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To: North Dakota Public Entities  
From: Attorney General Wayne Stenehjem  
Re: Open Meeting requirements during Coronavirus (COVID-19) National Emergency  
Date: March 16, 2020

In light of recent concerns surrounding the spread of the Coronavirus (COVID-19), I have been asked to provide guidance for public entities regarding their responsibilities under the open meetings law.

The decision whether to hold a meeting rests with the **public entity**. While some meetings may be required by law, other meetings may be cancelled or postponed. The Governor, in conjunction with the North Dakota Department of Health, has outlined strategies for various events and public gatherings, based on three levels of risk thresholds:

1. Low Risk – Threshold 1: no significant community transmission in North Dakota resulting in minimal restrictions and burdens.
2. Moderate Risk – Threshold 2: transmission occurring in at least one geographic jurisdiction and authorities should consider canceling or rescheduling events within the jurisdiction.
3. High Risk – Threshold 3: widespread transmission throughout North Dakota and authorities should cancel or postpone events.

For more information regarding the risk levels and Governor's recommendations, please access <https://www.governor.nd.gov/news/burgum-department-health-release-recommendations-events-and-public-gatherings>

Public entities should first consider whether a meeting can or should be cancelled or rescheduled. If a meeting is held, public entities have always had the ability to meet by remote means, including video or teleconference.

### **Public Access**

The open meetings law recognizes that the public has a right to attend meetings of public entities. The law also requires a speakerphone or monitor be provided at a location specified in the notice for public access when one or more members of the governing body are participating by telephone or video.

While a physical location accessible to the public is therefore required for meetings, an agency can also provide **additional** means for the public to attend or observe – such as providing call-in numbers, real time/live streaming of the meeting online, or similar remote means for the public to access. Entities should provide public notice regarding such alternative means and encourage the public to utilize the remote access, rather than attending in person, based on current conditions.

## **Meeting Notice Requirements**

I have also been asked about the notice requirements for special or emergency meetings.

Special meetings can be held on very short notice and, under general open meeting laws, there is **no minimum notice** requirement for those special meetings. As soon as the governing body knows it will be meeting, notice should be posted to the public in compliance with N.D.C.C. § 44-04-20 (i.e. providing an agenda with the date, time, and location of the meeting at the entity's principal office, on either the entity's website or with the auditor or Secretary of State's website, at the location of the meeting on the day of the meeting, to the official newspaper, and to anyone requesting personal notice).

Public entities should contact their legal counsel for questions or legal advice regarding responsibilities under the open meetings law.

The COVID-19 situation is evolving rapidly and the Office of Attorney General will continue to monitor the situation and will update the above guidance as necessary.

For more information regarding the Coronavirus in North Dakota and preventative measures, please access North Dakota Department of Health's website at:

<https://www.health.nd.gov/diseases-conditions/coronavirus>.