

~~****PROPOSED DRAFT POLICY****~~

Approved by
the BOS
on Oct. 1, 2013

DATE: September 26, 2013

TO: All Town of Ayer Boards, Commissions, Committees, and Employees

FROM: Robert A. Pontbriand, Town Administrator

SUBJECT: Town of Ayer Remote Participation Policy for all Public Meetings
(Proposed Draft)

The Attorney General's Office has issued regulations providing direction to municipalities with regard to remote participation at public meetings regulated by the Open Meeting Law 940 CMR 29.10 (see attached).

On (insert date), the Ayer Board of Selectmen voted as follows in accordance with 940 CMR 29.10:

To allow remote participation in accordance with the requirements of 940 CMR 29.10, with the authorization applying to all public meetings of all Town of Ayer Public Bodies in the Town of Ayer.

In addition, the Board voted on (insert date), to approve the type of technology to be used in remote participation, as follows.

To allow remote participation by means of telephone, the Internet, satellite enabled audio and/or video conferencing, and/or any other technology which enable the remote participant and all persons at the meeting location to be clearly audible to one another.

Note that the Ayer Board of Selectmen may also revoke its approval of remote participation in the same manner as it has approved it. The Ayer Board of Selectmen will monitor remote participation at meetings, and so instructs each public body that uses remote participation to inform the Town Administrator of each such remote participation, providing the details of the remote participation, and its assessment of such use. Please contact the Town Administrator if you have any questions about remote participation at meetings.

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Each public body using remote participation must be aware of the requirements of remote participation, as detailed below. Every effort should be made by the public body to avoid the use of remote participation at meetings when possible.

Members of a public body may participate remotely only if physical attendance is “unreasonably difficult”, as determined by the Chair or the person acting as Chair (in the Chair’s absence) of the meeting. Attendance that is “unreasonably difficult” is limited to the following:

1. Personal illness;
2. Personal disability;
3. Emergency;
4. Military service; or,
5. Geographic distance

During a meeting at which a member(s) is remotely participating, the member who is participating and all others present at the meeting must be clearly audible to each other; a quorum of the public body must be physically present; and the Chair, or person acting as Chair, must be physically present.

If the technology that is being used to allow the member(s) to remotely participate fails during the meeting, the Chair is encouraged to suspend the meeting while the failure is being fixed. If the failure cannot be fixed, the failure and the departure of the remotely participating member(s) must be noted in the meeting minutes.

The mandatory procedures for remote participation are as follows:

1. Any member(s) of a public body who wishes to remotely participate must notify the Chair as soon as reasonably possible, and include in the notification the reason for, and facts supporting the request.
2. When feasible, the Chair must distribute to the remote participant(s) in advance of the meeting all materials to be used in the meeting.
3. At the start of the meeting the Chair must announce the names of the members who are remotely participating, and the reasons for their remote participation. This information must be recorded in the minutes of the meeting.
4. All votes taken while any member(s) is remotely participating must be by roll call vote and recorded as such in the meeting minutes.

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5. Public body members may participate remotely in Executive Session, but the Chair must state their name(s) and reason(s) for remote participation in Open Session prior to entering Executive Session. This information must be recorded in the minutes of the meeting. Once in Executive Session the remote participant(s) must state that no other persons are present and/or able to hear the discussion at the remote location(s), unless presence of such person(s) is approved by a simple majority vote of the public body.
6. Any cost for and/or associated with the remote participation shall be borne by the remote participant(s).
7. Failure to adhere to all of these mandatory procedures is a violation of 940 CMR 29.10 and the Town of Ayer's Policy on Remote Participation at Meetings.

Violations:

- Violations of 940 CMR 29.10 and/or the Town's Policy will result in the remote participation meeting being deemed illegal and all actions and/or votes to be illegal (null and void).
- Furthermore any violations of 940 CMR 29.10 are subject to investigation and enforcement by the Attorney General which may include fines and penalties to the individual(s) involved; the public body involved and/or the Town of Ayer. Such violations may also result in an order of revocation from the Attorney General's Office for the remote participation at meetings in the Town of Ayer.

Revocation of Policy:

- The Ayer Board of Selectmen reserves the right at any time to revoke the adoption of Remote Participation at Public Meetings Policy by a simple majority vote of the Ayer Board of Selectmen in a posted, Open Meeting.

Again, if you have any questions or concerns, please contact the Town Administrator.

Attachment: 940 CMR 29.10

Cc: Attorney General of the Commonwealth of Massachusetts
Town Counsel