

Town of Pembroke

Diversity, Equity and Inclusion Committee



Written Guidance with respect to the Committee's function and purpose in order to reduce confusion and overlapping responsibility and jurisdiction.

Mission Statement

The mission of the Diversity, Equity & Inclusion Committee (DEI) is to support and foster these three core values in our community. The committee is designed to serve as an advisory group to provide guidance to local governing bodies, boards and committees on diversity-related issues, discourage prejudices and discrimination, and encourage unity in our community.

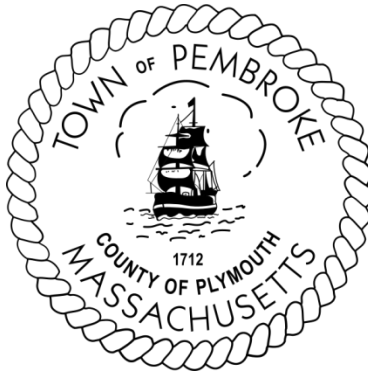
Committee Goals

- Provide a welcoming environment by encouraging cooperation among all residents and groups through community awareness and outreach.
- Review and provide feedback that could improve our existing town policies, practices and procedures.
- Facilitate discussions/ forums for town residents about issues of diversity, equity and inclusion.
- Seek out and suggest opportunities/programs/activities that promote diversity, equity and inclusion in our community.

Committee Membership

The DEI shall consist of up to 11 members with each member appointed by the Select Board. These members will include one liaison each from Police, Fire, Schools, Library and a High School student. The remaining six positions will be made up of Pembroke residents. We will seek to solicit volunteers from marginalized communities and various backgrounds to represent an accurate cross section of the Pembroke community. The Committee shall provide quarterly updates to the Select Board.

On creating the Committee, initial appointment and expiration of terms shall be done using staggered terms of three years, two years and our high school liaison always serving one-year terms. All future appointments and or reappointments will be to fill three year terms within the staggered terms set by the initial appointment schedule.



TOWN OF PEMBROKE

APPOINTED COMMITTEES

POLICIES AND PROCEDURES
HANDBOOK

Adopted June 15, 2015
Amended August 2, 2021

Introduction

Congratulations on your appointment to a town board, committee or commission! You are about to take on a very important role within the Town of Pembroke. Boards, committees and commissions serve as planning and implementation bodies of the town and in some cases, as enforcement agencies for state statutes and local by-laws. The volunteer members who serve on these boards and committees are in an essential part of running an effective and efficient local government. This handbook has been prepared by the Select Board as a general information aid to all town boards and committees.

The Select Board actively encourages Pembroke residents to participate in local government by volunteering to serve on a board or committee. We recognize that serving on a board or committee takes dedication and commitment and we value your volunteer service.

This handbook has been prepared by the Select Board as a general Policy and Procedure for Boards and Committees appointed by the Select Board to aid them in decision making when serving under the direction of the Select Board.

DISCLAIMER: This handbook is intended to be a general guidance document for those serving on Town boards and committees. Many of the topics discussed herein are also addressed by state law and/or the Town's By-laws or Town policies, and this handbook is not to be construed as a substitute for those primary resources. Any questions regarding this handbook or other applicable statutes, by-laws or policies should be addressed to the Town Manager.

APPOINTED COMMITTEE HANDBOOK

I. Committee Function and Formation

The Role of Appointed Committees

Appointed committees serve many vital functions in Town government. The roles of appointed committees include, but are not limited to law enforcement, advisory, regulatory, investigative and planning functions. The Select Board will provide each committee with written guidance with respect to the committee's function and purpose in order to reduce confusion and overlapping responsibility and jurisdiction. The Select Board expects that committees will cooperate and coordinate activities so that all decisions reflect that which is in the best interest of the town.

The following are general responsibilities of appointed committees:

- Protect and act in the best interest of the Town within the function and purpose;
- Understand the laws and regulations related to the committee's function and purpose;
- Exercise power and authority cautiously, fairly and responsibly;
- Adhere to the laws that guide procedures and decision making;
- Actively seek effective solutions to the problems and dilemmas that confront the Town; and
- Represent the Town residents, not just a segment.

Commensurate with the general responsibilities are the following general rights of appointed committees:

- To be treated with respect;
- To be candid and forthcoming without fear of personal consequences;
- To be fully informed about, and participate in, actions that impact the committee.

Committee Appointment

The appointing authority for most committees is the Select Board. Massachusetts General Law requires that the Town establish some committees, while others are established based on the unique needs of the community. The goal of the Select Board is to appoint candidates who are broadly representative of the community and whose qualifications and interests match the needs of the community. However, an applicant does not need to be an expert in any particular area to be appointed.

Committee vacancies may be advertised in local weekly newspapers or listed on the Town website. The Town website provides an application form for potential applicants to be submitted to the Select Board. Applicants should attend at least one meeting of the board or committee to which they seek appointment, and may be asked to have an interview with the Select Board at their regular meeting. Although committees may recommend and recruit potential members, Massachusetts Law or the Town By-laws govern the process for making appointments or filling vacancies on boards and committees and does not allow the affected board or committee to exclusively appoint new members.

Duration of Term and Reappointment

Committee terms may range from temporary to a three year term. If an appointment is the result of a committee member resigning prior to completing a term, then the replacement appointee serves the duration of the original term. In any case, reappointment is not automatic and members are under no obligation to accept reappointment. The Select Board will evaluate the member's contribution, attendance at meetings, and the changing needs of the committee and community. If reappointment is accepted, the member must be sworn in by the Town Clerk.

Certification

Committee appointees must be sworn in by the Town Clerk and will receive a Certificate of Appointment. Committee members may not act in any official capacity until the member is sworn in by the Town Clerk. Additionally, the Open Meeting Law requires that within two weeks of qualification for office, all persons serving on a public body shall certify that s/he has reviewed the educational materials provided by the Attorney General's Office. Each committee member shall provide certification of completion of this requirement to the Town Clerk.

Attendance Guidelines

Volunteers or paid employees who accept appointments to committees and commissions accept a responsibility to regularly attend scheduled meetings. Without regular attendance, the business of that group and, hence, the Town, cannot be conducted. While some absences will invariably occur, habitual, repeated or consistent absence cannot be accepted. To better serve the interests of the Town, the following guidelines will be used for all committees and commissions appointed by the Select Board:

- Missing three consecutive monthly meetings, four consecutive semi-monthly meetings or a majority of meetings in an appointed year may be construed that the member does not want to continue serving and they may be asked to resign or not be reappointed.
- To prevent the perception that a Chairman is giving preference to some individuals, the Chairman will simply report the situation to the Select Board on a quarterly basis and leave it to take whatever action is necessary.

Resignation

The Select Board expects that all committee members will fulfill the duration of their term. However, the Board does recognize that, in some cases, a member is not able to complete a term. It is hoped that the committee member will work with the committee Chairman to determine a timely manner and process in which the member can resign from the committee. A written resignation must be submitted by the committee member to the appointing authority, the Select Board, as well as to the Town Clerk.

Committee Officers

Massachusetts General Law requires that some committees elect certain officers. However, all committees must elect a new Chairman every year and designate a clerk (unless the committee has an assigned person) to ensure that the minutes of each meeting are recorded, transcribed and filed for posting on the town website within two weeks of the meeting (may be posted in draft form until approved by the board). A Vice-Chairman may be elected at the committee's discretion. Committees must notify the Selectmen's office whenever the committee elects new officers.

Chairman. The Chairman presides at all meetings, decides questions of order, calls special meetings and signs official documents that require the Chairman's signature. The Chairman has the same rights and responsibilities as other members to offer resolutions, make or second motions and vote.

Vice Chairman. Performs the Chairman's duties in his/her absence.

Clerk. Unless the committee has an assigned staff person, the clerk or secretary should record and prepare minutes, prepare and distribute agenda and other meeting materials, schedule a meeting room and post meetings with the Town Clerk. These responsibilities may be shared with other members.

Staff Support. Some committees do have hired staff to serve their committee. The staff person is hired to provide assistance, rather than perform the duties that are expected of committee members. The staff member may record minutes of meetings, prepare and circulate information for meetings, serve as a liaison and perform clerical duties. Please be aware that most committee staff have limited hours and committees should not ask for more that can reasonably be accomplished in those hours.

II. Conduct and Policies

Conflict-of-Interest Law

The Conflict-of-Interest law (MGL Chapter 268A) strictly regulates the activities and conduct of public officials, including appointed committee members, *during and after their service*. The purpose of the law is to ensure that public officials' financial interests and personal relationships do not conflict with their public obligations. The law is broad and expansive to prevent an official from becoming involved in a situation that becomes an actual conflict or creates the appearance of conflict. Committee members must not accept gifts, privileges or employment provided as a result of acting in a capacity as a public official.

This handbook is not intended to provide advice on every situation that may constitute a conflict under General Laws Chapter 268A, and committee members are encouraged to contact Town Counsel or the State Ethics Commission with any specific questions.

At a minimum, the law prohibits a committee member from engaging in deliberations, votes or any other form of committee participation in which the committee member, or any of the following associates of the committee member, may have a financial interest:

- Immediate family;
- Partner of business associate;
- Business organization where the member serves as an officer, employee or other position;
- Any person or organization with whom the member is negotiating with or has any arrangement concerning prospective employment.

Any committee member who has a conflict must abstain from committee involvement regarding the matter, and any committee member concerned about the appearance of a Conflict of Interest may recuse himself/herself from participating in the matter. In some cases, the member may not be required to abstain if full disclosure is made prior to the committee's action. Violations of this law may result in large fines, legal action and/or imprisonment. Prior to accepting an appointment, candidates should consider any potential conflicts. Be aware that the law also limits activities of members after they have left the committee. Any questions or perceived conflicts of

interest should be directed immediately to the Town Manager for referral to Town Counsel, or to the State Ethics Commission.

Every Appointed Official is required to complete an on-line ethics training program through the State Ethics Commission within 30 days of the date of appointment and every two years thereafter. In addition, appointed officials must be provided with a summary of the Conflict of Interest law each year and acknowledge receipt of same.

Budget and Fundraising

In general, committees have limited budgets. Funds are only allocated for expenses directly related to the committee's sphere of responsibility including mailings, postage, and travel expenses for seminars and meetings. Contact the Town Manager or Town Accountant with any questions concerning the budget.

All payments and purchases must be coordinated with the Town Accountant's office. Items purchased without first contacting the Town Accountant may not be reimbursable.

Massachusetts General Law requires that any funds or donations received by the committee must be placed in the Town's general fund unless a special fund has been dedicated to receive funds or donations.

Sexual Harassment Policy

Massachusetts General Laws Chapter 151B prohibits certain conduct that may constitute sexual harassment or retaliation for one's role in a sexual harassment complaint or investigation. The Town of Pembroke's sexual harassment policy pertains to all Town officials and employees, as well as appointed committee members. Sexual harassment in the workplace is unlawful. It is unlawful to retaliate against anyone for filing a complaint about sexual harassment or for cooperating with an investigation into sexual harassment. It is the policy of the Town of Pembroke that no employee be harassed by another employee or supervisor on the basis of sex and that no personnel action be taken affecting any employee (either favorably or unfavorably) on the basis of conduct that is not related to work performance. Such conduct may include, but is not limited to, submitting to sexual advances, refusing to submit to sexual advances, protesting sexual overtures or raising a complaint concerning the alleged violation of this policy.

The policy was formulated to protect Town employees and officials, both males and females, against unsolicited and unwelcome sexual overtures or conduct, either physical or verbal. It prohibits misconduct that may upset morale and interfere with work and efficiency. Some forms of misconduct may even constitute a violation of the equal employment opportunity law. A copy of the sexual harassment policy of the Town of Pembroke is available in the Town Manager's office. Appointed officials are subject to the Town's sexual harassment policy. On an annual basis, appointed officials will be provided a copy of the sexual harassment policy and are required to sign that they have received and read the policy.

Misuse of Position

Misuse of position is expressly prohibited in the Massachusetts General laws. No unwarranted privileges should be sought or accepted if the reason for the privilege results from serving in an official capacity. This includes gifts, favors, employment, and preferable treatment.

Use of Town Equipment and Facilities

Each committee is responsible for its own clerical work. Town equipment and facilities should not be used for personal purposes that are unrelated to the committee's work.

Annual Town Report

Each year, the Selectmen's office prepares the Annual Town Report. Committees are required to submit a short but detailed report on the committee's membership, activities, accomplishments, and future plans. The Annual Town Report is the official historical record of Town government activities for the year. Committee reports must be submitted to the Selectmen's office by the end of the month of January each year. Contact the Selectmen's office for more information.

III. Meetings and Procedures

Meeting Definition

Meetings of public bodies are subject to the Open Meeting Law, Massachusetts General Laws Chapter 30A. The information contained herein is provided as a general overview of the Open Meeting Law but is not intended to be all-inclusive. Board and committee members are encouraged to refer to M.G.L. Chapter 30A, Sections 19-25, the Town Manager or Town Counsel with specific questions.

A meeting occurs at any time that a quorum (majority) of the committee members meet to deliberate any public business or policy over which the committee has jurisdiction or advisory power. Deliberation is oral or written communication (including email, text, telephone or other communications which more than two members deliberate on a subject before them) that expresses a member's opinion. In addition, serial communications between two board members, which are then conveyed to another board member or members are also considered deliberations which may only occur within the context of a public meeting. One exception to this rule occurs when board members are communicating for the sole purpose of determining when to schedule a meeting, but members are advised that their communication should be limited to discussing schedules.

Several specific exemptions are provided:

- Site Visits and On-Site Inspections – when board members meet at or near the locus of a project that is the subject of permit approval or permit review, so called site visits do not constitute a meeting so long as the members do not deliberate. Site visits are data gathering events.
- Attendance by Board Members of one Board at another Board's meeting – attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate is not a meeting. With sufficient notice, it would be prudent for the visiting committee to also post a meeting notice and produce meeting minute meetings.
- Attendance at Town Meeting – attendance by a quorum of a public body at Town Meeting does not constitute a "meeting".

Members of the Board of Appeals and Planning Board could potentially act in a quasi-judicial manner in certain circumstances. Members of these Boards should request additional information from the Town Manager.

Attendance and Quorums

It is expected that the committee members will regularly attend meetings. Members are chosen based on their unique qualities and needs of the committee. The effectiveness of each committee depends upon the knowledge and dedication of its members. All meetings must have a quorum – typically, a majority of members, unless the number of members required to be present is set by a special or general law or by-law – present in order to conduct official business. Some committees require a super-majority to act on certain applications or petitions. Unless a different quantum of vote is established by special or general law or by-law, when a quorum is present, a majority vote of the votes cast is sufficient for the adoption of any motion that is in order.

Public Hearings

Many communities are required by Massachusetts General Law to conduct public hearings. Other committees may also choose to have a public hearing in order to receive input from the community. All public hearings must be conducted in accordance with the Open Meeting Law and Town by-laws. It is recommended that a formal procedure be developed to conduct the hearing, which may include the following:

- Chairman states guidelines and procedures, including time limits and decorum;
- Where necessary, Chairman states background information;
- Petitioner makes presentation;
- Information presented from Town officials and other committees;
- Committee members question petitioner;
- Public directs questions and comments through the Chairman, allow only questions and comments that are relevant to the discussion;
- Committee closes public portion of hearing;
- Committee begins deliberation;
- Motions may be made and votes taken at the committee's discretion;
- Hearing is closed or continued to a specific date.

Open Meeting Law

The Open Meeting Law (MGL Ch.30A) requires that meetings of public bodies be conducted in open session. When any elected or appointed Board, committee or subcommittee meets, the public and press are allowed to attend. However, the Open Meeting Law does not require that the public be allowed to participate. A copy of the Open Meeting Law will be given to all committee members when they are sworn in by the Town Clerk.

Posting of Notice of Meeting. It is the responsibility of each committee to ensure that all meetings are posted. A meeting notice must be posted at least 48 hours prior to the meeting. Note: Saturdays and Sundays and legal holidays do not count as part of the 48 hours. The date, time, and location of the meeting must be provided. If a meeting date, time, or location changes, or the meeting is cancelled, a reposting may be required. The meeting notice shall be filed with the Town Clerk and posted in a manner conspicuously visible to the public at all hours: agendas must be posted to the Town website at www.pembroke-ma.gov by forwarding them

electronically to the Library Director. The meeting notices must include an agenda of the meeting that lists topics that the chair reasonably anticipates will be discussed during the meeting.

Control of Meeting. It is the responsibility of the Chairman to maintain order and decorum at the hearing, no person shall address a meeting of a public body without the permission of the chair. The Chairman must be consistent and fair, but may put restrictions on the nature, number, and frequency of individual's comments and questions. It is within the Chairman's power to order the removal of an individual from the hearing if the individual does not adhere to the guidelines and procedures established by the committee; however, a Chairman should carefully consider this action before exercising it.

Audio and Video Recording. Any person may record a meeting (with the exception of executive sessions) with an audio recorder or video recording equipment, provided that there is not active interference with the meeting. Upon opening the meeting the Chairman shall inform other attendees of any such recording. Note that the board may not refuse to allow a recording, unless it interferes with the conduct of the meeting.

No Votes By Secret Ballot. The law prohibits the taking of any votes, whether in open or executive session, by secret ballot.

Executive Session. An executive session is a board or committee meeting held in private to discuss, deliberate and vote on certain matters allowed under M.G.L. Chapter 30A, §21 . Most committees will not need to conduct an executive session. If the purpose of the executive session is one permitted by M.G.L. Chapter 30A, §21 and, if required, the board determines that an open meeting may have a detrimental effect on any of the following, the board may enter into executive session to discuss any of the following, provided proper procedure is followed:

- Collective bargaining
- Litigation
- The purchase, exchange, lease or value of real estate
- The interviewing of applicants for employment or appointment by a preliminary screening committee

The following topics are categorically appropriate for executive session:

- Strategy for nonunion personnel negotiations
- Collective bargaining or contract negotiations with nonunion personnel
- Strategy for or deployment of security personnel or devices
- Investigate charges of criminal activity or to consider filing criminal complaints
- Comply with or act under the authority of any general or special law or federal requirements
- Meet with or confer with a mediator subject to specific limitations
- Discuss trade secrets relating to "selling or distributing electrical power and energy".

The above is not intended as a substitute for the provisions for convening an executive session under the Open Meeting Law, and boards are encouraged to refer to M.G.L. Chapter 30A, §21 to ensure that the subject matter to be discussed satisfies the criteria for an executive session.

No board, committee or commission shall discuss the reputation, character, physical or mental condition rather than the professional competence, of an individual or discuss the discipline or

dismissal of, or complaints or charges against a public officer, employee, staff member or individual in open session.

Executive sessions should not be convened without first consulting the Town Manager, and also Town Counsel, prior to the meeting. There are posting, voting and recording requirements to which each board must comply and violations could result in legal action and large fines. In addition, there are certain types of executive sessions that require advance, written notice to and confer rights upon an individual who may be discussed in the executive session.

Meeting Minutes. The law requires that a formal and permanent written record be kept of all meeting, both open and executive session. The minutes must be typed and include (as a minimum):

- Date, time and location of meeting;
- Names of those members present and absent;
- A record of all votes, decision, and actions taken;
- Brief summary of the discussion;
- A list of the documentation and other exhibits used at the meeting, with limited exceptions noted in M.G.L. Chapter 30A, §22(e).

Minutes should be reviewed and approved by the committee at a subsequent meeting. Copies of approved minutes should be forwarded to the Town Clerk as soon as they are available and a file including minutes and copies of the agenda should be maintained. Unless related to an executive session, minutes from a public meeting are a public record and must be disclosed, whether in draft or final form, if a proper request for a copy has been made within ten (10) days. The law requires withholding disclosure of executive session minutes and records for a period no longer than necessary to support the lawful purpose of the executive session. More specifically, the law requires that when the purpose for which a valid executive session was held has been served, the materials discussed and recorded during the executive session must be disclosed.

Open Meeting Law enforcement – the Massachusetts Attorney General enforces the Open Meeting Law. The law provides very broad investigative authority to the Attorney General's office to investigate claimed Open Meeting Law violations and suggests almost unlimited authority to enforce the law. Accordingly, it would be prudent to seek counsel's opinion where questions arise regarding compliance with Open Meeting Law.

Meeting Schedule

Meetings may be held weekly, bi-monthly, monthly or less frequently, depending upon the nature of the committee's work; committees may meet more often in one time of the year than others. Meetings are generally held in the evenings, but may be held at other times. The Select Board urges committees to schedule meetings at times that are convenient for the public to attend – weekends and holidays should be avoided. In addition, certain boards are prohibited by law (M.G.L. Chapter 40A, §11) from meeting on the day of an election. Massachusetts General Law requires that meetings are open to the public and that the meeting be accessible to the public. Committees must make reasonable accommodations for people with disabilities, including holding the meetings in an accessible location.

Meeting Rooms

Please note that the posting of a meeting does not constitute reserving a meeting room, conversely, reserving a meeting room does not constitute the posting of a meeting. Each committee using a meeting room is responsible for ensuring that the lights are turned off, that the room is free of trash and that the building is locked up when the meeting is concluded (if no other committees are in the building). Doors should not be locked while a meeting is in progress.

Town Hall The Town Hall has two handicapped-accessible public meeting rooms; the main meeting hall used for Selectmen's meetings and the upstairs conference room. Rooms must be reserved by contacting the Town Manager's office at (781) 293-3844.

Library The Pembroke Public Library has two handicapped-accessible public meeting rooms; the large meeting room and exhibition hall and the modern conference room. Rooms must be reserved by contacting the Library Director's office at (781) 293-6771.

Council on Aging The Council on Aging has a large handicapped-accessible public meeting room. This room must be reserved by contacting the COA Director's office at (781) 294-8220.

Police Station This meeting room is for the use of emergency management, PEMA and crisis team personnel only.

Water Department This meeting room is for the use of the DPW Commissioners, project coordinators and engineers only.

Purpose: The methods by which people can communicate continue to evolve through various social media applications, smart phones, web based options, and other electronic technology. The Town of Pembroke recognizes the many opportunities for communication through these tools to the public. The Town encourages the responsible use by its employees, agents, elected and appointed officials, consultants, volunteers and any person conducting business with or on behalf of the Town of Pembroke social media channels of communication and of private social media channels of communication. Therefore this Guideline is applicable to all people listed in the preceding sentence. The use of these tools create new responsibilities for Town employees, Boards, and Commissions. The purpose of this Guideline is to provide guidance to clarify the boundaries between appropriate and inappropriate use of official Town of Pembroke and private social media accounts and services. Nothing in this Guideline is intended to restrict an individual's right to discuss, as a private citizen, matters of public concern on private social media sites. Nothing in this Guideline is intended to restrict an individual's right to engage in concerted activity with co-workers in accordance with the provisions of the Massachusetts General Laws.

Definitions: "Social Media" is:

1. Any website
2. Any Social Networking website (e.g. Twitter, Myspace, Facebook, LinkedIn, Pinterest, Snapchat, YikYak)
3. Multimedia sharing websites (e.g. Flickr, YouTube, Vimeo, Picassa, Shutterfly)
4. Blogs (e.g. Wikipedia, PBwiki, Wikispaces)
5. Forums and discussion boards (e.g. Google Groups, Yahoo! Groups, Yammer)
6. Personally managed websites, blogs, etc.
7. On-line polls and surveys (e.g. Survey Monkey, Doodle)
8. Any other web or application accessible site on which an individual user can post texts, media, etc.

"Official Social Media" is:

Any of the sites or services listed in the definition section of this Guideline and their affiliated accounts which were established by and through the Town of Pembroke and are maintained by the Town of Pembroke, its employees, officials, or board members

Guidance:

1. Official Social Media sites will be used solely for communicating information about projects and services offered by the Town. Examples include Town/Department announcements, official Town news, Emergency notifications, Town events and activities, or Board or Committee meetings or agendas. Town employees may not engage in private messaging over official Town social media accounts. Official Social Media cannot be used to post political information or viewpoints, religious information or viewpoints, commercial information, information pertaining to an employee's personal activities, matters, or interests, information which consists of content which is sexual, pornographic, or adult in character, or information which advocates or promotes the use of drugs, alcohol, or tobacco.
2. When posting to Social Media sites you should do so in a way that is not defamatory. Defamatory communications are those that cause harm to the reputation of another person or cause that person to be ridiculed, held in contempt, or lowered in the estimation of the community. Defamatory statements will not be tolerated. Defamatory statements are your own responsibility and the Town of Pembroke will not defend you from the consequences of your personal actions.
3. You may not misrepresent any non-Official Social Media site as a Town of Pembroke Official Social Media site. The use of the Town's name and/or of the Town Seal are prohibited unless approved by the Town Manager or his/her designee. Misuse of the Town Seal is a criminal act punishable pursuant to M.G.L c. 268, s.35. You may not post information on a non-Official Social Media site which can be read as indicating that the information is being posted by you in your capacity as a Town employee or official, that it constitutes official information of the Town, or that it represents an official viewpoint of the Town. If in connection with a posting on a non-Official Social Media site you identify yourself as a Town employee or official or it is reasonable to conclude that readers will know that you are a Town employee or official, you must include a statement that your posting is not made on behalf of, and does not represent an official viewpoint of, the Town.
4. You may not use Social Media to post material which is illegal, which is in violation of federal or state laws regarding discrimination, or which constitutes criminal conduct. You may not use Social Media to post material which constitutes an unauthorized disclosure of proprietary or confidential information of the Town, information protected by the Town's attorney-client privilege, information constituting the Town's internal development of a policy, or personnel records or information regarding Town employees or the Town's non-public labor relations information..

5. Any reference requests received through any Social Media site for current or former employees must be directed to the Town Manager's office. Comments which you post about current or former employees can have legal consequences and you should avoid making any such comments at any time which reasonably and foreseeably could have legal consequences.
6. Any posted content on Official Social Media sites that include pictures, photographs, likenesses, or images cannot under any circumstances depict children under the age of 18, and cannot include the complete names of anyone other than Town employees or officials. If you need to post an item that include pictures, photographs, likenesses, or images of another person(s), the individuals who are depicted must first sign a release form which expressly authorizes the Town of Pembroke to use such image and likeness online. If you do not obtain permission, the picture, photograph, likeness, or image must be blurred in such a manner that the person cannot be identified or recognized. If that is not possible, the material cannot be used at all.
7. You should keep in mind that content posted to Official Social Media sites may constitute public records within the meaning of the Massachusetts Public Records Law and may be obtained by members of the public upon request.
8. You must avoid communications in any posts or online communications which could create a hostile environment for, or where the person reasonably believes they are being harassed by, another Town employee. You must ensure that your postings are consistent with other Town Policies, including but not limited to, those concerning Sexual Harassment, Workplace Bullying and Offensive Conduct, Workplace Conduct Policy, and Code of Ethics.

Official Social Media Accounts:

1. Official Social Media accounts of any type may only be initiated, established, and/or authorized by the Town Manager or his designee.
2. Once authorized, any and all Town Departments and Divisions can establish a social media account. The accounts should be used to promote the department and its functions and in a manner which complies with the applicable requirements of this Guideline.
3. All Official Social Media account login information must be compiled and maintained by the Town Manager's office.

Monitoring: The Town reserves the right to monitor content on all Official Social Media sites and to modify or remove any messages, posting, or images that it deems in its sole discretion and judgment to be abusive, defamatory, violation of copyright, trademark, or other intellectual property rights, or otherwise in violation.

Any post, comment, or remark that contains obscene or sexual language, personal attacks, insults, profane language, racist or discriminating language, or personal or private information will also be removed.

The Town reserves the right to take appropriate disciplinary action for any violation of this Guideline on any Official Social Media Site or non-Official Social Media site which comes to its attention.

Procedure: Failure to comply with this Guideline may lead to disciplinary action. Discipline can include, but is not necessarily limited to, a directive to cease the misrepresentation of official Town guideline or business, verbal or written warning, suspension, and/or further action.

Town of Pembroke

Electronic Messaging and Internet Acceptable Use Policy

Effective July 1, 2017

Introduction

The Town of Pembroke established an Information Technology (IT) Committee in 2012. The IT Committee meets on a regular basis to coordinate, improve and streamline the IT efforts for Town Departments, Boards, Committees, and Commissions. The Town of Pembroke encourages responsible, effective and lawful use of Town owned and supported electronic devices and systems as a means for employees to fulfill their individual job duties and responsibilities. Inappropriate use of your Internet and E-mail privileges may result in disciplinary action up to and including termination of your employment with the Town of Pembroke.

Purpose

In view of the potentially serious consequences that may result from the misuse of the Internet and E-mail at work, the Town of Pembroke has issued this policy to provide you with direction and guidance for the acceptable and responsible use of Town owned and supported electronic devices and systems. All employees must read, sign and return the final page of this policy to your Department Head as acknowledgement of receipt and understanding of these requirements.

Scope

This policy applies to all Town employees. "Employees" for the purpose of this policy shall include: all full or part-time employees of the Town of Pembroke, as well as contract employees; individual consultants; temporary employees; seasonal employees; volunteers; trainees; student interns; members; directors; officers; partners; agents; and subcontractors. The use of Town of Pembroke resources implies an understanding of an agreement to this policy.

Policy

Employees should have **no expectation of privacy** when using Town owned and supported electronic devices and systems. All use is continuously monitored to ensure compliance with this policy. The use of town resources constitutes express consent for the Town to monitor and/or inspect any data that users create or receive, any messages they send or receive, and any web sites that they access.

Employees should not use town provided E-mail messaging systems for confidential matters that are not intended for public disclosure.

Each Board, Commission, and Committee shall designate a procedure in which all electronic files containing town business are retained for public record.

Town owned and supported electronic devices and systems are town property. Any content residing on or sent from these devices and systems is Town property.

Incidental personal use of Town Internet and E-mail systems, while not encouraged, is permissible at the discretion of your Department Head. Personal use must not interfere with an employee's work performance and must not violate the unauthorized use guidelines within this policy.

Internet and E-mail access is a privilege provided to employees to help them conduct official

Town of Pembroke

Electronic Messaging and Internet Acceptable Use Policy

Effective July 1, 2017

Town business and may be revoked at any time.

Employees are prohibited from accessing Internet sites or sending any E-mail containing material that is sexually explicit, gambling related or that contains defamatory, harassing, threatening or otherwise offensive content.

Any employee that is requested by an external vendor/consultant/contractor to participate in a remote control type session with the external vendor/consultant/contractor must contact an IT Committee member to request the ability to participate, with exception for recurring sessions with vendors. Each request will be reviewed on an individual basis and a determination issued upon review by the IT Committee.

Confidential, federal or personally identifiable information must never be transmitted via E-mail unless it is sent utilizing an authorized encrypted secure E-mail option approved by the Town.

E-mail must not contain confidential information in the subject line.

Faxes received in an employee's E-mail inbox may not be forwarded to non-Town E-mail addresses unless they are sent via the secure E-mail option.

Non-business related E-mail sent into Town's server via the Internet may be "blocked" and not delivered to the intended recipient. The Town may "block" and prevent employee access to any Internet site.

Employees utilizing Town issued devices may only access the Internet through Town approved firewalls. Under no circumstances may employees use public modem, WLAN (Wireless Local Area Network), or WWAN (Wireless Wide Area Network). Employees are encouraged to contact their Department Head or an IT Committee member for more information.

All Internet pages and E-mail content are scanned for viruses and malicious software and any Internet content containing a virus or malicious software will not be allowed into the Town's network.

The Town's Global Address List will not be made available for public access unless a public records request is filed in accordance with G.L. c.66, §10 and G.L. c.4 §7(26).

As with any other application, Town employees are forbidden from sharing their accounts with anyone except their Department Heads.

Employees are required to notify a member of the IT Committee upon receipt of any E-mail containing sexually explicit material and/or content that is defamatory, harassing, threatening or offensive in nature, or any other item of concern that is received.

Employee Responsibilities

Department Heads must ensure that their employees comply with this policy and all standards, guidelines and laws referenced within this policy.

Town of Pembroke

Electronic Messaging and Internet Acceptable Use Policy

Effective July 1, 2017

Department Heads must ensure that their employees safeguard the confidentiality and integrity of the Town's information as part of the ongoing business process and their individual work assignments.

Employees are expected to ensure that content within all Town owned and supported devices and systems is appropriate for the workplace and must be able to withstand public scrutiny, as any information contained within these systems can be subject to public disclosure.

Non-compliance/Unauthorized Use

Unauthorized use of Internet and E-mail includes, but is not limited to:

- Accessing personal or non-Town mail servers, including personal E-mail accounts, unless granted prior authorization by Department Head.
- Storing or forwarding Town information using non-Town mail servers, including personal E-mail accounts, unless granted prior authorization by Department Head.
- Sending obscene, defamatory, harassing or threatening messages or messages containing sexually explicit material.
- Sending or posting any material or images that may be offensive or demeaning to any person based upon their race, sex, religion or sexual orientation.
- Using an unauthorized encryption method or sending unencrypted confidential information, including but not limited to, names, addresses, social security numbers, tax and child support data over the Internet or via E-mail.
- Sending or posting messages with a disguised or false identity.
- Gaining or attempting to gain unauthorized access to any computer, computer records, data, databases or electronically stored information.
- Distributing chain letters, conducting illegal activities, or soliciting information for personal gain or profit via the Internet and/or E-mail is strictly prohibited.
- Engaging in public instant messaging and/or accessing bandwidth intensive services.
- Violating any local, state or federal law.
- Making or posting indecent remarks and proposals.
- Prior to uploading or downloading any software employees must contact IT Committee for authorization. Depending on the software download request, IT Committee may require a formal request defining the business need. This request must come from a Department Head

Town of Pembroke

Electronic Messaging and Internet Acceptable Use Policy

Effective July 1, 2017

and may be reviewed by the IT Committee at the next available IT Committee meeting.

- Knowingly spreading a computer virus.

Penalties

Non-compliance or unauthorized use of the Internet and/or E-mail may result in a direct violation of federal and state statutes.

Procurement

The Town recognizes that departments have specialized technology needs which may require the purchase of hardware and software to meet those needs. However, the IT Committee must ensure that the technology can be integrated into the current infrastructure prior to it being purchased and/or installed.

In the event that your office requires a purchase of hardware or software to enhance the job performance the Department Head is required to present the proposal to the IT Committee at a scheduled IT Committee meeting. The appointment will be added to the Agenda and posted before the meeting in accordance with MGL c.30 §20(b). This will give the committee the opportunity to review the purchase for any compatibility issues. Knowing potential issues before the purchase allows for a smoother implementation and a more accurate cost assessment of the proposed purchase or project.

Support

In the event that you experience operating issues with your workstation equipment, including but not limited to computer hardware, software and telephone, please contact someone on the IT committee immediately for assistance. They can discuss the issue with you and determine whether a call to the outside service contractor is necessary. If it is determined that outside assistance is required, the IT Committee member will remain in contact with the engineer throughout the solution process.

Department heads MUST notify a member of IT Committee immediately of any personnel changes within your office. This includes but is not limited to, new hires, terminations, retirement, temporary hires, seasonal workers, interns, outside vendor changes etc.

IT Committee contact information is listed in the table below.

IT Committee Member	Department	Telephone	Email (preferred)
Cathy Salmon (Chairman)	Assessor	781-709-1414	csalmon@townofpembrokemass.org
Sabrina Chilcott	Selectmen	781-709-1402	schilcott@townofpembrokemass.org
Kathleen McCarthy	Treasurer	781-709-1417	kmccarthy@townofpembrokemass.org
Deborah Wall	Library	781-293-6771	dwall@sailsinc.org
Kristine Fraser	Fire	781-293-2300	kfraser@pembrokefire.org
Sheila Landy – Support Specialist	Health	781-709-1407	slandy@townofpembrokemass.org
Casey Driscoll – Support Specialist	Selectmen	781-709-1416	ctobin@townofpembrokemass.org

POLICY PROHIBITING SEXUAL HARASSMENT IN THE WORKPLACE IN DEPARTMENTS OF THE TOWN OF PEMBROKE

The following policy statement is issued by the Pembroke Select Board to insure the effective operation of Town Departments. It supplements any similar policies which may already be in effect in any Department.

POLICY

It is unlawful to engage in sexual harassment in the workplace and/or to retaliate against anyone involved in any way in a sexual harassment complaint. It is the policy of the Town of Pembroke to promote and maintain a working environment within Town Departments which is free of harassment. This includes harassment on the basis of race, color, age, sex, religion, national origin, disability, sexual orientation and specifically includes sexual harassment. The Town has the duty and responsibility to eliminate sexual harassment from the workplace in Town Departments, and will not tolerate or condone sexual harassment in any form by or toward its employees.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors and/or other verbal or physical acts of a sexual or sex-based nature where:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- b. An employment decision is based on an individual's acceptance or rejection of such conduct; or
- c. Such conduct interferes with an individual's work performance; or creates an intimidating, hostile or offensive working environment.

Examples of conduct which constitutes sexual harassment include, but are not limited to:

- * repeated offensive sexual flirtations, advances, or propositions;
- * continued or repeated verbal abuse or innuendo of a sexual nature;
- * uninvited physical contact such as touching, hugging, patting or pinching;
- * verbal comments of a sexual nature about an individual's body or sexual terms used to describe an individual;
- * display of sexually suggestive objects or pictures;
- * jokes or remarks of a sexual nature in front of people who find them offensive;
- * gestures and other actions derogatory or degrading;
- * the demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status or promises of preferential treatment;
- * indecent exposure.

Town of Pembroke Sexual Harassment Policy
Page 2

Sexual harassment is not limited to prohibited behavior by a male employee toward a female employee or by a supervisory employee toward a non-supervisory employee. Sexual harassment also can be found in any of the following less "traditional" situations:

A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser.

The harasser does not have to be the victim's supervisor. (S)he may also be an agent of the employer, a supervisory employee who does not supervise the victim, a non-supervisory employee, or, in some circumstances, even a non-employee, such as a recipient of public services or a vendor.

The victim does not have to be the opposite sex from the harasser.

The victim does not have to be the person at whom the unwelcome sexual conduct is directed. (S)he may also be someone who is affected by such conduct when it is directed toward another person. For example, (1) the sexual harassment of one female or male employee may create an intimidating, hostile, or offensive working environment for another female or male co-worker, or may interfere with the co-worker's performance; or (2) an employee who is forced to work in an environment where preferential treatment is given to those who submit to sexual advances may be adversely affected by such conduct.

Sexual harassment does not depend on the victim having suffered a concrete economic injury as a result of the harassed conduct. Improper sexual advances which do not result in the loss of a promotion by a victim or the discharge of the victim may, nonetheless, constitute sexual harassment where they interfere with the victim's work or create a harmful or offensive work environment.

The Town also prohibits employees from taking retaliatory action against anyone who has articulated any concern about sexual harassment or who assists in any way with an investigation of such a complaint.

REPORTING, ENFORCEMENT AND SANCTIONS

Department employees are responsible for:

Refraining from sexual harassment and voicing immediately any available evidence of such behavior to appropriate management.

Cooperating in any investigation of alleged sexual harassment by providing any information (s)he possesses concerning the matter being investigated.

Town of Pembroke Sexual Harassment Policy
Page 3

Actively participating in efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such discrimination.

Any employee who believes he or she has been harassed should report the incident immediately to the head of the Department in which (s)he works, except that if the Department head is the alleged harasser, it should be reported to the Selectmen's Office. Department heads are responsible for taking immediate action by conducting a confidential and fair investigation of all complaints. If the matter is not resolved at the Department level, either the alleged harasser, Department head or the victim should report it to the Selectmen's Office.

In addition to or in lieu of internal reporting, allegations of sexual harassment may be reported to:

Massachusetts Commission
Against Discrimination
One Ashburton Place
Boston, MA 02108
617-727-3990

Equal Employment
Opportunity Commission
John F. Kennedy Federal Building
Boston, MA 02108
617-565-3200

If, after a thorough investigation, an employee is found to have engaged in sexual harassment within the workplace, he/she could be subject to disciplinary action, including, but not limited to an oral warning or reprimand, a written warning or reprimand to be placed in a personnel file, sensitivity training, suspension, demotion, transfer, termination, or some combination of the above.

I, _____, have received a copy of the Sexual and Other Unlawful Harassment Policy of the Town of Pembroke.

Signature: _____
Date: _____

Guide for Members of Public Boards and Commissions

How to be an Effective Member of a Public Board or Commission



**Commonwealth of Massachusetts
Office of the Inspector General**

**Glenn A. Cunha
Inspector General**

December 2017 Edition

Table of Contents

Guide for Members of Public Boards and Commissions	1
Practices for Effective Board Members	2
1. Learn about the public organization	2
2. Educate yourself about the role of your board (and your role as a board member)	3
3. Uphold fiduciary principles and act in the best interests of the public organization	4
4. Exercise care when making decisions and voting by informing yourself, asking questions and expecting answers	4
5. Actively oversee the executive who leads the organization	5
6. Actively monitor and protect public expenditures	7
7. Consider your ethical responsibilities and follow the Massachusetts conflict-of-interest law	8
8. Operate in compliance with the Massachusetts open meeting law	9
9. Ensure that you operate in compliance with the Massachusetts public records law	11
10. Detect and report suspected fraud, wrongdoing or other misuse of public resources: If you see something, say something	12
Conclusion.....	14
Appendix A: Sources of Advice and Assistance	15
Appendix B: Reasons for Entering Executive Session	16

Guide for Members of Public Boards and Commissions

Congratulations on your appointment to a public board or commission (“public board”). Your service to the citizens of Massachusetts is essential to good government. Thank you for your commitment to fulfilling your duties and responsibilities as a public board member.

Public boards take many forms. Some provide direct oversight to a state, county or local governmental entity (collectively, a “public organization”). Other boards set policy for their public organization and some make advisory recommendations. Still others perform a combination of these functions.

Whether you serve on a state, county or local board, you support a public organization that provides public services with public funds. Your work is important, whether you are advising your public organization on policy matters, approving salaries, reviewing the budget, or assessing the executive director’s performance. Your participation, insights and engagement as a citizen and active decision-maker are essential to ensuring that your public organization fulfills its mission and uses public resources appropriately.

Who should use this guide?

If your board has a role in overseeing the public official leading a public organization – or if your board provides input on a public program, the use of public funds or the care of public property – you should read this guide. Similarly, if you are a member of a board that provides advice or recommendations to a public organization, this guide will help you fulfill your duties as a board member.

This guide outlines practices, such as upholding fiduciary principles, that will help you effectively perform your role. It also provides an overview of the laws that apply to your position. These laws relate to the meetings your board holds, your official acts and communications, and your individual conduct. These laws serve to promote open, transparent and accountable government, all of which are essential elements to our representative democracy.

Use this guide to understand your obligations and to help you perform your duties as a public board member to the best of your abilities. The appendix at the end of this guide contains additional resources, including contact information for state agencies that interpret and enforce the laws applicable to you and your board.

Thank you again for your commitment to fulfilling your duties and responsibilities as a public board member.

Public boards take many forms, such as:

- *Public university boards of trustees*
- *Redevelopment authority boards of trustees*
- *Municipal light department boards of commissioners*
- *Housing authority boards*
- *Town finance committees*
- *Library boards of trustees*
- *Municipal select boards*
- *Economic development authorities*

Practices for Effective Board Members

The following practices will help you succeed in fulfilling your obligations as a public board member.

1. Learn about the public organization.

When you are first appointed, get to know the public organization you serve. Learn about the public organization's mandate or mission, which may be found in state law or a local ordinance. A public organization's mandate often identifies the scope of its authority to carry out its public purpose or service, as well as any procedures governing how it achieves its mission and any regulations or by-laws that its officers or appointees must follow.

In addition, learn about *how* the public organization fulfills its mission. Read about the programs it operates and the segments of the public it serves. Ask for past annual reports and budgets, as well as a current organizational chart. Learn about recent achievements and upcoming initiatives or special projects.¹

Ask:

- What is the public organization's mission or mandate?
- What rules, regulations or by-laws govern the public organization, if any?

Delve deeper and ask:

- How does the organization carry out its mission or purpose?
- How is the organization structured?
- What is the organization's annual budget? Who sets the budget and who decides how it is spent?
- Who are the senior officials in the organization and what are their roles?
- What are the major projects or objectives that the public organization is considering over the next few years? What will be the projected cost of these projects?
- Are the proposed projects and objectives consistent with the mission of the public organization and with the organization's budget and other priorities?

The answers to these questions will help you understand how the public organization operates and will enable you to become an effective and involved board member.

¹ The State Auditor conducts periodic audits of state agencies, quasi-state agencies and housing authorities. If you serve on such a board, check the State Auditor's website, available at www.mass.gov/auditor, for audit reports on your public organization.

2. Educate yourself about the role of your board (and your role as a board member).

In order to be an effective public board member, you need to understand your board's role with respect to the public organization. Some boards provide direct oversight to ensure that the public organization operates effectively and in accordance with its mandate, while others work in an advisory capacity to help guide a public organization toward particular goals and outcomes. The board's role is usually set out in a statute, local ordinance or other enabling document.

You should understand the board's role and responsibilities in order to guide the public organization toward the realization of its mission, goals and objectives.

Ask:

- What is the scope of the board's authority and what is the source of that authority?
- What matters typically come before the board?
- Based on the board's role with respect to the organization, are there other matters that should be brought before the board?

You should also understand how the board operates, including how often it meets, how the agenda is established and the procedures that govern the meetings. As a starting point, read the meeting minutes from at least the past four board meetings.

Ask:

- How often does the board meet? Is the board required to meet on a specific schedule and, if yes, what is that schedule?
- Who sets the agenda for the meetings? Can board members submit topics for the agenda?
- Does your board follow written procedures for meetings, such as *Robert's Rules of Order*?
- How does the board vote? Are all votes conducted in the same manner?

Public boards should meet regularly to facilitate open, vigorous and in-depth discussions in compliance with the Massachusetts Open Meeting Law, which is outlined later in this guide.

Furthermore, take steps to learn how the chairperson and other officers are selected, if there are limits for serving as an officer and whether your board may establish committees. Request lists of all current board members and committees.

Your board may find it helpful to adopt a set of written operating procedures, including for the conduct of meetings, term limits and leadership appointments, if they are not already in place.

Ask:

- How are officers selected?
- Does the board have committees and if so, how are members selected to serve on them?

- Are there term limits for officers, board members or committee members?

3. Uphold fiduciary principles and act in the best interests of the public organization.

In some instances, the law may consider you a fiduciary. A fiduciary is someone who owes a particular duty of care, known as a fiduciary duty, to an entity or individual – in this case, a public organization. A fiduciary duty requires an individual to act with good faith, loyalty and due care. A fiduciary must act in the best interests of the public organization.

Even if you are not a fiduciary under the law, fiduciary principles should guide the decisions that you and your board make. Adhering to fiduciary principles will help the board recognize that it is a steward of the public funds entrusted to the organization, and that the board plays a vital role in ensuring the public organization fulfills its mission. As part of upholding fiduciary principles, the board should always act independently, with care and in the best interests of the organization.

A fiduciary is "someone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, loyalty, due care, and disclosure." Black's Law Dictionary 10th ed. (2014).

Board members who adhere to the fiduciary principles will be active participants in board matters, will stay informed and will act in the best interests of the organization. Fiduciary principles remind the board that it must act on behalf of the organization, not its executive. They will lead the board to actively oversee the executive and to expect accountability from the executive, which will help the public organization operate effectively, transparently and in accordance with its mission.

Using fiduciary principles as the framework for your board will result in an active, well-informed board that acts in the public organization's best interests and assists the organization in achieving its mission.

4. Exercise care when making decisions and voting by informing yourself, asking questions and expecting answers.

To be an active and effective board member, you must be informed. Consequently, before your board meets, arm yourself with accurate information to make thoughtful decisions. Take time to prepare for meetings in advance; read the materials that are distributed and think about the issues on the agenda.

Ask:

- How far in advance does the board receive meeting materials so that you can properly prepare for pending actions before voting on a matter before the board?
- What is the procedure for requesting the organization to provide additional information, either in advance of or at a meeting?

- What is the procedure for asking individuals from the organization to attend the meeting to provide additional information?

Public discourse, analysis and debate are expected, whether public board members are trustees of a public college or commissioners of a local housing authority. When your board meets, ask probing questions that are relevant to the issue and debate the issue at hand during meetings to get information that will help you make informed decisions. If the chair of the board or an official in the organization does not provide you with the necessary information to make an informed decision, ask for it. If you do not receive the information you need, ask to change the date of the vote.

Before voting on a matter, ask probing questions, such as:

- What statutes or regulations apply to the requested action?
- What internal procedures apply to the requested action and were those procedures followed?
- Does the requested action align with the public organization's mission, responsibilities, priorities and budget?
- Do you need additional data so that you can make an informed decision?
- Do you need to hear from others in the organization? For instance, does legal counsel or human resources have information necessary to make this decision?

Finally, exercise your own judgment and always act in the best interests of the public organization. Do not allow yourself to be marginalized by an executive or fellow board member who may assert knowledge or expertise above yours or who simply does not agree with you. Do not rubber stamp official acts that come before your public board – your work is important and you need to be informed.

5. Actively oversee the executive who leads the organization.

It is likely that your public organization is run by an executive, such as a public college president, a director or other professional, and that your board is responsible for overseeing the executive. If so, respect the trust the taxpayers placed in you. While you do not want to interfere with the day-to-day management of the public organization, you do want to make certain that the executive's actions align with the objectives of the public organization. The executive reports to you and is accountable to the board. Be an active overseer.

Expect the executive to timely inform the board of major projects, expenditures and initiatives. Use board meetings to discuss substantive issues with the executive, such as budget planning, capital projects and significant policy matters. Ask questions, seek clarification and get back-up documentation. Collaboration with the executive will require open communication and information-sharing.

Ask:

- What are the executive's objectives and priorities for the organization?
- Do these objectives align with the organization's mission and values?
- What are the financial costs of achieving these objectives?

To help both the executive and the organization, your board should conduct an annual performance evaluation of the executive. It also must establish a system to track and account for the executive's vacation, sick and work time. Both the performance assessment and the mechanism used to account for the executive's time should be established in writing. The board also should ensure that the organization can track other expenses and requests for reimbursements.

The board should approve the executive's expenses and reimbursements (at least those above a certain dollar threshold). This includes reviewing the back-up documentation for the executive's expenses and reimbursements. Staff who report to the executive are not in a position to question the executive's performance, expenditures or conduct; the board's independence and oversight in this regard are therefore critical.

Similarly, perform your due diligence before signing the executive's contract – whether it is the executive's first contract or a renewal. Your board should do its own, independent research to ensure that the salary and other benefits offered, including vacation time, sick leave and other fringe benefits, are reasonable and consistent with standard practices. Make sure that they are comparable to those of other executives with like experience and expertise who work in similar public settings. And very importantly, ensure that the compensation is consistent with the public organization's budgetary commitments.

Be clear about time expectations. If the executive must devote his full time and attention to the public organization, make that explicit in the contract. If the position is part-time, the contract should clearly set out time and attendance requirements.

Information about state salaries is accessible online through CTHRU, available at www.macomptroller.org.

Finally, apply the same due diligence if you have to recruit a new executive for the public organization. Conduct an appropriate search that provides you with a talented applicant pool. As part of the selection process, speak with references and conduct a background check.

Ask:

- What is the organization's budget for the executive's salary?
- How much time is the executive required to devote to the public organization?
- How does the organization document and verify the executive's work, vacation and sick leave hours?

Consider establishing an independent audit committee that reports to the board. Among other duties, the committee could periodically audit reimbursements and expenses at the executive level.

- What is the public organization's expense reimbursement policy? Is it consistent with the public organization's mission and objectives? Does it clearly define how the executive's expenses are reviewed and approved?
- Do the executive's reimbursement requests match legitimate expenses related to the public organization's public purpose?

6. Actively monitor and protect public expenditures.

Your board may be responsible for approving budgets, capital projects and other expenditures. If that is the case, your public board ensures that a public organization utilizes its finite public resources wisely and complies with the laws that govern the use of those resources. You are the steward of those resources as a public board member.

As a starting point, learn to read a financial statement. You do not need to be an accounting expert, but understanding financial statements is essential to ensuring that your organization is using its public resources appropriately. If accounting is not your area of expertise, consider asking a professional from within the organization to give the board a tutorial on reading financial statements. Be sure to not only look at the figures in the financial statement, but also be sure to review the accounting firm's notes regarding litigation and other matters that may affect the financial soundness of the organization. Also, when financial material is presented at a board meeting, ask questions to clarify any unclear information. Chances are high that if you are uncertain about the information, other board members are, too.

You also should understand the public bidding laws that apply to your organization. In Massachusetts, many public organizations must follow particular laws and procedures before undertaking construction projects; buying supplies, services and real property; or disposing of surplus supplies and property. The Legislature designed these laws to ensure that all qualified vendors have a fair and equal opportunity to compete for public contracts and that taxpayer money is spent wisely. To the extent you can, educate yourself or obtain training on these laws. Additional resources to help you understand these laws are available in Appendix A at the end of this guide.

Ask:

- What laws must the public organization follow related to purchasing or disposing of goods, services and real property?
- What laws must the public organization follow in connection with construction projects?
- What are the public organization's written procurement policies?
- What audit procedures are in place to ensure that the organization is complying with state law and its internal procedures?

The Office of the Inspector General provides several resources, including procurement charts and manuals, to help you understand public bidding and construction laws. For more information, please visit the Office's website, available at www.mass.gov/ig.

At the state level, the Massachusetts Comptroller maintains "CTHRU," a comprehensive electronic database of state expenditures, including state salaries and payments made to vendors by state agencies. Use this database, available at www.macomptroller.org, to learn more about your agency's expenditures or to compare your organization's expenses to other public organizations.

If you are a member of a local board that serves a local public organization, inquire about whether there is an electronic resource similar to "CTHRU," so that you may have more information at your fingertips about the budget, salaries and spending of the organization.

Armed with this information you will be able to make meaningful determinations about financial matters that come before your board.

7. Consider your ethical responsibilities and follow the Massachusetts conflict-of-interest law.

As a public board member, you likely are subject to the state's conflict-of-interest law, which is designed to ensure that all public employees act for the benefit of the public organization, free from personal bias or gain. The law impacts your conduct as a board member, as well as certain activities you undertake separate from your board membership. For instance, the law:

- Restricts you from discussing or voting on matters in which you or an immediate family member, or your private business has a financial interest.
- Restricts you from accepting gifts and gratuities, if given because of some official act or because of official position, even if the gift or gratuity would not influence your actions as a board member.
- Requires you to disclose in writing any appearances of a conflict of interest prior to performing your official duties, and prohibits favoritism toward a family member or friend or bias against a business associate.
- Restricts you from representing business or other interests before your board.

The law also requires you to:

- Complete training on the conflict-of-interest law. You have to acknowledge receiving a summary of the conflict-of-interest law every year and complete the Ethics Commission's free, online training program within 30 days after your appointment.
- File disclosures in certain instances involving actual and potential conflicts of interest.

You must acknowledge receipt of the conflict-of-interest summary annually and complete the online training program every two years. If you have not taken the training, contact the Ethics Commission (see Appendix A) or the individual or office that appointed you.

Keep the conflict-of-interest law especially in mind when your board deliberates or votes on an issue. Your vote matters. It is an official act and your decisions or deliberations must be

independent and free from personal bias, personal gain and personal advantage. When you believe there may be a conflict between your official duties and your personal interest, at a minimum you must disclose that conflict. Disclosure forms and instructions are available on the Ethics Commission's website.

The Ethics Commission provides free advice to all public employees on the conflict-of-interest laws. Its website, available at www.mass.gov/ethics, also contains helpful advisories, guides and rulings.

You must abstain or recuse yourself from a matter under consideration by your public board if certain financial interests are affected. If a matter before your board creates an appearance of a conflict for you, you must first disclose the nature of the conflict in writing before participating in deliberations and voting on the matter. At a minimum, disclosure creates transparency and helps ensure accountability, impartiality and independence. It enhances the public's confidence in the integrity and fairness of our government and its processes. It helps ensure the delivery of honest services unencumbered by personal interest or gain.

To help your board and your public organization comply with the conflict-of-interest law, ask:

- Have all board members completed the conflict-of-interest law's educational requirements?
- Does your board or the public organization understand how to complete and submit conflict-of-interest law disclosure forms? If so, where are they retained?
- Does your board have a written policy about abstention or recusal?
- Are you permitted to work on outside activities that may impact your role as a board member? If so, how are outside activity requests approved?
- Does your board require the executive to file disclosure forms or outside activity forms? If so, are the forms reviewed? Is there an approval process required? Are these activities monitored for potential conflicts?

You may want to consider circulating an annual "outside activities" form as part of an internal control plan related to possible conflicts of interest. It may prompt disclosure before a conflict arises.

Finally, remember that the conflict-of-interest law applies to your fellow board members, employees of the public organization and, in certain instances, to consultants and contractors. If you learn of a potential conflict of interest – whether by a board member, senior executive or employee – you need to properly address it. Seek advice from your board's legal counsel or contact the Ethics Commission.

8. Operate in compliance with the Massachusetts open meeting law.

When you were appointed, you should have received a copy of the state's open meeting law. Similar to the conflict-of-interest law, the open meeting law applies to both your individual conduct and the board's operations. For example:

- Public boards must give advanced notice of the topics that will be discussed at a meeting.
- Meetings of public boards must be open to the public, although in limited circumstances members *may* hold certain aspects of the meeting in closed session, away from public view.
- Discussing certain matters with other board members outside of a properly noticed meeting – such as by email or telephone – will likely violate the open meeting law.

Once appointed, all public board members must sign a certification form stating that they have received certain educational materials, that they understand the requirements of the open meeting law and that they understand the consequences for violating it. These educational materials include the text of the law, the Attorney General's regulations, the Attorney General's Open Meeting Law Guide, and copies of all determination letters from the past five years where the Attorney General found that the public body had violated the open meeting law.

Because the open meeting law promotes openness and transparency in government, it contains specific notice requirements to ensure that the public knows – prior to the meeting – when and where the board will meet, along with what topics the board intends to discuss at the meeting. Except in the case of an emergency, a public board must provide notice of its meeting 48 hours in advance (excluding Saturdays, Sundays and legal holidays). The notice must include the date, time and location of the meeting, as well as a list of all topics that the chair reasonably anticipates will be discussed.²

The law seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently. Consequently, a board may only discuss the topics listed in the meeting notice, unless the topic was not reasonably anticipated when the notice was posted. While public bodies (such as boards) may discuss topics that were not reasonably anticipated by the chair, the Massachusetts Attorney General encourages public bodies to postpone discussion of any topics of significant public concern until notice can be given to the public.

Further, while most board discussions must be public, as noted above, there are certain situations in which the board *may* vote to meet in private. In these instances, your public board may discuss a matter in what is known as an "executive session." An executive session may be held for any of ten permissible reasons, as specified in the open meeting law. Public bodies are required to post notice of anticipated executive sessions, listing the topics to be discussed behind closed doors with as much detail as possible without compromising the lawful purpose for secrecy. Public bodies must begin meetings in open session before entering executive session and must take a vote to enter executive session, again providing as much detail as possible about what will be discussed.

See Appendix B at the end of this guide for a list of the ten permissible reasons for entering executive session.

² The open meeting law also contains additional requirements concerning meeting notices, including where the notice must be posted.

The open meeting law prohibits communication between or among a quorum of a public board outside of a noticed meeting on any business within that board's jurisdiction.³ Therefore, a series of telephone calls or emails between a quorum of board members – often referred to as “serial deliberations” – could violate the open meeting law. This is because the public is entitled to notice and an opportunity to witness deliberations concerning board business.

Ask:

- Does your public organization post meeting notices in advance?
- Do members discuss only what is on the agenda at the meeting?
- Does your board vote to enter “executive session” properly and only for the reasons set forth in the open meeting law?
- Does your board have practices in place to ensure that members do not have serial deliberations that violate the open meeting law?

The open meeting law addresses many topics, such as remote participation and meeting minutes, that are not discussed here. The Massachusetts Attorney General's Office (“AGO”) is responsible for interpreting and enforcing the open meeting law. It produces a comprehensive guide to the open meeting law, as well as helpful educational material and rulings. The AGO also provides in-person and online trainings about the open meeting law. Visit the AGO's website, available at www.mass.gov/ago, or contact the AGO's Division of Open Government, to learn more about the open meeting law.

9. Ensure that you operate in compliance with the Massachusetts public records law.

The public records law is another way citizens may examine whether their government is functioning in accordance with its public policy objectives and in compliance with the law. Indeed, the public records law supports transparency of the decision-making process and promotes the accountability of public employees, public boards and government officials to the taxpayers.

Consequently, the law requires that you retain certain records for a period of time, and that you turn over certain records if a member of the public requests them – when they contain content related to your official capacity. *This is true even if the records are on your personal computer, personal cellphone or personal email account.*

All public boards receive and generate public records in the regular course of business. You also generate public records when you operate in your official capacity as a public board member. If you communicate with another individual in your official capacity or exchange information about matters under your board's purview, for instance, you may create a public

³ For the purposes of the open meeting law, a quorum is a simple majority of the members of the public board. For example, in the case of a five-member board, the quorum would be three.

record even if you use your personal email, voicemail or video recording to transmit that information. A common misperception exists that communications on personal email accounts or via text messages are not subject to the public records law; this is incorrect as all board-related communications are subject to public disclosure.

In addition, the law defines the term “record” very broadly and it includes more than written meeting minutes or agendas. For example, records can include emails, photographs, voicemails, video tapes, attendance lists and public meeting sign-in sheets. These records are subject to public records requests, and you may be required to keep these documents for a certain period of time. Check with your public organization and the Secretary of the Commonwealth to determine the full scope of your record retention obligations.

The Secretary of the Commonwealth's Office provides record retention schedules for state, county and local governmental entities.

Ask:

- Does your board have a written policy or a practice related to managing public records requests?
- Do public board members respond to inquiries about board matters made by the public in a manner that is consistent with this policy?
- Does your board have an appointed Records Access Officer?
- Does your board have a practice related to the use of personal devices or emails?
- Does your board have a written records retention policy?

For more information on the state's public records law, please contact the Public Records Division at the Secretary of the Commonwealth's Office at (617) 727-2832. The Secretary of the Commonwealth's Office also has developed a free, comprehensive guide to the public records law. The guide, titled *A Guide to the Massachusetts Public Records Law*, is available on the Secretary of the Commonwealth's website at www.sec.state.ma.us. See Appendix A.

10. Detect and report suspected fraud, wrongdoing or other misuse of public resources: If you see something, say something.

Any misuse of public funds and resources affects a public organization's financial well-being, reputation and ability to accomplish its mission. As a public board member, you have an important role in preventing and detecting fraud. You and your fellow members are custodians of the public trust. You have the responsibility to protect public resources, including money, assets, real property, employee time, digital records and other types of data. Massachusetts citizens have entrusted these public resources to your care.

Although most employees are honest and hardworking, fraud and other misconduct still occur, so you must diligently apply preventative measures – often referred to as internal controls – to help safeguard public assets and taxpayers' interests. As a result, all organizations need

internal controls. Every internal control must be based on the specific organization. Some common elements of an internal control plan to protect public resource include the following:

- The segregation of duties performed by employees to ensure no one individual can commit and cover up their own wrongdoing.
- Approval processes for expenditures, with increased oversight for larger expenditures.
- Methods to track and monitor employee time and attendance, including the use of leave time.
- Controls to track the public organization's acquisition and disposition of public assets, such as vehicles, equipment, supplies and petty cash.
- Fraud-reporting mechanisms, including a telephone or email hotline or an independent complaint review process.
- An anti-fraud policy, as well as employee training on the policy and annual reminders to follow the policy.
- A code of conduct with standards related to conflict of interest and other professional standards that align with the public organization's mission.
- Tone at the top: communication from the organization's administration about its commitment to the highest ethical and professional standards.
- Careful vetting of employees – both before and after hiring – to ensure that their background and professional certifications meet the entity's standards and support the entity's mission.

Further, you should determine whether the board has an internal audit committee to check and verify expenses. If not, advocate for the creation of one. The board needs to set the "tone at the top," and communicate that the public organization has zero tolerance for fraud and other inappropriate activity. An ethical work environment with internal controls is essential to the proper use of public resources.

Ask:

- What fraud risks exist in the public organization your board oversees?
- What types of internal controls are in place to properly monitor the use of public resources?
- Does the public organization or your board perform compliance reviews or audits?
- Does your public organization have an anti-fraud program that includes training, policies, new-hire background checks and a fraud hotline or other fraud-reporting mechanisms?

*Report suspected fraud, waste or other misuse of public funds by calling the Office's confidential hotline: (800) 322-1323.
Or email the Office at
IGO-FightFraud@state.ma.us.
All reports are confidential.*

Conclusion

This Office would like to thank the Office of the Attorney General, the Secretary of the Commonwealth and the State Ethics Commission for their assistance in creating this guide.

To learn more about fulfilling your role as a board member, we hope you will attend the Office's complimentary class, *Are You a Member of a Public Board or Commission? Know Your Responsibilities*. This free class is offered through the Office's Massachusetts Certified Public Purchasing Official ("MCPPO") program. For information on dates for this course, please see the Office's website at www.mass.gov/ig.

If you would like to learn even more about protecting your public organization and its limited public resources, the Office's MCPPO program offers a wide range of training – from public construction to contract administration to fraud prevention. Please explore the MCPPO's classes at www.mass.gov/ig.

Thank you for your service and best of luck in your role as a public board member!

Appendix A: Sources of Advice and Assistance

Office of the Attorney General

The Office of the Attorney General interprets and enforces the open meeting law.

Office of the Attorney General
Division of Open Government
One Ashburton Place
Boston, MA 02108
Telephone: 617-963-2540
Email: openmeeting@state.ma.us
Website: www.mass.gov/ago

Office of the Comptroller

The Office of the Comptroller is responsible for developing internal control guidelines for Commonwealth departments, including state agencies and quasi-state agencies.

Office of the Comptroller
One Ashburton Place, 9th Floor
Boston, MA 02108
Telephone: 617-727-9140
Email: comptroller.info@state.ma.us
Website: www.mass.gov/comptroller

Office of the Inspector General

The Office of the Inspector General is an independent agency that prevents and detects the misuse of public funds and public property, conducts confidential investigations, improves transparency in government, helps government run more effectively and educates government employees and the public.

Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108
Telephone: 617-727-9140
Email: IGO-FightFraud@massmail.state.ma.us
Website: www.mass.gov/ig

Secretary of the Commonwealth

The Secretary of the Commonwealth administers the public records law.

Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
Telephone: 617-727-2832
Email: pre@sec.state.ma.us
Website: www.sec.state.ma.us

State Ethics Commission

The State Ethics Commission administers and enforces financial disclosure and conflict-of-interest law. It also renders written advisory opinions upon request.

State Ethics Commission
One Ashburton Place, Room 619
Boston, MA 02108
Telephone: 617-371-9500
Website: www.mass.gov/ethics

Appendix B: Reasons for Entering Executive Session

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. The open meeting law, G.L. c. 30A, § 21, sets out ten permissible reasons for entering executive session:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual;
2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
 - (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
 - (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:

in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to G.L. c. 164, § 1F.

Open Meeting Law Guide and Educational Materials



COMMONWEALTH OF MASSACHUSETTS

OFFICE OF ATTORNEY GENERAL
MAURA HEALEY

JANUARY 2018

TABLE OF CONTENTS

Contents

Open Meeting Law Guide

Overview	4
Certification	4
Meetings of Public Bodies	5
What constitutes a public body?	5
What constitutes a deliberation?	6
Notice	8
Executive Session	10
The Ten Purposes for Executive Session	11
Remote Participation.....	15
Public Participation.....	17
Minutes	18
Open Session Meeting Records.....	19
Executive Session Meeting Records	19
Open Meeting Law Complaints	20
What is the Open Meeting Law complaint procedure?	20
Open Meeting Law Trainings.....	23
Contacting the Attorney General	23

Appendix

The Open Meeting Law, G.L. c. 30A, §§ 18-25	25
940 CMR 29.00: Open Meeting Law Regulations.....	36
Certificate of Receipt of Open Meeting Law Materials.....	48

Dear Massachusetts Residents:

One of the most important functions of the Attorney General's Office is to promote openness and transparency in government. Every resident of Massachusetts should be able to access and understand the reasoning behind the government policy decisions that affect our lives. My office is working to achieve that goal through fair and consistent enforcement of the Open Meeting Law, along with robust educational outreach about the law's requirements.

The Open Meeting Law requires that most meetings of public bodies be held in public, and it establishes rules that public bodies must follow in the creation and maintenance of records relating to those meetings. Our office is dedicated to providing educational materials, outreach and training sessions to ensure that members of public bodies and citizens understand their rights and responsibilities under the law.

Whether you are a town clerk or town manager, a member of a public body, or a concerned citizen, I want to thank you for taking the time to understand the Open Meeting Law. If you would like additional guidance on the law, I encourage you to contact my Division of Open Government at (617) 963-2540 or visit our website at www.mass.gov/ago/openmeeting for more information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ma Healey', with a stylized, flowing script.

Maura Healey
Massachusetts Attorney General

Attorney General's Open Meeting Law Guide

Overview

[Purpose of the Law](#)

The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently.

[Attorney General's Authority](#)

The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for statewide enforcement of the law in the Attorney General's Office. G.L. c. 30A, § 19(a). To help public bodies understand and comply with the law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and orders remedial action to address violations of the law. The purpose of this Guide is to inform elected and appointed members of public bodies, as well as the interested public, of the basic requirements of the law.

[Certification](#)

Within two weeks of a member's election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the attached Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences of violating it. The certification must be retained where the public body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, the Attorney General's regulations, this Guide, and Open Meeting Law determinations issued to the member's public body within the last five years in which the Attorney General found a violation of the law.

In the event a Certificate has not yet been completed by a presently serving member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law. A public body member must sign a new Certificate upon reelection or reappointment to the public body but need not sign a Certificate when joining a subcommittee.

Open Meeting Law Website

This Guide is intended to be a clear and concise explanation of the Open Meeting Law's requirements. The complete law, as well as the Attorney General's regulations, training materials, and determinations and declinations as to complaints can be found on the Attorney General's Open Meeting website, www.mass.gov/ago/openmeeting. Members of public bodies, other local and state government officials, and the public are encouraged to visit the website regularly for updates on the law and the Attorney General's interpretations of it.

Meetings of Public Bodies

What meetings are covered by the Open Meeting Law?

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." As explained more fully below, a deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

- 1) is the communication between or among members of a **public body**;
- 2) if so, does the communication constitute a **deliberation**;
- 3) does the communication involve a matter within the body's **jurisdiction**; and
- 4) if so, does the communication fall within an **exception** listed in the law?

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches¹ of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and

¹ Although the Legislature itself is not a public body subject to the Open Meeting Law, certain legislative commissions must follow the Law's requirements.

its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees (including those of charter schools) are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Individual government officials, such as a town manager or police chief, and members of their staff are not subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements. This exception for individual officials to the general Open Meeting Law does not apply where such officials are serving as members of a multiple-member public body that is subject to the law.

Bodies appointed by a public official solely for the purpose of advising the official on a decision that individual could make alone are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a five-member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.²

What constitutes a deliberation?

The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction. Additionally, certain communications that may otherwise be considered deliberation are specifically exempt by statute from the definition of deliberation (for example, discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law.

Note that the expression of an opinion on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For

² See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991).

example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any “matter within the body’s jurisdiction.” The law does not specifically define “jurisdiction.” As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body’s jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body’s members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

The Attorney General interprets the exemption for “quasi-judicial boards or commissions” to apply only to certain state “quasi-judicial” bodies and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as “agencies” for purposes of G.L. c. 30A.

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as a board of selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore,

the Attorney General will not investigate complaints alleging violations in these situations. Note, however, that this is a matter of interpretation and future Attorneys General may choose to apply the law in such situations.

Notice

What are the requirements for posting notice of meetings?

Except in cases of emergency, a public body must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays, and legal holidays. Notice of emergency meetings must be posted as soon as reasonably possible prior to the meeting. Also note that other laws, such as those governing procedures for public hearings, may require additional notice.

What are the requirements for filing and posting meeting notices for local public bodies?

For local public bodies, meeting notices must be filed with the municipal clerk with enough time to permit posting of the notice at least 48 hours in advance of the public meeting. Notices may be posted on a bulletin board, in a loose-leaf binder, or on an electronic display (e.g. television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located. In the event that meeting notices posted in the municipal building are not visible to the public at all hours, then the municipality must either post notices on the outside of the building or adopt the municipal website as the official method of notice posting.

Prior to utilizing the municipal website, the Chief Executive Officer of the municipality must authorize or vote to adopt such website as the official method of posting notice. The clerk of the municipality must inform the Division of Open Government of its notice posting method and must inform the Division of any future changes to that posting method. Public bodies must consistently use the most current notice posting method on file with the Division. A description of the website, including directions on how to locate notices on the website, must also be posted on or adjacent to the main and handicapped accessible entrances to the building where the clerk's office is located. Note that meeting notices must still be available in or around the clerk's office so that members of the public may view the notices during normal business hours.

What are the requirements for posting notices for regional, district, county and state public bodies?

For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website.

The regional school district committee must file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district. A copy of the notice must be filed and kept by the chair of the public body or the chair's designee.

County public bodies must file meeting notices in the office of the county commissioners and post notice of the meeting in a manner conspicuously visible to the public at all hours at a place or places designated by the county commissioners for notice postings. As an alternative method of notice, a county public body may post notice of meetings on the county public body's website. The county public body must file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

State public bodies must post meeting notices on the website of the public body or its parent agency. The chair of a state public body must notify the Attorney General in writing of the specific webpage location where notices will be posted and of any subsequent changes to that posting location. A copy of each meeting notice must also be sent to the Secretary of State's Regulations Division and should be forwarded to the Executive Office of Administration and Finance, which maintains a listing of state public body meetings.

Where a public body adopts a website as the official method of posting notices, it must make every effort to ensure that the website is accessible at all hours. If a website becomes inaccessible within 48 hours of a meeting, not including Saturdays, Sundays or legal holidays, the website must be restored within six business hours of the discovery. If the website is not restored within six business hours, the public body must re-post notice of its meeting to another date and time, in accordance with the requirements of the Open Meeting Law.

[A note about accessibility](#)

Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice.³ The Attorney General's Disability Rights Project is available to answer questions about accessibility and may be reached at (617) 963-2939.

³ The Massachusetts Commission for the Deaf and Hard of Hearing will assist with arrangements for a sign language interpreter. The Commission may be reached at 617-740-1600 VOICE and 617-740-1700 TTY.

What information must meeting notices contain?

Meeting notices must be posted in a legible, easily understandable format; contain the date, time, and place of the meeting; and list all topics that the chair reasonably anticipates, 48 hours in advance, will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. Where there are no anticipated topics for discussion in open session other than the procedural requirements for convening an executive session, the public body should list “open session” as a topic, in addition to the executive session, so the public is aware that it has the opportunity to attend and learn the basis for the executive session.

Meeting notices must also indicate the date and time that the notice was posted, either on the notice itself or in a document or website accompanying the notice. If a notice is revised, the revised notice must also conspicuously record both the date and time the original notice was posted as well as the date and time the last revision was posted. Recording the date and time enables the public to observe that public bodies are complying with the Open Meeting Law’s notice requirements without requiring constant vigilance. Additionally, in the event of a complaint, it provides the Attorney General with evidence of compliance with those requirements.

If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting. Although a public body may consider a topic that was not listed in the meeting notice if it was not anticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if the topic was not listed in the meeting notice.

Executive Session

When can a public body meet in executive session?

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must first:

- Convene in open session;
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
- State whether the public body will reconvene in open session at the end of the executive session; and
- Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, the member must state at the start of the executive session that no other person is present or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant's location.

While in executive session, the public body must keep accurate records, all votes taken must be recorded by roll call, and the public body may only discuss matters for which the executive session was called.

The Ten Purposes for Executive Session

The law states ten specific purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a public body may enter executive session.

The ten purposes for which a public body may vote to hold an executive session are:

- 1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.**

This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

Generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating before entering into executive session under Purpose 2. A public body may withhold the identity of the non-union personnel or bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

While a public body may agree on terms with individual non-union personnel in executive session, the final vote to execute such agreements must be taken by the public body in open session. In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.

Collective Bargaining Sessions: These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

Generally, a public body must identify the collective bargaining unit with which it is negotiating or the litigation matter it is discussing before entering into executive session under Purpose 3. A public body may withhold the identity of the collective bargaining unit or name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate a definite harm that would have arisen. At the time the executive session is proposed and

voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

Note: For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

- 4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;**
- 5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;**

This purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.

- 6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;**

Generally, a public body must identify the specific piece of property it plans to discuss before entering into executive session under Purpose 6. A public body may withhold the identity of the property if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details

would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Under this purpose, as with the collective bargaining and litigation purpose, an executive session may be held only where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality. A public body may withhold that information only if publicly disclosing it would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body. It may, however, include a review of résumés and multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of the members of the parent public body. The committee may also contain members who are not members of the parent public body.

Note that a public body is not required to create a preliminary screening committee to consider or interview applicants. However, if the body chooses to conduct the review of applicants itself, it may not do so in executive session.

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:

- in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164;
- in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or
- in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164;
- when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

Remote Participation

May a member of a public body participate remotely?

The Attorney General's Regulations, 940 CMR 29.10, permit remote participation in certain circumstances. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

Note that the Attorney General's regulations enable members of public bodies to participate remotely if the practice has been properly adopted, but do not require that a public body permit members of the public to participate remotely. If a public body chooses to allow

individuals who are not members of the public body to participate remotely in a meeting, it may do so without following the Open Meeting Law's remote participation procedures.

How can the practice of remote participation be adopted?

Remote participation may be used during a meeting of a public body if it has first been adopted by the chief executive officer of the municipality for local public bodies, the county commissioners for county public bodies, or by a majority vote of the public body for retirement boards, district, regional and state public bodies. The chief executive officer may be the board of selectmen, the city council, or the mayor, depending on the municipality. See G.L. c. 4, § 7.

If the chief executive officer in a municipality authorizes remote participation, that authorization applies to all public bodies in the municipality. 940 CMR 29.10(2)(a). However, the chief executive officer determines the amount and source of payment for any costs associated with remote participation and may decide to fund the practice only for certain public bodies. See 940 CMR 29.10(6)(e). In addition, the chief executive officer can authorize public bodies in that municipality to "opt out" of the practice altogether. See 940 CMR 29.10(8).

Note about Local Commissions on Disability: Local commissions on disability may decide by majority vote of the commissioners at a regular meeting to permit remote participation during a specific meeting or during all commission meetings. G.L. c. 30A, § 20(e). Adoption by the municipal adopting authority is not required.

What are the permissible reasons for remote participation?

Once remote participation is adopted, any member of a public body may participate remotely only if physical attendance would be unreasonably difficult.

What are the acceptable means of remote participation?

Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Text messaging, instant messaging, email and web chat without audio are not acceptable methods of remote participation. Note that accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

What are the minimum requirements for remote participation?

Any public body using remote participation during a meeting must ensure that the following minimum requirements are met:

1. A quorum of the body, including the chair or, in the chair's absence, the person chairing the meeting, must be physically present at the meeting location;
2. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
3. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

What procedures must be followed if remote participation is used at a meeting?

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely; such information must also be recorded in the meeting minutes. The chair's statement does not need to contain any detail about the reason for the member's remote participation.

Members of public bodies who participate remotely may vote and shall not be deemed absent for purposes of G.L. c. 39, § 23D. In addition, members who participate remotely may participate in executive sessions but must state at the start of any such session that no other person is present or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

If technical difficulties arise as a result of utilizing remote participation, the chair (or, in the chair's absence, person chairing the meeting) may decide how to address the situation. Public bodies are encouraged, whenever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

Public Participation

What public participation in meetings must be allowed?

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the chair. An individual may not disrupt a meeting of a public body, and at the request of the chair, all members of the public shall be silent. If, after clear warning, a person continues to be disruptive, the chair may order the person to leave the meeting. If the person does not leave, the chair may authorize a constable or other officer to remove the person. Although public participation is entirely within the chair's discretion, the

Attorney General encourages public bodies to allow as much public participation as time permits.

Any member of the public may make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record a meeting, that person should attempt to notify the chair prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress (such as passing a note for the chair to the board administrator or secretary). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance.

Minutes

What records of public meetings must be kept?

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must include:

- the date, time and place of the meeting;
- the members present or absent;
- the decisions made and actions taken, including a record of all votes;
- a summary of the discussions on each subject;
- a list of all documents and exhibits used at the meeting; and
- the name of any member who participated in the meeting remotely.

While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

Minutes, and all documents and exhibits used, are public records and a part of the official record of the meeting. Records may be subject to disclosure under either the Open Meeting Law or Public Records Law. The State and Municipal Record Retention Schedules are available through the Secretary of the Commonwealth's website at:

<http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm>.

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. A “timely manner” is considered to be within the next three public body meetings or 30 days from the date of the meeting, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages minutes to be approved at a public body’s next meeting whenever possible. The law requires that existing minutes be made available to the public within ten days of a request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within ten days of a request.

There are two exemptions to the open session records disclosure requirement: 1) materials (other than those that were created by members of the public body for the purpose of the evaluation) used in a performance evaluation of an individual bearing on his professional competence, and 2) materials (other than any résumé submitted by an applicant, which is subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials. Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

Executive Session Meeting Records

Public bodies are not required to disclose the minutes, notes, or other materials used in an executive session if the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, however, minutes and other records from that executive session must be disclosed unless they fall within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or the attorney-client privilege applies. Public bodies are also required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted. These determinations must be included in the minutes of the body’s next meeting.

A public body must respond to a request to inspect or copy executive session minutes within ten days of the request. If the public body has determined, prior to the request, that the requested executive session minutes may be released, it must make those minutes available to the requestor at that time. If the body previously determined that executive session minutes should remain confidential because publication would defeat the lawful purposes of the executive session, it should respond by stating the reason the minutes continue to be withheld. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. In such circumstances, the body should still respond to the request within ten days, notifying the requestor that it is conducting this review.

Open Meeting Law Complaints

What is the Attorney General's role in enforcing the Open Meeting Law?

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to receive and investigate complaints, bring enforcement actions, issue advisory opinions, and promulgate regulations.

The Division of Open Government regularly seeks feedback from the public on ways in which it can better support public bodies to help them comply with the law's requirements. The Division of Open Government offers periodic online and in-person training on the Open Meeting Law and will respond to requests for guidance and information from public bodies and the public.

The Division of Open Government will take complaints from members of the public and will work with public bodies to resolve problems. While any member of the public may file a complaint with a public body alleging a violation of the Open Meeting Law, a public body need not, and the Division of Open Government will not, investigate anonymous complaints.

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

Individuals who allege a violation of the Open Meeting Law must first file a complaint **with the public body** alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a [Complaint Form](#) available on the Attorney General's website, www.mass.gov/ago/openmeeting. When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

Step 2. The Public Body's Response

Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to meet to review the complainant's allegations, take remedial action if appropriate, notify the complainant of the remedial action, and forward a copy of the complaint and description of the remedial action taken to the complainant. The public body must simultaneously notify the Attorney General that it has responded to the complainant and provide the Attorney General with a copy of the response and a description of any remedial action taken. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so. A public body is not required to respond to unsigned complaints or complaints not made on the Attorney General's complaint form.

The public body may request additional information from the complainant within seven business days of receiving the complaint. The complainant then has ten business days to respond; the public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take remedial action. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government and should include a copy of the complaint and state the reason for the requested extension.

Step 3. Filing a Complaint with the Attorney General's Office

A complaint is ripe for review by the Attorney General 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note that complaints are **not** automatically treated as filed for review by the Attorney General upon filing with the public body. A complainant who has filed a complaint with a public body and seeks further review by the Division of Open Government must file the complaint with the Attorney General after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation or the date that the violation was reasonably discoverable.

When filing the complaint with the Attorney General, the complainant must include a copy of the original complaint and may include any other materials the complainant feels are relevant, including an explanation of why the complainant is not satisfied with the response of the public body. Note, however, that the Attorney General will not review allegations that were not raised in the initial complaint filed with the public body. Under most circumstances, complaints filed with the Attorney General, and any documents submitted with the complaint, will be considered a public record and will be made available to anyone upon request.

The Attorney General will review the complaint and any remedial action taken by the public body. The Attorney General may request additional information from both the complainant and the public body. The Attorney General will seek to resolve complaints in a reasonable period of time, generally within 90 days of the complaint becoming ripe for review by our office. The Attorney General may decline to investigate a complaint that is filed with our office more than 90 days after the date of the alleged violation.

May a public body request mediation to resolve a complaint?

If a complainant files five complaints with the same public body or within the same municipality within 12 months, the public body may request mediation upon the fifth or subsequent complaint in order to resolve the complaint. The public body must request mediation prior to, or with, its response to the complaint, and will assume the expense of such mediation. If the parties cannot come to an agreement after mediation, the public body will

have ten business days to respond to the complaint and its resolution will proceed in the normal course.

Mediation may occur in open session or in executive session under Purpose 9. In addition, a public body may designate a representative to participate on behalf of the public body. If mediation does not resolve the complaint to each party's satisfaction, the complainant may file the complaint with the Attorney General. The complaint must be filed within 30 days of the last joint meeting with the mediator.

The mediator will be chosen by the Attorney General. If the complainant declines to participate in mediation after a request by the public body, the Attorney General may decline to review a complaint thereafter filed with our office. A public body may always request mediation to resolve a complaint, but only mediation requested upon a fifth or subsequent complaint triggers the requirement that the complainant participate in the mediation before the Attorney General will review the complaint.

Any written agreement reached in mediation must be disclosed at the public body's next meeting following execution of the agreement and will become a public record.

When is a violation of the law considered "intentional"?

Upon finding a violation of the Open Meeting Law, the Attorney General may impose a civil penalty upon a public body of not more than \$1,000 for each intentional violation. G.L. c. 30A, § 23(c)(4). An "intentional violation" is an act or omission by a public body or public body member in knowing violation of the Open Meeting Law. G.L. c. 30A, § 18. In determining whether a violation was intentional, the Attorney General will consider, among other things, whether the public body or public body member 1) acted with specific intent to violate the law; 2) acted with deliberate ignorance of the law's requirements; or 3) had been previously informed by a court decision or advised by the Attorney General that the conduct at issue violated the Open Meeting Law. 940 CMR 29.02. If a public body or public body member made a good faith attempt at compliance with the law but was reasonably mistaken about its requirements, its conduct will not be considered an intentional violation of the Law. G.L. c. 30A, § 23(g); 940 CMR 29.02. A fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel. G.L. c. 30A, § 23(g); 940 CMR 29.07.

Will the Attorney General's Office provide training on the Open Meeting Law?

The Open Meeting Law directs the Attorney General to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The Attorney General has established an Open Meeting Law website, www.mass.gov/ago/openmeeting, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials, the Attorney General's determination letters resolving complaints, and other resources. The Attorney General offers periodic webinars and in-person regional training events for members of the public and public bodies, in addition to offering a free online training video.

Contacting the Attorney General

If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the Attorney General's Division of Open Government. The Attorney General also welcomes any comments, feedback, or suggestions you may have about the Open Meeting Law or this guide.

Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel: 617-963-2540
www.mass.gov/ago/openmeeting
OpenMeeting@state.ma.us

Appendix

The Open Meeting Law, G.L. c. 30A, §§ 18-25⁴

Chapter 28 of the Acts of 2009, sections 17–20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.

Section 18: [DEFINITIONS]

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Deliberation”, an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

“Emergency”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“Executive session”, any part of a meeting of a public body closed to the public for deliberation of certain matters.

“Intentional violation”, an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

“Meeting”, a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include:

- (a) an on-site inspection of a project or program, so long as the members do not deliberate;
- (b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
- (c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;
- (d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or
- (e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session;

⁴ NOTICE: This is NOT the official version of the Massachusetts General Law (MGL). While reasonable efforts have been made to ensure the accuracy and currency of the data provided, do not rely on this information without first checking an official edition of the MGL.

“Minutes”, the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

“Open meeting law”, sections 18 to 25, inclusive.

“Post notice”, to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

“Preliminary screening”, the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

“Public body”, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

“Quorum”, a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report

- (a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.
- (b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:
 - 1. the general background of the legal requirements for the open meeting law;
 - 2. applicability of sections 18 to 25, inclusive, to governmental bodies;
 - 3. the role of the attorney general in enforcing the open meeting law; and
 - 4. penalties and other consequences for failure to comply with this chapter.

- (c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

- (d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:
1. the number of open meeting law complaints received by the attorney general;
 2. the number of hearings convened as the result of open meeting law complaints by the attorney general;
 3. a summary of the determinations of violations made by the attorney general;
 4. a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
 5. an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
 6. the number of actions filed in superior court seeking relief from an order of the attorney general; and
 7. any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings

- (a) Except as provided in section 21, all meetings of a public body shall be open to the public.
- (b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.
- (c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or

town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division of the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

- (d) The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.
- (e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.
- (f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.
- (g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.
- (h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the

appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. Executive Sessions

(a) A public body may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
 - i. to be present at such executive session during deliberations which involve that individual;
 - ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
 - iii. to speak on his own behalf; and
 - iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
 7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
 8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
 - i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
 - ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or
 10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.
- (b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:
1. the body has first convened in an open session pursuant to section 21;
 2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
 3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
 4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
 5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. Meeting Minutes; Records

- (a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.
- (b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.
- (c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.
- (d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.
- (e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.
- (f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of

said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

- (g) (1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.
- 2. Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions

- (a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.
- (b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.
- (c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:
 - 1. compel immediate and future compliance with the open meeting law;
 - 2. compel attendance at a training session authorized by the attorney general;
 - 3. nullify in whole or in part any action taken at the meeting;
 - 4. impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
 - 5. reinstate an employee without loss of compensation, seniority, tenure or other benefits;
 - 6. compel that minutes, records or other materials be made public; or
 - 7. prescribe other appropriate action.

- (d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.
- (e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.
- (f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.
- Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.
- In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).
- In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.
- (g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.
- (h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. Investigation by Attorney General of Violations of Open Meeting Law

- (a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.
- (b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.
- (c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.
- (d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

- (e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.
- (f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.
- (g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. Regulations; Letter Rulings; Advisory Opinions

- (a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.
- (b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

The official regulations are published in the Massachusetts Register. For more information, contact the Secretary of the Commonwealth's State Publications and Regulations Division.

Section

29.01: Purpose, Scope and Other General Provisions

29.02: Definitions

29.03: Notice Posting Requirements

29.04: Certification

29.05: Complaints

29.06: Investigation

29.07: Resolution

29.08: Advisory Opinions

29.09: Other Enforcement Actions

29.10: Remote Participation

29.11: Meeting Minutes

29.01: Purpose, Scope and Other General Provisions

(1) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.

(2) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.

(3) Mailing. All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

County Public Body. A public body created by county government with jurisdiction that comprises a single county.

District Public Body. A public body with jurisdiction that extends to two or more municipalities.

Emergency. A sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation. An act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, the public body or public body member that:

- (a) acted with specific intent to violate the law;
- (b) acted with deliberate ignorance of the law's requirements; or
- (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person. All individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice. To place a written announcement of a meeting on a bulletin board, electronic display, website, or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public Body. Has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that Public Body shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office. The election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.

Regional Public Body. A public body with jurisdiction that extends to two or more municipalities.

Remote Participation. Participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

29.03: Notice Posting Requirements

(1) Requirements Applicable to All Public Bodies.

- (a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.
- (b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.
- (c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2) through (5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used.
- (d) The date and time that a meeting notice is posted shall be conspicuously recorded thereon or therewith. If an amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended shall also be conspicuously recorded thereon or therewith.

(2) Requirements Specific to Local Public Bodies.

- (a) The official method of posting notice shall be by filing with the municipal clerk, or other person designated by agreement with the municipal clerk, who shall post notice of the meeting in a manner conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located.
- (b) Alternatively, the municipality may adopt the municipal website as the official method of notice posting.
 - 1. The Chief Executive Officer of the municipality, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to adopt the municipal website as the official method of posting notice. Any municipality that has adopted its website as the official method of posting notice by another method as of October 6, 2017 will have satisfied the adoption requirement.
 - 2. If adopted, a description of the website as the notice posting method, including directions on how to locate notices on the website, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.
 - 3. Once adopted as the official method of notice posting, the website shall host the official legal notice for meetings of all public bodies within the municipality.
 - 4. Notices must continue to be filed with the municipal clerk, or any other person designated by agreement with the municipal clerk.

- (c) A municipality may have only one official notice posting method for the purpose of M.G.L. c. 30A, §§ 18 through 25, either 940 CMR 29.03(2)(a) or (b). However, nothing precludes a municipality from choosing to post additional notices *via* other methods, including a newspaper. Such additional notice will not be the official notice for the purposes of M.G.L. c. 30A, §§ 18 through 25.
 - (d) Copies of notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.
- (3) Requirements Specific to Regional or District Public Bodies.
- (a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
 - (b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. A copy of each meeting notice shall be kept by the chair of the public body or the chair's designee in accordance with the applicable records retention schedules. The public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
- (4) Requirements Specific to Regional School Districts.
- (a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.
 - (b) As an alternative method of notice, a regional school district committee may, by majority vote, adopt the regional school district's website as its official notice posting method. A copy of each meeting notice shall be kept by the secretary of the regional school district committee or the secretary's designee in accordance with the applicable records retention schedules. The regional school district committee shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
- (5) Requirements Specific to County Public Bodies.
- (a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.
 - (b) As an alternative method of notice, a county public body may, by majority vote, adopt the county public body's website as its official notice posting method. A copy of the notice shall be kept by the chair of the county public body or the chair's designee in accordance with the applicable records retention schedules. The county public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of the Commonwealth's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its webpage for listing meeting notices and any change to the webpage location. The public body shall consistently use the most current website location on file with the Attorney General. A copy of the notice shall be kept by the chair of the state public body or the chair's designee in accordance with the applicable records retention schedules.

(7) Websites. Where a public body adopts a website as its method of noticing meetings, it must make every effort to ensure that the website is accessible to the public at all hours. If a website becomes inaccessible to members of the public within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, the municipal clerk or other individual responsible for posting notice to the website must restore the website to accessibility within six hours of the time, during regular business hours, when such individual discovers that the website has become inaccessible. In the event that the website is not restored to accessibility within six business hours of the website's deficiency being discovered, the public body must re-post notice of its meeting for another date and time in accordance with M.G.L. c. 30A, § 20(b).

29.04: Certification

(1) For local public bodies, the municipal clerk, and for all other public bodies, the appointing authority, executive director, or other appropriate administrator or their designees, shall, upon a public body member's qualification for office, either deliver to the public body member, or require the public body member to obtain from the Attorney General's website, the following educational materials:

- (a) The Attorney General's Open Meeting Law Guide, which will include an explanation of the requirements of the Open Meeting Law; the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25; and 940 CMR 29.00.
- (b) A copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last five years in which the Attorney General found a violation of M.G.L. c. 30A, §§ 18 through 25. Open Meeting Law determinations are available at the Attorney General's website.

(2) Educational materials may be delivered to public body members by paper copy or in digital form.

(3) Within two weeks after receipt of the educational materials, the public body member shall certify, on the form prescribed by the Attorney General, receipt of the educational materials. The municipal clerk, appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.

(4) An individual serving on multiple public bodies must sign a certification for each public body on which he or she serves. A public body member does not need to sign a separate certification when joining a subcommittee of the public body.

(5) A public body member must sign a new certification upon reelection or reappointment to the public body.

29.05: Complaints

- (1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints. A public body need not address a complaint that is not signed by the complainant. A public body need not address a complaint that is not filed using the Attorney General's complaint form.
- (2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law Complaint Form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.
- (3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body.
- (4) The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, §§ 18 through 25 or, if the alleged violation of M.G.L. c. 30A, §§ 18 through 25 could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.
- (5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(b), the public body shall meet to review the complaint's allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the Attorney General that it has sent such materials to the complainant and shall provide the Attorney General with a copy of the complaint, the response, and a description of any remedial action taken.
 - (a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.
 - (b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.
- (6) If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after receiving the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

(7) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other materials the complainant believes are relevant. The Attorney General shall decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 90 days of the date it should reasonably have been discovered. However, this time may be extended if the Attorney General grants an extension to the public body to respond to a complaint or if the complainant demonstrates good cause for the delay in filing with the Attorney General.

(8) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days.

(9) Mediation to Resolve a Complaint.

- (a) If a complainant files five complaints alleging violations of M.G.L. c. 30A, §§ 18 through 25, with the same public body or within the same municipality within 12 months, upon the fifth or subsequent complaint to that public body or a public body within that municipality within the 12-month period, the public body may request mediation with the complainant, at the public body's expense, to resolve the complaint. A mediator is defined by M.G.L. c. 233, § 23C, and will be selected by the Attorney General.
- (b) A public body must request mediation prior to, or with, its response to the complaint. If the mediation does not produce an agreement, the public body will have ten business days from the last joint meeting with the mediator to respond to the complaint.
- (c) A public body may participate in mediation in open session, in executive session through M.G.L. c. 30A, § 21(a)(9), or by designating a representative to participate on behalf of the public body.
- (d) If the complainant declines to participate in mediation after a public body's request in accordance with 940 CMR 29.05(9)(a), the Attorney General may decline to review the complaint if it is thereafter filed with the Attorney General.
- (e) If the mediation does not resolve the complaint to the satisfaction of both parties, then the complainant may file a copy of his or her complaint with the Attorney General and request the Attorney General's review. The complaint must be filed with the Attorney General within 30 days of the last joint meeting with the mediator.
- (f) Any written agreement reached in mediation shall become a public record in its entirety and must be publicly disclosed at the next meeting of the public body following execution of the agreement.
- (g) Nothing in 940 CMR 29.05(9) shall prevent a complainant from filing subsequent complaints, however public bodies may continue to request mediation in an effort to resolve complaints in accordance with 940 CMR 29.05(9)(a).
- (h) Nothing in 940 CMR 29.05(9) shall prevent a public body or complainant from seeking mediation to resolve any complaint. However, only mediation requests that follow the requirements of 940 CMR 29.05(9)(a) will trigger the application of 940 CMR 29.05(9)(d).

29.06: Investigation

Following a timely complaint filed pursuant to 940 CMR 29.05, where the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, §§ 18 through 25 has occurred, then the Attorney General may conduct an investigation.

(1) The Attorney General shall notify the public body or person that is the subject of a complaint of the existence of the investigation within a reasonable period of time. The Attorney General shall also notify the public body or person of the nature of the alleged violation.

(2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue one or more civil investigative demands to obtain the information in accordance with M.G.L. c. 30A, § 24(a), to:

- (a) Take testimony under oath;
- (b) Examine or cause to be examined any documentary material; or
- (c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to 940 CMR 29.06 shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or in a written determination to resolve the investigation pursuant to 940 CMR 29.07.

29.07: Resolution

(1) No Violation. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has not been violated, the Attorney General shall issue a written determination to the subject of the complaint and copy any complainant.

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, §§ 18 through 25, the Attorney General may take one of the following actions:

- (a) Informal Action. The Attorney General may resolve the investigation with a letter or other appropriate form of written communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, §§ 18 through 25, providing the subject with a reasonable period of time to comply with any outstanding obligations.
- (b) Formal Order. The Attorney General may resolve the investigation with a formal order. The order may require:
 - 1. immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;

2. attendance at a training session authorized by the Attorney General;
 3. nullification of any action taken at the relevant meeting, in whole or in part;
 4. that minutes, records or other materials be made public;
 5. that an employee be reinstated without loss of compensation, seniority, tenure or other benefits; or
 6. other appropriate action.
- (c) Orders shall be available on the Attorney General's website.

(3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00: *Formal Rules*, as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether a violation of M.G.L. c. 30A, §§ 18 through 25 occurred, and whether the public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:

- (a) immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
- (b) attendance at a training session authorized by the Attorney General;
- (c) nullification of any action taken at the relevant meeting, in whole or in part;
- (d) imposition of a fine upon the public body of not more than \$1,000 for each intentional violation; however, a fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel, in accordance with M.G.L. 30A, § 23(g);
- (e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
- (f) that minutes, records or other materials be made public; or
- (g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body, subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07, shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body need not notify the Attorney General of its compliance with an order requiring immediate and future compliance pursuant to 940 CMR 29.07(2)(b)1. or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of *certiorari*. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25 pursuant to M.G.L. c. 30A, § 23(f).

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

- (a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.
- (b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.
- (c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.
- (d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.
- (e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.
- (f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.
- (g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(e), a local commission on disability may, by majority vote of the commissioners at a regular meeting, authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

- (a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other as required by M.G.L. c. 30A, § 20(d);
- (b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location as required by M.G.L. c. 30A, § 20(d);
- (c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

(5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting in accordance with the procedures described in 940 CMR 29.10(7) only if physical attendance would be unreasonably difficult.

(6) Technology.

- (a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.
 - 1. telephone, internet, or satellite enabled audio or video conferencing;
 - 2. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.
- (b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.
- (c) The public body shall determine which of the acceptable methods may be used by its members.
- (d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged wherever possible to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.
- (e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

- (a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.
- (b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.

- (c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
- (d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.
- (e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

(8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines after investigation that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. A "timely manner" will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages public bodies to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY

940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).

Certificate of Receipt of Open Meeting Law Materials

I, _____, who qualified as a member of the
(Name)

_____, on _____, certify pursuant
(Public Body) (Date)

to G.L. c. 30A, § 20(h) and 940 CMR 29.04, that I have received and reviewed copies of the following
Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) the Attorney General's Regulations, 940 CMR 29.00–29.11;
- 3) the Attorney General's Open Meeting Law Guide, explaining the Open Meeting Law and its application; and
- 4) if applicable, a copy of each Open Meeting Law determination issued by the Attorney General within the last five (5) years to the public body of which I am a member and in which the Attorney General found a violation of the Open Meeting Law.

I have read and understand the requirements of the Open Meeting Law and the consequences of violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes to the Open Meeting Law during my term of office.

(Name)

(Name of Public Body)

(Date)

Pursuant to G.L. c. 30A, § 20(h), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

Public Body Checklist for Posting a Meeting Notice

Issued by the Attorney General's Division of Open Government – September 25, 2017

Notice Contents

- ☐ The notice contains the date, time, and location of the meeting. G.L. c. 30A, § 20(b).
- ☐ If the meeting is a joint meeting of several public bodies, the names of all bodies meeting are listed at the top of the notice.
- ☐ The notice contains all of the topics that the chair reasonably anticipates will be discussed at the meeting. The topics are sufficiently specific to reasonably advise the public of the issues to be discussed at the meeting, including executive session topics. G.L. c. 30A § 20(b); 940 CMR 29.03(1)(b).
- ☐ The notice is printed in a legible, easily understandable format. G.L. c. 30A, § 20(b).
- ☐ The date and time that the notice is posted is conspicuously recorded on or with the notice. 940 CMR 29.03(1)(d). If the notice is amended within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended must also be conspicuously recorded on or with the notice. 940 CMR 29.03(1)(d).

Notice Publication

- ☐ The notice is published at least 48 hours before the meeting, not including Saturdays, Sundays and legal holidays. G.L. c. 30A, § 20(b).
- ☐ The notice is posted with the proper authority:
 - Local public bodies – Filed with the municipal clerk, who must post it in a location conspicuously visible to the public at all hours in or on the municipal building where the clerk's office is located, or to the municipal website if adopted by the municipality as the official method of posting notices. G.L. c. 30A, § 20(c); 940 CMR 29.03.
 - State public bodies – Posted to a website, and a copy sent to the Secretary of State's Regulations Division. G.L. c. 30A, § 20(c).
 - Regional public bodies – Posted in every municipality within the region, unless the public body has adopted an alternative notice posting method. G.L. c. 30A, § 20(c); 940 CMR 29.03.
 - County public bodies – Filed with the office of the county commissioners and a copy of the notice is publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose, unless the county has adopted its website as the official method for posting notices. G.L. c. 30A, § 20(c); 940 CMR 29.03.

Note that this checklist is intended as an educational guide, and does not constitute proof of compliance with the Open Meeting Law. These checklists are updated periodically, so please check that you are using the most current version. For questions, please contact the Attorney General's Division of Open Government at 617-963-2540 or via email at openmeeting@state.ma.us. For more information on the Open Meeting Law, please visit www.mass.gov/ago/openmeeting.

Public Body Checklist for Creating and Approving Meeting Minutes

Issued by the Attorney General's Division of Open Government – September 25, 2017

- ☐ Minutes must accurately set forth the date, time, place of the meeting, and a list of the members present or absent. G.L. c. 30A, § 22(a).
- ☐ Minutes must include an accurate summary of the discussion of each subject. See G.L. c. 30A, § 22(a). The summary does not need to be a transcript, but should provide enough detail so that a member of the public who did not attend the meeting could read the minutes and understand what occurred and how the public body arrived at its decisions.
- ☐ The minutes must include a record of all the decisions made and the actions taken at each meeting, including a record of all votes. G.L. c. 30A, § 22(a).
- ☐ The minutes must include a list of all of the documents and other exhibits used by the public body during the meeting. G.L. c. 30A, § 22(a). Documents and exhibits used at the meeting are part of the official record of the session, but do not need to be physically attached to the minutes. See G.L. c. 30A, §§ 22(d), (e).
- ☐ If one or more public body members participated remotely in the meeting, the minutes must include the name(s) of the individual(s) participating remotely. 940 CMR 29.10(7)(b).
- ☐ If one or more public body members participated remotely in the meeting, the minutes must record all votes as roll call votes. 940 CMR 29.10(7)(c).
- ☐ Executive session minutes must record all votes as roll call votes. G.L. c. 30A, § 22(b).
- ☐ The minutes must be approved in a timely manner. G.L. c. 30A, § 22(c). A “timely manner” will generally be considered to be within the next ~~three~~ public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. 940 CMR 29.11(2).

Note that this checklist is intended as an educational guide, and does not constitute proof of compliance with the Open Meeting Law. Checklists are updated periodically, so please confirm that you are using the most current version. For questions, please contact the Attorney General's Division of Open Government at 617-963-2540 or via email at openmeeting@state.ma.us. For more information on the Open Meeting Law, please visit www.mass.gov/ago/openmeeting.

Public Body Checklist for Entering Into Executive Session

Issued by the Attorney General's Division of Open Government – March 12, 2013

- ☐ Executive session listed as a topic for discussion on meeting notice, including as much detail about the purpose for the executive session as possible without compromising the purpose for which it is called. See G.L. c. 30A, § 20(b); 940 CMR 29.03(1)(b).
- ☐ Public body convened in open session first. G.L. c. 30A, § 21(b)(1).
- ☐ Chair publicly announced the purpose for executive session, citing one or more of the 10 purposes found at G.L. c. 30A, § 21(a).
- ☐ Chair stated all subjects that may be revealed without compromising the purpose for which the executive session was called. G.L. c. 30A, § 21(b)(3). For example, the Chair identified the party a public body may be negotiating with or the litigation matter the public body will be discussing.
- ☐ Chair stated whether the public body will adjourn from the executive session, or will reconvene in open session after the executive session. G.L. c. 30A, § 21(b)(4).
- ☐ For Executive Session Purposes 3, 6, and 8:
 - ☐ Chair publicly stated the having the discussion in open session would have a detrimental effect on the public body's negotiating position, bargaining position, litigating position, or ability to obtain qualified applicants. G.L. c. 30A, §§ 21(a)(3), (6), (8).
- ☐ A majority of members of the body voted by roll-call to enter into executive session. G.L. c. 30A, § 21(b)(2).

Note that this checklist is intended as an educational guide, and does not constitute proof of compliance with the Open Meeting Law. Checklists are updated periodically, so please confirm that you are using the most current version. For questions, please contact the Attorney General's Division of Open Government at 617-963-2540 or via email at openmeeting@state.ma.us. For more information on the Open Meeting Law, please visit www.mass.gov/ago/openmeeting.

Open Meeting Law and the Conduct of Public Meetings

**Town of Pembroke
October 25, 2016**

Presented by Brian W. Riley, Esq.



Disclaimer



This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice as to any specific issue. You are advised not to take, or to refrain from taking, any action based on this information without consulting legal counsel about the particular facts of the specific issue.

Introduction



- Recent developments and agency interpretations under the Open Meeting Law (OML) and Public Records Law (PRL) are changing the way public bodies notice and conduct public meetings.
- Intense scrutiny from the public and media requires us to focus on the details.
- This scrutiny can result in critiques not only focused upon the public body's compliance with the OML, for instance, but also the general conduct of the meeting.

Open Meeting Law ("OML")

● MA OML (G.L. c.30A, §§18-25)

- Under the revised OML, there is an administrative complaint process for alleged Open Meeting Law violations, under the purview of the Attorney General's Office (AG).
- Administrative complaints have been filed covering the content of the meeting notice (i.e. agenda), the contents of meeting minutes, the timing of minutes approval and release, and production of meeting minutes upon request.

Legal Requirements



- Meeting Notices/Agendas
 - Properly posting a meeting:
 - 1) was it posted timely? Proof?
 - 2) was it posted in the correct location(s)?
 - 3) did the notice contain the requisite detail?
 - 4) have executive sessions been properly cited?
- Minutes
 - Must be accurate, and timely prepared and approved – verbatim transcripts are not required.

Before the Meeting



- The meeting notice must be posted at least 48 hours prior to the meeting, not counting Sat., Sun., or legal holidays.
 - The notice must include "the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting." G.L. c. 30A, § 20(b). The list of topics shall have "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03(l)(b).
 - Per the Attorney General's Office, a topic will generally be considered to include sufficient specificity when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion.

Meeting Notice - considerations

- Manner: Must be filed with Town Clerk and posted in manner conspicuously visible to the public at all hours in or on municipal building housing clerk's office; AG's regulations now allow posting on website or in other building; AG must be notified of second posting location.
- Write out terms that may not be familiar to the general public (i.e. replacing "HUD CPD HOME" with "Department of Housing and Urban Development Community Planning and Development HOME Investment Partnerships Program")
- Executive Sessions – cite to specific statutory reference(s), and/or quote text of executive session purpose. More content may be necessary! Shorthand references are to be avoided (i.e., “personnel”, “contract negotiations,” “real estate,” etc.)

Meeting Notice - considerations

- For a Monday meeting, notice must be posted on Thursday.
- If Monday is a holiday, a Tuesday meeting must also be posted on Thursday.
- Clerk should time stamp notice to ensure accurate record exists of filing .
- Notice must be timely posted in both locations.
- A meeting may not be continued from one night to the next unless the meeting is properly posted under the OML 48 hours in advance.
- The notice required under the OML **does not substitute for or otherwise supersede** notice requirements under other applicable laws.

"Old" vs. "New" Business

- Regularly occurring items need more detail than simply using generic placeholders

“While the use of such headings alone may be insufficient to give the public a true idea of what will be discussed, see OML 2013-168, **here the Board used the phrases as headings under which more specific descriptions were listed**. This practice does not violate the Open Meeting Law. Furthermore, the Committee's use of "Other" did not violate the law. The Board's response states that the use of the topic "Other" is intended as a placeholder for topics not reasonably anticipated by the chair. Public bodies may include a topic in their notices for the discussion of such matters. See OML 2015-115. While a public body may include this type of item on a meeting agenda, as a best practice we recommend that, when including such a topic, public bodies indicate explicitly that the time is being reserved for topics not anticipated by the chair. See OML 2013-13.” (From AG OML Determination 2015-0127).

Meeting Notice (cont'd)



- E.g., OML 2014-141 (Wayland) – AG concluded that School Committee violated law by failing to include in notice of meeting name of non-union personnel with whom it would be negotiating
- E.g., OML 2013-1112(Wayland) – AG found that topics such as “New Business”, “Old Business” and “Invoice Approval” were not sufficiently detailed
- E.g., OML 2013-174 (Wayland) The AG determined that “Review Town Administrator Contract and Job Description” was not sufficiently detailed to inform the public about the possibility of terminating the Town Administrator.
- E.g., OML 2015-8 (Ayer) – AG found that topics listing DEP file number but not street address were insufficiently detailed because the addresses could not easily have been discovered

Emergencies

- There are limited times when a public body can meet without the requisite 48 hours advanced notice/posting.
- Poor planning does not equal an emergency!
- Natural disasters and public safety issues do equal an emergency.

Updating the Meeting Notice

“A public body may update its meeting notice with additional detail if it learns that a noticed topic may be confusing to the public.” (From AG OML Determinations 2013-182; 2013-174).

“Surprise” Topics



- **May a public body consider a topic at a meeting that was not listed in the meeting notice? (from AG FAQ on “Meeting Notices”)**

Yes, if it is a topic that the chair did not reasonably anticipate 48 hours before the meeting. If a meeting topic is proposed after the meeting notice is posted, the public body is encouraged to update its posting to provide the public with as much notice as possible of what subjects will be discussed during a meeting. Although a public body may consider a topic that was not listed in the meeting notice if unanticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if those topics were not listed in the meeting notice.

Content of Meeting Minutes

G.L. c. 30A, Section 22

- (a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the **date, time and place**, the **members present or absent**, a summary of the **discussions** on each subject, a **list** of documents and other exhibits used at the meeting, the **decisions** made and the actions taken at each meeting, including **the record of all votes**.
- (b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded **by roll call** and entered into the minutes.

Content of Meeting Minutes

Per the Attorney General's Office, "[m]inutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred."

A verbatim transcript is not required, at least under the Open Meeting Law.

- Sufficiency of meeting notice is judged not only on its face, but also upon what was actually discussed.

Minute Preparation & Approval

G.L. c. 30A, §22(c)

Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

The Attorney General “recommends” that minutes be approved at the next following meeting. See AG OML Determinations 2015-43; 2013- 173; 2013-37.

Documents Used



G.L. c. 30A, §22(d)

Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

Documents Used



Thus, documents “used” by the public body during a meeting must be listed in the meeting minutes. All records used by a board at an open meeting are presumptively considered public records.

Per the Attorney General’s Office, a document is “used” by the body if, at a minimum, it is:

1. Physically present
2. Verbally identified
3. The contents are discussed by the members of the body during the meeting

Executive Sessions



- G.L. 30A, §21 – statute with procedures and valid purposes
- Before going into the executive session, the chair must state the purpose for the session, “stating all subjects that may be revealed without compromising the purpose for which the executive session was called.”
- The vote to go into executive session must still be by roll call vote.
- Must still state whether the body is returning to open session.

Executive Session – Valid Purposes

● **G.L. 30A, §21**

- Purpose 1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. ...
 - Adds right of individual to create independent record of session at own cost
 - Meeting notice and vote need NOT refer to name of individual to be discussed

Executive Sessions – Valid Purposes

- Purpose 3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares ...
 - This includes the name of a case in litigation, if doing so would not compromise the litigation. OML 2012-118
- Purpose 6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body
- * If entering executive session under exemptions 3 or 6, the public body cannot invite the “other side” to participate in the executive session. OML 2012-114.

Executive Session Minutes

- Executive session minutes must be reviewed at reasonable intervals by the Chair.
- Such minutes must be provided upon request within 10 days; provided, however, that if the periodic review has not been done, minutes must be provided not later than the body's next meeting or 30 days, whichever first occurs. **No fee** may be assessed for this review, or the time spent in redacting any material exempt from disclosure under the PRL.

Recent Attorney General Decisions

- All meetings must start in open session, and meeting notice must signify this in some way (particularly single executive session meeting).
- All requests for meeting minutes must be responded to promptly, without charge, including executive session meeting minutes, if the purpose for the executive session has been satisfied.
- Single email, sent by one board member without response from any other member, constitutes deliberation because an opinion was expressed.

Recent Attorney General Decisions

- **Among other items cautioned by DOG:**
 - Use of word “exemption” rather than “purpose” when invoking executive session provisions of G.L. c. 30A, §21(a)(1)
 - “Small talk” after the meeting = deliberation

PRL Implications



- Meeting Minutes are Public Records; they are required to be maintained permanently.
- Requests for meeting minutes are covered under both the OML and the PRL.

Tips for Conducting Public Meetings

- OML Requirements
- Other Statutory or Legal Requirements
- Process – Depends upon type of meeting and subject (i.e., public meeting vs. public hearing)

Public Hearings



- Three main types of hearings:
 - Adjudicatory (i.e. nuisance “dog” hearings; disciplinary hearings); generally affecting personal or property rights
 - Application/Permitting (i.e., liquor licensing, land use permits)
 - Regulatory (i.e., to adopt regulations, fees)

Public Meetings



- Is this how you want to be remembered for posterity?
- The Chair has the authority to cause disruptive persons to be ejected; wield this power wisely! Warn people about their behavior before ejecting them. Taking a recess might be a better option.
- Make sure the factual (and if appropriate legal) bases for your decision are made clear at the hearing, and as part of your vote (and decision).

Making a Defensible Decision

- Advertise the Application
- Conduct the Public Hearing
- Close the Public Hearing
- Make the Decision
- Perfect the Decision as needed (i.e., mail to applicant, file with Town Clerk, etc.)

Defensible Decisions



- **ADVERTISE THE APPLICATION**
- Check the application for completeness.
- Give proper statutory notice.
- Advertise all of the relief requested in the application.
- Do not advertise relief that has not been requested.
- Check the tax arrearage list and follow G.L. c.40, §57 process, if applicable [**Article XXXII of General By-laws**].

Defensible Decisions



- **CONDUCT THE PUBLIC HEARING**

- Read the legal ad aloud to introduce the public hearing (or summarize it).
 - (Make sure the application and legal notice and advertisement match).
- Make sure Board has a quorum.
- Explain the Board's procedures to the public.
- Explain what relief the applicant seeks to the public.
- Allow the applicant to present the application.
- Allow Board members to ask questions.
- Allow public participation – presentation and questions.

Defensible Decisions



- **CLOSE THE PUBLIC HEARING**

- Before closing, ask if anyone has any additional information to submit. Explain nothing further will be accepted once the hearing is closed.
- Take a vote to close the hearing. (Majority)
- Take votes to make findings. (Majority)
- Take a vote to make the decision, observing the voting quantum.

Voting



- If a motion to approve an application (or make another decision) is made and fails to achieve the necessary votes for approval, then the motion fails and the project is deemed denied.
- It is not necessary to do a housekeeping motion to state that there is a denial, but you may do so, if you wish.

Defensible Decisions



- **Recite the reasons for the decision.** Do not just recite the standards for relief.
-
- DO NOT SAY:
- The project would not be substantially more detrimental.
-
- DO SAY:
- The project would not be substantially more detrimental because it would add 500 s.f. to an existing single-family dwelling that is lawfully nonconforming and it would not create any additional impacts on the neighborhood with respect to traffic or interfere with light and air and it would conform visually to the size of a majority of the dwellings that already exist in the neighborhood.

Avoiding Litigation!



- Adhere to advertising and notice requirements.
- Make sure the Board has a quorum to act.
- Observe voting requirements.

Handling a New Lawsuit



- Note the date you are served.
- Note whether there is a summons.
- Note whether there is a “Short Order of Notice.”
- Immediately notify the Town Administrator and provide a copy of all pleadings served upon you and the dates.

Site Visits/Inspections



- On-site inspections are not a “meeting” that must be posted, provided that the members do not deliberate during the inspection. G.L. c.30A, §18.
- If you do post, remember to state that the Board cannot invite members of the public onto private property.

Beware of Email!



- No deliberating via e-mail!
- You may perform scheduling via e-mail.
- You may distribute materials via e-mail, but all deliberations must be held for meeting.

Practical Advice for Board Members

- Attend meetings & be on time
- Be prepared: Read packet before meeting
- Be familiar with sites and projects – know why you are there.
- Seek staff assistance before meeting
- Focus on facts, not opinions
- Be practical
- Be patient
- Don't make it personal
- Be respectful
- Treat everyone equally
- Be probing, but not argumentative
- Participate in discussion; share information
- Summarize what you have heard
- Be conscious of body language
- Be open-minded



Brian W. Riley, Esq.
KP Law, P.C.

101 Arch St., 12th Floor
Boston, MA 02110
(617) 556-0007
www.k-plaw.com
briley@k-plaw.com



THE LEADER IN PUBLIC SECTOR LAW
ATTORNEYS AT LAW

© 2016 KP LAW, P.C. | ALL RIGHTS RESERVED.