



TOWN OF LINCOLN
MIDDLESEX COUNTY MASSACHUSETTS

Timothy S. Higgins
Town Administrator

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TO: Board/Committee Chairs & Respective Staff
FR: Tim Higgins, Town Administrator *T.H.*
On behalf of the Selectmen
RE: **Remote Participation in Board & Committee Meetings**
DT: October 15, 2013

Several of you attended or sent representatives to the meeting the Board of Selectmen hosted back in February to share thoughts on whether it would be beneficial to allow board and committee members to participate in meetings remotely, in accordance with a recent change in the Open Meeting Law. Although some of you urged caution, there was a strong consensus in support of having the Selectmen adopt a policy making remote participation an option under certain specific circumstances. The Selectmen's due diligence also included discussions with counterparts from communities who have experience with remote participation. Again, despite one or two cautionary tales, the consensus view among these communities is that the program encourages greater volunteer participation in town government and that the privilege is not being abused.

The Lincoln Board took the matter up on October 7th and voted to authorize the use of the remote participation provision of the Open Meeting Law, consistent with the Attorney General's Division of Open Government's regulation. I've attached a copy of the Board's new Remote Participation Policy, the philosophical underpinning of which is that our volunteers should be given every reasonable opportunity to fulfill their duties; it's assumed that folks will act in good faith and only seek to participate remotely under limited circumstances. The responsibility for managing the logistics falls to the board and committee Chairs. The policy includes an opt-out provision for boards and committees who determine, by majority vote for whatever reason/s, that the practice is not well-suited to their work.

Policy Overview:

- Effective Date: November 1, 2013 – to permit installation of communication equipment.
- Controlling regulation: 940 CMR, 29.00.
- One year trial; the Selectmen would appreciate ongoing feedback.
- Ability to opt-out; by majority vote of each board and committee.
- Minimum requirements:
 - All participants, including the remote participant, must be clearly audible to each other.
 - A quorum of the board must be physically present at the meeting.
 - Remote participants must have access to all meeting materials.
- Permissible Reasons for Remote Participation
 - Preamble:
 - Shall be infrequently utilized
 - Not permitted simply as a matter of convenience

- Personal illness;
 - Personal disability;
 - Family or other emergencies;
 - Military service; or
 - **Significant** geographic distance
 - The Chairman has the responsibility and authority to grant or to deny requests to participate remotely.
- Technology
 - Best efforts are being made to make phone conferencing equipment available at primary meeting locations; efforts will also be made to accommodate those who require adaptive communication alternatives.
 - If communication problems inhibit the progress of any meeting, the Chair may elect to terminate the participation of the remote participant.
- Procedures
 - Requester shall notify the person chairing, as soon as possible, of his/her desire to participate remotely and explain the need.
 - If Chair approves, the Chair shall communicate with appropriate town staff to confirm availability of communication equipment.
 - Chair must announce at start of meeting that a member/members are participating remotely, and provide the name/s and reasons – all recorded in the minutes.
 - Any time a member participates remotely all votes must be taken by roll call vote.
 - Exec. Sessions include an additional requirement that the remote participant acknowledge for the record that no other person is present or able to hear the discussion unless the Board permits by majority vote.
 - The town shall not reimburse any expenses associated with remote participation.

Thank you for helping us craft what we believe is a sensible approach for Lincoln. We would greatly appreciate your ongoing feedback, particularly during the initial, one-year trial period. If you would, please send me an e-mail each time one of your members utilizes the policy and briefly describe your experience. I'll compile your feedback and present it to the Board to help assess the results of program.

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REMOTE PARTICIPATION POLICY TOWN OF LINCOLN, MA [adopted by the Board of Selectmen, October 7, 2013]

1. 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 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 under the *Open Meeting Law*, M.G.L. c.30A, §§18-25.

2. ENABLING AUTHORITY- 940 CMR 29.10(8)

A municipality may adopt a policy that prohibits or further restricts the use of remote participation by public bodies within its jurisdiction.

3. ADPTION OF REMOTE PARTICIPATION

In accordance with 940 CMR 29.10(2)(a), the Board of Selectmen, on October 7, 2013, voted to authorize the adoption of 940 CMR 29.10 so that remote participation is permitted in the Town. In accordance with 940 CMR 29.10(3), the Board of Selectmen may revoke its adoption of 940 CMR 29.10 by simple majority vote at any time. The Board intends to consult with the Town boards and committees after one year to assess the efficacy of the program.

This policy and 940 CMR 29.10 shall apply to all Town boards, committees, commissions, sub-committees and working groups ("Town Boards") regardless of whether such Town Boards are appointed or elected. Where the Remote Participation Policy is more stringent than 940 CMR 29.10, the Policy shall control.

Pursuant to 940 CMR 29.10 (8) each Town board and committee shall have the discretion to opt-out, and may elect to not make remote participation at meetings an option for its membership. The determination as to whether a board or committee shall opt-out shall be made by majority vote of the board/committee.

4. MINIMUM REQUIREMENTS FOR REMOTE PARTICIPATION

No member of a Town Board shall participate in a meeting remotely unless the following requirements are met:

- (a) Members of the Town Board who participate remotely and all persons present at the meeting locations shall be clearly audible to each other;
- (b) A quorum of the Town Board, including the chair or the person authorized to chair the meeting, shall be physically present at the meeting locations in accordance with *M.G.L. c.30A, §20(d)*; and
- (c) Members of the Town Board who participate remotely must have access to the same materials being used at the meeting location.

5. PERMISSIBLE REASONS FOR REMOTE PARTICIPATION

It is the express desire of the Board of Selectmen that remote participation in meetings be an infrequent event, for both individual board members and Town Boards as a whole. Chairs of Town Boards 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 the inherent benefits of physical presence in a meeting. Chairs are encouraged to inform their colleagues that remote participation will not be permitted simply as a matter of convenience.

A member of a Town Board shall be permitted to participate remotely in a meeting if the person chairing the meeting determines that one or more of the following factors makes the member's physical attendance unreasonably difficult yet still leaves that member able to actively participate in the meeting:

- (a) Personal illness;
- (b) Personal disability;
- (c) Family or other emergencies;
- (d) Military service; or
- (e) Significant geographic distance.

Any determination by the person chairing the meeting to allow or not to allow remote participation shall be final and shall not be appealable.

6. TECHNOLOGY

- (a) During the initial one year trial period, the Town will make best efforts to have telephone conferencing equipment available at its primary meeting locations. Video conferencing technology is not available at this time.

- (b) The Town will make best efforts to allow any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

Every reasonable effort will be made to accommodate any Town Board member who requires TTY service, video relay service, or other form of adaptive telecommunications.

- (c) 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 resulting in the loss of connection with the remote participant, that participant's attendance shall be terminated. The meeting should not be interrupted while any attempt to restore the connection is made.
- (d) Each individual Town Board that anticipates using remote participation shall determine which of the acceptable methods may be used by its members.

7. PROCEDURES FOR REMOTE PARTICIPATION

- (a) Any member of a Town Board who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify 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) If the person chairing the meeting approves the request for remote participation, he or she shall make any necessary arrangements with IT personnel to ensure that the required equipment is available. If the required equipment is not available from the IT Department or another source, then the person chairing the meeting shall deny the request for remote participation.
- (c) 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 be recorded into the minutes.
- (d) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
- (e) Remote participants shall preserve the confidentiality of executive session. Certain media, such as speakerphone, can inadvertently be heard by people not party to the executive session discussions. The remote participant shall state at the start of any executive session that no other person is present and/or able to hear the discussion at the meeting location unless the presence of that person is approved by a simple majority vote of the Town Board.
- (f) The Town shall not be responsible for the reimbursement of any out-of-pocket costs associated with the remote participation of Town Board members.

- (g) 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 the other participants in the meeting. The remote participant shall also state at the beginning of any meeting that no other person is in proximity and could exert undue influence on the participant, in either executive or public session, and shall inform the chair if that situation changes.