

March 18, 2020

**Summary of Core Points in Executive Order 2020-07 and the Illinois Attorney General's Guidance to Public Bodies
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On March 16, 2020, Governor Pritzker signed Executive Order 2020-07 enabling meetings to be held electronically. The Order is effective for the duration of the Governor's Gubernatorial Disaster proclamation, which is 30 days from its issuance on March 9, 2020. The Attorney General also posted its "Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act During the COVID-19 Pandemic" directly on its website. *Below is only brief summary of only the core points contained in both Executive Order 2020-07 and in the Attorney General's Guidance to Public Bodies. All public bodies are encouraged to carefully read both Executive Order 2020-07 and the Attorney General's Guidance to Public Bodies, and to consult with their own legal counsel.*

Executive Order 2020-07 specifically suspends the OMA requirement in Section 2.01 that "members of a public body must be physically present" at a meeting location *and* suspends OMA's limitations in Section 7 on when remote participation is allowed. The Order does not suspend any other OMA requirement.

The Order encourages public bodies to postpone consideration of public business where possible, *i.e.*, where a public body does not have critical issues that must be addressed because of time constraints. To the extent members of a public body, their staff and members of the public can be exposed or infected with COVID-19 during public meetings, the Order prohibits all public and private gatherings of 50 or more persons beginning March 18, 2020. To that end, public bodies are encouraged to cancel public meetings where they expect 50 or more persons may attend.

QUORUM REQUIREMENT

A public body that determines a meeting is necessary is still required to have quorum of its members in order to hold any public meeting, whether in-person or by remote access. To the extent the Order suspends the OMA in-person presence requirements and suspends limitations on remote participation, a quorum of a public body's members may be established by remote access (for example, by video, audio, or telephonic conference).

PUBLIC NOTICE

Every public body must still post an agenda at least 48 hours in advance of holding any regular meeting, even if the meeting is entirely by remote access. Public notice of any special meeting that will be held electronically, except a meeting held in the event of a *bona fide* emergency, or of any rescheduled regular meeting, or of any reconvened meeting, likewise shall be given at 48 hours before such meeting, which notice shall also include an agenda for the special, rescheduled, or reconvened meeting. Public

notice with agenda for any emergency meeting should be posted by the public body as soon as practicable. If a public body elects to cancel a meeting after it has already posted notice and agenda in accord with OMA's public notice requirements, notice of cancellation must be posted by the public body at its principal office and meeting location, and on its website.

OPENNESS & TRANSPARENCY

A public body is also still required to maintain openness and transparency to members of the public. If a meeting becomes necessary, public bodies are encouraged to provide video, audio, and/or telephonic access to such meetings to ensure members of the public can monitor the meeting, and to update their websites and social media to keep the public fully informed of changes to their meeting schedules or the format of their meetings due to COVID-19. Remote access information for members of the public who wish to participate in the meeting should be included on the agendas for public meetings and posted on the public body's website, at its principal office and meeting room. Public bodies are also encouraged to record the entire meeting and post open session recordings on their websites as soon as practicable.

PUBLIC COMMENT

The Order does not suspend the OMA requirement for public comments at public meetings, even if the meetings are conducted entirely by remote access. Public bodies should consider taking any public comments by email or written submission and reading those public comments at the public meeting.

FOIA

The Governor's Order does not address or include a suspension of any of the FOIA requirements during the COVID-19 Pandemic, and the Attorney General's Guidance continues to require all public bodies to comply with FOIA and to respond to each request promptly, "to the extent they are able to, given the limitation on staff and resources during the COVID-19 pandemic." To that end, the Attorney General does note that given that many public bodies have chosen to allow employees to work remotely, while others have partially or completely closed their offices, public bodies may utilize FOIA's additional 5-day extension. Noting that the length of the COVID-19 pandemic remains unknown, the Attorney General also encourages requestors "to work with public bodies to agree on reasonable and appropriate response times in light of the public health concerns we all face."

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