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Digital Public Hearings in a Post-COVID World



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Digital Public Hearings in a Post-Covid World

By Travis Parker, AICP

The tradition of the town hall style public meeting as the basis for local government decision-making goes back over 400 years. Early Puritans enshrined the town hall meeting as the ideal democratic replacement to the hierarchical system that they had left behind. As the country grew westward, the importance of participatory government at the local level carried uniformly to each new state and territory.

Much has changed in our world in that time but, at least until the COVID-19 pandemic, the form of our local public hearings stayed generally the same. We stubbornly refused to adopt most of the technologies that transformed the rest of our lives.

The pandemic forced us to collectively challenge our preconceptions about public hearings. Suddenly we weren't able to meet in the same room. Technologies that were never designed to replace public hearings were hastily pressed into service by confused and desperate staff members. Now, as we come out of pandemic restrictions on gatherings, there are many lessons learned and many decisions to be made on how our public hearings will look in the future.

This issue of Zoning Practice examines the traditional process of local government public hearings and the challenges that this model creates for modern communities. It then introduces the relatively new idea of asynchronous public hearings and the advantages and challenges of modernizing the public hearing process.

Traditional Hearings

There are three basic parts to any public hearing. First is the provision of information about the issue to the public and decision makers. This can take the form of staff memos, applications, reports, and presentations, among other things.

The second part of the hearing, and most fundamental to the entire concept, is

A traditional city council meeting in Lakewood, Colorado (Credit: City of Lakewood)



the opportunity for members of the public to comment on the issue at hand. Traditionally, this is done in person in a formal process at the meeting, though some ability to submit written comments through letters or emails has long been generally acknowledged as well.

The final part of the process is the discussion and vote by the decision makers. This is where our elected or appointed officials consider everything they've learned

from staff and applicant submissions, as well as the public comment, and decide on the best course of action.

The question is, with the technology available to us, do all of these parts need to be done in person and at the same time? One of the greatest unacknowledged deficiencies of traditional public hearings is the availability of information prior to a decision. Most jurisdictions will make application materials and staff memos available prior to the hearing; however, presentations by the applicant and staff are offering new information

immediately before members of the public are expected to share their viewpoints and the decision makers need to cast a vote. Moreover, attendees often raise new questions and concerns during public comment. As the last step before discussion and voting, this leaves little time for creative problem solving or serious consideration of new issues raised.

Traditional public hearings also set a high barrier to entry compared to the ease of the rest of our modern lives. While we can order transportation, food, and entertainment from our phones anywhere and anytime, most of us still have to schedule hours of time on a weeknight and often attend in person in order to be heard by our city council. This system heavily weighs participation toward those with the time and resources to participate and can have major impacts on the demographics of

those participating. One yearlong study of participants in Colorado showed that 87 percent of in-person public hearing participants were 55 or older.

State Regulations (Open Meeting Laws)

Every state in the country has an open meetings law or set of laws designed to ensure fair and transparent access to public decision-making. These were primarily adopted or updated between the 1950s and 1970s. As such, they generally were written to promote engagement in a world where computers didn't exist, print newspapers were the chief method of conveying information, and remote interaction wasn't possible beyond a telephone call.

For this reason, many state laws were and still are completely silent on the use of technology for public hearings. These laws generally require adequate public notice of a meeting and require the ability for the public to participate. Others were updated in the past 20 years to address email and the extent to which email interactions constitute a meeting. These more modern laws can actually make modern technological public hearings more difficult because these laws placed limitations on two or three way communication by email before streaming of meetings and video conferencing were possibilities.

With the pandemic, many states temporarily loosened laws to allow remote participation by all, including council members, through emergency legislation. Only now, as pandemic restrictions are loosening, are some states, like Oregon, writing new modern regulations for open meetings. Oregon [HB 2560](#), signed into law June 14, 2021, extends the definition of public participation in public hearings to include technological options. The bill requires access by "telephone, video, or other electronic or virtual means" be available for members of the public.

State open meetings laws are on a wide spectrum of permission for technology and hybrid meeting options. Oregon's requirement for remote access is at one end of the spectrum along with a few other states like New York that encourage

Three Basic Parts to Any Public Hearing

1. Provision of information about the issue to public and decision makers
2. Opportunity for members of the public to comment on the issue
3. Discussion and vote by the decision makers

A livestreamed public hearing from Montgomery County, Maryland (Credit: Montgomery County, Maryland)



remote and asynchronous participation. At the other end of the spectrum are seven states, including Maine and Louisiana, that largely prohibit or strongly discourage electronic or hybrid participation in public meetings by members of the body.

The majority of states lie somewhere in the middle of the spectrum. Many states are largely silent on technology and allow local governments significant leeway in ability to conduct hybrid meetings. Others interpret their codes to require in-person meetings but still have emergency orders in place to allow hybrid meetings. The Ohio Open Meetings Act requires public bodies, including municipalities, boards of education, and other public entities, to conduct all public business in “open meetings” that the public can attend. This has traditionally been interpreted to require in-person meetings and prohibit remote technological attendance. In 2020, the Ohio General Assembly authorized emergency relief to permit public bodies to hold meetings and vote via videoconference or other technological means. The authorization lapsed in July 2021, temporarily requiring public bodies to return to in-person-only meetings; however, [House Bill 51](#) recently passed again allowing remote meeting options to continue for the time being.

Practical Implications on Engagement

While it is easy to simplify these differing permission levels by thinking of them as a spectrum, as with most of life, the reality is more complicated. For those states on the permissive side of the spectrum, either requiring or encouraging electronic participation in hearings, these requirements are written for the benefit of the public participants, not the council or board members. Oregon’s [HB 2560](#) for example says, “All meetings held by a governing body of a public body, excluding executive sessions, must provide *to members of the general public*, to the extent reasonably possible, an opportunity to access and attend the meeting by telephone, video or other electronic or virtual means...” (emphasis added). There is no requirement in Oregon that city council members be able to participate remotely, though that is not prohibited.

On the other side of the spectrum, are those states that prohibit or discourage remote or hybrid meetings. These states require that members of the governing body be in person and are not allowed to participate remotely. Even if they require the ability for the public to participate in person, which they generally do, they absolutely do not prevent local governments from also allowing members



Responsive web design, which adapts web-page layout to the viewing environment, can help broaden access to digital public hearings. (Credit: People Speak)

of the public to participate remotely or asynchronously.

In Maine's latest open meetings law [LD 32](#) for example, "A public body may allow *members of the body* to participate in a public proceeding using remote methods only under the following conditions..." (emphasis added). There are no restrictions in Maine law against hybrid meetings for members of the public. Virginia, a state which also requires decision makers to be in person in most cases, goes even further and clearly states after requiring in-person meetings: "Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation" ([§2.2-3708.2.E](#)).

states that require members of the body to be in person, and require the ability for the public to be in-person, do not and cannot prohibit a municipality from also allowing remote and asynchronous participation to members of the public.

The Ideal Hearing

What if we weren't constrained by history or legal considerations? What if you were asked to create the ideal public hearing process from scratch with no preconceptions? The public isn't necessarily interested in attending these meetings. Generally, they are just interested in one single agenda item that is relevant to them and not the whole meeting. They want information and, depending on what they learn, a simple way to have their voice heard. Given this, what basic principles could define the ideal public hearing?

Available. Information would be freely accessible and widely distributed. Generally, a single clear location for all information is best. Rather than hunting on the city's website, a simple memorable URL that consistently and reliably has all the public hearing information for the city provides the easiest way for the public to find information.

Simple. A simple and intuitive interface is best. Governments have a tendency to post information in a very formal and inaccessible manner, heavy with jargon, case numbers, and legalese. Easy to understand titles and summaries for agenda

"All meetings...must provide to members of the general public, to the extent reasonably possible, an opportunity to access and attend the meeting by telephone, video or other electronic or virtual means..."

The implication for local officials is that open meetings laws set a baseline of public engagement, but do not limit additional engagement above the baseline. There is no state in the country that prohibits local governments from adding methods of public participation beyond those that are expressly required. Specifically, even those

items can go a long way to helping the public find the issue of interest to them and learn about it.

The home page for Lakewood, Colorado's Lakewood Speaks public hearing portal (Credit: City of Lakewood)



Accessible. People should be able to easily access information from any device and any location. They should be able to ask questions or be clearly directed to where they can and be able to provide public comment in a variety of mediums, with enough options to match the communication preferences of different segments of the community.

Asynchronous. Finally, participation shouldn't be determined by scheduling availability. In an ideal system, people could participate at the time and location of their choosing and engage with items relevant to them without being forced to commit to a meeting time.

We can look to other areas of modern life for examples of how it could work. Modern presentation and collaboration software can allow countless forms of interaction, including direct messaging, group messaging, voice-to-text, and video conferencing. There are real-time and asynchronous survey tools, as well as data aggregation tools to collect information and even measure trends and opinions. Software can automate emailing and notification, sending timed and targeted messages, and allowing the public to sign up to receive the notifications they choose. Considering these options, it becomes a lot easier to envision practical and efficient software solutions for communities to expand access to public hearings.

Case Study: Lakewood, Colorado

Beginning in 2016 we had this very discussion in Lakewood, Colorado. We were seeing the same patterns at our planning commission meetings that are familiar around the country. No one was showing up to most of our meetings. Those who did come semi-regularly tended to fall into a very narrow demographic of older, white homeowners. Once or twice a year, there would be a controversial topic that would bring a lot of people to a meeting. When this happened, the room would be filled primarily with people holding extreme viewpoints on one side or the other of the issue.

We could clearly see what I think most people intuitively know. Attending in-person local government public hearings is just not a priority in the lives of most people. Even when some agenda items might be of interest, the barriers to participation are too high. The result is the community is not part of the decision-making process for issues that impact them. Moreover, a few unrepresentative voices (those willing and able to show up and sit through meetings) carry a greatly disproportionate weight with decision makers.

Staff, planning commission, and city council all wanted to find a way to increase engagement by making participation easy. Our answer was an online portal that would be the sole source of information for public hearings in the city and would make participation as intuitive and simple as possible. We formed a public-private partnership with a local firm called [People Speak](#) and spent the next year designing and testing a new type of public hearing.

Our creation was called [Lakewood Speaks](#) and rolled out with our planning commission in 2017 and with our city council and other boards and commissions the following year. The idea was both simple and revolutionary. We replicated the steps taken at an in-person public hearing on an interactive website and spread the hearing out over the course of multiple days. On Lakewood Speaks, residents can view presentations, read materials, and even provide their public comment the same day they get a notice of the case. There is no need to check your schedule and make arrangements to spend an hour

or more at city hall, waiting for three minutes at a microphone.

It didn't take long to see results. As people got used to using the site to access information, ask questions, and provide comments, the percentage of online versus in-person participation quickly shifted and the overall number of comments went up. By 2019 (a year before the pandemic forced innovation on local governments around the world) 90 percent of public commenting was happening online. That year we had an 800 percent increase in total comments and the demographics of commenting shifted dramatically. Nearly 90 percent of in-person participants were 55 or older. Online participants were evenly distributed across age ranges, almost exactly matching actual city demographics.

That same year other cities started adopting the software and running asynchronous public hearings. COVID-19 has interrupted the ability to collect comparative data on in-person versus online participation, but the rapid adoption of asynchronous hearing technology during the pandemic (versus just allowing remote participation through video conferencing) should allow collection of more significant data as pandemic restrictions are removed.

Remote Only versus Asynchronous

The path of least resistance for local governments during the pandemic was to simply use a video conferencing platform, like Zoom or WebEx, to hold public hearings and invite the public in to comment. Generally, the rest of the process was unchanged: Notices, comment periods, meeting structure, and information availability all stayed the same as before. This forced innovation allowed local governments to see some of what is possible for public hearings, but by making only this change and not taking additional steps, municipalities got the mistaken impression that moving public hearings online was necessarily more work for staff, without improving the amount or quality of public input.

As pandemic restrictions have lifted, most municipalities are back to meeting in person; however, most also recognize that the public now expects the ability to participate in a remote manner. Many are facing the difficult decision of continuing to stream meetings on Zoom or other web conferencing services that are staff-intensive and minimally effective at increasing participation.

The solution that some municipalities have found is asynchronous hearings. As shown in Lakewood and many of the other cities running asynchronous hearings, this solution can greatly increase public involvement and input without the staff intensive work of managing remote commenting and web streaming during a live meeting.

Web conferencing live hearings for remote public comment require at least one extra staff member to manage the online meeting and the public participation. Moreover, participation, while available remotely, is still fairly limited. You must be available during the meeting time, you must watch and wait for your item to come up on the agenda, you must watch and wait through presentations and other commenters, and you must follow whatever complicated log-in, identification, and hand-raising procedures are required for your city's software. For the council or commission, each commenter needs two or three minutes and must take place one after another. The implication is that it can take two hours to receive comments from 40 residents. If your city's ideal goal is hearing from hundreds or even thousands of residents on an issue, this system shows its obvious flaws.

The answer appears to be asynchronous hearings. This type of hearing has an open hearing online for days or even weeks. Cities using asynchronous hearing software can receive dozens or hundreds of comments over the course of the online public hearing. Comments can be submitted by computer or phone, including calling options. The majority of comments come in prior to the in-person meeting so that the ability to receive and read comments is nearly unlimited. Commenting is all automated, so no



An example of an agenda item page from Lakewood, Colorado's Lakewood Speaks public hearing portal (Credit: City of Lakewood)

additional staff time is needed either before or during the meeting. Finally, even those comments that do come in during the public comment portion of the meeting can be done simultaneously without needing hours of meeting time for large numbers of commenters. All of this can, and probably should, be done in conjunction with a traditional live public hearing with live public commenting at a microphone. This offers the best of both worlds and more options for the public without more demand on staff.

Keys for Success

As mentioned earlier, we have been using this technology in Lakewood for about five years. In that time, we have learned several lessons that are useful for other jurisdictions interested in improving their hearings. These tips come from our experiences:

Fully replicate the in-person experience.

One of our goals in creating this system years ago was to remove any real or perceived advantage to showing up in person by making the online experience as meaningful and educational as in person. One component of this is that we require staff and applicants to pre-record any presentations for our site (this is relatively simple in PowerPoint). This means that our residents don't have to wait and attend in person to learn about what is

being proposed. Obviously not every agenda item has a presentation, but our rule is anything available for the public at the hearing and prior to the council discussion and vote is available for the online portion of the hearing prior to the meeting. To date we have not had a single applicant push back on this requirement; they seem to like the opportunity to present their own story to the public. The primary implication of this advice for staff could be earlier deadlines. Instead of presentations and reports being due the day before a hearing, they might be due three days or a week before the hearing in order to be posted online.

Don't sweat the legal stuff.

I'll start this section by stating clearly that I am not a lawyer and nothing in this article constitutes actual legal advice. With that out of the way, however, we spent far too much time on legal considerations in developing Lakewood Speaks. Government lawyers are generally good people whose primary job is to avoid lawsuits. This is often accomplished by avoiding any change whatsoever on the theory that if something has been done forever it is more likely to be legal than something new. Fortunately, asynchronous hearings are common enough now that you won't be treading completely new ground, but they are still uncommon enough that many municipal lawyers may warn you against them,



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especially in those states where hybrid hearings are discouraged. Remember that governments are rarely (if ever?) sued for increasing transparency and participation options, and feel free to push back on your local legal team.

Update your notices and provide friendly reminders. The primary way that most residents hear about hearing actions is through mailed and online notices. When your city expands hearings and allows asynchronous commenting, it is vital to update your notices to the public by including the URL and perhaps additional information. Moreover, in the first year of use it will be important to remind people familiar with the old system about the new options. When people send comments through email or other ways, you can point them to your website. During meetings, the chairperson and members can acknowledge online comments and offer other reminders of the system. Within six to 12 months, online participation will become the norm.

Keep it simple. The process changes and staff requirements of web conferencing hearings can make it seem that any changes to public hearings are intensive and involve major process changes. However, other than the deadline shifts and notice updates discussed above, there doesn't have to be much to it. Our new system didn't involve any changes to existing staff reports or applicant information. We simply used the same materials in a new way. Start small, just putting existing materials online and allowing additional public input. Don't overthink things by assuming all the changes you could make are necessary.

Don't let desire for perfection keep you from doing better. Any number of cities that I have spoken to about

making this change have gotten stuck on some version of, "What if (insert scenario here) happens, and it doesn't go as well for us as it did for you?" Then they proceed to stick with their outdated methods that are performing worse for them and the public than even the negative scenario they envisioned. Adjustments can always be made, but we all know that what we are generally doing now for public hearings is archaic and ineffective. Government as a rule is slow to innovate because the status quo is always safer and easier. However, as government officials it is our duty to make improvements when they are needed, and even make mistakes in doing so, with the goal of improving representation and governance.

The Future of Public Hearings

For all the damage that COVID-19 has done to individual lives and families, it has offered a rare opportunity for government to innovate and change. The forced innovation of the last two years gave the public and elected officials a small glimpse of what is possible. The most important thing to do now is not to lose the momentum forward and slip back into the idea that government decision-making processes must necessarily be staid and unwelcoming. More local governments can open up their hearings to make them truly public. More local government officials can push for transparency and inclusivity in decision making.

Asynchronous hearings represent an innovation that is probably a decade or more overdue, but still seems, as is, visionary today when adopted by a local government. Showing that simple and highly effective changes like this are not only possible but simple is the first step toward changing the view of local governments toward progress and innovation.



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