

OPEN MEETINGS LAW



SUNSHINE LAWS

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.

La. R.S. 42:12

WHAT IS A PUBLIC MEETING?

Convening of a quorum of a public body to deliberate, act, or receive information on a matter over which the public body has supervision, control, jurisdiction, or advisory power. La. R.S. 42:13(A)(1).



WHAT IS A PUBLIC BODY?

- “Public body” means village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, **where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.**
- La. R.S. 42:13(A)(2)

EXCEPTIONS

However, the Open Meetings Law does not apply to chance meetings or social gatherings of members of a public body at which there is no vote or other action taken, including formal or informal polling of members.

La. R.S. 42:13(B)



WHAT IS A QUORUM?

“Quorum” means a simple majority of the total membership of a public body. La. R.S. 42:13(3).

“Walking” or “Rolling” quorums are a device used to circumvent the Open Meetings Law so as to allow a quorum of a public body to discuss an issue through the use of multiple discussions of less than a quorum. These situations are unlawful and a violation of the Open Meetings Law.

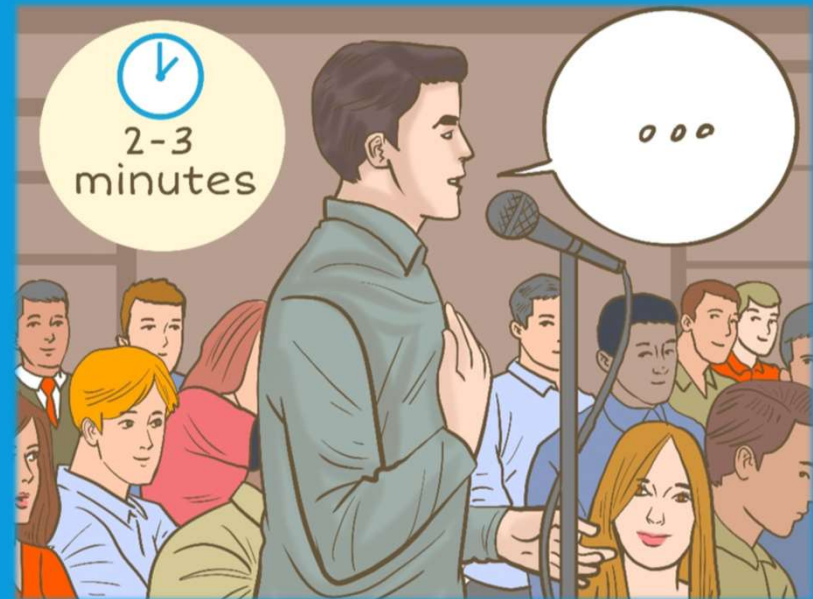
CAN I ATTEND A REGULAR IN-PERSON MEETING BY TELEPHONE?

- ❖ NO.
- ❖ The Open Meetings Law requires “live voice” voting. La. R.S. 42:14(C).
- ❖ Opinion 13-0075: Members cannot participate by telephone for purposes of achieving a quorum.
- ❖ Votes shall be recorded in the minutes, which are public documents.



PUBLIC COMMENT

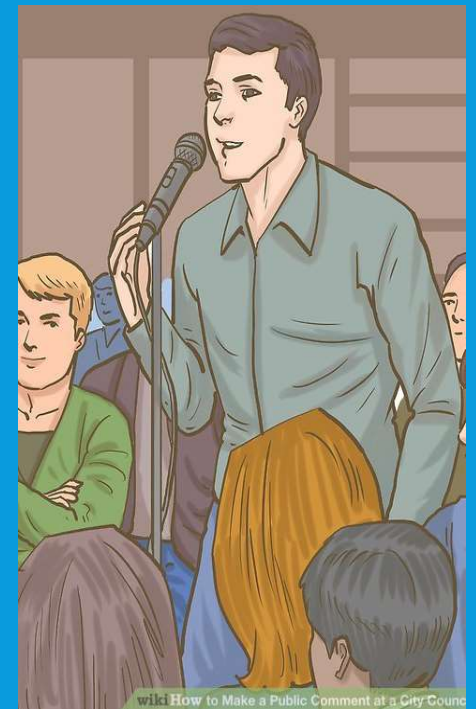
- ❖ La. R.S. 42:14(D) provides that all public bodies, except school boards, shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken. Reasonable rules may be adopted
- ❖ The law does not provide a definition of “reasonable” rules.



SCHOOL BOARD PUBLIC COMMENT

La. R.S. 42:15

- A. Notwithstanding any other law to the contrary, each school board subject to the provisions of this Chapter, except as provided in Subsection B of this Section, shall allow public comment at any meeting of the school board prior to taking any vote. The comment period shall be for each agenda item and shall precede each agenda item.
- B. The Orleans Parish School Board, at any meeting of the school board, shall provide an opportunity for public comment subject to reasonable rules, regulations, and restrictions as adopted by the school board.
- C. For purposes of this Section, a comment period for all comments at the beginning of a meeting shall not suffice to meet the requirements of Subsection A or Subsection B of this Section.



EXECUTIVE SESSION

Procedure for entering into Executive Session

- ❖ La. R.S. 42:16 provides the procedure for going into executive session. There must be **a vote of 2/3 of the members present** at a properly called meeting. The reason for going into executive session must be contained within 42:17.
- ❖ **No final or binding action shall be taken during an executive session.** The minutes must include the vote of each member to enter into executive session and the reason for doing so.

Proper Reasons to Enter Executive Session:

- ❖ La. R.S. 42:17 contains a complete list.
- ❖ Discussion of the character, professional competence or physical or mental health of a person, provided that person is given 24-hours notice (exception for appointing a person to a public body or discussing the award of a public contract except as provided in 39:1593(C)(2)(c))
- ❖ Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body.
- ❖ Or any other matters now provided for or as may be provided for by the legislature

NOTICE OF MEETINGS

All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting **no later than 24 hours before the meeting.**

The agenda cannot be changed less than 24 hours before the meeting.

La R.S. 42:19

WHAT IS REASONABLE NOTICE?

Written public notice must include:

- Agenda;
 - Date;
 - Time; and
 - place of the meeting.
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- Each agenda item must be listed separately and with reasonable specificity.
 - Before the public body may take action on an item, the item must be read aloud except as provided in (dd).
(consent agendas)

POSTING THE NOTICE

Copies of the notice must be posted at:

1. The principal office of the body holding the meeting; OR
 2. The building in which the meeting is to be held; OR
 3. In the official journal of the public body (within 24 hours).
- * Must be posted on website if you have one.
 - * Notice must be mailed to any member of the media who requests a copy.

La. R.S. 42:19



CHANGES TO THE AGENDA

- ❖ Upon **unanimous approval** of the members present at a meeting of a public body, the public body may take up a matter not on the agenda. Any such matter shall be identified in the motion to take up the matter with reasonable specificity, including the purpose for the addition, and entered into the minutes.
- ❖ There must be an opportunity for public comment, and amending the agenda cannot be used as a subterfuge to defeat the purpose of the Open Meetings Law. La. R.S. 42:19(A)(1)(b)(ii)(cc).

MINUTES

La. R. S. 42:20 requires that, at a minimum, minutes must include:

- ❖ Date
- ❖ Time
- ❖ Place of the meeting
- ❖ The members of the public body both present and absent
- ❖ The substance of all matters decided and at the request of any member, a record, by individual member, of any votes taken, and
- ❖ Any other information that the public body requests to be included.



ENFORCEMENT

La. R.S. 42:25 provides:

- A. The attorney general shall enforce the provisions of this Chapter throughout the state. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.
- B. Each district attorney shall enforce the provisions of this Chapter throughout the judicial district within which he serves. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.
- C. Any person who has been denied any right conferred by the provisions of this Chapter or who has reason to believe that the provisions of this Chapter have been violated may institute enforcement proceedings.

PENALTIES

La. R.S. 42:26 allows:

- ❖ Writ of mandamus
- ❖ Injunctive relief
- ❖ Declaratory Judgment
- ❖ Judgment rendering action void
- ❖ Attorney's fees and Court costs
- ❖ Judgment awarding civil penalties
 - ❖ Any member who knowingly and willfully participates in a meeting violating the OML shall pay up to \$500 per violation.
 - ❖ Civil penalties are personally liable.
 - ❖ See La. R.S. 42:28

OML AND TECH

Be careful because you can achieve a quorum in text and emails.

Before sending a message to a quorum of a public body ask...



- What is the sender's intent: to convey information or elicit a response?
- Is the communication designed to facilitate a group discussion over email?

Walking or Rolling quorums can also happen through texts and emails. Remember that any public business conducted on your private phone or email is still subject to the Public Records Law.

EXCEPTION FOR MEETINGS DURING A GUBERNATORIALLY DECLARED DISASTER OR EMERGENCY

A. Notwithstanding any other provision of this Chapter to the contrary, a public body may conduct and its members may attend and participate in a meeting via electronic means provided all of the following:

(1) The governor has declared a state of emergency or disaster involving a geographic area within the jurisdiction of the public body and the nature of the emergency or disaster would cause a meeting of the public body conducted pursuant to the other provisions of this Chapter to be detrimental to the health, safety, or welfare of the public.

* * *

(3) The public body and its presiding officer comply with all of the requirements of this Section.

CERTIFICATION

(2) The presiding officer of the public body certifies on the notice of the meeting that the agenda of the meeting is limited to one or more of the following:

(a) Matters that are directly related to the public body's response to the disaster or emergency and are critical to the health, safety, or welfare of the public.

(b) Matters that if they are delayed will cause curtailment of vital public services or severe economic dislocation and hardship.

(c) Matters that are critical to continuation of the business of the public body and that are not able to be postponed to a meeting held in accordance with the other provisions of this Chapter due to a legal requirement or other deadline that cannot be postponed or delayed by the public body.

(d) Other matters that are critical or time-sensitive and that in the determination of the presiding officer should not be delayed; however, such matters shall not be considered at the meeting unless the members of the body present at the meeting approve the consideration of the matters by a two-thirds vote.

NOTICE REQUIREMENTS

B. No later than twenty-four hours prior to a meeting conducted pursuant to the provisions of this Section, the public body shall provide for all of the following:

(1) The notice and agenda for the meeting, which shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

(2) Detailed information regarding how members of the public may participate in the meeting and submit comments regarding matters on the agenda, which information shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

MISC. REQUIREMENTS

C. For each meeting conducted pursuant to this Section:

- (1) The public body shall provide a mechanism to receive public comment electronically both prior to and during the meeting.
- (2) The public body shall properly identify and acknowledge all public comments during the meeting and shall maintain those comments in its record of the meeting.
- (3) The presiding officer of the public body shall ensure that each person participating in the meeting is properly identified.
- (4) The presiding officer shall ensure that all parts of the meeting, excluding any matter discussed in executive session, are clear and audible to all participants in the meeting including the public.

THE OML AND THE ADA

- Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities. That includes access and participation in public meetings. 42 U.S.C. §12132.
- State and local governments are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate such modification would fundamentally alter the nature of the service, program, or activity being provided.

THE OML AND THE ADA

- Violations under Title II of the ADA may occur when you have:
 - (1) a person is a qualified individual who has a disability;
 - A qualified individual is someone “with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”
 - (2) who was excluded from participation in a public entity’s services, programs, or activities or was otherwise discriminated against by a public entity; and
 - (3) that such an exclusion or discrimination is by reason of his disability.

THE OML AND THE ADA

- Under Title II of the ADA participation via teleconference or video conference is a reasonable accommodation for a qualifying disability. *Silver v. City of Alexandria*, 470 F.Supp.3d 616 (W.D. La.2020).
- However, if other lesser reasonable accommodations are available, they can be taken.
- When denying two Idaho Legislators' 2021 TRO filed in hopes that they could participate via zoom, a federal court noted that, while a public entity must make reasonable accommodations, it is not required to make those preferred by the person. In the Idaho case, there were other reasonable accommodations available such as masks, social distancing, vaccines, etc that were not available to Councilman Silver in the Alexandria case. *Chew v. Legislature of Idaho*, 512 F.Supp.3d 1124 (D. Idaho2021).

PUBLIC BODIES ALLOWED TO MEET VIA ZOOM

- Bond Commission – Act 149 – La. R.S. 42:29(E)
- Advisory Committees of the La. Board of Medical Examiners
 - – Act 408 – La. R.S. 42:17.3
- Louisiana State Law Institute – Act 613 – La. R.S. 24:202(G)
- Pharmacy Benefit Manager Monitoring Advisory Council –
 - Act 723 – La. R.S. 42:17.2

RECENT AG OPINIONS

- La. Atty. Gen. Op. No. 22-0010 - Provided all other statutory requisites for holding an electronic meeting are satisfied, there is no prohibition in La. R.S. 42:17.1 against some or all the board members meeting in the same location to conduct a meeting via electronic means.
- La. Atty. Gen. Op. No. 19-0128 - A walking quorum and violation of the Open Meetings Law occurs if members of the governmental body gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum of the body with the intent to circumvent the Open Meetings Law as prohibited by La. R.S. 42:14(B). Members who knowingly and willfully participate in a walking quorum may be liable for civil penalties under La. R.S. 42:28. Members should be mindful of these factors when deciding whether to engage in any in person or electronic communications with other members outside of a public meeting.

RECENT AG OPINIONS

- La. Atty. Gen. Op. No. 20-0103 - The Republican Parish Executive Committee of Plaquemines Parish is not a public body for the purposes of the Open Meetings Law.
- La. Atty. Gen. Op. No. 21-0111 - While nothing prohibits a member of the council from independently consulting with an entity or preparing a draft proposal to present to the governing authority, such actions do not have any legal effect or bind the governing authority. Additionally a committee or subcommittee of the city governing authority that possess policy making, advisory, or administrative functions is a public body and subject to the Open Meetings Law.

CONTACT INFORMATION

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