

Technology Guidance for Boards/Committees

March 8, 2021

Zoom Meeting Protocols

ALL MEETINGS

The Open Meeting Law regulations governing remote participation, 940 CMR 29.10, remain in effect, except where the Governor's executive order specifically suspends certain requirements. In particular, when any—or all—public body members participate in a meeting remotely, the following requirements apply:

- At the start of the meeting, the chair must announce the name of the member or members who are participating remotely; such information must also be recorded in the meeting minutes.
- All votes must be taken by roll call. It may be best to call on each person, in order of position and longevity.
- Members of the public body must be clearly audible to each other and to members of the public at all times.
- Recording a Session: Advise verbally and post (this may be put in the chat function, however people attending the meeting via phone-only will not be able to read it)
- This session is being recorded. It is also being shared live, for the public to see and hear. There should be no expected right to privacy, as this is a public forum. (Live broadcast on SudburyTV public access and website.)
- Please remember to mute your devices in order to reduce interruption and unexpected distractions.
- If you desire to be recognized, you can use the function to raise your hand or chat functions. The Host will acknowledge at the appropriate time.
- Reminder: Citizen comments are to be limited to ___ minutes per person. (Only if the board/commission has set a time limit; this is optional and not a requirement.)
- When recognized, please state your name and address (or position if you are a town employee), if you are not a resident or employee, a decision will be made regarding you contributing to our meeting/conversation.

EXECUTIVE SESSIONS

- When holding an executive session remotely, the public body must still take all required procedural steps for entering into executive session as in open session.
- 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.

Use of Shared Cloud Drives/Websites and Other Group Communications

1. Advice on a board using Chat and Q&A in public meetings:
Using the chat feature during a meeting, on Zoom or other similar remote meeting service, is not specifically prohibited by the Open Meeting Law (OML), and many boards use it to receive and read aloud questions or comments from the audience. Please note that the Division of Open Government ("Division") has previously cautioned against board members using text messaging to communicate with the public or each other during a meeting.
2. May members of public bodies who are physically present at a meeting use electronic messaging, such as text messaging or email, to communicate with members of the public during that meeting?

The Open Meeting Law does not address this issue. The Open Meeting Law encourages government transparency; however, the best practice is for public body members to avoid the use of electronic devices during meetings to discuss matters within the jurisdiction of the public body if those electronic communications are not shared with members of the public attending the meeting. Strictly speaking, there is no violation unless a quorum of the board engages in a text, email or chat and the public cannot view the exchange. But the Division would likely have the same advice regarding the chat function as it states above for texting – the best practice is for members not to use the chat function and communicate by speaking so the attendees can hear it.

3. In order to control versions and to be able to access the documents easily, is it permissible to use a shared drive that is accessible to the sub-committee members? The idea would be that the shared drive link would be on the sub-committee Town webpage as well as on meeting agendas for the public to access.

The Division has advised that the use of a shared drive (Google Docs, e.g.) is problematic and may only be used in a limited fashion. As with emails, the risk with a shared document is that members of a board can view edits, questions and comments of other members. If such is viewed by a quorum, outside of a public meeting, the Division would find this to be an OML violation.

4. Are there certain conditions under which use of a shared drive would or would not be appropriate?

*The Division advises, just as with email or other electronic communications, that the only time such communications are permitted among a quorum is for purposes that are exempt from the statute's definition of deliberation: "Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; **provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or ...the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.***

5. If documents in the shared drive are updated in any way between meetings, would that be perceived as an Open Meeting Law violation?

See above – if these updates are viewed by a quorum, the Division would most likely find a violation, as edits or comments are considered to be "opinions" of the members.

6. If the 2 members of the subcommittee emailed each other updates and information, would that be a potential for OML violation, seeing that they automatically make up a quorum?

The strict provisions of the OML regarding "deliberation" among a quorum are particularly difficult with a 3 member board or a 2 member subcommittee, as there is no exception for a small board. The Division advises that there are only the three limited exceptions to "deliberation" [distribution of a meeting agenda, scheduling information or distribution of reports or documents that may be discussed at a meeting], and essentially any other communication outside of a meeting is prohibited. Here is an example of what the Division says when it analyzes a complaint about a three-member board:

*Despite the foregoing, we take this opportunity to express our concern with some of the Board's procedures, and to offer guidance for future meetings. We remind the Board that, as a three-member body, a quorum consists of any two of its members. See G.L. c. 30A, §§ 20(a)-b, 21. Therefore, additional caution is advised to ensure that no communication occurs between a quorum of the Board on any matter within the Board's jurisdiction outside of a properly noticed meeting. See *id.* In addition, should the Board deem it necessary to enter executive session, a majority of members must vote to go into executive session by roll call, and the chair must*

clearly state the purpose of the executive session and announce whether the Board will reconvene after the executive session concludes. See G.L. c. 30A, § 21(b). Further, other than during a properly-convened executive session, it is not appropriate for a quorum of the Board to seek to have a private conversation with an individual about a topic within the Board's jurisdiction, out of view of the public. See G.L. c. 30A, § 20(a).

Even for something like draft minutes, the only advice I can offer is for a draft to be distributed but then have no communication between members on it until the meeting; individual members can send comments or edits to a staff person as long as they do not copy each other.

7. Is it true that the two members of a 2-member subcommittee are not allowed to be on the same email, to share a copy of the very documents they worked on together in an Open Meeting? This would leave the document transfer available through a public posting on a website, transfer through staff or production of minutes/packet. This seems very tricky for a team of 3 or less.

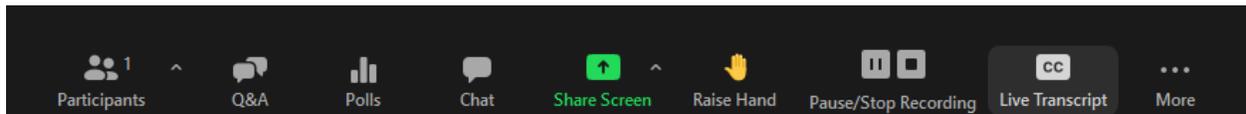
See above – they cannot exchange opinions or edits to a document with each other outside of a meeting; it makes things very inefficient but that is what the OML says.

Zoom Live Transcript

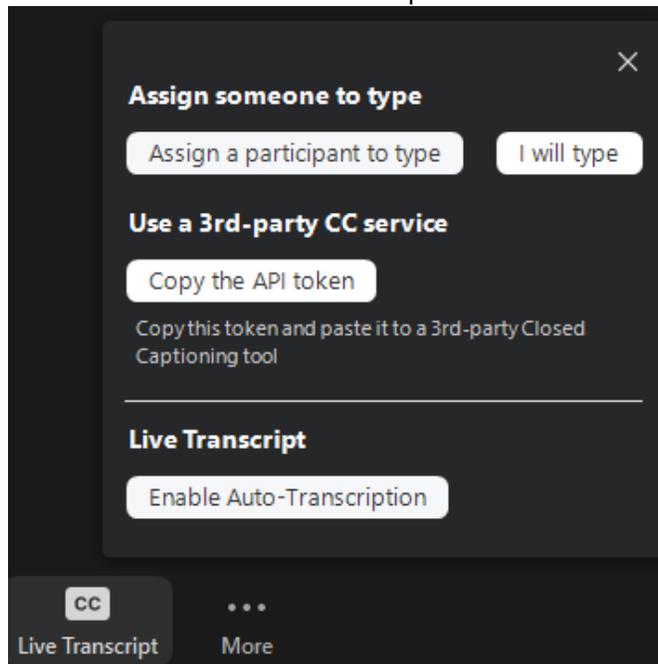
The Live Transcript service is a feature in Zoom that enables those with audible accommodation needs to get more from a meeting. It should be used in every meeting.

Below are the steps the Host must do in order to enable this Live Transcript service:

1. The Host will now see a Live Transcript button on the toolbar at the bottom of the screen.



2. To enable Live Transcription during the meeting the Host will press the Live Transcript button and then choose Enable Auto-Transcription.



The live transcription of the meeting will then happen automatically. It can be saved, similar to a chat being saved.