

**Public Meetings and Covid-19**  
**New Hampshire Municipal Association**  
**Updated March 16, 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 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 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.

In line with CDC guidance, NHMA recommends that municipalities take reasonable steps to notify the public of the risk of Covid-19, including posting notices *asking* people who exhibit symptoms of the disease not to attend meetings, and provide alternate means of attendance – whether through live webcast or telephonic conference call or other means.

***Board Attendance at Meetings***

Municipalities have also expressed concern regarding board attendance at meetings. RSA 91-A:2, III(b) requires that “a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting” except in an emergency. That statute defines an “emergency” as a situation in which “immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action.” RSA 91-A:2, III(b).

One example of an “emergency” is a serious weather event which causes major infrastructure damage and the town *must* begin taking action to close roads/bridges in order to prevent harm to people or property. In light of the nature of Covid-19 and the guidance on social distancing from the CDC, it may be the case that “imperative action” includes deadlines for land use boards and it may be the case that “the physical presence of a quorum is not reasonably practical within the period of time requiring action” due to the risk of infection. It is impossible to issue blanket advice on this matter due to the rapidly evolving situation, so we would encourage boards and officials to work

with applicants, abutters, and interested parties in all situations to try to secure agreements – preferably written – regarding timeline extensions and other matters which may be deferred until a time when risk of infection has passed.

If a board does decide that Covid-19 merits qualification as an “emergency,” the determination must be made by the chair of the board. RSA 91-A:2, III(b). Note that “the facts upon which that determination is based shall be included in the minutes of the meeting.” RSA 91-A:2, III(b).

If it is the case that one or more members (but less than a quorum) of a board cannot be physically present for a meeting, “a public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body...only when such attendance is not reasonably practical.” RSA 91-A:2, III. “Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.” RSA 91-A:2, III(a). Note, of course, that a body which allows members to participate electronically must still abide by the requirement that a quorum of the body be physically present except in an emergency, as outlined above.

### ***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 is also encouraging municipalities to consider alternative means of public participation, including virtual options. If it is possible to allow the public to appear at hearings telephonically or via an internet-based option where they can hear those who are presenting or speaking and, as necessary, be heard, that is an option which may both serve the interest of allowing public attendance and participation while also adhering to CDC and DHHS guidance to practice social distancing. If that is 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. But always keep in mind that under the current state of the law, the public cannot be *required* to use these alternatives for participating and must be allowed to attend a public meeting or hearing in person.

When meetings and hearings are held, 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.