



City of Albuquerque

Mayor's Office

Timothy M. Keller, Mayor

Interoffice Memorandum

Date: July 7, 2021

To: City Boards and Commissions

From: Office of the City Clerk, City Legal Department, and Mayor's 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:

On June 30, 2021, the Mayor issued the Twentieth Declaration of Local Emergency Due to Novel Coronavirus COVID-19 ("Twentieth Declaration").¹ Unlike past declarations, the Twentieth Declaration does not authorize public boards, commissions, and committees to conduct virtual meetings via teleconference or videoconference.² The pre-pandemic application of the City's Public Boards, Commissions, and Committees Ordinance ("Public Meetings Ordinance")³ is back to being fully in effect.

This guidance provides a general outline for how City boards, commissions, and committees should return to the pre-pandemic procedures for conducting meetings subject to the New Mexico Open Meetings Act (OMA)⁴ and the Public Meetings Ordinance, while continuing to provide an option for remote participation by members of the public.

Effective June 30, 2021:

- All boards, commissions, and committees subject to the Public Meetings Ordinance are required to hold their meetings, "insofar as possible," "at a city-owned facility."⁵
- Members of a public board, commission, or committee may only attend remotely when it is "difficult or impossible for the member to attend the meeting in person[.]"⁶

¹<https://www.cabq.gov/mayor/documents/mayor-keller-twentieth-declaration-of-emergency-order-signed.pdf>.

²Compare Twentieth Declaration, with Nineteenth Declaration of Local Emergency Due to Novel Coronavirus COVID-19, p. 12 ¶ 8.

³See ROA 1994, §§ 2-6-1-1 to -6.

⁴NMSA 1978, §§ 10-15-1 to -4.

⁵*Id.* § 2-6-1-4(B)(1).

⁶*Id.* § 2-6-1-4(B)(5).

- A quorum of the board must be physically present at the meeting, even if it is difficult or impossible for some members to physically attend.⁷

Hybrid Meetings:

City boards, commissions, and committees should continue to provide an option for remote meeting attendance by members of the public (hybrid), whenever possible. A hybrid meeting occurs when a board's quorum physically meets in a city-owned facility and the public is able to attend the meeting physically or remotely. Hybrid meetings satisfy both OMA and the Public Meetings Ordinance and provide the public with the access they have grown accustomed to during the pandemic. The July 2020 guidance published by the City Clerk and City Legal Department related specifically to meetings held via Zoom or other electronic platform. Much of that guidance still applies to hybrid meetings where the board meets physically and the public is granted access to attend remotely. The applicable guidance is included below:

1. **Hybrid Meeting Notice:** Notice of any applicable meeting must comply with the mandates of OMA, and it should contain detailed information about how members of the public may attend in person or listen via telephone, live streaming, teleconferencing, or other similar technologies. This information should include such details as relevant phone numbers or web addresses.
2. **Hybrid Meeting Conduct:** Hybrid board, commission, or committee meetings shall be conducted in accordance with the following guidelines:
 - i. The public should be able to both attend physically and have some remote access to the meeting;
 - ii. The Board should offer more than one means to access the meeting, so that if a person does not have a computer, they may call in to the meeting;
 - iii. Where possible, **videoconference is the preferred** method of allowing remote attendance by members of the public;
 - iv. The chairperson or person leading the meeting should suspend discussion if the audio or video is interrupted; and
 - v. The public entity should produce and maintain a recording of the open session of the meeting. 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.
3. **Remote Participation by Appointed Members:** Appointed members of a public board, commission, or committee may only attend a public meeting remotely when their physical attendance is "difficult or impossible." The New Mexico Attorney General's OMA Compliance Guide states the following on the subject of remote attendance by appointed members: "Thus, in all cases where it is possible, members of a public body should attend meetings in person. Participation by telephone should occur only when circumstances beyond the member's control would make attendance in person extremely burdensome. [OMA's] provision [allowing members to attend remotely] is not intended to encourage participation by telephone in cases where personal attendance would be merely

⁷*Id.*

inconvenient or would be more efficient or economical for the public body.”⁸ Neither OMA nor the Public Meetings Ordinance authorize remote attendance for the sake of convenience.

When a board, commission, or committee meeting has at least one appointed member attending remotely, the meeting shall follow the New Mexico Attorney General’s COVID-19 guidance on virtual meeting conduct even after it is rescinded. This includes identifying speakers, voting by roll call, and 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).

- i. Where possible, **videoconference is the preferred** method of attendance for members whose physical attendance is difficult or impossible;
 - ii. The chairperson should announce the names of those members attending remotely at the beginning of the meeting;
 - iii. 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; and
 - iv. If **any** member is attending remotely, all votes of the public entity should be by roll call vote;
 - v. If **any** member is attending remotely, all suggestions for conducting a hybrid meeting should be followed as if the public were attending remotely, regardless of whether any members of the public are attending remotely.
4. **Public Comment:** When conducting hybrid meetings, boards, commissions, and committees may allow public comment in numerous ways. The public can provide advanced written comments or live commentary via 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” meetings of City Boards and Commissions subject to OMA.⁹ Boards, commissions, and committees should review their rules and past practice when considering how to handle public comment. For example, if a board is going to allow public comment by email in lieu of public comment by phone, video, or chat, the board should review their rules to determine if this process is consistent with their rules. Boards, commissions, and committees 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. If in-person public comments are allowed, it should be ensured those comments can be heard by those attending remotely.

⁸New Mexico Attorney General, Open Meetings Act Compliance Guide 12 (8th ed. 2015), <https://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Open%20Meetings%20Act%20Compliance%20Guide%202015.pdf>.

⁹*Gutierrez v. City of Albuquerque*, [1981-NMSC-061](#), ¶ 15, [96 N.M. 398](#), [631 P.2d 304](#).

Recommendations on Technology:

There are numerous online platforms that provide online 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 attendees at one time
- Up to 8 hours of uninterrupted use
- Host moderation
- Visual display of printed material (screen share)
- Attendance 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 attendees, and allow 24 hours of uninterrupted use. Attendees can join the meeting using a dial-in number with a phone or use a meeting link to join the meeting either via video or just audio with a computer or smartphone.

Using these video conferencing technologies, “Hosts” (Chair or staff person) have the ability to moderate meetings and take public comments or questions from attendees. For those participating via computer or smart phone, Zoom has a “raise hand” button, which notifies the host an attendee would like to make a comment. On a telephone, this can be accomplished through pressing “*9,” while pressing “*6” on a phone allows an attendee to mute or unmute themselves.

Zoom also has a screen share function, which allows hosts and participants to make documents available on their computer visible to attendees. All pertinent documents should be shared in advance of the meeting and made available for download or online viewing through a link in the meeting notice.

The functionality of these technology platforms meets the user needs and will enable the City’s boards, commissions, and committees to conduct meetings that are open and accessible to the public.

Training:

While various technology platforms can facilitate compliance with OMA and the Public Meetings Ordinance, Chairs and members are strongly encouraged to obtain training on the use of the platform, including meeting moderation and attendee engagement. Online meetings may potentially be disrupted and require immediate intervention. The City Clerk’s Office, Constituent Services, or the Department of Technology and Innovation can provide training to members and staff. **In any virtual forum, a strong, skilled, active moderator familiar with the technology is essential to a successful virtual meeting. Whether that moderator is a staff member or the Chair, that person’s skill set is not only critical to ensuring undisrupted “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 Meeting or Executive Session, the Chair needs to initiate a separate teleconference meeting. Any Board considering engaging in a Closed or Executive Session needs to consult with their attorney before doing so.

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.