

Open Meetings Act—Virtual Meetings until April 1, 2021

COVID-19 (DHHS Emergency Order and PA 254 of 2020)

Introduction

Due to the coronavirus pandemic, the state has put regulations in place to protect the public health and still enable local governing bodies to hold meetings. As of January 2021, there are two actions in play: the Michigan Department of Health and Human Services (DHHS) emergency order on gatherings and Public Act 254 of 2020. The DHHS order put limits on indoor and outdoor gatherings, and PA 254 of 2020 amended the OMA to permit public bodies to meet electronically by telephone or videoconferencing through March 31, 2021.

DHHS Gatherings and Face Masks Emergency Order

The DHHS emergency order is in effect through February 21, 2021. The order expressly prohibits any indoor gathering at a non-residential venue, except where no more than 10 persons from no more than two households are gathered, and limits any outdoor gathering to the fewer of 25 persons or 20 persons per 1,000 square feet. DHHS has published guidance stating that public meetings are only permissible if the meeting is outdoors and has fewer than 25 persons (or 20 persons per 1,000 square feet) in attendance. **All persons participating in gatherings are required to wear a face mask.**

Open Meetings Act (PA 254 of 2020)

Technical Requirements

Virtual public meetings must utilize an electronic platform that allows for two-way communication between the members of the governing body and the public. In addition, meetings must be properly noticed, to include (MCL 15.263 and 15.263a):

- publishing the notice on the public body's website homepage at least 18 hours in advance of the meeting;
- an explanation of why the public body is meeting virtually,
- how the members of the public (including persons with disabilities) may participate,
- how members of the public can directly contact members of the public body; and
- posting the meeting agenda online at least two hours before the meeting begins.

Further, members of the governing body participating virtually are required to announce at the beginning of the meeting that they are participating remotely. If a member is attending the meeting remotely for a purpose other than military duty, the member's announcement must further identify his/her physical location by county, city/township/village and state.

Public Health Requirements

If a public body holds an in-person meeting before April 1, 2021, (e.g. after the DHHS order expires on February 22, 2021) it must adhere to social distancing and mitigation measures and adopt heightened standards of facility cleaning in line with recommendations by the Centers for Disease Control and Prevention.

State of Emergency

The League requested changes to the OMA allowing a local state of emergency or state of disaster to be declared pursuant to a local ordinance (in addition to those declared under law or charter in the current law) and adds a local chief administrative officer (in addition to a local official or local governing body) as a person who may declare the local state of emergency.

What happens after March 31, 2021?

Starting April 1, and continuing through 2021, public bodies may conduct electronic meetings only if a member of the public body is absent due to military duty, a health condition, or a statewide or local state of emergency/state of disaster.

OPEN MEETINGS ACT (EXCERPT)
Act 267 of 1976

15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; COVID-19 safety measures; tape-recording, videotaping, broadcasting, and telecasting proceedings; accommodation of absent members; remote attendance; rules; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body must be open to the public and must be held in a place available to the general public. All persons must be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting. For a meeting of a public body held in person before April 1, 2021, the public body shall do both of the following:

(a) To the extent feasible under the circumstances, ensure adherence to social distancing and mitigation measures recommended by the Centers for Disease Control and Prevention for purposes of preventing the spread of COVID-19, including the measure that an individual remain at least 6 feet from anyone from outside the individual's household.

(b) Adopt heightened standards of facility cleaning and disinfection to limit participant exposure to COVID-19, as well as protocols to clean and disinfect in the event of a positive COVID-19 case in the public body's meeting place.

(2) All decisions of a public body must be made at a meeting open to the public. For purposes of any meeting subject to this section, except a meeting of any state legislative body at which a formal vote is taken, the public body shall, subject to section 3a, establish the following procedures to accommodate the absence of any member of the public body due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster declared pursuant to law or charter or local ordinance by the governor or a local official, governing body, or chief administrative officer that would risk the personal health or safety of members of the public or the public body if the meeting were held in person:

(a) Procedures by which the absent member may participate in, and vote on, business before the public body, including, but not limited to, procedures that provide for both of the following:

(i) Two-way communication.

(ii) For each member of the public body attending the meeting remotely, a public announcement at the outset of the meeting by that member, to be included in the meeting minutes, that the member is in fact attending the meeting remotely. If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must further identify specifically the member's physical location by stating the county, city, township, or village and state from which he or she is attending the meeting remotely.

(b) Procedures by which the public is provided notice of the absence of the member and information about how to contact that member sufficiently in advance of a meeting of the public body to provide input on any business that will come before the public body.

(3) All deliberations of a public body constituting a quorum of its members must take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person must not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person must be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person must not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies, but only when deliberating the merits of a case:

(a) The Michigan compensation appellate commission operating as described in either of the following:

(i) Section 274 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.274.

(ii) Section 34 of the Michigan employment security act, 1936 (Ex Sess) PA 1, 421.34.

(b) The state tenure commission created in section 1 of article VII of 1937 (Ex Sess) PA 4, MCL 38.131, when acting as a board of review from the decision of a controlling board.

(c) The employment relations commission or an arbitrator or arbitration panel created or appointed under

1939 PA 176, MCL 423.1 to 423.30.

(d) The Michigan public service commission created under 1939 PA 3, MCL 460.1 to 460.11.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or other association or facility formed under that act as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body that adopts a nonpolicymaking resolution of tribute or memorial, if the resolution is not adopted at a meeting.

(10) This act does not apply to a meeting that is a social or chance gathering or conference not designed to avoid this act.

(11) This act does not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection must be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation that the board of trustees, by rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, determines requires immediate action.

(12) As used in subsection (2):

(a) "Formal vote" means a vote on a bill, amendment, resolution, motion, proposal, recommendation, or any other measure on which a vote by members of a state legislative body is required and by which the state legislative body effectuates or formulates public policy.

(b) "Medical condition" means an illness, injury, disability, or other health-related condition.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1981, Act 161, Imd. Eff. Nov. 30, 1981;—Am. 1986, Act 269, Imd. Eff. Dec. 19, 1986;—Am. 1988, Act 158, Imd. Eff. June 14, 1988;—Am. 1988, Act 278, Imd. Eff. July 27, 1988;—Am. 2016, Act 504, Eff. Apr. 9, 2017;—Am. 2018, Act 485, Eff. Mar. 29, 2019;—Am. 2020, Act 228, Imd. Eff. Oct. 16, 2020;—Am. 2020, Act 254, Imd. Eff. Dec. 22, 2020.

Administrative rules: R 35.621 of the Michigan Administrative Code.

OPEN MEETINGS ACT (EXCERPT)
Act 267 of 1976

15.263a Electronic public meetings; telephonic or video conferencing; permissibility under certain circumstances; 2-way communication required; advance notice of electronic meetings; availability of agenda; registration requirement prohibited; remote participation limited to military duty or medical condition.

Sec. 3a. (1) A meeting of a public body held, in whole or in part, electronically by telephonic or video conferencing in compliance with this section and, except as otherwise required in this section, all of the provisions of this act applicable to a nonelectronic meeting, is permitted by this act in the following circumstances:

(a) Before March 31, 2021 and retroactive to March 18, 2020, any circumstances, including, but not limited to, any of the circumstances requiring accommodation of absent members described in section 3(2).

(b) On and after March 31, 2021 through December 31, 2021, only those circumstances requiring accommodation of members absent for the reasons described in section 3(2). For the purpose of permitting an electronic meeting due to a local state of emergency or state of disaster, this subdivision applies only as follows:

(i) To permit the electronic attendance of a member of the public body who resides in the affected area.

(ii) To permit the electronic meeting of a public body that usually holds its meetings in the affected area.

(c) After December 31, 2021, only in the circumstances requiring accommodation of members absent due to military duty as described in section 3(2).

(2) A meeting of a public body held electronically under this section must be conducted in a manner that permits 2-way communication so that members of the public body can hear and be heard by other members of the public body, and so that public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. A public body may use technology to facilitate typed public comments during the meeting submitted by members of the public participating in the meeting that may be read to or shared with members of the public body and other participants to satisfy the requirement under this subsection that members of the public be heard by others during the electronic meeting and the requirement under section 3(5) that members of the public be permitted to address the electronic meeting.

(3) Except as otherwise provided in subsection (8), a physical place is not required for an electronic meeting held under this section, and members of a public body and members of the public participating electronically in a meeting held under this section that occurs in a physical place are to be considered present and in attendance at the meeting for all purposes.

(4) If a public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body shall, in addition to any other notices that may be required under this act, post advance notice of a meeting held electronically under this section on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly scheduled or electronic public meetings that is accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of nonregularly scheduled or electronic public meetings. Subject to the requirements of this section, any scheduled meeting of a public body may be held as an electronic meeting under this section if a notice consistent with this section is posted at least 18 hours before the meeting begins. Notice of a meeting of a public body held electronically must clearly explain all of the following:

(a) Why the public body is meeting electronically.

(b) How members of the public may participate in the meeting electronically. If a telephone number, internet address, or both are needed to participate, that information must be provided specifically.

(c) How members of the public 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.

(d) How persons with disabilities may participate in the meeting.

(5) Beginning on the effective date of the amendatory act that added this section, if an agenda exists for an electronic meeting held under this section by a public body that directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body shall, on a portion of the website that is fully accessible to the public, make the agenda available to the public at least 2 hours before the electronic meeting begins. This publication of the agenda does not prohibit subsequent amendment of the agenda at the meeting.

(6) A public body shall not, as a condition of participating in an electronic meeting of the public body held

under this section, require a person to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms established and required by the public body necessary to permit the person to participate in a public comment period of the meeting.

(7) Members of the general public otherwise participating in a meeting of a public body held electronically under this section are to be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of this act applicable to a closed session.

(8) At a meeting held under this section that accommodates members absent due to military duty or a medical condition, only those members absent due to military duty or a medical condition may participate remotely. Any member who is not on military duty or does not have a medical condition must be physically present at the meeting to participate.

History: Add. 2020, Act 228, Imd. Eff. Oct. 16, 2020;—Am. 2020, Act 254, Imd. Eff. Dec. 22, 2020.

City of Grand Haven
Electronic Meeting Procedures
October 19, 2020

This policy is adopted pursuant to PA 228 of 2020

- All deliberations and decisions of a public body must be made at a meeting open to the public.
- Members of the legislative (or other) City body may participate in public meetings via remote electronic means provided that all members of the body can see and hear each other and hear and be heard and seen by the public. Exceptions to attending a meeting in person shall only be permissible if the member is absent due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster declared pursuant to law or charter by the governor or a local official or local governing body that would risk the personal health or safety of members of the public or the public body if the meeting were held in person.
- Each member of the legislative (or other) City body must, at the outset of each meeting, verbally certify that they are attending remotely and must declare their physical location (City & State/Country).
- The presider of the meeting must state clearly, for the record, the reason some or all members may be participating in the meeting remotely.
- Meetings to be held with some or all members participating remotely by electronic means shall be so noticed a minimum of 18 hours in advance of the meeting on City website in location immediately accessible to all members of the public.
- Each member of the legislative (or other) City body must consent to having their email address and/or phone number displayed on the City web site so that interested members of the public may communicate with them regarding agenda items to be covered at the meeting.
- Any member of the public may attend any electronic meeting by logging into Facebook or other live streaming platform and all members of the public shall be afforded ample opportunity to comment, verbally or in writing, during the meeting. Members of the public shall state or write their name and address in order to address the public body.
- A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.