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MEMORANDUM

TO: Public Bodies (as defined by La. R.S. 42:13)

FROM: Jeff Landry, Attorney General

DATE: August 12, 2020

RE: Additional Open Meetings Guidance in light of COVID 19 and the recent passage of La. R.S. 42:17.1

The following guidance on the Open Meetings Law is to assist public bodies during the current Public Health Emergency.

Louisiana Constitution Article XII, § 3 establishes a general constitutional right to observe the deliberations of public bodies. The Open Meetings Law, La. R.S. 42:11, *et seq.*, describes and defines this constitutional right. However, this constitutional right is expressly qualified and subordinate to laws passed by the legislature.¹

Can a meeting be held over video or telephone conference?

Yes, if certain criteria are met. Act 302 of the 2020 Regular Legislative Session amended the Open Meetings Law to provide an exception for allowing meetings to be held over video or telephone conference during a gubernatorially declared disaster or emergency. Act 302 enacted La. R.S. 42:17.1, which allows all public bodies to conduct, and its members to attend and participate in, a meeting held via electronic means provided all of the following criteria are satisfied:

- The governor declares a state of emergency or disaster involving an area within the jurisdiction of the public body and, due to the nature of the emergency or disaster, holding a meeting as normal in person is detrimental to the health, safety, or welfare of the public.
- The presiding officer of the public body certifies on the notice of the meeting that the agenda is limited to one of the following topics:
 - Matters directly related to the public body's response to the disaster or emergency and that are critical to the health, safety, or welfare of the public;
 - Matters, if they are delayed, that will cause curtailment or harm to vital public services or severe economic dislocation and hardship; and/or
 - Matters critical to the continuation of the business of the public body and that are not able to be postponed to a meeting held in person due to a legal

requirement or other deadline that cannot be postponed or delayed by the public body.

- The public body and its presiding officer comply with the other notice and public comment requirements set forth in La. R.S. 42:17.1.

Has the quorum requirement changed in light of COVID-19?

No. Quorum requirements remain applicable, and a quorum of members must be present to conduct business. A quorum is a simple majority of the total membership of the public body. La. R.S. 42:13(4). Thus, a simple majority of the total membership of the public body must still be engaged in the meeting in order to conduct business.

Can members that participate via teleconference be counted towards the quorum?

Yes. If the provisions of La. R.S. 42:17.1 are satisfied, members that are participating via teleconference may be counted toward the quorum, participate in the board discussion, and vote.

Do notice requirements change in an emergency?

Yes. In cases of extraordinary emergency, written public notice shall not be required for meetings held in person. La. R.S. 42:19(A)(1)(b)(iv). The public body shall give notice as it deems appropriate and circumstances permit. *Id.* Under usual circumstances, reasonable public notice includes the agenda, date, time, and place of meeting.

During a gubernatorially declared emergency or disaster, meetings held via electronic means must abide by the notice requirements found in La. R.S. 42:19, including posting the notice and agenda on the website of the public body twenty-four hours in advance of the meeting. In addition, the public body must supply detailed information regarding how members of the public may participate in the meeting and submit public comments. This information must be emailed to any member of the public or the news media who requests notice of the meeting.¹ Finally, the notice, agenda, and public comment information must be widely distributed to the public body's official journal and every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

Can a public body enter executive session and restrict attendance?

Yes. Louisiana Revised Statutes 42:16-17 allows a public body to hold an executive session upon an affirmative vote of two-thirds of the constituent members present. The reasons a public body may hold an executive session are enumerated in La. R.S. 42:17 and include matters of extraordinary emergencies such as the threat of an epidemic. During an executive session, the public body can restrict who is allowed in the executive session.

¹ The members of the public or the news media are not required to submit a new request for notice for each subsequent meeting. Any request should be treated as a standing request for notice.

The vote to hold executive session must be taken at an open meeting for which notice has been given pursuant to La. R.S. 42:19.² No final or binding action may be taken during an executive session, and the public comment period requirement is still applicable.³

Note that the public body should still give notice, as circumstances permit, to allow the public an opportunity to comment prior to any action, including deliberations and discussions, on an agenda item upon which a vote is to be taken. To the extent possible, the agenda should list each item separately and describe each item with reasonable specificity.⁴

Do the public comment requirements change during an emergency?

No. The public comment requirements do not change, unless the meeting is held via electronic means in accordance with La. R.S. 42:17.1. Louisiana Revised Statutes 42:14 requires public bodies to allow a public comment period before acting on an agenda item upon which a vote is to be taken. School boards are additionally required to have a public comment period preceding each agenda item.⁵ Reasonable rules and restrictions are permitted regarding such comment periods and are discussed below.⁶

Louisiana Revised Statutes 42:17.1(B)(2) requires that a public body who holds a meeting through teleconference must provide detailed information on the public body's website, setting forth how members of the public may participate in the meeting and submit public comments, and the public body is required to distribute this information to all known local media outlets. The public body must provide a mechanism to receive public comments electronically both prior to and during the meeting.⁷ During the meeting, the public body must properly identify and acknowledge all public comments and must keep all comments in the record of the meeting.⁸ The presiding officer has the responsibility to ensure that each person participating in the meeting is properly identified, and that all parts of the meeting (excluding discussions held in executive sessions) are clear and audible to all participants in the meeting and the public.⁹

Reasonable rules and restrictions for public comment periods may include but are not limited to the following:

- Limiting the amount of time for each speaker;
- Limiting the number of people in a meeting room to comply with the Governor's Public Health Emergency Proclamations or guidance from the Centers for Disease Control and Prevention. However, the public body must provide a mechanism for the persons to simultaneously observe the meeting and allow them to participate in the public comment period;
- Requiring persons present for public comment to maintain an appropriate distance from others;
- Establishing procedures to receive public comments via video, email, facsimile, telephone or other means for a certain period preceding the meeting and having an administrator read the comments to the members during the public comment

period of the meeting. This will serve to adhere to the public comment requirement in La. R.S. 42:14 and 17(C), and allow interested persons to socially distance themselves while still having a mechanism to participate;

- Reading aloud the items on the agenda with reasonable specificity, including the matter to be discussed and potential action to be taken at the start of the meeting, if broadcasting live or holding a meeting through electronic means. The Board may pause the proceeding for 30 minutes or a reasonable time to allow for public comments to be submitted to the public body by way of phone calls, emails, or comments on the live stream, etc.; and
- Any other rules or restrictions that are reasonable and in keeping with Open Meetings Laws and the spirit of those laws.

¹ *St. Mary Anesthesia Assocs., Inc. v. Hosp. Serv. Distr. No. 2 of Par. of St. Mary*, 01-2852 (La. App. 1 Cir. 12/20/02), 836 So. 2d 379, 383, *writ denied*; *St. Mary Anesthesia Assocs., Inc. v. Hosp. Servs. Dist. No. 2 of Par. of St. Mary*, 03-0220 (La. 3/28/03), 840 So. 2d 577; *Ortega v. Recreation & Parks Comm'n for Par. of E. Baton Rouge*, 17-1502 (La. App. 1 Cir. 7/18/18), 255 So. 3d 6, 15.

² La. R.S. 42:16.

³ La. R.S. 42:16.

⁴ La. R.S. 42:19.

⁵ La. R.S. 42:15.

⁶ La. R.S. 42:14; La. R.S. 17:81; La. Atty. Gen. Op. No. 04-0107.

⁷ La. R.S. 42:17(C)(1).

⁸ La. R.S. 42:17(C)(2).

⁹ La. R.S. 42:17(C)(3) and (4).