

# Open Meetings Act FAQs for meetings held during the COVID-19 Emergency

The current state of emergency raises questions for public bodies on how to meet in compliance with the Open Meetings Act when public gatherings are discouraged, and, in some cases, buildings are closed. Some of these questions are new and have not been addressed before, whether by the Open Meetings Compliance Board, which is not a division of this Office, or in Opinions of the Attorney General. And, for many public bodies, other laws, such as charter provisions and local ordinances, set additional open meetings requirements. This informal guidance only addresses the requirements of the Open Meetings Act, and, although it is based on past opinions of the Compliance Board, it does not predict how either the Compliance Board, an independent board, or a court, might apply the Act in any particular matter. The overriding principle is that when a public body encounters circumstances that challenge its ability to admit the public to an open meeting in the usual location, the public body must provide the public with the best possible opportunity to observe the conduct of public business, given those circumstances. In doing that, a public body should consider how best to reach its interested public.

General guidance on the “open meeting” requirements of the Open Meetings Act can be found in the [Open Meetings Act Manual](#), particularly [Chapter 3](#).

## 1. May a public body meet by teleconference?

Yes, so long as the public can listen in. The Manual explains: “When the meeting ‘place’ is a conference call, the public may be provided access either via a call-in number or by access to a meeting room with a speakerphone. [8 OMCB Opinions 111, 113 \(2012\)](#). Some states limit public bodies’ use of conference call meetings. For example, California law requires at least one member to be present in a meeting room. *See* Cal Gov’t Code § 11123(b)(1)(F). Maryland does not limit the use of conference-call meetings. Still, the members of public bodies that meet by teleconference should identify themselves and speak audibly so as to assure that the meeting is, in fact, “open” to the public. It might also be advisable for each member to tell the group whether anyone is with the member at the time.” *See* [Open Meetings Act Manual, Chapter 3](#).

Additional practical considerations:

- If the public is given a call-in number, the chair may set ground rules. Some rules might include:
  - The chair will call the roll to establish a quorum;
  - Members need to identify themselves when they are talking;
  - The members may be asked to identify anyone who is present with them during the call;
  - The public may be asked to mute the call on their end to avoid interruptions;
  - The public may not speak unless the chair asks them to.
- Public bodies might wish to consider including any ground rules in the meeting notice.

## **2. May a public body hold a closed session by teleconference?**

Yes, but only after voting to close the session in a call that the public has been given notice of and can listen to. The vote must be recorded, so the chair should call the roll for it. The chair should read the written closing statement out loud and ask the public if anyone objects to the closed session. As always, if someone does object, the public body must send a copy of the closing statement to the Compliance Board. The opportunity to object does not mean that the individual may participate further. In short, closed teleconference meetings are subject to the same requirements that apply to closed in-person meetings.

Practical considerations:

- To maintain the confidentiality of a session properly closed under the Act, the public body members must disconnect from the open-session call and reconvene in closed session by calling in to a number to which the public does not have access.
- During the closed session, each member must identify anyone who is “present” with them, as that information must be provided in the closed-session summary in the next open session's minutes.
- As always, the meeting notice should alert the public to the fact that the meeting will be closed.
- If the public body will reconvene in open session afterwards, the public must be given notice of that fact and of the time at which the open session will begin, with a call-in number for that session.
- As always, the public body must keep minutes of any closed session that is subject to the Act.

## **3. May a quorum of a public body's members meet in person but exclude the public from the meeting room and stream the meeting live?**

The Compliance Board hasn't addressed this issue, so the answer isn't as clear as it is for FAQ #2. Ordinarily, as explained in Chapter 3 of the Manual, a quorum of a public body may not gather physically in places inaccessible to the public. The Compliance Board has recognized, however, that sometimes, through no fault of its own, a public body can't accommodate all of the members of the public in the meeting space, and, in those circumstances, the Compliance Board has found that the public body has complied with the Act by providing streaming video elsewhere, as in an overflow room. *See 10 OMCB Opinions 40, 41-43 (2016) and opinions cited therein.*

Also, in at least one matter, the Compliance Board has not applied the Act inflexibly when the public body was dealing with an emergency and no one was deprived of the opportunity to observe. *See [11 OMCB Opinions 35 \(2017\)](#).* In sum, as in all emergencies, public bodies must do

their best under the circumstances to provide the public with a meaningful opportunity to observe the conduct of public business.

Practical considerations:

- The public body should not admit a few members of the public into the room and exclude others unless it has set rules in advance, such as a maximum permissible occupancy that will enable people to sit at distances.
- If press will be allowed, the public body should alert them to any special rules for seating.
- The presiding officer may wish to publicly explain the need to exclude the general public and the presence of anyone who has been admitted, such as the press and the public body's counsel and staff.
- If the public body's interested observers do not have access to the internet, the public body might consider meeting by teleconference instead to enable more people to observe.
- In short, the public body must do its best to provide the public with the best possible opportunity to observe.

(March 13, 2020)