



NHMA Guidance on Public Meetings after the State of Emergency Ends (Posted June 11, 2021)

The current state of emergency, first declared on March 13, 2020, and extended 21 times since then, expires tonight at midnight, and the governor announced yesterday that he will not extend it. This means that [Emergency Order #12](#), which has authorized public bodies to meet without a physical location for the last 15 months, also expires at midnight tonight.

Thus, any public body that is meeting tomorrow or later must comply with current law. The meeting must have a physical location at which the public may attend and, except in an emergency, a quorum of the body must be present at that physical location. [RSA 91-A:2, III](#) defines an “emergency” as a situation where “immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action.” The statute requires that the chair or presiding officer determine whether an “emergency” exists, and the reason must be recorded in the meeting minutes.

If no “emergency” exists, but one or more members of the body (but less than a quorum) wish to participate remotely, RSA 91-A:2, III, states that public body *may* allow such remote participation if in-person attendance is not reasonably practical. Whether a member of the body may participate remotely is something that should be included in the body’s rules of procedure. In addition, RSA 91-A:2, III includes several additional requirements if a member participates remotely:

- Each part of the meeting must be audible “or otherwise discernable” to the public at the location of the meeting.
- Any member participating remotely must identify the persons present in the location from which the member is participating.
- All votes must be by roll call.

Please note that there is no prohibition in the statute on allowing the public to access the meeting by means other than physical attendance, so long as physical attendance is permitted. In other words, the body may, *in addition* to allowing for in-person attendance, broadcast the meeting via cable access television or an online format such as Zoom or Teams, or allow members of the public to call in and listen to the meeting. Any such additional means of accessing the meeting should be included in the meeting notice.

In addition, if the public body chooses to allow a public comment period, it should clearly inform the public if a format that the public may use to participate in the public meeting (e.g. Zoom) will be broadcast only. For example, “the public may view the meeting but will not be able to participate in the public comment period via the following link.” In addition, if the public body chooses to allow a public comment period for both those who attend remotely and those who attend in person, both groups should be treated equally. For example, if members of the public are allowed to speak for 3 minutes, both those attending remotely and those in-person should be permitted to speak for 3 minutes.

Keeping in mind that many online services have both chat and audio functions, if members of the public are allowed to participate in a public meeting remotely, the public body must decide in advance whether comments made in the chat function will be read by the presiding officer or be included in the minutes. In addition, anyone who wants to speak at a public meeting or hearing must identify themselves by name and address and such information must be recorded in the minutes in accordance with RSA 91-A:2, II.

Last, if a public body has provided notice about a meeting that was going to occur virtually after the expiration of the State of Emergency, it will need to provide a new notice indicating the physical location of the meeting. Depending on the timing, this may require rescheduling the meeting. ***We strongly urge local officials to consult with their municipal attorney about rescheduling meetings and providing appropriate notice.***

Please note that the legislature is scheduled to meet in Committees of Conference next week to consider, among other legislation, legislation related to remote meetings. Please keep an eye on our [Legislative Bulletin](#) (and subscribe if you haven't already) for updates. We know that remote meetings are of interest to our members, and we will update you via the Bulletin if the legislature adopts changes to the Right-to-Know law that differ from the above.