

REMOTE PARTICIPATION ADVISORY  
BOARDS AND COMMISSIONS  
TOWN OF SOUTH HADLEY

This advisory provides an overview of remote participation and the Open Meeting Law, G. L. c. 30A, §§ 18-25. A regulation promulgated by the Attorney General, 940 CMR 29.10 (the “Regulation”), allows the remote participation of board members and only after the chief executive officer of the municipality has authorized its use. The Town of South Hadley Selectboard voted to approve a Remote Participation Policy for ALL Boards on February 21, 2023.

The following methods of remote participation are allowed under the Regulation: telephone, internet, satellite enabled 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.” If video conferencing is used, the remote participant must be visible to all persons present at the meeting. The primary focus of the Regulation is to ensure that all participants of the meeting, both physical and remote, can be heard by all others.

The Regulation allows each individual municipal body to determine which approved method of remote participation it will utilize during its meetings. The chair or acting chair of the meeting is responsible for determining how to handle any technical difficulties interfering with the remote participant’s ability to hear and be heard. The chair is encouraged to suspend discussion at the meeting during any technical difficulties. In the event a remote participant is disconnected from the meeting, the chair or acting chair must note the time of the disconnection in the meeting minutes.

A board member may participate remotely only if a quorum of the board is physically present at the meeting, including the chair or acting chair, and the remote participant’s physical attendance is “unreasonably difficult.” Remote participation will be permitted at the chair of the board or the acting chair’s discretion. We suggest that the chair or acting chair note on the record that he or she has determined that it is “unreasonably difficult” for the remote participant to be physically present at the meeting and therefore has permitted the remote participation.

The following mandatory procedures must be followed any time a municipal board member wishes to attend a meeting remotely:

- (a) Any member who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or acting chair 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. 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 the presence of that person is approved by a simple majority vote of the public body.
- (e) When feasible, the chair or acting chair 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, § 22.

# OPEN MEETING LAW

## 940 CMR 29.10

### Remote Participation

- The Selectboard may authorize the use of remote participation at all future meetings of all municipal boards. Remote participation may not be utilized unless and until it is authorized by the Selectboard. 940 CMR 29.10(2).
- Minimum Requirements for remote participation: [940 CMR 29.10(4)]
  - Members of a 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; and
  - Members of public bodies who participate remotely may vote and shall not be deemed absent.
- Remote participation is allowed only when a board member's physical attendance is "unreasonably difficult." [940 CMR 29.10(5)]
- The following methods of remote participation are allowed: [940 CMR 29.10(6)]
  - Telephone, internet, satellite enabled 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.

Each municipal board shall determine the method of remote participation permitted at its meetings.

- The following procedure must be followed when board members participate remotely:
  - 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.
  - 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.
  - All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
  - 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 the presence of that person is approved by a simple majority vote of the public body.
  - 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 the Open Meeting Law.

# OPEN MEETING LAW

## CHECKLIST FOR CHAIRS AND BOARD AND COMMITTEE MEMBERS

- Meeting Notice must be posted at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays.
- In emergency situations, the 48 hour notice period may be waived however every effort should be made to update the Meeting Notice whenever possible.
- Notice must include the agenda for the meeting and any other matters that the Chair reasonably believes will be discussed at the meeting.
- Notice must be visible to the public “at all times.” This has been interpreted as meaning 24 hours a day, 7 days a week.
- The Chair must announce at the beginning of each meeting if the meeting is being tape recorded or video taped by either the Board/Committee or a member of the audience.
- All exhibits presented at the meeting are public records and they become part of the record for the hearing.
- Meeting minutes must reflect all actions taken by the Board/Committee.
- Meeting minutes must include a list of exhibits presented at the meeting.
- Executive Sessions may only be held in accordance with the exceptions found in the Law (see attached). The Chair must announce all subjects that may be revealed during the executive session and whether the Board/Commission will reconvene in public at the close of the executive session.
- Emails are likely to lead to deliberations outside of a public meeting. Emails should therefore be utilized only to distribute meeting materials and to convey logistical meeting information to the Board/Committee Members.

# OPEN MEETING LAW

## EXECUTIVE SESSION

A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

- (2) To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
- (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
- (4) To discuss the deployment of security personnel or devices, or strategies with respect thereto;
- (5) To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
- (6) To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
- (7) To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
- (8) To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

(9) To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

- i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
- ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

(10) To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.