

BOARD OF SELECTMEN



TOWN OF SUNDERLAND

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TO: All Committee, Commissions and Boards
FROM: Board of Selectmen
SUBJECT: Policy for Remote Participation at Meetings
DATE: December 22, 2015

On December 21, 2015 the Board of Selectmen voted to adopt the attached Policy for Remote Participation at Meetings. This policy is being adopted on a trial basis and will be reviewed by the board in July.

We would like to take this opportunity to strongly encourage members of all committees, commissions and boards to physically attend all meetings whenever possible. As elected and appointed officials, we share 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, which is promote transparency with regard to deliberation and decisions on which public policy is made.

Should you have any questions regarding this policy, please contact the Town Administrator.

Thank you for cooperation in this matter.



TOWN OF SUNDERLAND
BOARD OF SELECTMEN
POLICY FOR
REMOTE PARTICIPATION AT MEETINGS*

I. APPLICABILITY

The Board of Selectmen, on 12/21/15 voted to authorize the adoption of 940 CMR 29.10 so that remote participation is permitted in the Town. The Board of Selectmen may revoke its adoption of 940 CMR 29.10 by simple majority vote at any time.

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 either the Remote Participation Policy or 940 CMR 29.10 is more stringent, the more stringent Policy shall control.

II. 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 members of Town boards and committees should make every effort 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. IT IS INTENDED THAT THIS POLICY SHALL BE USED ONLY ON RARE OCCASIONS WHERE NECESSARY FOR THE CONDUCT OF BUSINESS BY BOARDS AND COMMITTEES.

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.

III. POLICY

The Board of Selectmen by adopting this policy authorizes individuals serving on its appointed and elected Boards, Committees, Commissions and Work Groups that are subject to the Open Meeting Law to participate remotely at meetings for the following permissible reasons:

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

Individual board/committee/commission/work group members may participate remotely up to nine (9) times fiscal year in executive session.

IV. PROCEDURE

1. 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/her request.
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 for his/her remote participation. This information shall also be recorded in the meeting minutes.
3. If the person chairing the meeting approves the request for remote participation, he or she shall make any necessary arrangements with appropriate Town personnel to ensure that the required equipment is available and, to the greatest extent practical, provide access to all meeting materials. THE TOWN DOES NOT GUARANTEE AVAILABILITY OF REQUIRED EQUIPMENT AT ANY PARTICULAR TIME OR LOCATION.
4. A member participating remotely for an executive session shall 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 presence of that person is approved by a simple majority of the public body.
5. All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
6. A quorum of the public body, including the individual chairing the meeting shall be physically present at the meeting location. Members who participate remotely shall not be deemed to be absent.
7. The acceptable means of remote participation is: conference, telephone, internet, or satellite-enabled audio or video conferencing; or, any other technology that is available that enables the remote participant and all persons present to be clearly audible to one another. The chair or in the chair's absence, the person authorized to chair the meeting shall make this determination.
8. If video technology is used, the remote participant shall be clearly visible to all persons present at the meeting location.
9. The Town shall not be responsible for the reimbursement of any out-of-pocket costs associated with the remote participation of Board members.
10. 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 who could exert undue influence on the participant, in either executive or public session, and shall inform the chair if that situation changes.

The Board of Selectmen may revoke Remote Participation at any time under 940 CMR 29.10(3).

V. VIOLATIONS

Violations of the Open Meeting Law are reportable through the Open Meeting Law division of the Attorney General's office. If the Attorney General determines, after an 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.

***Pursuant to MGL c. 30A, s. 20(d); 940 CMR 29.00 attached below**

Section 20. (a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting. Notice

shall be printed in a legible, easily understandable format and shall contain the date, time and place of the meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within the district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in the places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website under the procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division in the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may, by regulation or letter ruling, 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. The authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

[Subsection (e) effective until July 1, 2015. For text effective July 1, 2015, see below.]

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting permit remote participation applicable to a specific meeting or generally to all of the commission's meetings; provided, however, that the commission shall comply with all other requirements of law and regulation.

[Subsection (e) as amended by 2015, 46, Sec. 52 effective July 1, 2015. See 2015, 46, Sec. 216. For text effective until July 1, 2015, see above.]

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after

clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated under section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application under section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

940 CMR 29.00: Open Meetings

Open Meetings

29.01 Purpose, Scope and Other General Provisions

29.02 Definitions

29.03 Notice Posting Requirements

29.04 Certification

29.05 Complaints

29.06 Investigation

29.07 Resolution

29.08 Advisory Opinions

29.09 Other Enforcement Actions

29.10 Remote Participation

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

(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.