



City of Albuquerque
Mayor's Office

Timothy M. Keller, Mayor

Interoffice Memorandum

Date: April 5, 2020

To: Directors; City Board and Commission Staff; Board and Commission Members.

From: Office of the City Clerk, City Legal Department, Office of Constituent Services

Subject: Continuity of Government Operations through Virtual Meetings of City Boards and Commissions

Guidance regarding Open Meetings Act Compliance during COVID-19 State of Emergency for City Boards and Commissions:

This guidance provides a general outline for how City Boards and Commissions should conduct meetings subject to the New Mexico Open Meetings Act (OMA), NMSA 1978, §§ 10-15-1 to -4 (1974, as amended) during the COVID pandemic. OMA allows videoconference or teleconference meetings by covered boards and commissions “if otherwise allowed by law or rule of the public body.” NMSA 1978 § 10-15-1(C). Because this guidance is not tailored to any specific Board, Board Chairs and staff should work closely with the City Legal Department to ensure compliance with OMA, the City's Public Boards, Commission, and Committees Ordinance (“Public Boards Ordinance”) and relevant Board rules. Following appropriate action to resolve Board-specific issues related to board rules or compliance with the Public Boards Ordinance, City Boards should follow the Attorney General's Guidance on OMA Compliance during COVID-19 State of Emergency.

On March 17, 2020, Attorney General Hector Balderas issued guidance to public entities regarding OMA compliance during COVID-19 State of Emergency.¹ The Office of the Attorney General (OAG) advised public entities to postpone any non-essential public meetings or agenda items during the public health emergency. The OAG guidance does not, however, prohibit regular meetings through a conference call or other similar remote meeting format and public entities may **continue with virtual meetings for emergency or time-sensitive matters**. In sum, City Boards and Commissions may continue to hold **meetings related to essential businesses**,

¹ N.M. Att'y Gen., Guidance to Public Entities Regarding Open Meetings Act and Inspection of Public Records Act Compliance during COVID-19 State of Emergency, Mar. 17, 2020, https://www.nmag.gov/uploads/PressRelease/48737699ae174b30ac51a7eb286e661f/AG_Balderas_Guidance_to_Public_Entities_Regarding_OMA_and_IPRA_Compliance_During_COVID_19_State_of_Emergency.pdf.

as defined by the Department of Health Public Health Order, issued March 23, 2020.² The Public Health Order provides a complete list of "essential businesses" including, but not limited to first responders, utilities, infrastructure services, private construction projects, public works projects, real estate, grocery stores, and banks.

The OAG provides the following guidelines to comply with OMA when a public entity holds an emergency virtual meeting:

- i. **Notice** of the meeting must still comply with the mandates of OMA, and it should contain detailed information about how members of the public may attend and listen via telephone, live streaming, or other similar technologies—this should include such detail as relevant phone numbers, web addresses, etc.;
- ii. While provided by alternative means, the public must have some form of **access** to the meeting to substitute for the access it would have during any normally scheduled public meeting subject to OMA;
- iii. Where possible, **videoconference is the best alternative** method of holding meetings;
- iv. At the start of the meeting, the chairperson should announce the names of those members of the public entity participating remotely;
- v. All members of the public entity participating remotely must identify themselves whenever they speak and must be clearly audible to the other members of the public entity and to the public;
- vi. The chairperson or person leading the meeting should **suspend discussion if the audio or video is interrupted**;
- vii. All votes of the public entity should be by **roll call vote**; and
- viii. The public entity should **produce and maintain a recording** of the open session of the meeting.

It is recommended that any City Board or Commission that proceeds with holding regular or emergency meetings follow the OAG guidance on notice, identifying speakers, voting by roll call, and if possible, maintaining a recording of the meeting. The Board must also continue to keep minutes as required by the Open Meetings Act. See, NMSA 1978 §10-15-1(G). The recording of the meeting need only be retained, however, until the written minutes of the meeting are approved. At that time, the recording becomes non-record material and may be retained for reference until no longer needed. NMAC 1.21.2.452. Electronic signatures of board documents by Board members are allowed pursuant to the Mayor’s Second Emergency Declaration.

Recommendations on Public Comment:

When conducting meetings by videoconference or teleconference, Boards may allow public comment in numerous ways. The public can provide written comments in advance of the meeting or provide live commentary by phone or video as part of the meeting agenda. OMA is satisfied if the City provides “reasonable public access” for those who want to “attend and listen”

² N.M. Dept. of Health, Cabinet Secretary Kathlyeen M. Kunkle, Public Health Emergency Order Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19, Mar. 23, 2020, <https://www.governor.state.nm.us/wp-content/uploads/2020/03/COVID-19-DOH-Order-fv.pdf>.

to meetings of City Boards and Commissions that are subject to OMA. *Gutierrez v. City of Albuquerque*, [1981-NMSC-061](#), [96 N.M. 398](#), [631 P.2d 304](#). **Although the OAG clearly stated that public comment is not required by law, if a City Board typically allows public comment, the Board should continue allowing public comment.** *Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999). Boards and Commissions should, however, review their rules and past practice when considering how to handle public comment. For example, if the Board is going to allow public comment by email in lieu of public comment by phone, video, or chat, Boards should review their rules to determine if such a practice is consistent with their rules or if the rules should be suspended or modified to allow the Board's practice in this instance. Boards and Commissions that are considering allowing public comment by video conference, "chat" functions on technology platforms, or telephone conference are strongly advised to ensure either their Board Chair or relevant City staff person are well versed in the relevant technology platform and pertinent moderator practices.

Recommendations on Technology:

The OAG guidance recommends Boards & Commissions use video or teleconferencing conferencing to hold meetings. There are numerous on-line platforms that provide on-line video and call conferencing and City Boards & Commissions should use such platforms (e.g. Zoom or GovTV) to conduct online video meetings.

These platforms have the following platform-enabled requirements to meet the needs of our Boards & Commissions:

- Ability to support 50 or more participants at one time
- Up to 8 hours of uninterrupted use
- Host moderation
- Visual display of printed material (screen share)
- Participation by telephone and/or video
- Audio and/or video recording of meetings

Meetings hosted via our City of Albuquerque Zoom subscription for example can support up to 300 participants, and allow *24 hours* of uninterrupted use. Participants can dial in to join by phone, or use a meeting link, ID, and password to join by smartphone or computer.

Using these videoconferencing technologies, "Hosts" (Board Chairs or a Board staff person) have the ability to moderate meetings to allow for member and public questions and answers. For those participating via computer or smart phone, Zoom has a "raise hand" button; those participating via telephone would press "*9" button to notify the host, and "*6" to mute.

Zoom in particular has a screen share function which would allow the host and participants to share documents from their screens. All pertinent documents can and should also be shared in advance of the meeting and be available for download or viewing on-line by sharing a link in the meeting notice.

The functionality of these technology platforms meets the user needs and will enable City of Albuquerque Boards and Commissions to conduct meetings that are open and accessible to the public, while also complying with the Attorney General's OMA Guidance.

Training:

While various technology platforms can comply with OMA, Board and Commission Chairs and Members are strongly advised to obtain training on use of the platform, including meeting moderation and participant engagement. There is significant potential for disruption of electronic meetings necessitating immediate intervention. City Clerk, Constituent Services, or the Department of Technology and Innovation can provide training to Board Members and staff. **In any virtual forum, a strong, skilled, active moderator who is familiar with the technology is essential to a successful virtual meeting. Whether that moderator is a staff member or the Board Chair, that person's skill set is not only critical to ensuring uninterrupted "reasonable public access" for those who want to "attend and listen" but also critical to safeguarding such access for the public and protecting against disruptions.**

Other Considerations:

Closed Meetings/Executive Sessions:

- Should a Board need to enter into a Closed or Executive Session, the Chair would need to initiate a separate teleconference meeting.

Video vs Audio Recording of Meetings:

- Closed/Executive Sessions of any Board should not be recorded.
- Regular Sessions/Meetings, should be audio recorded for the production of meeting minutes.