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MEMORANDUM

RE: Analysis – Council Member Participation in Council Meeting Via
Communications Media Technology

Jason Lee

There are a number of Florida Attorney General Opinions that address the question of whether a local government board or commission member who is physically absent from a board meeting may still be allowed to participate in the meeting by means of communications media technology when a quorum of the members of the board or commission are present at the meeting. (Examples: AGO 92-44, 98-28, 2003-41).

These AGOs conclude that a board or commission member who is physically unable to attend a meeting **may participate and vote** via communications media technology on matters discussed in the public meeting where a physical quorum is present **when the reason for their absence constitutes an extraordinary circumstance**. Generally, the AGOs have concluded that absences due to medical treatments or medical emergencies constitute an extraordinary circumstance. However, whether an absence due to any other reason constitutes an extraordinary circumstance warranting a member's participation via communications media technology is a determination that must be made in the good judgment of the board or commission. (See AGO 2003-41). This determination should be discussed and voted upon by the board prior to allowing the absent member to participate via technology. If the board determines the member's absence is due to an extraordinary circumstance, you must then look to the applicable board bylaws or rules to determine if there are any additional steps that must be taken to allow the member to participate in the meeting and/or to vote on items before the board for action.

In this instance, Council Rule 4.605 provides the process by which a Council Member's vote may be made by proxy.

COUNCIL RULE 4.605 – PROXY VOTING PROHIBITED states in pertinent part:

“The Legislative Services Division may manually enter a Council Member's vote into the electronic roll-call system only if the Council Member is physically present in the meeting, **and can verbally or visibly express their vote on the record** and upon the direction of the presiding officer or committee chair. If the electronic roll-call system fails **or is unavailable and upon direction of the presiding officer or committee chair, the Legislative Services Division may record the vote of each Council Member by alternative ballot.** Each alternative ballot shall be certified by the Chief of Legislative Services.