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FAQ STATEMENT #1 FOR SB 661
AMENDING CERTAIN SECTIONS OF THE OKLAHOMA OPEN MEETING ACT

1. Why is the Open Meeting Act being amended now?

- The amendments are a direct but temporary response to the COVID-19 virus and the ongoing social distancing guidance issued by President Trump, Governor Stitt, and national and state public health entities.

2. Are the changes permanent?

- No. These changes will remain in effect until November 15, 2020 or the Governor declaring the state of emergency to be terminated, whichever occurs first.

3. November 15, 2020, seems like a long time. What if the social distancing guidelines are lifted before November 15, 2020?

- The amendments do not prohibit in-person meetings (see FAQ #8). If the Governor lifts the state of emergency due to COVID-19, then these amendments will no longer be in effect. As social distancing guidelines ease and/or are removed, public bodies should take account of such changes and resume holding in-person meetings as soon as public health conditions warrant.

4. What are the amendments?

- They allow public bodies subject to the Open Meeting Act (“OMA”) to hold meetings via videoconference and teleconference (often called “virtual” meetings) without also having an in-person meeting location.

5. How is that different from what the OMA allowed before the amendments?

- Prior to these amendments, the OMA required public bodies to hold in-person meetings where a majority of the public body members were physically present together. So long as the public was given the appropriate advance notice, public body members could participate in a public meeting via videoconference from a location that was open and accessible to the public, like a technology center or public library located in the member's jurisdiction.
- Under these new temporary changes, a majority of the members of a public body may meet via videoconference or teleconference. If a public body holds a virtual-only meeting, it should electronically record the entire meeting. Additionally, minutes are still required to be taken during open meetings and executive sessions.

6. Are meetings still required to be open to the public?

- Yes. The public must still be able to watch the meeting in real time via a videoconference link, or if videoconference is not available, listen to the meeting in real time by calling a conference call line.

7. How will the public know if the meeting is going to be in-person, by videoconference, or by teleconference?

- Public bodies must still provide the public with notice of meeting dates, time, and locations as well as agendas, including whether the meeting provides teleconferencing or videoconferencing.
- SB 661 temporarily allows public bodies to suspend making hard copies of meeting notices and meeting agendas available at their principal office location. However, electronic copies of meeting notices and meeting agendas are required to continue to be available on public body websites and/or through distribution lists.
- If a meeting will include video- or teleconferencing, the notice and agenda must include the information needed for the public to participate, such as the full website address or the call in number along with any codes or other information needed to access the virtual meeting.
- Notices and agendas must also state how each public body member is appearing, whether by teleconference, videoconference, or in-person. Once posted, any public body member who indicated they would appear in-person at a meeting site may **not** change to a remote appearance. However, public body members who intended to appear remotely may instead appear at the in-person meeting location, if one is offered.

8. Are votes still required to be publicly cast and recorded?

- Yes. Votes are required to be publicly cast and recorded. If the meeting is virtual, then all votes must be made and recorded by a roll call vote.

9. Can public bodies still hold in-person meetings?

- Yes. Public meetings can still be conducted in the same way they have always been done.
- The amendments are designed to provide flexibility to public bodies. These amendments balance the continuing priority of transparency with the recognized need to protect the health and welfare of the public, public body members, and staff while social distancing guidelines are in effect due to the COVID-19 pandemic.

10. Is there a preference or priority between using videoconferencing or teleconferencing for holding these virtual meetings?

- Yes. While public bodies may determine that in-person meetings are temporarily unsafe, public bodies should utilize all available resources to hold meetings using videoconferences that are open and accessible to the public. Teleconferences, or audio-only meetings, should only be utilized where videoconferencing capabilities are unavailable. Teleconferences must also use conference call lines that are toll-free and accessible to the public.

11. What about executive sessions? Are they permitted during virtual-only meetings?

- Yes. The amendments do permit executive sessions to take place during a virtual-only meeting. The requirement that minutes be taken during executive sessions remains. And agendas are still required to list proposed executive sessions in accordance with 25 O.S. § 311(B)(1).
- There are inherent challenges in ensuring that only public body members and those authorized to attend an executive session are present. For this reason, **it is advisable that executive sessions only be conducted when videoconferencing is available.** Additionally, public bodies should communicate with IT support to determine the capability to electronically verify attendees to ensure executive sessions remain confidential as authorized by law.

12. What happens if the videoconference or teleconference link breaks, or you can't hear or see what is happening?

- If audio connection is lost at any time during the meeting, the amendments require that the meeting is stopped and reconvened once the audio connection is restored. The meeting should also be stopped if the audio or video (if applicable) is compromised such as distorted audio or frozen video feed.

13. If the meeting stops because there is a problem with the audio, how will the public know when it is reconvened?

- The OMA still requires that public notice of the date, time and place of the continued/reconvened meeting be announced at the original meeting and that only matters appearing on the agenda of the meeting which is continued may be discussed when the meeting is reconvened. 25 O.S. § 311(A)(11).
- To ensure compliance with this requirement, ahead of or at the start of a virtual meeting, public bodies need to announce the date, time and place that the meeting will be reconvened if audio is lost or compromised. For instance, a public body may announce that they will attempt to restore communications for a maximum of thirty (30) minutes, and if they are unable to restore communications, the meeting will reconvene at a certain date, time, and place.

14. If the meeting only takes place using a teleconference line, how does the public body or the public know that a quorum is maintained throughout the meeting?

- The OMA still requires that the public body have a majority of members in attendance. There are challenges to ensuring that a majority is maintained throughout the duration of a teleconference meeting. For this reason, **teleconferences should be a method of last resort only** (see FAQ #9).
- If a teleconference is the only way for a public body to meet to conduct business, the public body should take a roll call of its members in attendance at regular intervals, such as every fifteen (15) minutes. While this may, of necessity, interrupt the flow of the meeting, it is critical to ensure that the actions taken by the public body meet the requirements of the OMA and that the public maintains confidence in the transparency of the public body.

15. Can the public still comment during virtual meetings?

- The OMA does not mandate that the public be allowed to participate or speak at open meetings. The decision to allow the opportunity for such is up to the individual public body. The amendments do require that the public be allowed to participate and speak in the same manner and to the same extent at a virtual meeting as the public body allows for in-person meetings.

16. Do the amendments change the public's right to have copies of the meeting materials provided to public body members?

- No. A public body is still required to make materials shared between members of a public body during a virtual meeting immediately available to the public in the same form. This means that public bodies will need to upload such materials to their websites or distribute them in another electronic format before or at the start of the meeting. Additionally, public bodies should distribute such materials through any existing distribution list maintained for notice of public meetings.

Email questions to questions@oag.ok.gov.