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*Comptroller*

## 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

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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](mailto:open.records@cot.tn.gov)
- Policies and Procedures – Division of Local Government Audit at [LGA.web@cot.tn.gov](mailto:LGA.web@cot.tn.gov)
- Budget and Debt Obligations – Division of Local Government Finance. Visit [tncot.cc/lgf-contacts](http://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](#)



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## VIRTUAL MEETING GUIDELINES

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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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