



City of Albuquerque
Mayor's Office

Timothy M. Keller, Mayor

Interoffice Memorandum

Date: September 9, 2021

To: City Boards and Commissions

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:

Pandemic conditions have continued to vary widely across the state and City over time. Presently, it appears that New Mexico may be grappling with the Coronavirus pandemic for some time to come and it is critical that City Boards and Commissions continue to function. Without the work of these City Boards and Commissions, City Departments may be deprived of important advice on various matters of public concern. 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 and updates prior guidance issued April 3, 2020 based on the experiences of various boards and commissions that have met thus far.

On March 17, 2020, Attorney General Hector Balderas issued guidance to public entities regarding compliance with OMA and the New Mexico Inspection of Public Records Act (IPRA) during the COVID-19 State of Emergency (the OAG Guidance).¹ Although the OAG Guidance advises public entities to postpone any non-essential public meeting agenda items during the duration of the state of emergency, it does not prohibit boards and commissions from meeting. The City's boards and commissions provide valuable input and advice on the development of City policies and the delivery of essential programs and services. Given the on-going pandemic and uncertainty of when regular in-person meetings will be possible, all boards and commissions may resume holding routine meetings. To the extent the provisions of the City's Public Boards, Commission, and Committees Ordinance regarding in-person meetings effect any given board, the Mayor's recent emergency declarations authorize Boards, Commissions, and Committees to

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.

hold meetings via teleconference or videoconference.² Despite this authorization, boards, commissions, or committees, which conduct merits hearings, including but not limited to the Board of Ethics and Campaign Practices, the Personnel Board, and the Labor Management Relations Board may take testimony in person to facilitate fact finding at their discretion.

In order to hold a meeting regarding routine but time-sensitive matters, City Boards and Commissions should take the following steps.

1. **Rules:** Rules, including board rules, of specific boards and commissions may need to be amended prior to holding a virtual meeting. Boards, their 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 any relevant board rules.
2. **Notice:** Notice of any applicable 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 details as relevant phone numbers, web addresses, etc.;
 - i. The public must have some form of access to the meeting to substitute for the access it would during any normally scheduled public meeting subject to OMA;
 - ii. Where possible, **videoconference is the preferred** method of holding meetings;
 - iii. At the start of the meeting, the chairperson should announce the names of those members of the public entity participating remotely;
 - iv. 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;
 - v. The chairperson or person leading the meeting should suspend discussion if the audio or video is interrupted;
 - vi. All votes of the public entity should be by roll call vote;
 - vii. The public entity should produce and maintain a recording of the open session of the meeting; and
 - viii. 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.
3. **Meeting Conduct:** It is recommended that any City Board or Commission that proceeds with holding regular or emergency meetings follow the OAG guidance on 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). 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.

² See Seventh Declaration of Local Emergency Due to Novel Coronavirus COVID-19 at 9.

4. **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” meetings of City Boards and Commissions subject to OMA. *Gutierrez v. City of Albuquerque*, [1981-NMSC-061](#), [96 N.M. 398](#), [631 P.2d 304](#). **Although OAG guidance 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 determination is consistent with their rules or if the rules should be suspended or modified to allow for temporary modification of the Board’s practice. 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 to hold meetings. 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 meeting link to join the meeting via video or just audio with a computer or smartphone.

Using these video conferencing technologies, “Hosts” (Board Chairs or a Board 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 City of Albuquerque Boards and Commissions to conduct meetings that are open and accessible to the public, while also meeting the State Attorney General’s Guidance Regarding OMA Compliance During COVID-19 State of Emergency issued March 17, 2020.

Training:

While various technology platforms can facilitate compliance with OMA, Board and Commission Chairs and members are strongly advised to obtain training on the use of the platform, including meeting moderation and attendee engagement. Online meetings may potentially be disrupted, which necessitates the need for immediate intervention. The City Clerk’s Office, 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 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 or Executive Session, the Chair would need 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.