NVTC ELECTRONIC PARTICIPATION POLICY
Effective July 1, 2021

Occasions may arise when a Commissioner of the Northern Virginia Transportation Commission (NVTC) is unable to be physically present at a meeting. Under certain circumstances, the Virginia Freedom of Information Act, VA. Code Ann. §§ 2.2-3700 et seq., permits members of a public body, such as NVTC, to participate in meetings through electronic means such as telephone and video conferencing. The law limits the instances in which this may occur and prescribes procedures that must be followed when a member participates remotely. The NVTC Electronic Participation Policy (“Policy”), as hereafter set forth, identifies the instances when a Commissioner may participate in a NVTC meeting, including NVTC appointed committee meetings, electronically and the procedures that apply.

Pursuant to the Freedom of Information Act, participation by a member of a public body in a meeting through electronic communication means shall be authorized only if the following conditions are met:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations by §§ 2.2-3700.A.1 and 2. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

2. A quorum of the public body is physically assembled at one primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

Nothing in this Policy should be construed as to prohibit the use of audio or audio/visual means to increase public participation at meetings even if no Commission members are participating electronically. NVTC welcomes the use of electronic means to increase public access to its Commission meetings. The specific requirements and limitations on electronic participation described herein apply only to the members of NVTC holding a public meeting.

Circumstances When Electronic Participation Is Permitted

A Commissioner may participate in a NVTC meeting through electronic communication means from a remote location that is not open to the public under the following circumstances:

A. A Commissioner who is unable to attend the meeting due to 1) a temporary or permanent disability or other medical condition that prevents the member’s physical attendance; or 2) a family member’s medical condition that requires the member to provide care for such
family member, thereby preventing the member’s physical attendance (§2.2-3708.2.A.1.a); or

(This section allows for an unlimited number of times a member can participate electronically due to disability, medical condition or care for a family member.)

B. A Commissioner who is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter (§2.2-3708.2.A.1.b). When such individual participation is for a personal matter, such participation is limited by law to two meetings or 25% of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

(Example: if NVTC holds 10/11 Commission meetings a year, a Commissioner could participate electronically for a personal reason 2.5/2.75 times, rounded up to three (3) meetings a year.)

C. A Commissioner, whose principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting, may participate electronically subject to the procedural requirements set forth in this Policy (§2.2-3708.2.B.1).

D. To address a state of emergency declared by the Governor (§2.2-3708.2.A.3). Due to the limited nature of this provision and that specific strict procedures apply, NVTC’s electronic participation requirements during an emergency will be addressed in this Policy in a separate section at the end of the Policy (page 6).

Procedural Requirements

Electronic participation by a NVTC Commissioner as authorized above (by A-C) shall be only under the following conditions:

1. A quorum of NVTC Commissioners is physically assembled at the primary or central meeting location.

2. NVTC can make arrangements for the voice of the Commissioner who is participating remotely to be heard by all persons at the primary or central meeting location.

3. A Commissioner must notify the applicable chair (Commission chair or committee chair), with notification copied to the executive director and commission secretary, on or before the day of the meeting, not later than eight (8) hours prior to the start of the meeting, that such Commissioner is unable to attend and identify the reason in A, B, or C above that prevents physical attendance. (The request can be made verbally but should be followed up in writing as soon as possible.)

4. The existence of a disability or medical condition of a Commissioner or their family member, the specific nature of the personal matter, or that a Commissioner’s primary
residence is 60 miles or more from the meeting location, must be identified and be recorded in the minutes.

5. Commissioner’s remote participation must be in accordance with the adopted NVTC Electronic Participation Policy. If the Commissioner’s participation from a remote location is disapproved because such participation would violate the provisions of this Policy, such disapproval shall be recorded in the minutes with specificity.

NOTE: As stated above, if a Commissioner cannot meet the procedural requirements to participate in a meeting by electronic communications means, the Commissioner may still monitor the meeting by listening or watching by electronic communication means. However, the member cannot be counted as present and cannot participate. In such a situation, as a matter of best practices, the chair should make a statement to inform the public and the other members, such as: “Please observe that [member name] could not attend today’s meeting but is [listening/watching] the meeting by [speakerphone, videoconferencing, or whatever electronic communications means is being utilized]. However, [member name] is only monitoring the meeting and is not counted as present, and cannot make motions, vote or otherwise participate.”

Guidelines for the NVTC Electronic Participation Policy

The determination of whether requests by Commissioners to participate in NVTC Commission meetings, as well as committee or subcommittee meetings, from remote locations complies with the NVTC Electronic Participation Policy (“Policy”) shall be made by the NVTC chair subject to final approval by the Commission. The following guidelines shall be used by the chair and NVTC in considering and acting upon requests:

1. This Policy applies to NVTC meetings, including Commission meetings, committee meetings, subcommittee meetings and working groups, when the technology is available to accommodate remote participation.

2. This Policy shall be applied strictly and uniformly, without exception, to all Commissioners and without regard to the identity of the Commissioner requesting to participate remotely or the matters that will be considered or voted on at the meeting.

3. Notification of the request to participate electronically shall be provided by the Commissioner seeking to participate remotely to the applicable chair (Commission chair or committee chair), with notification copied to the executive director and commission secretary, at the earliest practicable time, not later than eight (8) hours before the meeting start time. The request can be made verbally but should be followed up in writing as soon as possible.

4. Individual participation from a remote location shall be approved unless such participation would violate this Policy or the provisions of the Virginia Freedom of Information Act (Code Chapter 37 of Title 2.2). If a member's participation from a remote location is challenged, then the Commission shall vote whether to allow such
participation. If the Commission votes to disapprove of the member's participation because such participation would violate this Policy, such disapproval shall be recorded in the minutes with specificity.

5. The Commissioner requesting to participate electronically shall provide sufficient specificity as to the nature of the matter as is necessary for the chair, and the Commission, to determine whether the circumstances warrant remote participation.

6. For purposes of this Policy, a personal matter includes circumstances that prevent a member from physically attending a meeting including personal and business travel.

7. For purposes of this Policy, a temporary or permanent disability or a medical condition for either a Commissioner or their family member that prevents physical attendance at the meeting should be evident based on the nature of the disability or the condition. Examples include temporary hospitalization or confined to home; contagious illness; or any permanent physical disability that prevents travel to the meeting location.

8. Medical verification of a medical condition or physical disability shall not be required.

9. More than one Commissioner may participate electronically at the same meeting, as long as a physical quorum is present at the primary meeting location.

10. Commissioners participating remotely are allowed to fully participate in NVTC’s public meetings, which includes but not limited to making motions and voting.

11. The Commissioner may participate in a NVTC public meeting, using all available electronic communication means including telephone and video conferencing. For the purposes of this Policy, “electronic communication” is defined to mean “the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transit or receive information.” The definition is applicable to all types of electronic participation described in this Policy.

12. Remote participation shall be permitted only under circumstances where all attendees at the regular meeting location, including the public, can, at a minimum, hear the remote member. If the means used for participation in the meeting, or other circumstances at the remote location, are disruptive to the meeting, the chair, subject to Commission approval, may deny or withdraw the approval to participate remotely, including during the meeting. While not required, the Commissioner participating remotely is encouraged to view the meeting via livestream to the extent it is available.

13. Remote locations are not required to be open to the public unless three or more members of the public body are gathered at the same remote location. If three or more members are gathered at the same remote location, then such remote location shall be open to the public. If such remote location is required to be open to the public, then all persons attending the meeting at any remote location shall be afforded the same opportunity to
address the public body as persons attending at the primary or central location. All public meeting requirements shall apply to that remote location.

14. NVTC’s commission secretary shall be responsible for documenting in the meeting minutes the request to participate electronically, the reasons why it is necessary, the remote location from which the Commissioner participated electronically, and the Commission’s approval or disapproval. The minutes should include the specific nature of the personal matter cited by the member.

15. NVTC’s commission secretary shall be responsible for ensuring a Commissioner does not participate electronically for personal reasons more than two times per calendar year or 25% of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

**NVTC Electronic Participation During a State of Emergency Declared by the Governor**

Section §2.2-3708.2.A.3. of the Virginia Freedom of Information Act allows all public bodies to meet by electronic communication means without a quorum present under certain provisions. As part of its NVTC Electronic Participation Policy, the Commission will adhere to Section §2.2-3708.2.A.3 which reads:

*Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that:*

(i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location; and

(ii) the purpose of the meeting is to address the emergency.

The public body convening a meeting in accordance with this subsection shall:

a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the public body conducting the meeting;

b. Make arrangements for public access to such meeting; and

c. Otherwise comply with the provisions of this section.

d. The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.
Governor Northam signed into law effective April 22, 2020 a legislative amendment to the FY 2021-2022 State Budget (HB30, 2020) to provide authority for public bodies, including agencies, boards, and common interest communities to conduct electronic meetings during a declared state of emergency when it is impracticable or unsafe to assemble a quorum in a single location. The legislative amendment HB30 is effective through June 30, 2022 and reads as follows:

Amendment 137: Allow policy-making boards to meet virtually during emergency declarations
Item 4-0.01
Operating Policies Language
Page 578, after line 26, insert:

\[ g. \text{Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that:} \]

\( (i) \) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location;

\( (ii) \) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities;

\( (iii) \) a public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia; and

\( (iv) \) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

A public body or governing board convening a meeting in accordance with this subdivision shall:

1. Give notice to the public or common interest community association members using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body or governing board conducting the meeting;

2. Make arrangements for public access or common interest community association members access to such meeting through electronic means including, to the extent practicable, videoconferencing technology. If the means of communication allows,
provide the public or common interest community association members with an opportunity to comment; and

3. Public bodies must otherwise comply with the provisions of § 2.2-3708.2 of the Code of Virginia.

The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes of the public body or governing board.

NVTC Electronic Participation During a State of Emergency Declared by a Local Government

During the 2021 Special Session, the General Assembly passed legislation SB 1271 (McPike) amending the Freedom of Information Act to allow a public body, or a joint meeting thereof, to meet by electronic communication means without a quorum of the public body physically assembled at one location when a locality in which the public body is located has declared a local state of emergency. As NVTC’s offices are located at 2300 Wilson Blvd., Suite #230, Arlington, VA 22201, NVTC could apply this provision if Arlington County declared a local state of emergency. The legislative requirements include:

(i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and

(ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities.

The bill requires public bodies meeting through electronic communication means during a local or state declaration of a state of emergency to:

a. Make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body, and

b. Provide the public with the opportunity to comment at such meetings when public comment is customarily received.