

Town Administrator Report

Remote Participation

submitted to

South Hadley Selectboard

September 15, 2015

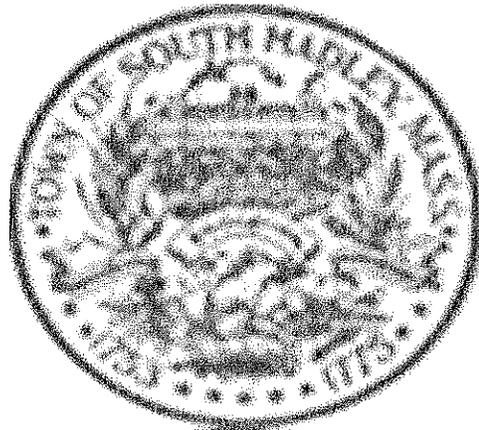


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**Section
One**

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating these regulations, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, sec. 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that authorization or vote applying to ~~all~~ subsequent meetings of ~~all~~ local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, sec. 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other;

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, sec 20(d);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, sec. 23D.

(5) Permissible Reasons for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), if the chair or, in the chair's absence, the person chairing the meeting, determines that one or more of the following factors makes the member's physical attendance unreasonably difficult:

(a) Personal illness;

(b) Personal disability;

(c) Emergency;

(d) Military service; or

(e) Geographic distance.

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications:

(i) telephone, internet, or satellite enabled audio or video conferencing;

(ii) any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.

(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.

(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, sec. 22.

(8) Further Restriction by Adopting Authority. These regulations do not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or

regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines, after investigation, that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

Note that the Attorney General's regulations enable members of public bodies to participate remotely if the practice has been properly adopted, but do not require that a public body permit members of the public to participate remotely. If a public body chooses to allow individuals who are not members of the public body to participate remotely in a meeting, it may do so without following the Open Meeting Law's remote participation procedures.

How can the practice of remote participation be adopted?

Remote participation may be used during a meeting of a public body if it has first been adopted by the chief executive officer of the municipality for local public bodies, the county commissioners for county public bodies, or by a majority vote of the public body for retirement boards, district, regional and state public bodies. The chief executive officer may be the board of selectmen, the city council, or the mayor, depending on the municipality. See G.L. c. 4, § 7.

If the chief executive officer in a municipality authorizes remote participation, that authorization applies to all public bodies in the municipality. 940 CMR 29.10(2)(a). However, the chief executive officer determines the amount and source of payment for any costs associated with remote participation and may decide to fund the practice only for certain public bodies. See 940 CMR 29.10(6)(e). In addition, the chief executive officer can authorize public bodies in that municipality to "opt out" of the practice altogether. See 940 CMR 29.10(8).

Note about Local Commissions on Disability: Beginning on April 7, 2015, local commissions on disability may decide by majority vote of the commissioners at a regular meeting to permit remote participation during a specific meeting or during all commission meetings. G.L. c. 30A, § 20(e). Adoption by the municipal adopting authority is not required.

What are the permissible reasons for remote participation?

Once remote participation is adopted, any member of a public body may participate remotely if the chair (or, in the chair's absence, the person chairing the meeting) determines that one of the following factors makes the member's physical attendance unreasonably difficult:

1. Personal illness;
2. Personal disability;
3. Emergency;
4. Military service; or
5. Geographic distance.

What are the acceptable means of remote participation?

Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Text messaging, instant messaging, email and web chat without audio are not acceptable methods of remote participation. Note that accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

What are the minimum requirements for remote participation?

Any public body using remote participation during a meeting must ensure that the following minimum requirements are met:

1. A quorum of the body, including the chair or, in the chair's absence, the person chairing the meeting, must be physically present at the meeting location;
2. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
3. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

What procedures must be followed if remote participation is used at a meeting?

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely and which of the five reasons listed above requires that member's remote participation. The chair's statement does not need to contain any detail about the reason for the member's remote participation other than the section of the regulation that justifies it. This information must also be recorded in the meeting minutes.

Members of public bodies who participate remotely may vote and shall not be deemed absent for purposes of G.L. c. 39, § 23D. In addition, members who participate remotely may participate in executive sessions but must state at the start of any such session that no other person is present or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

If technical difficulties arise as a result of utilizing remote participation, the chair (or, in the chair's absence, person chairing the meeting) may decide how to address the situation. Public bodies are encouraged, whenever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.



The Official Website of the Attorney General of Massachusetts

Attorney General Maura Healey

[Home](#) > [Government Resources](#) > [Open Meeting Law](#) > [OML FAQ: Remote Participation](#)

OML FAQ: Remote Participation

Remote Participation

If the practice of remote participation has been authorized in a municipality, may an individual public body adopt a policy prohibiting or further restricting its use?

No. Only the adopting authority specified in 940 CMR 29.10(2) may establish restrictions on the use of remote participation. The adopting authority can authorize the practice for all public bodies within its jurisdiction but give all public bodies the opportunity to opt out of the practice, however.

What types of restrictions may an adopting authority place on remote participation?

An adopting authority, such as the Board of Selectmen in a town, may decide to adopt the practice of remote participation, but place restrictions on its use. Just as the adoption of remote participation must apply to all public bodies within the adopting authority's jurisdiction, however, any restriction on remote participation, other than on the amount or source of payment for any costs associated with the practice, must apply uniformly to all public bodies within the adopting authority's jurisdiction. **Note:** A local commission on disability that has separately adopted remote participation may set restrictions on use by its members.

For instance, a Board of Selectmen may choose to adopt a policy saying that no member of any public body in the town may participate remotely in more than three meetings each year. Or the Board may adopt a policy stating that a last minute lack of childcare shall be considered a personal emergency justifying remote participation under 940 CMR 29.10 (5) (c). However, the Board may not authorize the practice but say that only the Board of Selectmen can utilize it. The Board can say that funds for the purchase of necessary equipment will only be allocated for the Board's use, though.

An adopting authority also may not adopt a policy that violates state or federal law. Thus, it is not permissible for an adopting authority to say that no member may participate remotely due to personal disability or geographic distance, since these are allowable reasons for remote participation under the Attorney General's regulations. But the adopting authority can adopt a policy saying that any member wishing to participate remotely due to geographic distance must be a certain distance from the meeting location for his or her physical attendance to be considered unreasonably difficult.

If remote participation has been adopted, must a quorum of a public body be physically present at the meeting location?

Yes. A quorum of a public body, including the person chairing the meeting, must be physically present at the meeting location. The only exception to this general rule is for local commissions on disability (see below).

May a local commission on disability use remote participation even if the practice has not been adopted by its municipal adopting authority?

Yes. Local commissions on disability may decide by majority vote of the commissioners at a regular meeting to permit remote participation during a specific meeting or during all commission meetings. Adoption by the municipal adopting authority (i.e. Board of Selectmen or Mayor) is not required.

Must a quorum of a local commission on disability always be physically present at the meeting location?

No. Effective July 1, 2015, if a local commission on disability has adopted remote participation, a quorum of the commission does not need to be present at the meeting location. However, a local commission on disability must still provide a physical meeting location where interested members of the public may attend and hear the discussion by the body. Additionally, the commission's chair, or the person chairing the meeting in the chair's absence, must be present at the meeting location. This means that if the chair wishes to participate remotely, he or she may do so, but may not then chair the meeting. Finally, note that while the law requires that only one member of a local commission on disability (the chair) be physically present at the meeting location, a quorum of the commission must still participate, remotely or in person, for a "meeting" to occur.

Section

Two

**REMOTE PARTICIPATION POLICY
TOWN OF HADLEY
ADOPTED 6/6/12**

PURPOSE STATEMENT

The Office of the Attorney General amended the Open Meeting Law regulations at 940 CMR 29.00 to allow members of public bodies, in limited circumstances, to participate remotely in meetings. While all members of Town Boards and Committees should try to attend meetings in person, the new regulations seek to promote greater participation in government meetings by allowing members to participate remotely when certain specific circumstances prevent them from being physically present.

The intent of this policy is to establish clear guidelines on the practice of remote participation by Town Boards and Committees under the Open Meeting Law MGL Chapter 30A, Sections 18-25.

ENABLING AUTHORITY

A municipality may adopt a policy that any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may enact policies, laws, rules or regulations that define, prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

ADOPTION OF REMOTE PARTICIPATION

In accordance with 940 CMR 29.10(2)(a), the Select Board hereby adopt 940 CMR 29.10 so that remote participation is permitted in the Town. In accordance with 940 CMR 29.10(3), the Select Board may revoke its adoption at any time in accordance with 940 CMR 29.10.

This policy and 940 CMR 29.10 shall apply to all Town boards, committees, commissions, sub-committees and working groups regardless of whether such public bodies are appointed or elected. Where the Remote Participation Policy is more stringent than 940 CMR 29.10, the Policy shall control. This policy may be amended by the Select Board at any time in accordance with 940 CMR 29.10.

MINIMUM REQUIREMENTS FOR REMOTE PARTICIPATION

Members of the public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other.

A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by MGL Chapter 30A, Section 20(d).

Members of the public body who participate remotely must have access to the same materials being used at the meeting location.

Members of the public bodies who participate remotely may vote and shall not be deemed absent for the purposes of MGL Chapter 39, Section 23D.

PERMISSIBLE REASONS FOR REMOTE PARTICIPATION

It is the express intent of the Select Board that remote participation in meetings be an infrequent event, for both individual public body members and Town Boards and Committees as a whole. Chairs of public bodies are encouraged to interpret these rules in a strict fashion and to continue to induce all members to attend meetings in person as a general rule, due to inherent benefits of physical presence in a meeting.

A Board or Committee member may attend a meeting through electronic conferencing if his or her physical presence at the meeting is prevented due to extenuating circumstances such as: personal illness or disability; a family or other emergency; military service; significant geographic distance (due to personal employment or business with public body).

The determination by the person chairing the meeting to allow or not to allow remote participation shall be final and shall not be appealable. Factors in this determination may include, but shall not be limited to, the specific challenges faced by the board or committee member to attend all or part of the meeting; the relative importance of the items on the agenda to be discussed and decided upon; the ability of the board or committee to provide access to meeting materials.

ACCEPTABLE METHODS OF REMOTE PARTICIPATION

1. Telephone, Internet, or satellite enabled audio or video conferencing.
2. Any other technology that enables remote participation and all persons present at the meeting location to be clearly audible, and ,if possible clearly visible to all persons present at the meeting location.
3. The focus of the chair should always be on maintaining the flow of the meeting. If the chair determines that technical difficulties are inhibiting the progress of the meeting, the chair may elect to terminate the participation of the remote member. If technical difficulties arise as a result of utilizing remote participation, the chair should suspend discussion while reasonable efforts are made to correct any problem that interferes with remote participants' ability to hear or be heard clearly by all persons at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred and subsequent reconnection if achieved shall be noted in the meeting minutes. If a public hearing occurs after disconnection, the member shall be noted as absent.

Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive communication.

PROCEDURES FOR REMOTE PARTICIPATION

Any member of a public body who wishes to participate remotely shall, within 48 hours or as soon as reasonably possible prior to the meeting, notify the chair or person chairing the meeting of his or her desire to do so and the reasons for and facts supporting his or her request.

1. Prior to the meeting, the chair shall make every effort to ensure the equipment is available and functioning properly. If the required equipment is not available, then the chair shall deny the request for remote participation.
2. At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. This information shall also be recorded in the meeting minutes.
3. All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
4. Remote participants shall preserve the confidentiality of executive session. The remote participant shall state at the start of any such session that no other person is present or is able to hear or witness the discussion at the remote location, unless presence of that person is approved by simple majority vote of the public body. The session shall not be recorded by any device at the remote location.
5. The Town shall not be responsible for the reimbursement of any out-of-pocket costs associated with the remote participation of Board or Committee members.
6. Members participating remotely are cautioned that the same obligations of consideration apply as in any physical meeting. Remote participants should direct all their attention to the meeting, and should make their decisions based upon the same information as is available to all other participants at the meeting.

VOTED: To allow remote participation for meetings of Town Boards, Committees and Commissions, including the School Committee and public bodies organized by the Schools in accordance with the requirements of the applicable regulations, 940 CMR 29.10 subject to the following:

Pursuant to this Board's authority under 940 CMR 29.10 (8) the Board adopts the following policy conditioning and limiting the use of remote participation:

1. Prior to using remote participation, the Chair and any subsequent Chair as well as any staff person assigned to such Board, Committee or Commission shall be trained by Town Counsel or her designee to review the requirements of the regulations with respect to remote participation; and

2. Remote participation shall only be allowed in public buildings and public schools in rooms with town issued phones so as to ensure the member participating remotely is audible to all persons present at the meeting.

3. At this time Internet, satellite video or so-called face-time conferencing is not permitted without the express written permission of Town Counsel and the Chief Information Officer.

4. The Chair or staff person shall provide the Information Services Department with a reasonable amount of time to ensure there is a functioning phone with speaker phone capability in the particular room where the meeting will be held. A reasonable amount of time shall be no less three hours during regular business hours prior to the start of the meeting.

5. This vote and policy applies to all Town and School public bodies that are subject to the Open Meeting Law.

Brookline



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Board of Selectmen
REMOTE PARTICIPATION POLICY

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First Reading: June 4, 2014
 Approval Date: June 4, 2014
Trial Period for FY2015
Amended 6/23/2015
Trial Period Extended for FY2016

Purpose.

It shall be the policy of the Board of Selectmen to allow remote participation in accordance with the requirements of Massachusetts Open Meeting Law 940 CMR 29.00, section 29.10, for all subsequent meetings of all Boards, Committees and Commissions in the Town of Chatham, from July 1, 2015 through June 30, 2016, the so called "extended trial period".

Minimum Requirements for Remote Participation.

- a. Members of each Board, Committee, and Commission shall vote on the adoption of the Remote Participation Policy for their Board/Committee/Commission.
- b. Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other;
- c. A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, sec 20(d);
- d. Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, sec. 23D.

Permissible Reasons for Remote Participation.

- a. Personal illness;
- b. Personal disability;
- c. Emergency;
- d. Military Service; or
- e. Geographic distance.

Technology.

- a. Remote participation media will be by telephone or internet enabled audio/video conferencing.
- b. When video technology is in use, the remote participant shall be clearly visible and audible to all persons present in the meeting location.
- c. The public body will determine the media used by its members.
- d. The person chairing the meeting may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

Procedures for Remote Participation.

- a. Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request. The chair /acting chair shall notify the Information Technology Director for remote participation room set- up at least 24 hours prior to the scheduled meeting.
- b. At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. This information shall also be recorded in the meeting minutes.
- c. All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
- d. Costs such as phone or internet charges to the member for remote participation shall be borne by the remotely participating member.
- e. A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.
- f. When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, sec. 22.
- g. The Board of Selectmen may revoke Remote Participation in the same manner as it was adopted.

May a member of the public body participate remotely?

The Attorney General's Regulations, 940 CMR 29.10, permit remote participation in certain circumstances. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

On January 15, 2013 the Board of Selectmen authorized the use of remote participation subject to the regulations and further restricting the use of remote participation. See Vote and Policy of the Board prior to using remote participation.

What are the permissible reasons for remote participation?

Once remote participation is adopted, any member of a public body may participate remotely if the chair or, in the chair's absence, the person chairing the meeting, determines that one of the following factors makes the member's physical attendance unreasonably difficult:

- Personal illness;
- Personal disability;
- Emergency;
- Military service; or
- Geographic distance.

The Chair should not announce any details of a private nature surrounding the reason that the member is participating remotely such as specific details about the illness or disability or where the member is and how long they will be away, etc.

What are the acceptable means* of remote participation?

Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications. Text messaging, instant messaging, email and web chat without audio are *not* acceptable methods of remote participation.

* See Board of Selectmen's Policy adopted on January 15, 2013 limiting and restricting the use of remote participation at this time to the use of telephone conferencing with Town issued phones

What are the minimum requirements for remote participation?

Any public body using remote participation during a meeting must ensure that the following minimum requirements are met:

- **A quorum of the body**, including the chair or, in the chair's absence, the person chairing the meeting, **must be physically present at the meeting location**;
- Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
- All votes taken during a meeting in which a member participates remotely must be by roll call vote.

What procedures must be followed if remote participation is used at a meeting?

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely and which of the five reasons listed above requires that member's remote participation. The chair's statement does not need to contain any detail about the reason for the member's remote participation other than the section of the regulation that justifies it. This information must also be recorded in the meeting minutes.

Members of public bodies who participate remotely may vote, and shall not be deemed absent for purposes of G.L. c. 39, § 23D. In addition, members who participate remotely may participate in executive sessions, but must state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

If technical difficulties arise as a result of utilizing remote participation, the chair or, in the chair's absence, person chairing the meeting may decide how to address the situation. Public bodies are encouraged, whenever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

Section

Three

Massachusetts Open Meeting Law
Remote Participation
940 CMR 29.10



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Introduction

Recently, the Attorney General added 940 CMR 29.10, which allows for remote participation in certain circumstances under the Massachusetts Open Meeting Law Regulations. It is hoped that these changes will increase participation in government. Despite this change, the Attorney General still encourages all members of public bodies to be physically present at meetings whenever possible. Furthermore, the Attorney General's Office cautions that these regulations are not to be used as a way to defeat the transparency goals of the Open Meeting Law.

Adopting Remote Participation

To adopt remote participation, public bodies must follow the requirements laid out in 940 CMR 29.10(2). For local governments, the Chief Executive Officer ("CEO") makes the decision: in cities, the mayor authorizes remote participation; in towns, the Board of Selectmen authorizes by simple majority vote. Once the CEO gives authorization, remote participation applies to all public bodies in that municipality. The Regulations also provide authorization procedures for Regional or District Public Bodies, Regional School Districts, County Public Bodies, State Public Bodies, and Retirement Boards—these bodies adopt by a simple majority vote.

Once a public body adopts remote participation, it then applies to all subsequent meetings for that public body. The regulations, however, do not require the CEO to fund remote participation for all public bodies; thus the CEO retains control over which bodies may use remote participation in its meetings. Furthermore, a public body may revoke remote participation by following the same procedure used for adopting remote participation.

Permissible Reasons for Remote Participation

Because the Attorney General's Office encourages members of public bodies to physically attend all meetings, there are only five permitted reasons for remote participation:

- (1) Personal Illness;
- (2) Personal Disability;
- (3) Emergency;
- (4) Military Service;
- (5) Geographic Distance.

After the member notifies the public body's chair of his or her desire to participate remotely, the chair determines whether the member meets any of the above criteria, thereby making physical attendance unreasonably difficult for him or her.

Requirements, Procedures and Technology

The new regulations promulgate several requirements that must be met before a member may participate remotely. First, before any remote participation, the public body must have a quorum of members physically present at the meeting location. After the quorum is established, the chair must announce the names of any members participating remotely and the reason for his or her absence—but chairs are not required to provide details beyond the above enumerated reasons. That is, if a remotely participating member is on a West Coast business trip, the chair need only announce “geographic distance” as the reason for allowing that member to participate remotely. This information must be recorded in the meeting minutes.

Second, the technology used must allow for all remote members and persons present at the meeting to be clearly audible to each other, and accommodations must be made for any member who requires TTY service, video relay service, or other adaptive telecommunications. Moreover, if video conferencing is used, the remote member must be both clearly audible and clearly visible to all persons present at the meeting. Though the regulations suggest telephone, internet, or satellite-enabled audio or video conferencing, the public body may adopt any

technology that meets the “clearly audible to all participants” requirement. Text messaging, email, instant messaging, web chat, and the like are not permissible means of remote participation. If technical difficulties arise once the meeting is underway, the chair decides how to address such difficulties, but the preferred practice is to suspend discussion while reasonable efforts are made to correct the problem. The meeting minutes must note the technical difficulties if the disconnection becomes permanent.

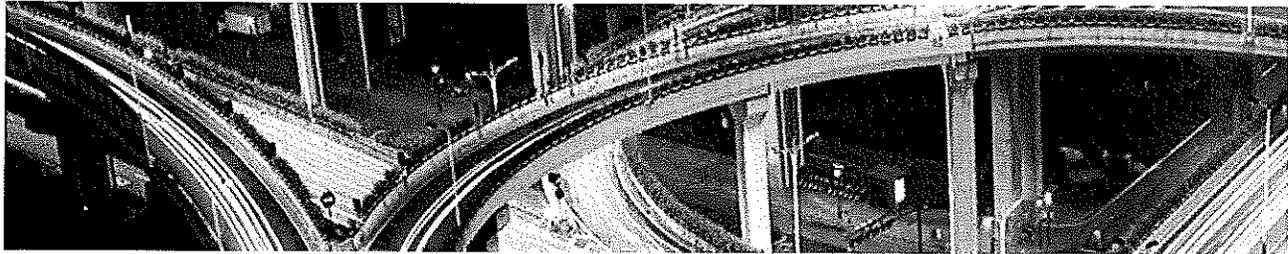
Third, despite not being physically present, the remote participant retains his or her vote, but all votes taken at a meeting where remote participation is used must be by roll-call vote. Moreover, the remote participant is not deemed absent from the meeting for purposes of M.G.L. c. 39, § 23D.

Once the above requirements are met, the meeting proceeds as it normally would. The chair should make all efforts to distribute copies of documents or exhibits expected to be used at the meeting to the remote participant ahead of time—and such distribution should be noted in the minutes. The remote member may also participate in executive sessions, provided he or she ensures that no other person at the remote location is able to hear the discussion.

Lastly, these regulations do not prohibit towns from passing bylaws or policies that restrict or eliminate the use of remote participation by public bodies. And violations of the regulations may result in the Attorney General ordering the temporary or permanent suspension of remote participation.

Questions

If you have any questions or concerns about how these new regulations may affect you or your municipality, please contact one of our attorneys at Collins, Loughran & Peloquin, P.C.



Government Law and Public Finance Advisory



DECEMBER 9, 2011

Remote Participation in Meetings Subject to the Massachusetts Open Meeting Law

BY JOHN R. REGIER

The Massachusetts Attorney General recently promulgated regulations authorizing **remote participation** in meetings subject to the **Open Meeting Law** under certain prescribed circumstances.

The Massachusetts Open Meeting Law has long required public bodies to conduct their business in meetings that are open to the public. They cannot, for example, take action by unanimous written consent, as many private sector boards can. Before 2009, when the legislature enacted substantial revisions to the Open Meeting Law, there was some uncertainty about whether members of public bodies could participate in meetings by telephone. The Attorney General's office had always said no, but a few district attorneys, who had jurisdiction over meetings of local bodies, had said yes.

When the law was revised in 2009, the answer became clear. Remote participation in meetings was prohibited, effective July 1, 2010, without the permission of the Attorney General's office. (The power to enforce the Open Meeting Law was also consolidated in the Attorney General's office.) The Attorney General was given the power to authorize remote participation by members of a public body not present at the meeting location, so long as the absent members and all persons present at the meeting location would be clearly audible to each other and so long as a quorum of the body, including the chair, would be present at the meeting location. By promulgating the new regulations, the Attorney General has decided to allow such remote participation under certain circumstances, although the Attorney General strongly encourages members of public bodies to be physically present at meetings whenever possible.

If a public body wishes to avail itself of this flexibility, it must first take formal action to adopt the practice of remote participation, generally by majority vote of the body. Such a vote will permit remote participation in subsequent meetings of that body and of its committees. In the case of cities and towns, the mayor (or other chief executive officer) in a city and the board of selectmen (or other chief executive officer) in a town are authorized to adopt the practice for all local public bodies in that municipality.

As required by the statute, members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other, and a quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, must be physically present at the meeting location. Members of the public body who participate remotely are permitted to vote.

There are five permissible reasons for remote participation. The chair (or other person chairing the meeting) must make a determination that one or more of the following factors make the member's physical attendance unreasonably difficult:

- (a) personal illness;
- (b) personal disability;
- (c) emergency;
- (d) military service; or
- (e) geographic distance.

At the start of the meeting, the chair must announce the name of any member who will be participating remotely and the reason. All votes must be taken by a roll call.

A member participating remotely may participate in an executive session, but must state at the start of the session that no other person is present and/or able to hear the discussion at the remote location, unless the presence of that person is approved by a simple majority vote of the public body.

A public body may use any technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another, including telephone, Internet, or satellite-enabled audio or video conferencing. If video technology is used, the remote participant must be clearly visible to all persons present in the meeting location.

A municipality or public body may adopt policies that prohibit or further restrict remote participation.

We will provide further alerts and advisories on future guidance and regulations issued regarding the new Open Meeting Law.

* * *

Mintz Levin has been working with clients to analyze current practices to ensure compliance with the new Open Meeting Law and regulations. We can help conduct trainings and develop or review meeting policies. We also work with our private clients to ensure their proprietary and confidential information provided to a public body remains protected.

[Click here to view Mintz Levin's Public Finance attorneys.](#)

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Section

Four

REMOTE PARTICIPATION

Checklist for Chair or Acting Chair

_____ The member has contacted me and I have determined that one of the following factors makes the member's physical attendance unreasonably difficult:

- *Personal Illness;*
- *Personal Disability;*
- *Emergency;*
- *Military Service; or*
- *Geographic distance*

_____ There will be a quorum (simple majority) of members, including the Chair or acting Chair, physically present at the meeting.

_____ I (or the staff person assigned to the Board/Committee) have secured a room in a public building with a town/school issued phone with speaker phone capability in accordance with the Selectmen's Policy.

_____ I (or the staff person) have made reasonable efforts to distribute to the remote participant(s), in advance of the meeting copies of documents that may be used during the meeting.

_____ At the start of the meeting I must announce the name of the member participating remotely and the reason he/she is participating remotely (without giving details about the reason.) This announcement must be recorded in the minutes.

_____ The phone is working and the remote participant is clearly audible to those present at the meeting.

_____ All votes will be taken by ROLL CALL vote.

_____ If there are TECHNICAL DIFFICULTIES I will suspend discussion while efforts are made to correct the problem. If there is a DISCONNECTION, I will note that fact in the minutes and the time of the disconnection.

_____ If an EXECUTIVE SESSION, I have asked the member participating remotely to state for the record that no other person is present and/or able to hear the discussion at the remote location, unless the presence of that person has been approved by the public body.

**Section
Five**

Remote Participation Survey Results Mike

Questions	Hanson	Wayland	Charlton
Does your community allow it? If so, how often is it used? Has the use of it increased or decreased since you began using it?	Yes, hardly ever, no	Yes, not often, remains infrequent	Yes, maybe 3 times a year, no, pretty steady
Does it cost anything to set up?	No, our meeting rooms have speaker phones	See next question	No, we use a speaker phone in the selectmen's room
Does it require any special equipment?	No	You need an adequate speaker phone for the audience to be able to hear the remote participant	See above
Do you have any local regulations (beyond the state law) about the use?	No	No	See attached policy
Is there a time of year that it is used more?	Hardly ever used	Not that has become apparent	Summer
Is there a certain type of use for it?	No	Not thus far	Board of Selectmen when they are away on business

Remote Participation Survey Results Mike

Questions	West Bridgewater
<p>Does your community allow it? If so, how often is it used? Has the use of it increased or decreased since you began using it?</p>	<p>Yes, Selectmen voted to accept it as an acceptable way to conduct meetings, but mandated that each Committee would have to vote on whether or not they approved the use of it for their meetings. Some did approve it, some didn't.</p>
<p>Does it cost anything to set up?</p>	<p>No related cost. However, we already have speaker phones. The cost would come if you buy special equipment, like a conference phone. These can be quite costly. My research found a great one that would project sound well and collect sound from around the table - from all the meeting participants - that was about \$300</p>
<p>Does it require any special equipment?</p>	<p>See above, basically it is your choice</p>
<p>Do you have any local regulations (beyond the state law) about the use?</p>	<p>Nothing above state rules. I did a memo that broke down the various steps for all of the boards/committees to use. The biggest thing is to note that there has to be a quorum, the Chairman can't be the chair and be participating remotely, and that it must be announced that one member is participating remotely. For Executive Session, the member participating remotely must state that s/he is in a room where no one else is and no one else can hear what s/he is saying.</p>
<p>Is there a time of year that it is used more?</p>	<p>Not really</p>
<p>Is there a certain type of use for it?</p>	<p>Not really</p>

Remote Participation Survey Results Mike

Questions	Holland	Swampscott
<p>Does your community allow it? If so, how often is it used? Has the use of it increased or decreased since you began using it?</p>	<p>Yes, perhaps 6 times a year, no change since it was introduced...used primarily FinCom, since a couple of the members travel extensively on business</p>	<p>Yes</p>
<p>Does it cost anything to set up?</p>	<p>Not in our case - a standard speakerphone works for us. If we were to use remote participation with a sizable audience, better audio equipment would be required.</p>	<p>No</p>
<p>Does it require any special equipment?</p>	<p>See above</p>	<p>Speaker phone</p>
<p>Do you have any local regulations (beyond the state law) about the use?</p>	<p>No</p>	
<p>Is there a time of year that it is used more?</p>	<p>Winter - due to travel conditions where some members have to travel from their business location back to town. We have not encountered a situation where remote participation is used for anything or than weather or excessive distance situations.</p>	<p>No</p>
<p>Is there a certain type of use for it?</p>	<p>Generally for a couple of the FinCom member, since they travel a lot for business</p>	<p>No</p>

Remote Participation Survey Results Mike

Questions	Southborough	Halifax	Nahant
Does your community allow it? If so, how often is it used? Has the use of it increased or decreased since you began using it?	Yes	Yes, once or twice a year	Yes
Does it cost anything to set up?	No	No	No
Does it require any special equipment?	Conference Phone	Phone in center of table	Skype
Do you have any local regulations (beyond the state law) about the use?	No	No	No
Is there a time of year that it is used more?	No	No	No
Is there a certain type of use for it?	Mostly ES	No	No

Remote Participation Survey Results Mike

Questions	Dukes County	Sherborn	Grafton
Does your community allow it? If so, how often is it used? Has the use of it increased or decreased since you began using it?	Yes, every other meeting or so. It varies.	Yes, infrequently, increased slightly	We do allow it. Not often used
Does it cost anything to set up?	No	We Purchased a teleconferencing system at Staples for under \$200	Not really... Good phone system is always need
Does it require any special equipment?	We use Ipad and people skype in, or just regular phone line and we put them on speakerphone	See above, however, many times we have gotten better results with an iPhone on speakerphone instead of using the equipment that has not been reliable	No
Do you have any local regulations (beyond the state law) about the use?	No	BOS Policy enacted allowing Committees and Boards to vote to opt out. We require it to be used only in Sherborn in a room at Town Hall (For Example, Town Meeting is held in a neighboring town and we don't allot it there).	No
Is there a time of year that it is used more?	In winter as some of our members spend more time off island (Martha's Vineyard)	Summer	No
Is there a certain type of use for it?	No - general participation in meetings	In the instances it is used it is because a member is at home injured or away/out of town and whatever is on the agenda was time sensitive	No

**Section
Six**

Town Administrator M. Sullivan

Summary of Findings and Observation

September 11, 2015

Process; Identify Massachusetts communities who have adopted CMR 940 section 29.10 through the MMA ListServe and personal outreach. Research articles and minutes of discussion relative to "remote participation". Examine the CMR and collect copies of legal opinions of the subject matter. The municipalities who participated are a reasonable cross section of the state, economically, geographically and population, all factors of acceptance or use. There is no effective way to my knowledge, as to determine why other communities have not adopted section 29.10, as this may provide balance to the analysis.

Ten communities or organizations participated in the survey, others offered copies of policy, checklists and forms. It was difficult to find an exact figure from either the state or Massachusetts Municipal Association, in respect to the 351 cities and towns and how many have adopted. There is about 25 which have accepted the CMR, from what I can discern. There are some "counties, districts (regional school and utility) and authorities" which have adopted as well. To my knowledge the South Hadley Districts have not accepted the provisions for remote participation or are they considering them at this time.

There is no question, if the South Hadley Selectboard was compelled to accept section 29.10 and set reasonable policy for boards and commissions to be guided by, we are capable of remote participation. The cost factors can be reasonable, depending on the complexity of the system which is directed. Video which can be observed by all attendees and participants is possible, but more complex than the basic phone in model, therefore more costly. In some policies the remote participant is tasked with having compliant platform when they participate. It should likely be made component of consideration as to which side of the transmission will be responsible for what devices.

In my conversations with communities who have already implemented 29.10, there is moderate to low usage. The Sherborn ATA stated "...it has been used a few times by the Selectboard and a couple of times by planning". When asked if it had increased participation by citizens in respect to boards and committees overall, each communities contact said there has been "no effect" from the interviewees perspective on the level of participation. Each community still struggles to fill all boards and commissions (sound familiar), it would seem being able to participate remotely has little or no effect on citizen desire to serve on boards or otherwise participate other than remove this polite excuse.

The Wayland contact had two interesting observations in their use of 29.10. One, was there was a nuance difference for remote participants and the public attending a meeting. On both sides

of the receiver there was missing body language, facial expressions and misunderstood terms during a discussion. This does not seem to be averted when video is used. It was also suggested the remote participant cannot help but have other distractions when away, work colleagues or hotel staff are not always tuned in to the fact you are remotely at a public meeting.

In one of the conversations it was suggested a well written position paper to be read by the chair on a matter of supreme importance, may be as effective as remote participation. The other "old school" idea was if the topic or subject matter was of such importance, there is usually time to re-schedule. It goes without saying on occasion there is factors which will not allow rescheduling, in these seemingly infrequent situations, remote participation may help.

Respectfully, I suggest this is an executive decision and will respect the final outcome. I would only ask the discussion and outcome be aware of the administrative efforts which will be part of formulating policy, managing the requests and disseminating the changes. I thought it was interesting as part conversations with communities who have had it in place for more than two years consistently described the discussion leading up to accepting was much more exercised than the effects of said discussion.

Town Administrator

Michael J. Sullivan

Submitted September 15, 2015