



## Cape Light Compact JPE

261 Whites Path, Unit 4, South Yarmouth, MA 02664

Energy Efficiency 1.800.797.6699 | Power Supply 1.800.381.9192

Fax: 774.330.3018 | [capelightcompact.org](http://capelightcompact.org)

June 17, 2021

BY: Federal Express and Electronic Mail

Board of Selectmen  
Town of West Tisbury  
1059 State Road  
West Tisbury, MA 02575

Re: Cape Light Compact JPE

Dear Selectmen:

The purpose of this letter is to inform the Town that the Governing Board of the Cape Light Compact JPE (the "Compact") intends to vote on certain proposed amendments to Compact's First Amended and Restated Joint Powers Agreement dated as of December 13, 2017 (the "JPA"). The vote to adopt the proposed amendments will take place at the July 21, 2021 Governing Board meeting, or at a later date if the Governing Board decides that a later date is more desirable or appropriate.

While the power to amend the JPA generally lies with the Governing Board, the Members are required to be given advance notice under Article XV of the JPA which provides for at least thirty (30) days advance written notice prior to taking a Governing Board vote to adopt such amendment(s).

The Governing Board is proposing to amend Article V(D), Manner of Acting and Quorum of the JPA. The specific text of the proposed amendments is set forth below. The proposed amendments are a response to the June 15, 2021 expiration of Governor Baker's pandemic Executive Order Suspending Certain Provisions of the Open Meeting Law (the "Order"). As you know, the Order expressly permitted members of a public body to participate in a meeting remotely. While the Order was in effect, all members of the Compact's Governing Board have been able to participate in meetings remotely and the Compact has been able to consistently achieve a quorum with nearly 80% of member towns participating remotely on average. Prior to issuance of the Order, obtaining a physical quorum was challenging, as the Compact has a large board consisting of one board member representing each of its twenty-one towns, and one representing Dukes County. The distance required to travel in order to attend board meetings in person is significant, especially for the seven Martha's Vineyard representatives who, even in good weather, need to devote an entire day to attend a two and a half hour meeting because of the required car and ferry travel. Winter storms often make in-person attendance impossible.

During the months prior to the end of the emergency Order, the Board discussed options to

*Working Together Toward A Smarter Energy Future*

Aquinnah | Barnstable | Bourne | Brewster | Chatham | Chilmark | Dennis | Dukes County | Eastham | Edgartown | Falmouth  
Harwich | Mashpee | Oak Bluffs | Orleans | Provincetown | Sandwich | Tisbury | Truro | Wellfleet | West Tisbury | Yarmouth

continue its very successful remote participation practice. Recognizing that effectuating changes to the Open Meeting Law was out of its immediate control, the Board looked at its governing document, the JPA, for possible options to continue to allow Board members to participate remotely. Compact legal counsel, BCK Law, presented the Board with the option of changing the current quorum requirements of the Governing Board, Article V(D) of the JPA (see attached June 4, 2021 memorandum from legal counsel). Counsel proposed that a simple majority of the Executive Committee must be physically present to attain a quorum to satisfy the OML requirements. However, in order for a meeting of the Governing Board to convene and take action, additional Governing Board members equal to or greater than a simple majority of the Municipal Members of the Governing Board must be physically present or participating remotely. As set forth in the memorandum, Compact counsel is of the opinion that amending the JPA as set forth below will actually have the effect of increasing Governing Board member participation and thus eliminate (or at least significantly reduce) the need for the Executive Committee to meet in place of the full board, and thus, the amendments, when implemented, should expand Municipal Members' rights as their appointed Directors on the Governing Board should be able to participate in and vote virtually at all Governing Board meetings. Yesterday, the Governor signed legislation which extends the ability of members of public bodies to continue to participate remotely in public meetings through April 1, 2022. However, the Governing Board still intends to take a vote on the proposed amendments at its July board meeting.

The specific language of the proposed amendments to Article V(D) are as follows (**red text** is proposed new language, **strikeout text** is for suggested deletions, **blue text** has been moved:

*A simple majority of the members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) must be physically present to attain a quorum. In order for a meeting of the Governing Board to convene and take action, additional members of the Governing Board equal to or greater than a majority of the Municipal Members of the Governing Board must be physically present or participating remotely (the "Additional Participating Governing Board Members"). By way of example, if the Governing Board has a total of twenty-one Municipal Members, and five members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) are physically present, an additional six Governing Board members must participate in person or remotely in order for a meeting to convene. If there are not enough Additional Participating Governing Board Members to attain a majority of the Governing Board, the provisions of Article V(C) (Executive Committee) shall apply to convening and taking action at a meeting to the meeting.*

***The Governing Board shall act by vote of a majority of the Directors of the Municipal Members present and voting at the time of the vote. Directors may participate in meetings remotely in accordance with applicable laws regarding remote participation, including the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. [moved up and edited slightly] Unless altered by the Governing Board in accordance with this Agreement, each Municipal Member shall be entitled to select one (1) Director whose vote shall be equal ~~in weight~~ to the Director of any other Municipal Member, except as expressly***

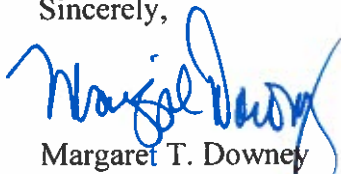
*set forth in the succeeding paragraphs. ~~Directors may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. [moved up] In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, G.L. c. 30A, §§18-25, a simple majority of the Directors of the Municipal Members must be physically present to attain a quorum.~~ County Representatives shall not count towards a quorum as they have limited participation rights. Directors abstaining from voting shall be counted for meeting quorum purposes, but their votes shall not count with respect to the matters they abstain from voting on. By way of example, if ten (10) Directors from the Municipal Members are present and four (4) abstain from voting, and the remaining Directors split their votes four (4) in favor, two (2) against, the motion would pass.*

*While a quorum is present **plus the Additional Participating Governing Board Members**, unless another provision is made by law, this Agreement or by the Cape Light Compact JPE's own rules, all business shall be determined by a majority vote of the Directors of the Municipal Members then present and voting. **Directors participating remotely are to be considered present and may vote.** Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the Municipal Members shall be taken by a weighted vote in which the vote of each Director shall be weighted in the same proportion as the population of the Municipal Member such Director represents bears to the whole population of the Municipal Members of the Cape Light Compact JPE, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one (1) town, one (1) vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein. Exhibit B sets forth the population for each Municipal Member, and provides an example of a vote taken in accordance with weighted voting procedures.*

Members having any comments on the proposed amendments are being asked to provide them to their Director in advance of the July meeting. Compact counsel is also available to answer questions from your town counsel.

Please let me know if you have any questions.

Sincerely,



Margaret T. Downey  
Cape Light Compact JPE Administrator

Enclosure

Cc: Sue Hruby, CLCJPE Director, via email