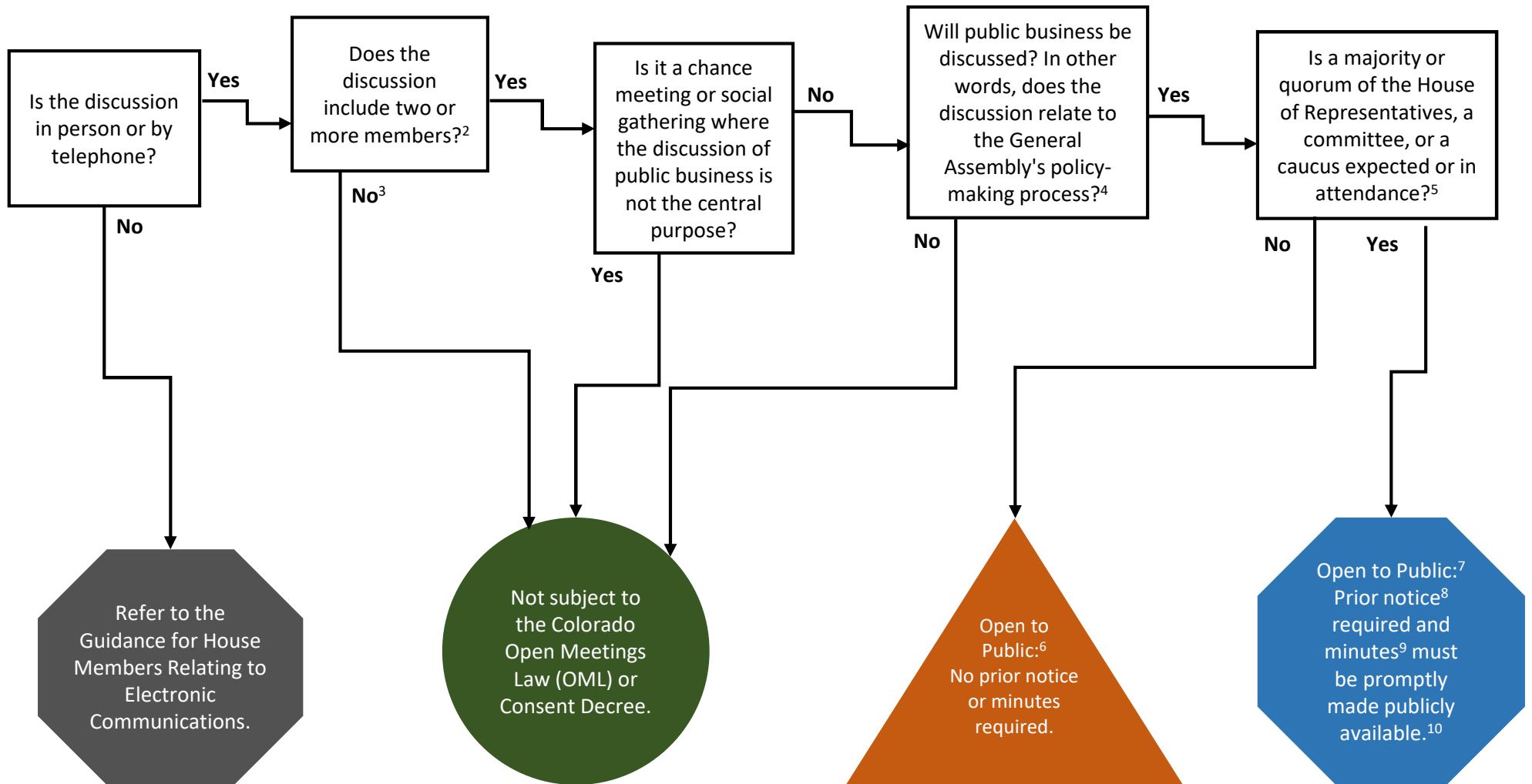


Guidance for House Members Related to Non-electronic Meetings¹ after the Amended Stipulated Consent Judgment and Decree in *Epps, et al. v. Colo. House of Representatives, et al.* (Consent Decree)



Explanatory Notes for the Guidance for House Members Related to Non-electronic Meetings

1. “Meeting” means “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.” §24-6-402 (1)(b), C.R.S. This guidance relates to discussions that are in person or by telephone. It also may apply to those discussions by any other means of communication—perhaps the mail—but as a practical matter, it is unlikely that anything fits in that catch-all in today’s legislative environment.
2. A meeting may be subject to the OML even if it is convened by a member of the public or an entity or organization. The members attending the meeting are responsible for ensuring that the requirements of the OML are met or avoiding discussions that would cause the meeting to be subject to the OML.
3. When a member meets only with people who are not legislators, such as lobbyists, stakeholders, constituents, legislative staff, or executive-agency staff, then the meeting is never subject to the OML based on the member’s participation.
4. The definition of “meeting” referenced in Note #1 and the Consent Decree relate to discussions of “public business,” which the Colorado Supreme Court has clarified by holding that “a meeting must be part of the policy-making process to be subject to the requirements of the OML.” *Bd. of County Cmm’rs v. Costilla County Conservancy Dist.*, 88 P.3d 1188, 1194 (Colo. 2004). A meeting is part of the policy-making process if there is “a meaningful connection between the meeting itself and the policy-making powers of the public body holding or attending the meeting.” *Id.* “Such a link exists, for example, when the meeting is convened to discuss or undertake . . . a rule, regulation, ordinance, or a formal action” or if it “was held for the purpose of discussing a pending measure or action, which is subsequently ‘rubber stamped’ by the public body holding or attending the meeting.” *Id.* (*internal citations omitted*). For the House and its committees and caucuses, a discussion by its members of pending legislation (bills, resolutions, or memorials) or other formal actions (interim committee or committee bill drafts or budget setting) that are voted upon by the General Assembly or a committee thereof have a meaningful connection to the General Assembly’s policy-making powers. In some circumstances, even discussions prior to a bill’s introduction or other vote may be viewed as having a meaningful connection to the General Assembly’s policy-making powers. It is impossible to establish a bright-line rule when these pre-introduction discussions will have such a meaningful connection, but factors that seem relevant include: (1) The form of the bill (Is it just an idea not yet drafted or is it fully finalized and awaiting introduction?); (2) the nature of the discussions (Is it a general discussion about a topic or is a member soliciting support for the proposal or asking other members to vote in support or against it?); and (3) who is involved (Is it just the sponsors working on a bill they will introduce together or is it an entire committee or caucus discussing it?). In each parenthetical, the first scenario is less likely to have a connection to policy-making powers, and the second scenario is more likely to have a connection. The closer a situation is to one or more the of these examples, the more or less likely it will be considered public business. When in doubt, exercise caution and err on the side of treating the meeting as being subject to the OML and the Consent Decree.
5. Under House Rules, if less than a majority or quorum is present, the House or a committee cannot take any type of formal action, and, therefore, meetings subject to the OML because formal action may be taken are not separately included in the analysis.
6. This means that any member of the public who seeks access must be allowed to listen to the discussion or attend the meeting in person or through electronic means, such as watching the meeting through Zoom or a similar platform. It does not mean that a person must be permitted to actively participate in the meeting.
7. Unless the House, committee, or caucus is in executive session, the entire meeting should be open to the public. For example, this means that a committee of reference should not go into recess and have a separate side discussion about a bill it is considering during a hearing, nor should the members of the committee conduct simultaneous private discussions about a bill through electronic means that are not available to the public during the meeting.
8. The meeting should only be held after full and timely notice to the public. If it is not a calendared meeting and Legislative Council Staff is not providing the notice, House members may provide notice through publicly accessible websites or social media. What constitutes full and timely notice for the General Assembly is not defined in the OML, and the courts have adopted a flexible standard, taking into account the public’s interest in access to discussions of public business, as well as the public body’s need to conduct its business in a reasonable manner. While the context around the meeting may dictate how much notice is possible, members should try to provide notice as far in advance as possible, and the notice should include the meeting’s date and time, location, expected attendees, and agenda or items to be discussed.
9. Minutes are not defined in the OML but generally mean “the official record of the proceedings of a meeting.” At a minimum, minutes should identify the date, time, and attendees of the meeting and include a summary of the discussion and any action taken.
10. The requirement that minutes “must be promptly made publicly available” is from the Consent Decree and is different from the requirement in the OML that minutes be promptly recorded and that the record of minutes be open to public inspection. Like a notice of a meeting, members may provide the minutes through publicly accessible websites or social media.