

FAQ: Public Meetings & Public Notice Issues In Light of the COVID-19 Pandemic

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CSI offers this guidance to relay the current thinking related to “best practices” and potential technological measures to facilitate public access. It is provided for informational purposes only and is not to be construed as legal advice or formal legal opinion on the behalf of CSI. Use of this information does not create an attorney-client relationship, nor is the creation of such relationship intended by the provision of this information. This information does not constitute a formal administrative opinion on behalf of CSI. CSI recommends that each school contact its attorney to obtain legal advice with respect to any particular issue.

1. May a public body conduct a “public meeting” entirely remotely by electronic means?

Yes. The Colorado Open Meetings Law (“COML”) recognizes that “meetings” of public bodies may be conducted by “by telephone, electronically, or by other means of communication.” § 24-6-401(1)(b). The law provides that all “meetings” at which a quorum, or three or more members, of the body discuss “public business” must be “open to the public at all times.” § 24-6-402(2)(b).

{Please note that other legal regimes, most notably the Americans with Disabilities Act, may necessitate the use of reasonable accommodations during an electronic-access-only meeting to facilitate attendance at electronic-only meetings by individuals with disabilities.}

2. May a public body decline to provide password access to an electronic meeting if the physical meeting location is otherwise accessible and open to the public?

While potentially lawful, this is not a best practice. COML prohibits the use of an electronic-only meeting where the password for access to the meeting is not made available to the public. Schools should provide all interested persons, including members of the public and board members, with the password to access the electronic meeting.

3. May a public body provide electronic-only notice of a “public meeting”?

Yes. The COML authorized local public bodies, as of Jan. 1, 2019, to use electronic-only posting of notices of their meetings. § 24-6-402(2)(c)(III).

4. May a public body meet without any kind of notice if there is an “emergency”?

Yes, but the scope of what constitutes an “emergency” is exceedingly narrow. The Colorado Court of Appeals has held that a town council’s “emergency” meeting without timely notice was permissible under the COML in light of the council’s subsequent notice, consideration, and ratification of the actions taken at the emergency meeting at a later properly noticed public meeting. *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996). It is likely that a court would not consider a public body to be justified by an “emergency” if the circumstances leading to the need to call a meeting are foreseeable or where the need for action is not so urgent that a notice could not be posted electronically.

5. May a public body convert a previously scheduled in-person meeting into an electronic-only meeting?

Yes, so long as a new notice is published notifying the public of the new means of access. Other amendments to previously posted notices can include the addition of new topics or changes in the location of a meeting. As explained before, the amended notice should precede the meeting by at least twenty-four hours.

6. How much advance notice must be provided for a meeting of a public body.

At least twenty-four hours. The COML establishes an explicit minimum of at least twenty-four hours notice for public meetings of local public bodies. § 24-6-402(2)(c)(I). Obviously, providing notice for more than twenty-four hours is appropriate where feasible.

{Please note that many public bodies have internal bylaws or policies that may address the timing for notices of their meetings. Such internal policies should also be consulted when considering how much notice to provide for an upcoming public meeting.}

7. How much advance notice must be provided for an amended notice of a previously posted meeting of a public body.

Same – at least twenty-four hours. The COML does not distinguish between an initial notice of a meeting and an amended notice. An amended notice setting out the logistics and mechanics for an electronic-only meeting should be posted at least twenty-four hours before the start of the meeting.

8. Is a public body required to provide a mechanism during an electronic-only meeting that would enable a member of the public to speak to the public body during the electronic-only meeting?

No. The COML imposes no requirement for a “public comment” period, or any other form of public input during a public meeting. Rather, the purpose of the statute is to allow the public to observe, not necessarily to participate. § 24-6-401.

{However, if a public body has a regular practice of soliciting public input or comments during its public meetings, the body may wish to rely on the “chat” or similar functions of online video-conference systems such as Zoom or Skype, which would allow participants to send comments to the body in writing. The public body should also consult its board by-laws or operating procedures for applicable public-comment rules.}

9. What is the best practice for setting up electronic-only access for an executive session in conjunction with a meeting of the public body?

Use a two-mode system of access for the meeting. If the public body uses a commercial internet-based video conferencing service such as Zoom, the service will allow for the creation of side-bar meetings into which selected participants may join the portion of the meeting that has been closed to the public. This will allow for the public-meeting portion of the electronic meeting to remain open while the executive session is conducted. Otherwise, in the absence of a commercial video-conferencing system, the safest way to

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conduct a closed executive session during a body's meeting is by having a two-mode method for accessing the electronic meeting. That is, if the meeting is conducted by *both* webinar *and* a concurrent telephone dial-in conference bridge, the webinar portion of the meeting can be suspended or recessed while the executive session is conducted by telephone. For the executive session, only the body's board members and other appropriate staff would be given the access code for the executive session and they would dial into the telephone conference bridge after they had voted to go into executive session. Once the executive session is completed, the body's board members would then rejoin the webinar video conference that had been suspended.

{Alternatively, if the board is using only a telephone conference system for its electronic-only meeting, rather than a webinar as well, the board should have two conference call bridges, one for the open public meeting and the other for the closed executive session.}

References: *Colorado Open Meetings Law ("COML"), §§ 24-6-401, et seq., C.R.S., and the case law interpreting it*

Contact:

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