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Comptroller

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Memorandum

Date: March 20, 2020

To: Tennessee Local Government Officials, Leaders, and Legal Representatives

From: Office of the Tennessee Comptroller of the Treasury

Subject: Revised: COVID-19 Guidance

Local governing bodies throughout Tennessee are impacted by the COVID-19 pandemic. We recognize that many of you may have questions about how to carry out your governance and operational responsibilities lawfully and effectively. This memorandum addresses recent changes related to Tennessee's open meeting requirements and addresses what all local governments should do to ensure polices are in place to respond to this situation.

Public Meetings by Electronic Means

On March 20, 2020, Governor Bill Lee signed Executive Order No. 16 ("the Order"), which suspends the requirements of the Tennessee Open Meetings Act ("TOMA") to the extent necessary to allow any governing body subject to the requirements of TOMA to meet and conduct essential business by electronic means if the body determines meeting electronically is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 pandemic.

The Order applies to any state, county, or municipal governing body or any other public body that may be subject to the requirements of TOMA. It allows members of the governing body to participate and vote in public meetings without being physically present to protect public health, safety, and welfare and prevent the spread of COVID-19. This is a temporary measure that expires on May 18, 2020, unless further action is taken by the Governor.

Except as specifically provided in this new executive order, the public notice provisions, meeting minute provisions, and other requirements of TOMA still apply to meetings of governing bodies being held electronically.

If a governing body seeks to conduct electronic meetings in accordance with the Order, it must make reasonable efforts to ensure that the public may access the meeting live via electronic means. In the event a governing body cannot provide live access after making reasonable efforts, the governing body must make a clear audio or video recording of the meeting and make the

recording available to the public as soon as practicable after the meeting, but no later than two business days after the meeting.

Although not specifically required in the Order, our Office recommends that members of a governing body participating by electronic means make a determination on the record that meeting electronically is necessary to protect public health, safety, and welfare in light of the coronavirus and that the governing body include this determination in the minutes of the governing body. Additionally, governing bodies are urged by the Governor to include in the notice any instructions for the public to access the meeting electronically and a copy of the meeting agenda. Accordingly, our Office also encourages governing bodies to include this information in the notice of the meeting to the extent they are able to do so.

As noted above, a governing body allowing participation by electronic means is required to make efforts to provide the public with live electronic access to the meeting and they are urged to include instructions as to how the public may electronically access the meeting in the meeting notice. This access may be provided through a call-in number if the meeting is by phone or through other online mediums such as Skype, Zoom, Facebook Live, or other available products. Attached hereto are Virtual Meeting Guidelines that you may find useful to assist with providing the public electronic access to meetings held electronically or by other means.

In addition to the notice requirements set forth above, we encourage governmental entities to include a statement that public access to the meeting will be limited. Also, we recommend that notice of the meeting still include the time, place, and date of the meeting, although there may not be public access to the physical location of the meeting. The notice should also address if there will not be a physical location for the meeting in order to protect public health, safety, and welfare.

State governing bodies holding meetings electronically pursuant to Tenn. Code Ann. § 8-44-108 are still subject to the following requirements in Tenn. Code Ann. § 8-44-108(c). Local governing bodies holding meetings electronically may also want to take these into consideration.

- The meeting should be audible to the public at the location specified in the notice of the meeting.
- Each member participating electronically or otherwise should be able to hear each other simultaneously and speak to each other during the meeting.
- Documents to be discussed at the meeting should be provided to members participating electronically prior to the meeting, to the extent doing so is practicable.
- All votes at the meeting should be by roll call vote.
- Notice of the meeting should provide a statement that the meeting will allow members to participate electronically or by other means.

Please also note that a member participating in a meeting by electronic means is deemed to be present in person at the meeting for purposes of voting but not for purposes of determining per diem eligibility. However, a member may be reimbursed expenses of such electronic communication or other means of participation.

Policies and Procedures During Emergencies

Local governments have broad authority to implement alternative policies and procedures to address operating dilemmas presented by emergency situations. In response to COVID-19, our Office has received numerous questions regarding continuing operations of your local government in these difficult times. When and if an emergency declaration is made in your local government, we recommend that the governing body take immediate action to address temporary operating policies and procedures. While we recognize the situation is fluid and it will be hard to address every potential possibility, we strongly recommend taking urgent steps to implement any existing emergency operating policies and procedures or adopting such policies and procedures as necessary. When adopting emergency policies and procedures, we offer the following items to be considered:

- 1) Closing and opening government offices
- 2) Timely budget adoption ([see FY 2021 COVID-19 Budget Memo](#))
- 3) Leave policies
- 4) Payroll issues related to salaried and hourly staff
- 5) Provisions regarding routine accounting functions such as receipting, depositing, payable disbursements, and debt service payments
- 6) Continued local government operations such as collecting property taxes, deed filings, motor vehicle licenses and renewals, issuing building permits, public safety, utilities, etc.
- 7) Electronic public meetings (see section above)
- 8) Public records access (see section below)

Local governments will need to implement emergency policies and procedures that best meet the needs and operational goals of the local government. The pandemic is an unprecedented event. Therefore, it is not possible to provide detailed, emergency guidance that will address every local government.

While it is our expectation that local governments continue to comply with state statutes and policies and procedures adopted by the governing body, annual audits of local governments for the 2019-2020 fiscal year will take into account the circumstances surrounding the implementation of emergency policies and procedures that deviate from standard practice. Our goal is to continue to help you make government work better despite the challenges faced due to the Coronavirus.

Access to Public Records

Although the COVID-19 pandemic may require the temporary closure of public offices and may limit access to public records, we believe the Tennessee Public Records Act (“TPRA”) allows

governmental entities sufficient flexibility to comply with its requirements because it takes into account whether it is practicable for a records custodian to provide access to public records.

The TPRA provides that state, county, and municipal records must be open for inspection, during normal business hours, to any citizen of this state to the extent such records are not otherwise made confidential by state law. Tenn. Code Ann. § 10-7-503(a)(2)(A). The TPRA further provides that records custodians must promptly make public records available to the extent they are not specifically exempt from disclosure. Tenn. Code Ann. § 10-7-503(a)(2)(B). In the event it is not practicable for a records custodian to provide access promptly to public records, the custodian must, within seven business days, make the records or information available, deny the request in writing with the basis for denial, or provide the requestor with the time reasonably necessary to produce the records or information. Tenn. Code Ann. § 10-7-503(a)(2)(B)(i)-(iii).

Local government efforts to prevent the spread of COVID-19 will likely make it impracticable for records custodians to provide access promptly to public records. If circumstances surrounding a local government's response to COVID-19 make it impracticable for a records custodian to provide access promptly to public records (e.g., public buildings are closed or the majority of public employees must work from home without access to physical records), the Comptroller's Office of Open Records Counsel recommends that the records custodian, within seven business days, advise the requester of the circumstances making it impracticable to produce the records promptly and provide the time the custodian believes will be reasonably necessary to produce the records or information.

Contacts

Our Office has a variety of staff who can assist you during this time. If you have questions, please reference the contact information below:

- Meetings and Public Records – Office of Open Records Counsel at open.records@cot.tn.gov
- Policies and Procedures – Division of Local Government Audit at LGA.web@cot.tn.gov
- Budget and Debt Obligations – Division of Local Government Finance. Visit tncot.cc/lgf-contacts for the appropriate contact.

Other Resources

The County Technical Assistance Service (CTAS) and Municipal Technical Advisory Service (MTAS) are also providing resources for local governments related to COVID-19. You can access that information by clicking the links below.

- [CTAS – COVID-19 Resources for Local Governments](#)
- [MTAS – COVID-19 Resources for Local Governments](#)



VIRTUAL MEETING GUIDELINES

The keys to success for any virtual public meeting include having a clear understanding of the platform you are using and advance planning.

Picking the Right Platform

Many options are on the market for conducting remote meetings. Some of these platforms are more familiar to a general audience – like Facebook Live and YouTube – but there are others that may give you capabilities such as seeing the participants, collaborating on documents, screen sharing, and recording the meeting. Some platforms offer a free option and others charge a monthly fee.

Possible Options:

- Facebook Live
- YouTube
- FreeConferenceCall.com
- Microsoft Teams
- SLACK
- Periscope
- Discord
- Livestream

Planning the Meeting

The most important factor in having a successful virtual meeting is to have a clear meeting agenda and make sure the people involved are ready to present. It is also helpful to post or share any meeting materials beforehand, so participants are prepared.

Make sure to test your selected platform before the meeting to make sure you're familiar with how the application functions and that it is working properly.

Etiquette for Virtual Meetings

- Introduce everyone at the beginning of the meeting.
- Make sure you designate when questions will be accepted (during or at the end of a presentation).
- Do not interrupt people while they are speaking.
- Mute your phone if you are not speaking.
- Ask people to silence cell phones.
- Make sure to eliminate as much background noise as possible.
- Common courtesy is key to a successful meeting.

Ending the Meeting

- Make sure all deliverables and next steps are fully communicated.
 - Assign any open items or tasks to individuals or groups.
 - Declare when information is due.
 - Provide information for the next meeting.
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STATE OF TENNESSEE
EXECUTIVE ORDER
BY THE GOVERNOR

No. 16

**AN ORDER ENSURING GOVERNMENT CONTINUES TO FUNCTION
OPENLY AND TRANSPARENTLY DURING THE COVID-19 EMERGENCY WHILE
TAKING APPROPRIATE MEASURES TO PROTECT THE HEALTH AND SAFETY
OF CITIZENS AND GOVERNMENT OFFICIALS**

WHEREAS, on March 12, 2020, I issued Executive Order No. 14, which declared a state of emergency and waived certain laws to facilitate the response to Coronavirus Disease 2019 (COVID-19), and on March 19, 2020, I issued Executive Order No. 15, which superseded Executive Order No. 14 and, in addition to reiterating the existence of a state of emergency, took a number of additional measures in furtherance of the treatment and containment of COVID-19; and

WHEREAS, the findings in Executive Order No. 15 are incorporated herein by reference; and

WHEREAS, it is critical to limiting the community spread of COVID-19 that private and governmental entities of all types eliminate large public gatherings and conduct business remotely by electronic means to the greatest extent possible; and

WHEREAS, to this end, guidance from the White House and Centers for Disease Control and Prevention (CDC) advises that Americans should “avoid social gatherings in groups of more than 10 people” and advises that older persons and persons with serious underlying health conditions should remain at home; and

WHEREAS, state, county, and municipal governing bodies must continue to meet to carry out essential functions, including, but not limited to, considering annual budgets or special budgetary items in response to COVID-19 or measures providing regulatory flexibility or other means to treat and contain COVID-19; and

WHEREAS, in accordance with state and federal guidance, during this continuing emergency, the interest of public health and safety requires avoiding large gatherings of people in the same physical location; and

WHEREAS, despite these constraints on holding public meetings, maintaining open, public access to government proceedings, as guaranteed by Article I, Section 19 of the Tennessee Constitution and the Open Meetings Act, codified in Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is of critical importance; and

WHEREAS, in a March 20, 2020, letter, the Tennessee Coalition for Open Government acknowledged the need to balance these interests, stating that, in light of the COVID-19 outbreak, governing bodies should be able to meet electronically regarding essential business, so long as they provide electronic access to the public and reasonable safeguards to ensure transparency; and

WHEREAS, other state entities have recently taken measures balancing the protection of public health and safety with the need to ensure that government continues to function and remains open to the public, including:

On March 13, 2020, the Supreme Court of Tennessee issued an order suspending in-person court proceedings through March 31, 2020, subject to certain narrow exceptions for essential proceedings, and, even in those exceptional cases, limited attendees to attorneys, parties, witnesses, security officers, and other necessary parties. The Supreme Court's order further "urged [judges] to limit in-person courtroom contact as much as possible by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing" and suspended "[a]ny Tennessee state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact."

Beginning March 16, 2020, the Lieutenant Governor and Speaker of the House of Representatives limited access to the Cordell Hull Building, while ensuring that the General Assembly's proceedings remained open to the public through the livestreaming services on its website, and I announced that the State Capitol would likewise be closed to tours and visitors; and

WHEREAS, in addition to the other powers granted by law, Tennessee Code Annotated, Section 58-2-107(e), provides that during a state of emergency, the Governor is authorized to suspend laws and rules regarding the conduct of state business if necessary to cope with the emergency, utilize all available state and local resources and state departments and personnel to combat the emergency, order evacuations, make orders concerning entry and exit and the occupancy of premises within an emergency area, and take measures concerning the conduct of civilians and the calling of public meetings and gatherings, among other things; and

WHEREAS, pursuant to this authority and the general emergency management powers of the Governor under law, the temporary suspension of selected state laws and rules and the other

measures contained herein are necessary to facilitate the response to the current public health emergency.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, in light of the continuing state of emergency to facilitate the response to COVID-19, do hereby order the following:

1. As a reasonable measure to protect the safety and welfare of Tennesseans while ensuring that government business may continue in a manner that is open and accessible to the public, the provisions of Tennessee Code Annotated, Title 8, Chapter 44, Part 1, are hereby suspended to the extent necessary to allow a governing body, as defined in Tennessee Code Annotated, Section 8-44-102, to meet and conduct its essential business by electronic means, rather than being required to gather a quorum of members physically present at the same location, if the governing body determines that meeting electronically is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak, subject to the following conditions:
 - a. All governing body meetings conducted by electronic means under this Order shall remain open and accessible to public attendance by electronic means, as follows: Each governing body must make reasonable efforts to ensure that the public access to the meeting via electronic means is live access, but if the governing body cannot provide such live public access despite reasonable efforts, the governing body must make a clear audio or video recording of the meeting available to the public as soon as practicable following the meeting, and in no event more than two business days after the meeting; and
 - b. This Order does not in any way limit existing quorum, meeting notice, or voting requirements under law, and governing bodies are urged to provide the public with clear notice of the meeting agenda and how the public can access the meeting electronically at a time and location reasonably accessible to all members of the public; and
 - c. The provisions of Tennessee Code Annotated, Section 8-44-108(c), remain in effect; and
 - d. All such meetings shall be conducted in a manner consistent with Article I, Section 19 of the Tennessee Constitution.
2. Pursuant to Tennessee Code Annotated, Sections 58-2-107 and 58-2-118, I hereby authorize all governing bodies, state departments and agencies, and political subdivisions of the state, and other agencies designated or appointed by the governor to make, amend, and rescind orders and rules as necessary to conduct electronic meetings adhering to the provisions and spirit of the Tennessee Constitution and Open Meetings Act.

3. Given the findings underlying, and general applicability of, this Order, Tennessee Code Annotated, Section 8-44-108(b)(3), which requires each governing body to provide findings to the Secretary of State concerning the need for a meeting where a quorum is not physically present, is hereby suspended.
4. Any law, order, rule, or regulation inconsistent with this Order is hereby suspended.
5. This Order shall remain in effect until 12:01 a.m., Central Daylight Time, on May 18, 2020, at which time the suspension of any state laws and rules and my authorization pursuant to Tennessee Code Annotated, Section 58-2-118, shall cease and be of no further force or effect.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 20th day of March, 2020.



GOVERNOR

ATTEST:



SECRETARY OF STATE

