



Attending and/or Conducting Meetings Electronically

By David W. Broadwell, CML General Counsel, March 16, 2020

Governments at all levels are struggling with the question of how to adjust public meeting procedures to cope with the COVID-19 public health crisis. On March 14, the Colorado General Assembly adjourned entirely for at least two weeks and posed an interrogatory to the Colorado Supreme Court to help the body cope with the unique challenges caused by the current crisis. Adjournment and cancellation is a short term strategy, but the business of government must go on, and that inevitably requires meetings of decision-making bodies. To view the interrogatory posed to the Supreme Court, go to:

https://leg.colorado.gov/sites/default/files/documents/2020A/bills/2020a_hjr1006_enr.pdf

The consensus of opinion is that the Colorado Open Meetings Law allows for participation in public meetings to occur electronically, given the definition of “meeting” at 24-6-402(1)(b), C.R.S. However, local laws and policies typically provide only for live, in-person meetings in fixed locations, and thus require some modification before electronic attendance is permitted.

The trick is to ensure that the electronic access to the meeting is sufficient to practically and legally emulate the degree of public access and participation that would be true under normal circumstances in a live meeting conducted in person. Tami Tanoue of CIRSA recently offered some tips on this subject linked here: <https://www.cirsa.org/blog/remote-council-board-meetings-during-pandemic-times/>.

Last week, CML was contacted by Jeff Roberts of the Colorado Freedom of Information Council, asking what Colorado municipalities had in store for “virtual meeting” in the wake of the COVID-19 emergency. Any new or different procedures for convening meetings may be under the microscope, both in terms of ensuring the public’s ability to see and hear the meeting, as well as the public’s ability to meaningfully participate in the meeting (e.g. for any matter requiring a public hearing.)

Some forward-thinking cities like Northglenn already had in place codified procedures for conducting meetings electronically in the face of a public health emergency:

https://www.cirsa.org/wp-content/uploads/2020/03/Res_19-119_Electronic_Participation_Policy.pdf

Other like Westminster and Aspen are currently setting the table for new electronic meeting models as part of their COVID-19 emergency declarations:

Westminster: <https://www.cml.org/docs/default-source/default-document-library/westminster-council-meeting.pdf>

Aspen: <https://d3n9y02raazwpg.cloudfront.net/cityofaspen/bc5319a2-6535-11ea-99b9-0050569183fa-da76106a-2e02-4fe6-bbb2-ae71e53e957b-1584128908.pdf>

A few additional tips and observations for varying scenarios:

- **Remote participation by a member of the governing body?** This option has been around for years, and many local governments already have local policies describing whether and under what circumstances officials may patch-in to a meeting and cast votes. This option may now become more important as vulnerable or self-isolating members of a public body may ask to participate in meetings from afar.
- **Remote participation by members of the public?** What if the municipality continues to conduct meetings as usual, but wants to provide extra options for sick or vulnerable people to “attend” remotely? This option is less commonly addressed in municipal meeting procedures, but the Colorado General Assembly blazed a trail with their remote testimony policy, details of which are linked here: <https://leg.colorado.gov/remote-testimony>
- **Still conduct live meetings, but exclude the public from being physically present?** A public body and staff could meet in a highly controlled and relatively safe environment, and restrict all public “attendance” to electronic means of telecommunication. In the current COVID-19 environment some Capitol staffers considered this option for the General Assembly, calling it legal but highly impractical. The General Assembly’s decision to eschew this option is explained in the fourth recital on p. 2 of HJR 20-1006, linked at the top. But this option may be more feasible in the smaller environment of a city council or town board.
- **Conduct the entire meeting electronically—the truest form of virtual meeting?** Modern technologies promoted by the likes of Zoom and GoToMeeting make the ability to do large mass-participation meetings at least possible in ways they never were until recently. Again, a carefully crafted approach to using this technology could legally comply with the OML. The cost, effort and practicality are the main challenges that any municipality will face if it goes this far.

Please remember to share with CML any new meeting policies or procedures adopted by your municipalities and we will post them on our COVID-19 webpage at:

[https://www.cml.org/home/topics-key-issues/coronavirus-\(covid-19\)](https://www.cml.org/home/topics-key-issues/coronavirus-(covid-19))