

**Municipal Alert**  
**March 26, 2020**

**Guidance for Municipalities on Conducting Remote Public Meetings  
Under the Open Meeting Law and the Relaxed Remote  
Participation Standards**

*For a discussion of these and other legal issues, please visit our website at [www.mhtl.com](http://www.mhtl.com). To receive legal updates via e-mail, contact [information@mhtl.com](mailto:information@mhtl.com).*

On March 12, 2020, the Governor issued an Executive Order ("Order") suspending certain provisions of the Open Meeting Law ("OML"), to allow expanded remote participation and alternative access to all public meetings conducted under the OML ( this excludes Town Meetings). No public body in Massachusetts has ever been authorized to conduct all remote public meetings prior to the Order, and many cities and towns shut down meetings for much of the rest of March. In the coming weeks, as local governments begin moving forward to conduct the public business, select boards, school committees, planning boards, boards of health, and all public board and commissions, will be faced with this new experience.

Legal Requirements for Remote Public Meetings

The Order only relaxed the remote participation and public access portions of the OML and its regulations. All other provisions of the OML and its regulations remain in force.

Meeting notices must still be posted with the regular 48-hours notice, including a complete agenda of all items the chair reasonably anticipates will be discussed during the meeting.

- Meeting notices should now also include the means of remote participation and how the public may participate in that meeting.

The specific technology to be used is not prescribed by the Order.

- Technological solutions can include telephone, internet, or satellite enabled audio or video conferencing or "any other technology that enables the public to clearly follow and participate in the proceedings of the public body in real time, while those activities are occurring."
- Municipalities should consider utilizing the same technological solution across all public bodies, so that chairs, members, and the public get used to a consistent platform.

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- If a municipality is using a video-conferencing platform, it should consider choosing a platform which allows participants to also participate in the meeting via telephonic means, in order to provide the broadest possible accessibility.

If the municipality does not have access to technology that allows the public to “clearly follow and participate in the proceedings of the public body in real time, while those activities are occurring”, a public body must instead post one of the following, as soon as practicable, on the municipal website:

- A full and complete transcript of the meeting, or a recording of the meeting, or some other comprehensive record of the proceeding.

If a state or local law or regulation requires that a particular meeting or portion of a meeting allow for active, real-time public participation (such as a school committee budget hearing), that requirements is not waived.

- the public meeting must be held using a method which allows for such active public participation, or the portions requiring public participation cannot be held.

The regulations concerning remote participation in meetings require that all votes in a meeting with any remote participants must be by roll-call vote

Establishing Rules of the Road for Holding Remote Meetings

In order to ensure that all remote meetings are successful and efficient, public bodies should establish “rules of the road” for holding and participating in these meetings. The public body should consider adopting specific rules in writing, which can be made available to all participants, and the chair should remind participants of the rules at the beginning of each meeting.

Suggested rules include:

- Ask everyone participating to mute their device during the meeting, until called upon.
- Roll call of all members of the public body at the beginning of the meeting.
- Verbal sign in of all non-member participants at the beginning of the meeting.
  - o During the verbal sign in, the non-member participants may want to indicate if they are there with a request to speak on any matter on the agenda.
  - o The clerk may want to keep a list of participants so they can be recognized during any public speak portion of the meeting, or any public hearing
- Remind participants not to speak until either asked to speak or recognized by the chair.

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Public bodies may want to consider seeking written comments from the public, submitted to the chair or the clerk of the body, in advance of any meeting, to be acknowledged and/or read at the meeting. This may help streamline the progress of the meeting.

Having someone other than the public body chair (such as a staff member) facilitate the technological portions of the meeting can be helpful. That person can mute and unmute participants as necessary, handle live requests for assistance, and arrange for document viewing if the chosen platform allows for it.

Because of the requirements for roll call votes in a remote meeting, and the need to poll members of the public body to determine if anyone wants to speak on a matter, the meetings will likely take longer than a typical in-person meeting, where it is easier to use non-verbal cues.

- Public bodies should consider keeping their agendas limited to essential matters only, at least while they are transitioning to all remote participation meetings.

If the agenda includes an executive session, it will streamline the meeting for that portion to be scheduled last.

- The public body should complete all its public business, and take a roll call vote to move into executive session, including notice that it will adjourn the meeting from executive session and not return to open session.
- Once the executive session is complete, the motion to adjourn is to adjourn the meeting.
- In order to ensure that the executive session is confidential, the public body may want to utilize a different remote access method for that portion of the meeting, circulated to members of the public body and invitees only, or schedule a separate meeting for executive session matters only.
- Executive sessions should not be recorded.

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**Checklist for Public Body Chairs**

- Agenda still must be published 48 hours in advance of the meeting
- Agenda must include the specific information on how to access the meeting remotely
- Agenda may be published by whichever means the municipality has designated
- Calling the meeting to order:
  - o If the meeting is still being recorded via your access platform, don't forget to inform the public.
  - o If community access TV is also broadcasting the meeting, a statement about that broadcast must also be made.
  - o Initial roll call of all public body members
  - o Suggested roll call of other participants
- Remind all participants of the "rules of the road"
  - o Mute devices
  - o Do not speak unless called on or otherwise recognized
- All votes are by roll call
- If the meeting includes a public hearing:
  - o Open the hearing
  - o Allow the applicant to present
  - o Allow other public participation/comments
  - o Close the hearing (or continue the hearing)
  - o Vote on the requested action if the hearing is closed
- If the meeting includes an executive session:
  - o Schedule it as the last item of business
  - o Inform the public that the meeting will be adjourned from the executive session, and the public body will not be returning to public session
  - o Use a separate form of access for the executive session, circulated only to members of the public body and invitees, in order to ensure confidentiality.
    - Or consider scheduling an entirely separate meeting to handle executive session items.

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*This Client Alert was prepared by Karis North and reviewed with Katherine Hesse, David DeLuca, Cindy Amara and Kevin Bresnahan. If you have any questions, please contact Karis North or the attorney assigned to your account, or call (617) 479-5000.*

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