

## INFORMATION MEMO

### City Options for Meeting Remotely

*The ongoing COVID-19 public health emergency has led many city councils and city boards and commissions to hold meetings virtually through the use of interactive technology. Two provisions of Minnesota's Open Meeting Law allow city council members and members of city boards and commissions to remotely appear and participate in meetings. Learn when each provision may be used and the legal requirements to be followed under each option. In addition, find guidance and tips for holding public hearings while holding virtual meetings.*

#### RELEVANT LINKS:

[Minn. Stat. § 13D.02.](#)

[Minn. Stat. § 13D.001, subd. 2.](#)

[Minn. Stat. § 13D.02, subd. 1\(a\).](#)

[Minn. Stat. § 13D.02, subd. 6.](#)

## I. Remote meeting options under Minnesota's Open Meeting Law

City council meeting and meetings of city boards and commissions are subject to the Open Meeting Law. Two statutes of the Open Meeting Law allow city council members and members of city boards and commissions to appear and participate remotely. The type of technology that can be used to facilitate remote attendance depends on the statute the city is using for its meetings.

### A. Meetings conducted by interactive technology – Minnesota statute 13D.02

At any time, members can appear and participate in a meeting remotely using “interactive technology,” defined as “a device, software program, or other application that allows individuals in different physical locations to see and hear one another.” Skype, Zoom, WebEx, and similar programs with an audio and video connection satisfy this requirement.

#### 1. Meeting requirements

The public body must meet the following six requirements to meet using interactive technology:

- At least one member is physically present at the regular meeting location;
- All members must be able to hear and see each other and all discussion and testimony presented at any location at which at least one member is present;
- All members of the public at the regular meeting location must be able to hear and see all discussion, testimony, and votes of all members;

## RELEVANT LINKS:

[Minn. Stat. § 13D.02 subd. 1\(b\).](#)

[Minn. Stat. § 13D.02, subd. 4.](#)

[Notice of Interactive Technology Meeting, LMC Model Form](#)

[Minn. Stat. § 13D.04.](#)

[Minn. Stat. § 13D.02, subd. 3.](#)

- All votes are conducted by roll call so each member's vote can be identified and recorded; and
- Each location at which a member is present must be open and accessible to the public.
- The minutes for the meeting must reflect the names of any members appearing by interactive television technology and state the reason or reasons for the appearance by interactive television technology

However, a meeting satisfies the requirements of the open meeting law even though a member of the public body participates from a location that is not open to the public if the member has not participated more than three times in a calendar year from a location that is not open or accessible to the public, and:

- The member is serving in the military and is at a required drill, deployed or on active duty; or
- The member has been advised by a health care professional against being in a public place for personal or family medical reasons.

As of May 24, 2023, this statute no longer requires that a state of emergency be declared. Therefore, a member of a public body may participate from a location that is not open to the public for health reasons regardless of whether or not a state of emergency is declared under section 12.31.

## 2. Public Notice and Meeting Access

For meetings held via interactive technology, the city must give notice of the regular meeting location as well as the location of members of the body. The city does not need to provide notice of a member's location when the military or medical exception applies to that member. The timing and method of notice is the same as for in-person council meetings, and depends on whether the interactive technology meeting is a regular, special, or emergency meeting.

When holding a meeting via interactive technology, the city must ensure, to the extent practical, that the public has a way to monitor the meeting electronically from a remote location. Note that the city's obligation is to ensure that the public can "monitor" the meeting. Cities may allow public participation and comment through the interactive technology at their discretion; however, it is not required by the Open Meeting Law. If the city allows for remote participation and comments, the city will need to be mindful of any First Amendment considerations that may arise.

The meeting notice should contain all the information needed for the public to monitor the meeting remotely, including meeting links and/or access codes, as applicable.

## RELEVANT LINKS:

[Minn. Stat. § 13D.01, subd. 6.](#)

[Minn. Stat. § 13D.021.](#)

[Minn. Stat. § 12.31.](#)  
[Minn. Stat. § 12.29.](#)

[DPO 21-003.](#)

[Minn. Stat. 13D.021, subd. 1.](#)

[Declaring Electronic Meetings](#), LMC Model Declaration.

[Minn. Stat. § 13D.021, subd. 1.](#)

### 3. Agenda packet distributed to public

If possible, the agenda packet that members have during the meeting should be made available to the public.

The agenda packet could be posted for download on a website or shared cloud storage or can be uploaded to a video-based conferencing application. It may also be shared as part of the software application the city uses as its mode of interactive technology.

## B. Meetings during pandemic or chapter 12 emergency – Minnesota statute 13D.021

During a pandemic or state or local declaration of state of emergency under Chapter 12, Minnesota statutes, the city council and city boards and commissions may meet using telephone or interactive technology, and may meet entirely remotely. The council can only exercise this authority during a pandemic or a state of emergency declared under Chapter 12, Minnesota statutes. A state of emergency may be declared by the governor for the entire state or declared locally by the mayor and continued after three days by consent of the city council.

Public bodies cannot meet using this authority if a quorum or more of members continue to meet in-person. When a quorum or more members meet in person, the meeting must be open and accessible to the public.

### 1. Declaration that in-person meeting is not practical or prudent

The first step for holding a pandemic or chapter 12 emergency meeting is for the city's presiding officer, chief legal counsel, or chief administrative officer to make a declaration that an in-person meeting or meeting conducted per Minnesota Statute 13D.02 (discussed above) is not practical or prudent due to health pandemic or emergency declared under chapter 12. The declaration should identify the basis for the meeting, whether for a health pandemic or chapter 12 state of emergency, and cite the relevant facts supporting the declaration.

### 2. Meeting requirements

In addition to the declaration discussed above, the city must meet the following requirements to conduct a pandemic or state of emergency meeting:

- All members of the body participating in the meeting, wherever, their physical location, can hear one another and heard all discussion and testimony.

## RELEVANT LINKS:

See Colorado Municipal League, “[Virtual Meeting Conduct](#),” for practical tips and virtual meeting etiquette.

[Minn. Stat. § 13D.021, subd. 1\(3\),\(4\).](#)

[Minn. Stat. § 13D.021, subd. 4.](#)

[Notice of Pandemic or State of Emergency Electronic Meeting](#), LMC Model Form.

[Minn. Stat. § 13D.04.](#)

[Minn. Stat. § 13D.021, subd. 3.](#)

[Minn. Stat. § 13D.021, subd. 5.](#)

- At least one member of the body, chief legal counsel, or chief administrative officer physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration.
- Members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or state of emergency declaration.
- All votes are conducted by roll call, so each member’s vote on each issue can be identified and recorded.

### 3. Entirely remote meetings

Pandemic or state of emergency meetings may be held entirely remotely – no member of the body or city staff need to appear at the regular meeting location, nor will the public be given that option. In order to exercise this option, a finding must be made that any in-person meeting attendance is not feasible due to the pandemic or state of emergency. Many times this finding is combined with the declaration that in-person meetings are not practical or prudent, discussed above. Once this finding is made, the council, city staff, and public will all appear and participate remotely.

### 4. Public notice and meeting access

For pandemic or state of emergency meetings, the city must give notice of the regular meeting location and that fact that some or all members may participate by telephone or interactive technology. The city does not need to give notice of the location of members of the public body. The timing and method of notice is the same as for in-person meetings, and depends on whether the pandemic or state of emergency meeting is a regular, special, or emergency meeting.

When holding a meeting via interactive technology, the city must ensure, to the extent practical, that the public has a way to monitor the meeting electronically from a remote location. The meeting notice should contain all the information needed for the public to monitor the meeting remotely, including meeting links and/or access codes, as applicable.

### 5. Public comment period

Cities that offer a regular public comment period during their in-person meetings must, to the extent practical, offer a public comment period when holding a pandemic or state of emergency meeting entirely remotely. The Open Meeting Law does not elaborate, but the city could consider taking verbal comment, written comment, or both, depending on the technology used to conduct the meeting.

## RELEVANT LINKS:

[Minn. Stat. § 13D.01, subd. 6.](#)

[Minn. Stat. § 412.851.](#)  
[Minn. Stat. § 414.033, subd. 2b.](#)  
[Minn. Stat. § 429.031, subd. 1.](#)  
[Minn. Stat. § 429.061.](#)

[Minn. Stat. § 444.18, subd. 3.](#)

[Minn. Stat. § 469.003, subd. 2.](#)

[Minn. Stat. § 469.093, subd. 1.](#)

## 6. Agenda packet distributed to public

If possible, the agenda packet that councilmembers have during the meeting should be made available to the public.

The agenda packet could be posted for download on a website or shared cloud storage or can be uploaded to a video-based conferencing application. It may also be shared as part of the software application the city uses as its mode of interactive technology.

## II. Remote public hearings

State statutes, charter provisions, or city ordinances may require a public hearing before the city may take certain actions. The purpose of a public hearing is for the city to take public comment on a proposed action. Public hearings are subject to the Open Meeting Law and may take place remotely, given all requirements discussed above are followed.

When holding in-person meetings, taking public comment is relatively simple. Persons wishing to make comments address the council during the public hearing. When meeting remotely, cities have flexibility in how they will take public comment. Cities can take comments prior to and during the hearing. Cities can require those wishing to address the council during the hearing to sign up prior to the hearing.

### A. Before the public hearing

#### 1. Identify the law that requires a public hearing

Public hearing requirements are found in state statutes, home rule charter provisions, and city ordinances. Cities should consult those sources directly to find the specific procedural requirements that apply for the public hearing in question

Here are some actions that require public hearings:

- Street vacation.
- Annexation by ordinance.
- Local improvement projects that will be paid for with special assessments.
- When special assessments are made to property.
- Purchase and improvement of waterworks, sewers, drains, and storm sewers by storm sewer improvement districts.
- Adoption of a housing redevelopment authority (HRA) enabling resolution.
- Adoption of an economic development authority (EDA) enabling resolution.

## RELEVANT LINKS:

Minn. Stat. § 469.065, subd. 2.  
Minn. Stat. § 469.105, subd. 2.  
Minn. Stat. § 469.107, subd. 2.  
Minn. Stat. § 340A.602.  
Minn. Stat. § 275.065, subd. 6.  
Minn. Stat. § 462.357, subd. 3.  
Minn. Stat. § 462.358, subd. 3b.  
Minn. Stat. § 462.3595, subd. 2.  
Minn. Stat. § 410.12, subd. 7.  
Minn. Stat. § 462.355, subd. 4.

Minn. Stat. § 15.99, subd. 2(a).  
Minn. Stat. 462.358, subd. 3b.

- Sale of port authority land.
- Sale of EDA land.
- Increase of levy for an EDA.
- Continuation of a municipal liquor store after a net loss for two of three consecutive years.
- Truth-in-Taxation Law processes.
- Adoption or amendment of a zoning ordinance.
- Subdivision applications.
- Granting of a conditional use permit.
- Adoption of a charter amendment by ordinance.
- Certain interim ordinances.

Take note of any notice requirements in the applicable statute, charter provision, or ordinance. Common notice requirements are publishing and/or mailing notice for a specified period prior to the hearing. Also take note of any timing requirements in the statute, charter provision, or ordinance. There may be a deadline for the city council or commission to act.

For written requests related to zoning and other land use applications, cities generally have 60 days to make a decision. For subdivision applications, cities generally have 120 days to make a decision on the preliminary plat. Public hearings are required on these issues. Keep this in mind when scheduling hearings. If the city does not act by the deadline, the application may be automatically approved.

## 2. Provide notice of hearing

First, check the applicable statute, charter provision, or ordinance to find out the type and method of public notice. Sometimes specific content is required in the notice. Notices should contain clear and complete information on how the city will accept public comments and any deadlines for submitting pre-hearing comments. All methods the city chooses for accepting comments should be clearly communicated to the public.

Consider methods of notice beyond what is legally required. Cities can use the city website, newsletters, email subscription lists, or social media to provide notice. This ensures that more residents get notice of the hearing and can comment, if desired.

## 3. Taking comments before the hearing

State laws generally don't provide a specified way of handling public comments.

Cities should consider taking public comments prior to the public hearing. Several methods of comment can be made available, including mail, email, or voicemail. The methods should be communicated in the public notice.

## RELEVANT LINKS:

[Minn. Stat. 13D.01, subd. 6.](#)

LMC Information Memo,  
[Data Practices: Analyze,  
Classify, and Respond.](#)

Handbook, [Records  
Management.](#)

Consider a deadline for submitting comments prior to the date of hearing. That way, staff have time to prepare and distribute comments to councilmembers in time for consideration before the hearing. This may provide a cleaner method of taking comment, as the council will have all comments available to it before the hearing begins.

All comments received should be attached to the public record and maintained by the city pursuant to its records retention schedule.

## B. Holding the public hearing

### 1. Taking comments during the hearing

In addition to taking comments prior the hearing, the city council or commission should also provide a method to receive public comments during the hearing. Good meeting management is essential to ensure an orderly presentation of comments to the council.

During the hearing a staff person controlling the meeting technology platform can control who can talk at what time and call on persons as they come up on the agenda to speak.

Alternatively, the city can require that those wishing to make comments during the meeting make an appointment to do so. The staff person controlling the meeting technology then gives those persons a number to call or an invitation to join the meeting at a certain time. The staff person can also call on persons based on their appointments.

If time allows, a city can continue a public hearing to a future time. Doing so will allow additional time for the public to provide input based on the information presented at the original hearing.

### 2. Chat/Comment features

Virtual meeting platforms such as Zoom, Microsoft Teams, WebEx, and similar applications often contain a live chat feature. The Open Meeting Law requires the council to provide access to all materials the council or commission is considering at that meeting. Any chat done during the meeting should be visible to the public, rather than done privately between members and/or staff, in order to meet this requirement.

The chat feature may be disabled if the application allows for it. However, chat messages that are sent during the meeting become part of the record of the public hearing and likely are public data per the Minnesota Data Practices Act. Cities should also consult their records retention schedules to determine the retention period for chat messages sent and received during council meetings that feature a public hearing.



## RELEVANT LINKS:

Handbook, [Records Management](#).

LMC Information Memo, [Data Practices: Analyze, Classify, and Respond](#).

[Minnesota Mayors Handbook](#).

[Minnesota Mayors Handbook](#).

LMC Research and Information Service  
651-281-1200 or (800) 925-1122  
[Research@lmc.org](mailto:Research@lmc.org)  
[Submit a question online](#)

### 3. Making a good record

All comments received prior to the hearing should be distributed to councilmembers or commissioners and made part of the public hearing record. Cities may want to acknowledge receipt of comments made prior to the hearing to ensure that people know their comments were received.

During the meeting, presiding officers may want to reiterate that all comments received prior to the hearing were distributed to all members. Comments received during the hearing should be distributed to all members.

All comments received should be maintained in the city's records and maintained per the city's records retention schedule. Comments will likely be classified as public data per the Minnesota Government Data Practices Act. Cities should have an orderly process for collecting and maintaining all comments in the event someone makes a data request for this information.

## III. Conclusion

Proper meeting management takes on a heightened role when city councils are meeting remotely and using technology that councilmembers, staff, and the public are not familiar with. Because the mayor is typically the presiding officer at council meetings, their role takes on added significance. Some suggestions on proper meeting management from the Minnesota Mayor's Handbook:

- Interpret and impartially enforce any applicable meeting management policies, bylaws, or rules or order.
- Clearly communicate rules and expectations to members of the public listening to the meeting remotely.
- Recognize speakers to ensure no one speaks over one another.
- For remote meetings, ensure that votes on motions and resolutions are taken by roll call of each councilmember.
- For public hearings required by law, ensure the public has a meaningful opportunity to present testimony using the methods the city has prescribed.

The Minnesota Mayors Handbook also has sample rules of conduct and rules of order that can provide guidance.

The League can help answer questions and provide further guidance. Please contact the League Research and Information Service with questions.