



# ALABAMA LEAGUE OF MUNICIPALITIES

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**TO: Mayors, Councilmembers, City Clerks**  
**FROM: Alabama League of Municipalities**  
**DATE: March 19, 2020**  
**RE: Updated Guidance on Open Meetings Act**

We previously issued guidance concerning governmental bodies' options related to COVID-19 and the Open Meetings Law, which was directed towards limiting the threat of exposure while conducting an in-person public meeting. The Governor's March 18, 2020 Proclamation has provided another option for governmental bodies where members of a governmental body can attend a meeting by telephone or video conference, be counted for a quorum, and vote on matters coming before the body, so long as the deliberations conducted or actions taken during the meeting are limited to either:

- (a) matters that are necessary to respond to COVID-19; or
- (b) matters that are "necessary to perform essential minimum functions of the governmental body".

**We would once again like to thank Shane Black and Ben Goldman with Hand Arendall for their analysis and expertise.**

If the matters to be addressed at the meeting include any deliberations or votes on other matters, then arguably the Governor's exception cannot be used, and the regular Open Meetings Law applies. Keep in mind, however, that it's important for governmental bodies proceeding under the Governor's proclamation or the regular Open Meetings Law to adhere to any applicable public health orders that are in effect. Right now, for example, Jefferson County and contiguous counties are under public health orders that restrict gatherings of 25 or more persons or gatherings of any size that cannot maintain a consistent 6-foot distance between attendees. See <http://alabamapublichealth.gov/legal/orders.html>. It is likely these orders will continue locally or even statewide in the days ahead. It is also important to keep these in mind when addressing issues regarding public hearings mandated by law. It may be necessary to postpone public hearings and re-advertise at a later date after the expiration of the state of emergency.

If the Governor's exception can be used, then (a) the communications equipment must allow meeting participants to hear one another at the same time, and (b) no less than 12 hours after the meeting, the governing body must post a summary of the meeting on its website or in another prominent location. That summary must "recount the deliberations conducted and the actions taken with reasonable specificity to allow the public to understand what happened," something that may be more than what some bodies typically record in their minutes. The governmental body is encouraged, but not required, to use communications equipment that allows the public to listen to, observe, or participate in the meeting. Other provisions of the Open Meeting Law that are not inconsistent with this exception will still apply, meaning, for example, that governing bodies must still provide notice to the public of all meetings.

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The relief provided by the Governor with respect to meetings of governmental bodies is limited to certain specific provisions of the Open Meetings Act. So, please be mindful that other provisions of law, such as meeting notice requirements, are not affected by the Proclamation.

This is an important action by the Governor under her emergency powers, and it will help - in certain situations - many local governments adhere to the CDC guidance about gatherings while continuing to do business.

Here is an important “take-away” from the Governor’s exception: this exception does not apply to all deliberations and actions of a governmental body. If a governmental body wants to use this exception, it must first ask these two questions for each item on the agenda or reasonably expected to be discussed at the meeting: (a) does it relate to the COVID-19 response?; and (b) does it involve something that is “necessary to perform essential minimum functions of the governmental body”? If the answer to either item is “yes” for each and every item, then the governmental body can use this exception for its upcoming meeting. But if the answer to either question is “no”, then the governmental body cannot use this exception, and it should refer to the earlier guidance provided by the League concerning the Open Meetings Law via memo to officials dated March 15 available on the League’s website.

The big question here, of course, will be trying to determine whether a business item is “necessary to perform essential minimum functions of the governmental body.” This will have to be decided by governmental officials on a case-by-case basis depending on the nature of the governing body and the business item. Governmental bodies should consult with their attorneys in making these decisions.

If the Governor’s exception is not used, then a governmental body has two choices: to either not discuss or take action on items not satisfying either of the Governor’s two tests (and indefinitely postponing them until this COVID-19 situation is over, whenever that may be), or to proceed under the Open Meetings Law, as best one can, without the use of the Governor’s exception.