

Town of Concord

EFFECTIVE
GOVERNANCE
WORKSHOP

For Committee and Board
Volunteers

COMMITTEE REFERENCE
MATERIALS

Saturday, September 19, 2015

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OVERVIEW OF TOWN GOVERNANCE

Purpose/Background:

- Excerpts from Town Governance Study Committee Final Report – Committee and Board Training

Form of Government:

- Town of Concord Organization Charts
- Town Meeting Flow Chart
- Concord Town Charter
- Proposed Revisions to Town Charter (approved by the 2015 Annual Town Meeting and pending in the State Legislature – House Bill #3685)

Open Meeting Law:

- Open Meeting Law Guide (revised 3.18.2015)
- Open Meeting Law Regulations (revised 9.14.2012)
- Select Board's Remote Participation Policy (governs all Concord boards and committees with the exception of the Regional School Committee – adopted 1/7/2013)
- Procedure for Posting Public Meetings
- Executive Session Procedure & Purposes for an Executive Session
- Sample Motions for Entering Executive Session
- Board Checklist for Entering into Executive Session (from Attorney General)
- Guidelines and Tips for Meeting Minutes
- Board Checklist for Creating & Approving Meeting Minutes (from Attorney General)
- Calculation of Quorum & Majority

Public Records Law:

- Summary of Public Records Law
- Records Management Procedures

Ethics & Conflict of Interest Law:

- Summary of Conflict of Interest Law
- Conflict of Interest Training
- Top Ten Rules about Conflict of Interest Law
- Requesting Advice from State Ethics Commission Legal Division
- Filing a Complaint with the State Ethics Commission

**EXCERPTS FROM TOWN GOVERNANCE STUDY COMMITTEE
FINAL REPORT
COMMITTEE AND BOARD TRAINING
AUGUST 25, 2014**

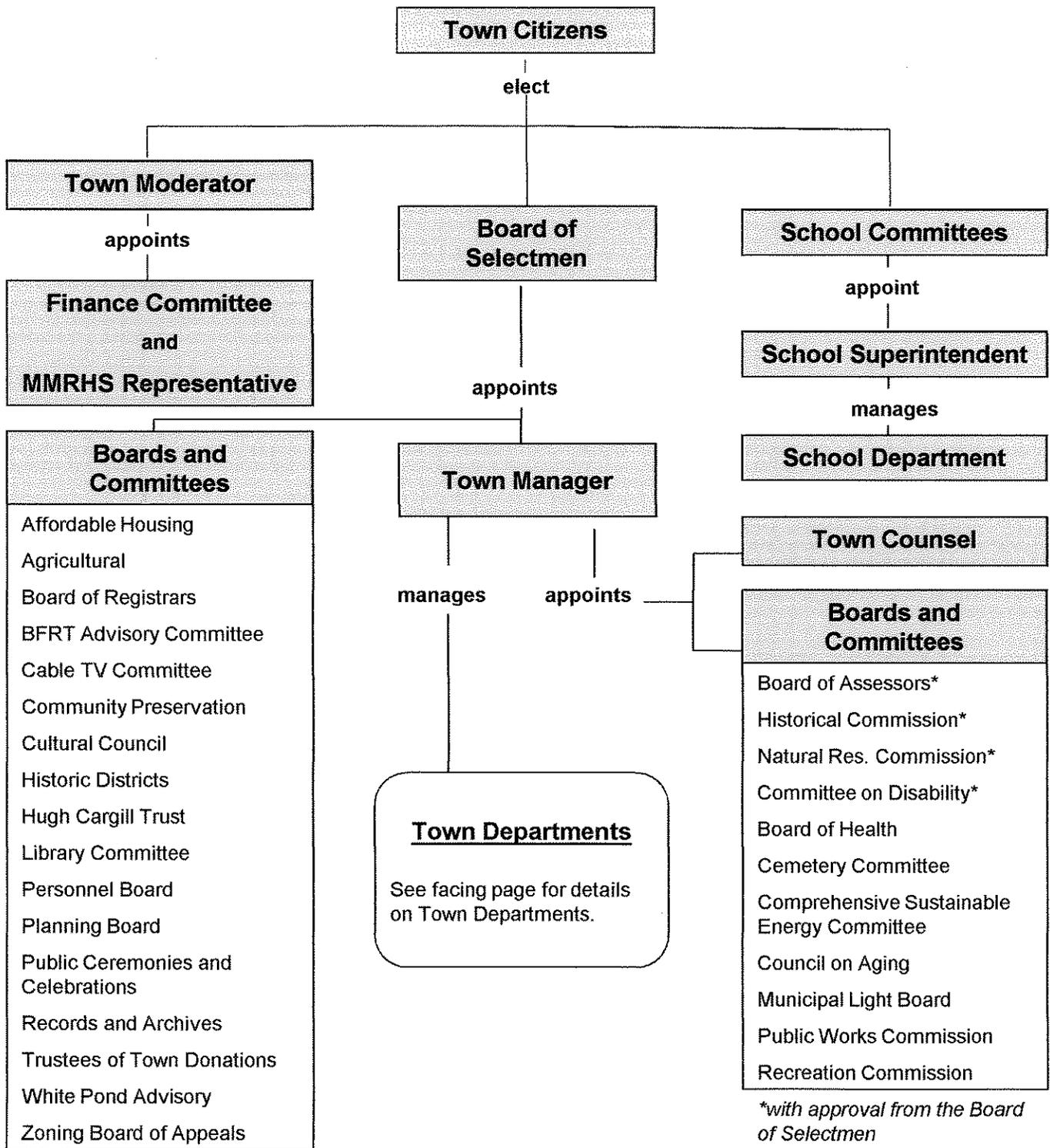
Recommendations on Committee Governance (Executive Summary, page 3, Item #5):

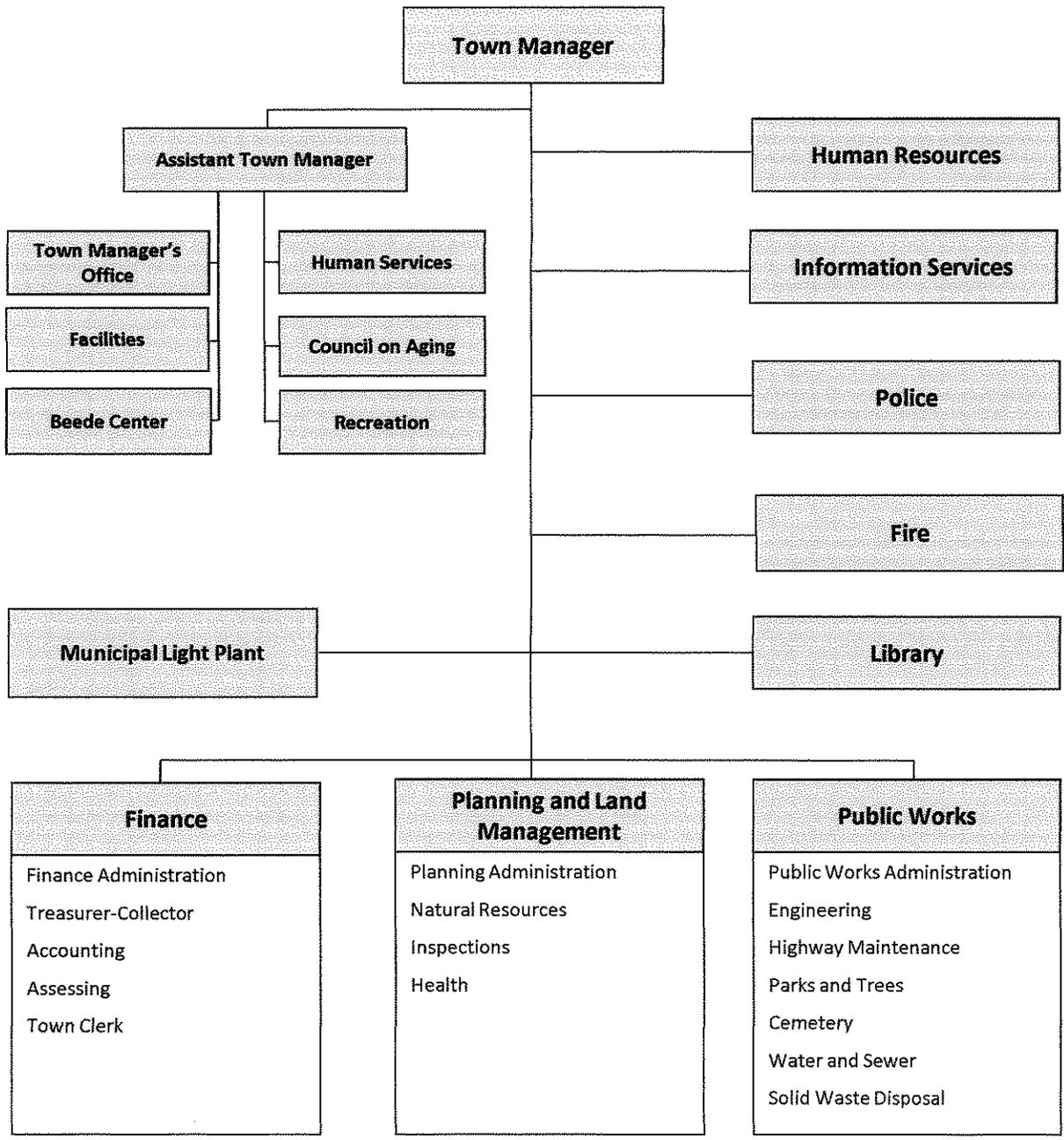
The Committee recommends a number of proposals to encourage and assist members of boards and committees in conducting their business in full compliance with the law. In addition, we recommend that all boards and committees utilize systems and practices that contribute to open, ethical government and the full and effective functioning of our democratic traditions.

Recommendations on Committee Governance (Final Report, page 22-23):

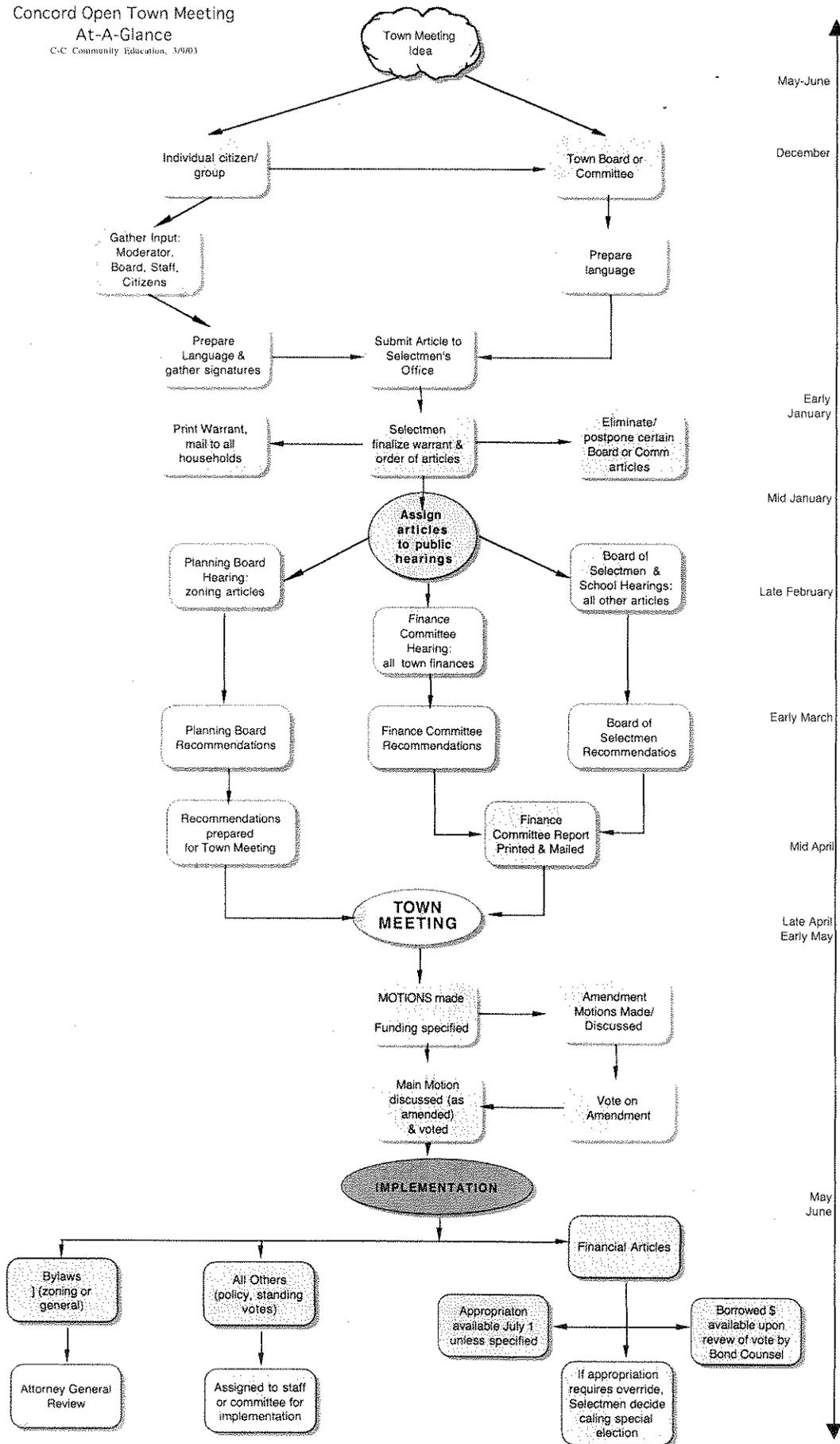
The Committee recommends a number of steps to encourage and support members of boards and committees to that: all boards and committees conduct their business in full compliance with the law, including Open Meeting, Public Records, Ethics, and the statutory authority of their own committee; all boards and committees utilize systems and practices that contribute to open, ethical government and the full and effective functioning of our democratic traditions; and all boards and committees utilize systems and practices that further General Principles of “good governance.”

- The Committee recommends that the Selectmen consider updating the existing APP #10 “Town Board, Committee, and Task Force Appointment Policy” to include committee governance and best practices, to be added to the Committee Handbook.
- The Committee recommends that the Selectmen ensure that all bylaws, committee charges, APPs, and administrative codes governing committees and departments are reviewed and updated as needed every ten years, and the committee charges be posted on the Town’s web site for each committee.
- The Committee recommends that the Selectmen make available annual training sessions for all members of town boards and committees on subjects including State Ethics Laws, Public Records Laws, Open Meeting Law, Concord’s form of government, best practices in running a meeting, best practices in conducting a public hearing, and suggestions on ways to foster the town’s principles of governance.
- Recommend that all committees make available orientation materials for new members as a standard practice.
- Recommend that the Concord Committee Handbook be distributed to all elected and appointed committee members.





Concord Open Town Meeting
At-A-Glance
C-C Community Education, 3/9/03



**AN ACT ESTABLISHING A SELECTMEN-MANAGER FORM OF
GOVERNMENT FOR THE TOWN OF CONCORD**

**Chapter 280 of the Acts of 1952
As Most Recently Amended (2004)**

THE CONCORD TOWN CHARTER

Be it enacted by the Senate and House of Representatives in General Court assembled,
and by authority of the same, as follows:

SECTION 1. ELECTED OFFICIALS

At the town election following the acceptance of this act the registered voters of the town
of Concord shall elect the following officials:

- A. A moderator for a term of one year;
- B. Two selectmen for terms of three years each, two selectmen for terms of two years each and one selectman for a term of one year;
- C. Two members of the school committee for terms of three years each, two members for terms of two years each, and one member for a term of one year. At each annual town election thereafter a moderator shall be elected for a term of one year and selectmen and members of the school committee for terms of three years to replace those whose terms expire. When a vacancy or vacancies occur in the membership of the board of selectmen, the board of selectmen shall call a special town election to fill the vacancy or vacancies for the unexpired term or terms, except that if such vacancy or vacancies occur less than one hundred days prior to the annual election and not less than three members of such board remain in office, the vacancy or vacancies shall remain unfilled until such annual election (See Note #1, Amendments). When a vacancy or vacancies occur in the membership of the school committee, the board of selectmen shall call a special town election to fill the vacancy or vacancies for the unexpired term or terms, except that if such vacancy or vacancies occur less than one hundred days prior to the annual election and not less than three members of such committee remain in office, the vacancy or vacancies shall remain unfilled until such annual election (See Note #2, Amendments). The powers, duties and responsibilities of elected officials shall be as now or hereafter provided by applicable statutes and bylaws and votes of the town, except as herein otherwise provided.

SECTION 2. APPOINTED OFFICIALS

- A. The selectmen shall appoint a town manager as provided in Section 5, who may thereafter be removed as provided in Section 7.
- B. The selectmen shall appoint a library committee, a planning board, a board of appeals, a town accountant, trustees of town donations, a personnel board, a public ceremonies and celebrations committee (see Note #3, Amendments), election officers, registrars of voters other than the town clerk and such other officers, boards and committees as they shall hereafter be directed to appoint by bylaw or vote of the town, and such temporary or ad hoc committees as in their judgment shall from time to time be necessary or desirable (see Note #3, Amendments). The selectmen may, by majority vote, undertake an investigation of the affairs of any committee, board or official appointed by them or by the town manager, and they shall have access to all records and other documents which they may deem necessary or desirable for this purpose. The selectmen may remove, after such hearing as the selectmen may deem advisable, any of the officers, boards or committees appointed by them under the provisions of this paragraph B, or any member thereof, other than the town clerk.

The selectmen shall, at the respective times specified in clauses 1 and 2 herein and at intervals of not more than ten (10) years thereafter appoint the following special committees:

- 1. within one year after this paragraph takes effect, a committee for the purposes of reviewing and recodifying the existing zoning bylaw and revising the building code of the town; and
- 2. within one year after this paragraph takes effect, a committee for the purpose of reviewing and recodifying all other existing bylaws of the town.

(Clause 3 deleted. See Note #8, Amendments)

Within one year following its appointment, each such committee shall submit a report to the selectmen with specific recommendations for action to be taken to accomplish the purpose of such committee. (See Note #5, Amendments)

- C. The moderator shall appoint a finance committee and such other officers, boards and committees as he shall herein after be directed to appoint by bylaw or vote of the town.

- D. The town manager shall appoint, upon merit and fitness alone, and may remove for cause:
1. a town clerk, a town treasurer, a town collector and a board of five assessors (see Note #7, Amendments), subject however, in each instance, to the approval of the selectmen;
 2. all other officers, boards, committees and employees of the town, with the exception of the elected officials specified in Section 1, officials, boards and committees appointed by the school committee and by the selectmen and moderator as herein before in this Section 2 provided and employees of the same.

SECTION 3. MEMBERSHIP; TERMS; POWERS, DUTIES, RESPONSIBILITIES; TERMINATION

The membership of boards and committees appointed as provided in Section 2, the length of the term of each member thereof and of officers so appointed, and the powers, duties and responsibilities of the same shall be as now or hereafter provided by applicable statutes and bylaws and votes of the town, except as herein otherwise provided. Upon appointment and qualification of the various officials as provided for in Section 2, the term of office and all powers and duties of each person theretofore holding each such office shall cease and be terminated.

SECTION 4. MULTIPLE OFFICERS

Neither the moderator nor any member of the board of selectmen, the school committee, or the finance committee may, during the term for which he was elected or appointed, be elected or appointed to any other town office, except as otherwise provided herein. Any person appointed by the town manager to any town office under the provisions of this act or of any other statute of the Commonwealth shall be eligible during the term of said office to appointment to any other town office, except the town accountant shall not be eligible to hold the position of town treasurer or town collector. Subject to the approval of the selectmen, the town manager may assume the powers, duties, and responsibilities of any officer, board or committee which he is authorized to appoint, such assumption to be evidenced by and effective upon the filing with the town clerk of a written declaration of such assumption signed by the town manager, and thereupon each officer, board or committee whose powers, duties and responsibilities are so assumed by the town manager shall be discharged and shall have no further powers, duties or responsibilities as such.

SECTION 5. APPOINTMENT OF TOWN MANAGER

The selectmen elected as provided herein shall appoint, as soon as practicable, for a term of three years, a town manager who shall be a person especially fitted, in their opinion, by education, training and experience to perform the duties of the office. The town manager shall be appointed without regard to his political beliefs. (Sentence deleted. See Note #9, Amendments). No holder of elective office in the town shall within two years of holding of such office be eligible for appointment as town manager. The town manager may be appointed for successive terms of office. Before entering upon the duties of his office, he shall be sworn, in the presence of a majority of the selectmen, to the faithful and impartial performance thereof by the town clerk or by a justice of the peace or notary public. He shall execute a bond in favor of the town for the faithful performance of his duties in such sum and with such sureties as may be fixed or approved by the selectmen.

SECTION 6. APPOINTMENT OF A TEMPORARY TOWN MANAGER

In the event of the temporary absence or disability of the town manager, he may appoint, subject to the approval of the selectmen, a suitable person to perform the duties of the manager during such absence or disability. If the town manager fails to make such appointment or the person so appointed fails to serve, the selectmen may appoint a suitable person, who may be a selectman, to perform such duties. In the event of any vacancy in the office of town manager or the suspension of the town manager as hereinafter provided, the selectmen shall, within seven days, appoint the person to perform such duties.

SECTION 7. REMOVAL OF TOWN MANAGER

The selectmen may remove the town manager by the affirmative vote of at least three members of the board. At least thirty days before such proposed removal shall become effective, the selectmen shall file a preliminary written resolution with the town clerk setting forth the specific reasons for his proposed removal. The town clerk shall forthwith deliver a copy of such resolution to the town manager or mail the same to him by registered mail at his last known address. The manager may file with the selectmen, within seven days after receipt of such copy, a written request for a public hearing not earlier than ten days nor later than twenty days after the filing of such request. After such public hearings, if any, otherwise at the expiration of thirty days following the filing of the preliminary resolution and after full consideration, the selectmen, by the affirmative vote of at least three members of the board may adopt a final resolution of removal. In the preliminary resolution, the selectmen may suspend the manager from duty, but shall in any case cause to be paid to him forthwith any unpaid balance of his salary for the then current month and, at the discretion of the selectmen, such additional amount not in excess of three months' salary, as the selectmen shall deem proper.

SECTION 8. COMPENSATION OF TOWN MANAGER

The town manager shall receive such compensation for all services performed by him as the selectmen shall determine, but it shall not exceed the amount appropriated therefor by the town.

SECTION 9. POWERS AND DUTIES OF TOWN MANAGER

In addition to specific powers and duties provided elsewhere in this act the town manager shall have the general powers and duties enumerated in this section:

- A. The town manager shall supervise and direct and shall be responsible for the efficient administration of all officers, boards and committees appointed by him and their respective departments.
- B. He may, with the approval of at least three of the selectmen, establish, combine, reorganize, or discontinue departments under his supervision; and, with the approval of both the selectmen and the finance committee, he may transfer all or part of the appropriation of a discontinued department to any other department, any balance not so transferred to be returned to the town treasury.
- C. With respect to the wage or salary and classification of employees appointed by the town manager, he shall be governed by the provisions of the "Wage and Salary Classification Plan - Town of Concord, Massachusetts", as the same may be amended from time to time and for so long as the same may remain in force.
- D. The town manager shall keep full and complete records of his office, and shall render as often as may be required by the selectmen a full report of all operations during the period reported on.
- E. With the exception of property under the jurisdiction of the school committee, the town manager shall have full and exclusive jurisdiction over the rental and use of all town property, and shall be responsible for the proper maintenance and repair thereof; and, upon request by the school committee, he shall be responsible for the maintenance and repair of property under its jurisdiction, but only to such extent and for such period as the school committee shall from time to time specify. He shall be responsible for the preparation of plans and the supervision of work on existing and on new buildings and grounds, unless a special committee of the town is created for such purpose.

- F. The town manager shall purchase all supplies and materials and equipment and award all contracts for all departments of the town, but he shall make purchases for departments not under his supervision only upon requisition duly authorized by the head of such department.
- G. The town manager shall administer either directly or through a person or persons appointed by him in accordance with this act all provisions of general and special laws applicable to the town and bylaws and votes of the town, within the scope of his duties, and all rules and regulations made by the selectmen.
- H. The town manager, subject to the approval of the board of selectmen, shall have authority to prosecute, defend and compromise all litigation to which the town is a party, and to employ counsel whenever in his judgment it may be necessary.
- I. The town manager shall perform such other duties consistent with his office as may be required by bylaw or vote of the town or by vote of the selectmen.

SECTION 10. INVESTIGATION BY TOWN MANAGER

The town manager may without notice cause the affairs of any committee, board, or official under his control or the conduct of any officer or employee thereof to be examined. The town manager shall have access to all town books and papers for information necessary for the performance of his duties.

SECTION 11. RELATIVE TO DUTIES OF BOARDS AND OFFICERS APPOINTED BY TOWN MANAGER

Except as otherwise herein provided, each committee, board and officer appointed by the town manager shall, in the performance of their duties, be subject to the general supervision and direction of the town manager. Such committees and boards shall promptly organize for the proper conduct of their respective offices. Each committee and board member and each officer appointed by the town manager shall hold office until his successor has been appointed and qualifies, unless his office shall have become vacant by reason of his resignation or removal.

SECTION 12. VACANCIES TO BE FILLED BY TOWN MANAGER

Any vacancy in an office or committee or board over which the town manager has power of appointment shall be filled by the town manager, as hereinbefore provided.

SECTION 13. OATH OF OFFICE OF TOWN OFFICIALS

All elected officials shall be sworn to the faithful performance of their respective duties by the town clerk or a justice of the peace or notary public, except that the town clerk shall be sworn to the faithful performance of his duties by the chairman of the Board of Selectmen or by a justice of the peace or notary public.

SECTION 14. WARRANTS

A copy of each warrant for the payment of town funds prepared by the town accountant shall be submitted to the town manager who shall make recommendation to the selectmen with respect to the approval or disapproval by them of each such warrant or of any item or items in any such warrant.

SECTION 15. RECEIPTS PAID TO TREASURY

Every official shall pay into the treasury of the town all amounts received by him on behalf of the town and all fees received by him in accordance with the provisions of any general or special law and shall make a full and true return thereof to the town accountant.

SECTION 16. ESTIMATES OF EXPENDITURES

Not less than 90 days before the annual town meeting each year (See Note #4, Amendments), the town manager shall submit to the selectmen a careful detailed estimate in writing of the probable expenditures of the town government for the ensuing fiscal year, stating the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the town, and showing specifically the amount necessary to be provided for each fund and department, together with a statement of the expenditures of the town for the same purposes in the two preceding years and an estimate of the expenditures for the current year. He shall also submit a statement showing all revenues received by the town in the two preceding fiscal years together with an estimate of the receipts of the current year and an estimate of the amount of income from all sources of revenue exclusive of taxes upon property in the ensuing year. He shall report the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the town together with an estimate of the tax rate necessary to raise said amount. For the purpose of enabling the town manager to make up the annual estimates of expenditures, all boards, officers, and committees of the town shall, upon his written request, furnish all information in their possession and submit to him in writing a detailed estimate of the appropriations required for the efficient and proper conduct of their respective departments during the next fiscal year.

SECTION 17. ANNUAL BUDGET

The selectmen shall consider the tentative budget submitted by the town manager and make such recommendations relative thereto as they may deem expedient and proper in the interests of the town. Not less than 60 days before the annual town meeting each year the selectmen shall transmit a copy of the budget together with their recommendations relative thereto to each member of the finance committee. (See Note #6, Amendments)

SECTION 18. DUTIES OF CERTAIN TOWN OFFICIALS RELATIVE TO ELECTION

It shall be the duty of the selectmen and the town clerk in office and any other town official upon whom by reason of his office a duty devolves under the provisions of their act, when this act is accepted by the registered voters as herein provided, to comply with all the requirements of law relating to elections, to the end that all things may be done necessary for the nomination and election of the officers first to be elected under this act.

SECTION 19. SUBMISSION OF ACT AND TIME OF TAKING EFFECT

This act shall be submitted to the qualified voters of the town of Concord for acceptance at the first annual town election occurring not less than thirty days after the passage of this act. The vote shall be taken by ballot in answer to the question which shall be printed on the official ballot: "Shall an act passed by the General Court in the year nineteen hundred and fifty-two entitled 'AN ACT ESTABLISHING A SELECTMEN-MANAGER FORM OF GOVERNMENT FOR THE TOWN OF CONCORD' be accepted?" If this act shall be so accepted by a majority of the qualified voters voting thereon it shall become and be in full force and effect immediately after the final adjournment of the annual town meeting held in the year following the year in which this act is so accepted, provided, however, that said annual town meeting shall be held in conformance with the provisions of this act. If this act is rejected by the qualified voters of the town of Concord when first submitted to said voters under this section, it shall be submitted for acceptance in like manner to such voters at the next following annual town election in said town, and if it is not accepted at said annual election, it shall again be submitted for acceptance in like manner to such voters at the next following annual election and, if accepted by a majority of such voters voting thereon at either of said elections, shall take effect as hereinbefore provided.

SECTION 20. BYLAWS, RULES, ETC.

All laws, bylaws, votes, rules and regulations in force in the town of Concord when this act takes effect, not inconsistent with its provisions, whether enacted by authority of the town or any other authority, shall continue in full force and effect until otherwise provid-

ed by law, bylaw, or vote; all other laws, bylaws, votes, rules and regulations, so far as they refer to the town of Concord, are hereby repealed and annulled, but such repeal shall not revive any pre-existing enactment.

SECTION 21. REVOCATION OF ACCEPTANCE

At any time after the expiration of three years from the date on which this act is accepted, and not less than sixty days before the date of an annual meeting, a petition, signed by not less than twenty percent of the registered voters of the town, may be filed with the selectmen, requesting that the question of revoking the acceptance of this act be submitted to the voters at the next annual town meeting. At said election the question shall be printed on the official ballot: "Shall the acceptance by the town of Concord of an act passed by the General Court in the year nineteen hundred and fifty-two entitled 'AN ACT ESTABLISHING A SELECTMEN-MANAGER FORM OF GOVERNMENT FOR THE TOWN OF CONCORD' be revoked?" If such revocation is favored by a majority of the qualified voters voting thereon, the acceptance of this act shall be revoked and this act shall become null and void beginning with the annual town meeting next following such vote, provided that all town officers holding office under this act shall continue to hold office until their successors have been duly qualified. At the first annual town election following such vote of revocation the registered voters of the town shall elect by ballot all elective officers, boards, and committees whose election to office was required immediately prior to the acceptance of this act, provided however, that the town does not vote to accept other plans which provide for a different arrangement from that existing immediately prior to the acceptance of this act. It shall be the duty of the selectmen and the town clerk in office and any other town official upon whom by reason of his office a duty devolves when this act is revoked, to comply with all of the requirements of this section relating to elections to the end that all things may be done necessary for the nomination and election of the officers required to be elected following the revocation of this act. The said revocation shall not affect any contract then existing or any action at law or any suit in equity or any other proceedings then pending, with the exception of any contract made by the town with the town manager then in office, whose contract shall be terminated immediately upon such vote, but who shall receive three months' compensation from the date following such vote. The board of selectmen shall be charged with all the powers and duties of the town manager which duties and responsibilities may be discharged by themselves or by a temporary town manager appointed by them. Any special laws relative to said town which are repealed by this act shall be revived by such revocation. All laws, bylaws, votes, and rules and regulations repealed and annulled, as provided in Section 20, shall be revived by such revocation. Bylaws, votes and rules and regulations in force when said revocation takes effect, so far as consistent with the general laws respecting town government and town officers and with special laws, shall not be affected thereby.

Approved May 5, 1952

NOTES ON CHARTER AMENDMENTS

Section Amended Noted Below

1. Article 2, Town Meeting, October 10, 1972; passed by the General Court, Acts 1973, Chapter 179 (Section 1C amended)
2. Article 3, Town Meeting, October 10, 1972; accepted by the Town of Concord at Town Election 1973 (Section 1C amended)
3. Article 4, Town Meeting, October 10, 1972; accepted by the Town of Concord at Town Election 1973 (Section 2B amended)
4. Article 5, Town Meeting, October 10, 1972; accepted by the Town of Concord at Town Election 1973 (Section 16 amended)
5. Article 18, Town Meeting, March 6, 1973; accepted by the Town of Concord at Town Election 1974 (Section 2B amended)
6. Article 8, Town Meeting, May 6, 1974; accepted by the Town of Concord at Town Election 1975 (Section 17 amended)
7. Article 39, Town Meeting, April 4, 1978; accepted by the Town of Concord at Town Election 1979 (Section 2D amended)
8. Article 48, Town Meeting, April 9, 1984; accepted by the Town of Concord at Town Election 1985 (Section 2B amended)
9. Article 69, Town Meeting, May 8, 2003; passed by the General Court, Acts 2004, Chapter 347, September 16, 2004 (Section 5 amended)

HISTORY OF THE CHARTER OF THE TOWN OF CONCORD

On March 12, 1956, the Selectmen-Manager form of government became effective in the Town of Concord. This was the result of a special act passed by the General Court in 1952*, which act was accepted by the Town of Concord at the Annual Town Election of 1955.

Although adopted in 1956, the Charter falls under the 1966 Home Rule Amendment (Article 89) of the Massachusetts State Constitution. This was made certain by a letter from the Commonwealth's Attorney General to the Concord Town Counsel, dated June 29, 1972. Amendments to the Charter may therefore be made according to the procedures defined by the Home Rule Amendment in its Section 9.

The Charter was amended by a special act passed by the General Court in 1973 ("An Act Providing for the Election of Persons to Fill Vacancies in the Membership of the Board of Selectmen of the Town of Concord") upon petition by the Town voted at the Town Meeting in October 1972.

It has also been amended by referendum vote. A list of these amendments is provided on page 11 of this document. They are referenced by number in the Charter text.

The contents of the special act of 1952, as amended, are set forth in this Section.

The document as a whole will be referred to as the "Selectmen-Manager Charter," or simply as the "Charter".

*Passed by the General Court in 1952 (Acts 1952, Chapter 280);
Accepted by the Town of Concord at Town Election, March 7, 1955;
Effective 11:58 p.m., March 12, 1956.

HOUSE No. 3685

The Commonwealth of Massachusetts

PRESENTED BY:

Cory Atkins

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to amend the town charter of Concord.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>

HOUSE No. 3685

By Ms. Atkins of Concord, a petition (accompanied by bill, House, No. 3685) of Cory Atkins and Michael J. Barrett (by vote of the town) that the town of Concord be authorized to amend the charter of said town. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to amend the town charter of Concord.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 280 of the Acts of 1952 is hereby amended to add immediately
2 before section 1 thereof a preamble reading: "Preamble: The legislative body of the Town is an
3 open town meeting, open to all registered voters of the Town."

4 SECTION 2. Chapter 280 of the Acts of 1952 is hereby amended by substituting for the
5 term "board of selectmen," and for the word "selectmen," in each and every place in which either
6 one appears, the term "select board" or "member of the select board," by substituting the words
7 "his or her" for the word "his" in each and every place in which it appears, and by substituting
8 the term "member of the select board" for the word "selectman" in each and every place where it
9 appears.

10 SECTION 3. Chapter 280 of the Acts of 1952, section 2(B)(1), is hereby amended by
11 deleting from the end the words "and revising the building code of the town."

12 SECTION 4. Chapter 280 of the Acts of 1952, section 21, is hereby amended by deleting
13 the word "sixty" from the first sentence of the section, and replacing it with the word "one-
14 hundred-twenty."

15 SECTION 5. Chapter 280 of the Acts of 1952, section 1C, is hereby amended by
16 inserting immediately before the final sentence thereof the following: "In the event that the
17 moderator is absent, disabled from the performance of his or her duties, or has recused him or
18 herself, the deputy moderator elected at the Annual Town Meeting shall act as moderator; in the
19 event of a vacancy in the position of moderator, the deputy moderator shall act as moderator
20 until the next regularly elected moderator takes office."

Open Meeting Law Guide



COMMONWEALTH OF MASSACHUSETTS

OFFICE OF ATTORNEY GENERAL

MAURA HEALEY

MARCH 18, 2015

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". The signature is fluid and cursive, with a large loop at the end of the last name.

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, and this Guide.

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.

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.

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 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

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.

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 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.

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

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.

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 or on the municipal building in which the clerk's office is located. In the event that the 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 follow one of these alternative posting methods approved by the Attorney General in 940 CMR 29.03(2)(b):

- public bodies may post notice of meetings on the municipal website;
- public bodies may post notice of meetings on cable television, **AND**, post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- public bodies may post notice of meetings in a newspaper of general circulation in the municipality, **AND**, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building; or
- public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

Prior to utilizing an alternative posting method, 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 alternative posting method 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, even if an alternative posting method has been adopted, 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. A copy of the notice must be filed and kept by the chair of the public body or the chair's designee.

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- 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. 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 file meeting notices by posting the notice 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 website address 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.

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 utilizes technology that 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.

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.

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.

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.

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 resumés 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.

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: Beginning on April 7, 2015, 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 if the chair (or, in the chair's absence, the person chairing the meeting) determines that one of the following factors makes the member's physical attendance unreasonably difficult:

1. Personal illness;
2. Personal disability;
3. Emergency;
4. Military service; or
5. Geographic distance.

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 and which of the five reasons listed above requires that member's remote participation. The chair's statement does not need to contain any detail about the reason for the member's remote participation other than the section of the regulation that justifies it. This information must also be recorded in the meeting minutes.

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.

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.

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, along with the reason under 940 CMR 29.10(5) for his or her remote participation.

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 State'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 State'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. The Open Meeting Law does not provide a definition of "timely manner," but the Attorney General recommends that minutes be approved at a public body's next meeting whenever possible. The law requires that existing minutes be made available to the public within 10 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 10 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 resumé 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 10 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 10 days, notifying the requestor that it is conducting this review.

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 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 Attorney General. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so.

The public body may request additional information from the complainant. 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.

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 or, after full disclosure, acted in good faith compliance with the advice of counsel, its conduct

will not be considered an intentional violation of the Law. G.L. c. 30A, § 23(g); 940 CMR 29.02.

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.

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THE COMMONWEALTH OF MASSACHUSETTS
OPEN MEETING LAW, G.L. c. 30A, §§18-25

* * *

This version of the law is current as of April 7, 2015.

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.

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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.

"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 under the 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. The 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 permit remote participation applicable to a specific meeting or generally to all of the commission's meetings; provided, however, that the commission shall comply with all other requirements of law and regulation.

(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 under 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 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 Website of the Attorney General of Massachusetts

Attorney General Maura Healey

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940 CMR 29.00: Open Meetings

Regulations — Revised 9/14/2012

Open Meetings

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29.01: Purpose, Scope and Other General Provisions

(1) **Authority** . The Attorney General promulgates 940 CMR 29.00, relating to the Open Meeting Law, pursuant to [M.G.L. c. 30A, sec. 25 \(a\) and \(b\)](#).

(2) **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, sec. 18-25](#).

(3) **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

(4) **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.

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29.02: Definitions

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

Commission means the Open Meeting Law Advisory Commission, as defined by [G.L. c. 30A, sec. 19\(c\)](#).

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

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

Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of [M.G.L. c. 30A, sec. 18-25](#). Evidence of an intentional violation of [M.G.L. c. 30A, sec. 18-25](#) shall include, but not be limited to, that the public body or public body member (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, sec. 18-25](#). 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 or, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel, such conduct will not be considered an intentional violation of [M.G.L. c. 30A, sec. 18-25](#).

Person means all individuals and entities, including governmental officials and employees. **Person** does not include public bodies.

Post notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, cable television channel, newspaper 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, sec. 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 similar authority shall be deemed a local public body;

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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 means 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 biannual basis on January 1st of a calendar year beginning on January 1, 2011. Where a member's term of office began prior to July 1, 2010, and will not expire until after July 1, 2011, the member shall be deemed to have qualified for office on January 1, 2011.

Remote Participation means 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.

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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, sec. 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. The date and time that the notice is posted shall be conspicuously recorded thereon or therewith.

(c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2)-(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

(2) Requirements Specific to Local Public Bodies

(a) The municipal clerk, or other person designated by agreement with the municipal clerk, shall post notice of the meeting 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. Such notice shall be accessible to the public in the municipal clerk's office. If such notice is not conspicuously visible to the public during hours when the clerk's office is closed, such notice shall also be made available through an alternative method prescribed or approved by the Attorney General under 940 CMR 29.03(2)

(b) A description of such alternative method, sufficient to allow members of the public to obtain notice through such method, 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.

(b) For local public bodies, the Attorney General has determined, pursuant to M.G.L. c. 30A, sec. 20(c), that the following alternative methods will provide more effective notice to the public:

- a. Public bodies may post notice of meetings on the municipal website;
- b. Public bodies may post notice of meetings on cable television, AND, post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- c. Public bodies may post notice of meetings in a newspaper of general circulation in the municipality, AND, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- d. Public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building, or;
- e. Public bodies may provide an audio recording of meeting notices, available to the public by telephone at all 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.

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(b) 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. A copy of the notice shall be filed and kept by the chair of the public body or the chair's designee.

(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 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 post a meeting notice on the regional school district's website. A copy of the notice shall be filed and kept by the secretary of the regional school district committee or the secretary's designee.

(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 post a meeting on the county public body's website. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website in accordance with procedures established by the Attorney General in consultation with the Information Technology Division of the Executive Office for Administration and Finance for the purpose of providing the public with effective notice. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of State's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its internet notice posting location and any change thereto. The public body shall consistently use the most current notice posting method on file with the Attorney General.

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29.04: Certification

(1) For local public bodies, a document including M.G.L. c. 30A, sec. 18-25; a document including 940 CMR 29.00; and educational materials prepared by the Attorney General explaining M.G.L. c. 30A, sec. 18-25, and its application, shall be delivered by the municipal clerk to each member of a public body, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into performance of the office. Within two weeks after receipt of such materials, the member shall certify, on the form prescribed by the Attorney General, receipt of such materials. The municipal clerk shall maintain the signed certification for each such person, indicating the date the person received the materials.

(2) For regional, district, county or state public bodies, a document including M.G.L. c. 30A, sec. 18-25; a document including 940 CMR 29.00; and educational materials prepared by the Attorney General explaining M.G.L. c. 30A, sec. 18-25, and its application, shall be delivered by the appointing authority, executive director or other appropriate administrator or their designees, to each member of a public body, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into the performance of the office. Within two weeks after receipt of such materials, the member shall certify, on the form prescribed by the Attorney General, receipt of such materials. The 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.

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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.

(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. The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, sec. 18-25, or if the alleged violation of M.G.L. c. 30A, sec. 18-25, could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(4) The public body shall review timely complaints to ascertain the time, date, place and circumstances which constitute the alleged violation. If the public body needs additional information to resolve the complaint, then the chair may

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request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within 10 business days after he or she receives the request. The public body will then have an additional 10 business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5)..

(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)(a) and (b), the public body shall review the complaint's allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. The public body shall simultaneously notify the complainant that it has sent such materials to the Attorney General and shall provide the complainant with a copy of the 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. 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 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 may decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, sec. 18-25, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

(7) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days. If additional time is necessary to resolve a particular complaint, the Attorney General will notify the complainant and the public body.

(8) If a complaint appears untimely, is not in the proper form, or is missing information, the Attorney General shall return the complaint to the complainant within 14 business days of its receipt, noting its deficiencies. The complainant shall then have 14 business days to correct the deficiencies and resubmit the complaint to the Attorney General. If the deficiencies are not corrected, no further action on the complaint will be taken by the Attorney General.

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29.06: Investigation

Whenever the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, sec. 18-25, has occurred that has not been adequately remedied, 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 and an investigation 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 subpoenas to obtain the information in accordance with M.G.L. c. 30A, sec. 24, 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 other action taken to conduct or resolve the investigation pursuant to 940 CMR 29.00.

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29.07: Resolution

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(1) No Violation. If the Attorney General determines, after investigation, that the M.G.L. c. 30A, sec. 18-25, has not been violated, the Attorney General shall terminate the investigation and notify, in writing, the subject of the investigation and any complainant.

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, sec. 18-25, 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, and whether the violation was intentional or unintentional. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, sec. 18-25, the Attorney General may take one of the following actions:

(a) Informal action. The Attorney General may resolve the investigation with a telephone call, letter or other appropriate form of communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, sec. 18-25, 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, sec. 18-25;
2. Attendance at a training session authorized by the Attorney General;
3. That minutes, records or other materials be made public; or
4. Other appropriate action.

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 et seq., 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, sec. 18-25, occurred, whether the public body, one or more of its members, or both, were responsible, and whether the violation was intentional or unintentional. 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, sec. 18-25;
- (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;
- (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 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.

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29.08: Advisory Opinions

The Attorney General may issue advisory opinions on request or at his or her own initiative to provide guidance to public bodies and the public on changes to M.G.L. c. 30A, sec. 18-25, court decisions interpreting M.G.L. c. 30A, sec. 18-25, or other developments concerning M.G.L. c. 30A, sec. 18-25.

- (1) The Attorney General shall ordinarily make a draft advisory opinion available for comment on the Attorney General's website at least 60 days prior to the planned issuance of the opinion. Notice of the posting shall be provided to the Commission.
- (2) Comments on the draft advisory opinion shall be submitted, in writing, to the Attorney General at least 30 days prior to the planned issuance of the opinion.
- (3) Action taken by a public body in good faith compliance with an advisory opinion, provided that the circumstances are not materially different, shall not constitute an intentional violation of the M.G.L. c. 30A, sec. 18-25.

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29.09: Other Enforcement Actions

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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, sec 18-25 [M.G.L. c. 30A, sec. 18-25](#) pursuant to [M.G.L. c. 30A, sec. 23\(f\)](#).

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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 these regulations, 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 the Open Meeting Law, 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, sec. 7](#), must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, 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 these regulations, 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 these regulations, 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 these regulations, 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 these regulations, 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, sec. 20](#) or [M.G.L. c. 34B, § 19](#) must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(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;
- (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, sec 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, sec. 23D](#).

(5) **Permissible Reasons 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), if the chair or, in the chair's absence, the person chairing the meeting, determines that one or more of the following factors makes the member's physical attendance unreasonably difficult:

- (a) Personal illness;
- (b) Personal disability;
- (c) Emergency;
- (d) Military service; or
- (e) Geographic distance.

(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.

- (i) telephone, internet, or satellite enabled audio or video conferencing;

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(ii) 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 and the reason under 940 CMR 29.10(5) for his or her remote participation. 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, sec. 22.

(8) Further Restriction by Adopting Authority. These regulations do 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.

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Subject to revision
by Select Board
in 2015

REMOTE PARTICIPATION POLICY

TOWN OF CONCORD MA

(Adopted by the Board of Selectmen, January 7, 2013)

1. PURPOSE STATEMENT

The Office of the Attorney General amended the Open Meeting Law regulations at 940 CMR 29.00 to allow members of public bodies, in limited circumstances, to participate remotely in meetings. While members of Town boards and committees should make every effort to attend meetings in person, the new regulations seek to promote greater participation in government meetings by allowing members to participate remotely when certain specific circumstances prevent them from being physically present. IT IS INTENDED THAT THIS POLICY SHALL BE USED ONLY ON RARE OCCASIONS WHERE NECESSARY FOR THE CONDUCT OF BUSINESS BY BOARDS AND COMMITTEES.

The intent of this policy is to establish clear guidelines on the practice of remote participation by Town Boards under the Open Meeting Law, M.G.L. c.30A, 18-25.

2. ENABLING AUTHORITY – 940 CMR 29.10 (8)

A municipality may adopt a policy that prohibits or further restricts the use of remote participation by public bodies within its jurisdiction.

3. APPLICABILITY

The Board of Selectmen, on January 7, 2013 voted to authorize the adoption of 940 CMR 29.10 so that remote participation is permitted in the Town. The Board of Selectmen may revoke its adoption of 940 CMR 29.10 by simple majority vote at any time.

This policy and 940 CMR 29.10 shall apply to all Town boards, committees, commissions, sub-committees and working groups ("Town boards") regardless of whether such Town Boards are appointed or elected. Where either the Remote Participation Policy or 940 CMR 29.10 is more stringent, the more stringent Policy shall control.

4. MINIMUM REQUIREMENTS FOR REMOTE PARTICIPATION

No member of a Town Board shall participate in a meeting remotely unless the following requirements are met:

- a) A member who cannot attend a meeting for one or more of the five permissible reasons set forth in Section 5 below, must request permission from the chair at least **48 hours** prior to the scheduled meeting;
- b) Members of the Town Board who participate remotely and all persons present at the meeting locations shall be clearly audible to each other and, if the meeting is televised, the member participating remotely shall be audible to the television audience;

- c) A quorum of the Town Board, including the chair or the person authorized to chair the meeting, shall be physically present at the meeting locations;
- d) To the greatest extent practical, and to ensure informed discussion and decision-making, members of the Town Board who participate remotely should have access to the materials being used at the meeting location.
- e) Remote participation shall be limited to one member per scheduled meeting.
- f) Remote participation is not allowed for executive session meetings
- g) Any cost of remote participation in a meeting shall be borne by the remotely participating member.
- h) Remote participants shall not operate a motor vehicle or otherwise jeopardize personal or public safety while participating in a meeting.
- i) A board may not impose additional remote participation requirements without the Board of Selectmen's prior review and approval.

5. PERMISSIBLE REASONS FOR REMOTE PARTICIPATION

A Board member may attend a meeting through electronic conferencing if his or her physical presence at the meeting is made unreasonably difficult due to:

- i. Personal illness or disability that does not affect the Board member's ability to perform his or her duties as a Board Member.
- ii. A family or other personal emergency.
- iii. Military service.
- iv. Significant geographic distance.

A member's qualification to participate remotely does not necessarily mean that the member will be permitted to participate remotely. The determination by the person chairing the meeting to allow or not to allow remote participation shall be final and shall not be appealable. Factors in making this determination may include, but shall not be limited to the following:

- a. The specific challenges faced by the member to attend all or part of the meeting
- b. The ability of the Town Board or its staff to provide access to meeting materials

6. TECHNOLOGY

- a) The following media devices are acceptable methods for remote participation.
 - i. Telephone, internet, or satellite enabled audio or video conferencing
 - ii. Any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible by 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 focus of the chair should always be on maintaining the flow of the meeting. If the chair determines that technical difficulties are inhibiting the progress of the meeting, the chair may elect to terminate the participation of the remote member. If technical difficulties arise resulting in the loss of connection with the remote participant, that participant's attendance shall be terminated. Either such event shall be noted in the meeting minutes.

- d) Each individual Town Board that anticipates using remote participation shall determine which of the acceptable methods may be used by its members.

7. PROCEDURES FOR REMOTE PARTICIPATION

- a) Any member of a Town Board who wishes to participate remotely shall, as soon as reasonably possible (and no less than 2 business days) prior to a meeting (two business days is preferred), notify 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) If the person chairing the meeting approves the request for remote participation, he or she shall make any necessary arrangements with appropriate Town personnel to ensure that the required equipment is available and, to the greatest extent practical, provide access to all meeting materials. THE TOWN DOES NOT GUARANTEE AVAILABILITY OF REQUIRED EQUIPMENT AT ANY PARTICULAR TIME OR LOCATION.
- c) At the start of the meeting, the chair shall announce the name of any member who will participate remotely and the reason (see paragraph 5., above) for his or her remote participation. This information shall be recorded in the minutes. The chair may also request, at the beginning of any hearing or matter before the Board, if any party or person attending or participating therein has any objection to the member's remote participation. In the case of an objection, the chair may in his or her discretion, exclude the member participating remotely from participating in any manner or vote with respect to such hearing or matter.
- d) Members participating remotely may vote and shall be counted as present for the meeting.
- e) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
- f) The Town shall not be responsible for the reimbursement of any out-of-pocket costs associated with the remote participation of Board members.
- g) Members participating remotely are cautioned that the same obligations of consideration apply as in any physical meeting. Remote participants should direct all their attention to the meeting, and should make their decisions based upon the same information as is available to all the other participants in the meeting. The remote participant shall also state at the beginning of any meeting that no other person is in proximity who could exert undue influence on the participant, in either executive or public session, and shall inform the chair if that situation changes.
- h) The chair of any Board for which a request is received to participate remotely shall provide to the Board of Selectmen, no later than December 31 of each year, a report that indicates the date of any meetings for which remote participation was requested, the name(s) of individuals making the request, the determination of the chair for each request, and a summary of any logistical, technical and compliance issues related to remote participation.

Note: Consideration should be given to the proposed language in the Charter regarding associate members on Boards and Commissions. Associate members should be utilized in the absence of members of Boards and Commissions when deemed appropriate by the chair.

Town of Concord Procedure for Posting Public Meetings

Posting Requirements

All public bodies are subject to the Open Meeting Law, which requires that meetings be posted at least 48 hours in advance of the meeting, excluding Saturdays, Sundays and holidays. The following should be included in the meeting posting:

- Name of Committee
- Date and Time of Meeting (“2nd Wednesday or 4th Tuesday of the month is not adequate—use specific dates)
- Location of Meeting

All meeting postings should be sent to the Town Clerk’s Office as early in advance of the meeting as possible, but no later than **Noon on the 48-hour deadline day**. For example, if you have a meeting scheduled for a Tuesday night beginning at 7:00 pm, then the meeting should be posted with the Town Clerk’s Office no later than the previous Friday at Noon. If Monday is a holiday, then the meeting must be posted by Noon on the previous Thursday. During the summer we ask that postings sent on Fridays be sent by 10:00 am.

Meetings are posted by the Town Clerk’s Office on the Town House bulletin board (the official posting location) and on the Town’s Web Calendar (24-hour access requirement). All meeting postings should be sent to the Town Clerk’s generic e-mail address:

townclerk@concordma.gov

Agenda Requirements

An agenda for every public meeting (including Executive Sessions) must be posted at least 48 hours in advance of the meeting, excluding Saturdays, Sundays and holidays. The agenda should list “all topics that the chair reasonably anticipates to 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. For example, listing “license renewals” or “violation discussion” as an agenda topic is not sufficient—the name and location of the license holder or violation should be included on the agenda, so that the public would be able to determine in advance of the meeting what will be covered.

If a discussion topic is proposed after the agenda has been posted, and the item was not reasonably anticipated 48 hours before the meeting, the agenda should be updated to provide the public with as much advance notice as possible of the subjects that will be discussed at the meeting. Although the public body may consider a topic that was not listed in the meeting notice if it was not anticipated 48 hours in advance, 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 on the meeting notice. All agendas (including revised) should be sent to the Town Clerk’s generic e-mail address noted above.

Room Reservations

All public meetings must take place in a building that is open to the public and accessible by wheelchair, without the need for special assistance. Public meetings may not be held in a private home or other private facility except in unusual circumstances, and only if the building is open to the public and is handicapped accessible without assistance. ***Room reservations should be done prior to posting a meeting notice.*** In some cases, building access is limited to working hours when staff is present, so if your committee does not have assigned staff, please be sure to confirm building and room access when reserving meeting space. Contact information is below for reserving Town buildings:

Town House (22 Monument Square)

Rooms: three rooms on the second floor – Hearing Room (not available weekdays during business hours), Lunch Room (limited availability during the day), and the Select Board’s Meeting Room (Member of Select Board or Town staff must be present to use this room)

Contact: Ruth Lauer – 978-318-3003 or Laurel Landry – 978-318-3009

Planning & Land Management Building (141 Keyes Road)

Rooms: one meeting room on the first floor

Contact: Nancy Hausherr or Andrew Mara – 978-318-3290

Water & Sewer Building (135 Keyes Road)

Rooms: one meeting room (daytime use only, or evenings when Town staff is present)

Contact: Susan Clerk – 978-318-3255) or Highway Staff -- 978-318-3220

Hunt Gym (90 Stow Street)

Rooms: one meeting room and one larger all-purpose room on the first floor

Contact: Recreation Department – 978-318-3035

Concord Free Public Library (129 Main Street)

Rooms: Trustees Room on first floor (limited availability); one meeting room on lower level; rooms available when building is open, so meetings must conclude approximately 15 minutes prior to closing time

Contact: Reference Desk – 978-318-3347

Fowler Library (1322 Main Street)

Rooms: One meeting room (50-person capacity) on lower level; available when building is open, so meetings must conclude approximately 15 minutes prior to closing time

Contact: Main Desk – 978-318-3350

Public Safety Building (219 Walden Street)

Rooms: One meeting room on third floor

Contact: Denise Caruso – 978-318-3403

Assessors' Conference Room (24 Court Lane)

Rooms: One meeting room on first floor (20-person capacity)

Contact: Assessing Department – 978-318-3070

Harvey Wheeler Community Center (1276 Main Street)

Rooms: Large Meeting Room/Auditorium and Clock Tower Room

Contact: Council on Aging – 978-318-3020

Municipal Light Plant (1175 Elm Street)

Rooms: Public Meeting Room (available for day or evening meetings); Engineering Conference Room (available for daytime meetings only); and Operations Conference Room (available for daytime meetings only)

Contact: Light Plant – 978-318-3101

School Buildings:

To reserve a room, contact the office of the building where you wish to hold a meeting, as follows:

Alcott School (93 Laurel Street) – 978-318-9544

Thoreau School (29 Prairie Street) – 978-341-2490

Willard School (185 Powder Mill Road) – 978-318-1340

Peabody Middle School (1231 Old Marlboro Road) – 978-318-1360

Sanborn Middle School (835 Old Marlboro Road) – 978-318-1380

Ripley Building (120 Meriam Road) – 978-341-2490

Concord-Carlisle High School (500 Walden Street) – 978-318-1400

EXECUTIVE SESSION PROCEDURE

1. Convene in open session.
2. Chair must publicly state the purpose for the executive session and all subjects that may be discussed without compromising the purpose for the executive session and announce whether the open session will reconvene at end of executive session.
3. Take roll call vote of majority of members to enter executive session, and record in minutes.
4. Maintain accurate minutes of executive session.
5. Take all votes by roll call (no secret ballots).
6. Do not discuss any matter other than purpose for which executive session is lawfully called.

ONLY 10 PURPOSES FOR AN EXECUTIVE SESSION

1. To discuss the reputation, character, health, discipline, charges, complaints against, but not the professional competence of a public officer, employee, staff member or individual.
2. To conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union 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. Note that there is no enumerated purpose in the Open Meeting Law for entering into executive session in order to seek legal advice from counsel.
4. To discuss the deployment of or strategy regarding security personnel or devices.
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 estate, if the chair declares in advance that an open meeting may have a detrimental effect on the negotiating position of the public body.
7. To comply with any general or special law or federal grant-in-aid requirements.
8. To consider or interview applicants for employment by a preliminary screening committee, if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants. This does not apply to any meeting regarding applicants who have passed a prior preliminary screening.
9. To confer with a mediator regarding litigation or decision; provided that (i) any decision to participate in mediation shall be made in open session and the parties disclosed and (ii) no action shall be taken with respect to the issues involved without deliberation and approval of the action at an open session.
10. To discuss trade secrets in the course of activities conducted by a public body as an energy supplier, if an open session will adversely affect conducting business relative to other entities making, selling or distributing energy.

Source: Open Meeting Law, MGL. Ch. 30A, §21(a)
Anderson & Kreiger, LLP, Open Meeting Law Training Materials June 27, 2012

Sample Motions for Entering Executive Session
Under the New Open Meeting Law

PURPOSE	MOTION	CHAIR'S STATEMENT
Reputation or Character	I move to enter executive session to discuss the reputation or character, of an individual.	
Physical or Mental Condition	I move to enter executive session to discuss the physical condition or mental health of an individual.	
Discipline or Dismissal	I move to enter executive session to discuss the discipline or dismissal of a public officer, employee, staff member or individual.	
Complaints or Charges	I move to enter executive session to discuss complaints or charges brought against a public officer, employee, staff member or individual.	
Preparation for Nonunion Negotiations	I move to enter executive session to conduct strategy sessions in preparation for negotiations with nonunion personnel.	
Nonunion Negotiations	I move to enter executive session to conduct contract negotiations with nonunion personnel.	
Collective Bargaining Strategy	I move to enter executive session to discuss strategy with respect to collective bargaining.	Chair declares: "An open meeting may have a detrimental effect on the bargaining position" of the Board.
Collective Bargaining	I move to enter executive session to conduct collective bargaining sessions.	
Litigation Strategy	I move to enter executive session to discuss strategy with respect to litigation.	Chair declares: "An open meeting may have a detrimental effect on the litigating position" of the Board or Commission.

PURPOSE	MOTION	CHAIR'S STATEMENT
Mediation (Litigation)	I move to enter executive session to meet or confer with a mediator with respect to litigation.	Chair declares: "The parties to the mediation are _____; the issues involved in the mediation are _____; and the purpose of the mediation is _____. No action will be taken by [the Board or Commission] with respect to those issues without deliberation and approval for the action at an open session."
Mediation (Other)	I move to enter executive session to meet or confer with a mediator with respect to a decision on public business.	Chair declares: "The parties to the mediation are _____; the issues involved in the mediation are _____; and the purpose of the mediation is _____. No action will be taken by [the Board or Commission] with respect to those issues without deliberation and approval for the action at an open session."
Security Matters	I move to enter executive session to discuss the deployment of security personnel or devices, or strategies with respect thereto.	
Criminal Matters	I move to enter executive session to investigate charges of criminal misconduct or to consider the filing of criminal complaints.	
Real Property	I move to enter executive session to consider the purchase, exchange, lease or value of real property.	Chair declares: "An open meeting may have a detrimental effect on the negotiating position" of the Board or Commission.
Compliance with Law	I move to enter executive session to comply with, or act under the authority of, any general or special law.	
Federal Aid	I move to enter executive session to comply with, or act under the authority of federal grant-in-aid requirements.	

PURPOSE	MOTION	CHAIR'S STATEMENT
Preliminary Screening of Applicants	I move to enter executive session to consider or interview applicants for employment or appointment by a preliminary screening committee.	Chair declares: "An open meeting will have a detrimental effect in obtaining qualified applicants, and the meeting is not to consider or interview applicants who have passed a prior preliminary screening."
Energy Matters	I move to enter executive session to discuss trade secrets or confidential, competitively-sensitive or other proprietary information concerning an energy supplier, municipal aggregator or cooperative.	Chair declares: "Disclosure of the trade secrets or confidential, competitively-sensitive or other proprietary information will adversely affect the ability to conduct business in relation to other entities making, selling or distributing electric power and energy."

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.

MEETING MINUTES

Excerpts from Open Meeting Law Guide, 3/18/2015:

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, along with the reason for his or her remote participation

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 State'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.

Town Clerk Tips for Creation of Minutes:

- **Be Prepared** – The individual preparing the minutes must have access to and be familiar with the meeting information packet in order to follow the discussion. The accuracy of the minutes is only as good as the extent to which the minute taker understands the discussion.
- **Be Accurate** – It's important that the facts of the meeting are accurate – who is present, who is absent, motions made and seconded, language of any votes, who is responsible for meeting follow-up, etc. Minute taker should ask questions after the meeting if something is not understood.
- **No Attributions Unless Required** – Avoid “he said” and “she said” when possible. If a number of people make similar comments or share the same sentiment during a meeting, then it is not necessary to attribute a particular comment to an individual. Only necessary when a sentiment is unique and not shared by other board members.
- **Be Concise** – A transcript of the proceedings is not needed nor is it helpful. A summary of the discussion leading up to a decision is required. Be concise. Rule of thumb is that minutes should be no more than 1 page, single spaced, for each 30 minutes of a meeting. In many cases, the minutes can be even shorter.
- **Be Careful with Format** – Minutes should be easy to read and be organized so that they are clear to the reader, who was not necessarily present at the meeting. Follow the agenda. Use highlights, bullets, and indentations carefully and only when it makes it visually easier on the reader. The Q&A format is cumbersome and unnecessary in minutes—same result can be achieved by just wording the response so that the question is obvious—e.g., In response to a question, Mr. Smith reported that...
- **No Editorializing** – Keep the minutes to what actually transpired at the meeting and not what someone “wishes” had happened or had been said at the meeting. Okay to clean up phrasing when summarizing, but the minute taker should avoid interjecting personal sentiments or bias.

Public Body Checklist for Creating and Approving Meeting Minutes

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

- 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, and their reason(s) under 940 CMR 29.10(5) for remote participation. 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). Generally, this should occur at the next meeting of the public body.

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.

CALCULATION OF QUORUM AND MAJORITY

What is a quorum of a public body?

The Open Meeting Law defines a quorum as a simple majority of the members of a public body, unless otherwise provided in a general or special law, executive order, or other authorizing provision. If a quorum of a public body wants to discuss public business within that body's jurisdiction, they must do so during a properly posted meeting at which a quorum is present.

How does a public body determine what constitutes "a simple majority of the members," for the purposes of calculating quorum, when there are vacancies?

When there is a vacancy on a public body, a quorum is still measured by the number of members of the public body as constituted. However, a general or special law, executive order, or other authorizing provision may provide for the quorum of a public body to be a majority of the members serving on the body.

Examples:

1. The XYZ Committee has seven members; therefore a quorum is four members. There are currently two vacancies on the board, leaving five members serving. By default, a quorum is still measured as four members.
2. A general law creates a seven-member public body and states that a quorum of that body shall be a majority of the members serving on the body. There are two vacancies on the public body, leaving five members currently serving. Because the general law creating the body specifies that a quorum is measured as a majority of the five serving members, then a quorum is now three members.
3. The ABC Committee has five members; therefore a quorum is three members.

SPECIAL QUORUM REQUIREMENTS

Concord's **Historic Districts Special Act** provides for five regular and five associate members. The Associate members only vote in the absence of a regular member. The Special Act defines a quorum as "five members, including associate members." (Special Act, §8)

Concord has a three-member **Board of Appeals**, appointed by the Select Board. In addition, Associate Members are also appointed and serve in the absence of a regular member. Three members constitute a quorum for a Board of Appeals meeting. A unanimous vote is required for the granting of a special permit and in order to reverse a decision of the Building Inspector (three members present and voting).

Sources: MA Attorney General Web Site (OML FAQ); MGL Ch. 40A (The Zoning Act); Concord's Historic Districts Special Act, as amended.

SUMMARY OF MASSACHUSETTS PUBLIC RECORDS LAW¹

Overview The Massachusetts Public Records Law provides that every person has a right to access to public information. This right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee.

What records are public? Every record that is made or received by a government entity or employee is presumed to be a public record unless a specific statutory exemption permits or requires it to be withheld in whole or in part. Specific statutory exemptions have been created by the legislature. These exemptions, which are discretionary to the records custodian, allow the records custodian to withhold a record from the general public. If a records custodian claims an exemption and withholds a record, the records custodian has the burden of showing how the exemption applies to the record and why it should be withheld. A list of these exemptions is included beginning on page 3 of this summary document.

How do I obtain copies of public records?² To obtain a copy of a record, you must make a request to the state or local records custodian of the record. There are no strict rules that govern the manner in which requests for public information should be made. Requests may be made in person or in writing. Written requests may be made by mail, fax, or email. A requestor must provide the records custodian with a reasonable description of the desired information. A records custodian is expected to use his or her superior knowledge of the records in his or her custody to assist the requester in obtaining the desired information.

Must a public records request be in writing? A written request is not required but is recommended. An oral request made in person (not by telephone) is permitted. To appeal the records custodian's response to the Supervisor of Public Records, however, a request must be in writing. A records custodian may provide a specific form to be used, but cannot demand that the form be used.

Response from Records Custodian The records custodian must respond to requests as soon as practicable, without unreasonable delay and within 10 calendar days. The response must be either an offer to provide the requested materials or a written denial. A denial must detail the specific basis for withholding the requested materials, including a citation to one of the statutory exemptions upon which the records custodian relies, and must explain why the exemption applies. If the custodian estimates that it will cost more than \$10 to comply with the request, the custodian must provide a good faith estimate of the cost to comply.

The Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received. There is no obligation to create a record for a requestor or to honor prospective requests. It should be noted that the Public Records Access Regulations do not prohibit a records custodian from responding to such requests.

Fees Unless specifically addressed by statute, a custodian may charge 20¢ per page for photocopies and 50¢ per page for computer printouts. A records custodian may charge the actual cost of reproducing a copy of a record that is not susceptible to ordinary means of reproduction, such as large computer records or

¹ Excerpted from "A Guide to the Massachusetts Public Records Law," publication of the Secretary of State's Office, updated January 2013. A copy of the Guide is available on the Secretary's web site:

<http://www.sec.state.ma.us/pre/prepdf/guide.pdf> See M.G.L. Ch. 4, §7(26) for full text of the Public Records Law

² See 950 C.M.R. 32.00 (Public Records Access Regulations) and M.G.L. Ch. 66, §1.

over-sized plans. A records custodian may wait until receipt of applicable fees prior to performing the work necessary to comply with the request.

Search, Segregation and Photocopying Charges A records custodian may charge and recover a fee for the time he or she spends searching, redacting, photocopying and re-filing a record. "Search time" means the time used to locate a requested record, pull it from the files, copy it and return it to the files. "Segregation time" means the time used to delete exempt data from a requested public record. The hourly rate may not be greater than the prorated hourly wage of the lowest paid employee who is capable of performing the task, with no overhead charges added. A records custodian may not recover fees associated with creating or organizing the record. The expectation is that municipal records are organized and maintained in a readable format and orderly fashion. If a requestor wishes to review records in the record custodian's office but does not require copies, a records custodian may charge and recover a fee for his or her time spent searching for and redacting the records. Access to records viewed in this manner should not be denied and only minor fees associated with securing the record should be charged.

Fee Estimates The Public Records Access Regulations require that a records custodian provide a detailed, written, good faith estimate for the cost of complying with a public record request when the cost is expected to exceed \$10.00. The estimate should contain a statement advising the requestor that the actual cost of reproducing the record might vary once the custodian begins preparing the record. A records custodian is permitted to require payment of the estimated fee before commencing work.

In the interest of open government, all records custodians are strongly urged to waive the fees associated with access to public records, but are not required to do so under the law. Public records that are of great interest to a large number of people must be readily available within the office of the records custodian and should be provided at a minimum cost, if any. Examples include minutes of board meetings, town meeting documents, warrants, street lists and municipal financial documents.

Does the Public Records Law apply to email and other computer records? The Public Records Law applies to all government records generated, received or maintained electronically, including computer records, electronic mail, video and audiotapes.

Is a requester required to disclose the intended use of the public record requested? With the possible exception of situations where the records custodian is anticipating the withholding of records pursuant to Exemption (n), a records custodian may not ask a requester the reason for the request or the intended use of the requested records.

How should a records custodian respond to an unclear request? Records custodians must use their superior knowledge to determine the precise record(s) responsive to a request. However, a requestor must provide a reasonable description of the requested records.

What is the difference between the Freedom of Information Act (FOIA) and the Massachusetts Public Records Law (PRL)? The federal FOIA is a statute that applies to federal records. The Massachusetts PRL applies to records created by or in the custody of a state or local agency, board or other governmental entity.

Appeals A requester who is denied access to any requested information may petition the Supervisor of Public Records for a review of the request – Secretary of the Commonwealth, Division of Public Records, One Ashburton Place, Rm 1719, Boston, MA 02108. Tel: 617-727-2832
Website: <http://www.sec.state.ma.us/pre>

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Exemptions to the Public Records Law

Exemption (a) – The Statutory Exemption

This applies to records that are specifically or by necessary implication exempted from disclosure by statute.

Exemption (b) – Personnel Rules & Practices

This applies to records that are related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding.

Exemption (c) – Privacy Exemption

This is the most frequently invoked exemption. The exemption limits its application to personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

Exemption (d) – The Deliberative Process Exemption

This provides for limited executive privilege for policy development. It applies to inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based. This exemption is intended to avoid release of materials that could taint the deliberative process if prematurely disclosed. Its application is limited to recommendations on legal and policy matters found within an ongoing deliberative process.

Exemption (e)

This allows the withholding of notebooks and other materials prepared by an employee which are personal to him/her and not maintained as part of the files of the governmental unit. The exemption may not be used to withhold any materials that are shared with other employees or are being maintained as part of the files of a governmental unit.

Exemption (f) – The Investigatory Exemption

This provides custodians a basis for withholding investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials, the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

Exemption (g)

This applies to trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit.

Exemption (h)

This applies to proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.

Exemption (i)

This applies to appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.

Exemption (j)

This allows records custodians of firearm records to withhold the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued, or any firearms identification cards issued, and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, and the names and addresses on said licenses or cards.

Exemption (k) – Repealed in 1988

Exemption (l)

This provides a basis for withholding from disclosure questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument.

Exemption (m)

This pertains to contracts for hospital or healthcare services between a government-operated healthcare facility and a health maintenance organization or health insurance corporation.

Exemption (n)

This applies to records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records is likely to jeopardize public safety.

Exemption (o)

This applies to the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories.

Exemption (p)

This applies to the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in Exemption (o).

Exemption (q)

This allows for the withholding of adoption contact information.

Exemption (r)

This applies to information and records created and received by the Office of Child Advocate.

Exemption (s)

This relates to certain records of public utility providers.

Exemption (t)

The statement of financial interest filed by public retirement boards with the Public Employee Retirement Administration Commission (PERAC) is exempt from disclosure.

Exemption (u)

This applies to trade secrets or other proprietary information in the possession of the University of Massachusetts.

RECORDS MANAGEMENT PROCEDURES

State law requires all committees to keep accurate written records of its public meetings. All committees, commissions, boards, sub-committees and ad-hoc committees shall appoint a clerk/secretary who will be responsible for posting meeting notices and agendas, taking minutes of all meetings, and serving as records custodian.

The records of each meeting are public records, and a copy of all non-executive session minutes must be available for public inspection. Records of any executive session remain closed to the public only as long as publication may defeat the purposes of the executive session. Minutes of meetings should include the following information:

- Date, time and place of the meeting
- 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 and actions taken at the meeting (including those taken in executive session)
- Exact wording of all motions, including who made and seconded the motion
- The vote of each member. Those members present and not participating in the vote should be recorded as abstentions.
- Votes in executive session must be recorded in the minutes by a roll call.

Once minutes are accepted by committee vote they become the official record of the meeting and become a permanent public record. Any secretarial notes, if not destroyed once the official minutes are accepted, are considered a public document under the public records law.

What to do with approved minutes:

- A courtesy copy of the minutes, upon approval, should be sent to the appointing authority (Town Manager, Board of Selectmen, or Moderator).
- The original approved set of minutes should be retained in the department office ***for committees with assigned staff liaisons***. A copy should be forwarded to the Town Clerk electronically after the minutes are approved – townclerk@concordma.gov. It is not necessary to forward attachments or supporting documents. Older original copies of minutes should be periodically forwarded to the Town Clerk's Office for binding and transfer to the Town Archives.
- ***Committees without assigned staff liaisons*** should submit the approved minutes to the Town Clerk's Office electronically for filing and public access once they are approved – townclerk@concordma.gov. Supporting documents used at the meeting should be forwarded with the minutes to the Town Clerk for filing and public access.
- All approved minutes are retained by the Town Clerk's Office. Periodically, the Town Clerk's copy of the minutes will be bound up and transferred to the Town Archives.

What about other committee records?

Under the State Open Meeting Law, documents and other exhibits used by the body at an open or executive session (including photographs, recordings or maps) shall, along with the minutes, be part of the official record of the session. These should be retained either at the department level (for those committees with staff liaisons) or at the Town Clerk's Office (for those committees without staff liaisons). These supporting documents will be periodically placed in the Town Archives by the Town Clerk.

Dissolution of a committee:

Upon dissolution of a board, committee, or commission, the records should be culled, weeding out all non-permanent records. These should be organized in a reasonable and understandable manner and submitted to the Town Clerk for review by the Records & Archives Committee and transferred to the Town Archives.

Summary of the Conflict of Interest Law for Municipal Employees

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a municipal employee for conflict of interest law purposes?

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a "key employee" under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts.

II. On-the-job restrictions.

(a) Bribes. Asking for and taking bribes is prohibited. (See Section 2)

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) Gifts and gratuities. Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), and 26)

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

Example of violation : A town administrator accepts reduced rental payments from developers.

Example of violation : A developer offers a ski trip to a school district employee who oversees the developer's work for the school district.

Regulatory exemptions . There are situations in which a municipal employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission

has created exemptions permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Another commonly used exemption permits municipal employees to accept payment of costs involved in attendance at educational and training programs. Other exemptions are listed on the Commission's website.

Example where there is no violation : A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where the chief can examine various kinds of fire-fighting equipment that the town may purchase. The chief fills out a disclosure form and obtains prior approval from his appointing authority.

Example where there is no violation : A town treasurer attends a two-day annual school featuring multiple substantive seminars on issues relevant to treasurers. The annual school is paid for in part by banks that do business with town treasurers. The treasurer is only required to make a disclosure if one of the sponsoring banks has official business before her in the six months before or after the annual school.

(c) Misuse of position. Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b)(2) and 26)

A municipal employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a municipal employee may not use her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

Example of violation : A full-time town employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

Example of violation : A city councilor directs subordinates to drive the councilor's wife to and from the grocery store.

Example of violation : A mayor avoids a speeding ticket by asking the police officer who stops him, "Do you know who I am?" and showing his municipal I.D.

(d) Self-dealing and nepotism. Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19)

A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

Example of violation : A school committee member's wife is a teacher in the town's public schools. The school committee member votes on the budget line item for teachers' salaries.

Example of violation : A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

Example : A planning board member lives next door to property where a developer plans to construct a new building. Because the planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where not otherwise required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority, and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

Example where there is no violation : An appointed member of the town zoning advisory committee, which will review and recommend changes to the town's by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company's financial interest. There is no violation.

There is also an exemption for both appointed and elected employees where the employee's task is to address a matter of general policy and the employee's financial interest is shared with a substantial portion (generally 10% or more) of the town's population, such as, for instance, a financial interest in real estate tax rates or municipal utility rates.

Regulatory exemptions. In addition to the statutory exemptions just mentioned, the Commission has created several regulatory exemptions permitting municipal employees to participate in particular matters notwithstanding the presence of a financial interest in certain very specific situations when permitting them to do so advances a public purpose. There is an exemption permitting school committee members to participate in setting school fees that will affect their own children if they make a prior written disclosure. There is an exemption permitting town clerks to perform election-related functions even when they, or their immediate family members, are on the ballot, because clerks' election-related functions are extensively regulated by other laws. There is also an exemption permitting a person serving as a member of a municipal board pursuant to a legal requirement that the board have members with a specified affiliation to participate fully in determinations of general policy by the board, even if the entity with which he is affiliated has a financial interest in the matter. Other exemptions are listed in the Commission's regulations, available on the Commission's website.

Example where there is no violation: A municipal Shellfish Advisory Board has been created to provide advice to the Board of Selectmen on policy issues related to shellfishing. The Advisory Board is required to have members who are currently commercial fishermen. A board member who is a commercial fisherman may participate in determinations of general policy in which he has a financial interest common to all commercial fishermen, but may not participate in determinations in which he alone has a financial interest, such as the extension of his own individual permits or leases.

(e) False claims. Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26)

A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

Example of violation : A public works director directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

(f) Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b)(3))

A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced. Section 23(b)(3) requires a municipal employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for a city or town. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

Example where there is no violation : A developer who is the cousin of the chair of the conservation commission has filed an application with the commission. A reasonable person could conclude that the chair might favor her cousin. The chair files a written disclosure with her appointing authority explaining her relationship with her cousin prior to the meeting at which the application will be considered. There is no violation of Sec. 23(b)(3).

(g) Confidential information. Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))

Municipal employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

III. After-hours restrictions.

(a) Taking a second paid job that conflicts with the duties of your municipal job is prohibited. (See Section 23(b)(1))

A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.

Example : A police officer may not work as a paid private security guard in the town where he serves because the demands of his private employment would conflict with his duties as a police officer.

(b) Divided loyalties. Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See Sec. 17)

Because cities and towns are entitled to the undivided loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the city or town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the town has an interest. Acting as agent includes contacting the municipality in person, by phone, or in writing; acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his own personal interests, even before his own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he works for the permitting agency, or an agency which regulates the permitting agency.

Example of violation : A full-time health agent submits a septic system plan that she has prepared for a private client to the town's board of health.

Example of violation : A planning board member represents a private client before the board of selectmen on a request that town meeting consider rezoning the client's property.

While many municipal employees earn their livelihood in municipal jobs, some municipal employees volunteer their time to provide services to the town or receive small stipends. Others, such as a private attorney who provides legal services to a town as needed, may serve in a position in which they may have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for "special" municipal employees than for other municipal employees.

The status of "special" municipal employee has to be assigned to a municipal position by vote of the board of selectmen, city council, or similar body. A position is eligible to be designated as "special" if it is unpaid, or if it is part-time and the employee is allowed to have another job during normal working hours, or if the employee was not paid for working more than 800 hours during the preceding 365 days. It is the position that is designated as "special" and not the person or persons holding the position. Selectmen in towns of 10,000 or fewer are automatically "special"; selectman in larger towns cannot be "specials."

If a municipal position has been designated as "special," an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before municipal boards other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility.

Example : A school committee member who has been designated as a special municipal employee appears before the board of health on behalf of a client of his private law practice, on a matter that he has not participated in or had responsibility for as a school committee member. There is no conflict. However, he may not appear before the school committee, or the school department, on behalf of a client because he has official responsibility for any matter that comes before the school committee. This is still the case even if he has recused himself from participating in the matter in his official capacity.

Example : A member who sits as an alternate on the conservation commission is a special municipal employee. Under town by-laws, he only has official responsibility for matters assigned to him. He may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him and he will not participate in it.

(c) Inside track. Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 20)

A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the city or town has with someone else. This provision is intended to prevent municipal employees from having an "inside track" to further financial opportunities.

Example of violation : Legal counsel to the town housing authority becomes the acting executive director of the authority, and is paid in both positions.

Example of violation : A selectman buys a surplus truck from the town DPW.

Example of violation : A full-time secretary for the board of health wants to have a second paid job working part-time for the town library. She will violate Section 20 unless she can meet the requirements of an exemption.

Example of violation : A city councilor wants to work for a non-profit that receives funding under a contract with her city. Unless she can satisfy the requirements of an exemption under Section 20, she cannot take the job.

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There are numerous exemptions. A municipal employee may hold multiple unpaid or elected positions. Some exemptions apply only to special municipal employees. Specific exemptions may cover serving as an unpaid volunteer in a second town position, housing-related benefits, public safety positions, certain elected positions, small towns, and other specific situations. Please call the Ethics Commission's Legal Division for advice about a specific situation.

IV. After you leave municipal employment. (See Section 18)

(a) Forever ban. After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

Example of violation : A former school department employee works for a contractor under a contract that she helped to draft and oversee for the school department.

(b) One year cooling-off period. For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.

Former municipal employees are barred for one year after they leave municipal employment from personally appearing before any agency of the municipality in connection with matters that were under their authority in their prior municipal positions during the two years before they left.

Example : An assistant town manager negotiates a three-year contract with a company. The town manager who supervised the assistant, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the town in connection with the company's work on the contract for one year after leaving the town.

A former municipal employee who participated as such in general legislation on expanded gaming and related matters may not become an officer or employee of, or acquire a financial interest in, an applicant for a gaming license, or a gaming licensee, for one year after his public employment ceases.

(c) Partners. Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends.

Partners of municipal employees and former municipal employees are also subject to restrictions under the conflict of interest law. If a municipal employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the municipality or provide services as an attorney to anyone but the city or town in relation to the matter.

Example : While serving on a city's historic district commission, an architect reviewed an application to get landmark status for a building. His partners at his architecture firm may not prepare and sign plans for the owner of the building or otherwise act on the owner's behalf in relation to the application for landmark status. In addition, because the architect has official responsibility as a commissioner for every matter that comes before the commission, his partners may not communicate with the commission or otherwise act on behalf of any client on any matter that comes before the commission during the time that the architect serves on the commission.

Example : A former town counsel joins a law firm as a partner. Because she litigated a lawsuit for the town,

her new partners cannot represent any private clients in the lawsuit for one year after her job with the town ended.

This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. Our website, <http://www.mass.gov/ethics> contains further information about how the law applies in many situations. You can also contact the Commission's Legal Division via our website, by telephone, or by letter. Our contact information is at the top of this document.

Version 6: Revised May 10, 2013

COMMONWEALTH OF MASSACHUSETTS

CONFLICT OF INTEREST TRAINING

As a municipal employee (paid or unpaid), you are required to complete an online training program once every two years. The training takes 30-40 minutes to complete and is geared specifically to municipal employees. You may access the training at the following web site:

<http://www.muniprogram.state.ma.us>

Once you have completed the training, please print out a receipt and submit it to the Town Clerk's Office as soon as possible. Please use one of the following methods to return your completed receipt to the Town Clerk:

1. Drop off at the Town Clerk's Office, 1st floor of the Town House
2. Via e-mail at townclerk@concordma.gov
3. Via fax at 978-318-3093 – Attention: Town Clerk's Office
4. Via postal mail – Town Clerk, P.O. Box 535, Concord, MA 01742
5. Via interoffice mail

Tips for completing the online training:

- Allow about 40 minutes for completion of the training. This is a multiple-choice test which you cannot fail—if you answer a question incorrectly, you will be allowed to try again until you choose the correct answer.
- The program was developed to work with the Internet Explorer web browser. The program may also work with other web browsers (such as Firefox or Safari), but some pages do not display properly using Google Chrome web browser. It is recommended that you do not use Google Chrome to run this program.
- Turn Off Pop-Up Blockers – All Pop-up blockers must be turned off. In Internet Explorer, click the Tools drop-down menu; then select Pop-up Blocker. If Pop-up Blocker is on, click Turn Off Pop-up Blocker.
- The training is fully narrated. There are directions on the screen how to Mute the narrative if you wish to read the narration on the screen without the audio.

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STATE ETHICS COMMISSION

THE TOP TEN RULES MUNICIPAL EMPLOYEES NEED TO KNOW ABOUT THE CONFLICT OF INTEREST LAW

10. Whether elected or appointed, paid or unpaid, part-time or full-time, **you are a municipal employee** subject to the conflict of interest law – even “consultants” may be considered municipal employees.

9. **Don't** accept bribes (don't sell or trade your official actions).

8. **Don't** accept meals, tickets or gifts from anyone to thank or reward you for any official action you have taken or may take or to influence you in any official action.

7. **Be** loyal to the municipality:

- **Don't** accept money from or represent anyone other than the municipality for work involving the municipality.
- **Don't** accept paid, private work that is incompatible with your public position and duties.
- **Don't** improperly disclose or use confidential information that you obtained as a municipal employee.

6. **Don't** use your official position to get special benefits for yourself or anyone else that are not available to the general public.

5. **Don't** create appearances of conflicts of interest: Publicly disclose significant relationships or circumstances that might cause a reasonable person to think that you might be unfair or biased in your official actions.

4. **Don't** act on any matter affecting your own financial interests or those of family members, partners or organizations with which you have a private relationship.

3. **Don't** double dip. Don't accept an additional (even unpaid) municipal position before seeking legal advice.

2. **After** you leave municipal service:

- **Don't** accept money from or represent anyone other than the municipality if the private work involves a matter that you participated in or worked on as a municipal employee.
- Strictly **observe** the one-year “cooling off” rule: **Don't** represent or appear before municipal agencies for a private party on matters that were under your “official responsibility” when you were a municipal employee.

AND THE NUMBER ONE RULE IS...

Get Advice!

Source: State Ethics Commission 7.10.2008



The Official Website of the State Ethics Commission

State Ethics Commission

Home > Commission Services > Request Advice

Request Advice from the Legal Division

Anyone who is covered by the conflict of interest law may request free legal advice about how the law applies to them in a particular situation. The advice is confidential in most circumstances. You may request advice by calling the "Attorney-Of-The-Day," or online, or in writing by U.S. Mail.

Please do not request advice for the same question using more than one of these methods.

Please note that the Legal Division will not return any original materials submitted in support of requests for legal advice.

1. Call the "Attorney-of-the-Day" (617) 371-9500/(888) 485-4766

The Attorney-of-the-Day will return your call as soon as possible, and within 1 business day if you indicate that the matter requires an urgent response because it is a time-sensitive issue, such as you need to get advice on the issue before you attend a meeting that evening.

OR

2. Make a Request Online

You may submit a request for telephone or written advice from the Legal Division. If you request telephone advice, the Attorney-of-the-Day will return your call as soon as possible, and within 1 business day if you indicate that the matter requires an urgent response because it is a time-sensitive issue, such as you need to get advice on the issue before you attend a meeting that evening.

If you request written advice, you generally will receive an informal written opinion from the Legal Division within 30 days.

OR

3. Send a Letter Requesting an Informal Written Advisory Opinion

To request an informal written opinion from the Legal Division, please include all relevant facts and a specific question. You generally will receive an informal written advisory opinion from the Legal Division within 30 days. Please mail your request to:

State Ethics Commission
Legal Division
One Ashburton Place, Room 619
Boston, MA 02108.

The Legal Division gives advisory opinions pursuant to G.L. c. 268B, § 3(g) and 930 CMR 3.01.

The Legal Division will NOT respond to requests seeking advice concerning:

1. The conduct of another individual

The Legal Division may provide you only with advice concerning your own conduct.

2. Conduct that has already occurred

The Legal Division may provide you only with advice concerning your future conduct.

3. Issues that are not covered under G.L. c. 268A, the conflict of interest law

The Legal Division may only provide you with advice concerning G.L. c. 268A, the conflict of interest law and 268B, the enabling statute for the State Ethics Commission.

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State Ethics Commission

Filing a Complaint

Filing a Complaint with the Enforcement Division

If you believe that a state, county or municipal employee has violated the conflict of interest or financial disclosure law, you can file a complaint with the Commission's Enforcement Division. All materials relating to a complaint are required by law to be kept confidential, as well as the name of the complainant. A complaint may be filed by telephone by speaking to an Intake Investigator, or in writing via U.S. mail, or electronically by email.

Please note the following:

- **DO NOT** file the same complaint more than once or use more than one of these methods to file the same complaint.
- You will be notified when we have completed reviewing the matter.
- If a complainant chooses to remain anonymous, we will not be able to contact him to follow up on his complaint.
- The Enforcement Division will not return any materials submitted in support of complaints.

1. Call the Intake Investigator (617) 371-9500 or (888) 485-4766

Intake Investigators are generally available to take calls between noon and 5:00 p.m., Monday through Friday. If an investigator is not available to speak with you immediately, one will return your call within one business day.

2. File a Complaint in Writing via U.S. mail

To file a complaint via U.S. mail, please include all relevant facts and a specific concern. Include the name of the public employee/official about whom you are complaining, his/her position, and the specifics of your concern in as much detail as possible. Please mail your complaint to:

State Ethics Commission
Enforcement Division
One Ashburton Place, Room 619
Boston, MA 02108-1501

If you are sending documents or records with your complaint, please be sure to keep a copy for yourself.

3. File a Complaint by email

- You may file a complaint by email at: complaint@massmail.state.ma.us
- Please note that your contact information (name, address, telephone number, and email address) is **REQUIRED** when filing a complaint online. Anonymous complaints cannot be accepted by email. If you wish to file a complaint anonymously, please call, write or visit the Commission.
- Please include the following information in your email:
 - a. Your name, address and a daytime telephone number
 - b. Your email address
 - c. The name and job title/position of the person who is the subject of your complaint
 - d. The name of the public agency in which the subject is serving: Is this a state, county or municipal agency?
 - e. Is the subject elected or appointed to his/her position?
 - f. Is the person serving in a paid or unpaid public position?
 - g. Provide as much detail concerning your allegations as possible, such as what happened, the location and dates, and whether there are witnesses or documents that can corroborate your allegations.

The Commission does not acknowledge complaints by email. If you would like an acknowledgment, an oral acknowledgment will be provided. You will need to call the Enforcement Division at 617-371-9500 and provide your name, telephone number, email address, date you emailed the complaint and the name of the person about whom you are complaining.

When the Enforcement Division has completed its review of your complaint, you will be informed of that fact. If the Commission publicly resolves any of the allegations in your complaint, you will receive a copy of that resolution.

Complementary Content

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HANDOUTS FOR MODULE 2

COMMITTEE AND MEETING MANAGEMENT

- Meeting Management Tips for Town of Concord Committees and Boards

MEETING MANAGEMENT TIPS FOR TOWN OF CONCORD COMMITTEES & BOARDS

- Agenda Preparation When preparing the agenda, put some effort into the logical flow and sequence for the meeting, to be sure that there is sufficient time allotted to cover the necessary items, including discussion. Stick to the agreed-upon timeframe. If the committee habitually runs out of time, then seek agreement to either meet longer or more frequently in the future. Adjourn early if you finish early.
- Physical Environment Plan the meeting's physical environment. Choose a room large enough to accommodate all who wish to attend. If more people show up than can fit in the assigned room, then either adjourn to a larger room (leaving a note on the door as to the new location, or assign someone to stay and re-direct latecomers to the new room), or adjourn the meeting to a later date at a larger venue (requires new 48-hour notice posting). Consider room arrangement when using visual aids, assuring that slides, maps, plans, etc. are visible to both board members and members of the public sitting in the audience. Use an amplification system if the audience is large.
- Nameplates should be used and displayed at all times, to assure that members of the public (viewing either in person or via CCTV) are able to identify the participants.
- Meeting Information Packets Background information for the agenda, including draft committee minutes, should be distributed to committee members in advance of the meeting. This is particularly important for lengthy or important documents, which require time to read and think about in advance. All members should come to the meeting prepared to participate.
- Role of the Chair The Chair of the meeting should make all participants feel welcomed, acknowledging the value of everyone's time and effort. Start on time and be mindful of the agenda. Encourage questions or input with openness, but with an eye on the task at hand. Limit interruptions by asking that cell phones be silenced. Prohibit multiple simultaneous conversations or side discussions during the meeting. The Chair should facilitate a meeting, not dictate the outcome. Focus the discussion on one topic or problem at a time. If an item appears to be unsolvable at the time or requires more consideration or information, be willing to set it aside and bring it up again at a future meeting, allowing time before the next meeting for members to think about the issue and/or to redraft a proposal to bring back to the committee for a more focused discussion.

There should be an opportunity for minority opinions to be heard and recognized—differences of opinions serve to enrich the decision-making process. Remember that this is a team effort, so the Chair should foster an environment that is collaborative, actively seeking input from all participants. If the Chair is not present, another member of the Committee should assume the role of facilitating the meeting. Staff members should serve in an advisory capacity at the meeting, and should not run the meeting.

- Parliamentary Procedure While Concord uses Town Meeting Time as its parliamentary procedure for Town Meetings, there has been no such formal adoption of a procedure for committee and board meetings. Although not required, recent practice has been to use The

New Robert's Rules of Order as the parliamentary procedure for Concord's boards and committees, since most people are familiar with these rules and they are readily understood. Questions about quorum requirements or parliamentary procedures should be addressed either to the appointing authority or to the Town Clerk.

- Public Participation With the exception of executive sessions, all committee meetings are by law open to the public, including the press. Committees are expected to operate within both the letter and spirit of the law in this regard. Discussions should be audible to the public. An individual may not address the public body without permission of the chair. Although public participation is within the chair's discretion, the Attorney General, Concord Select Board, and Concord's Town Manager encourage public bodies to allow as much public participation as time permits. Except in unusual situations, agendas should include a specific opportunity for citizens to comment on matters discussed during the meeting. Background material for agenda items should be made available to the public in advance or at the meeting, whenever feasible. This is particularly urged when documents are an integral part of the discussion of an agenda item.
- Meeting Follow Up At the end of the meeting, the Chair should review the follow up items and identify the individual(s) responsible, reaching consensus of the next steps. These should also be delineated in the meeting minutes.

Documents consulted in the drafting of these meeting tips:

- Current Concord Committee Handbook (Revised 12.2012)
- Select Board's Guidelines for Proper Conduct of Public Meetings (2.23.2015)
- "Managing Meetings," from Planning Basics, August 2004

HANDOUTS FOR MODULE 3

HOW TO CONDUCT AN EFFECTIVE PUBLIC HEARING

- How to Conduct a Public Hearing

How to Conduct a Public Hearingⁱ

What is a Public Hearing?

A public hearing is an official proceeding of a governmental body or officer, during which the public is accorded the right to be heard. Any hearing held by a public body constitutes “conducting public business” within the meaning of the Open Meeting Law (OML), and therefore a quorum of the public body must be present and must comply with the requirements of the OML. Where a public hearing is required by law, the particular statute governing the subject matter usually sets forth the applicable procedural requirements relating to public hearings held with regard to the subject matter (including advertising and notice requirements).

Function of a Public Hearing:

1. to collect information for the board in order to make a sound decision/recommendation;
2. to provide a process that meets the test of “due process” for any party whose rights will be materially affected by the decision.
3. to promote the perception of fairness so as to garner respect for the decision and for the rule of law; and
4. to make a record for the decision and any legal review or appeal.

Difference between a public meeting & a public hearing

At a public meeting, the public is entitled to be present and listen to the proceedings of an open sessionⁱⁱ, but is not by right entitled to speak or participate in the meeting, except with permission of the Chair. At a public hearing, the public has a right to “be heard,” particularly about matters that will materially affect them (property rights, financial impact, etc.).

Role of the Chair

The Chair is responsible for the pace and conduct of the meeting, setting and enforcing time limits on speakers, limiting and cutting off comments that are tangential to the purpose of the hearing, and keeping committee members, presenters and the public focused on the issues to be decided. The Chair should explain the purpose of the hearing and how the information collected at the hearing will be used in reaching a decision. The Chair should designate a contact person (perhaps a staff member) for the collection of further information about the public hearing, providing the public with a place to go to read through the material that will be presented at the hearing.

Role of Committee Members

Members are responsible for listening to all sides of the proceedings, and offering support to the Chair when necessary. Members can also be supportive by observing the hearing procedures and rules, being well-prepared, asking relevant questions, and deliberating respectfully so that the committee reaches an informed decision.

Hearing Procedures

The hearing should be called to order and opened at the designated time. Committee members should be introduced to the public. An opening statement or presentation should be made by or on behalf of the board, stating what the board hopes to gain from listening to the public and what the next step in the process will be. The Chair should note proper publication of the legal notice of the hearing, which should be entered into the record. The Chair should state the rules of procedure to be followed by the board at the hearing. The rules should include reference to, and the rationale behind, the order in which witnesses or those wishing to testify will be called. Such explanation will help the public to understand and accept the procedure.

Some public hearings require those giving testimony to be sworn in, and this should be done at the beginning of the hearing. At a minimum, anyone who speaks during the hearing should be identified, stating name and address, which should be incorporated into the hearing record and minutes.

Witnesses should be advised to direct their presentation to the board, and not the public. The board members may want to ask questions of witnesses in order to clarify facts and opinions presented in their testimony. Questions from the public should be directed to the Chair, and not to the witnesses, which avoids turning the hearing into an open debate. If the board receives any written testimony prior to or during the hearing, the Chair should not such receipt, which should be entered into the record and be included in the "list of documents" consulted during the public hearing.

A public hearing is concluded when all attendees desiring to speak have been heard (please note time limits below). The Chair should remind those wishing to speak that they should do so only if they have something new to add to the proceedings that has not already been stated. If more people wish to be heard than time allows, the board may consider continuing the hearing to a future date. When the oral portion of the hearing is completed, the hearing may be closed. Although a formal vote is not required, it is advised that a vote be taken so that the public knows that the hearing is closed. The board can decide if it wishes to "hold the record open" for a set period of time to accept any additional written comments documents. This may be appropriate to allow people to respond to the oral testimony. Once the hearing is closed, no additional oral comments should be accepted unless the board is willing to re-open the hearing.

Time Limits

It is recommended that the Chair impose some limits on the time to be taken by the applicant/presenter and other speakers. The "perception of fairness" purpose of a public hearing should be balanced with the need to keep the hearing going at a reasonably quick pace. It's easier if the time limits are decided, communicated, and enforced consistently.

ⁱ Portions excerpted from "How to Conduct an Error-Free Municipal Hearing," by George A. Hall, Jr., Anderson & Kreiger, LLP (Town Counsel) – 2009; and from "Conducting Public Meetings and Public Hearings" prepared as part of the James A. Coon Local Government Technical Series for the New York State Dept. of State, 2008 (Reprinted 2012)

ⁱⁱ Does not apply to an executive session