

# *In Brief*

## **PREPARE FOR NEW (OR OLD) OMA PHYSICAL PRESENCE REQUIREMENTS**

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Pursuant to executive orders responding to the COVID-19 pandemic, the physical presence requirements under the Open Meetings Act (OMA) have been suspended from March 16 through May 29, 2020. During this time, a public body is permitted to convene a properly noticed meeting with any number of members physically present, or no members physically present, as long as the total participating members constitutes a quorum. No specific reason or vote to allow remote participation by members is required. If the Governor does not issue a new executive order or sign relevant legislation in the next few days, public bodies must once again comply with the physical presence requirements of the OMA for meetings held on and after May 30, 2020. *However, it is more likely that the Governor will issue a new executive order and, sometime in the near future, sign Senate Bill 2135. That bill would allow for remote attendance at meetings during a public health emergency, provided several conditions are met.*

Without action by the Governor, the return of the physical requirements under the OMA would coincide most of Illinois entering Phase 3 (Recovery) of the Governor's "Restore Illinois" Plan. While gatherings under Phase 3 remain limited to 10 or fewer people, this limitation would not apply to an open meeting convened by a public body for the purpose of conducting essential business. As a reminder, compliance with the physical presence requirements of the OMA means:

- ❖ A quorum must be physically present at the meeting location in order to convene a meeting.
- ❖ One or more members may attend by other means (*i.e.*, telephone, videoconference) only if: a quorum of the members is physically present at the meeting location; a majority of the public body permits it pursuant to rules adopted by the public body; and the member is prevented from physical attendance because of personal illness or disability, employment purposes or the business of the public body, or family or other emergency.

If Senate Bill 2135 is signed into law, as expected, it will go into effect immediately upon the signing. The bill would allow public bodies to conduct meetings by audio or video conference without the physical presence of a quorum if all of the following conditions are met:

- ❖ The Governor or IDPH Director has declared a public health-related disaster for all or part of the area covered by public body's jurisdiction.
- ❖ The head of the public body determines an in-person meeting is not practical or prudent.
- ❖ All participating members are verified, can hear one another, and can hear all discussion and testimony.

- ❖ For open meetings, the public body has made arrangements so that:
  - members of the public present at the regular meeting location can hear all discussion, testimony, and member votes, or
  - if the emergency makes physical attendance not feasible, the public can hear the meeting remotely as it happens and has notice of the arrangements.
- ❖ Unless the disaster makes it not feasible, at least one member of the public body, chief legal counsel, or chief administrative officer is physically present at the regular location.
- ❖ All votes are conducted by roll call so that individual votes can be identified and recorded.
- ❖ The public body gives notice of a meeting held under these new conditions:
  - at least 48 hours before the meeting on the public body's website, to all members of the public body, and to news media that have requested meeting notices; or
  - if the public body declares a bona fide emergency, as soon as practicable before the meeting to news media that have requested meeting notices. For bona fide emergency meetings, the emergency must be stated at the start of the meeting, and the public body must comply with verbatim recording requirements.
- ❖ Each member participating remotely is considered present for purposes of quorum and participating in all proceedings.
- ❖ For open meetings, the public body makes a verbatim audio or video recording.
- ❖ The public body bears all costs associated with compliance with these requirements.

These changes do not override the preexisting requirements of Section 2.06 of the OMA, which include making verbatim records of closed meetings, keeping written minutes, and providing an opportunity for public comment.

If public bodies convene a meeting at their regular meeting location, they should comply with social distancing requirements and other guidance in effect on the date of the meeting. Currently and to the greatest extent feasible, this includes: spacing seats 6 feet apart; marking with signage or taping 6-foot distances for attendees; wearing face coverings (unless unable to wear due to age or health condition); providing restroom accessibility for handwashing and having hand sanitizer available; and regular cleaning of high-touch services. Given the social distancing requirements, public bodies may wish to consider moving their meeting to a larger room so that attendees can be more spread out. Public bodies should consider stating on the posted agenda how it plans to comply with social distancing and health/safety guidance during the meeting.

At least for the foreseeable future, citizens may be apprehensive about physically attending a public meeting. In consideration of this, public bodies may wish to consider allowing public comment both in-person or via email and providing remote access to the meeting. If such conveniences are offered, they should be noted on the posted agenda.

Please do not hesitate to contact any Robbins Schwartz attorney for further guidance.

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