



**Town of Arlington  
Legal Department**

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To: Select Board

Cc: Town Committees and Commissions; Adam Chapdelaine, Town Manager; John Leone, Town Moderator

From: Douglas W. Heim, Town Counsel

Date: March 13, 2020

Re: UPDATE – Executive Order Expanding Remote Participation During Coronavirus State of Emergency

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Please receive this update to the Memorandum from this Office of March 11, 2020 regarding the Town’s options for conducting meetings during the coronavirus (or “CLOVID-19”) State of Emergency in the Commonwealth.

Yesterday evening, Gov. Baker issued an Executive Order “Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A sec. 20.” I have attached the Order to this Memo for your review. In short, the Executive Order:

- Suspends the requirement to have a meeting in a physical location, and thereby allows “virtual” meetings (teleconference, live-stream, and/or social media-based meetings) of public bodies; and

- Allows *all* public body members to participate remotely in such meetings

The Order represents an important tool for helping the Town safely conduct its regular business. However, there are also important requirements and qualifications each Department, Committee, and Commission must weigh in determining how and whether or not to conduct virtual meetings.

First, meetings by telephone or video conference during the state of emergency must still provide “alternative means of public access.” Public access can be provided by allowing the public to call in or otherwise join meetings remotely so that they can see and/or hear what takes place at remote participation meetings. It does not however require public participation for most meetings where participation is not mandated by law.

Second, there are conflicting interpretations about whether or not the Executive Order applies to hearings pursuant to authorities or requirements of the general laws, such as special permit hearings.<sup>1</sup> Assuming for the moment that it does, alternative means of public access for *hearings* would require the ability for the public to participate in a reasonable facsimile of public comment portion of hearings. To that end, documents used for any such hearings should be also made available online (through Novus or otherwise) before or at the time of hearing. The Town is investigating the means by which it can reasonably afford alternative means of public access generally, as well as meeting the likely higher operational challenges of public participation hearings require. This Office is also seeking greater clarity on our ability to extend remote

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<sup>1</sup> Not all matters that are historically labeled as “hearings” qualify as hearings required by the general laws or other regulations and ordinances. For example, Select Board “Warrant Article Hearings” are not mandated by state law or the Town Bylaws. Committees, Commissions, and Department Heads are encouraged to consult this Office if they are uncertain of the hearing requirements for potential agenda items.

participation to permit hearings under the Order from the Division of Local Services and the Division of Open Government.

Third, the Order only modifies the Open Meeting Law as noted above. All other Open Meeting Law requirements – notices, agendas, and minutes, etc. remain in effect.

Finally, the Order does not affect Town Meeting, which per both the general laws and our local bylaws must be conducted among a quorum of persons physically present. This Office is working with the Massachusetts Municipal Lawyers Association and other partners to advocate for special legislation to provide further options in that arena.

This Office will work with the Town Administration to develop further guidelines and processes for public meetings throughout the State of Emergency.