



**PART 4:**

# MINNESOTA OPEN MEETING LAW AND REMOTE PARTICIPATION



## PRESENTED BY:

**Sonya Guggemos**

Senior Staff Counsel  
for Risk Control



The information contained in this document is intended for general information purposes only and does not constitute legal or coverage advice on any specific matter.



## MINNESOTA OPEN MEETING LAW

SLIDE 3



- Minnesota Statutes Chapter 13D
- Promotes transparency in government
- Presumes all meetings of a public entity's governing body are open to public unless governing body has statutory authority to close meeting

# USING TECHNOLOGY TO MEET

Minnesota Open Meeting Law and Remote Participation



## 2 STATUTES PERMIT REMOTE MEETINGS FOR LOCAL GOVERNMENT

SLIDE 5



### Minn. Stat. § 13D.02:

#### Other Entity Meetings by Interactive Technology

- Can be used any time
- Interactive technology (video):
  - Must be able to both **hear and see** all discussion, testimony and votes
  - At all board member locations



### Minn. Stat. § 13D.021:

#### Meetings During Pandemic or Chapter 12 Emergency

- Can be used **when in-person meeting or a meeting conducted under 13D.02** is not practical or prudent because of a **health pandemic or a Chapter 12 emergency**
- Can be telephone or interactive technology



## DETERMINING QUORUM AND PARTICIPATING IN PROCEEDINGS

SLIDE 6



### Minn. Stat. § 13D.02:

#### Other Entity Meetings by Interactive Technology

- Each board member participating by interactive technology is considered present at the meeting for purposes of determining a quorum and participating in all proceedings



### Minn. Stat. § 13D.021:

#### Meetings During Pandemic or Chapter 12 Emergency

- Each board member participating by telephone or interactive technology is considered present at the meeting for purposes of determining a quorum and participating in all proceedings

# SECTION 13D.02: OTHER ENTITY MEETINGS BY INTERACTIVE TECHNOLOGY

Minnesota Open Meeting Law and Remote Participation



SECTION 13D.02:  
PHYSICAL  
LOCATION

SLIDE 8

## Requirements:

- All participating board members, wherever their physical location,
  - Can **hear and see** one another; and
  - Can **hear and see** all discussion and testimony presented at any location at which at least one member is present
- Members of public present at the regular meeting location of the body can **hear and see** all discussion and testimony and all votes of all members of the body
- **At least one member of body is physically present at regular meeting location**





## SECTION 13D.02: ADDITIONAL REQUIREMENTS

SLIDE 9



### Requirements:

- All votes are conducted by roll call
- Each location at which a member of the body is present must be open and accessible to the public, unless an exception is met



## SECTION 13D.02: OPEN, ACCESSIBLE REQUIREMENT, EXCEPTIONS

SLIDE 10



### Each location at which a board member is present must be open and accessible to the public, unless:

- Board member is serving in military and at a required drill, deployed or on active duty; or
- Board member has been advised by a health care professional against being in a public place for personal or family medical reasons

**Exceptions are limited to 3 times per calendar year**

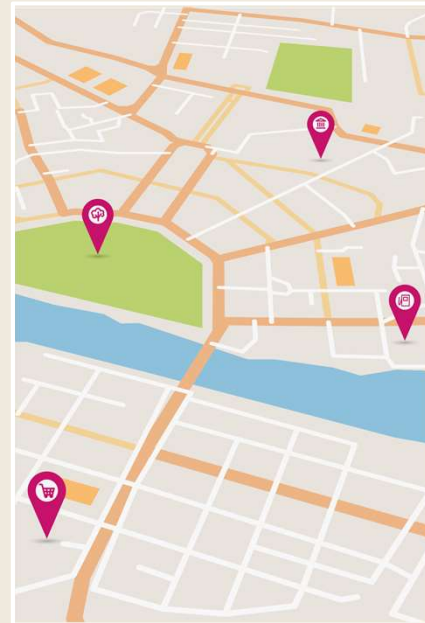


SECTION 13D.02:  
NOTICE  
REQUIREMENT

SLIDE 11

**Entities must give:**

- Notice of regular meeting location; and
- Notice of any location where board member will be via interactive technology
  - Except for locations that do not need to be open and accessible to the public



SECTION 13D.02:  
NOTICE  
LOCATION,  
TIMING

SLIDE 12



**Generally, notice:**

- Must be posted on the principal bulletin board (or on the door of its usual meeting room if there is no principal bulletin board); and
- Mailed or otherwise delivered to each person who has filed a written request for special meeting notices
- **At least 3 days before meeting date**



## SECTION 13D.02: MONITORING AND MINUTES

SLIDE 13

- To extent practical, government entity must allow person to monitor meeting electronically from remote location
- Minutes for meeting conducted under Section 13D.02 must reflect:
  - Names of board members appearing by interactive technology; and
  - State reason(s) for appearance by interactive technology



# SECTION 13D.021: MEETINGS DURING PANDEMIC, CHAPTER 12 EMERGENCY

Minnesota Open Meeting Law and Remote Participation



SECTION 13D.021:  
**LIMITED  
USE**

SLIDE 15

- Presiding officer, chief legal counsel or chief administrative officer for governing body determines that **in-person meeting or meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under Chapter 12**
  - May depend on particular circumstances of governing body
  - May take local public health conditions into account, as well as state and federal guidance



SECTION 13D.021:  
**REQUIREMENTS**

SLIDE 16



- All members of body participating in the meeting, wherever their physical location, can **hear** one another and can **hear** all discussion and testimony
- Members of public present at regular meeting location of the body can **hear** all discussion and testimony and all votes of the members of the body
  - Unless attendance at regular meeting location is not feasible due to health pandemic or emergency declaration



SECTION 13D.021:  
PHYSICAL  
PRESENCE  
AND VOTING

SLIDE 17



- At least 1 member of body, chief legal counsel or chief administrative officer is physically present at regular meeting location
  - Unless unfeasible due to health pandemic or emergency declaration
- All votes are conducted by roll call



SECTION 13D.021:  
NOTICE

SLIDE 18



**Entities must give:**

- Notice of regular meeting location; **and**
- Fact that some board members may be participating by telephone or interactive technology; **and**
- Ability for public to monitor meeting electronically from a remote location

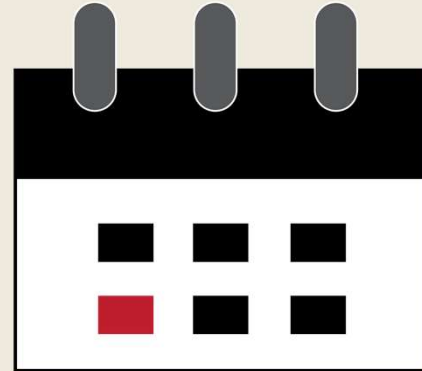


SECTION 13D.021:  
NOTICE  
POSTING AND  
TIMING

SLIDE 19

**Generally, notice:**

- Must be posted on principal bulletin board (or on the door of its usual meeting room if there is no principal bulletin board); **and**
- Mailed or otherwise delivered to each person who has filed a written request for special meeting notices
- **At least 3 days before meeting date**



SECTION 13D.021:  
MONITORING

SLIDE 20

- No requirement for remote locations to be open and accessible to the public
- To extent practical, government entity must allow person to monitor meeting electronically from remote location





SECTION 13D.021:  
PUBLIC  
COMMENT  
PERIOD

SLIDE 21



If attendance at regular meeting location is not feasible and public body's practice is to offer a public comment period at in-person meetings:

- Members of public shall be permitted to comment from a remote location during public comment period of meeting, to extent practical

# FAQS ON MEETING REMOTELY

Minnesota Open Meeting Law and Remote Participation



QUESTION:  
REMOTE  
ATTENDANCE  
LIMITS?

SLIDE 23

Is there a limit on the number of times a board member can attend a meeting from a remote location?



ANSWER:  
REMOTE  
ATTENDANCE  
LIMITS?

SLIDE 24

**A: No. It's a policy decision.**

The only statutory limitation is related to the **number of times** that a remote location **can be closed to the public**

- For personal or family medical reasons\*
- Military service reasons\*

\*When meeting under Section 13D.02





QUESTION:  
FULLY  
REMOTE  
MEETINGS?

SLIDC 25



Can a government entity hold its meeting completely online with all board members, staff and public participating and attending remotely?



ANSWER:  
FULLY  
REMOTE  
MEETINGS?

SLIDC 26



**A: To limited extent under normal circumstances**

- All statutory requirements must be met:
  - At least 1 board member must attend meeting at regular meeting location
  - Regular meeting location must be set up so that public can hear, see all discussion, testimony and all votes of public body members
  - Notice given of regular meeting location and all remote locations\*

Analysis is different under Section 13D.021

\*Unless the remote location is closed to the public under the limited statutory exceptions



QUESTION:  
CHANGE OF  
PLANS

A board member recently discovered he cannot attend a scheduled in-person board meeting.

Can the board member attend remotely via interactive technology?



SLIDC 27



ANSWER:  
CHANGE OF  
PLANS

**A: It depends on when the in-person meeting is scheduled:**

- Under Section 13D.02:
  - Entities must give notice of locations at which board members will be participating via interactive technology\*
- Notice needs to be provided at least 3 days before the date of the meeting.
  - If notice cannot be provided within this time frame, all requirements for meeting remotely have not been met

• \*Unless the remote location is closed to the public under the limited statutory exceptions



SLIDC 28



QUESTION:  
SICK BOARD  
MEMBER

SLIDE 29



Can a board member with a medical issue participate in meetings remotely?



ANSWER:  
SICK BOARD  
MEMBER

SLIDE 30



**A: Yes, if all required conditions under Section 13D.02 are met.**

- Board member may close his/her remote location to public if:
  - Advised by a health care professional against being in a public place for medical reasons
  - Have not already done so 3 times in calendar year
- Analysis may be different if board is currently meeting under Section 13D.021



QUESTION:  
SICK BOARD  
MEMBER,  
PART 2

SLIDC 31



If board member's medical issue is a COVID-19 diagnosis, can board decide to meet under Section 13.021, Meetings During Pandemic or Chapter 12 Emergency, instead?



ANSWER:  
SICK BOARD  
MEMBER,  
PART 2

SLIDC 32



**A: Probably not, but check with legal counsel**

- Under Section 13D.021: Needs to be determination that in-person meeting or meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or a Chapter 12 emergency
- 1 board member with a COVID-19 diagnosis may not be enough for a determination that board cannot meet in person or via the regular remote meeting statutes due to a health pandemic
  - See Minnesota Department of Administration Advisory Opinion 21-003



QUESTION:  
OUT-OF-  
STATE  
ATTENDANCE



Can a board member attend a meeting remotely from an out-of-state location?

SLIDE 33



ANSWER:  
OUT-OF-  
STATE  
ATTENDANCE



**A: Yes**

- Nothing in law addresses location from which a board member may participate remotely
  - See Minnesota Department of Administration Advisory Opinion 13-009
- Under Section 13D.02, entities must give notice of locations at which board members will be participating via interactive technology\*
- Remote location must be open and accessible to public
- \*Unless the remote location is closed to the public under the limited statutory exceptions

SLIDE 34



QUESTION:  
DROPPED  
VIDEO  
CONNECTION

SLIDE 35



A board member participating from a remote location loses his video capability. Audio continues to function.

Can remote board member continue to participate in the meeting?



ANSWER:  
DROPPED  
VIDEO  
CONNECTION

SLIDE 36



**A: Probably not**

- Section 13D.02 requires:
  - All board members participating in meeting can hear and see one another, regardless of location
  - Members of public at regular meeting location can hear and see all discussion, testimony and votes of all board members
- If board member cannot be seen on video, all statutory requirements have not been met
- Analysis may be different if board is meeting under Section 13D.021.



QUESTION:  
ROLL VOTING  
STILL  
REQUIRED?

SLIDE 37



Does board still need to conduct a roll call vote if only 1 board member is participating from a remote location?



ANSWER:  
ROLL VOTING  
STILL  
REQUIRED?

SLIDE 38



- **A: Yes**
- Both Sections 13D.02 and 13D.021 require that **all** votes be conducted by roll call
- Can identify and record each board member's vote on each issue

# SEEK ASSISTANCE

Minnesota Open Meeting Law and Remote Participation



IF  
QUESTIONS  
ARISE



- Consult with legal counsel
- Review MCIT Open Meeting Law resources
  - [MCIT.org/resources](https://mcit.org/resources)
- Check with Minnesota Department of Administration, Data Practices Office:
  - [MN.gov/admin/data-practices](https://mn.gov/admin/data-practices)

SLIDC 40

# **DISCUSSION**

**Submit Questions Now**