

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: April 29, 2022
TO: All Members, City Council
FROM: Jonah Temple, Deputy City Solicitor
Jaclyn Zawada, Assistant City Solicitor
RE: Guidance on COVID-19 Measures and Open Meeting Law

On February 15, 2022, Governor Baker signed a new session law, which extends certain COVID-19 related measures. Among other things, this new law extends remote meeting provisions of the March 12, 2020 Executive Order until July 15, 2022. There are two key remote meeting provisions: allowance of remote participation of members of a public body and allowance of remote access for the public.

This means that public bodies may, until July 15, 2022, continue to provide live “adequate, alternative means” of public access to the deliberations of the public body rather than holding meetings in a public place that is open and physically accessible to the public. This also means that all members of a public body have the option to continue participating in meetings remotely until July 15, 2022.

Absent any further change in the law, we expect the requirements of the Open Meeting Law to resume on July 15, 2022. As discussed below, this will limit the remote participation of City Council members to a much greater degree than that of the public.

At this time, the City Council and its subcommittees may continue to conduct public meetings remotely until July 15, 2022. Public meetings may also be conducted using a hybrid model, where both city councilors and the public have the option to attend either in person or remotely. Prior to July 15, remote and hybrid meetings do not require a quorum of the public body be physically present at a meeting location.

We recommend, however, that the City Council prepare, as further detailed below, to shift in July 2022 to modified hybrid meetings wherein city councilors are required to attend in person and arrangements are made to enable the public and City staff to attend both in person and remotely.

Please note that this guidance and all open meeting law requirements apply equally to full City Council meetings and subcommittee meetings.

PRIOR TO JULY 15, 2022

Currently, the City Council may hold meetings in person, remotely, or hybrid.

- **In Person**. Public body members may meet in person in a public place that is open and physically accessible to the public without any option for remote participation for the general public.
- **Remote**. Public bodies may conduct meetings as fully remote/virtual meetings so long as the public is allowed access through live adequate, alternative means (such as Zoom).
- **Hybrid**. Public body members may meet in person while requiring the general public to follow the proceedings remotely so long as the public is allowed access through adequate alternative means. Alternatively, both public body members and members of the public can be given the option of whether to participate in person or through remote access.

For meetings where public access is being provided through adequate, alternative means (remote or hybrid), the following rules apply:

- Public access through adequate, alternative means allowing the public to follow the meeting in real time. Commonly used methods that comply with the law include Zoom, YouTube live, Facebook live, and community television live broadcasts.
- Participation by both the members of the public body and the public may be done remotely.
- The agenda must provide information about how the public can access the remote or hybrid meeting.
- A requirement to pre-register for a meeting does not comply with the law.
- Be aware of and thoughtfully consider the options and controls that are available for the remote meeting, particularly as to muting, unmuting, removing unruly participants and any screen sharing or public chat capabilities.
- The closed captioning function should be turned on when available.

For meetings where members of the public body are participating remotely (remote or hybrid), the following rules apply:

- At the start of the meeting, the chair must announce the names of all members attending remotely, with this information recorded in the minutes.
- All votes must be taken by roll call.
- Members of the public body must be clearly audible to each other and to members of the public at all times.

- The steps to enter into executive session remain the same. At the start of the executive session, each public body member participating remotely must state that no other person is present or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

Additional guidance for all meeting types:

- If there are technical difficulties during the meeting, the chair is encouraged to temporarily suspend the meeting until the issues can be resolved.
- Sending private text messages among or between members of a public body about an agenda item during a public meeting is a violation of the open meeting law.
- Public comments are not required in any public meeting; however, the office of the Attorney General encourages public participation where feasible. Permission of the chair is required prior to public comment.
- Public comments at public hearings are often required by law and the public body must be prepared to provide for an opportunity for the public to comment through the chosen alternative means of communication.

After July 15, 2022

Absent any further change or extension in the law, all requirements of the Open Meeting Law will resume on July 15, 2022.

Most significant is the legal requirement that public bodies must resume meeting in person. The Open Meeting Law will still allow remote participation of public body members, but only in limited circumstances.

As the Mayor has already authorized remote participation in accordance with the Open Meeting Law by executive order, no action is necessary by the City Council to allow for remote participation after July 15. However such participation will only be allowed in limited circumstances where a quorum of the public body is physically present at the meeting location and public attendance of the member would be unreasonably difficult. Additionally, any member of a public body who wishes to participate remotely after July 15 must notify the person chairing the meeting as soon as reasonably possible prior to the meeting of his or her desire to do so and reason for and facts supporting the need to be remote. Practically speaking, all city councilors should plan to attend meetings in person as they did prior to the pandemic. The Law Department will provide more detailed information concerning the procedure for remote participation under the Open Meeting Law closer to July 15, 2022.

As for public participation, after July 15, the City Council may continue to provide the public with the option to attend and participate in meetings remotely. This will be considered the hybrid model after July 15, where the public body is meeting in person and the public has the option to attend either in person or remotely.

For hybrid meetings, the agenda must provide both the physical location of the meeting as well as the virtual alternative. It is important for hybrid meetings that the level of public access and participation apply equally to individuals who attend in person and those joining remotely. For example, if a meeting is held in a room in City Hall with members of the public attending in person as well as via zoom, and the chat function is turned on in the zoom meeting, then members of the public attending in City Hall must be allowed a public comment period during the meeting.

Please contact the Law Department if you have any questions. Thank you.