



Public Meetings and COVID-19
New Hampshire Municipal Association
Updated March 24, 2020

(This situation is evolving rapidly; please check our [website](#) for updated versions)

Due to concerns about Covid-19, many municipalities have asked how their public bodies may continue to conduct board business while also complying with Governor Sununu’s [Emergency Order #16](#) prohibiting gatherings of 10 or more people, and CDC guidance on social distancing and minimization of in-person interactions. “Social distancing” means “remaining out of crowded public places where close contact with others may occur, such as shopping centers, movie theaters, stadiums, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible.” In many municipalities, it will be difficult to ensure that any board meeting does not result in a gathering of 10 or more people and even more difficult to find appropriate space which allows for maintaining social distance and avoiding close contact with members of the public during public meetings. Nevertheless, municipal boards must meet to ensure that local government keeps functioning.

Public Attendance at Meetings

Under RSA 91-A:2, when a quorum of a public body meets in person, or communicates contemporaneously with each other, for the purpose of discussing or acting upon matters over which the public body has supervision, control, jurisdiction, or advisory power, the statute requires that those “meetings” shall be “open to the public.”

“Open to the public” is defined in that statute as follows: “[e]ach part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting.” RSA 91-A:2, III(c). Therefore, the statute contemplates that the location of the meeting will be a physical location, and the public is permitted to be in attendance at that meeting.

On March 23, 2020, Governor Sununu issued [Emergency Order #12](#) which modified the requirements of RSA 91-A, III(c) requiring that each part of a meeting of a public body be audible or otherwise discernible to the public “at the location specified in the meeting notice as the location of the meeting.” Specifically, Governor Sununu waived the “location” requirement. **In other words, there is no longer a need for the public body to provide a physical location where the public may come and listen to the meeting, even when an “emergency” has been declared by the chair pursuant to RSA 91-A, III(b).**

The “location” requirement was modified such that a meeting – as discussed below, *any* meeting – may be conducted in a manner where any member of the public has the ability to call a telephone number in order to listen to the meeting. Additional access by video or other electronic means are permitted, but a telephonic connection is *required* for a meeting occurring without a physical location.

The public notice of the meeting must include the information necessary for accessing the meeting, i.e. the phone number that the public can call to listen in, in addition to the date and time of the meeting.

There must be a mechanism for the public to alert the public body during the meeting if there are problems with access. Practically, the simplest solution may be to post a “help line” in the notice along with the dial-in number for the meeting. That may be an actual phone number or email address which is monitored throughout the call by someone from the municipality who can alert the board to any issues. For example, the email for the chair of the board or the phone number that would connect to the staff person who is also in attendance telephonically. Either one of those individuals could alert the public body about issues with the public connecting to the telephonic system or losing connection during the meeting.

The meeting must be adjourned if it is determined that the public is unable to access the meeting. Therefore, it would be a good idea for municipalities and boards to test any telephonic systems that they use prior to posting notice of meetings. Any unanticipated issues which arise can be addressed prior to posting notice or during the meeting, ensuring that the public is able to access the meeting. NHMA has confirmed with the Attorney General’s Office that provisions 4(c) and 4(d) are not intended to pertain to problems with the public just hearing a particular speaker but it is more about the conference call in ability not working at all. In short, if the public’s ability to access the meeting is materially impaired, the board should consider adjourning the meeting.

Board Attendance at Meetings

On March 23, 2020, Governor Sununu issued Emergency Order #12 which modified the requirements of RSA 91-A, III(b) requiring that a quorum of a public body be physically present unless immediate action is imperative. Specifically, Governor Sununu waived the requirement that a quorum be physically present in *non-emergency* situations for the duration of the declared State of Emergency in Executive Order 2020-04. In other words, a board chair need not find that an “emergency” exists pursuant to the statutory definition and record the facts upon which that finding was made in the minutes of the meeting in order to allow *all* members of the board to meet telephonically or via other electronic means.

Note, of course, that a board *may* still follow the statutory procedures to find an emergency exists, which would enable all board members to participate electronically, but that is no longer necessary pursuant to the Governor’s Order.

Remote Meeting Requirements

Please note that other remote meeting requirements are still in effect. In particular, boards meeting either partially or entirely remotely should comply with the remainder of RSA 91-A:2, III. Those include: identifying the reason why the in-person attendance of any remote board members is not reasonably practicable in the minutes of the meeting; identifying any persons present in the location where the board member is calling from; and all votes must be by roll call.

In addition, boards should consider how nonpublic sessions will be conducted. The most practical solution would be to conduct all nonpublic sessions at the end of a regular meeting. The reason for this is that it would be easier to conduct the public portion using the public teleconference software, then either using a second call to conduct the nonpublic session or remove all non-board members from the current call in order to allow the board to conduct the nonpublic session. Again, this should be practiced in advance to the extent possible.

Further Advice

NHMA encourages public boards and bodies to keep abreast of the news about Covid-19 through the CDC and DHHS websites (information available on the [NHMA Resources Covid-19 Page](#)), and work with their citizens and within their government to implement practices which will mitigate the effect of the disease. It is a good idea to designate someone on the board to keep track as agreements are secured to delay hearings on applications or delays implemented in accordance with CDC and DHHS guidance. That way, when things get back to normal, there is a clear record of what follow-up a board needs to do.

NHMA also recommends that municipalities take reasonable steps to comply with Governor Sununu's Emergency Order #16, prohibiting gatherings of 10 or more people, including taking advantage of the provisions of Emergency Order #12, as described above. This may include considering alternative means of public participation, including virtual options. If it is possible to allow the public to participate telephonically or via an internet-based option that may allow meetings to run in a similar fashion to "normal" in this trying time. If those options are not possible, public bodies should consider allowing and encouraging the public to submit written comments in advance of public meetings and hearings that are read aloud at the meeting or hearing. This will allow those who would like to participate but do not wish to attend a public gathering to still be heard.

If meetings and hearings of 10 or fewer people are held at a physical location, municipal officials should strive to follow CDC guidelines for public gatherings, including:

- Posting signage encouraging people to wash their hands when entering the building, staying home if sick or if they have been exposed to someone who is sick, and covering their mouths when they cough or sneeze;
- Spacing seating farther apart than usual to promote social distancing, including the distance between board members, if possible; and
- Wiping down common surfaces before and after meetings.