Guidance Spotlight:
Temporary Modifications to the Open Meeting Law's Requirements

On March 12, 2020, the Governor issued an Executive Order Suspending Certain Provisions of the Open Meeting Law. The Executive Order makes two primary changes to the Open Meeting Law. First, the Order relieves public bodies from the requirement in the Open Meeting Law that meetings be conducted in a public place that is open and physically accessible to the public, provided that the public body makes provision to ensure public access to the deliberations of the public body through adequate, alternative means. Second, all members of a public body may participate in a meeting remotely; the requirement that a quorum of a public body be physically present at the meeting location is suspended.

The Division of Open Government reminds public bodies that all other provisions of the the Open Meeting Law and regulations remain in effect. For example, notice of all meetings of public bodies must be posted at least 48 hours in advance of the meeting, not including Saturdays, Sundays, and legal holidays. In lieu of a meeting "location," the meeting notice must included specific information on how the public may access a meeting that is being held remotely. In addition, the standards for holding an emergency meeting, for which notice of a meeting may be posted less than 48 hours in advance, have not changed. An "emergency" is defined in the Open Meeting Law as “a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.” The existence of a declared state of emergency at either the state or local level does not automatically entitle public bodies to hold "emergency" meetings. A public body seeking to hold an emergency meeting must be able to demonstrate not only the existence of a sudden, generally unexpected occurrence or set of circumstances, but also that the specific matters to be discussed could not wait long enough to post notice 48 hours in advance.

With regard to remote participation by public body members, the Executive Order expressly authorizes all members of a public body to participate in a meeting remotely; therefore, during the time that the Executive Order remains in effect, public bodies need not vote to "adopt" the practice of remote participation before they may begin holding meetings with all public body members participating remotely. However, we remind public bodies that all other procedural requirements for remote participation remain in effect, as set forth in the Attorney General's regulations. See 940 CMR 29.10. For example, all members of a public body participating remotely must be clearly audible to each other; text or online chat is not an acceptable method of remote participation. If a public body member is disconnected from the meeting, that fact and the time the disconnection occurred shall be noted in the meeting minutes. At the beginning of the meeting, the public body chair must identify all public body members participating remotely, and all votes taken during the meeting must be conducted by roll call vote. In addition, at the start of any executive session, each public body member must state that no other person is present and/or able to hear the discussion at the remote location, unless the public body has voted to approve that person's presence.

Now, more than ever, it is critical that public bodies carry out their business as transparently as possible, and in accordance with the Open Meeting Law. As always, the Division of Open Government's legal staff is available to provide guidance on the requirements of the Open Meeting Law. Please contact us at (617) 963-2540 or OpenMeeting@state.ma.us.