



## **COUNTY BOARD AND COMMITTEE MEETINGS – COMPLIANCE WITH OPEN MEETINGS LAW REQUIREMENTS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY**

County governments throughout the state are facing unprecedented challenges due to the COVID-19 pandemic and the spread of the disease throughout the State of Wisconsin. A primary concern for county governments is to safely conduct county board and committee meetings in light of the ongoing public health emergency while also complying with their board rules and open meetings law (“OML”)<sup>1</sup> requirements.

In conjunction with our general counsel, von Briesen & Roper, s.c., we offer the following guidance, which is based off many of the questions that county officials have asked us and von Briesen over the past few weeks.

There are numerous state and local orders that have been issued in response to the crisis that affect a county’s ability to conduct meetings and ongoing business. The most significant order is Emergency Order #12 (Safer at Home Order) issued by Governor Evers and the Wisconsin Department of Health Services (“DHS”) on March 24, 2020 (the “Order”).<sup>2</sup> The Order requires all individuals to remain home except for “Essential Activities” and other exempt purposes, including “Essential Government Functions.” Importantly, the Order permits local governments to determine their own “Essential Government Functions,” including which of its employees and other individuals are permitted to travel and participate in such government functions. Included within the broad exemption is a local governmental body’s ability to meet and transact business.

Additionally, many counties have declared local emergencies pursuant to Wis. Stat. § 323.11 in response to COVID-19. A declaration of a local emergency authorizes counties to utilize additional emergency powers provided under Wis. Stat. § 323.14. These emergency powers provide counties flexibility to determine how to operate during an emergency and to somewhat relax the procedural formalities otherwise required to conduct meetings.

This Q & A seeks to provide clarification and guidance to county governments as they continue to respond to the COVID-19 emergency and determine how to continue essential county board and committee meetings so that counties are able to continue providing effective and efficient services to their residents. County officials are encouraged to review this guidance carefully with corporation counsel. Corporation

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<sup>1</sup> Wis. Stat. § 19.81, et seq.

<sup>2</sup> The Order is available at: <https://evers.wi.gov/Documents/COVID19/EMO12-SaferAtHome.pdf>

counsel have the best understanding of local rules and regulations impacting the OML analysis and, as well, serve as the preeminent source of guidance on OML compliance.

**Q: What if a county desires to continue to hold in-person meetings of the board and/or its committees? How does the county comply with the OML if the county's facilities are closed to the public?**

A: *A county may designate in-person county board and committee meetings as "Essential Government Operations" pursuant to the Order. This would allow board members and committee members to travel to and attend the meetings. Nonetheless, all individuals attending an in-person meeting must comply with social distancing requirements as provided under Paragraph 16 of the Order. Even though the county building is closed to the public, the county may still comply with the OML by publicly streaming real-time video of the meeting and/or providing a conference line and dial-in number. In both cases, the platform should only allow observation and listening, not direct participation in order to ensure an orderly meeting can be held.<sup>3</sup> In addition, the public should be made aware of alternate monitoring environments in the event viewing or listening on a particular platform is unavailable.*

**Q: May counties hold meetings by teleconference or by videoconference?**

A: *Yes. However, remote attendance at meetings is not expressly authorized under Wis. Stat. ch. 59 so there are a few procedural matters that should be addressed. Because Robert's Rules of Order define "present" as in-person attendance, either the county's board rules should expressly permit remote attendance or there should be accommodation made for remote attendance in the context of the board's procedures under the current state of emergency. Counties should suspend or modify any in-person attendance requirement (and other similar board rules) during a time of declared emergency. This may be accomplished quickly and temporarily under the county's emergency powers if the county has declared a local emergency.*

*In addition, whether a board or committee meets in-person or by remote communication, accommodations must be offered and made for those persons with disabilities that are unable to monitor the meeting(s).*

**Q: How does a county comply with the OML if it holds meetings by teleconference or videoconference?**

A: *If a county holds a remote meeting by teleconference or videoconference, the county is able to comply with the OML by publicly providing remote access to the general public. This includes the provision of a conference line and dial-in number in order to monitor phone call meetings and/or a live-stream available*

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<sup>3</sup> The Wisconsin Department of Justice ("DOJ") has provided guidance indicating that remote participation by members of the public complies with the OML. DOJ's current guidance is available at: <https://www.doj.state.wi.us/news-releases/office-open-government-advisory-additional-information-regarding-covid-19-and-open>; DOJ also recommends providing telephonic access to the public in all cases so as to not discriminate against those without internet access.

*for viewing by the public on a video conference platform. In both cases, the platform should only allow observation and listening, not direct participation in order to ensure an orderly meeting is held.*

**Q: Is any additional language necessary for the public notice and posted agendas for a meeting held by teleconference or videoconference?**

A: *Yes. Importantly, counties must still comply with public notice requirements. Notices should follow typical practice, but should also note that the meeting will be held remotely and include instructions for how the public may access the meeting. This includes providing the telephone number, video conference link, and any necessary passcodes or other login information. Agendas should also include this information to help ensure the meeting's accessibility to the public.*

**Q: What if a meeting has already been noticed and did not provide that the meeting would be held remotely, can it still be held by teleconference or video conference?**

A: *No. The meeting should be re-noticed or rescheduled if necessary. The statutory notice requirements are not satisfied if the public is not provided actual notice of how it may monitor the meeting.*

**Q: Can a county board or committee meet on less than 24 hours' notice to the public?**

A: *Yes. Section 19.84(3) of the Wisconsin Statutes provides: "Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting." The statute does not define "good cause," but there can be little doubt that the emergency situation confronting counties at this time provides support for "good cause" if immediate action is necessary. Boards and committee relying upon the "good cause" exception to the 24-hour notice requirement should document the reasons why 24-hour notice would be "impossible or impractical" at the time the agenda is published.*

**Q: Is public comment and direct participation required in a meeting?**

A: *Generally, no. The OML requires the ability of the public to monitor meetings of governmental bodies. Direct participation and public comment is only required for certain public hearings (e.g., a public hearing for a zoning petition). Nonetheless, some counties have a requirement in their local rules or ordinances requiring a public comment period during board and/or committee meetings. Consistent with a county's emergency powers, the designated person/committee/board should suspend such a rule during the emergency.*

**Q: May the county board or a committee meet in closed session during a meeting held by teleconference or videoconference?**

A: *Yes. However, it is highly recommended that counties utilize services that allow them to control meeting participants. In other words, counties should have the ability to drop all lines that are not board or committee members (or other parties deemed necessary) from the closed session part of the agenda. There is also added difficulty if the body intends to reconvene in open session. In that case, it is recommended that the body set a time to resume in open session and tell the public to dial back in at the specified time via the public notice and agenda. As is the typical case, any official action on matters discussed in closed session should be undertaken in open session except in the rarest of circumstances as approved by corporation counsel.*

**Q: Our county typically records meetings, should our county continue doing so if the county holds remote meetings?**

A: *Yes, and counties that are not recording meetings are highly encouraged to begin doing so. While real-time monitoring is required under the OML, DOJ is recommending that governmental bodies post recordings on their websites as soon as practicable after the meeting concludes if a board or committee meets by remote communication. Again, posting a recording is not a substitute for real-time monitoring, but still provides an additional level of access to the public showing a good faith attempt to maintain openness.*

**Q: Are there any special procedures or practices that county boards and committees should follow when holding meetings by teleconference or videoconference?**

A: *There are no required additional or special practices or procedures that must be implemented for remote meetings. However, it is good practice for all members to identify themselves before speaking and to avoid speaking over one another. This will help both members and the public to hear speakers clearly and follow the progression of the meeting.*

**Q: Are county supervisors entitled to a per diem when attending meeting by teleconference or videoconference?**

A: *Yes, unless a board rule or resolution specifically provides otherwise. The per diem provided to a county supervisor is paid for each day that he or she attends a meeting of the board. The per diem is not a reimbursement (e.g., for travel). County supervisors should still be paid the county's set per diem for meeting attendance in accordance with the county's set amount.*

**Q: Are there any situations when meetings of the county board or committees are not required to comply with the OML?**

A: *There are very limited circumstances where the county board may conduct meetings without regard to OML requirements, including public notice requirements. This is only permissible when (1) there is a declared emergency; (2) it becomes imprudent, inexpedient, or impossible to conduct the county's*

*affairs at the regular or usual place; and (3) the circumstances of the emergency require urgent and immediate action making it impossible to comply with time-consuming procedures and formalities prescribed by law.*

*Again, this exception is extremely limited. Counties should always comply with the OML to the extent not precluded by an immediate and extreme emergency.*

### **PRACTICAL TIPS:**

Separate and apart from compliance questions, we have received questions and information from many counties with “best practices” on conducting remote meetings, including the following:

- The Chair should always ask for a roll call vote on matters requiring a vote unless the matter is routine, in which case the Chair can ask for objections to unanimous adoption (*e.g.*, adopting the agenda.)
- Board or committee members should request permission to leave a meeting, even temporarily, so the clerk or recording secretary can appropriately record quorum and votes.
- The Chair should start each meeting with reminders about speaking slowly, not interrupting other speakers, muting the phone/video when not speaking and otherwise allowing the meeting to proceed in an orderly fashion.
- An individual should be assigned to monitor an email account to serve as the recipient of a board or committee member’s questions or identification of problems associated with remote participation in the meeting.

These practical tips must, of course, proceed in compliance with the OML. As a result, corporation counsel should be consulted when these, or other, measures are implemented to ensure compliance with both the OML and any local rules.

If you have any questions related to meetings, OML requirements, or any other government law needs, please contact the Wisconsin Counties Association or any member of the von Briesen & Roper Government Law Group ([www.vonbriesen.com](http://www.vonbriesen.com)).