

In Brief

ARE BOARD MEETINGS SUBJECT TO THE RESTRICTIONS IN THE REGIONAL MITIGATION MEASURES?

With all regions in the State operating under mitigation measures which include limits for in-person meetings (10 or 25 persons depending on the region), there is great confusion about whether these measures apply to public bodies holding meetings to conduct public business under the Open Meetings Act (OMA). Based on our detailed review of several key documents, and as set forth in more detail below, such meetings are exempt from the 10 or 25-person mitigation measure for meetings. That said, we recommend that public bodies at least consider the option to hold remote meetings during times when the Governor or IDPH Director has declared a public-health related disaster for all or part of the area covered by the public body's jurisdiction, as now permitted under OMA Section 7(e). 5 ILCS 120/7(e). Additionally, Boards should, whenever possible, attempt to limit gatherings consistent with these mitigation measures in order to assist community health organizations.

The key documents pertaining to this issue include the mitigation executive orders issued by Governor Pritzker (sample: <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-43.aspx>) the Governor's Community Revitalization Order (EO 2020-43) (<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-43.aspx>), the Phase 4 guidance from the Department of Commerce and Economic Opportunity for Meetings and Social Gatherings (<https://dceocovid19resources.com/restore-illinois/restore-illinois-phase-4/meetings-and-social-events/>) and the latest Gubernatorial Disaster Proclamation (<https://www2.illinois.gov/sites/gov/Documents/CoronavirusDisasterProc-11-13-2020.pdf>).

Based on our analysis of the above documents, governmental agencies are exempt from the mitigation measures for meetings and social events for the purpose of performing services or business needed to ensure the continuing operation of the government agency or to provide for or support the health, safety and welfare of the public. Since regular, special and emergency board meetings are generally necessary to ensure the continuing operation of a government agency, conducting such business would be subject to the exemption from the restrictions imposed by the mitigation measures (exemption found in the Community Revitalization Order (EO 2020-43)). Notably, the Phase 4 guidance for meetings and social events states that "it is applicable to businesses that meet the following criteria: hotel meeting rooms and ballrooms, as well as other indoor and outdoor event areas". Examples given in the Phase 4 guidance include weddings,

funerals and potlucks, which are very different than meetings held by a public body to conduct public business necessary to ensure the continuing operation of government. The State's new Tier 3 Resurgence Mitigations, announced today and effective on November 20, 2020, contain similar language, but encourage governments voluntarily to take proactive steps whenever possible to support the new mitigation strategies.

In addition, the new OMA Section 7(e) provides a vehicle by which a public body *may* hold a fully remote meeting provided certain conditions are met, but does not require or mandate remote or virtual meetings. Notably, one of these conditions is that the head of the public body determines an in-person meeting is not practical or prudent. Governor Pritzker, as the head of the executive branch and the State's highest office makes a finding in his November 13, 2020 disaster proclamation that in-person attendance of more than 10 people at the regular meeting location is not feasible. This finding is not binding on other public bodies within the State, as each head of the public body has an independent obligation to make such findings under OMA Section 7(e). However, this same rationale can be cited by other boards as the reason to conduct a virtual meeting under OMA Section 7(e).

If a public body chooses to convene an in-person meeting at their regular meeting location it should comply with social distancing requirements and other guidance in effect on the date of the meeting. Currently this includes: spacing seats 6 feet apart; marking with signage or taping 6-foot distances for attendees; wearing face coverings (unless unable to wear due to age or health condition); providing restroom accessibility for handwashing and having hand sanitizer available; regular cleaning of high-touch services; and following COVID-19 symptom screening protocols. Given the social distancing requirements, public bodies may wish to consider moving their meeting to a larger room so that attendees can be more spread out. Use of overflow rooms with adequate audio is also permitted and is another option to reduce the number of attendees in any one room. Public bodies should consider stating on the posted agenda how it plans to comply with social distancing and health/safety guidance during an in-person meeting.

Please do not hesitate to contact any Robbins Schwartz attorney for OMA guidance and considerations during COVID-19.