
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
ANGELA M. LUTZ AMANN
KORINE L. LAND
DONALD L. HOEFT
BRIDGET McCAULEY NASON
PETER J. MIKHAIL
TONA T. DOVE
AARON S. PRICE
DAVID L. SIENKO
CASSANDRA BAUTISTA
SCOTT LUCAS
AMANDA JOHNSON

MEMO

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: May 15, 2020
RE: Ability of City To Meet Via Telephone or Other Electronic Means During Declaration of Statewide or Local Emergency or Continuing Health Pandemic

Section 1. Background. Since March 13, 2020, Governor Tim Walz has issued a series of Executive Orders pursuant to the provisions of Minn. Stat. § 12.31, declaring and subsequently extending a peacetime emergency due to the current COVID-19 pandemic (the “COVID-19 Peacetime Emergency”). Executive Order 20-53, issued on May 13, 2020 and approved the same day by the Executive Council, extended the existing COVID-19 Peacetime Emergency through June 12, 2020 and noted that the same may be further extended by executive order on or before June 12, 2020.

In addition to the COVID-19 Peacetime Emergency declared by Governor Walz, the City of Sunfish Lake has likewise declared a local emergency pursuant to Minn. Stat. § 12.29, subd. 1, which currently extends through June 5, 2020. Based on these emergency declarations, the City Council has been meeting via electronic means (Zoom) pursuant to the provisions of Minn. Stat. § 13D.021. Questions have been raised regarding the City’s continued ability to meet via electronic meetings following the termination of the Governor’s declaration of the COVID-19 Peacetime Emergency on June 12th or at a later date, if further extended.

Section 2. Ability of City Council to Meet via Telephone or Other Electronic Means During an Emergency Declared Under Chapter 12 or a Health Pandemic.

Following the 2003 SARS pandemic and in recognition that during the extraordinary circumstances presented by pandemics and other emergency circumstances, it may be necessary for meetings of public bodies which are ordinarily required to be held in-person pursuant to the provisions of Minn. Stat. Cha. 13, to be held using telephone or other electronic means, the Minnesota Legislature enacted Minn. Stat. § 13D.021. Pursuant to Minn. Stat. § 13D.021, subd.

1(1), meetings of the City Council may be held by telephone or other electronic means when all of the following circumstances exist:

1. The presiding officer, chief legal counsel, or chief administrative officer for the affected governing body determines that an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under chapter 12;
2. All members of the body participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;
3. Members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration;
4. At least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration; and
5. All votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

Minn. Stat. § 12.29, subd. 1 grants cities the authority to declare a local emergency. A local emergency “may be declared only by the mayor of a municipality ... [and] may not be continued for a period in excess of three days except by or with the consent of the governing body of the political subdivision.” Meetings of the City Council may be held pursuant to the provisions of Minn. Stat. § 13D.021 when an emergency is declared under Minn. Stat. Cha. 12 by either the Governor, pursuant to Minn. Stat. § 12.31, subds. 2(a) and 2(b), or by the Mayor, as further extended with the consent of the City Council, pursuant to Minn. Stat. §12.29, subd. 1, provided the other requirements for holding those meetings listed in the statute, including a determination by the mayor or chief legal counsel that an in-person meeting is not practical or prudent due to either a health pandemic or an emergency declared under Chapter 12, are met. Absent a declaration of a state or local emergency, meetings of the City Council may likewise be held pursuant to the provisions of Minn. Stat. § 13D.021 when a health pandemic exists, and a determination is made that meeting in-person is not practical or prudent.¹

Section 3. Ability of City Council to Meet Remotely Outside of Existence of Health Pandemic or Emergency Declared Under Chapter 12.

Upon termination of an emergency,² the City Council has the ability to meet via interactive television per the provisions of Minn. Stat. Sec 13D.02 as follows:

§ 13D.02 MEETINGS CONDUCTED BY INTERACTIVE TV; CONDITIONS.

Subdivision 1. **Conditions.** (a) A meeting governed by section 13D.01, subdivisions 1, 2, 4, and 5, and this section may be conducted by interactive television so long as:

(1) all members of the body participating in the meeting, 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;

(2) members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;

(3) at least one member of the body is physically present at the regular meeting location;

(4) all votes are conducted by roll call so each member's vote on each issue can be identified and recorded; and

(5) each location at which a member of the body is present is open and accessible to the public.

(b) A meeting satisfies the requirements of paragraph (a), although a member of the public body participates from a location that is not open or accessible to the public, if the member has not participated more than three times in a calendar year from a location that is not open or accessible to the public; and

(1) the member is serving in the military and is at a required drill, deployed, or on active duty; or

(2) the member has been advised by a health care professional against being in a public place for personal or family medical reasons. This clause only applies when a state of emergency has been declared under section 12.31, and expires 60 days after the removal of the state of emergency.

The statute provides additional requirements for meetings conducted under this section, including specific notice requirements related to the locations where members of the Council will be participating from.

Section 4. Conclusion. Based on the currently declared statewide and local emergencies, the Council may continue to meet via telephone or other electronic means pursuant to Minn. Stat. § 13.021. Upon expiration of the governor's declaration of emergency, meetings may continue to be held under Minn. Stat. § 13.021 provided that a local emergency or health pandemic exists which make it neither prudent nor practical for meetings to be held in-person or pursuant to Minn. Stat. § 13D.02.

¹ In the unlikely event that a health pandemic exists, but there is no emergency declaration pursuant to the provisions of Chapter 12, meetings may still be held under Minn. Stat. § 13D.021.

² Per Minn. Stat. Sec. 13D.021, subd. 1, even during a health pandemic or emergency declared pursuant to Chapter

12, if the Council is able to meet via interactive television pursuant to Minn. Stat. § 13D.02, it must do so. However, until after the cessation of the declaration of a state of emergency, such a meeting would require the location where the council member is attending be open to the public, which, with the nature of the COVID-19 health pandemic, is clearly neither practical nor prudent.

RESOLUTION NO. 20-_____

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION EXTENDING EXISTING DECLARATION OF LOCAL EMERGENCY

WHEREAS, on March 13, 2020, Governor Tim Walz, by way of Emergency Executive Order 20-01, declared a Peacetime State of Emergency to authorize any and all necessary resources to be used in support of the COVID-19 response, which COVID-19 Peacetime Emergency remains in effect within the State of Minnesota; and

WHEREAS, by that Proclamation and Declaration of Emergency dated March 16, 2020, Mayor Dan O’Leary declared that a local emergency existed due to the COVID-19 health pandemic; and

WHEREAS, on March 19, 2020, the City Council adopted Resolution No. 20-06 which agreed with the Mayor’s Proclamation and Declaration of Emergency, consented to the declaration of a local emergency due to the COVID-19 health pandemic, and extended the declaration of local emergency until June 5, 2020; and

WHEREAS, the City Council of the City of Sunfish Lake finds that the existing local emergency will continue past June 5, 2020, therefore necessitating an extension of the existing declaration of local emergency.

WHEREAS, the presiding officer of the Planning Commission concurs with this resolution.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Sunfish Lake, Minnesota, as follows:

1. The City Council finds that the existing local emergency due to the COVID-19 health pandemic will continue past June 5, 2020.
2. The City Council hereby extends the existing declaration of local emergency until such time as the City Council takes formal action to declare that the local emergency due to the COVID-19 health pandemic has ended and to rescind the declaration of local emergency.
3. All of the authorizations and approvals granted in the initial Proclamation and Declaration of Emergency and in Resolution No. 20-06 are hereby continued for the duration of the existence of the previously-declared and extended local emergency, and the Mayor and City Staff are authorized and directed to take any and all additional actions necessary or convenient in order to accomplish the intent of this Resolution, the initial Proclamation and Declaration of Emergency, and Resolution No. 20-06.
4. The City Council and Mayor hereby determine as follows:
 - a. That in-person meetings of the City Council and Planning Commission of the City of Sunfish Lake are not practical or prudent, due to the COVID-19 health pandemic, existing COVID-19 Peacetime Emergency, and existing local emergency.

- b. That due to the health pandemic and existing local emergency and due to the capacity limitations of the regular meeting location, it is not feasible to have members of the public present and in attendance at the regular meeting location of the Council and Planning Commission.
- c. That due to the health pandemic and local emergency, it is not feasible to have a member of the Council or the Planning Commission (as the case may be) or the City Attorney or the City Administrator present at the regular meeting location of the Council or Planning Commission.
- d. That under such circumstances, pursuant to Minnesota Statutes § 13D.021, meetings of the City Council and the Planning Commission may be conducted by telephone or other electronic means

The City Council hereby extends the authority to all city public bodies to conduct public meetings pursuant to and in compliance with Minnesota Statutes, Section 13D.021 until such time as the presiding officer of each body determines, in consultation with the City Attorney, that it is no longer impractical or imprudent for the respective public body to resume in-person meetings or the termination of this declaration of local emergency, whichever occurs first.

- 5. The City Clerk is authorized and directed to file and post notice of adoption of this resolution and any emergency regulations as authorized and required by State law or City Code and City Staff are authorized and directed to take any and all additional actions necessary or convenient to accomplish the intent of this resolution. Notice of meetings to be held by telephone or other electronic means shall be posted on the City bulletin board.

Adopted by the City Council of the City of Sunfish Lake this 2nd day of June, 2020.

Ayes:

Nays:

Attest:

Attest:

Dan O'Leary, Mayor

Catherine Iago, City Clerk