State of Emergency Webinar: Questions and Answers

1. If some members of a council attend a meeting at the regular meeting location, would that question the validity of the determination that meeting in person is not feasible?

Whether it is unfeasible for members of the public to attend meetings at the regular meeting location, and whether it is unfeasible for at least one member of the public body, chief legal counsel, or chief administrative officer are two separate conditions under 13D.021, subdivision 1. However, it is likely that the number of individuals in attendance at the regular meeting might weigh in favor of whether in person attendance is or is not feasible. At this time, the Governor has issued a Stay at Home order, which would support a determination that in person attendance is not feasible due to the current health pandemic and declared state of emergency.

2. How should a local government document the decision to hold a remote meeting? Is this an executive officer memo or something more formal?

Minn. Stat. §13D.021 does not designate how to document the decision made by the presiding officer, chief legal counsel, or chief administrative officer of a public body to hold meetings pursuant to this section. This is a procedural question, and public bodies will need to determine how they will document these decisions.

3. Has the chapter 12 peacetime emergency been extended?

Yes. A peacetime emergency must not be continued for more than five days unless extended by resolution of the Executive Council up to 30 days. The Executive Council has extended the peacetime emergency.

4. Most of our motions are approved unanimously. Would it be ok to call the question for voice vote and only roll call when the result is not unanimous?

Minn. Stat. §13D.021, subdivision 1 (5) simply states that “all votes are conducted by roll call, so each member’s vote on each issue can be identified and recorded.” It technically does not provide an exclusion for a unanimous consent – where each member’s vote can be assumed.

5. Are you encouraging public entities to prioritize requests related to COVID-19?

How government entities prioritize data requests will be determined by their data access policies and procedures.

6. For boards that are legislatively required to hold “quarterly meetings,” are there any specific exemptions to this requirement during a state of emergency/stay at home order?

There are not any exemptions within the Open Meeting Law.
7. Do you have to provide notice to the public that a meeting will be held electronically? If so, how?

Yes, notice for meetings held pursuant to Minn. Stat. §13D.021 is covered under subdivision 4 of that section. The public body must provide notice of the meeting location (if attendance at the regular meeting location is feasible), the fact that some members may participate electronically or by phone, and the details for monitoring remotely, pursuant to subdivision 3. The timing and method of noticed are still governed by section 13D.04.

8. How do you hold a board meeting if your office is closed? Can the board chair and legal counsel meet in a room and have other board members attend via telephone?

Practically, if attendance at the regular meeting location is not feasible due to the health pandemic or declared state of emergency, then all public body members may participate via phone or other electronic means if the other conditions of Minn. Stat. §13D.021 are met. If the regular board meeting location is closed due to the current state of emergency, then this would be an appropriate time to hold meetings pursuant to section 13D.021.

9. What language can we add to our notices related to COVID-19?

In addition to the required information outlined in subdivision 4 of section 13D.021, public bodies may choose to include any additional information that might be helpful to those within the community and would promote access meeting materials and discussion.

10. What are some ways to verify identity for private data requests during this time?

How entities verify identities will depend on their policies and procedures. Due to social distancing recommendations and the Governor’s current Stay at Home order, the typical ways entities verify identities may be more difficult. This might require updates to policies and procedures in order to facilitate remote ways of verifying identities while still ensuring the necessary protection of not public data.

11. “Chief administrative officer” is not a term we have used in any documents for our agency. Can we presume who that is or do we need our boards to designate it.

Public bodies may have delegations, position descriptions, or appointments that would document who their chief administrative officer is. The Open Meeting Law does not provide its own definition of a chief administrative officer.

12. Are there any particular areas of the MGDPA or types of data for which you anticipate local governmental entities will be receiving COVID-19-related data requests?

Not at this time. We don’t know what types of data requests entities will receive related to COVID-19.