

M E M O R A N D U M

TO: Town Commission
FROM: Tom Harmer, Town Manager
REPORT DATE: May 12, 2021
MEETING DATE: May 18, 2021
SUBJECT: Review of Resolution 2013-33, Commission Policy Regarding Electronic Meeting Attendance and Participation

Recommended Action

Provide direction to Manager.

Background

On October 7, 2013 the Town Commission passed Resolution 2013-33 that provides the current restrictions related to Commissioner participation in meetings by electronic means. I have attached the Resolution for your reference. The Resolution addresses voting meetings, workshops, and exempt meetings.

The restrictions are summarized below.

Voting (Regular, Special, and Emergency Meetings) a quorum, in-person is required. Absent Commissioners can listen using interactive electronic technology as needed. They are not permitted to actively participate or vote.

Workshops (Regular and Special Workshops) absent Commissioners may fully participate using interactive electronic technology and have the ability to participate in developing consensus.

Exempt Meetings (Executive Session, Shade, or Attorney-Client) absent Commissioners are not permitted to listen, participate, or vote using interactive electronic technology.

For background information, the Town Charter states that Commissioners absent for 2 consecutive calendar months effectively vacates their seat. Provisions exists for excused absences that are pre-approved by the Commission.

According to the Town Attorney, there is an Attorney General (AG) opinion on the use of electronic media stating they can participate at non-voting meetings with or without a quorum. In the case of voting meetings, they can only participate if:

- An in-person quorum is present; and
- An extraordinary circumstance – or in the good judgement of the Board (vacations, or for convenience are generally not included in their framework).

In preparation for this workshop discussion, the Town Attorney did some follow up research to see if there have been updated AG opinions that address participation. I included her commentary below:

The recent AG's opinions on the subject (outside of the temporary suspension of quorum requirements in AGO 2020-03) have all consistently followed the mandatory physical quorum requirement element for any Board to take action. The "extraordinary circumstance" element has been followed by several AG opinions, but the "extraordinary circumstance" justification is determined by the good judgement of the Board. The Town Attorney used previously (and continues to use) the examples listed below of recognized circumstances that have been adopted by other local government bodies as justifiable circumstances in the past. The point being is that the local government Board gets to decide what they think should apply to qualify as extraordinary.

There is some indication from AG's 10+ years ago that mere convenience should not constitute an extraordinary circumstance; nevertheless, the AG did not limit the Board on what other circumstances may qualify as justifiably extraordinary. Caring for recovering/ill family members (i.e., elderly relative, new baby, sick child/grandchild, etc.), a Town commitment (ie, attending an in-State or out of State meeting on the Town's behalf), travel for health reasons (self or another) – those and other type situations may also apply.

Most of the AGs rely upon the rationale above about quorum and electronic participation focus heavily on the openness of a public meeting, and specifically protecting the public's ability to see/view/hear the interaction between the Board members at a public meeting. Given the advancements in technology (particularly in recent years – Zoom/Teams meetings, etc.), a Board member is no longer just a "voice on the phone". The Board member can visually interact and see what is occurring and the meeting remains open. That may lend itself to more leniency on the rationales used to development the "extraordinary circumstance" guidance.

Of course, it is also important to note the above criteria about "extraordinary circumstances" is not incorporated into Florida Statutes. However, it is advisable to follow that as the guidelines.

Over the past year, the Town has held numerous virtual and hybrid meetings. Many of these meetings have been facilitated with new technology that wasn't readily available in 2013. The new technology does enhance the ability for Commissioners to more effectively interact through virtual means. The ability to conduct these meetings were facilitated through Governor's Executive Orders temporarily suspending the physical quorum requirement and by Resolution 2020-28 adopted by the Town Commission that suspended certain existing local requirements including the ability to participate remotely during the State of Emergency.

In the near future it is expected that the Governor will not extend the State-wide State of Emergency. When that occurs, the Town would revert back to the existing Town restrictions outlined in Resolution 2013-33.

Based on the Commission's recent experience during COVID-19 we are recommending that Resolution 2013-33 be reviewed, discussed in a workshop setting, and that staff receive

direction on any changes to the current policy that the Commission would like to revisit. It appears that the primary opportunity to update the policy would be in the area of voting meetings and allowing participation that meets the extraordinary threshold.

The Town Attorney and I will be prepared to provide background information and answer questions regarding the current Resolution and opportunities to update the Resolution.

Options that the Commission may consider as part of the discussion:

- List examples that meet the extraordinary standard acceptable to the Commission
- For those cases that may not be clear- then have an option for a case by case basis that the Commission could consider
- General Limitations to consider- absences are first come first served basis, limited number of Commissioners absent from a meeting and limit the number of absences during the year.

Based on Commission direction, Town staff will work with the Town Attorney to develop an updated Resolution for consideration at a future Regular Meeting.

Staff Recommendation

Provide direction to Manager.

Attachments

Resolution 2013-33 (Available in Town Clerk's Office)

End of Agenda Item