

Guidance to Public Bodies on the Open Meetings Act at the Expiration of the Gubernatorial COVID-19 Disaster Proclamation

Updated May 15, 2023

Since March 2020, many public bodies throughout Illinois have sought to curb the spread of COVID-19 by holding fully remote/virtual meetings, or meetings at which a significant number of public body members and/or the public participated remotely. Between March 2020 and June 2020, the Governor issued a series of Executive Orders suspending certain provisions of the Open Meetings Act, and in June 2020, the legislature passed a bill that amended the Open Meetings Act to establish requirements broadly applicable to public bodies which permit these types of meetings. During that time, the Governor also has issued a series of disaster proclamations for the state of Illinois related to the COVID-19 pandemic.

On May 11, 2023, the last statewide disaster proclamation relating to the COVID-19 pandemic expired. As will be explained in this guidance, the absence of a gubernatorial disaster proclamation relating to public health means that the Open Meetings Act no longer authorizes most public bodies to hold meetings at which fewer than a quorum of members are physically present.

This document is intended to serve as guidance from the Public Access Counselor (“PAC”) based on the current status of the law as applied to remote/virtual meetings. If you have questions about the Open Meetings Act, please contact the PAC by phone at 877-299-3642 (voicemail) or public.access@ilag.gov.

Section 7(e) of the Open Meetings Act

On June 12, 2020, the Governor signed into law Public Act 101-0640, which added section 7(e) to the Open Meetings Act (“OMA”). Section 7(e) of OMA allows public bodies to hold open or closed meetings by audio or video conference without the physical presence of a quorum of members, and to accommodate public attendance through alternative arrangements, so long as several enumerated conditions are met.¹ The first enumerated condition, outlined in section 7(e)(1), requires that:

The Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area[.]²

Between June 2020 and May 2023, the Governor issued a series of disaster proclamations related to public health concerns. On April 28, 2023, the Governor issued the most recent disaster proclamation related to the COVID-19 pandemic. Section 12 of that proclamation stated that it

¹5 ILCS 120/7(e).

²5 ILCS 120/7(e).

would remain in effect through May 11, 2023.³ When that disaster proclamation expired, the Governor did not issue a new disaster proclamation.

Because there is no longer a disaster proclamation relating to public health issued by either the Governor or the Director of IDPH in effect for Illinois, the first enumerated condition in section 7(e) cannot be satisfied. Therefore, **there is no longer legal authority in OMA permitting most public bodies to hold a meeting by audio or video conference without the physical presence of a quorum of the members.**

Attendance Requirements for Public Body Members

Section 2.01 of OMA requires that a quorum of members of a public body must be physically present at the location of an open meeting.⁴ If that requirement is met, section 7 of OMA contains a narrowly drawn exception that allows other members to attend the meeting by video or audio conference if they are prevented from physically attending the meeting for certain specific reasons.⁵

A member of a public body may attend a meeting by video or audio conference for those specific reasons only in accordance with and to the extent allowed by the rules of the public body. Therefore, each public body must have its own rules permitting attendance by these means. Those rules must conform to the requirements and restrictions of section 7 of OMA.⁶

A majority of the members physically present at the meeting may allow another member to attend by video or audio conference if the member is prevented from physically attending because of:

- Personal illness or disability;
- Employment purposes or the business of the public body; or
- Family or other emergency.⁷

The public body's own rules may not expand this statutory list of reasons permitting remote attendance. If a member needs to attend a meeting remotely for one of the listed reasons, the member must notify the recording secretary or clerk of the public body before the meeting, unless advance notice is impractical.⁸ A majority of the members present at the meeting must approve allowing the member's remote attendance.⁹

³Gubernatorial Disaster Proclamation, issued April 28, 2023, at 5, <https://www.illinois.gov/content/dam/soi/en/web/illinois/documents/government/coronavirus-disaster-proc-04-28-23.pdf>

⁴5 ILCS 120/2.01.

⁵5 ILCS 120/7.

⁶5 ILCS 120/7(c).

⁷5 ILCS 120/7(a).

⁸5 ILCS 120/7(b).

⁹5 ILCS 120/7(c).

If each of the requirements described above is met, the member may attend the meeting by video or audio conference. A member attending remotely in accordance with section 7(a)-(c) has the same rights as members attending the meeting physically (to participate in discussion, to vote), unless the public body's own rules state otherwise.

When preparing meeting minutes, the public body must record the members of the public body who were present or absent, "and whether the members were physically present or present by means of video or audio conference[.]"¹⁰

The requirement that a quorum of members must be physically present at the location of a meeting applies to the vast majority of Illinois public bodies. However, sections 2.01 and 7(d) authorize alternative attendance rules for members of:

- Public bodies with statewide jurisdiction;
- an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles;
- A municipal transit district with jurisdiction over a specific geographic area of more than 4,500 square miles;¹¹
- A local workforce investment area with jurisdiction over a specific geographic area of more than 4,500 square miles; and
- A State advisory board or body that does not have authority to make binding recommendations or determinations or to take any other substantive action.

If you are a member of one of these public bodies, we urge you to review the attendance requirements and exceptions outlined in sections 2.01 and 7(d) of OMA.¹²

Public Accommodation and Public Comment

Because there is no longer in effect a disaster proclamation relating to public health issued by either the Governor or the Director of IDPH in effect for Illinois, the first enumerated condition in section 7(e) cannot be satisfied. Therefore, **there is no longer legal authority in OMA permitting a public body to exclude the public from in-person attendance at meetings.**

So long as public bodies allow the public to attend meetings in person, they may, additionally, live stream a meeting on a website, social media, or a public access television station. Public bodies may also establish video or audio conference access to meetings for interested members of the public.

¹⁰5 ILCS 120/2.06(a)(2).

¹¹The legislative history for the amendment adding this exception to OMA indicates that it applies to the RIDES Mass Transit District. Remarks of Sen. Forby, April 27, 2010, Senate Debate on House Bill No. 5329, at 140.

¹²5 ILCS 120/2.01; 5 ILCS 120/7(d).

Public bodies also must provide the public an opportunity to address public officials at meetings.¹³ Since March 2020, public bodies that prohibited or limited in-person attendance by the public have adopted rules allowing interested individuals to provide comment through various means, including written submissions to be read aloud at the meeting, through video conference, or through audio conference. Public members attending meetings in person are entitled to address the public body in person during the meetings. However, public bodies may continue to offer additional options for public comment for members of the public who are unable to attend meetings in person. Public bodies should always confirm that they are adhering to the procedures set forth in their own rules.

¹³5 ILCS 120/2.06(g).