

M E M O R A N D U M

To: Mayor Schneier and Town Commission
CC: Tom Harmer, Town Manager
From: Maggie D. Mooney, Esq., Town Attorney
Date: September 16, 2022
Subject: Commission Meeting Attendance and Virtual Meetings

At the July 1, 2022, Meeting the Town Commission requested that the Town Attorney provide the Town Commission with information on the Commissioner meeting attendance requirements within the Town Charter. The Commission also requested that the discussion include information on the timing and requirements associated with amending the Town Charter.

A. Town Charter Meeting Attendance Requirements – Art. II, Secs. 13 and 15

The Town of Longboat Key (“Town”) Charter includes meeting and workshop attendance requirements and includes a removal from office penalty if Commissioner(s) miss two (2) consecutive months of meetings and workshops due to unexcused absences. The specific text in the Charter states:

Sec. 13. – Meetings.

a) Pursuant to Article II, Section 6, of this Charter following each general municipal election, the town commission shall meet at the usual place for holding the meeting of the legislative body of the town, at which time the newly elected commissioners shall assume the duties of office. Thereafter the town commission shall meet at such times as may be prescribed by ordinance or resolution, except that **it shall meet regularly not less than once each month for a regular voting meeting and once each month for a regular non-voting workshop, except that the regular non-voting workshops in the months of July and August and the regular monthly voting meeting in the month of August may be cancelled** by the commission if cancelled at least thirty (30) days prior to the day on which the meeting would normally be conducted.

(b) All meetings of the town commission and of the committees thereof shall be public. Any citizen shall have access to the minutes and records thereof at all reasonable times. The commission shall determine its own rules and order of business and shall keep minutes of its proceedings. [Emphasis added].¹

Sec. 15. - Penalty for absence.

Absence from all meetings and workshops for two (2) consecutive calendar months shall operate to vacate the seat of a member, unless such absence is excused by the commission prior to the end of the two-month period. The month of August shall be excluded when computing these two consecutive months.

[Emphasis supplied].

See, Art. II, Secs. 13 and 15, Town Charter.

In the past 10 years, there have not been any Commissioners removed from office for any reason, including unexcused absences. There is not a definition in the Town Charter or Town Code of the term “unexcused”. If a circumstance presented itself where a determination would need to be made as to whether a particular Commissioner’s absence was excused or not, the Town Commission would need to evaluate the individual’s circumstances at a public meeting on a case-by-case basis.

As mentioned in a separate Memorandum from my office (also dated September 16, 2022) the Town Commission may initiate a Charter amendment to modify Article II, Sections 13 and 15 of the Town Charter through the adoption of an ordinance. The ordinance would need to set forth the Charter amendment text and the referendum question to be presented to the qualified electors of the Town. The March 2023 election would be the next opportunity to place a charter amendment referendum question before the voters. If such a referendum is desired, it would require that an ordinance be adopted no later than the Town Commission’s December 5, 2022, Regular Meeting. If the majority of the voters approve the charter amendment question, then the amendment will be adopted. If the majority of the voters reject the referendum question, then the current provisions within the Town Charter remain unchanged.

Should the Town Commission wish to amend the existing meeting and workshop attendance requirements or the office removal provisions from the Town Charter, then the Town Commission will need to provide direction on the desired modifications so an ordinance can be adopted in time to meet election deadline.

¹ In addition to the Charter, Section 30.01 of the Town Code states “[a] meetings of the town commission for the purpose of transacting town business, whether action is taken or not, shall be held in the town commission chambers of the town hall, unless the commission indicates another location, and shall be open to the public.”

B. Virtual Meeting Attendance and Considerations

Legal guidelines on meeting attendance through evolving interactive media technology has been outlined on several occasions by the Florida Attorney General through the issuance of advisory legal opinions. Excluding the timeframe when the Florida Governor declared a state of emergency and temporarily suspended certain meeting requirements, the Florida Attorney General has repeatedly opined that the Sunshine law (Florida Statutes 286.011) requires that members of a local government board have a physical quorum of the board present to conduct board meetings. See, AGOs 09-56, 10-24, 03-41. The opinions further state that communication media technology (i.e., video conferencing, computer, telephone, or other electronic media) should only be used by local government boards when “extraordinary” circumstances exist (i.e., when a board member has health problems, is ill, or is physically disabled). See, AGO 03-41. The opinions also advise that whether absences for convenience or for scheduling conflicts constitute qualifying “extraordinary” circumstances by board members is a determination that should be made “in the good judgment of the board.” See *id.*

In observance of the above guidance from the Florida Attorney General, and the above cited Town Charter requirements on meeting attendance, the Town adopted Resolution 2021-15, the Town’s “Interactive Electronic Media Technology Policy” which amended prior Town Commission’s policy on virtual attendance and participation (previously codified in Resolutions 2013-14 and 2013-33). A copy of Resolution 2021-15 is attached as Exhibit 1. Resolution 2021-15 is only applicable to Town Commissioners, not to any Town advisory boards, and provides:

- Town Commissioners may participate virtually at regular and special workshops if there is a physical quorum of the Town Commission present;
- Virtual participation is not permitted at Attorney-Client, Executive or Shade meetings;
- If a quorum is physically present, Town Commissioners are permitted to appear virtually at Regular Meetings and have full participant status (and vote) if “extraordinary circumstances” exist;
- “Extraordinary circumstances” for Regular Meeting participation is defined by a non-exhaustive list of situations including: illness, disability, caring for a recovering or ill family member, attendance at an event on behalf of the Town, health related travel, family obligation (family wedding or funeral), a declared emergency, or other circumstances that may qualify based upon the Commission’s good judgment.
- Use of interactive media technology is dependent upon the individual Commissioner’s device working properly (which is the responsibility of the individual Commissioner);
- Use of interactive media technology also depends on the public’s ability to hear, see and interact with the Commissioner appearing virtually; and
- The Commissioner’s technology usage cannot be disruptive to the in person public meeting.

When the Town Commission considered the adoption of Resolution 2021-15 and its applicability to only the elected Town Commission, the Town Commission indicated that in person physical meeting presence was the preference and intentionally limited the applicability of the policy to the elected Town Commission. The Commission considered a number of factors in arriving at the limited applicability of the policy including:

- Staff time and resources setting up and monitoring the interactive media technology (i.e., zoom);
- The frequency of Town Commission meetings and workshops as compared to the advisory board meeting schedule;²
- Concerns relating to quasi-judicial hearings and evidentiary limitations that may occur during advisory board hearings; and
- Logistical and staffing issues associated with managing advisory board member requests to appear virtually at meetings/hearings. Specifically, concerns were raised about how determinations would be made on specific advisory board member's "extraordinary circumstances" and how competing board member requests to participate virtually would be resolved.

A factor that was not raised or considered at the time of adoption of Resolution 2021-15, but should also be considered, is whether a further expansion of interactive media technology will elicit requests from members of the public, property owners, applicants and other interested parties (in quasi-judicial settings) to similarly appear virtually at Town public meetings and hearings. Increased virtual meeting usage may create compelling arguments from others interested parties that interactive media technology should be expanded to all participants in the public meeting process, especially if it is already available to Town Commissioners and advisory board members.

Ultimately, it is a Town Commission policy decision on whether to modify the Town's current interactive media technology policy. Depending on the Town Commission's interest in expanding the current interactive media technology policy, the Town Commission can either: (1) amend Resolution 2021-15 through the adoption of a superseding resolution, and/or (2) adopt a new resolution on interactive media technology that relates exclusively to the Town's advisory boards. If either option is desired, then the Town Commission would need to provide direction on its desired modifications.

C. Conclusion

In summary, the Town Commission has discretion to determine whether it wants to place a Charter referendum question before the Town's qualified voters at the March 2023 election to modify the existing Town Commission meeting and attendance requirements. If the Commission wants to pursue a Charter amendment changing the Commission meeting requirements and/or the penalty for absences, then the Town Commission needs to provide direction on the desired changes so an ordinance can be adopted in time to meet the election deadlines. Additionally, should the Town

² It is important to note that under Town Code, Planning and Zoning Board (PZB) and Zoning Board of Adjustment (ZBA) members can be removed from their positions if they fail to attend three (3) consecutive scheduled and called regular meetings. See, Secs. 33.20(B) and 158.010(A)(2), Town Code.

Commission want to amend its interactive media technology as set forth in Resolution 2021-15, and/or create a new interactive media technology policy that would be applicable to the Town's advisory boards, the Town Commission needs to provide direction and input on the desired policy changes so appropriate resolution(s) can be prepared for consideration.

If there are any questions or concerns about this Memorandum, please do not hesitate to contact me directly.

Exhibit: (1) Resolution 2021-15. This exhibit is available and on file with the Town Clerk's Office.

End of Agenda Item