



DATE: December 10, 2020

MEMO TO: Bill Durkin, Chair
Rules Committee

FROM: Alex Ty Kovach
Executive Director

RECOMMENDATION: Approve an Ordinance Amending the Policy for Attendance at Public Meetings by Video or Audio Conference.

STRATEGIC DIRECTION SUPPORTED: Organizational Sustainability

FINANCIAL DATA: No effect.

BACKGROUND: The Illinois Open Meetings Act (“OMA”) allows a public body to permit its members to electronically attend (via video or audio conference) a public meeting in two different situations.

The first situation is one in which the member cannot attend in person because of personal illness, public body business, or family or other emergency. In that scenario, the public body member can attend electronically, but only if a quorum of the public body is physically present at the meeting location. The OMA requires a public body that allows electronic attendance under this exception to adopt rules governing the same. To satisfy that requirement, in May of 2007, the Lake County Forest Preserve District (the “District”) Board of Commissioners (“Board”) approved a “Policy for Attendance at Public Meetings by Video or Audio Conference” (also known as the “Electronic Attendance Policy”) (the “Policy”). The District has incorporated the Policy into its Rules of Order and Operational Procedures (the “Rules”).

The State-wide COVID-19 crisis gave rise to the second situation in which a member can attend a public meeting via audio/video means. On March 16, 2020, the Governor issued Executive Order No. 2020-7 providing that, during the Gubernatorial Disaster Proclamation, the OMA requirements for in-person attendance were suspended. This Executive Order was extended several times. On April 7, 2020, the Board amended the Policy to allow Commissioners to attend, by video or audio conference, the meetings of the Board and its Committees, to the full extent allowed by law, including the Governor’s Executive Orders.

Then, on June 12, 2020, the Illinois General Assembly amended the Illinois Open Meetings Act (by adding a new Section 7(e)) to expressly provide that public body members may attend a meeting by video or audio conference, if the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster covering all or part of the public body’s jurisdiction. This exception is subject to various requirements and conditions, including requirements that:

- “all members of the body . . . shall be verified and can hear one another and can hear all discussion and testimony,”
- any open meeting conducted via audio/video be conducted “in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes . . . ,” and
- all votes be conducted by roll call vote, “so each member’s vote on each issue can be identified and recorded.”

On August 28, 2020, the Rules Committee met and gave direction to staff and Corporate Counsel to amend the Policy to address the above conditions imposed by Section 7(e), including to specify the manner in which Commissioners will “be verified” and their “vote[s] on each issue can be identified” during an audio/video meeting.

The attached ordinance amends the Policy:

1. to recognize the two different situations allowing attendance via audio/video means and to specify the different conditions and requirements that apply to each situation,
2. to require Commissioners attending via a video platform, in an effort to “verify” their attendance and votes, to show a live video transmission of themselves when they vote, when they speak, and during the initial attendance roll call,
3. with respect to closed sessions, continue to prohibit the closed session attendance via video/audio means of a Commissioner who is absent for “illness/emergency/work”-related reasons, but to allow closed session attendance via video means for “disaster-induced” meetings, so long as the members, during the entire closed session, show a live video transmission of themselves and participate alone in a room or other enclosed space,
4. for disaster-related audio/video meetings, require all votes to be roll call votes, and
5. other related or appropriate changes.

A clean version of staff’s proposed amended Policy, along with a “redline” comparison of staff’s proposed amended Policy vs. the Policy as approved by the Board on April 7, 2020, are attached for your reference.

REVIEW BY OTHERS: Chief Operations Officer and Corporate Counsel.

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
SPECIAL MEETING
TUESDAY, DECEMBER 15, 2020**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **RULES COMMITTEE** presents herewith "an Ordinance Approving an Amended Policy for Attendance at Public Meetings by Video or Audio Conference" and requests its approval.

RULES COMMITTEE:

Date: 12-10-2020 Roll Call Vote: Ayes: 7 Nays: 0

Voice Vote Majority Ayes: Nays: _____

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**AN ORDINANCE APPROVING AN AMENDED POLICY FOR ATTENDANCE
AT PUBLIC MEETINGS BY VIDEO OR AUDIO CONFERENCE**

WHEREAS, the Lake County Forest Preserve District (the “District”) has adopted Rules of Order and Operational Procedures relating to, among other matters, attendance by and participation of the District Commissioners at public meetings of the District (the “Rules”); and

WHEREAS, the Illinois Open Meetings Act (5 ILCS120/1 et. seq.) provides that, if a quorum of the members of a public body is physically present at the meeting of that body, the public body may allow a member of that body to attend the meeting by video or audio conference if the member is prevented from physically attending because of reasons identified in the Open Meetings Act, in accordance with and to the extent allowed by rules adopted by the public body; and

WHEREAS, on May 8, 2007, the District’s Board of Commissioners adopted a “Policy for Attendance at Public Meetings by Video or Audio Conference,” which has been amended from time to time (the “Policy”); and

WHEREAS, on March 16, 2020, in response to the State-wide COVID-19 crisis, the Governor of the State of Illinois issued Executive Order No. 2020-7 (COVID-19 Executive Order No. 5) (“Executive Order No. 2020-7”), which provides: “During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended” (Executive Order No. 2020-7, §6); and

WHEREAS, on April 7, 2020, the District amended the Policy to allow Commissioners, in the event of a bona fide disaster, to electronically attend, by video or audio conference, any meeting of the Board of Commissioners or any Committee of the Board of Commissioners to the full extent allowed by law, including Executive Order No. 2020-7; and

WHEREAS, on June 12, 2020, the Illinois Open Meetings Act was amended to provide that the members of a public body may attend a meeting by video or audio conference if the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area, subject to the other requirements and conditions related to audio and video attendance set forth in the Open Meetings Act; and

WHEREAS, Rule III.K.2.m of the Rules provides that a Commissioner may attend a meeting by electronic means, but only in accordance with (i) the Open Meetings Act and (ii) the District’s adopted “Policy for Attendance at Public Meetings by Video or Audio Conference”; and

WHEREAS, it is in the District’s best interests to approve an amended Policy that more specifically identifies the procedures and requirements governing a Commissioner’s attendance,

by audio or video conference, of a public meeting of the Board of Commissioners or any Committee of the Board of Commissioners, in the form attached to this Ordinance (the “Amended Policy”);

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois, **THAT:**

Section 1: Recitals. The recitals set forth above are incorporated as a part of this Ordinance by this reference.

Section 2: Approval of Amended Policy. The Amended Policy is hereby approved and shall govern the attendance, through video or audio conference, of District Commissioners at public meetings of the District’s Board of Commissioners and the District’s Committees of the Board of Commissioners.

Section 3: Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this ____ day of _____, 2020

AYES:

NAYS:

APPROVED this ____ day of _____, 2020

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

LAKE COUNTY FOREST PRESERVE DISTRICT

ELECTRONIC POLICY FOR ATTENDANCE AT PUBLIC MEETINGS POLICY BY VIDEO OR AUDIO CONFERENCE

I. Background and Purpose.

The Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* (the "Open Meetings Act"), requires that the final actions of ~~public bodies~~ Public Bodies be taken ~~openly at open, public meetings~~ and that their deliberations be conducted openly, except for certain limited circumstances that permit closed meetings. ~~Pursuant to Public Act 94-1058, the Illinois General Assembly amended various provisions of the Act, which amendments become effective on January 1, 2007. These amendments include certain clarifications to the definition of "meeting" to include meetings by electronic means and the adoption of rules for electronic meeting attendance by members of public bodies. This Policy is intended to adopt certain rules and procedures for electronic meeting attendance.~~ This Policy adopts certain rules and procedures for attendance, via video or audio conference, at public meetings by members of boards, committees, and bodies of the Lake County Forest Preserve District ("District") consistent with ~~Public~~ the Open Meetings Act 94-1058.

II. Definitions.

"Disaster Declaration" shall mean a disaster declaration that (i) was issued by the Governor of the State of Illinois or the Director of the Illinois Department of Public Health, (ii) is related to public health concerns because of a disaster, as defined in Section 4 of the Emergency Management Act, (iii) covers all or part of Lake County, and (iv) pertains to a disaster that, as determined by the District President in writing, renders an in-person District public meeting or a District public meeting conducted in accordance with the in-person requirements of the Open Meetings Act impractical or imprudent.

"Electronic Attendance" or "Attend Electronically" shall mean the attendance at, or the act of attending, a meeting of a Public Body by a member of that Public Body ~~who is not physically present at the meeting but attends by either video or conference,~~ audio conference, or a combination of video conference and audio conference, rather than in-person attendance at the meeting's physical location.

"Emergency Management Act" shall mean the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 *et seq.*

"Public Body" shall mean the District Board of Commissioners, all standing and special committees of the Board of Commissioners, and any other subsidiary boards, commissions, or bodies of the District that are subject to the Open Meetings Act.

"Qualified Location" shall mean one of the following locations: the County Building (18 North County Street, Waukegan, Illinois), the District General Offices (1899 West Winchester Road, Libertyville, Illinois), the County Central Permit Facility (500 West Winchester Road, Libertyville, Illinois), and the County Division of Transportation Office (600 West Winchester Road, Libertyville, Illinois).

III. Meeting Held When a Disaster Declaration is Effective.

~~A. If a Disaster Declaration is in effect, then a Member Qualifications for Electronic Attendance.~~

~~A member of a Public Body is qualified allowed to Attend Electronically a, in accordance with this Policy, any meeting of that Public Body that occurs while the Disaster Declaration is in effect.~~

IV. Meeting Held When a Disaster Declaration is Not Effective.

A. Member Qualifications for Electronic Attendance.

~~only if~~When no Disaster Declaration is in effect, a member of a Public Body may Attend Electronically the open portion of a meeting of that Public Body if (i) the meeting is held at a Qualified Location, (ii) a quorum of the Public Body is physically present for the meeting at the Qualified Location at which the meeting is being held, (iii) the member provides the notice required by Section IV.B.1. below, and ~~only if~~(iv) the member is physically prevented from attending the meeting by:

- (1) personal illness or disability;
- (2) the business of the Public Body or of the County of Lake; or
- (3) a family or other emergency.

~~B. A member of a Public Body may not Attend Electronically any Executive Session or other portion of a meeting of that Public Body which is closed to the public. B~~

IV. Procedures for Authorizing Electronic Attendance.

The following procedures are required before a member of a Public Body is authorized to Attend Electronically a meeting of that Public Body held when a Disaster Declaration is not in effect:

A1. Notice to the Secretary. The member must notify the District Secretary in writing at least 24 hours prior to the meeting that the member desires to Attend Electronically, unless such notice is impractical. The notice shall be substantially in the form attached to this Policy as Exhibit A and shall identify the reason the member cannot be physically present at the meeting in accordance with Section ~~III~~IV.A of this Policy. If it is impractical for the member to give the required written notice 24 hours prior to the meeting, the member shall ~~notify~~provide notice to the District Secretary by other means prior to the meeting and shall submit the required written notice as soon as ~~practicable, and by such means as is, practical.~~

B2. Determination of Authorization of Electronic Attendance. Upon receipt of notice in accordance with Subsection ~~IV.A.B.1.~~, the District Secretary shall promptly forward the notice to the presiding officer of the Public Body. After establishing that a quorum of the Public Body is physically present at the meeting at which a member has requested to Attend Electronically, the presiding officer shall state that a notice was received by a member of the Public Body in accordance with this Policy. The member will be authorized to Attend Electronically unless the Public Body determines by motion that the notice does not comply with Section IV.A or Section IV.B.1. of this Policy. If no such motion is made and adopted, the presiding officer shall declare the requesting member present. After such declaration by the

presiding officer, the question ~~of a member's~~whether a member can attend by Electronic Attendance may not be reconsidered.

V. Special Rules for Meetings Involving Electronic Attendance.

A meeting of a Public Body at which any member ~~has been~~is authorized to Attend Electronically in accordance with Section III or Section IV of this Policy must be conducted in accordance with the following special rules, in addition to any other applicable rules and procedures of the Public Body:

A. Roll-Call Audio or Video Attendance. ~~Electronic Attendance of a meeting shall be via an audio or video technology selected by the Executive Director, which shall be either (i) a combination audio or video technology or (ii) a telephone connection.~~

~~B. Public Access to Meeting. The video and Quorum. A quorum of the Public Body must be physically present at the meeting. Following the call audio transmission of the roll, discussions and at the conclusion of the procedures set forth in Section IV.B of this Policy, the presiding officer shall identify each member who is votes of Public Body members Attending Electronically.~~

~~B. Identification, and Recognition of Electronic Attendees. Any member Attending Electronically must identify himself or herself each time the member wishes to speak the comments and must be recognized by the presiding officer prior to addressing matters before the Public Body.~~

~~testimony of members of the
C. Public Access to Meeting. The speech of a member Attending Electronically shall be amplified in such a manner that it shall be generally audible to members of the Public Body and the public who are physically present at the meeting. Also, any video image of a member Attending Electronically, shall be projected in such a manner that the member's video image shall be generally and amplified so they are visible and audible to members of the Public Body and the public who are physically present at the meeting physically or remotely.~~

~~C. In addition, the votes of any member of Roll Call Votes. If a Public Body's meeting is held when a Disaster Declaration is in effect and if the requirements of Section IV.A. have not been satisfied (including the requirement that a quorum of the Public Body Attending Electronically shall be generally audible be physically present at the location where a Qualified Location), then all votes during such meeting is being held. shall be conducted by roll call.~~

D. Verification of Member Participation. To verify their Electronic Attendance and participation in the Public Body's meeting:

(1) each member of a Public Body attending a meeting via a combination audio/video technology, shall

a. at all times during the meeting, project via video, in a manner visible to the public, their written first and last names and

b. participate in the meeting via a live video transmission so that the member (and not merely their name or photograph) is visible to the public, at all times when

i. the member answers the attendance roll call.

ii. the member is speaking,

iii. the member is voting, or

iv. the meeting is in closed session (if closed session participation is allowed pursuant to Section IV.E.) and

(2) each member of a Public Body attending a meeting via telephone only shall provide their telephone number to the District Secretary and presiding officer of the Public Body in advance of the meeting and the presiding officer (after verifying the telephone number being used by the meeting participant belongs to the member) the shall announce during the meeting that the member is participating via telephone.

If any question arises as to whether a Public Body member is in attendance at a meeting, is part of a quorum of the Public Body, is participating in the meeting, or has voted, the question will be determined by the presiding officer of the Public Body.

E. Closed Session Participation. A member may not Attend Electronically the closed session of a meeting held when a Disaster Declaration is not effective. A member may Attend Electronically the closed session of a meeting held when a Disaster Declaration is effective, but the member (i) must be physically located within a room or other confined space in which no other person is present and (ii) participate in the closed session via a live video transmission so that the member (and not merely their name or photograph) is visible to the other Public Body members during the entire closed session.

F. Minutes. The minutes of each meeting of a Public Body shall identify (i) which of the members of the Public Body were physically present and, if applicable, (ii) which members of the Public Body Attended Electronically. The minutes shall also reflect participated by Electronic Attendance, (iii) the reason for each member's Electronic Attendance (as described in Section III of this Policy), the fact that, (iv) whether there was no valid or a sustained objection to such any Electronic Attendance pursuant to this Policy, and (v) the electronic means by which the each member attended the meeting.

VI. Effect of Electronic Attendance.

A member Attending Electronically attending a meeting of a Public Body by Electronic Attendance shall be considered present at the meeting, including for purposes of determining a quorum, and entitled to vote on any matter before the Public Body and otherwise participate in the meeting as if the member were physically present at the meeting, provided that so long as the member's Electronic Attendance at the meeting complies with the Open Meetings Act and the terms of this Policy. If a member attending by Electronic Attendance leaves the meeting (temporarily or permanently) they shall first notify the Presiding Officer.

VII. Emergency and Additional Authority During Disaster Situations Declaration.

If, on or following the event of most recent date upon which this Policy has been amended, (i) a bona fide disaster, as defined Disaster Declaration is in effect and (ii) the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 et seq. ("IEMAA"), a member ability of a Public Body may member to Attend Electronically a meeting of that Public Body has been expanded by either

(a) an amendment to the Open Meetings Act, the Emergency Management Act, or other state statute, (b) a new statute, or (c) an executive order issued by the Governor of Illinois, then a member of a Public Body may attend meetings of the Public Body to the full extent allowed by the Act, the IEMAA, the Executive Orders of the Governor, and all other applicable State and Federal laws~~such amendment, new statute, or executive order~~, notwithstanding any provision of this Policy that might otherwise restrict such attendance or the conduct of public business by a Public Body.

Adopted: 5/8/2007

~~Revised~~Amended: 1/11/2011

~~Revised~~Amended: 1/13/2014

~~Revised~~: 1/8/2015

~~Revised~~Amended: 4/7/2020

~~Amended~~ : 12/15/2020

Exhibit A

Form of Notice

In accordance with Subsection IV.A of the Lake County Forest Preserve District's "Electronic Attendance at Meetings Policy," I, _____, am submitting this notice evidencing my desire to Attend Electronically the _____, 20____, meeting of the _____ [insert name of Public Body holding meeting, e.g., "Board of Commissioners," "Finance and Administrative Committee"]. I am physically prevented from attending that meeting due to one or more of the following circumstances:

- Personal illness or disability.
- Business of the Public Body or the County of Lake.
- A family or other emergency.

Date: _____

Signature:
