

A GUIDE TO OPEN MEETINGS AND OPEN RECORDS

Kansas Open Meetings Act

K.S.A. 75-4317 et seq.

I. Policy, Construction, Purpose

- A. K.S.A. 75-4317(a) - Meetings shall be open to the public because “a representative government is dependent upon an informed electorate. . . .”
- B. Law enacted for the “public benefit,” so construed broadly in favor of the public to give effect to its specific purpose of openness. *State ex rel. Murray v. Palmgren*, 231 Kan. 524, Syl. ¶ 4 (1982).
- C. KOMA interpreted liberally and exceptions applied narrowly to carry out purpose

II. Who Is Subject to KOMA?

- A. All legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, and other subordinate groups thereof receiving or expending and supported in whole or in part by public funds. K.S.A. 75-4318(a)
- B. “Subordinate groups” – not defined; if created by a covered entity or the group has become an extension of a covered entity, most likely covered. It is the nature of the group, not its name or designation that determines if it is subject to KOMA.

III. Who Is Not Subject to KOMA?

- A. Any administrative body when exercising a “quasi-judicial” function. K.S.A. 75-4318(g)(1)
- B. Hearings conducted under the Kansas Administrative Procedures Act (KAPA). K.S.A. 77-523(f); K.S.A. 75-4318(g)(4)
- C. Judicial agencies and bodies.
- D. Staff meetings of a covered entity.

E. Private organizations.

IV. **What Is a Meeting?**

A. KOMA only applies when a body subject to KOMA holds a meeting as defined by K.S.A. 75-4317a.

1. "Meeting" as defined in the KOMA means:
 - a. Any gathering or assembly in person, through the use of a telephone, or any other medium for interactive communication,
 - b. By a majority of the membership of a public body or agency subject to the act, and
 - c. For the purpose of discussing the business or affairs of the public body or agency.
2. All three elements must be present for the KOMA to apply.

B. Gathering or Assembly.

1. Public agencies subject to KOMA may conduct meetings in person, by telephone or other medium for interactive communication (conference call, video, ZOOM, go to meeting, WebEx) if the meeting complies with all other KOMA requirements.
2. Informal discussions before, after or during a recess of a public meeting may be subject to the KOMA. *Coggins v. Public Employee Relations Board*, 2 Kan. App. 2d 416, 423, rev. denied 225 Kan. 843 (1978).
3. Name of the gathering is irrelevant if all three elements of a meeting are present.
4. Serial communications. K.S.A. 75-4318(f)
 - a. Interactive communications outside of a noticed meeting may be a meeting under KOMA if they:
 - 1) Collectively involve a majority of the membership of the public body or agency,
 - 2) Share a common topic of discussion about the business or affairs of the public body or agency, and
 - 3) Are intended by any or all participants to reach an agreement on a matter that requires binding action to be taken by the public body or agency.
 - b. Interactive communication, under KOMA, requires a mutual or reciprocal exchange.

C. Majority of the membership.

1. Majority of the membership for purposes of KOMA means the next whole number greater than one-half the total number of members including empty or unfilled positions.
 2. Prior to 2009 the KOMA contained a quorum requirement.
- D. Discussion of the business or affairs of the public body or agency.
1. Binding action or voting not necessary. The discussion alone is sufficient to satisfy this element.
 2. "Meeting" includes all gatherings at all stages of the decision making process. *Coggins v. Public Employees Relations Board*, 2 Kan. App. 2d 416, 423, rev. denied 225 Kan. 843 (1978).
 3. Social gatherings are not subject to the KOMA unless there is discussion of the business or affairs of the public body or agency.
 4. Retreats and meetings held in private are most likely prohibited. The KOMA requires members of the public to attend or observe a meeting subject to KOMA free of charge.
 5. Educational conferences/seminars are generally not subject to the KOMA where topics of general interest are discussed (Examples: Association of Counties meetings, League of Municipalities meetings) unless the specific business or affairs of the public body are discussed.

V. **Notice of Meetings**

- A. Generally, KOMA does not require notice of meetings to be published in a newspaper or on a website.
- B. Form of the Request.
 1. A person or entity must request notice of meetings before the public body or agency is required to provide notice of public meetings. K.S.A. 75-4318(b)
 - a. No formalities required to request notice. The request can be verbal or written.
 - b. A request is valid for until the end of the fiscal year. K.S.A. 75-4318(b)(3).
 - c. The public body or agency must notify the person or entity of the expiration before terminating the notice.
- C. Form of Notice.

1. Presiding officer has duty to provide notice, but duty may be delegated. K.S.A. 75-4318(c)
 2. The notice must provide date/time/location where public body will meet to person requesting notice a “reasonable time” before meeting.
- D. Notice Requirements for Executive Branch Agencies.
1. Executive Order 2018-08 requires all Executive Branch departments, agencies, boards, and commissions under the jurisdiction of the Office of the Governor to post all open meetings notices and meeting minutes on the Kansas public notice website maintained by the Kansas Department of Administration.
 2. Kansas Public Square. <https://publicsquare.ks.gov/>.

VI. **Agenda and Minutes**

- A. KOMA does not require public bodies or agencies to create agendas of their meetings.
1. Any agenda must include topics planned for discussion (if known). *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290, 293 (1986).
 2. Agenda may be amended during a meeting unless a statute or rule prohibits an amendment. *USD 407 v. Fisk*, 232 Kan. 820 (1983).
 3. Public agencies must make the agenda available to any person requesting the agenda. K.S.A. 75-4318(d)
- B. Minutes are only required to record the motion to go into executive session.
1. Local bylaws, ordinances, policies, etc., may require minutes to be kept.
 2. Motions to go into executive session must be maintained permanently. K.S.A. 75-4319(a)

VII. **Meeting Conduct**

- A. All meetings of public bodies or agencies subject to KOMA are required to be open to the public. K.S.A. 75-4318(a)

- B. The KOMA does not require that a member of the public be allowed to speak. The KOMA requires that member of the public be allowed to attend and observe/listen to public meetings.
- C. The use of cameras, photographic lights and recording devices to record an open meeting is not prohibited. K.S.A. 75-4318(e). Members of the public may record an open meeting as long as they are not disruptive. Use of these devices is subject to reasonable rules to ensure orderly conduct of the meeting.
- D. KOMA does not control the location of the meeting, size of the meeting space, or other accommodations. KOMA requires meeting locations to be accessible to the public. *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290, 292-293 (1986).
- E. Binding action by public body must be conducted in the open; secret ballots are not allowed. K.S.A. 75 4318(a). The public must be able to ascertain how each member of the public body voted.
- F. Emergency Declaration. K.A.R. 16-20-1 provides requirements that ensure a public body or agency subject to KOMA complies with the law only during a state of disaster emergency lawfully declared by the Governor pursuant to K.S.A. 48-924(a) through (c), and amendments thereto, or any other emergency declaration lawfully declared pursuant to applicable emergency powers provisions of local, state, or federal law, in the territory affected by the declaration, and to the extent that emergency responses required pursuant to the emergency declaration impede the ability of any of the following:
 - 1. Members of the public body or agency to conduct meetings by physically gathering;
 - 2. Members of the public to attend or observe public meetings by physically attending the meetings; or
 - 3. A combination of both (1) and (2).

VIII. **Executive Sessions**

- A. General requirements.
 - 1. An open meeting must be convened first and then recess into executive session. K.S.A. 75-4319(a). There is no mechanism in the KOMA to extend an executive session or to end an executive session early.

2. No binding actions may be taken in an executive session, but a consensus is allowed. K.S.A. 75-4319(c). If a consensus is achieved, an open and formal vote must be taken in open session

B. Who may attend?

1. Only members of the public body have a right to attend an executive session.
2. Mere observers may not attend.
3. Staff, agents or other non-public body individuals have no right to attend.
4. Public body may invite individuals who will aid the discussion or provide information on a permissible topic or participate in the discussion

C. Recessing into Executive Session

1. KOMA requires a formal motion seconded and carried. The complete motion as stated must be recorded in the minutes and retained permanently. K.S.A. 75-4319(a)
2. Parts of the motion for executive session:
 - a. Statement of the subject(s) to be discussed (without revealing confidential information)
 - b. Justification (from K.S.A. 75-4319(b)(1) through (15))
 - c. Time and place the open meeting will resume

D. Commonly used justifications:

1. Personnel matters of non-elected personnel. K.S.A. 75-4319(b)(1)
 - a. To protect the privacy interests of the employee
 - b. Does not include independent contractors, appointments to boards or committees, or public officers
 - c. May discuss applicants for employment
2. Consultation with the body's attorney. K.S.A. 75-4319(b)(2)
 - a. Elements of attorney-client privilege must be present:
 - 1) The attorney must be present
 - 2) The communication must be privileged
 - 3) No third parties may be present (breaks privilege)
3. Employer-Employee negotiations. K.S.A. 75-4319(b)(3)
 - a. For the purpose of formal negotiations – not general employee meetings or discussions.

- b. May meet in executive session to discuss the status of negotiations.
 - c. School boards have special rules for professional negotiations. K.S.A. 72-2228
4. Data relating to the financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorship. K.S.A. 75-4319(b)(4)
 - a. Called the economic development exception.
 5. Matters affecting a student, patient or resident of a public institution. K.S.A. 75-4319(b)(5)
 - a. Must cover a particular person, not students, patients, or residents in general.
 - b. With this justification, any hearing must be open if requested by the person involved.
 6. Preliminary discussions relating to the acquisition of real property. K.S.A. 75-4319(b)(6)
 - a. Acquisition only – not sale
 - b. Negotiating strategy alone is not sufficient
 7. Security Measures. K.S.A. 75-4319(b)(12)
 - a. Open discussion would jeopardize security measures that protect infrastructure and the public; includes intelligence information, tactical plans, resource deployment and vulnerability assessments.
 - b. Any confidential records or information concerning security measures provided or received in executive session are exempt from subpoena, discovery or other demand in any administrative, criminal or civil action. K.S.A. 75-4319(d). See also K.S.A. 45-221(g).

Kansas Open Records Act

K.S.A. 45-215 *et seq.*

I. Policy, Construction, Purpose

- A. “Public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy.” K.S.A. 45-216(a)
- B. KORA provides the procedure for the public to view and make copies of public records as well as defines and categorizes records.

II. What Is a “Public Agency for KORA”

- A. K.S.A. 45-217 (i)(1) defines “public agency.”
 - 1. The state or any political or taxing subdivision of the state, or any office, agency or instrumentality thereof, or any other entity receiving or expending or supported in whole or in part by public funds appropriated by the state or political/taxing subdivision.
 - 2. Instrumentality is not defined in KORA. Multiple factors may make this determination and requires a case-by-case review to determine if an entity is an instrumentality subject to KORA. *See generally State v. Great Plains of Kiowa County*, 308 Kan. 950 (2018).

III. What is not a “public agency?”

- A. Private companies, even if they receive public funds in exchange for goods and services. K.S.A. 45-217(i)(2)(A)
- B. Municipal or state judges/justices. K.S.A. 45-217(i)(2)(B)

IV. What is a public record?

- A. Any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of:
 - 1. Any public agency, or
 - 2. Any officer or employee of a public agency pursuant to the officer’s or employee’s official duties and which is related to the functions, activities, programs or operations of any public agency. K.S.A. 45-217(j)(1)
- B. Public records include written records, photographs, computer data, and email.
- C. Public records do not include:
 - 1. Records that are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds.
 - 2. Records made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state
 - 3. Records not in existence at time of request are not public records and the KORA does not require a public agency to create records in order to fulfill a request.

V. KORA Requirements of Public Agencies

- A. Each public agency must adopt procedures to be followed in requesting access to and obtaining copies of public records. K.S.A. 45-220(a).
- B. Each public agency must appoint a Freedom of Information officer to assist with KORA requests. K.S.A. 45-226
- C. Each public agency must display, distribute or otherwise make available a brochure describing requester rights, public agency responsibilities and procedures for inspecting or obtaining copies of public records. K.S.A. 45-226(b)(4) and 45-227(a)

VI. Rights of the Requester

- A. Any person may make a KORA request. The person need not be a resident of Kansas or a citizen of the United States.
- B. The person need not provide a reason for their request.
- C. Unless closed by law, the public has the right to review all public records, make abstracts of records or request copies of records.

VII. Limitations on requester's rights

- A. Requester may not remove a public record without the written consent of the custodian. K.S.A. 45-218(a)
- B. Public agencies are not required to make copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations unless shown at a public meeting. K.S.A. 45-219(a)
- C. Copyrighted materials may not be reproduced without the permission from the copyright holder, but must be available for viewing or listening. K.S.A. 45-219(a)
- D. The public agency may require:
 - 1. The request to be in writing, but not on a specific form. K.S.A. 45-220(b)
 - 2. The requester's name and address.
 - 3. Proof of identification. K.S.A. 45-220(b)
 - 4. Written certification that the requester will not use names and addresses obtained from the records to solicit sales or services. K.S.A. 45-220(c)(1) and K.S.A. 45-230

VIII. Responding to a KORA Request

- A. The request must be “acted upon” as soon as possible, but not later than the end of the 3rd business day following date request is received. K.S.A. 45-218(d)
- B. The three acceptable responses a public agency may provide under KORA. *Telegram Publishing Co., Inc. v. Kansas Department of Transportation*, 275 Kan. 779, ¶ 4 (2003)
 - 1. The record is provided (in the form requested, if possible)
 - 2. The request is under review and the records, if permitted, will follow
 - 3. The request is denied, with a detailed explanation for the denial if the requester asks for an explanation.

IX. Allowable Fees and Charges

- A. KORA allows public agencies to prescribe reasonable fees for providing access to or copies of public records. K.S.A. 45-219(c)
- B. Public agencies may only recover actual costs necessary to provide the requested records. K.S.A. 45-219(c)(1)
 - 1. These costs include staff time to retrieve, review and redact information from a record.
- C. Fees may be estimated and collected before the records are provided. K.S.A. 45-218(f) and K.S.A. 45-219(a)
- D. Executive Order 18-05. The Office of the Governor and all Executive Branch departments, agencies, boards, and commissions under the jurisdiction of the Office of the Governor shall not assess any charge or fee for the copying of documents responsive to an open records request made by any resident of Kansas under the Kansas Open Records Act, up to and including the first one hundred (1 00) pages of such documents. All residents of Kansas making such a request shall be informed of this policy in the initial response to their request.

X. Exemptions to Disclosure

- A. Mandatory Closure of Records
 - 1. Some public records are required to be closed by federal or state statute that are not found in KORA. KORA will look to other statutes first. See K.S.A. 45-221(a)(1)

2. Examples of mandatory closed records
 - a. Search and arrest warrants
 - 1) Accessing warrants executed before July 1, 2014.
 - i) Affidavits or sworn testimony given to support probable cause to obtain warrant are closed without a written court order.
 - ii) The defendant or defendant's counsel may have a copy.
 - 2) Accessing warrants executed on or after July 1, 2014. See K.S.A. 22-2302(c) and K.S.A. 22-2502(e)
 - i) Affidavits or sworn testimony given to support probable cause to obtain warrant are closed until warrant is executed.
 - ii) After execution, affidavit or sworn testimony shall be made available to the defendant or defendant's counsel upon request, and any person when requested pursuant to the following process outlined in K.S.A. 22-2502(e).
 - b. Care and treatment proceedings records.
 - 1) Mentally ill persons' commitment and treatment records are privileged and shall not be disclosed subject to certain exceptions. K.S.A. 59-212; K.S.A. 59-2979(c)
 - c. Motor vehicle records
 - 1) All motor vehicle records are subject to the KORA except as provided by state or Federal law.
 - 2) Photographs or digital images maintained in connection with the issuance of drivers' licenses shall be confidential and shall not be disclosed without court order. These records may be disclosed to any federal, state or local law enforcement agency to assist the agency in carrying out its functions. K.S.A. 74-2012(b); *See also* Driver's Privacy Protection Act, 18 USC § 2721 et seq.
 - d. Concealed Carry
 - 1) Records relating to persons issued licenses, applicants or persons denied a license shall be confidential and cannot be disclosed pursuant to KORA; disclosure a class A misdemeanor. K.S.A. 75-7c06(b)
 - 2) Records of person whose license suspended or revoked subject to public inspection under KORA. K.S.A. 75-7c06(c)
 - e. Social Security Numbers
 - 1) No document available for public inspection or copying shall contain an individual's social security number if document contains individual's personal information.
 - i) Personal information includes, but is not limited to, name, address, phone number or e-mail address
 - 2) Entire SS# must be redacted
 - 3) Unauthorized disclosure.
 - i) An agency shall give notice in most expedient time possible and without unreasonable delay consistent with the legitimate needs of

law enforcement and any measures necessary to determine the scope of the unauthorized disclosure; and

ii) Offer credit monitoring at no cost for one year. K.S.A. 75-3520

B. Discretionary Exemptions to Disclosure

1. Public agencies have discretion about whether to make certain types of records available to the public. K.S.A. 45-221(a)
2. Records that may be subject to discretionary closure are set out in K.S.A. 45-221(a)(1) through (54) and come under three general categories.
 - a. Personal privacy
 - b. Safety/security
 - c. Internal communications while policies are developed or administrative procedures are underway
3. Discretionary closure – personal privacy
 - a. Medical, psychiatric, psychological or alcoholism/drug dependency treatment records pertaining to identifiable patients. K.S.A. 45-221(a)(3)
 - b. Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants EXCEPT exemption shall not apply to:
 - 1) Names of employees
 - 2) Positions/Titles
 - 3) Salaries or actual employment contracts, including employment related contracts or agreements
 - 4) Length of service. K.S.A. 45-221(a)(4)
 - c. Clearly unwarranted invasion of personal privacy. Information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public. K.S.A. 45-221(a)(30)
 - 1) Examples of personal information include mother’s maiden name, DOB, street address, phone number, personal e-mail address. See K.S.A. 75-4320
 - d. Records that would disclose the name, home address, email address, phone/cell number, or other contact information for concealed carry licensees, applicants or persons enrolled in or who completed weapons training. K.S.A. 45-221(a)(52)
4. Discretionary closure – safety/security
 - a. Records that would reveal the identity of an undercover agent or any informant reporting a specific violation of law. K.S.A. 45-221(a)(5)
 - b. Records concerning emergency or security information or procedures of a public agency, if disclosure would jeopardize public safety, including records of cybersecurity plans, cybersecurity assessments and cybersecurity vulnerabilities or procedures related to cybersecurity plans, cybersecurity assessments and cybersecurity vulnerabilities, or plans, drawings, specifications or related

information for any building or facility that is used for purposes requiring security measures in or around the building or facility or that is used for the generation or transmission of power, water, fuels or communications if disclosure would jeopardize the security of the public agency, building or facility. K.S.A. 45-221(a)(12)

- c. Records of a public agency on a public website that are searchable by a keyword search and that identify the home address or home ownership of:
 - 1) a LEO or parole, probation, court services, community correctional services, local correctional or local detention officers;
 - 2) a federal judge, supreme court justice, court of appeals judge, district judge, magistrate judge, municipal judge, presiding officer who conducts hearings pursuant to KAPA, administrative law judge employed by the office of administrative hearings, a member of the State Board of Tax Appeals, administrative law judge who conducts hearings pursuant to the workers compensation act, a member of the workers' compensation appeals board;
 - 3) US attorney for Kansas, assistant US Attorney, special assistant US attorney, AG, assistant AG, special assistant AG, county/district attorney, assistant CA/DA, special assistant CA/DA, city attorney, assistant city attorney or special assistant city attorney. K.S.A. 45-221(a)(51)
 - 4) Any of the listed individuals shall file a request to restrict identifying information from public access on the public website with the custodian of records; must be restricted within 10 business days of receipt of request; restriction expires after 5 years; individual may file new request for restriction at any time. K.S.A. 45-221(a)(51)
 - d. Home address of any registered voter may be concealed from public inspection on voter registration list and original voter registration application form.
 - 1) The request must be made in writing to county election officer.
 - 2) The request shall specify a clearly unwarranted invasion of personal privacy or a threat to the voter's safety.
 - 3) Upon receipt, county election officer will take appropriate steps to ensure residence address is not publicly disclosed. K.S.A. 25-2309(i)
 - e. Criminal investigation records. Every audio or video recording made and retained by law enforcement using a body camera or vehicle camera as defined by K.S.A. 45-254, and amendments thereto as well as records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701, and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law. K.S.A. 45-217(c)
5. Discretionary closure – internal communications or procedures
- a. Records privileged under rules of evidence, unless consent. K.S.A. 45-221(a)(2)
 - b. Records of an investigation conducted under civil litigation or administrative adjudication, if disclosure interferes with the procedure. K.S.A. 45-221(a)(11)

- c. Correspondence between a public agency and a private individual, unless intended to give notice of a public agency action, policy or determination. K.S.A. 45-221(a)(14)
- d. Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed except where such records are publicly cited/identified in an open meeting or in an agenda of an open meeting. K.S.A. 45-221(a)(20)
- e. Attorney work product. K.S.A. 45-221(a)(25)
- f. Appraisals/engineering/feasibility estimates/evaluations by or for a public agency relating to acquisition or disposal of property, prior to the award of formal contracts. K.S.A. 45-221(a)(13)
- g. Specifications for competitive bidding, until officially approved by the public agency. K.S.A. 45-221(a)(27)
- h. Sealed bids and related documents until a bid is accepted or all bids rejected. K.S.A. 45-221(a)(28)

XI. Redaction

- A.** If a record contains material that is not subject to disclosure, the agency “shall separate or delete such material” and make the record available. K.S.A. 45-221(d)
- B.** Public Agencies are allowed under KORA to charge for staff time to redact

K.A.R. 16-20-1. Compliance with the Kansas open meetings act during an emergency declaration. (a) This regulation shall be in effect only as follows:

(1) During a state of disaster emergency lawfully declared by the governor pursuant to K.S.A. 48-924(a) through (c), and amendments thereto, or other emergency declaration lawfully declared pursuant to applicable emergency-powers provisions of local, state, or federal law;

(2) in the territory affected by any such declaration; and

(3) to the extent that emergency responses required pursuant to any such declaration prevent or impede the ability of any of the following:

(A) Members of a public body or agency subject to the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, to conduct meetings by physically gathering in person;

(B) members of the public to attend or observe public meetings by physically attending the meetings; or

(C) a combination of both paragraph (a)(3)(A) and paragraph (a)(3)(B).

(b) All requirements of the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, shall remain in force and effect during any emergency declared as described in paragraph (a)(1) unless expressly suspended by order of the governor pursuant to K.S.A. 48-925(c)(1), and amendments thereto, or other applicable provision of K.S.A. 48-925, and amendments thereto. No order of the governor shall be construed to suspend any

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requirement of the Kansas open meetings act, unless the order meets the following conditions:

(1) Expressly cites and invokes K.S.A. 48-925(c)(1), and amendments thereto, and any other specific provision of K.S.A. 48-925, and amendments thereto, from which the order draws authority;

(2) expressly references the Kansas open meetings act and the specific provisions thereof that the governor intends to suspend during the state of disaster emergency; and

(3) makes plain and unequivocal the intent of the governor to suspend any such requirement.

(c) Any public body or agency may comply with the requirement of K.S.A. 75-4318(a), and amendments thereto, that a meeting be "open to the public" through the use of a telephone or other medium for interactive communication if the requirements of subsection (e) are met.

(d) As used in this regulation, "medium for interactive communication" shall include teleconference, videoconference, internet conference, television broadcast, or any other method that permits the public to listen to the meeting and also to observe the meeting if the method allows for visual observation.

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(e) Each public body or agency conducting an open meeting utilizing solely a telephone or another medium for interactive communication rather than by members of the body or agency gathering in person at a physical location shall meet the following requirements:

(1) Use a medium for interactive communication that, at a minimum, allows members of the public, without cost, to listen to the meeting and, if available, also allows video observation of the meeting;

(2) comply with all requirements of the Kansas open meetings act, except any temporarily suspended by the governor as provided by subsection (b), including requirements for notice;

(3) if the medium for interactive communication allows, provide an alternative means to access the meeting for members of the public who do not have internet access that also complies with the requirements issued pursuant to any emergency declaration;

(4) provide directions describing how members of the public will be able to electronically access, listen to, or observe the open meeting;

(5) if the medium for interactive communication does not permit easy identification of the individual speaker, require each member of the public body or agency, staff, or presenter to state the individual's name and title, if any, each time the individual begins

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speaking or voting so that the individual can be readily identified by remote listeners or observers;

(6) require all participants to ensure that microphones, phones, or other electronic devices are muted when the participants are not speaking so that the ability of remote listeners or observers to hear the proceedings is not unnecessarily impeded;

(7) describe at the beginning of the meeting whether public comment will be allowed and what process will be used to identify any individual who wishes to comment, if permitted;

(8) describe at the beginning of the meeting the process that will be used for a closed or executive meeting pursuant to K.S.A. 75-4319, and amendments thereto;

(9) before any meeting, provide electronic or paper copies of an agenda, if any, to any individual requesting the agenda;

(10) clearly state each motion before the public body votes and announce the results of the final vote; and

(11) when not otherwise established by the agency or by ordinance or resolution of the public body, pass a motion that clearly identifies and authorizes by delegation each member of the public body or staff who will be permitted to sign any binding document for the public body or agency.

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(f) To the extent that emergency responses required pursuant to the emergency declaration prevent or impede the ability of the public to physically attend a public meeting, any public body or agency may comply with the requirement of K.S.A. 75-4318(a), and amendments thereto, by meeting in person but limiting physical access of the public to the place where the meeting occurs if the public body or agency meets the following requirements:

(1) Complies with all requirements of the Kansas open meetings act, except any requirements suspended by the governor as provided by subsection (b), including requirements for notice;

(2)(A)(i) Broadcasts the meeting live on television or the internet; and

(ii) provides members of the public with the ability to access the meeting by telephone without cost; or

(B) uses any other method other than the methods specified in paragraphs (f)(2)(A)(i) and (ii) that permits the public to listen to or observe the meeting without cost;

(3) provides directions describing how members of the public will be able to electronically access, listen to, or observe the open meeting;

(4) if the medium for interactive communication does not permit easy identification of the individual speaker, requires each member of the public body or agency, staff, or presenter to state the individual's name and title, if any, each time the individual begins

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speaking or voting so that the individual can be readily identified by remote listeners or observers;

(5) describes at the beginning of the meeting whether public comment will be allowed and what process will be used to identify any individual who wishes to comment, if permitted;

(6) describes at the beginning of the meeting the process that will be used for a closed or executive meeting pursuant to K.S.A. 75-4319, and amendments thereto;

(7) before any meeting, provides electronic or paper copies of an agenda, if any, to any individual requesting the agenda;

(8) states each motion before the public body votes and announces the results of the final vote; and

(9) when not otherwise established by the agency or by ordinance or resolution of the public body, passes a motion that clearly identifies and authorizes by delegation each member of the public body or staff who will be permitted to sign any binding document for any public body or agency.

(g) Nothing in this regulation shall require any public body or agency to provide members of the public with the opportunity for public comment.

(h) Nothing in this regulation shall require any public body or agency to take action to prevent any member of the public from physically attending any public meeting.

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(Authorized by K.S.A. 75-762; implementing K.S.A. 75-4317 and 75-4318; effective, T-16-3-

25-20, March 25, 2020; effective P-_____.)

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