

Resources

Executive Order 2020-15 – Governor Whitmer Grants Public Bodies The Flexibility to Meet Electronically During COVID-19 Emergency

March 20, 2020

On March 18, 2020, Governor Gretchen Whitmer issued Executive Order 2020-15 which permits all public bodies in the State of Michigan, with the exception of the State Legislature, to meet during the COVID-19 state of emergency (“COVID-19 Emergency”) by electronic means until April 15, 2020. Listed below is a link to Executive Order 2020-15 along with several questions and answers about the Order:

Who does Executive Order 2020-15 apply to?

Section 2(a) of the Open Meetings Act (“Act”) defines “public bodies” that are subject to the Act. Executive Order 2020-15 applies to all public bodies that meet the definition of “public body” under the Act with the exception of the state legislative bodies (i.e., the Legislature and its respective committees). See Paragraphs 1 and 7. This includes State boards, commissions, university boards and local public bodies, including counties, cities, townships, villages, community colleges, school districts, intermediate school district and public school academies.

Executive Order 2020-15 supersedes paragraphs 2 and 3 of Executive Directive 2020-02 which authorizes State departments, commissions and boards to meet electronically. See Paragraph 9. Additionally, Executive Order 2020-15 supersedes any conflicting provisions of a charter, ordinance or rule. See Paragraph 8.

How long is Executive Order 2020-15 in effect?

Executive Order 2020-15 is effective March 19, 2020, at 10:18 a.m. eastern standard time and continues through April 15, 2020. In the event that the COVID-19 Emergency continues past April 15, 2020, there is a strong likelihood that Governor Whitmer may extend the time period for public bodies to meet electronically under Executive Order 2020-15 or subsequent order.

What provisions of the Open Meetings Act are suspended?

Executive Order 2020-15 suspends the Open Meeting Act requirements that a public body meet in a physical place and any requirement that members of the public body be physically present at that place for the public meeting. Telephonic conferencing or video conferencing are both specifically permitted under the Order, provided that either conferencing capability utilizes two-way communication where: (i) members of the public body can communicate and hear each other and the public can listen to these communications; and (ii) members of the public body and the public can communicate and hear each other. Members of the public body who participate electronically are considered to be present at the meeting for purposes of attendance, quorum, and participation purposes.

Where does notice of a public meeting need to be posted?

In addition to other posting requirements under the Act, a notice of the meeting must be posted on the public body’s internet website at a location that is accessible to the general public. This includes either the public body’s homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the public body’s website homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings.

What information must be included in the notice?

In addition to the notice requirements under the Act, the notice must include all of the following information:

- (i) An explanation of the reason why the public body is meeting electronically.
- (ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.
- (iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
- (iv) Procedures by which persons with disabilities may participate in the meeting.

Do other meeting materials need to be posted?

Yes, Executive Order 2020-15 encourages a public body to make available to the general public through the public body's website homepage an agenda and other materials relating to the meeting.

Do we need to change our regular meeting schedule to meet electronically? What do we need to post online?

Yes, the public body will need to change its regular meeting schedule. The Act requires that if there is a change in the schedule of regular meetings of a public body, there shall be posted within three days after the meeting at which the change is made, a public notice stating the new dates, times and places of the public body's regular meetings. The change in "place" from a physical location to an electronic meeting in accordance with Executive Order 2020-15 should be noted in the revised regular meeting schedule.

How should we conduct our "closed sessions?"

If necessary, a public body may continue to have "closed sessions" as that term is defined by the Act. Executive Order 2020-15 has not expanded or restricted the permitted uses for such sessions. It may be most practical to have "closed sessions" toward the end of the public meeting following the main agenda action items and the public comment portion of the meeting. A separate dial-in or conference number should be arranged and made available to board members and other required participants that are required in the closed meeting session. Separate meeting minutes should be kept for the meeting and maintained separately as required by the Act.

What platform should be used?

There are many available telephonic and video conferencing platforms for a public body to consider, including Skype, Zoom, Loop-Up, and more. A public body should consult with its information technology department or staff to determine what technologies are readily available. If a public body chooses to use a telephone conference system, it should be mindful that some platforms have restrictions on whether you can mute participants, how many participants may dial-in, and how participants on the conference call can communicate with each other. A public body will also want to consider how many members of the public may participate in the meeting and what features may be needed to accommodate your meeting. Remember, Executive Order 2020-15 permits any member of the public and press/media to participate electronically in the public body's meeting.

Must we allow the general public to participate/speak at an electronic meeting?

Yes. The Act requires that a person must be permitted to address a meeting of a public body under rules established and recorded by the public body. A public body may still restrict comments to a public comment portion of the meeting, but the public body must also provide some mechanism by which the general public can engage and speak at the meeting. One example may be to have a "public comment" portion at the end of the public meeting so that persons from the general public, who submit their name to the public body's recording secretary prior to or at the beginning of the meeting, can then be acknowledged by the public body's chairperson during the public comment section to make their public comments.

How does Executive Order 2020-15 impact our “decisions?”

Executive Order 2020-15 does not change your obligation to make all “decisions” at meetings open to the public. As a reminder, a “decision” is “a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.” Remember: all deliberations of a public body involving a quorum must take place at a meeting open to the public—this includes any consensus-building process or informal discussions toward reaching a decision. Executive Order 2020-15 makes clear that “round-the-horn” decision making or the use of telephone calls, e-mails, text, instant messaging or other forms of communication among a subgroup of the public body’s membership for decision-making purposes is still prohibited.

A copy of Executive Order 2020-15 can be accessed [here](#).

If you have any questions concerning Executive Order 2020-15 or questions about the Open Meetings Act, please contact either Courtney Kissel (248-203-0743 or ckissel@dykema.com), or Len Wolfe (517-374-9178 or lwolfe@dykema.com).

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