TELECONFERENCE/INTERNET MEETINGS

1. **Official Meeting.** A gathering of a public body is an official meeting if (a) it includes a quorum of the public body and (b) official business of that public body is discussed.

2. **Internet/Teleconference.** Official meetings may be held by teleconference. (SDCL 1-25-1.5). For purposes of South Dakota open meeting laws, the term “teleconference” includes the exchange of information by audio, video, or electronic means (including the internet).

3. **Notice and Agenda.** The media and public must be notified of teleconference meetings using the same procedure as any other official meeting. (SDCL 1-25-1.1). This includes posting notice and a proposed agenda at least 24 hours in advance of the meeting (a) on the City’s website (if one exists) AND (b) at the City’s principal office. If special or rescheduled meetings are to be held by teleconference, notice must be provided the same as other special meetings (personal, electronic, or telephonic delivery of notice to members of the local media who have requested such notices and compliance with the remainder of SDCL 1-25-1.1 to the extent circumstances permit).

4. **Teleconference Instructions.** As a practical matter, the notice and agenda for teleconference meetings should include clear and uniform instructions so all members of the public are advised of the means and methods to be used. Practical limitations (like reserving a number of telephone lines) may be at issue and members of the public may be required to contact the public body in advance so adequate facilities are available. If that is the case, the notice should explain who to contact and any deadlines that apply.

5. **Meeting materials.** Under state law (SDCL 1-27-1.16), meeting materials must be made public, including materials for teleconferences. Any printed material relating to an agenda item that is prepared or distributed by or at the direction of the public body or its employees prior to a meeting must be (a) posted on the public body’s website (where one exists) or made available to the public at least twenty-four hours prior to the meeting, or (b) posted or made available to the public when given to members of the public body, whichever is later. If the material is not posted to a website, at least one copy must be available in the meeting room for viewing by the public while the governing body is considering the printed material. Please note: If information is distributed via email (or email responses), tweets, Facebook, or otherwise “distributed” in any way by a public body or its staff before the meeting
and relates to an agenda item, such material is subject to this statute. However, this requirement does not apply to material that is otherwise exempt from disclosure under state law or any printed material or record regarding the agenda item of an executive session.

6. Voting. A member is deemed present at a teleconference meeting if that member answers “present” to the roll call conducted for the purpose of determining a quorum. Each vote at an official meeting held by teleconference must be taken by roll call. (SDCL 1-25-1.5)

7. Public Participation/Comment. The open meeting laws provide that official meetings may be held by teleconference only if the public is afforded the opportunity to listen as follows:

a. When a quorum of the public body is physically present in one location, members of the public must be allowed to attend and participate at that location (except for portions of meetings properly closed for executive sessions). (SDCL 1-25-1.6). Further, the public body may choose, in its sole discretion, to allow members of the public to listen and/or participate by teleconference from a different location. If it does so, a plan or policy should be in place so the opportunity to participate is evenhanded. (see item 7.f. below).

b. When less than a quorum of the governing body is physically present at a physical location open to the public (with the rest of the quorum participating by phone or other electronic means), arrangements must be made for the public to listen by telephone or internet (except for portions of meetings properly closed for executive sessions). (SDCL 1-25-1.6).

c. The Chair must allow for public comment at all regularly scheduled official meetings (meetings designated as regular meetings by statute, rule, or ordinance). This includes teleconference meetings if they are regularly scheduled official meetings. (SDCL 1-25-1). The time for comment may be limited at the governing body’s discretion.

d. Public comment is not required unless meetings are regularly scheduled official meetings. (SDCL 1-25-1). For official meetings held by teleconference that are not regularly scheduled official meetings, any public participation may be limited to the extent provided in SDCL 1-25-1.6.

e. Regardless of whether a public body is required to allow the public to participate by teleconference means, or voluntarily does so, the public body should plan for the meeting involved (or develop a uniform policy if teleconferences are routine). For example, what means of communication will be allowed? Will it be telephone, Skype, or other type of interactive audiovisual internet site? Will it include email, texting, or personal messaging to a central site, or email, texting or personal message to a quorum of the public body, or something else? Will time limits apply the same as participation at the physical location? What
criteria will be used to make meeting materials available to the public and to maintain a record of those materials?

f. If teleconference participation by the public is not required by law, but allowed anyway, will all members of the public be afforded the same opportunity? If not, the public body should establish criteria. Will teleconference participation be allowed only to those who would otherwise need to travel a long distance to attend in person? Or to those who have physical limitations? Will members of the public be allowed to participate telephonically in quasi-judicial proceedings like conditional use permit hearings or liquor license matters? If so, the governing body’s attorney should be consulted to ensure the procedures are consistent with due process as required by law. Although not expressly stated in the open meeting law, indiscriminately allowing some members of the public to participate by teleconference without providing the same opportunity to others may present controversy and/or prompt allegations that such conduct violates the spirit of the open meeting law or other legal concerns.

8. Minutes. The laws regarding minutes of teleconference meetings apply the same as any other meetings. The exact language of the two provisions is as follows:

a. SDCL 9-18-1 (cities only). The governing body of each municipality shall publish, within twelve business days, the minutes for each meeting of the governing body including a detailed statement of all expenditures of money and the name of each person paid and the service provided. The municipality shall pay for the publication of the minutes not to exceed ninety percent of the legal line rates for weekly newspapers and not to exceed the legal line rate for daily newspapers as provided in § 17-2-19.

b. SDCL 1-27-1.17 (all governing bodies including cities). The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body’s website within five business days after the meeting.

9. Quasi-Judicial Matters. When hearing quasi-judicial matters, public officials are required to rely on evidence presented during the hearing. To the extent an official becomes aware of additional information outside the hearing (whether verbal, written, through the internet, or from other sources) and that material is not otherwise produced during the hearing, the official is required to disclose the information in the public record to afford all parties an opportunity to respond or participate. A record must be made of the specific information obtained from outside the hearing. Failure to make the disclosure may result in disqualification of the officer involved if the officer relies on such outside information. (SDCL 6-1-20).
2018 AND 2019 LEGISLATIVE UPDATES

1. 2018 -HB 1172 required public bodies to allow public comment at official meetings. The language was contained in SDCL 1-25-1 and stated as follows:

   The Chair of the public body shall reserve at every official meeting by a public body a period for public comment, limited at the Chair’s discretion, but not so limited as to provide for no public comment.

2. 2019-SB 91 contains several updates. In addition to style and form changes, it:

   a. Revised the 2018 public comment requirement, to read as follows:

      The chair of the public body shall reserve at every regularly scheduled official meeting a period for public comment, limited at the public body’s discretion, but not so limited as to provide for no public comment. At a minimum, public comment shall be allowed at regularly scheduled official meetings which are designated as regular meetings by statute, rule, or ordinance. Public comment is not required at official meetings held solely for the purpose of an inauguration, swearing in of newly elected officials, or presentation of an annual report to the governing body regardless of whether or not such activity takes place at the time and place usually reserved for a regularly scheduled meeting (2019 additions underlined).

   b. Addressed the scope of the term “official meeting.” While “official meeting” still refers to situations where (a) a quorum of a public body is present, and (b) official business or public policy of that body is discussed or decided, SB 91 recognizes some situations are outside the control of the public body and should be handled differently.

      i. For any event hosted by a nongovernmental entity to which a quorum of the public body is invited and public policy may be discussed, but the public body does not control the agenda, the political subdivision may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-1.1 or 1-25-1.3 and shall contain, at a minimum, the date, time, and location.

      ii. It is not an official meeting of a public body if its members attend a press conference called by a representative of the public body.

      iii. Note: In a similar vein, existing law already provided that it is not an official meeting of one political subdivision or public body if its members provide information or attend the official meeting of another political subdivision or public body for which the notice requirements of § 1-25-1.1 (City meetings) or 1-25-1.3 (state agency meetings) have been met.

   a. Previously SDCL 1-25-2 and SDCL 9-34-19 provided that executive sessions could be held for the following reasons:

      i. Employee/ Personnel Matters
      ii. Student Issues
      iii. Communication w/ attorney (lawsuits – contracts etc.)
      iv. Labor Negotiations
      v. Marketing Strategies (Municipal Liquor Stores)
      vi. Economic development- (SDCL 9-34-19)

   b. The 2019 change amends SDCL 1-25-2 to allow executive sessions for “discussing information listed in subdivisions 1-27-1.5(8) and 1-27-1.5(17).” This allows for certain confidential safety/security information to be discussed in executive session:

   SDCL 1-27-1.5(8) Information pertaining to the protection of public or private property and any person on or within public or private property including:
   (a) Any vulnerability assessment or response plan intended to prevent or mitigate criminal acts;
   (b) Emergency management or response;
   (c) Public safety information that would create a substantial likelihood of endangering public safety or property, if disclosed;
   (d) Computer or communications network schema, passwords, or user identification names;
   (e) Guard schedules;
   (f) Lock combinations; and
   (g) Any blueprint, building plan, or infrastructure record regarding any building or facility that would expose or create vulnerability through disclosure of the location, configuration, or security of critical systems of the building or facility;

   SDCL 1-27-1.5 (17) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law enforcement equipment or personnel;

   c. NOTE: A public body MUST cite the “specific law” authorizing an executive session when it votes to enter into executive session. This law has been in effect for several years.

This outline is general. City attorneys should be consulted regarding specific legal situations. Nothing in this outline is not intended to create an attorney-client relationship or substitute
for the advice of attorneys hired by or elected to serve local government entities. Further, this presentation is not made on behalf of the City of Sioux Falls or the State of South Dakota, or any other entity and may not necessarily represent the views of any specific entity.