



COVID-19
AND THE
OPEN
MEETINGS
LAW

Wisconsin Department of Justice

Office of Open Government

University of Wisconsin-Madison, Division of Extension

May 12, 2020

Effective Virtual Public Meetings During the Covid-19
Pandemic Webinar

PURPOSE OF THE OPEN MEETINGS LAW

- “Transparency and oversight are essential to honest, ethical governance.” *John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49, ¶ 32, 354 Wis. 2d 61, 848 N.W.2d 862
- **Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98**
 - The purpose of the open meetings law is to ensure openness
 - Only a few limited exemptions permit confidentiality
 - The open meetings law is to be broadly interpreted to promote openness
- Wis. Stat. § 19.81(1)
 - “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that **the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.**”



ESSENTIALS

- Generally, the open meetings law requires that all meetings of governmental bodies:
 - Must be preceded by public notice and
 - Must be held in a place that is open and reasonably accessible to all members of the public
 - Except in limited situations in which a closed session is specifically authorized



DOJ GUIDANCE ON REMOTE MEETINGS

- DOJ's past guidance on remote meetings stated that telephone conference calls and video conferences were acceptable means of conducting meetings.
- However, past guidance envisioned a physical place where members of the public could go to hear the telephone conference call or view the video conference.
 - The current public health situation and guidance on social distancing have made this challenging.
- As the public health situation developed and various orders were issued by the government, DOJ began receiving questions regarding the application of the open meetings law during the public health emergency.
- OOG issued guidance to address the inquiries.
 - Two advisories:
 - March 16, 2020 – provided key guidance on holding remote meetings
 - March 20, 2020 – offered additional information addressing technological and practical issues
 - Tips on holding open meetings posted on DOJ Office of Open Government website.



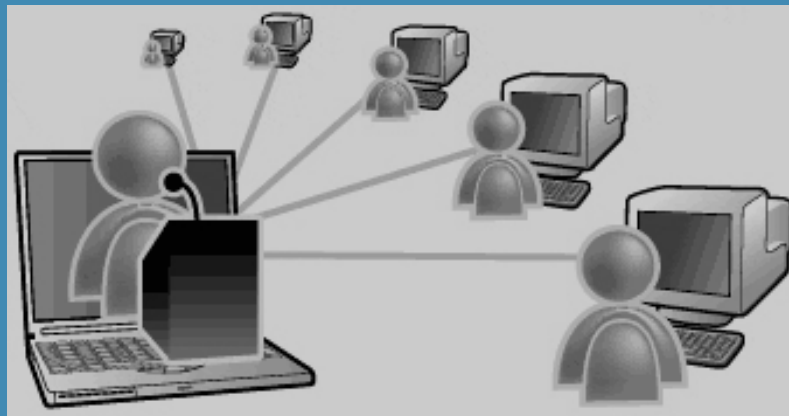
COVID-19 ADVISORIES

- The law requires meetings to be held in places “reasonably accessible” to the members of the public and open to all citizens at all times unless otherwise provided by law. Wis. Stat. § 19.81(2).
- Under the present circumstances, governmental bodies can typically meet their open meetings law obligations while practicing social distancing by conducting meetings via telephone or video conference calls.
- However, the public must be provided an effective way to monitor the calls.
- A governmental body must provide the public with the information on how to join the meeting remotely.
- **Notices** should include instructions on how to attend, including any required call-in number and/or log-in information.



COVID-19 ADVISORIES, CONTINUED

- Bodies should be mindful that it may be burdensome or infeasible for some members of the public to attend remotely.
 - Bodies should facilitate reasonable access to meetings for such individuals.
- Bodies that conduct meetings via videoconference should strongly consider including an alternate telephone option for those without internet access.



COVID-19 ADVISORIES, CONTINUED

- For certain types of meetings, only providing remote access may not always be permissible.
 - For example:
 - Telephone conferences involving complex plans, drawings, or charts
 - When the demeanor of a witness is significant
- The type of access that constitutes **reasonable access** in the present circumstances may be different from the type of access required in other circumstances.
 - Ultimately, whether a meeting is “reasonably accessible” is a factual question that must be determined on a case-by-case basis.



COVID-19 ADVISORIES, CONTINUED

- The body chair should encourage body members to identify themselves before speaking.
- Body members should refrain from speaking over one another.
- Bodies should post a recording of a meeting on its website as soon as practicable after a meeting concludes.
- Bottom line: Bodies that meet remotely can and should consider steps to ensure that their meetings remain open and accessible to the public.



INQUIRIES RECEIVED BY THE OOG

- Over the past two months, the number of calls to the OOG's Public Records-Open Meetings (PROM) help line are approximately double the average number.
 - Majority of calls are related to open meetings and COVID-19.
- Initial calls:
 - Most questions sought information on whether bodies could meet remotely, and if so, how.
- More recent calls:
 - Increase in concerns over bodies holding physical meetings.
 - No options permitting the public to attend remotely.
 - There have been some concerns about public comment periods.
 - Some in which only in-person attendees have been permitted to participate.



BEST PRACTICES

- It is advisable for bodies to keep the public health situation, government guidance, and health concerns of the public in mind when making decisions regarding conducting open meetings.
- Considerations:
 - Is the governmental business to be discussed related to an essential government function?
 - Is it feasible to postpone nonessential governmental business?
 - What accommodations can be made to facilitate reasonable access for individuals who wish to observe the meeting?
- **Bottom line:** It is important to focus on the purpose of the open meetings law—to ensure government openness and transparency—during this public health emergency.



FURTHER INFORMATION

- DOJ Office of Open Government – Open Government Resources During COVID-19:
<https://www.doj.state.wi.us/office-open-government/office-open-government>
- DOJ Compliance Guides and other resources are also available via the DOJ Office of Open Government webpage.
- Contact the Office of Open Government:
 - Write: Office of Open Government
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
 - Tel: (608) 267-2220
 - Email: fergusonpm@doj.state.wi.us





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