

COVID-19 Emergency Response: Implementation of Governor's Order Suspending Certain Provisions of the Open Meeting Law March 16, 2020

Under Governor Baker's emergency "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20," issued on March 12, 2020, meetings of public bodies may be conducted "virtually," provided that adequate access is provided to members of the public who wish to view or listen to (and where required, participate in) meetings remotely, in real time. That Order, which is effective immediately and until it is rescinded or the State of Emergency is terminated, and our explanation of the Governor's Order, can be found on our website at www.k-plaw.com.

This temporary relief should allow for continued public meetings and hearings that are essential to ensure that basic government operations continue during this challenging time, in a way that ensures transparency and preserves the public's right to observe "government in action", while at the same time limiting in-person gatherings that may foster the spread of the virus.

To aid you in implementing "virtual" meetings, we have prepared sample guidance that you can adopt explaining your community's use of virtual meetings and the process for members of the public to access meetings. In addition, we have also prepared sample language that you can include on all meeting notices where the meeting will be held virtually. In light of Governor Baker's ban on gatherings of more than 25 people, issued Sunday evening (March 15, 2020), it is likely that more and more communities will find it necessary to implement some means of holding virtual meetings. (Sunday's ban takes effect on March 17, 2020, and significantly reduces the Governor's prior ban on gatherings of more than 250 people).

Implementation of "Virtual" Public Meetings and Hearings:

We recommend that clear direction and instruction be provided to the public about the degree to which, and how, virtual meetings will be conducted. We have prepared a sample public notice in this regard. We also advise that for any meetings or hearings that will be conducted "virtually", that language be included prominently on meeting/hearing notices indicating that the meeting will be held via electronic means, rather than in person, and that the Chair of the public body make a statement regarding the use of remote participation at the start of any meeting being held virtually.

Suggested language informing public of use of remote participation and “virtual” meetings:

You may wish to consider adopting and posting explanatory language about the use of virtual meetings on your website, such as the following:

In light of the ongoing COVID-19 coronavirus outbreak, Governor Baker issued an emergency Order on March 12, 2020, allowing public bodies greater flexibility in utilizing technology in the conduct of meetings under the Open Meeting Law. The [city/town] of _____ greatly values the participation of its citizens in the public meeting process, but given the current circumstances and recommendations at both the state and federal levels to limit or avoid public gatherings, including Governor Baker’s ban on gatherings of more than 25 people, together with the present closure of [city/town] Hall and other public buildings to the public, the [city/town] has decided to implement the “remote participation” procedures allowed under Governor Baker’s emergency Order for all boards, committees, and commissions. This means that:

1. All or any of the members of the public body may choose to participate in a public meeting via remote access. Meetings may be virtual, in their entirety.
2. The public will not be allowed into a Board/Committee meeting, even where there are any members of the public body and/or [city/town] staff or official(s) physically present at the meeting location during the meeting. “Public comment” portions of meetings will be temporarily suspended.
3. However, the public will be provided with alternative access through which they can watch or listen to meetings “in real time,” and meeting notices will specify the manner in which members of the public may access audio or video of the meeting as it is occurring.
4. If, despite our best efforts, our technological capabilities do not adequately support public access to virtual or remote meetings, the [city/town] will ensure that an audio or video recording, transcript, or other comprehensive record of the proceedings at the meeting is posted on the [city/town’s] website as soon as possible after the meeting.
5. Notices for public hearings will contain additional information about how the public may participate via electronic/technological means.
6. For executive session meetings, public access to the meeting will be limited to the open session portion(s) of the meeting only. Public access to any audio, video, internet or web-based broadcast of the meeting will be discontinued when the public body enters executive session.
7. Where individuals have a right, or are required, to attend a public meeting or hearing, including executive session meetings, they will be provided with information about how to participate in the meeting/hearing remotely.
8. Meeting notices will still be posted at least 48 hours in advance (not counting Saturdays, Sundays, or legal holidays), unless it is an emergency meeting as defined under the Open Meeting Law (in which event, the meeting notice will be posted with as much advanced notice as is possible in the circumstances). Minutes will still be taken.

Please check individual meeting agendas on the calendar on the [city/town's] website, located [insert web address], for the latest information regarding meetings. Each meeting may experience unique circumstances that may require last minute changes in protocol, including cancellation or rescheduling. We appreciate your patience as we undergo this shift in a significant aspect of how the [city/town] conducts business.

Suggested language for your meeting notices:

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the [city/town] [board/committee/commission] will be conducted via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on the [city/town's] website, at [insert web address]. For this meeting, members of the public who wish to [listen/watch] the meeting may do so in the following manner: [specify method of access]. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so, despite best efforts, we will post on the [city/town's] website an audio or video recording, transcript, or other comprehensive record of proceedings as soon as possible after the meeting.

Suggested statement to be made by the Chair of a public body at the start of any public meeting conducted "virtually":

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the [city/town] [board/committee/commission] is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings as provided for in the Order. A reminder that persons who would like to [listen to/view] this meeting while in progress may do so by [specify remote access instructions]. **OR** [Despite our best efforts, we are not able to provide for real-time access, and we will post a record of this meeting on the city/town's website as soon as we are able.]

Suggested statement to be made by the Chair of the public body at the start of any public hearing conducted “virtually”:

Note that for public hearings, the applicant and the public must be provided a means to participate in the virtual meeting in real time. Thus, the statement made at the start of public hearings would be slightly different than for public meetings:

Pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this public hearing of the [city/town] [board/committee/commission] is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but the public can [listen to/view] this meeting while in progress by [specify remote access instructions]. Members of the public attending this meeting virtually will be allowed to make comments if they wish to do so, during the portion of the hearing designated for public comment, by [specify the means by which public comment may be made, depending upon the technology being used].

We will continue to keep you updated on additional developments in the face of this rapidly-evolving pandemic. A reminder that we have established a **Coronavirus “hotline”**, at 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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