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## **IMPORTANT CLIENT UPDATE**

### **Change to Open Meetings Act**

There was a recent amendment to the Open Meetings Act (OMA) effective March 29, 2019. The change is:

(2) All decisions of a public body shall be made at a meeting open to the public. For purposes of any meeting subject to this subsection, except a meeting of any state legislative body, the public body shall establish the following procedures to accommodate the absence of any member of the public body due to military duty:

(a) Procedures by which the absent member may participate in, and vote on, business before the public body, including, if feasible, procedures that ensure 2-way communication.

(b) Procedures by which the public is provided notice of the absence of the member and information about how to contact that member sufficiently in advance of a meeting of the public body to provide input on any business that will come before the public body. (Emphasis added)

We recommend that you adopt the mandatory requirements as soon as possible. Below is sample language that could be inserted by counties in their Board rules:

Quorum. A majority of the members of the County Board of Commissioners shall constitute a quorum for the transaction of the ordinary business of the County, and questions which arise at meetings shall be determined by the votes of a majority of the members present, except upon the final passage or adoption of a measure or resolution, or the allowance of the claim against the county, in which case a majority of the members elected and serving shall be necessary. Commissioners unable to attend due to military duty shall be permitted to participate in the discussion and votes of committee and board meetings by telephone or video conference provided that the requirements of the Open Meetings Act are met and that a quorum is physically present. Commissioners participating by telephone or video conference shall be considered present, but shall not be counted toward a quorum.

Also, a Board member who participates by telephone or video conference could be paid or denied payment by Board policy. There could also be maximum per diems per year for participating by telephone or video conference. Whatever decision is made should be included in the Board rules.

The above sample language can be modified for other public entities. Also, a County or other municipal entity could permit telephone or video conferencing for any member who is not physically present due to illness or injury, although it is not mandated by law.

The statutory change does not address whether a quorum must be physically present. However, there is a strong legal argument that a “physical” presence is required for a quorum. The OMA states at Section 2(a): “Meeting” is defined as “the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.” While we could not find any Michigan case law on point, generally present means a physical presence.

Please do not hesitate to contact us if you have any questions.

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