



Frequently Asked Questions on Public Meetings and Public Notice Issues *In Light Of the COVID-19 Pandemic*

The following guidance is based on the Colorado Open Meetings Law ("COML"), §§ 24-6-401, et seq., C.R.S., and the case law interpreting it, as well as the Colorado Administrative Procedures Act ("CAPA"), §§ 24-4-101, et seq., C.R.S. These FAQs also provide our current thinking related to "best practices" and potential technological measures to facilitate public access.

Q. May a public body conduct a "public meeting" entirely remotely by electronic means?

A. Yes.

The 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 two or more members of a state public body, or three or more members (or a quorum) of a local public body, discuss "public business" must be "open to the public at all times." § 24-6-402(2)(a). A meeting accessible only electronically, such as by webinar, online video conference (e.g., Zoom), or telephone conference, complies with the COML so long as the means to access the meeting electronically are made available to the public.

Q. May a public body provide electronic-only notice of a "public meeting"?

A. Yes.

The COML authorizes *local* public bodies to use electronic-only posting of notices of their meetings. § 24-6-402(2)(c)(III). For state public bodies, the statute requires that there must be "full and timely notice to the public." State bodies should adopt a 'flexible' standard that takes into account the interest in providing access to 'a broad range of meetings at which public business is considered,' as well as the public body's need to conduct its business 'in a reasonable manner.'" (*Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 652 (1978)).

Q. May a public body meet without any kind of notice if there is an "emergency"?

A. Yes, but the scope of what constitutes an "emergency" is narrow.

The COML has no provision for "emergency" meetings. 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). The court observed, however, that an "emergency" is one that is "an unforeseen combination of circumstances or the resulting state that calls for immediate action." As such, public bodies should provide some form of notice on their websites whenever possible.

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

A. Yes, so long as a new notice is published notifying the public of the new means of access.

Under the *Town of Marble* doctrine allowing for flexible standards in connection with notices of public meetings, it is permissible for a public body to amend a previously posted notice of a public meeting. *Town of Marble v. Darien*, 181 P.3d 1148, 1152 (Colo. 2008). Amendments can include the addition of new topics, changes in the location of a meeting, or the means of accessing the meeting.



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

A. At least 24 hours.

The COML requires at least 24 hours' notice for public meetings of local public bodies. § 24-6-402(2)(c)(I). While there is no similar provision for state public bodies, 24 hours' notice should be sufficient for a public meeting of a state public body, especially if there are extenuating circumstances that warrant a short notice period. Providing notice for more than 24 hours is appropriate where feasible. In addition, it is also important to consider whether a particular public body's statute, ordinances, charter, or rules require more than 24 hours of public notice. If so, then the more specific notice provision will control over the general provision in the COML.

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

A. At least 24 hours.

The COML does not distinguish between an initial notice of a meeting and an amended notice. The amended notice setting out the logistics and mechanics for an electronic-only meeting should be posted at least 24 hours before the start of the meeting.

Q. 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?

A. No.

The COML does not require 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. Note, though, that many local public bodies do have such requirements in their ordinances or rules. If that is the case, the public body will need to use a technology for its electronic meeting that facilitates a public comment period. Many current virtual-meeting services readily enable this function. The body may alternatively rely on the "chat" or similar functions of online video-conference systems such as Zoom or Skype, which allow participants to send comments to the body in writing.

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

A. 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 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. Once the executive session is completed, the body's board members would then rejoin the webinar video conference.