

## Implications of the Pending Termination of the State of Emergency Follow-Up June 14, 2021

In follow up to our eUpdate on June 7, 2021 (see [here](#)), please note that although the State Senate and House have passed different versions of legislation authorizing the extension of certain pandemic-related relief provisions, no final action on such legislation occurred today, and no final action on any such legislation is expected to occur before the State of Emergency expires tomorrow at 12:01 a.m. Accordingly, the current authorization for entirely remote or virtual public meetings under the Open Meeting Law will also expire at 12:01 a.m. tomorrow morning, although it may be re-authorized, by act of the Legislature, in the coming days. With that in mind, public bodies with previously posted and/or advertised meetings or hearings occurring tomorrow will need to ensure that these meetings/hearings are conducted in-person, and in compliance with any pre-pandemic remote participation rules, if remote participation has been previously authorized by the municipality's chief executive officer. As noted in the attached eUpdate, the Open Meeting Law does not prohibit also offering a remote or virtual option for members of the public to observe and/or participate in a public meeting or hearing; however, board and committee members themselves may not participate entirely via remote means when the State of Emergency expires, unless that authority is extended by the Legislature and approved by the Governor.

We will, of course, continue to keep you apprised of new developments. In the meantime, should you have questions, please do not hesitate to contact your KP Law attorney(s), or our coronavirus "hotline," at [coronavirusinfo@k-plaw.com](mailto:coronavirusinfo@k-plaw.com).

For your reference, the below guidance was issued by the Attorney General's Office, Division of Open Government on June 10, 2021:

**"The State of Emergency is scheduled to end at 12:01 AM on June 15, at which point the March 12, 2020, Executive Order Suspending Certain Provisions of the Open Meeting Law, which has allowed public bodies to meet remotely and to provide the public with "adequate alternative access" to meetings, will terminate. The Legislature is actively considering bills that would extend most or all of the provisions from the Executive Order regarding remote meetings. However, if such legislation is not enacted to take effect by June 15th, then public bodies must be prepared to hold meetings with at least a quorum of the public body members physically present at a meeting location which is open and accessible to the public. Public bodies are reminded that notice of all meetings must be posted at least 48 hours in advance, not including weekends and holidays, and the meeting notice must specify the location where the public may access the meeting. Therefore, unless and until**

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**new legislation is enacted that alters those requirements, public bodies should plan and post notice for meetings to be held in-person beginning on June 15.**

**We will post updated guidance as soon as there are updates that affect the Open Meeting Law.”**

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**Summary of minimum requirements for remote participation under 940 CMR 29.10**

1. Chief Executive Officer adopts remote participation for local public bodies.
2. A quorum of the public body, including the Chair or whichever member will be chairing the particular meeting, must be physically present at the meeting location. The remaining members of the public body may participate via remote means. In the case of Commissions on Disabilities, only the Chair or person chairing the meeting must be physically present at the meeting locations; all other members may participate remotely.
3. “As soon as reasonably possible” prior to the meeting, any member of the public body who wishes to participate remotely must notify the Chair (or whomever will be chairing that particular meeting), of the reasons why that member’s physical attendance would be “unreasonably difficult.”
4. Where feasible, the Chair or person who will be chairing the meeting should provide members who will be participating remotely with meeting packets or other documents to be used at the meeting, in advance of the meeting.
5. At the start of the meeting, the Chair is required to identify by name those member(s) participating remotely, and the meeting minutes should reflect this information as well. The reasons for the remote participation do not need to be announced publicly, and no vote of the public body itself is required to permit an individual member’s remote participation.
6. All members participating remotely must be clearly audible to the members of the public body attending the meeting in person. If a video platform (such as Zoom, Microsoft Teams, GoToMeeting) is used, all members must be clearly visible to each other as well (which means that when video conferencing technology is used, members participating remotely must leave their video feed “on” during the meeting).
7. If there are technological difficulties during the meeting, the meeting generally should be suspended until those difficulties can be resolved. If those technological difficulties result in the disconnection of a remotely participating member, the time of disconnection must be noted in the meeting minutes.
8. All votes taken during open or executive session meetings in which one or more members participate remotely, must be taken by roll call vote and recorded as such in the meeting minutes.
9. If members of the public body are participating remotely in an executive session, each such member must also state, at the start of the executive session, that no other person is present and/or able to hear the discussion at the remote location, unless the public body votes to approve that third party’s presence.

The full remote participation requirements can be found at 940 CMR 29.10. Any locally-adopted remote participation policies or rules should also be consulted.