



ACLU of Massachusetts
One Center Plaza, Suite 850
Boston, MA 02110
617-482-3170
www.aclum.org

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Joint Committee on State Administration and Regulatory Oversight
Sen. Nick Collins & Rep. Antonio Cabral

SUPPORT H.3040/S.2024
An Act to Modernize Participation in Public Meetings

Chair Cabral, Chair Collins, and members of the Joint Committee on State Administration and Regulatory Oversight:

The ACLU of Massachusetts offers our strongest support for H.3040/S.2024, *An Act to Modernize Participation in Public Meetings*, which would amend the Open Meeting Law to guarantee hybrid access for members of the public.¹

The purpose of the Open Meeting Law is to promote government transparency and enable all people to engage in the democratic process. But prior to the Covid-19 pandemic, we largely accepted that Open Meetings were only open to some.

Before 2020, in-person-only government meetings, inconvenient meeting locations and times, and the physical limitations of public spaces dictated who could attend. Residents with disabilities, homebound seniors, people with limited transportation access, and parents and family caregivers were frequently shut out. Many could not attend at all, and others had to overcome great difficulties to be able to show up and participate.

Today, we can do better; we know we can, because many of our communities have been doing it for years. The pandemic was a devastating shock to our system, but amid that crisis, Massachusetts cities and towns overnight implemented a technological revolution to conduct the business of state and local government. Paradoxically, at a time when we were more isolated than ever before, our local governments came alive with widespread democratic engagement. In 2021, then-Mayor Kim Driscoll noted that Salem saw a 700 percent increase in public attendance at city council meetings during the pandemic.² And Salem is not alone. We've spoken with municipal officials from large cities and small towns across the Commonwealth who tout the benefits of broader public participation. Towns and cities that initially adopted fully remote meetings, and more recently hybrid ones, have seen an increase in the number of people tuning into public meetings, and more constituents offering public comment to inform important decisions.

¹ We also strongly support H.2998, filed by Chair Cabral, and gratefully acknowledge both his longstanding leadership on Open Meeting Law access and his specific leadership in advancing this issue last session. We focus our testimony on H.3040 and S.2024 in order to highlight that legislation's timeline for compliance and dedication of state resources to help municipalities achieve the objective of guaranteed hybrid access for all Open Meetings.

² <https://www.bostonglobe.com/2021/03/29/opinion/legislature-should-not-be-exempt-open-meeting-law>

Hybrid meetings have become a permanent, essential part of everyday life. They have broken down longstanding barriers and substantially increased and improved public participation in civic life throughout the Commonwealth. The aftermath of the pandemic showed us we can more fully realize the promise of the Open Meeting Law by joining tradition and technology together. But while many Massachusetts communities have implemented hybrid meetings of their own volition, the landscape is uneven. Every resident of the state should benefit from what we now know about implementing basic technology to facilitate broader access to local democracy.

We can no longer accept the exclusion of large segments of the population from the democratic process simply because the existing system works for the most privileged among us, because inclusion has a price tag, or because change is inconvenient. We can do better—and our commitment to maximize democratic access and participation demands it.^{3 4}

Many Massachusetts Communities are Already Conducting Hybrid Meetings

The good news is that government entities across the Commonwealth – from this Legislature to the tiny town of Gosnold (pop. 70) – have already embraced hybrid meetings to ensure that everyone can participate.

This spring, the ACLU of Massachusetts and our partners conducted a survey of every city council, select board, and school committee in the state. We reviewed online meeting notices, publicly available agendas, and meeting minutes to take a snapshot of existing municipal practices. To be conservative, we defined hybrid meetings as those where members of the public could attend in person or via videoconference using a platform like Zoom or Microsoft Teams. This format enables the public to both observe and, where public comment is allowed, to participate in the meetings.⁵

³ Some of the same equity issues that impact members of the public may also impact who can serve on public bodies, and diversity of experience is needed among government decision-makers. For this reason, we support accommodations that would allow individual officials to participate remotely. However, we would strongly caution the Committee against dramatically scaling back or eliminating the in-person quorum requirement, which would represent a significant departure from the principles of sunlight, accountability, and community that undergird the Open Meeting Law.

⁴ Title II of the Americans with Disabilities Act (ADA) requires state and local governments to give people with disabilities an equal opportunity to benefit from all their programs, services, and activities. It also requires those entities to make reasonable modifications when necessary to accommodate people with disabilities. Whether or not state and local governments have an affirmative legal obligation to conduct all their meetings in a hybrid manner to ensure equal access for people with disabilities, the widespread availability of videoconferencing technology would make it unreasonable to deny a request for hybrid access as an accommodation in many circumstances. Among other reasons, we encourage the legislature to enact *An Act to Modernize Participation in Public Meetings* as a measure that is consistent with the spirit and objectives of the ADA.

⁵ We also tracked meetings that did not include a videoconferencing option but were streamed live. The Open Meeting Law does not require that members of the public be allowed to speak at all meetings. If meetings do not include a public comment portion, livestreaming an otherwise in-person meeting affords equal access to people

The results: With more than half of all city councils, select boards, and school committees conducting fully hybrid or livestreamed meetings, **hybrid meetings are already standard operating procedure for many government entities in municipalities of every size.**

City Councils and Select Boards

- 45.3% of plenary city council and select board meetings are fully hybrid (in-person plus videoconferencing)
- An additional 16.5% are livestreamed
- In total, 62% are fully hybrid or livestreamed

School Committees

- 34.5% of school committee meetings are fully hybrid
- An additional 24.9% are livestreamed
- In total, more than 59% are fully hybrid or livestreamed

Size Doesn't Matter

- Small, medium, and large communities all conduct hybrid meetings at similar rates⁶

Without Guaranteed Hybrid Meetings, Exclusion and Inequities Persist

The survey also revealed serious inequities among Massachusetts communities. Despite strong progress toward hybrid meetings, approximately 25 percent of communities have reverted to holding in-person-only meetings. In *those* cities and towns, people with disabilities, those with limited transportation, and working caregivers are systematically excluded from participating in meetings of the major governing bodies that set public policy in their city or town. Massachusetts cannot tolerate this kind of injustice, particularly when so many cities and towns of varying sizes and wealth have shown us equity is possible.

Another, smaller set of communities is holding meetings exclusively online, which can also limit access and interfere with transparency.⁷ In the end, both meetings conducted exclusively in person and meetings conducted exclusively online needlessly sideline certain groups of residents and limit civic engagement.

who attend the meeting at its physical location or observe it remotely; this would also count as a hybrid meeting under *An Act to Modernize Participation in Public Meetings*.

⁶ Approximately 40-50% of city councils and select boards in communities of every size are conducting hybrid meetings:

- 44% in municipalities with populations under 5,000;
- 49.6% in municipalities with populations between 5,000 and 15,000;
- 39.7% in municipalities with populations between 15,000 and 25,000;
- 45% in municipalities with populations greater than 25,000.

⁷ Members of the public who do not have reliable or fast internet may not be able to participate in virtual-only meetings. In addition, enabling members of the public and the press to meet and interact with public officials face to face can be important for government transparency and accountability.

We urge the committee to reject proposals to permanently codify the laissez-faire approach that leaves it to each municipality or public body itself to choose whatever format they prefer, regardless of the impact on public access. The only way to ensure equity and maximize public access to government deliberations is to guarantee hybrid meetings.

Making It Work – with Resources and a Runway

Many communities are already making hybrid meetings work, at least for the major governing bodies with the broadest constituencies. And their leadership demonstrates that all government entities can conduct hybrid meetings with the right resources and adequate implementation time. The ACLU of Massachusetts and our fellow advocacy groups are committed to working with the Legislature to get this right.

We acknowledge that guaranteeing hybrid meeting access presents some challenges, especially for public bodies in municipalities that have not yet developed the technological capacity to do hybrid meetings or made hybrid meetings a priority. *An Act to Modernize Participation in Public Meetings* expressly accounts for those challenges by: (1) prioritizing early adoption by a subset of public bodies, namely state agencies and elected municipal bodies; (2) providing a long runway for full compliance, with hardship waivers available all the way to 2030; and (3) dedicating state resources to this critically important civic project.

Several different revenue streams can be used to support hybrid meetings, including unexpended American Rescue Plan Act (ARPA) funds, the Massachusetts Broadband Institute's Municipal Digital Equity Planning program, and state bond authorization. Last year, the legislature demonstrated its commitment to supporting municipalities in their adoption of hybrid and virtual access by passing a \$30M bond authorization – but disappointingly, former Gov. Baker vetoed this line item after the end of the formal legislative session, leaving cities and towns in the lurch.⁸ We hope the legislature will renew this funding with a more receptive partner in the corner office.

An Act to Modernize Participation in Public Meetings would create a fiscal structure to support municipalities meeting their hybrid meeting goals by establishing a Municipal Hybrid Meeting Trust Fund and a grant program to help municipalities finance their modernization efforts.⁹

⁸ We deeply appreciated the legislature's inclusion of a new line item (1100-2517) which would have allocated \$30M in the 2022 general governmental bond bill ([H.5065](#)) to support municipal IT infrastructure for public meetings, and were equally disappointed with Governor Baker's decision to veto this critical funding to support increased access to democracy for residents of the Commonwealth.

⁹ Most hybrid meetings don't require costly or elaborate setups like the ones used by the legislature. In many cases, a computer, a table-top audio/video unit, and a large wall-mounted monitor will be sufficient to ensure more people can access and engage in the democratic process. This equipment is relatively inexpensive and does not require sophisticated training or technical expertise to use.

Conclusion

For some of us, virtual participation is a matter of convenience, but for many, hybrid participation options have opened the door to meaningful civic engagement for the very first time. More parents can participate in school board meetings without having to find childcare; elderly residents are able to participate in evening meetings without having to drive in the dark; transit riders can participate in MBTA meetings without having to coordinate a special commute to and from downtown; constituents can participate in municipal disability commission meetings from home.

Now that we've experienced the benefits of hybrid public meetings, we cannot go back. And we cannot accept uneven access, either; access to one's local democracy shouldn't hinge on what town or city one lives in. We urge the legislature to swiftly adopt permanent changes to the Open Meeting Law to guarantee hybrid access for all, in every community, so that all members of the public can fully engage with their state and local government.