



Town of Arlington Legal Department

Douglas W. Heim
Town Counsel

50 Pleasant Street
Arlington, MA 02476
Phone: 781.316.3150
Fax: 781.316.3159
E-mail: dheim@town.arlington.ma.us
Website: www.arlingtonma.gov

To: Select Board

Cc: Town Committees and Commissions; Sandy Pooler, Town Manager;

From: Douglas W. Heim, Town Counsel

Date: July 12, 2022

Re: UPDATE – Open Meeting Law Requirements & Remote Participation

Arlington boards, committees, and commissions, please accept this memorandum as an update with respect to your obligations and options under the Open Meeting Law for holding public meetings and hearings in light of the upcoming July 15, 2022 expiration of Chapter 22 of the Acts of 2022, which extended the terms of COVID-19 Executive Orders relative to the Open Meeting Law and allowed more flexibility for holding remote meetings and remote public access to meetings.

In short, as with previous legislative extension suspensions of certain Open Meeting Law requirements, there are several bills in the State Legislature which could further extend these flexible remote hearing options until well into next year.¹ Hence, it is very likely, but not certain that such measures will be in place before (or shortly after) the expiration of Chapter 22 of the Acts of 2022 and you may proceed as you have for the past two years. If however a bill does not pass, meetings will need to be held in a physical location accessible to the public with a quorum of members in attendance in person.

¹ The primary distinctions between these measures appears to be whether to extend remote meeting measures implemented during the pandemic or to make such changes permanent amendments to the Open Meeting Law.

If One of the Bills Passes

If one of the bills is successful, you will be able to continue to conduct meetings entirely remotely, but will have the options to conduct them entirely in-person, or in a “hybrid” manner where the public body meets in person, but the public is provided remote access (as allowed by Town and School policy respectively, and sufficiently resourced to meet requirements for remote meetings).

As you may recall, remotely conducted meetings under these relaxed rules must still provide “[a]dequate, alternative means” for public access which may include providing public access through telephone, internet, satellite enabled audio or video conferencing, or any other technology that enables the public to clearly follow the proceedings of the public body in real time (for most committees and commissions, the Zoom platform or similar technology). Remote participation also requires:

1. The Chair announce the name of the member or members who are participating remotely at the start of each meeting (and that the remotely participating members be reflected in the minutes);
2. That all votes be taken by roll call;
3. That members of the public body must be clearly audible to each other and to members of the public at all times and
4. That public bodies in remote executive sessions identify and approve any other persons present for executive session.

*Please also note that the Division of Open Government does not allow pre-registration as a *requirement* for following the observing or participating in meetings.²

If a hybrid meeting is held where only members or members and persons with business before the meeting are physically present, it is recommended that the foregoing requirements be applied to aid the public and other participants’ ability to follow the proceedings.

Without Passage of a Bill

Without passage of a bill, all committees and commissions will be required to conduct meetings in an accessible physical location, and remote participation *for members of a public body* will be limited to pre-pandemic terms (i.e. in addition to the aforementioned requirements

² Arlington Board and Commissions have consistently allowed members of the public access to Zoom meetings by telephone (including soliciting written and oral testimony), without registration. However, caution and care is still merited to ensure equitable means to both follow along and participate without registration. Contact the Legal Department if you have questions or concerns.

for remote participation, the Chair and a quorum of the body must be present together in a physical location). The Open Meeting Law does not require public participation, but meetings may neither be closed to the public nor may public access be limited to audiovisual broadcasts of the proceedings. Boards and commissions may of course record and broadcast their in-person meetings while also providing in-person public access (though the chair should note when meetings are being recorded). It is also possible for forms of remote public participation to be provided at the discretion of your public body chairs. The Town is presently working with recommendations from the Remote Participation Study Committee to further its capacity for same.

Postings & Notices

In the meantime, all public bodies are encouraged to post and notice meetings and hearings with *both* physical locations and remote access provisions. In the event a change of “location” is warranted to either entirely in-person or entirely remote meetings, you will be afforded the ability to update your meeting notices on the Town calendar and by other means.