

David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Director, City Planning Commission
Janese Chapman
Director, Historic Designation Advisory Board

John Alexander
LaKisha Barclift, Esq.
Timarie DeBruhl
Paige Blessman
M. Rory Bolger, Ph.D., FAICP
Victory Corley
Lisa DiChiera
Kristy Enoex
Eric Fazzini, AICP
Willene Green

City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Christopher Gulock, AICP
Marcel Hurt, Esq.
Sandra L. Jeffers
Kimani Jeffrey
Anthony W. L. Johnson
Phillip Keller, Esq.
Edward King
Kelsey Maas
Jamie Murphy
Dolores Perales-Lara
Analine Powers, Ph.D.
W. Akilah Redmond
Renee Short
Floyd Stanley
Thomas Stephens, Esq.
Theresa Thomas
Janice Tillmon
Ian Tomashik
Emberly Vick

TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff



DATE: April 2, 2026

RE: **MEMO REGARDING THE ABILITY OF COUNCIL MEMBERS TO PARTICIPATE IN PUBLIC MEETINGS WHILE ABSENT DUE TO A MEDICAL CONDITION**

The Detroit City Council requested that the Legislative Policy Division (LPD) provide a report discussing the ability of members of a public body to attend public meetings virtually due to a medical condition.

In a 2022 opinion by the Michigan Office of the Attorney General (AG), the AG was asked to analyze the intersection of the Americans with Disabilities Act (ADA) and the Michigan Open Meetings Act (OMA).¹ Specifically, the opinion addressed whether the ADA “allows or requires state and local boards and commissions to provide reasonable accommodations, such as the option to participate virtually, to individuals with disabilities who have been elected or appointed to serve or wish to fully participate as members of the public and have requested an accommodation.”

In the opinion, the AG first emphasized that the OMA requires that “meetings of a public body must be open to the public and must be held in a place available to the general public.”² Although the phrase “in a place available to the general public” is not defined in the OMA, the AG analyzed the plain meaning of “in a place” to determine that meetings of a public body “*must* be held in a physical space”

¹ 2022 Mich. Op. Att’y Gen. No. 7318 (Feb. 4, 2022).

² MCL 15.263(1).

and that “the OMA does not contemplate virtual meetings.”³ Further, the AG reasoned that if the OMA was intended to allow for virtual meetings, the now-expired amendments to the OMA allowing for virtual participation during the COVID-19 pandemic would not have been necessary.⁴

The OMA does not contain language that affirmatively requires any accommodation for a disabled individual that would allow them to access to or participation in public meetings. The ADA is a federal law intended to address discrimination against individuals with disabilities, which includes the prevention of discrimination in “public accommodations.”⁵ Because the OMA does not provide a requirement to accommodate individuals with disabilities, the ADA preempts the OMA to the extent that the OMA is inconsistent with ADA requirements.⁶

The AG stated the following with regard to the ADA’s application to local boards and commissions:

The ADA consists of three Titles, only one of which—Title II—is relevant here. Title II is brief, but there is a lot packed into a few words: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”⁷ For purposes of Title II, a “public entity” is “(A) any State or local government; (B) any department, agency, special purpose district or other instrumentality of a State or States or local government” (emphasis added).⁸ Therefore, “instrumentalities” such as local and state boards and commissions are public entities under Title II. Moreover, Title II’s language is broad enough to include both board members and members of the general public seeking to fully participate in a public entity’s public meetings.⁹

For a board member that is seeking an accommodation that allows them to fully participate in public meetings, the board member must first show that they are a “qualified individual with a disability” as defined by the ADA. The ADA defines “disability” for an individual as follows:

(1) Disability

The term “disability” means, with respect to an individual--

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

³ 2022 Mich. Op. Att’y Gen. No. 7318 (Feb. 4, 2022).

⁴ *Id.*

⁵ 42 USC 12101(a)(3).

⁶ Mich. Op. Att’y Gen. No. 7318, *Supra.*

⁷ 42 USC 12132.

⁸ 42 USC 12131(1)(A)(B).

⁹ Mich. Op. Att’y Gen. No. 7318, *Supra.*

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.¹⁰

Determinations of disability under the ADA are individually resolved on a case-by-case basis because of the necessity to conduct a factual analysis of an individual’s condition in relation to the activity that they are seeking to participate in.

Once the board member demonstrates that they are a “qualified individual with a disability,” they can request an accommodation under the ADA. An accommodation is reasonable for the purposes of the ADA “unless it requires ‘a fundamental alteration in the nature of a program’” or imposes “undue financial and administrative burdens.¹¹” Once again, the determination of the reasonableness of a requested accommodation happens on a case-by-case basis, however the AG reasoned that it is unlikely a request for hybrid participation at public meetings would be unreasonable because the OMA already requires public bodies to provide remote access for members of the military and many public bodies, like

¹⁰ 42 USC 12102(1)(A).

¹¹ *Smith & Lee Assoc, Inc v City of Taylor*, 102 F3d 781, 795 (CA 6, 1996), quoting *Southeastern Community College v Davis*, 442 US 397, 410, 412 (1979); 28 CFR 35.150(a)(3).

Detroit City Council, successfully allowed for virtual participation during the COVID-19 pandemic.¹² Further, the Detroit City Council continues to allow for virtual attendance by members of the public.

Notably, the AG drew a distinction between a request for hybrid participation and a “fully virtual” option, stating:

... a request for a *fully* virtual option is more likely to be viewed as a fundamental alteration of a board's or commission's services, and therefore not required. More importantly, where that option is not necessary to accommodate a qualified individual with a disability, the ADA does not require it and the OMA would not permit it. The Legislature's clear intent behind the OMA was to have in-person meetings. The Legislature, of course, could amend the OMA to permit fully virtual meetings. The potential benefits are many, including greater transparency, increased public involvement and participation, and the avoidance of singling out disabled board members who are participating remotely.¹³

In sum, the AG reasoned that if a member of a public body seeks an accommodation to participate in all meetings virtually is not permitted under the OMA where it is not necessary to accommodate the member. However, it is more likely that a request for hybrid participation would be considered a reasonable accommodation by a reviewing court and be in conformance with the OMA.

The OMA provides that public bodies shall establish procedures that allow for participation of absent members in limited circumstances, including due to a member’s “medical condition,” which the OMA defines as “an illness, injury, disability, or other health-related condition.”¹⁴ These procedures must include the following:

- (i) Two-way communication.
 - (ii) For each member of the public body attending the meeting remotely, a public announcement at the outset of the meeting by that member, to be included in the meeting minutes, that the member is in fact attending the meeting remotely. If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must further identify specifically the member's physical location by stating the county, city, township, or village and state from which he or she is attending the meeting remotely.
- (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.

¹² Mich. Op. Att'y Gen. No. 7318, *Supra*.

¹³ *Id.*

¹⁴ MCL 15.263.

Note that while the OMA requires procedures for the participation of an absent member, it does not require accommodation for a member who is absent due to a medical condition. Given the AG's interpretation of the OMA that in-person participation is a requirement, a member should only participate remotely under these procedures if their medical condition prevents them from physically attending.

Ultimately, the ADA requires local boards and commissions to provide reasonable accommodations to disabled members, which could potentially include an option for virtual participation. Virtual participation should only be allowed as an accommodation if a member has established that they are a person with a disability, as defined by the ADA, and only where it is necessary to allow them to fully participate as a member of the public body. If the member can be accommodated in a manner that allows them to attend physically, virtual participation should not be used as an accommodation given the mandate for physical attendance under the OMA. These determinations must be made on a case-by-case basis considering the specific facts and in conjunction with the Human Resources Department and the Law Department.

Please reach out to our office if you require any further assistance.