



OFFICE OF CORPORATION COUNSEL

Client-Driven. Community-Focused.

MARGARET C. DAUN
Corporation Counsel

PAUL D. KUGLITSCH
ANNE B. KEARNEY
Deputy Corporation Counsel

ALAN M. POLAN
KATHRYN M. WEST
DALE R. NIKOLAY
SCOTT F. BROWN
TEDIA K. GAMIÑO
DAVID N. FARWELL
LISA M. PROCACCIO
NELSON W. PHILLIPS III
MELINDA S. LAWRENCE
JUDD H. TABAK
Assistant Corporation Counsel

DATE: March 13, 2020

TO: Interested Parties

FROM: Margaret C. Daun, Corporation Counsel
Paul D. Kuglitsch, Deputy Corporation Counsel
Anne B. Kearney, Deputy Corporation Counsel

SUBJECT: Open Meetings in a Time of COVID-19 and Coronavirus

Governor Evers declared a public health emergency in Wisconsin on March 12, 2020.¹ County Executive Abele declared a public health emergency in Milwaukee County on March 13, 2020. See Exhibit 1.

In emergency situations, section 323.52(2) of the Wisconsin Statutes provides that the “powers and functions ... [of County boards and commissions and other officers] may be exercised in the light of the exigencies of the emergency [] without regard to or compliance with time-consuming procedures and formalities prescribed by law.”

Therefore, the County Board and its standing committees, as well as other County boards and commissions, can legally convene remotely via telephone conference² or video conference during this declared public health emergency.³ Of course, the meeting must be publicly noticed, the agenda must be specific as to time and subject matter, and access instructions for the public must be provided, including reasonable alternate accommodations for persons with disabilities. Wis. Stat. §§ 19.83-84.

¹ https://content.govdelivery.com/attachments/WIGOV/2020/03/12/file_attachments/1399035/EO072-DeclaringHealthEmergencyCOVID-19.pdf

² <https://www.doj.state.wi.us/sites/default/files/dls/ompr/OAG-69-143-lindner.pdf>

³ Four ordinances relating to the conduct of County Board meetings reference the County Board “room” explicitly. See MGCO §§ 1.02(c)(2) (duties of sergeant at arms); 1.04(c) (voting); 1.05(a) (speaking at meetings); 1.06 (departure from meetings). In the opinion of the Office of Corporation Counsel, absent more, these mentions of “room” do not require in-person meetings, since a court is more likely than not to conclude that a “room” includes a virtual “room” (i.e., a place of convening electronically), particularly during a declared public health emergency.

In summary, legally permissible approaches to public meetings during this emergency include:

- rescheduling public meetings until operationally essential;
- if meeting, consider meeting remotely, as noted above;
- if meeting in person, consider:
 - scheduling only those items that are operationally essential;
 - using meeting space that permits adequate social distancing;⁴
 - identifying overflow space to ensure adequate social distancing;
 - rigorous sanitization of meeting spaces and equipment;
 - ensuring that hand sanitizer is available to meeting participants.

Also note that under applicable law, during an emergency, 24-hour meeting notice is not required. Wis. Stat. § 19.84(3). If there is the need for an emergency convening of a public body, a court would likely conclude that no less than 2 hours' notice is sufficient. *Id.*

Furthermore, under state law, the public does not enjoy an absolute right to provide testimony at public meetings, nor do County ordinances mandate the availability of public testimony.⁵

In general, the Centers for Disease Control and other jurisdictions are recommending that no gatherings of more than 25 people occur under any circumstances.

The Office of Corporation Counsel is happy to consider potential ordinance amendments to further address public health emergencies after this pandemic has ended and/or as operationally essential during this pandemic. At this time, we do not see need for any immediate legislative action.

⁴ Under the County Board's COOP plan, the Board conducts business at MATC.

⁵ <https://www.doj.state.wi.us/sites/default/files/dls/ompr/20051025-lundquist.pdf>

PROCLAMATION OF EXISTENCE OF A COUNTY EMERGENCY

WHEREAS, ordinance 99 of Milwaukee County and State Statute 323, empowers the Office of Emergency Management to proclaim the existence or threatened existence of local emergency when said county is affected or likely to be affected by a public health emergency and/or extraordinary disturbance and the County Board is not in session; and

WHEREAS, the Office of Emergency Management of Milwaukee County does hereby declare that Milwaukee County must undertake efforts to prevent the spread of COVID-19, a/k/a Coronavirus, which has been declared a world-wide pandemic by the World Health Organization, and which caused the Governor of the State of Wisconsin to declare a public health emergency under Wis. Stat. § 323.10; and

WHEREAS, the County of Milwaukee is responsible for the well-being of its employees and the public it serves; and

WHEREAS, it must undertake efforts to prevent the spread of COVID-19.

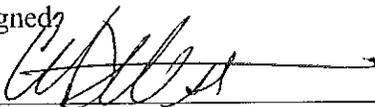
NOW THEREFORE, IT IS HEREBY PROCLAIMED, by the County Executive, that a local public health emergency now exists throughout Milwaukee County; and

IT IS FURTHER PROCLAIMED AND ORDERED, by the County Executive, that during the existence of said local emergency the powers, functions and duties of the emergency management organization of this County shall be those prescribed by State law, and by ordinances and resolutions of this County, and by the Milwaukee County Comprehensive Emergency Management Plan, as previously approved by the Milwaukee County Board of Supervisors; and

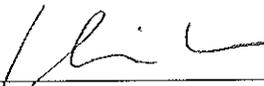
IT IS FURTHER PROCLAIMED AND ORDERED, by the County Executive, acting under the powers granted pursuant to Wis. Stat. § 323.14(4)(b), for and on behalf of the employees and residents of Milwaukee County, will do whatever is necessary and expedient to protect the health and well-being of Milwaukee County, including the issuance of Administrative Orders and other directives as may be required.

Adopted this 13 day of March, 2020.

Signed,



Milwaukee County Office of Emergency Management, Director Christine Westrich,



Milwaukee County Executive, Chris Abele.