Remote Meeting Attendance by Member of a Public Body

Introduction
Municipal officials frequently ask the League if it is permissible for councilmembers/trustees/commissioners to attend council meetings by remote participation—videoconferencing, teleconferencing, etc. Until recently, the Open Meetings Act (OMA) did not include a provision for remote attendance of council meetings. In 2018 the OMA was amended to require public bodies to create a policy that allowed local governing officials who are members of the military to remotely attend and participate in meetings. Prior to this amendment, the League had been conservative in its advice regarding the question of remote attendance; we advised our members to require physical attendance in their rules of procedure.

Legislation
In 2018 the Legislature passed an amendment to the OMA permitting remote attendance for members of governing bodies who are absent due to military duty, and requiring public bodies to establish procedures (MCL 15.263(2)):

For purposes of any meeting subject to this subsection, except a meeting of any state legislative body, the public body shall establish the following procedures to accommodate the absence of any member of the public body due to military duty:

(a) Procedures by which the absent member may participate in, and vote on, business before the public body, including, if feasible, procedures that ensure 2-way communication.

(b) Procedures by which the public is provided notice of the absence of the member and information about how to contact that member sufficiently in advance of a meeting of the public body to provide input on any business that will come before the public body.

Municipal Policies
There have been several outcomes such as Attorney General Opinion 6835 and Goode v Department of Social Services, 143 Mich App 756 (1985) where it has been found that members of certain bodies could remotely participate in meetings. Neither the subject of the Attorney General Opinion nor the Goode case involved members of local government governing bodies. As a result, the municipalities that have adopted remote attendance policies have been varied in their approach. For example, East Tawas considers a councilmember participating by remote electronic means as “fully participating, just as if such Council member were physically present.” In contrast, Ithaca allows remote participation, but the member is not part of the quorum nor is he/she allowed to vote. See the attached sample policies for details.

In response to the OMA amendment requiring local government bodies to formulate a policy allowing remote attendance by members serving military duty, the city of Battle Creek’s policy is also attached.
RESOLUTION PROVIDING FOR REMOTE COUNCIL MEMBER MEETING PARTICIPATION VIA ELECTRONIC MEANS

At a regular meeting of the East Tawas City Council held on the 17th day of December 2018 at 7:00 p.m. in the Council Chambers of the East Tawas City Hall, 760 Newman Street, East Tawas, Michigan, the following preamble and resolution were offered by Council member Leslie and seconded by Council member L. Bolen.

Whereas, the City of East Tawas Council believes it is in the best interest of its residents and taxpayers that the fullest participation and attendance in all Council meetings be achieved whenever possible; and

Whereas, the City of East Tawas Council as well believes that it is in the best interests of its members to be able to continue participation in Council meetings and associated activities even if they are unable to be physically present during periods of prolonged, excused absence; and

Whereas, the use of electronic conferencing for meeting attendance and voting requirements is permissible so long as the meeting is conducted in accordance with the Open Meetings Act; and

NOW THEREFORE, BE IT RESOLVED, that Council members may, during any period of excused absence, fully participate by remote electronic means in any Council meeting at which a quorum is present, and just as if such Council member were physically present.

BE IT FURTHER RESOLVED, that the following requirements shall apply to all instances of remote meeting participation:

1. The remotely participating Council member shall give notice of his or her intent to participate remotely, and the means of such participation, as soon as practicable.

2. The Council shall approve such remote participation prior thereto. Such approval may be on a meeting by meeting basis, or for an approved period of time spanning multiple meetings.

Physical attendance is preferred. This policy shall not be construed to mean that participation by remote, electronic means shall be regularly allowed; but rather, such participation shall be limited only to those Council members whose circumstances do not reasonably permit in-person attendance.

3. Prior to remote participation, the identity of the remotely participating Council member shall be verified by reasonably means by City staff and/or other Council members present.
4. Video conferencing is required for remote participation. To the extent practicable, the remotely participating Council member shall be able to hear all discussion and activity at the meeting and shall be able to be heard by those Council members, staff, and others in attendance at the meeting.

5. The minutes of the meeting shall reflect the fact of remote participation of each Council member so participating.

6. All votes shall be by roll call.

Yes: Baker, B. Bolen, L. Bolen, Klenow, Leslie, McMurray and Mooney.

No: None

Absent: None

RESOLUTION DECLARED ADOPTED.

I hereby certify that the above is a true and complete copy of a resolution adopted by the East Tawas City Council at a regular meeting held on the 17th day of December 2018; and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

_______________________________
Julie J. Potts, Clerk
Section 2  Village Council Meetings

2.1 The purpose of a regular or special meeting of the Village Council is for the business of the Village to be conducted in a public setting. Four (4) members of the Council shall constitute a quorum for the transaction of business at all Council meetings. In the absence of a quorum, any number of members less than quorum may adjourn any regular or special meeting to a later date of not later than one (1) week, or may compel the attendance of absent members. The regular meeting date and time for the Village Council shall be 7 PM on the third Tuesday of the month. Unless otherwise agreed to by a majority vote of the Council, the meeting location shall be the Village Hall located at 1010 Clubhouse Drive.

2.2 One Council member may appear at a Council meeting via telephone or video conference under limited circumstances as established herein. Telephonic or video appearances are only for the benefit of the necessary transaction of business that cannot otherwise wait for approval at a later date, and not for the benefit of individual Council members. Telephonic appearances may only occur as follows:

A. The presiding officer may approve a Council member’s appearance at a Council meeting via telephonic means when action on a measure to be voted on cannot be reasonably delayed. A minimum of three members must be physically present at a meeting which has been posted in compliance with then Open Meetings Act, and all absent members must be afforded an equal opportunity to participate in the meeting if they are so able and desire.

B. A member requesting to participate shall provide 12 hour notice to the Village Manager and Village Clerk of the desire to participate via telephonic means.

C. The member requesting to participate cannot attend the meeting under reasonable circumstances, such as but not limited to; travel, illness, business, or family emergency.

D. One member of a standing sub-committees of the Village Council such as the election commission, finance committee, or personnel committee may appear via telephonic means for discussion purposes only, and provided that the other two members of the sub-committee are physically present at the meeting.

2.3 Regular meetings shall be held on the third Tuesday of each month, with attendance being mandatory. Requests for excused absences shall preferably be submitted to the Council in writing, or verbally announced during a preceding Council meeting in advance of the planned absence, except in emergency situations. Excused and unexcused absences shall be determined by vote of the Council utilizing the following guidelines:

A. In the event a member must absent themselves from a regular Village Council meeting, the responsibility for reporting such absence will reside exclusively with the member, unless such absence makes it impossible to report in a personal and timely fashion.

B. Reporting of such an absence must be made known at the earliest opportunity. Reporting of an absence shall be first to the Village Council President. Should, however, the Village Council President be unavailable, the reporting of an absence will then be reported to
In accordance with the City of Ithaca City Charter, Chapter IV, Item F, the following rules is hereby set:

Whereas, the City Council acknowledges and complies with the Open Meetings Act (1976 PA267) as amended, and

Whereas, the Open Meetings Act does not address, nor is there any court rulings regarding electronic media participation, and

Whereas, the City Council has embraced technology by receiving Council packets electronically and the use of IPads or tablets to receive named packets, and

Whereas, the City Council wishes to further utilize technology to include all members when physical presence is hindered but the means of electronic participation is an option, now

Be it Resolved, that the following rule is set:

A City Councilperson may participate by means of Electronic Media if first excused from the Council meeting as stated by City Charter. Electronic participation is limited to six times per year.

The Mayor is not allowed to conduct the meeting through electronic participation.

A Councilperson participating through electronic media must participate through means where physical confirmation of the member can be made: this must be through a real-time and visual connection such as Facetime, Skype, etc and not through means of telephone or media without real-time visual connection.

A Councilperson verified through a real-time visual connection will be allowed to participate in discussions and will be paid for meeting attendance. The Councilperson will not however count toward the quorum or be allowed to vote. They are considered absent for voting status.

A Councilperson participating through the approved electronic media will be placed in his/her normal Council seat and faced toward the public as if seated. If visual connection is lost during the meeting, the member will be treated as if they had left the meeting and documented as so in the minutes of meeting.

Be it Further Resolved, that this rule shall remain in effect until City Council rescinds or changes it or the Open Meetings Act address electronic participation.

Adopted__________________

____________________________   ____________________ ___
Barbara Fandell, Clerk-Treasurer          Tim Palmer, Mayor
212.02
Rules of Procedure

III.
   A. Every Commissioner present, including the Mayor, when a question is stated or vote is called for on any resolution, motion, question or ordinance shall vote "Yes" or "No" thereon, unless he is excused by the unanimous consent of the remaining Commissioners, or unless he is pecuniarily interested, in which latter case he shall not vote. The vote on all matters shall be taken and entered upon the record of the proceedings of the Commission. A roll call vote shall be taken on any resolution, ordinance or amendment thereto before the City Commission on a rotating basis.

   B. Roll call votes shall be conducted by the Clerk in such sequence so as to rotate the requirement of voting first to each Commissioner, including the Mayor, alphabetically around the Commission table.

   C. As an alternative to paragraph B. hereof, roll call votes may be conducted by the Clerk using a machine system of voting which permits each Commissioner to vote "Yes" or "No" and not have his or her vote displayed to other Commissioners or the public until all votes by Commissioners have been cast, at which time the Clerk shall publicly reveal the vote.

   D. The following definition and procedures shall apply to accommodate the absence from a public meeting, workshop and/or work session (hereafter "meeting") of a member of the public body due to military duty:

      (1) “Military Duty” means (a) training and service performed by an inductee, enlistee or reservist or any entrant into a temporary component of the armed forces of the United States, and (b) time spent in reporting for and returning from such training and service, or if rejection occurs, from the place of reporting, pursuant to a lawful order.

      (2) The member of the public body who will be absent from a meeting due to military duty shall notify the City Manager of the intended absence and affected dates sufficiently in advance of the public meeting to allow the public to provide input on any business that will come before the public body, along with an email address and telephone number where that member can be reached during the absence from the meeting for military duty.

      (3) Upon notification by the City Manager to the City Clerk of the absence under this sub-section, the City Clerk shall post a notice of the affected public meeting, which shall include a notification to the public of the name of the member who will be absent due to military duty and a notification that the member may be contacted through the City of Battle Creek website portal or with a written message submitted to the City Manager’s office.

      (4) The member of the public body who will be absent from a public meeting due to military duty shall be permitted to participate in, and vote on, business before the public body in a manner determined by the City I.T. Director, or their designee, to ensure 2-way communication whenever feasible, ideally utilizing a form of teleconferencing whenever possible.
(5) The member of the public body who will be absent from a meeting due to military duty shall be considered to be present at the public meeting for purposes of this chapter when that member has participated in that meeting pursuant to subsection (4).