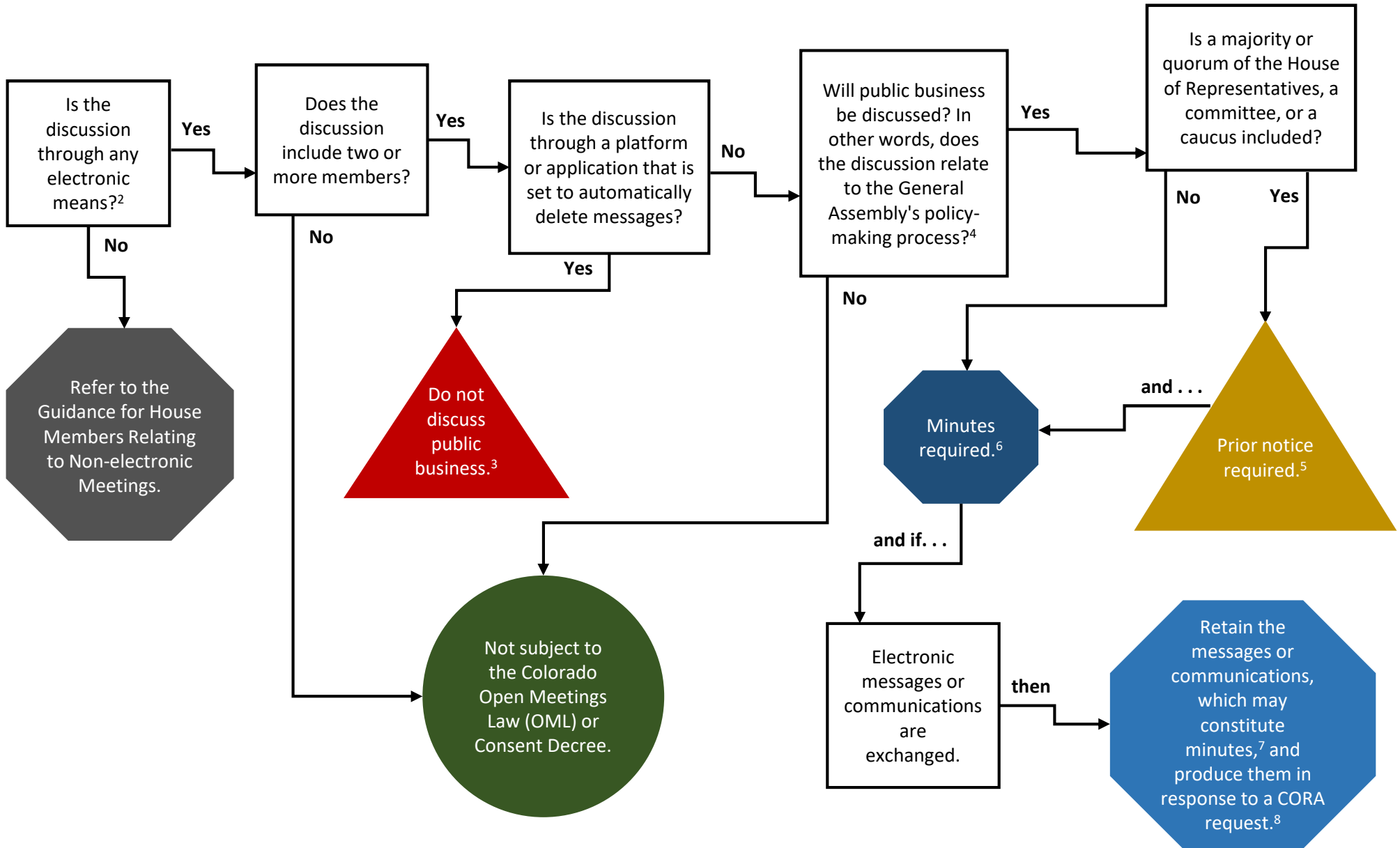


Guidance for House Members Related to Electronic Meetings¹ after the Amended Stipulated Consent Judgment and Decree in *Epps et al. v. Colo. House of Representatives, et al.* (Consent Decree)



Explanatory Notes for the Guidance for House Members Related to 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 conducted electronically.
2. A provision in the Consent Decree applies to discussions by two or more House members of “public business through any electronic means (including, without limitation, any instant messaging platform or application).” Consent Decree, p.3, paragraph 7.(A)(ii). Communications through electronic means include email; text messages; direct messages; video communication platforms, such as Zoom; and video calls, such as FaceTime.
3. This is a requirement in the House Policy included as Exhibit A to the Consent Decree (House Policy). Purely social communications are permitted. However, to avoid any question of whether public business was discussed, members should consider not using the automatic delete function at any time. In addition, if any member in a group message is able to enable the automatic delete function, then members should be vigilant in confirming that setting has not been enabled. Members may also consider removing all other members from their contacts, so that they don’t accidentally use Signal with another member.
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. 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. For meetings conducted through Zoom or other similar platforms, members may provide a link for the public to join so that the meeting is open, although the public does not have to be permitted to participate. It is unclear how members would provide notice for a meeting that is conducted by email, text, or other electronic formats and allow the public to “attend,” short of soliciting their contact information beforehand so that they could be included in the exchanges. This is an example of how the requirements of the OML do not easily apply to this type of communication. The only way to avoid the problem of how to comply with the notice requirement for this type of communication is to avoid meetings in this format that would require notice.
6. The Consent Decree prohibits discussion of public business (Note #4) between two or more members of the House through any electronic means unless written minutes are made publicly available upon request.
7. Under the Consent Decree, members are required to retain the electronic messages or communications exchanged, and those messages or communications may constitute the written minutes of the meeting. Insofar as the messages or communications must be “exchanged,” this requirement applies to written messages or communications but not to discussions through video, such as Zoom or FaceTime, where there is no exchange of the electronic message or communication.
8. The requirement to retain the electronic messages or communications and produce them in response to any request under CORA is included in the Consent Decree and House Policy.