



2020 March Webcast - Coronavirus Changes Open Meetings Laws



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

Coronavirus Pandemic

- **December 2019**, a novel coronavirus, which causes COVID-19, was detected in Wuhan, China
- **January 30, 2020**, the World Health Organization Director General declared the outbreak of COVID-19, as a Public Health Emergency of International Concern, advising countries to prepare for the containment, detection, isolation and case management, contact tracing and prevention of onward spread of the disease
- **March 5, 2020**, the World Health Organization Director General urged aggressive preparedness and activation of emergency plans to aggressively change the trajectory of this epidemic



Update

- **March 13, 2020**, President issues Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak
- **March 13, 2020**, Governor of Texas declares a state of disaster through a proclamation



Update

- **March 16, 2020**, Governor grants Texas Attorney General's Request to Suspend Certain Open Meetings Act Provisions
- **March 17, 2020**, Governor Abbott Activates National Guard In Response To COVID-19
- **March 18, 2020**, Governor Abbott Issues Proclamation Allowing For Postponement Of Local Elections Set For May 2nd
- **March 19, 2020**, Governor issues Executive Orders to limit gatherings to 10 or fewer, close schools, close bars and restaurants, food courts, gyms and massage parlors, and restrict access to nursing/retirement homes following guidance from President



Update

- **March 20, 2020**, Governor Abbott Postpones Runoff Primary Election In Response To COVID-19
- **March 22, 2020**, Governor Abbott Issues Executive Order Increasing Hospital Capacity, Announces Supply Chain Strike Force For COVID-19 Response
- **March 23, 2020**, Dallas County orders residents to shelter in place as coronavirus cases there spread



COVID-19: World at a Glance

- 334,981 Confirmed cases
- 14,652 Confirmed deaths
- 190 Countries, areas or territories with cases
 - Updated : 23 March 2020, 15:51 GMT-5



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

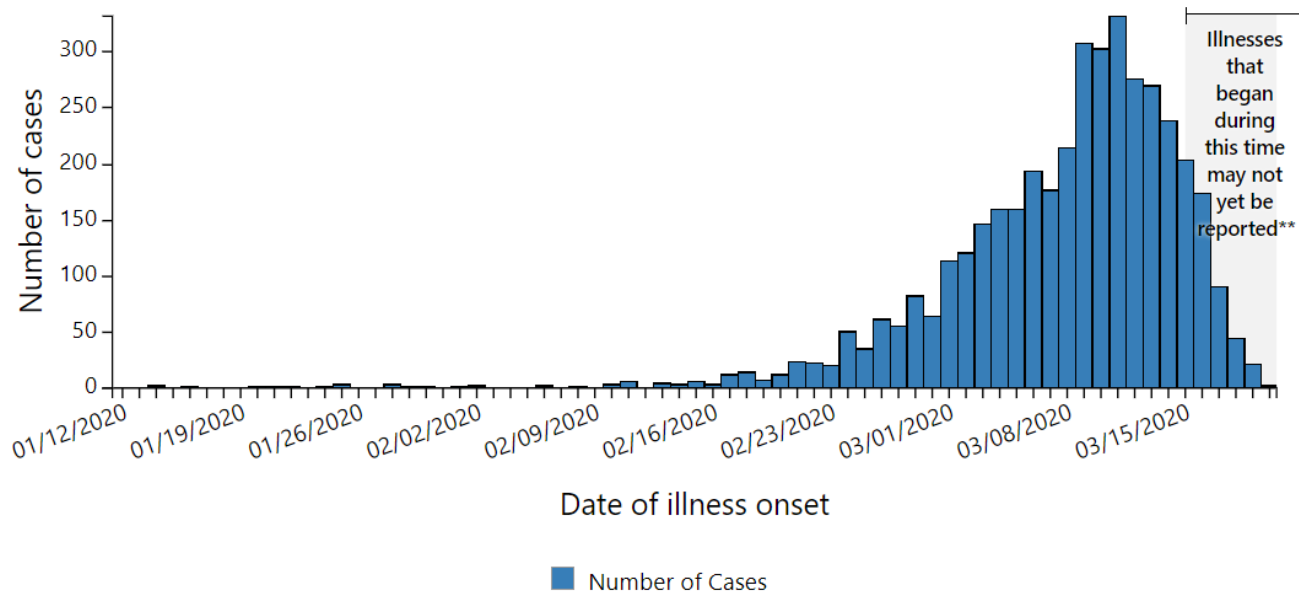
COVID-19: U.S. at a Glance

- Total cases: 33,404
- Total deaths: 400
- Jurisdictions reporting cases: 54 (50 states, District of Columbia, Puerto Rico, Guam, and US Virgin Islands)
- Information from US Center for Disease Control
 - <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>



COVID-19: U.S. at a Glance

COVID-19 cases in the United States by date of illness onset, January 12, 2020, to March 22, 2020, at 4pm ET (n=4,038)**



Illnesses that began during this time may not yet be reported**

03/15/2020-03/22/2020

COVID-19: Texas at a Glance

- People Tested
 - Total 10,055
 - Public Labs 1,575
 - Private Labs 8,480**
 - Number does not include the total tested by all private labs.
- Texas COVID-19 Cases
 - Total Statewide Cases - 352
 - Deaths - 8
 - As of noon, 3/23/2020
- Information from Texas Department of State Health Services
 - <https://dshs.texas.gov/news/updates.shtm#coronavirus>



Issues Resulting from COVID-19

- Continuity of Operations
- Open Meetings Act Compliance
- Public Information Act Compliance
- Conduct of Elections
- Revenue Impacts
- Provider Resources



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

General Recommendations

- Contact your Legal Counsel to get you through the process
 - This presentation is NOT a substitute for getting your own legal advice
- Contact your DSHS' Regional and Local Health Operations for more information on how to request supplies, such as masks and gowns, from the new Supply Chain Strike Force.
- Stay in constant communication with your Chief to make sure resources can be utilized



OPEN MEETING ACT



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

Open Meetings Act Suspensions

- Effective March 16, 2020, Governor Abbott's office suspended a limited number of open meeting laws in response to the Coronavirus (COVID-19) disaster.
- Only “to the extent necessary to allow telephonic or videoconference meetings and to avoid congregate settings in physical locations.”
- In effect “until terminated by the Office of the Governor, or until the March 13, 2020 disaster declaration is lifted or expires.”



Open Meetings Act Suspensions

- Provisions that require a quorum or presiding officer to be physically present at the specified location of the meeting provided
- Provisions that require physical posting of the notice
- Provisions that require the telephonic or videoconference meeting to be audible to members of the public who are physically present at the specified location of the meeting
- Provisions that may be interpreted to require face-to-face interaction between members of the public and public officials.



Open Meetings Generally

- 72 hours notice of meeting (unless emergency)
- Notice (agenda) must state time, date and place of meeting
 - **ESDs post agenda with County Clerk (or on Website) and at ESD administrative office**
- Notice must describe matters to be discussed sufficiently
- **Public has right to attend**



Governor's Suspension Notice Requirements

- **Physical posting Notice/Agenda not required** provided:
 - the online notice includes a toll-free dial-in number of free-of-charge videoconference link; **AND**
 - an electronic copy of any agenda packet.
- **If Notice is physically posted**, the additional items not required
- If the meeting is held **SOLELY** over video conference, Notice must include the telephonic or videoconference link regardless of physical posting.



Governor's Suspension Quorum Participation

- Suspended a portion of Texas Government Code 551.127, related to video conference calls
- Suspension permits a videoconference meeting to be held without a set meeting location or a quorum at that location.
- A quorum must be maintained through the videoconference line and the “quorum must still participate in the telephonic or videoconference meeting.”
- Suspends requirement for video signals at meeting location.



EXCEPTION TO QUORUM REQUIREMENTS

- Under Government Code Sec. 418.1102
 - a quorum is not required for the governing body of a local governmental entity to act if:
 - the entity's jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor; and
 - a majority of the members of the governing body are unable to be present at a meeting of the governing body as a result of the disaster.



Governor's Suspension Public Participation

- Telephonic or videoconference meetings need not be audible at the specified location if:
 - the dial-in number or videoconference link provided in the notice is audible to members of the public,
 - allows for their two-way communication, and
 - a recording is made available to the public.
- If ESD provides a location for the public to attend and listen or participate in a telephonic or videoconference meeting and does not provide the dial-in number or videoconference link, it will need to follow the general rules.



Telephone Conference Call Special Rules

- Meeting may be held by teleconference call only if:
 - **emergency or public necessity exists; and**
 - **it is difficult or impossible to convene a quorum at one location, or**
 - the meeting is held by an advisory board
- Suspension does not affect these requirements for teleconference meetings
- But BOTH conditions are likely satisfied now.



Telephone Conference Call General Rules

- Subject to usual notice requirements
- Meeting must be held in same place as regular meetings
- Identity of each speaker must be clearly stated prior to speaking.



Telephone Conference Call General Rules (cont.)

- Meeting must be set up to provide two-way communications.
- All portions (other than executive session) must be audible to public.
- Meeting must be tape-recorded & a copy made available to public.



Videoconference Call General Rules

- Allowed if:
 - Presiding officer is physically present at location of space for public
 - Members and employees participating by video conference have live video and audio feed
 - Public has access to space to attend meeting that has camera and microphone to allow participation
 - Public participation must be allowed as if the meeting were being held without video conference



Videoconference Call General Rules (cont.)

- Notice of meeting must specify location where public may attend
- Each participant must be clearly audible and visible to all participants and to public at all times.
- Must meet audio & video quality requirements of Section 551.127 of Government Code.
- The entity must at least make an audio recording of the entire meeting that is made available to the public.



Governor's Suspension Public Participation

- Suspended requirement that must allow each member of the public to an item on an agenda before or consideration of the item.
- BUT, must offer alternative methods of communicating with their public officials.



Key Points

Open Meetings Act

- Post Notice/Agenda **PHYSICALLY** at Administration Building and **ELECTRONICALLY** on Website
 - Avoids providing packet and internet/telephone access requirements imposed for web only posting
- Include Statement regarding Public Participation by Teleconference or Videoconference on Notice/Agenda



Key Points

Open Meetings Act

- If possible, designate one Commissioner to attend the meeting at the location specified in the agenda
- If a Commissioner will attend at meeting location, provide “extra” notice of participation by teleconference to avoid gatherings of 10 or more and provide link/phone number info
- Record Entire Meeting
 - Except Executive Sessions
 - Must be available to public



PUBLIC INFORMATION ACT



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

Public Information Act Generally

- Applies to Districts and VFDs/Service Providers
- Required to respond to all requests in reasonable period of time
- Exceptions to the Act - the governmental body generally must, within ten business days of receiving the open records request, refer the matter to the Office of the Attorney General (the OAG) for a ruling.



Public Information Act

TxOAG COVID Information

- Guidelines when calculating business days:
 - Holidays observed by the governmental body are not business days.
 - Weekends are not business days.
 - Skeleton crew days are not business days.
 - A day on which a governmental body's administrative offices are closed is not a business day.



Public Information Act

TxOAG COVID Information

- If a governmental body has closed its physical offices for purposes of a public health or epidemic response OR
- If a governmental body is unable to access its records on a calendar day,
- THEN such day is not a business day, even if staff continues to work remotely or staff is present but involved directly in the public health or epidemic response.



Key Points

Public Information Act

- If reduce staffing to skeleton crew days, extends time for response.
- Specify administrative staff responsible for records and clarify if not essential to emergency operations or required to work remotely.



Key Points

Public Information Act

- Specify whether those working remotely are able to access records.
- Provide notice to the public of operation on a skeleton crew and that any public information requests made during this time will begin to be processed once full administrative staffing is restored, the first business day.



ELECTIONS



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

Elections

- Generally CAN NOT cancel or postpone once called, unless unopposed
- Governor has authorized postponement of May general election to November 2020
- Governor has postponed May primary runoff elections until July 14th



Key Points Elections

- In order to postpone, the governing body must order the postponement of their election to the November 3, 2020 uniform election date.
- The order should contain:
 - A reference to the Governor's proclamation;
 - Confirmation that the candidate filings for the election will remain valid and that the filing period will not be re-opened for the November election date.



Key Points Elections

- Order Postponing (cont)
 - Confirm that all mailed ballot applications for voters that are voting by mail due to being over the age of 65 or due to disability will still be valid and that mailed ballot applications for voters who submitted applications based on expected absence from the county will no longer be valid.
 - The major dates for the November election, including the voter registration deadline (October 5, 2020), the deadline to submit an application for mailed ballot (October 23, 2020), and the dates for early voting (October 19, 2020 – October 30, 2020).



Key Points Elections

- **Necessary Revisions to Order of Election**
 - Meet by August 17, 2020 to revise original order of election.
 - Those revisions may include:
 - The change to the date of the election;
 - Any change in location of the main early voting location;
 - Any changes to early voting dates and hours, including weekend early voting;
 - Any changes to the identity of the early voting clerk and their contact information; or
 - Any changes to branch early voting locations.



Key Points Elections

- Update Official Websites and Notify Media
 - Post notice on the website and alert any local media regarding change to election date.
 - Provide notice to county election officer of change.
 - Provide a revised notice to the county for posting on the county's website.



Key Points Elections

- Order the postponement of the election as soon as possible
- Updated Contract for Election Services if required



CONTINUITY OF FUNCTIONS



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

Disaster Declaration

- President of ESD or Board may declare a disaster under the Texas Disaster Act of 1975 (Section 418.108 of Government Code)
- Declaration of local disaster may not be continued or renewed for a period of more than seven days except with the consent of the governing body of the political subdivision



Disaster Declaration

- An order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the County Clerk
- Declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration.



Disaster Declaration

- The appropriate preparedness and response aspects of the plans are activated as provided in the plans and take effect immediately after the local state of disaster is declared.
- Effectively becomes Continuity of Service Plan under Government Code 418.1101



Disaster Declaration

- Continuity of Function plan may provide for:
 - **delegating any administrative duty of the governing body** of the political subdivision or any official or employee of the political subdivision to another appropriate person;
 - establishing orders of succession for performing essential functions of the political subdivision; and
 - establishing meeting procedures for the governing body of the political subdivision.
- The plan may not provide for the delegation of a duty that the governing body or official is required to perform by the **Texas Constitution**.



Disaster Declaration Purposes

- Authorize District's Fire Chief (if Employee) to make all decisions regarding the resources to assist in the District's response to the situation including:
 - physical assets,
 - personnel staffing, and
 - financial resources.
- Serves to clarify operational control by Chief



Disaster Declaration

- Can override requirement that:
 - District funds may be disbursed only by check signed by the treasurer or assistant treasurer and countersigned by the president or vice-president, or
 - at least three board members.



REVENUE IMPACTS



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

Disaster Impacts On Revenue

- Ad Valorem Taxes
 - May be able to use old tax setting process if disaster continues through tax setting period
 - May result in reduction in taxable values if economic impact is too great



Disaster Impacts On Revenue

- Sales and Use Taxes
 - Likely drop in sales tax revenue. Work to project impact of loss of revenues
- Fees and Charges
 - May lose revenues from fees and charges for services as a result of Federal stimulus



EMPLOYEE IMPACTS



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020

ESD Employee and Volunteer Issues

- The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide employees with expanded family and medical leave for specified reasons related to COVID-19.
- The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.



Families First Coronavirus Response Act

- Generally, the Act provides that employees of covered employers are eligible for:
 - Two weeks (up to 80 hours) of expanded family and medical leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or



Families First Coronavirus Response Act

- Two weeks (up to 80 hours) of expanded family and medical leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and



Families First Coronavirus Response Act

- Up to an additional 10 weeks of expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.
- See <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>



National Guard

- Those personnel who serve as first responders and healthcare providers and are in the Texas National Guard need to reach out to their commanders and let them know their job duties.
- The Governor excepted, in this specific instance, the first responders and healthcare personnel.
- If an individual is a first responder or healthcare provider and receives notification to activate from their command, they will need to let them know they are a first responder or healthcare provider so they can be removed from the roster.
- Recommend those personnel notify their commands before being called up.





Questions?



4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
www.carltonlawaustin.com
©2020