

## Governor Baker Issues Order Temporarily Suspending Certain Provisions of the Open Meeting Law – March 13, 2020

In follow up to Wednesday's declaration of a State of Emergency, on Thursday evening Governor Baker issued an "Order Suspending Certain Provisions of the Open Meeting, G.L. c. 30A, §20." That Order, which is effective immediately and until it is rescinded or the State of Emergency is terminated, can be found [here](#).

This Order addresses one of the biggest obstacles faced by communities when determining the scope and extent of any closure of government operations in response to the COVID-19 outbreak - namely, the limitations imposed by the Open Meeting Law ("OML"), under which public bodies generally must meet in public settings, in person, and in view of the public. The Order provides much needed relief to boards, committees and commissions across the state faced with making immediate, critical decisions to ensure continued functioning of government at a time when federal and state officials and agencies are urging "social distancing" and avoidance of large gatherings to reduce possible transmission of the virus.

The Order makes the following important changes:

- Public bodies otherwise governed by the OML are temporarily relieved from the requirement that meetings be held in public places, open and physically accessible to the public, so long as measures are taken to ensure public access to the bodies' deliberations "through adequate, alternative means."
- Where a municipal public body is unable to provide alternative means of public access enabling the public to watch a meeting in real time, due to economic hardship and "despite best efforts", that public body may instead, as soon as it is able following the meeting, post on the municipal website "a full and complete transcript, recording, or other comprehensive record of the proceedings".
- All members of a public body may participate in public meetings by remote or virtual means, and the ability to utilize remote participation does not depend upon any previous decision by the municipality's chief executive officer to authorize remote participation generally.

The Order defines "adequate, alternative means of public access" as "measures that provide transparency and permit timely and effective public access to the deliberations of the public body," including but not limited to:

- Telephone, internet, or satellite enabled audio or video conferencing
- Any other technology that enables the public to follow the meeting in real time

Thus, meetings of public bodies may now be conducted via teleconference, "Skype," on-line meeting services (i.e., GoToMeeting or WebEx), and social media or other internet streaming services, so long as the public is

provided an avenue to watch or listen to the proceedings “live” (unless, as noted above, a municipal public body is unable to provide this alternative means of public access, due to economic hardship and “despite best efforts”). Importantly, any person who is entitled or required to appear before the public body must be allowed to also participate remotely. These alternative means of access must be offered at no charge to the public.

Notably, in cases of public hearings required by state or local law or regulation, where the rights of the public to attend, participate, and be heard, are implicated, any “alternative means of public access” **must** provide the applicants and/or the applicants’ representative(s) **and** the public with the ability to participate remotely as well. You may wish to consult our client alert issued on Wednesday, available [here](#), for further explanation of the distinction between public hearings and public meetings.

In light of the challenges for holding a public hearing, however, we continue to recommend that extensions be requested, and confirmed in writing, for matters with pending statutory or regulatory deadlines. Each licensing and permitting authority should assess all ongoing matters to identify those that may require extensions of time in light of pending deadlines. Given the information of which we are presently aware, and the rapidly changing nature of the response to this virus, we suggest you request 90-day extensions of time in all instances. In the event such extensions are not necessary or agreed to by the applicant, you will have to reassess an appropriate mechanism for holding necessary public hearings.

All other requirements of the OML remain in effect. Thus, meetings of public bodies must still be posted at least 48 hours in advance, not counting Saturdays, Sundays and legal holidays, unless the conditions for an “emergency” meeting under the OML are met. Minutes must still be taken, and approved in accordance with state requirements. All other rules governing “remote participation” apply, aside from the requirement that a quorum of the public body (including the chair or acting chair for the meeting) be physically present in the meeting location. Even with the relief provided by the Governor’s Order, we still advise compliance with the OML to the greatest extent possible, and as feasible and appropriate under the particular factual circumstances at issue.

We will shortly post on our website guidance concerning the process for providing notice and implementation of remote participation under these circumstances.

Finally, because Town Meetings are not covered by the OML, this Executive Order suspending certain provisions of the OML does not impact Town Meeting in any way.

We will continue to keep you updated on developments in the face of this rapidly-evolving pandemic. A reminder that we have established a **Coronavirus “hotline”**, at [coronavirusinfo@k-plaw.com](mailto:coronavirusinfo@k-plaw.com). A dedicated team of our attorneys is available through this “hotline” e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary, land use, or labor contact, and you should of course feel free to contact these attorney(s) directly with COVID-19 related questions.

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