

**TOWN OF BOW MAR
BOARD OF TRUSTEES
RESOLUTION NO. 2020-R-10**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF BOW
MAR AMENDING A POLICY FOR ELECTRONIC PARTICIPATION IN
BOARD OF TRUSTEES MEETINGS**

WHEREAS, the Town of Bow Mar, Colorado, through its Board of Trustees (the "Board"), has found it necessary to meet electronically during the COVID-19 pandemic to continue to act in the best interests of the health, safety, and welfare of its citizens, and on March 16, 2020 adopted a policy permitting electronic participation in Board meetings (the "Policy") as a result;

WHEREAS, the Board declared a public health emergency related to the COVID-19 pandemic on March 24, 2020; and

WHEREAS, it appears that the COVID-19 public health emergency will extend longer than initially expected; and

WHEREAS, the Board finds that it is desirable to extend the option to hold electronic meetings for public hearings held by the Design Review Board under emergency circumstances such as the COVID-19 public health emergency, provided that the applicant elects to proceed in that manner; and

WHEREAS, in amending the Policy, the Board of Trustees intends to follow the letter and spirit of the Colorado Open Meetings Law in every respect, and to the extent possible and practical under emergency circumstances.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BOW MAR, COLORADO AS FOLLOWS:

Section 1. The Board of Trustees hereby approves and adopts the Policy for Electronic Participation in Board of Trustees Meetings as amended, attached hereto as **Exhibit A**.

Section 2. If any part or provision of this resolution is adjudged to be unenforceable or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this resolution, it being the intention of the Board of Trustees that the various provisions hereof are severable.

Section 3. This resolution shall be effective immediately.

ADOPTED AND APPROVED this 20th day of April, 2020.

TOWN OF BOW MAR, COLORADO

By: 
Tom Feldkamp, Mayor

ATTEST:

By: 
Sue Blair, Town Clerk

APPROVED TO FORM:

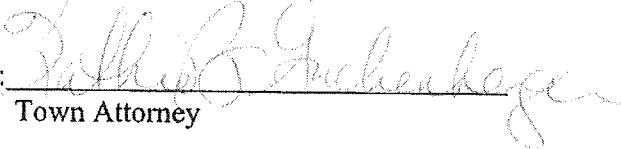
By: 
Town Attorney

Exhibit A

**AMENDED POLICY FOR ELECTRONIC PARTICIPATION IN
TOWN MEETINGS**

TOWN OF BOW MAR, COLORADO
POLICY FOR ELECTRONIC PARTICIPATION IN
BOARD OF TRUSTEES TOWN MEETINGS

I. Purpose

The purpose of this policy is to specify the circumstances in which a member of the Board of Trustees ("Board") and the Design Review Board ("DRB") may participate in regular and special meetings by telephone or other electronic means of participation, such as video conferencing ("Electronic Participation"). Electronic Participation has inherent limitations because it effectively precludes a member of the ~~Board~~ decision-making body from contemporaneously observing documentary information and data presented exclusively during a meeting; from fully evaluating a speaker's non-verbal language in assessing veracity or credibility; and from observing non-verbal explanations during a speaker's presentation or testimony (e.g., gestures or pointers directed at specific data in graphs, charts, photographs, site plans, etc.). The Board finds that the inherent limitations of Electronic Participation may produce inefficiencies in meetings, increase the expense of meetings, and could undermine certain decision-making processes, particularly quasi-judicial matters. The Board also finds that under certain circumstances, Electronic Participation in Board meetings may be desirable or necessary to facilitate the continuity of municipal operations or to protect the health, safety, and welfare of the citizens of the Town of Bow Mar.

II. Scope

This policy shall only apply to regular and special meetings (including study sessions) of the Board of Trustees of the Town of Bow Mar and to meetings of the Design Review Board to consider applications regarding construction of any building, structure, or improvement or alteration of the exterior of any property. This policy does not apply to the Board of Adjustment or any other boards or commissions established by the Town or the Board of Trustees, including, but not limited to, the Design Review Board for any other purpose except as expressly authorized herein.

III. Policy

A member of the Board of Trustees and a member of the Design Review Board may participate in a meeting of the Board via Electronic Participation only in accordance with this policy. The Mayor shall interpret and apply this policy as the chief executive officer of the Town.

A. Non-emergency Circumstances.

Electronic Participation may be made available to members of the Board of Trustees in non-emergency circumstances, and shall be subject to the following limitations:

1. A member of the Board may use Electronic Participation to listen to any Board meeting. Any Board member using Electronic Participation to attend a Board meeting shall be deemed present for purposes of determining a quorum, but only for meetings in which no quasi-judicial matters will be heard or considered. The Board member may not participate or vote in a quasi-judicial public hearing, but may maintain the

electronic connection and monitor and listen to the hearing. The Board member may participate and vote in legislative and administrative matters.

2. Electronic Participation is permitted as an infrequent substitution for physical attendance. For purposes of this policy, "infrequent" shall mean no more than two (2) Board meetings per calendar year. A Board member may request that the Board approve their Electronic Participation for more than two (2) Board meetings if unforeseen circumstances warrant, in the sole discretion of the Board, authorizing such additional Electronic Participation. The Board of Trustees may, by majority vote of the members present, declare a Board member's use of Electronic Participation excessive and deny a Board member the privilege of using Electronic Participation for a specific meeting or meetings.
3. More than one Board member may use Electronic Participation during the same meeting if the means of Electronic Participation permits clear, uninterrupted, and two-way communication for all participating Board members.
4. Electronic Participation may also be made available to a Board member during an executive session; provided, however, that the Board member using such means to participate in an executive session shall take all steps necessary to ensure that the privacy and confidentiality of the executive session are maintained at the highest level. No individual Board member using Electronic Participation for an executive session may permit any other person to hear, see, or otherwise have access to executive sessions or related materials.
5. The Board may discontinue the use of Electronic Participation by one or more members during a meeting where such participation results in delays or interference in the meeting process; *e.g.*, where the electronic connection is repeatedly lost, the quality of the electronic connection is unduly noisy, or a participating member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance. If a quorum is no longer present, the trustees may adjourn the meeting in accordance with Section 2-30 of the Bow Mar Municipal Code.

B. Emergency Circumstances.

If a quorum is not able to meet at any duly noticed regular or special meeting of the Board because meeting in-person is either not feasible or prudent due to a health epidemic or an emergency affecting the Town, the Board may conduct its meetings via Electronic Participation.¹ The Board may only conduct meetings using Electronic Participation only if all of the following conditions are met:

1. The Mayor determines that meeting in-person is either not feasible or prudent due to a health epidemic or an emergency affecting the Town²;

¹ See Section 2-28 of the Bow Mar Municipal Code.

² See Section 2-22(b) of the Bow Mar Municipal Code.

2. For special meetings, the trustees receive notice of the meeting at least twenty-four (24) hours in advance of the time and place of such special meeting, except in a case of an emergency, in which case the only notice that shall be required is such notice as is practical under the circumstances;³
3. All members of the Board can hear one another or otherwise communicate with one another via the means of Electronic Participation and can hear or read all discussion and testimony in a manner designed to provide maximum notice and participation;
4. Members of the public present at the regular meeting location can hear or read all discussion, presentations, testimony, and votes, unless not feasible due to the epidemic or emergency;
5. At least one member of the Board is present at the meeting location, unless not feasible due to the epidemic or emergency;
6. All votes are conducted by roll call;
7. Minutes of the meeting are taken, promptly recorded, and such records made available to public inspection as soon as is feasible in light of the epidemic or emergency;
8. To the maximum extent possible, the public receives such notice as is practical under the circumstances of:
 - a. the time of the meeting;
 - b. the fact that some or all members of the Board will use Electronic Participation to conduct the meeting; and
 - c. the right and means by which the public may monitor the meeting from another location.
9. The Board shall provide adequate opportunity for the public to participate in the meeting that is commensurate with the similar opportunity that is routinely given during in-person meetings – *i.e.*, the public comment portion of the agenda. The Mayor may, if deemed necessary and prudent due to a health epidemic or an emergency affecting the Town, and if adequate notice is provided to the public, permit the public to submit comments in advance of the meeting to be read into the record at a meeting being conducted via Electronic Participation.
10. The Board may also convene executive sessions in regular or special meetings conducted via Electronic Participation if such sessions otherwise conform to the provisions of Colorado law. All Board members using Electronic Participation to participate in an executive session shall take all steps necessary to ensure that the privacy and confidentiality of the executive session are maintained at the highest level. No individual Board member using Electronic Participation for an executive session may permit any other person to hear, see, or otherwise have access to executive sessions or related materials.

³ See Section 2-31 of the Bow Mar Municipal Code.

11. The Board may discontinue the use of Electronic Participation by one or more members or citizens during a meeting where such participation results in delays or interference in the meeting process; e.g., where the electronic connection is repeatedly lost, the quality of the electronic connection is unduly noisy, or a participant member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance. If a quorum is no longer present, the trustees may adjourn the meeting in accordance with Section 2-30 of the Bow Mar Municipal Code.

12. If the Building Commissioner has determined that meeting in-person is either not feasible or prudent due to a health epidemic or an emergency affecting the Town, the Design Review Board may hold and conduct meetings using Electronic Participation only under the following circumstances:
 - a. The DRB has received a complete application regarding construction of any building, structure, or improvement or alteration of the exterior of any property pursuant to Section 2-115 of the Bow Mar Municipal Code that is ready for the DRB's consideration. The DRB may not hold meetings or public hearings using Electronic Participation for any other purpose, including initial submittals pertaining to variances.

 - b. The Town shall advise the applicant of the emergency circumstances and present the applicant with options for proceeding with the application. Upon notice from the Town, the applicant shall authorize the Town, in writing, to proceed with one of the following options:
 1. Conduct the public hearing under this policy with accommodations made for Electronic Participation, including notice to and participation by the public; or

 2. Suspend any and all review and decision deadlines until such time that the emergency has passed, and the DRB can schedule and hold a meeting at which an in-person quorum will be present.

 - c. The DRB shall notice and conduct such meetings in accordance with all applicable notice, participation, and record-keeping requirements set forth in Section B. 3 through 9 above.

C. Arranging for Electronic Participation

To arrange to hold or participate in a meeting using Electronic Participation, a Board member or the Building Commissioner⁴ shall:

1. Contact the Mayor or Town Clerk in advance of the meeting to determine whether Electronic Participation is possible. Board members shall endeavor to inform the

⁴ If authorized by the applicant.

Mayor or Town Clerk of their desire to participate via Electronic Participation at the earliest possible time, and not less than twenty-four (24) hours prior to the time of the meeting for which they seek to use Electronic Participation.

2. If Electronic Participation is possible and permitted under this policy, the Town Clerk shall initiate the Electronic Participation no more than ten (10) minutes prior to the scheduled time of the meeting. Upon inadvertent disconnection during a meeting, the disconnected Board member shall make one attempt to re-initiate the connection. If such attempt fails, the Mayor shall determine whether the Board still has a quorum so that the meeting can proceed. If a quorum is no longer present, the trustees may adjourn the meeting in accordance with Section 2-30 of the Bow Mar Municipal Code.

D. Telephonic Participation by Non-Council Members.

Upon request of the Mayor or any two trustees, appointees of the Board (e.g., the Town Clerk, the Town Attorney, or designees acting on behalf of and at the direction of the Clerk or Attorney), may participate in a Board meeting via Electronic Participation. For all other persons, Electronic Participation shall not be permitted unless approved by a majority of Board members present at a meeting.

E. Reasonable Accommodations.

The Town shall provide reasonable accommodations and shall waive or modify provisions of this policy to provide equal access to Town Board-meetings held in accordance with this policy.

- Amended April 20, 2020 (to include Design Review Board consideration of applications regarding construction of any building, structure, or improvement or alteration of the exterior of any property).