
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.