

March 24, 2020

ADVISORY: OPEN MEETINGS FOR GEORGIA LOCAL AUTHORITIES IN CONJUNCTION WITH COVID-19 (CORONAVIRUS) MEASURES¹

Current Situation

On March 14, 2020, in an effort to contain and prevent the spread of COVID-19, Governor Kemp issued “Declaration of Public Health State of Emergency,” which extends through April 13, 2020 at 11:59 p.m., unless otherwise renewed or terminated (the “State of Emergency”). Further, the U.S. Centers for Disease Control (the “CDC”) March 14, 2020, along with the White House and other federal agencies, have recommended limiting, and the Governor has now legally limited, most public gatherings, ordering that no more than 10 people congregate during the State of Emergency. To aid reducing the spread of COVID-19, the CDC and the Governor have also strongly recommended physical separation (“social distancing”) for people who must be in contact with others. When combined, these restrictions can make compliance with normal Open Meetings Act in-person, public meeting requirements difficult, and conducting such meetings could inadvertently expose board members, staff, or attendees to COVID-19.

Legal Background

Under normal circumstances, local authorities are governed by a board, and as such, are subject to Georgia’s Open Meetings Act, § 50-14-1, *etc. seq.* (the “OMA”). The OMA requires quorums of the board members, or committee formed by them, to meet in-person, and in open, public forum for presentation, discussions, and deliberation, subject only to applicable exemptions for certain matters to be closed from the public through specific exceptions. Meetings are required to have agendas and be held at regular times at specified location, or subject to call, upon advance notice of at least 24 hours to the public and legal organ. Under special circumstances, subject to restricted agendas, local authorities are also permitted under the OMA to conduct a meeting on urgent matters with shorter notice. Minutes of meetings and summaries are required to be prepared following every meeting and executive session. With certain restrictions, the OMA generally provides for telephonic participation of board members due to illness or absence, so long as there is a quorum of members at the meeting location for the authority. However, this exception to the rule, alone, may be insufficient to meet criteria for reducing the risk of transmission of COVID-19.

¹ This Advisory is a quick-reference guide for local government officials, members, and staff. The information in this Advisory is general in nature and not a substitute for specific professional advice.

Available Alternatives:

Virtual Meetings: Several of our authority clients have requested guidance on holding meetings “virtually” during the State of Emergency. Our conclusion is “virtual meetings” of governing bodies are not only permitted, but for prevention of spread of COVID-19 and the reasons set forth below, the preferred alternative.

By “virtual meeting,” we refer to an authority meeting which complies with all other requirements of the Open Meetings Act, O.C.G.A. § 50-14-1 *et seq.* (i.e., the OMA), but which is held by teleconference (or other technologically advanced forms of conferencing, such as video conference, web conference, or live-streaming) of the board members without the physical presence of a quorum (or any) of the board members and/or public at the usual meeting place of the authority. The OMA states in relevant part:

Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted . . . to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting.

O.C.G.A. § 50-14-1(g).

Though the COVID-19 situation is unprecedented, based on our experience in the area coupled with guidance from state officials, the declared State of Emergency, with related restrictions, satisfies requirements of the OMA to trigger the ability of local authorities, and other governments, to conduct virtual meetings. This conclusion is consistent with the position that state agencies are taking, as well as ACCG and GMA.

Cancellation or Postponement: Georgia’s local authorities are the backbone of many of the projects and planning which affect citizen’s daily lives. As such, even during times of crisis, local authorities are expected and required to continue their operations in order to serve. Even so, given the State of Emergency and the restrictions ordered by the Governor and recommendation by federal authorities, it may be prudent to ask the questions of: “Is this meeting necessary to the performance of the authority’s projects, duties, and mission?” and “Could the matters for discussion be delayed without deleterious effect on the authority or public?” If the answer is yes, then in the interest of prevention of spread of COVID-19 and in public participation in open meetings, the authority may consider simply canceling scheduled meetings and not calling meetings during the effectiveness of the State of Emergency.

Physical Separation or “Social Distancing”: Though larger public gatherings and meetings are discouraged by the CDC and prohibited during the State of Emergency, local authorities are still permitted to meet in person with 10 or fewer persons in attendance, even under the Governor’s March 23, 2020 restrictions on gatherings. In order to do so, however, local authorities should keep in mind the prescriptions to provide six (6) feet or more of physical separation of people, sanitizing of spaces before and after meetings, and limiting attendance to the meeting.

Even if an local authority can meet the guidelines of having 10 or fewer persons in meeting place and still have an effective, in-person meeting during the State of Emergency (i.e. “board members only”), exclusion of the public will still likely be required to meet physical separation

and congregation requirements. The OMA mandates public observation of meetings, though, and the public is required to be able to listen and hear an authority's discussions in open session as if present in the room, even during the State of Emergency. This could be accomplished with live-streaming or broadcasting of the meeting, in real-time, or as simple as a conference dial-in number for the public. Audio or video recording and for later distribution and review by the public is not sufficient to meet the requirements of the OMA, however.

Frequently Asked Questions

Question: If our authority holds a virtual meeting, how is the public afforded access?

Answer: The method of conference or communication open to the members must also be accessible by the public. If a call-in or video conference, then the public must be provided the dial-in information and be able to hear the discussions in real time by joining. If broadcast, the public must be provided the station or web-link to the audio or video stream. This information would be included along with the agenda in the public notice, and/or on the web-site, and posted at the normal, physical location of meetings.

Question: If our authority holds a “virtual meeting,” must the normal requirements of the OMA relating to agendas, summaries, and minutes also be met?

Answer: Yes. Other than the physical quorum requirement being lifted, all other requirements of the OMA are still in effect through the State of Emergency.

Question: What if an item is properly included in an executive session discussion? How are executive sessions handled?

Answer: Under specified exemptions of the OMA, portions of the virtual meeting which are included in the executive session should not be available for observation by the public. This can effectively be accomplished by having a separate dial-in number or conference ID for the executive session; the primary conference would remain open but not used so that the public can hear portion of the meeting after executive session is resumed.

Question: Our authority is planning on having a virtual meeting, but are technologically limited to the number of callers or observers who can participate in the dial-in or conference? Is this a problem?

Answer: The requirement is for there to be reasonable provision made for the public to participate and observe the meeting. So, if there are only sufficient “slots” or dial-in numbers for some, but not all, of the public, that is not a problem; this is the equivalent of the physical size of the meeting room not accommodating an overflow of public attendance.

Further Questions?

If you have additional questions on holding your local authority meetings during the State of Emergency related to COVID-19, or other OMA or authority questions, please call or email us. We are here for you and always glad to help. Be safe.

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