



Electronic Meetings Under the New Robert's Rules of Order



Attorney Brian C. Sajdak, Wesolowski, Reidenbach & Sajdak, S.C.

Robert Heinlein, the so-called dean of science fiction writers, wrote in *Time Enough for Love* that “progress isn’t made by early risers. It’s made by lazy men trying to find easier ways to do something.” So it is with electronic meetings – something for many of us that was born from COVID-19 necessity. Yet, as the pandemic wanes, the push to continue with electronic meetings will be made largely because they are convenient and easy. Many do not see progress here, but instead fear of running afoul of proper parliamentary procedure or, worse, Wisconsin’s Open Meetings Law.

The fears of this technological advance are not unjustified. However, as Isaac Asimov once noted, “any technological advance can be dangerous. Fire was dangerous from the start, and so (even more so) was speech – and both are still dangerous to this day – but human beings would not be human without them.” Thankfully, at least from a parliamentary procedure perspective, any fears that might have existed may be allayed with the recent publication of *Robert’s Rule of Order Newly Revised* (RONR, 12th Ed.).^{1, 2}

For the first time the RONR expressly contemplates electronic meetings for a parent body such as a common council or village board. Initially, it is important to note that under RONR 9:30, the default provision for these bodies is that a meeting must be held as a “single official gathering in one room or area.” Electronic meetings for a parent body

must be expressly authorized in the bylaws for the body. RONR 9:31. For a governmental body, this means your code of ordinances should authorize electronic meetings. Accordingly, if your municipal code adopts Robert’s Rules but you have not codified authority to hold electronic meetings, a conflict exists that could subject actions taken to potential legal challenges.

In making the decision to authorize electronic meetings, RONR advises that specific rules should be established to guide participation in the meeting, keeping in mind that “simultaneous aural communication is essential to the deliberative character of the meeting.” RONR 9:34. To assist in this regard, the 12th Edition includes a 14-page appendix with sample rules that could be used depending on the type of electronic meetings to be used by the body.

Before addressing the suggested rules, the oft-repeated caution about Robert’s Rules should be repeated here – the rules are drafted with larger deliberative bodies in mind, and they often do not translate well to smaller local government bodies. The suggested rules provide an excellent example of this caution in that they do not include any rules related to access and/or participation in an electronic meeting by members of the public.

Perhaps such rules are unnecessary for large deliberative bodies, but for local governments in Wisconsin such rules are critical since they help address many fears

raised by electronic meetings under the Open Meetings Law. You should discuss your rules with your municipal attorney to ensure your electronic meetings do not run afoul of the Open Meetings Law.

The sample rules proposed in RONR are based upon four meeting scenarios. First, a full-featured internet meeting. This meeting type utilizes an internet service that integrates audio and/or video with text and voting capabilities. The second meeting type is a mixed telephone and internet meeting. Here, participants utilize the phone to communicate and the internet for the purpose of having secret votes and sharing documents. Third is a speakerphone meeting. Under this approach, the majority of members meet in person while some members may call in to participate by speaker phone. Finally, the telephone-only option, which is self-evident.

Within these meeting scenarios, the proposed rules address multiple aspects that you will want to consider should you wish to authorize electronic meetings. On the simpler side, the rules address how notice of the meeting is provided and the process for attending the meeting. More complex considerations include how to count a quorum depending on the location of members, how to handle motions and voting, and technical issues like if and when a member can be forcibly muted or disconnected.

This column cannot address all of the permutations because those communities that choose to authorize electronic meetings will each do so in different ways. Those communities that choose to go this route are well-advised to review all of the proposed rules to best tailor your rules to your meeting structure. As discussed above, such review should also involve an analysis of the Open Meetings Law to ensure there is no conflict with your rules.

About the Author:

Brian C. Sajdak is a member of Wesolowski, Reidenbach & Sajdak, S.C. where he serves as municipal counsel to multiple southeast Wisconsin municipalities. In addition to his municipal law practice, he also practices in the areas of zoning and land use, condemnation, tax assessment, civil litigation, and real estate law. Mr. Sajdak earned his B.S. degree from the University of Wisconsin-Madison and his J.D. degree from Marquette University Law School. He is a member of the State Bar of Wisconsin where he is a member of the Administrative and Local Government Law Section and the Government Lawyers Division. Mr. Sajdak served two terms on the Administrative and Local Government Law Section Board, including serving as the Chair of the Section, and is a past Co-Chair of the Public Education Committee's Publications & Technology Task Force. Contact Brian at brian@wrslegal.net

1. For additional coverage of the changes in the 12th Edition of Robert's Rules, see the "For the Good of the Order" columns in *The Municipality* by Daniel Foth in the September 2020 and Michael May in February 2021.

2. All subsequent citations in this column to RONR are to the 12th Edition.

Legal Captions

Employees 370

HR Matters article by Attorney Lisa Bergersen explains how "100% Healed" policies, requiring employees to be released by their health care provider with no restrictions prior to returning to their jobs, can violate state and federal disability discrimination laws. To minimize legal liability such policies should be eliminated or rewritten to be flexible and allow an employee to return to work, even with restrictions, if the employer can accommodate those restrictions without undue hardship or posing a direct threat to safety.

Platting 174

Zoning 526

Article provides overview of Wis. Stat. § 62.23(7) zoning authority and § 236.45 local subdivision regulation authority and summarizes Wisconsin Supreme Court decision in *Anderson v. Town of Newbold*, 2021 WI 6, which reviews functional analysis

courts use to determine whether an ordinance is a zoning ordinance and holds town ordinance imposing minimum width on lakefront lot was a lawful exercise of town's subdivision authority rather than a shoreland zoning ordinance regulating shoreland zoning more restrictively than state law.

Powers of Municipalities 941

Article by attorney Matt Dregne (Stafford Rosenbaum LLP) emphasizes importance of rule of law, particularly in context of land use decisions, and distinguishes how it applies when making legislative decisions versus when making quasi-judicial decisions that require an impartial decision-maker to decide a particular matter after making factual findings based on evidentiary record and applying existing legal standards.

Board of Review Training Requirement

The Board of Review (BOR) hear property owners' objections to their tax assessments. In 2021, Wisconsin Law requires that at least one member of the BOR obtain Wisconsin Department of Revenue (DOR) approved training within two years of the BOR's first two-hour meeting. While it is recommended that all BOR members be trained, the law requires that only one member undergo training. (Wis. Stat. §§ 70.46(4) & 73.03(55).) Only 2021 training is certified.

The UW-Madison Division of Extension Local Government Education, the Wisconsin Department of Revenue (DOR), the Wisconsin Towns Association, and the League of Wisconsin Municipalities again partnered to develop the 2021 Board of Review (BOR) training. A new "How to Conduct a Board of Review Hearing" video and updated materials are available here: <https://localgovernment.extension.wisc.edu/board-of-review-training/>