



TOWN MANAGER POLICY AND REGULATIONS REMOTE PARTICIPATION POLICY AND REGULATION

I. Remote Participation Policy

Purpose

The Open Meeting Law, MGL Chapter 30A section 20 (d), allowed the Attorney General to create regulations to authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Those remote participation regulations are found in 940 CMR 29.10: Remote Participation, within [940 CMR 29.00: Open Meetings](#). In order to promote greater resident participation in local government, this Remote Participation Policy and Regulation describes the circumstances under which a member's physical attendance may not be required to participate in deliberation and voting on matters before a local public body.

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.

Adoption of Remote Participation

This Remote Participation Policy and Regulation is adopted by the chief executive officer, the Town Manager, in accordance with 940 CMR 29.10 (2)(a) and our Charter. The Town Manager may also revoke adoption of 940 CMR 29.10 at any time, per 940 CMR 29.10 (3). The Town Manager may also enact further restrictions within the limitations of 940 CMR 29.10 (8).

Definitions and Scope

This Remote Participation Policy and Regulation applies to all meetings of all local public bodies, whether that body is named committee, board, commission, working group, or other title, including any multiple-member body created to advise or make recommendations to a public body [MGL Chapter 30A section 18; 940 CMR 29.02 and 29.10 (2)(a)].

The Amherst-Pelham Regional School Committee is described by the CMR category of Regional School Districts [940 CMR 29.10 (2)(c)], and therefore is not subject to this Remote Participation Policy and Regulation as it is not a local public body.

The Amherst Housing Authority (AHA) and the Amherst Redevelopment Authority (ARA) are deemed local public bodies [940 CMR 29.02] and are therefore subject to this Remote Participation Policy and Regulation.

The Disability Access Advisory Committee (DAAC) is not an official Commission on Disability as both Representative Town Meeting and Town Council have not accepted MGL Chapter 40 section 8J; the DAAC is therefore subject to this Remote Participation Policy and Regulation.

Public bodies must use the forms provided (see Regulation) in order to avail members of this Remote Participation Policy [940 CMR 29.10 (5) and (8)].

Public bodies may not opt out of Remote Participation [940 CMR 29.10 (8)].

Public bodies may not further restrict use of Remote Participation [940 CMR 29.10 (2)(a) and (8)].

Unless otherwise provided for by another policy, no funds will be expended to purchase equipment or services to facilitate the use of Remote Participation [940 CMR 29.10 (6) and (8)].

Public bodies may allow individuals who are not members of the public body to participate remotely, but that practice is not subject to Remote Participation Policy and Regulation. [Open Meeting Law Guide and Educational Materials, Version January 2018 page 15]

Where this Remote Participation Policy and Regulation is more stringent or detailed than 940 CMR 29.10, this Remote Participation Policy and Regulation shall prevail [940 CMR 29.10 (8)].

History

- January 23, 2017: Select Board voted by simple majority to allow remote participation in accordance with the requirements of 940 CMR 29.10 [940 CMR 29.10 (2)(a)], and further to adopt a Remote Participation Policy and Regulation with an expiration date of December 31, 2017 unless extended prior to that date by simple majority vote of the Select Board.
- December 18, 2017: Select Board voted by simple majority to extend the Policy and Regulation indefinitely.
- January 22, 2018: The Policy and Regulation were updated only to show the December 18, 2017 vote and to formally document a change that had already been implemented per the underlying CMR that changed October 6, 2017.
- June 12, 2021: The Town Manager adopted revisions to the Policy and Regulation.

II. Remote Participation Regulation

Public bodies must use the two provided forms (Remote Participation Checklist and Remote Participation Request) in order to implement this Remote Participation Policy and Regulation. These forms may be revised from time to time but only by the Town Manager. *Contact the Town Manager's office to ensure you are using the current version of the forms.*

Refer to the Definitions and Scope section of the Policy when applying the Regulations.

Minimum Requirements for Remote Participation [940 CMR 29.10 (4)]

- (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 public body, including the person authorized to chair the meeting, shall be physically present at the meeting location, as required by MGL Chapter 30A section 20 (d); even if there are one or more remote participants, the meeting must be adjourned immediately if a quorum is no longer physically present at the meeting location
- (c) Members of public bodies who participate remotely may vote; while a member or members are participating remotely all votes must be taken by roll call as required by CMR 29.10 (7)(c). Members of the Planning Board, Conservation Commission, and Historical Commission (Mullin Rule accepted by Town Meeting 05-06-09 Article 9), and of the Zoning Board of Appeals and Local Historic District Commission (Mullin Rule accepted by Town Council 03-09-20) who participate remotely shall not be deemed absent for the purposes of MGL Chapter 39 section 23D¹

Permissible Reasons for Remote Participation [940 CMR 29.10 (5) and (8)]

Physical attendance would be unreasonably difficult as determined by the person requesting to participate remotely.

Technology: Acceptable Methods of Remote Participation [940 CMR 29.10 (6)]

Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive communications [940 CMR 29.10 (6)(a)].

Acceptable: 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. When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location. The public body shall determine which of the acceptable methods may be used by its members.

¹ MGL Chapter 39 Section 23D (a): Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for one or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.

Not permitted: text messaging, instant messaging, email, or web chat between or among members without audio.

Technical difficulties: 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. If a public hearing occurs after disconnection, the remote participant shall be noted as absent in the meeting minutes [940 CMR 29.10 (8)].

Procedures for Remote Participation [940 CMR 29.10 (7)]

- (a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the person chairing the meeting of their desire to do so via completion of the provided form.
- (b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes. Neither the chair nor others present at the meeting should divulge details about the remote participant's location or reason(s) [940 CMR 29.10 (8)]
- (c) All votes taken during any meeting in which any member participates remotely shall be by roll call vote.
- (d) Remote participants shall preserve the confidentiality of the executive session. The remote participant shall state at the start of any executive session that 1) no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by simple majority vote of the public body, and 2) that the executive session is not being remotely recorded by any device [940 CMR 29.10 (8)].
- (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 they reasonably anticipate will be used during the meeting. Any documents used during the meeting shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with MGL Chapter 30A section 22.