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CLIENT ADVISORY

TO: TOWN OF SOUTH HADLEY STAFF AND BOARD MEMBERS
FROM: MEAD, TALERMAN & COSTA, LLC
RE: OPEN MEETING LAW – REMOTE PARTICIPATION
DATE: FEBRUARY 5, 2025

This advisory provides an update of the Open Meeting Law, G. L. c. 30A, §§ 18-25 (“OML”) as well as regulations promulgated by the Attorney General, 940 CMR 29.10 (the “Regulation”), governing remote participation of board members. As noted in the outline below, there is proposed legislation that would change the current remote participation provisions to authorize public bodies to permit their members to attend public meetings remotely. The introduction of this legislation is very recent and it is not clear when this provision may be acted upon, if ever. A brief checklist and outline of the pertinent current provisions of the OML follows:

I. CHECKLIST FOR CHAIRS AND BOARD AND COMMITTEE MEMBERS

- Meeting Notices must be posted at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays.
- In emergency situations, the 48-hour notice period may be waived however every effort should be made to update the Meeting Notice whenever possible. An “emergency” is defined in G.L. c. 30A, § 18 as “a sudden, generally unexpected occurrence or set of circumstances demanding immediate action”
- Notice must include the agenda for the meeting and any other matters that the Chair reasonably believes will be discussed at the meeting.
- Notice must be visible to the public “at all times.” This has been interpreted as meaning 24 hours a day, 7 days a week.
- The Chair must announce at the beginning of each meeting if the meeting is being tape recorded or video taped by either the Board/Committee or a member of the audience.
- All exhibits presented at the meeting are public records and they become part of the record for the hearing.
- Meeting minutes must reflect all actions taken by the Board/Committee.
- Meeting minutes must include a list of exhibits presented at the meeting.

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- Executive Sessions may only be held in accordance with the exceptions found in the Law (see attached). The Chair must announce all subjects that may be revealed during the executive session and whether the Board/Commission will reconvene in public at the close of the executive session.
- Emails are likely to lead to deliberations outside of a public meeting. Emails should therefore be utilized only to distribute meeting materials and to convey logistical meeting information to the Board/Committee Members.

II. EXECUTIVE SESSION (G.L. C. 30A, § 21)

A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- to be present at such executive session during deliberations which involve that individual;
- to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- to speak on his own behalf; and
- to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

(2) To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

(4) To discuss the deployment of security personnel or devices, or strategies with respect thereto;

- (5) To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
- (6) To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
- (7) To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
- (8) To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
- (9) To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
 - i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
 - ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or
- (10) To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

III. THE OPEN MEETINGS LAW AND REGULATIONS GOVERNING REMOTE PARTICIPATION GENERALLY

- But for Governor Baker’s Executive Order implemented in response to the COVID-19 pandemic and the special acts that have extended the duration of it, under ordinary circumstances, only the Selectboard would have the authority to permit the use of remote participation at meetings of municipal boards. Remote participation would not be available unless and until it was authorized by the Selectboard. [940 CMR 29.10(2)].
- Remote participation is allowed only when a board member’s physical attendance is “unreasonably difficult.” [940 CMR 29.10(5)]
- Minimum Requirements for remote participation: [940 CMR 29.10(4)]
 - Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other;
 - 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; and
 - Members of public bodies who participate remotely may vote and shall not be deemed absent.

- The following procedure must be followed when board members participate remotely:
 - 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.
 - At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.
 - All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
 - 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. 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 the Open Meeting Law.

IV. REMOTE PARTICIPATION GUIDELINES PURSUANT TO COVID-19 EXECUTIVE ORDER AND SPECIAL ACTS EXTENDING THE DURATION OF THE ORDER

- Public bodies are currently authorized to conduct meetings remotely pursuant to Governor Baker's March 12, 2020, Executive Order Suspending Certain Provisions of the Open Meeting Law in response to the COVID-19 Pandemic, which has been extended to March 31, 2025. As such, the Town may continue to hold remote and hybrid meetings until this date subject to the conditions described below¹.
- Governor Baker's Executive Order suspended the following requirements of the Open Meetings Law:
 - That a quorum of the body and the chair be physically present at the meeting location;
 - That a public body's meetings be conducted in a public place that is open and physically accessible to the public, so long as adequate, alternative means of public access are used.
- The following methods of remote participation are allowed:
 - Telephone, internet, satellite enabled or video conferencing, or
 - Any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another which allows the public to clearly follow the proceedings of the public body while those activities are occurring.
 - The public body may not charge a toll or fee for remote attendance or participation by the public.
 - Roll call attendance must be taken.
 - If any one member is participating remotely a roll call vote must occur for every matter on which the body votes.

• ¹ Note that recently proposed legislation would give public bodies the authority to allow their members to participate in public meetings remotely.