

# TOWN OF CONCORD



# Committee Handbook

Revised October 2025

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TOWN OF CONCORD  
TOWN CLERK'S OFFICE

Tel: (978) 318-3080

Fax: (978) 318-3093

## MEMORANDUM

**TO:** Board and Committee Members

**FROM:** Town Clerk's Office

**RE:** Board & Committee requirements upon election or appointment into office

Once you have been sworn into office for your elected or appointed position, there are a few more essential actions that you need to complete in order to be in compliance with state laws. They are described below.

### 1. Legal Summaries

- We are required to provide you with summaries of the Open Meeting and Conflict of Interest Laws. You will find them in the Committee Handbook along with a stapled packet of updates to the Open Meeting Law.

### 2. Required Acknowledgments

- You must sign and return two acknowledgments within 30 days of your appointment date
  - i. Certificate of Receipt of Open Meeting Law materials (attached to the back of the stapled packet)
  - ii. Acknowledgment of Receipt of the Conflict of Interest Law Summary. (attached to the back of the Committee Handbook)

### 3. Online Training Certificate – every two years

- You must complete an online conflict of interest training every two years
- Online ethics training information is available through the Ethics Commission's website at <https://www.mass.gov/online-conflict-of-interest-training>.

Please return the two acknowledgment documents and certificate of training to the Town Clerk's Office at your earliest convenience.

Additional resources are available at <http://concordma.gov/1893/Committee-Resources>.

Thank you for your commitment to serving the Town of Concord!



# CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

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

\_\_\_\_\_, on \_\_\_\_\_, certify pursuant  
(Public Body) (Date)

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

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

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Public Body)

\_\_\_\_\_  
(Date)

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



**ACKNOWLEDGEMENT OF RECEIPT**  
**Summary of The Conflict-of-Interest Law for**  
**Municipal & School Employees**

I hereby acknowledge receipt of the Summary of the Conflict-of-Interest Law for Municipal Employees, Mass. General Laws Chapter 268A, as prepared by the State Ethics Commission, revised May 10, 2013.

NAME (please print) \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DEPARTMENT/BOARD/COMMITTEE/POSITION \_\_\_\_\_

\_\_\_\_\_

DATE \_\_\_\_\_ Town  School

**ONLINE TRAINING**

In addition to the above certificate, all Municipal Employees must complete an online training course every two years and forward the certificate of completion to the Town Clerk's Office via mail or electronically.



# Committee Administration

## A. Powers and Duties

While all boards and committees appointed by the Moderator, the Select Board, or Town Manager are an essential part of our Town government, the responsibility and authority of some are governed by statute, in addition to the committee charge. It is in the overall best interest of the Town for each such board or committee to function in a manner which is consistent with general policies coordinated or promulgated by the Select Board and the Town Manager.

Other committees serve as advisors to the Town in the performance of their duties to the public and have powers and duties as delegated to them in their individual charges. Such committees shall represent the Town in dealing with regional and State planning agencies to the extent requested by the appointing authority. When doing so, they should take positions which have been endorsed by the Town and they should keep Town officials fully informed concerning all such liaison activities.

## B. Committee Charge

All committee members need to review and understand the committee charge and the purpose of their work.

## C. Participation in Town Government

Effective Town government requires strong and informed citizen participation. The work of every board or committee is intertwined with that of others. To foster informed decision making, the Select Board believes it appropriate that every committee have as full representation as possible of its membership at the following regular governmental functions:

- Coordination meetings to discuss items to be included on the Town Meeting Warrant
- Finance Committee hearings on budget-related warrant articles
- Planning Board hearings on zoning-related warrant articles
- Select Board hearings on all other warrant articles
- Town Meeting

The objective is not to enforce uniformity or adherence to a majority view, but to assure understanding of all issues relating to the work of the committee on which an individual serves and of Town government in general. Broad participation is essential to the maintenance of an open town meeting, which otherwise could be dominated by those having only a limited range of special interests.

Committees that plan to submit a warrant article for Town Meetings should be prepared to discuss it at the Coordination Meeting in December. Draft warrant articles are due soon after the Coordination Meeting during the time the Warrant is open as established by the Select Board. Visit the Town Meeting webpage for annual town meeting timelines that are normally set by the Select Board in September.

All committees are required to write an annual report for use in the Annual Town Report. These are due in early January. Guidelines are provided by the Town Manager's Office.

#### **D. Officers of Committees**

Each committee should annually elect from among its members a chair and a clerk. Certain committees may also find it desirable to elect a Vice-Chair who can act in the absence of the Chair. In the case of new committees, or committees that have become inactive, The Select Board or Town Manager may appoint a Chair pro-tem to serve until the committee itself elects the Chair for the balance of the current year.

Except in unusual circumstances, the Chair and the Clerk positions should rotate yearly among the committee membership. Annually, when the new Chair has been elected, a committee member should notify the appointing authority and the Town Clerk's Office of the new Chair.

The committee Chair or a designee should plan on attending the monthly chair breakfast. This meeting is held to update the chairs of other committees on the activities of their committee.

New committee chairs are encouraged to reach out to their Select Board liaisons and the Town Clerk's Office for guidance on responsibilities of the Chair and how to run a meeting.

#### **E. Requirements upon Appointment and Reappointment**

Maintain compliance with state requirements - before a member can take part in a meeting or vote on committee business, they must have:

- Been sworn in (at appointment AND at re-appointment)
- Signed an acknowledgment of the Conflict-of-Interest Law (renewed annually)
- Signed an acknowledgment of the Open Meeting Law (submitted at appointment and at reappointment)
- Completed the mandatory online ethics training. (every 2 years)

Follow the requirements of the Conflict-of-Interest and Open Meeting laws to ensure transparency and record and preserve all committee records and communications.

#### **F. Recruiting New Members**

Coordinate with the Department Head and/or the appointing authority for appointment of new members. Remain aware of term ending dates for members and be ready to put nominations forward when terms end - after Annual Town Meeting for most. Please see APP #10 for more information (page 21).

#### **G. Resignations**

Advise the Town Clerk's Office, the appointing authority, and the associated Department Head (when assigned) of resignations and vacancies. Members resigning should be asked to send notice of their resignation to the committee chair and the Town Clerk's office.

#### **H. Dissolution of Committee**

Upon the dissolution of any committee, either by action of the appointing authority or pursuant to an expiration date provided in the committee charge, all records, documents, correspondence, and files concerning the committee's work will be promptly turned over to the Municipal Archivist / Records Manager according to the Records Management Guidelines section of the Committee Handbook.

## I. Committee Meetings

A meeting of a committee occurs any time a quorum of 51% of the members of committee (or a subcommittee) get together to discuss or consider any public business or policy over which the committee has some jurisdiction or advisory authority. Meetings must be held in accordance with the Open Meeting Law. The Select Board urges committees to meet in a Town building. A regular meeting time and location should be established. While the frequency of the meetings will depend on the nature and workload of the committee, most committees will meet at least once a month.

With the exception of executive sessions, all committee meetings, by law, are open to the public, including the press, and may be recorded when announced as such. Committees are expected to operate within both the letter and spirit of the law in this regard (e.g., public discussions should be audible, and handouts made available whenever possible and feasible if they are integral to the discussion). The conditions under which a committee can go into executive session are explained in the Open Meeting Law (see the checklist on page 107).

## J. Timing of Agenda Postings

When posting meetings, remember that:

- **48 hours prior to the start of the meeting is the online posting deadline.**
- The committee has to get the agenda to the Town Clerk's Office at least 4 hours before that to ensure timely posting.
- Agendas received after 4:30pm may not get posted until the next business day.
- If you are cutting it close to the 48-hour deadline, call the office at 978-318-3080 to alert us.

Agenda posting deadline	To have your meeting on:
Monday	Wednesday
Tuesday	Thursday
Wednesday	Friday
Thursday	Monday of the following week Tuesday if Monday is a holiday
Friday	Tuesday of the following week Wednesday if Monday is a holiday

**Send agendas  
& minutes to:  
meetings@concordma.gov**

## K. Minutes

All boards and committees must keep minutes of their proceedings, including subcommittees and task force committees, according to Open Meeting Law. In addition to minutes, documents, and other exhibits, such as photographs, records or maps used by the body at an open or executive session are, along with the minutes, part of the official record of the session. For more guidance, please refer to the Public Body Checklist on page 109 for Creating and

Approving Meeting Minutes issued by the Division of Open Government located in this handbook and page 15 for best practices.

### **L. Goals**

It is recommended that in May or June, committees should develop a plan of action which maps out how the committee meets its deadlines and how to accomplish its goals as stated in its committee charge.

### **M. References**

The Concord Free Public Library contains two books that describe parliamentary and committee procedures in detail:

- *Sturgis Standard Code of Parliamentary Procedure* by Alice Sturgis
- *Roberts Rules of Order* by Sarah Roberts.

Committees are encouraged to consult these books if they have any procedural problems that cannot be resolved by other means.

## WHAT'S SUBJECT TO THE OPEN MEETING LAW?

The focus of the Open Meeting Law (OML) is to ensure governmental transparency. All deliberations by a public body must be made within a public meeting, and a record must be maintained for access by the public. Executive sessions, closed to the public, are limited and must fit specific conditions.

### WHAT COUNTS AS DELIBERATION?

A deliberation is any oral or written communication through any medium between a quorum of a public body on any public business within its jurisdiction.

### ARE ANY COMMUNICATIONS EXCLUDED FROM THIS DEFINITION?

Communications to distribute the meeting agenda, scheduling information, or procedural information do not count as deliberations.

Reports or documents intended to be discussed at an open meeting are permitted provided no opinion of a member is expressed (any edits to that document are considered an opinion and are not permitted outside of an open meeting.)

Communications between a sub-quorum are permitted as long as that sub-quorum is not a subcommittee (a multi-member group created by formal action of a public body tasked with committee business) and as long as there is no serial communication.

\*Remember: emails, texts, and documents received for the committee or created by the committee are a public record and are subject to public records requests. Committee records are historical documents and belong to the Town of Concord.

### DIVISION OF OPEN GOVERNMENT

[openmeeting@state.ma.us](mailto:openmeeting@state.ma.us)

617 963 2540

[www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting)

### ETHICS COMMISSION

800 485 4766

617 371 9500

[www.mass.gov/ethics](http://www.mass.gov/ethics)

## COMMITTEE CHAIRS & CLERKS

Town committees are required to elect a committee chair and a clerk each year.

### CHAIR:

Sets agenda

Runs meeting

Ensures quorum (a sub-quorum is not a public body and is not subject to Open Meeting Law)

Permits and manages public comment at meetings. Members of the public may address a meeting with permission of the chair. The chair is not required to respond to this public comment beyond acknowledging it.

### CLERK:

Takes notes and creates minutes.

Takes roll call votes for executive sessions and for remote meetings.

Clerk's notes are public records until minutes are created. Minutes must be created and submitted to the Town Clerk within 30 days or three meetings of the public body, whichever is longer. Draft minutes must be released to public records requests until the minutes are approved by the public body. Draft minutes should be marked as draft if released before the minutes are approved.

## BEST PRACTICES WHEN CREATING AN AGENDA

### General and ADA Formatting:

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Leave a 1.5-inch margin at the top of the first page.

Use a 14-point font and no less than a 12-point font size.

Copy should be left-aligned, not centered or right-justified.

Do not use hyphens at the ends of lines.

Use a plain serif or sans serif font. Avoid bold, italic, or underlined formatting.

Good accessible fonts include:

- Times New Roman
- Verdana
- Helvetica
- Tahoma
- Arial
- Georgia

Line spacing must be at least 25% of the font size. Set line space to multiple, then specify 1.5 lines.

### Elements to Include:

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Name of Committee

Date

Time

If in-person, location including street address and meeting room information if any.

If online access offered: Zoom Link, Meeting ID, Passcode, Dial-in Information

Include a clear document title "Agenda"

List business items with enough detail that someone can understand what will be discussed. Topics such as 'old business' are not sufficient unless bulleted items with detail are listed below it.

The agenda must include a list of topics that the Committee Chair can reasonably expect to be discussed at the meeting 48 hours in advance of it. Revised agendas may be posted within the 48-hour posting period.

Agendas should include a standard ADA paragraph as follows:

“The Town of Concord endeavors to make public meetings accessible to all members of the community. To request a meeting accommodation or modification, please contact our ADA Coordinator Megan Zammuto, [mzammuto@concordma.gov](mailto:mzammuto@concordma.gov) or 978-318-3006. Please make any requests for accommodation or modifications with as much notification as possible, preferably at least two (2) business days prior to the scheduled meeting.”

### **Submitting Agendas**

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Meetings must be posted 48 hours prior to the start of the meeting, not counting holidays or weekends. It takes time to post meetings. Please provide at least a 3-hour buffer or plan to call the office to avoid having to reschedule the meeting.

The document should be saved as a PDF with the following file name format:

YYYYMMDD\_Agenda\_Committee\_Name

(ex: 20230712\_Agenda\_Climate\_Action\_Committee)

and sent to [meetings@concordma.gov](mailto:meetings@concordma.gov) with Agenda and Committee Name in the subject line.

## BEST PRACTICES WHEN CREATING MINUTES

### General and ADA Formatting:

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Leave a 1.5-inch margin at the top of the first page.

Use a 14-point font and no less than a 12-point font size.

Copy should be left-aligned, not centered or right-justified.

Do not use hyphens at the ends of lines.

Use a plain serif or sans serif font. Avoid bold, italic, or underlined formatting.

Good accessible fonts include:

- Times New Roman
- Verdana
- Helvetica
- Tahoma
- Arial
- Georgia

Line spacing must be at least 25% of the font size. Set line space to multiple, then specify 1.5 lines.

### Elements to Include:

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- Name of Committee
- Clearly Titled “Minutes”
- Date, Time, and Place
- Names of members present
- Names of members absent
- May include names of others present
- Names of members who participated remotely. \*If any members were remote, all votes must be recorded as roll call votes.
- An accurate summary of the discussion of each subject
- Exact wording of all motions including who made and who seconded the motion
- A record of all decisions made and actions taken, including a record of the members’ votes including abstentions
- A list of all documents and other exhibits used during the meeting. These documents and exhibits are part of the official record but do not need to be physically attached to the minutes. (See Note Following)\*

## Notes on Minutes:

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Minutes should closely follow the list of items on the agenda.

The minutes should not be a verbatim transcript. There should be enough detail so that a person who did not attend the meeting could read the minutes and understand what happened at the meeting and how the public body arrived at its decisions.

Draft minutes are a public record and must be made available if requested. The word “draft” may be stamped or written on unapproved minutes.

\*Supporting documents and materials do not need to be filed with the minutes, but they do need to be kept by the committee’s records custodian (Department Head when possible, or Appointing Authority, etc.) for one year and then according to the Secretary of State’s records retention schedule after that.

Minutes of Executive Sessions must be reviewed and released regularly and promptly. Executive session minutes must be released to the public as soon as the stated purpose for the executive session protection has ceased.

## Submitting Minutes

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From the Town of Concord APP #10:

“Each committee shall establish its own procedures for approval and submission of minutes to the Town House on a timely basis. Committees are strongly urged to prepare, review, and approve minutes as expeditiously as possible in order to maximize the public’s access to information concerning committee activity. In most instances, committee minutes should be reviewed and approved within six weeks of the original meeting date. All committees shall submit electronically a copy of approved minutes to the Town Clerk and to the Select Board immediately upon approval.”

According to open meeting law, minutes should be approved in a timely manner – considered to be within the next three public meetings or within 30 days, whichever is later.

The document should be saved as a PDF with the following file name format:

YYYYMMDD\_Minutes\_Committee\_Name

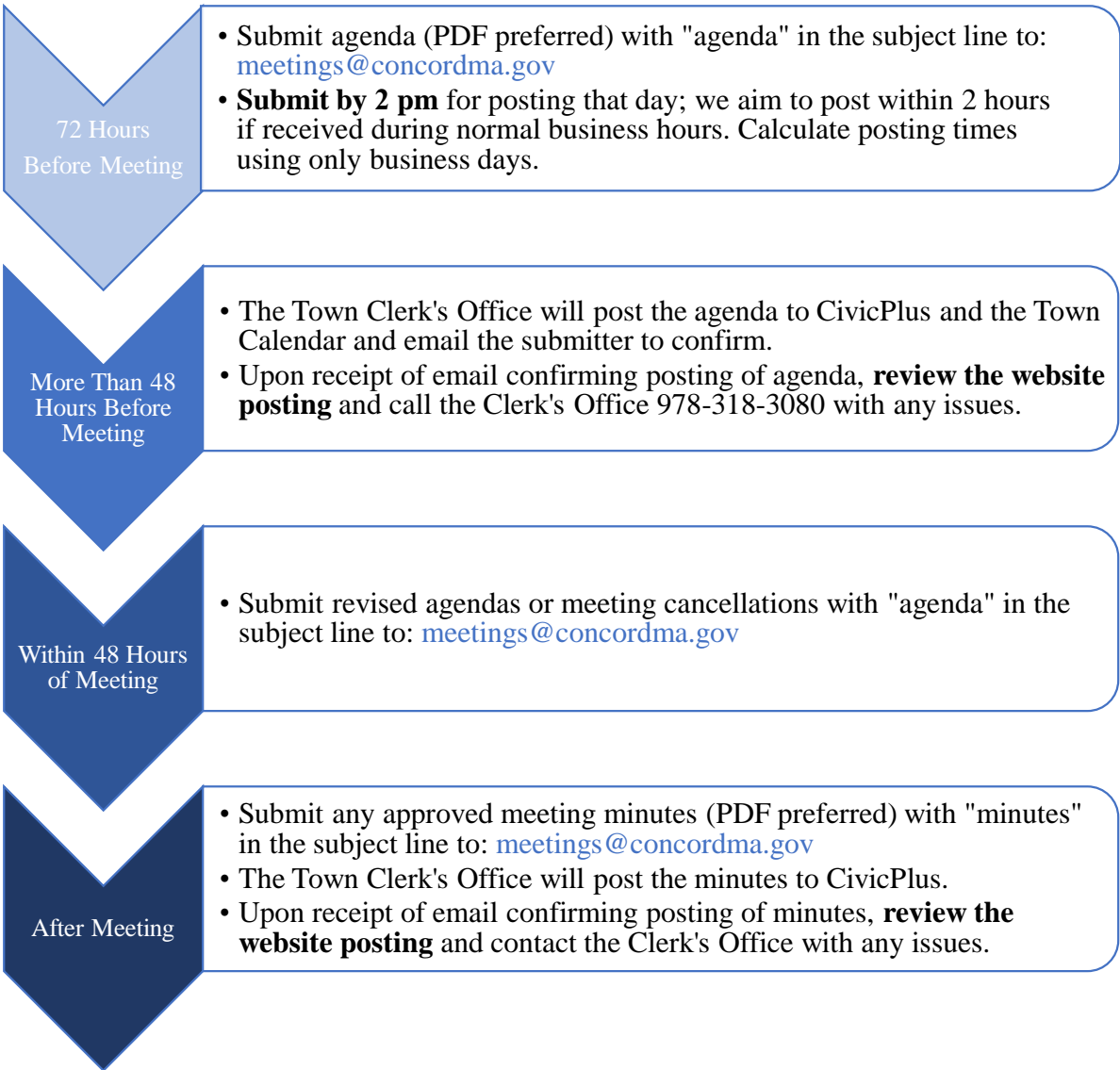
(ex: 20230712\_Minutes\_Climate\_Action\_Committee)

and sent to [meetings@concordma.gov](mailto:meetings@concordma.gov) with Minutes and Committee Name in the subject line.

All submissions of minutes to the [meetings@concordma.gov](mailto:meetings@concordma.gov) mailbox will receive a confirmation of posting in reply. You should always check for that confirmation and review the link included to be sure your document appears as it should.

It is not required to send a hard copy of signed minutes to the Town Clerk if the minutes have been submitted electronically to the [meetings@concordma.gov](mailto:meetings@concordma.gov) mailbox.





**Preferred File Formats and Naming**

When possible, please submit all agendas and minutes in the following format: **YYYYMMDD\_DocType\_Entity.pdf**

Examples: **20211213\_Agenda\_Select Board** OR **20211213\_Minutes\_Select Board**

If sending multiple attachments to an agenda or minutes, please combine them into a single PDF, if possible.



Adopted: 02/27/1979  
Revised: 01/12/1998  
Revised: 06/18/2012  
Revised: 10/21/2019  
Revised: 11/18/2019  
Revised: 04/09/2020  
Revised: 11/22/2021  
Revised: 08/22/2025

## TOWN OF CONCORD APP #10

Town Board, Committee, and Task Force  
Appointment Policy

The Select Board, Town Manager and Town Moderator (“Appointing Authority” or “Appointing Authorities”) have jointly adopted this policy concerning the appointment of members to Town boards, committees, and task forces. Please refer to this policy when considering or suggesting an individual for appointment to a Town board, committee, or task force.

Distribution: All Department Heads  
All Committee, Board, and Task Force Chairs  
Town Clerk

## **I. GENERAL**

This policy has been jointly adopted by the Appointing Authorities, and is intended to cover appointments to all committees, boards, commissions, and task forces (each, a "Committee"). With the exception of the Town Manager, this policy does not apply to Town employees.

## **II. POWERS AND DUTIES**

Effective local government requires that all Committees respect the duties and responsibilities of other Committees and coordinate their activities to the greatest extent possible. It is in the overall best interest of the Town that each Committee carries out its responsibilities in a consistent and professional manner that is in harmony with the general policies promulgated by the Select Board.

The powers and duties of some Committees appointed by the Appointing Authorities are governed by State statute. These include: the Board of Appeals, Planning Board, Historic Districts Commission, Board of Health, Natural Resources Commission, and others. Once appointed by an Appointing Authority, these Committees operate with a high degree of autonomy. However, it is in the best interests of the Town that these Committees be guided by the general policies promulgated by the Select Board to the extent possible.

Other Committees appointed by an Appointing Authority serve as, among other things, advisors to the Select Board or Town Manager in the performance of their respective duties to the public. These Committees have the powers and duties delegated to them in their specific charges. Committees may be called upon to represent the Town in dealing with other local, regional, or State agencies to the extent requested by their Appointing Authority. When doing so, they shall take positions on all issues consistent with the views of the Select Board and Town Manager, and they shall keep their Appointing Authority fully informed concerning their activities.

## **III. OFFICERS OF COMMITTEES, BOARDS, AND TASK FORCES**

Each Committee shall annually elect from among its members a Chair and a Clerk. Certain Committees may also find it desirable to elect Co-Chairs or a Vice-Chair who may act in the absence of the Chair. In the case of new Committees, or Committees that have become inactive, the Appointing Authority may appoint a chair pro-tem to serve until the Committee itself elects a Chair for the balance of the current year.

Except in unusual circumstances, the chairmanship and the clerkship should rotate yearly amongst the Committee membership.

#### **IV. OPEN MEETING LAW AND MINUTES**

All committees shall operate in accordance with the Open Meeting Law (MGL Ch 39 §23a-c) and shall keep minutes of their proceedings. Each Committee shall establish its own procedures for approval and submission of minutes to the Town House on a timely basis. Committees are strongly urged to prepare, review, and approve minutes as expeditiously as possible to maximize the public's access to information concerning Committee activity. In most instances, committee minutes should be reviewed and approved within six weeks of the original meeting date. All Committees shall submit electronically a copy of approved minutes to the Town Clerk immediately upon approval.

Committees are reminded that "draft" copies of the Committee's minutes are considered a public record and must be made available to the public upon request, even when the Committee has not yet had the opportunity to review and adopt the minutes.

Upon the dissolution of any Committee, either by action of the Appointing Authority, or pursuant to an expiration date provided in the Committee's charge, all records, documents, correspondence, and files concerning the Committee's work shall be promptly turned over to the Town Clerk for appropriate filing and archival storage.

#### **V. PARTICIPATION IN TOWN GOVERNMENT**

Effective Town government requires active and informed citizen participation. The work of every Committee is inter-dependent with that of others. To foster informed decision making in the Town, the Appointing Authorities believe it appropriate that every Committee have representation of its membership at relevant Town government functions, for example:

- Chair's Breakfast
- Finance Committee budget hearings
- Hearings on Town Meeting warrant articles
- Town Meeting

The objective is not to enforce uniformity or adherence to a majority view, but to assure understanding of all issues relating to the work of the Committee on which an individual serves and an understanding of Town government in general.

#### **VI. CONFLICT OF INTEREST**

All Committee members are subject to the requirements of Massachusetts General Laws, Chapter 268A, Conduct of Public Employees. The statute covers:

- (a) Gifts or receipt of compensation or gratuities from anyone other than the Town
- (b) Offers of promises to influence official acts

- (c) Financial interest in contracts or other particular matters
- (d) Acting as agent or attorney before a Town Committee
- (e) Unfair advantage in relation to a particular matter

If a Prospective Committee member has any question concerning a potential conflict of interest under MGL Ch. 268A, the member shall raise the question in advance of appointment. Those members currently serving should discuss questions of conflict with the Committee chair and the Appointing Authority as soon as possible. The State Ethics Commission is a useful resource for information concerning the application of the law, and Committee members are expected to follow guidance provided by the State Ethics Commission. Subject to review by the State Ethics Commission, the Appointing Authority will make the final determination concerning conflict of interest, with the assistance of Town Counsel as appropriate.

In Addition, all Committee members must avoid the appearance of conflict of interest in all matters coming before the Committee. Committee members shall seek guidance from the State Ethics Commission as appropriate, and file with their Committee chair and the Appointing Authority written notice of facts potentially creating the appearance of a conflict of interest as required.

## **VII. FORMATION OF A NEW COMMITTEE AND DISSOLUTION OF AN EXISTING COMMITTEE**

For a new Committee to be formed, it requires sponsorship from a Select Board member and a majority vote of the Select Board. There should be a public announcement and solicitation of volunteers to serve on the new Committee. A list of all interested volunteers should be compiled and discussed, with clear agreement from the Select Board as to how candidates will be vetted, followed by a vote on new Committee membership.

Select Board members and Chairs of existing Committees can propose dissolution of an existing Committee based on fulfillment of Committee charge or if work is no longer necessary. Such dissolution requires a majority vote of the Select board.

## **VIII. APPOINTMENT POLICY AND PROCEDURES**

### **(a) General**

It is the policy of the Appointing Authorities to seek the best qualified persons to serve on each Committee. Each Appointing Authority will endeavor to develop a pool of persons interested in serving on each such Committee from at least the following sources:

1. Volunteer cards on file
2. Personal knowledge
3. Recommendations from Town organizations or individuals

4. Suggestions from the Committee having a vacancy
5. Suggestion by prospective appointee(s)
6. Research of skills available in Town
7. Individual responses to publicity regarding vacancies (new volunteer cards)

It is the policy of the Appointing Authorities to enlarge the general pool of applicants through active solicitation of Town organization and through periodic public notification and events. The timing and extent of specific active solicitations shall be determined by the Appointing Authority based on its judgment as to appropriateness and need.

Regardless of how a candidate is initially identified, in order to be considered for placement onto a Committee, it is required that a volunteer card be completed and submitted to the Town. This can be done in person at the Town Clerk's Office or filled out online within the Volunteer section of the concordma.gov website.

The Town Clerk's office shall maintain an electronic list of people who have submitted volunteer cards, noting the date of their submission and particular Committees of interest. When an opening for a Committee position occurs or is anticipated, every effort should be made by the Town, the Committee and/or the Select board liaison to contact the volunteers who have listed that Committee as one of high interest.

In accordance with the vote on Article 47 of the 1978 Annual Town Meeting, each Appointing Authority shall make a special effort to seek out roughly equal numbers of women and men as candidates for appointment over which they have authority, and will make all possible efforts to seek out candidates of diverse cultural, religious, socio-economic, national, racial, and ethnic backgrounds, in addition to individuals with diverse sexual orientation, income, and ability/disability. The Appointing Authority shall make appointments in accordance with the Massachusetts Equal rights Amendment which states, in part, that "Equality under the law shall not be denied or abridged because of sex, race, color, creed, sexual orientation or national origin."

#### Term of Office

1. Unless otherwise prescribed by statute, Town Meeting vote, or specific Committee charge, three years shall be the standard term of office for Committee members.
2. Except as provided in section VIII(b) below, those appointed to a three-year term as a full member of a Committee shall be limited to two (2) full, consecutive terms.
3. Except as provided in section VIII(b) below, those appointed to a full-member Committee term of five (5) years or longer shall be limited to one (1) full term.

4. A partial term to fill a vacancy shall not be considered to be a full term.
5. Before reappointment to a second term, the individual contribution of the member's value to the Committee and his or her attendance record shall be reviewed by the Committee chair. Attendance of less than 75% of all Committee meetings shall prejudice reappointment.
6. All terms, unless prescribed by statute, shall terminate at the end of the months following Town Meeting, or May 31<sup>st</sup> whichever is earlier.
7. The terms of office on Committees shall be set on a staggered basis in the interest of fostering continuity of knowledge and experience on all Committees. The Appointing Authority shall determine the year in which a given term expires at the time of appointment.

Exception: *Ad hoc* committees appointed for a specific responsibility, at which time the charge to the Committee should include a specific time frame for submission of the Committee's final report and dissolution of the Committee.

8. With the consent of the Committee Chair, a committee member may take a leave of absence from Committee meetings and responsibilities not to exceed 90 days. For an absence longer than 90 days, the Committee member should resign and otherwise face removal under section VIII(l) below.
9. Each Committee member shall hold office until his or her successor has been appointed and qualifies, unless his or her office shall become vacant by reason of resignation or removal.

In the event of a declared emergency and if the Moderator reschedules Town Meeting after May 31, all appointed members of a committee whose terms would otherwise expire, shall remain in office until the close of the rescheduled Town Meeting.

#### **(b) Appointments for Additional Terms**

Members who have served a three-year term on the Records & Archives may be re-appointed to additional terms indefinitely. For other Committees, the Appointing Authority may reappoint a Committee member to serve one or more terms on the Committee beyond what is permitted under section VIII(a) above where one or more of the following pertains:

1. Through service on the Committee, the member has developed extensive and valuable background knowledge and experience concerning specific matters before the Committee that are expected to be ongoing Committee

matters in the future and which will be difficult adequately to pass on to new members.

2. A Committee member has skills and expertise, (such as an uncommon, advanced degree in a field directly relevant to the Committee's charge) that make the member's continued service on the Committee of special value to the Town.

3. The departure of the member from the Committee will result in an absence of important institutional knowledge or know-how regarding the ongoing activities of the Committee that will not be furnished by other Committee members, such as where all members of the Committee would be new appointees if the member in question is not reappointed.

It is intended that re-appointments under this section VIII(b) shall be rare, particularly if there are other available qualified volunteers and/or if the member is serving on another Committee per the section (c) exemption below. In each such re-appointment case, the re-appointment shall specifically reference this section of this Appointment Policy.

#### **(c) Dual Committee Appointments**

In general, individuals shall be limited to service on only one Committee at a time, especially in the case of a statutory or regulatory Committee and in cases where there are available qualified volunteers who are not currently serving on a Committee. However, the Appointing Authority may make exceptions for one of the following reasons (which will be documented during the nomination process):

1. By law or specific Committee charge, a Committee member serves as a representative on another Committee (e.g., the Board of Health representative on the Council of Aging), or serves on a joint Committee formed by other Committees.
2. The individual brings unique skills and/or experience not readily available from other volunteers or other public recruitment efforts.

Notwithstanding these exceptions, no individual shall sit on more than three Committees or subcommittees at any point in time.

#### **(d) Committee Transfers**

In general, a member of one Committee shall only be considered for appointment to another Committee upon completion of the current Committee term of service.

### **(e) Eligibility for Appointment**

All residents of the Town of Concord aged 18 and over are eligible for appointment, except the following:

1. Town employees whose service on a given Committee, in the judgment of the Appointing Authority, would create the appearance of a conflict of interest. Example: an employee of the Public Works Department should not be appointed to the Public Works Commission, but may, however, be appointed to the Council on Aging, Recreation Commission, or other Committee where appointment would not create an appearance of conflict.

2. The Town Manager, Concord Public School and CCRHS Administrators, and Town department heads (these individuals exert a significant influence over public policy by virtue of their positions but may be eligible for ad hoc Committees where such representation is required by the charge). Additionally, municipal officials may serve on a committee where their office is specified as a member by the Committee charge.

3. Elected Municipal Officials (Select Board, School Committee members, Town Moderator, Housing Authority Commissioners), except that elected officials may serve on temporary ad hoc Committees, working groups, or task forces, or where there is a statutory requirement.

Relatives, spouses, or business associates of existing Committee members whose appointment, in the judgment of the Appointing Authority, would create the appearance of a concentration of power or viewpoint or a conflict of interest.

### **(f) Criteria for Selection**

Actual appointments from the pool of applicants shall be made by the Appointing Authority on the basis of:

1. The level of applicant's interest in serving and interest in the work of the Committee.
2. The need for diversity on the Committee, taking into account the educational and professional background of the applicant, as well as the need for diversity among all committee members in terms of neighborhood representation, gender, age, and other demographic characteristics.
3. Special skills needed by a particular Committee. Each Committee's charge should identify relevant members skills, background, and/or experience required to support their work.

### **(g) Residency**

In most instances, committee members should be residents of the Town of Concord. There may be occasional exceptions when an individual's unique skill or experience supports the appointment of a non-resident and would be beneficial to the Committee's work. Non-residents shall not be eligible for appointment to any Committee responsible for exercising statutory or regulatory authority.

In the event a Committee member becomes a resident of another community, the member or the Committee chair shall promptly notify the Appointing Authority. The Appointing Authority may, upon the request of the committee chair, permit the non-resident member to continue to serve until the subsequent May 31, except in the case of statutory and regulatory Committees.

### **(h) Role of Committee in Appointments**

Each Committee is expected to:

1. Encourage individuals to complete volunteer cards
2. State the qualifications they are looking for in appointments
3. Through the Committee Chair, make suggestions to the Appointing Authority on potential members

Committees may invite prospective members to attend meetings to familiarize themselves with the work of the Committee. Committees shall not make any representation to candidates concerning the likelihood of appointment, nor take any vote with respect to candidates.

### **(i) Selection Procedures**

1. The Committee Chair and/or Clerk shall notify the Appointing Authority in writing as soon as a vacancy occurs, or if they are aware that there will be an upcoming vacancy in the next three months.
2. A notice will be prepared for public posting pursuant to the 1996 Town Meeting Vote under article #12.
3. No action will be taken on a vacancy for at least two weeks after the announcement of the vacancy.
4. For Select Board appointments, nominations shall be made at one Board meeting, and formal action will not be taken until a subsequent Board meeting.
5. For Town Manager appointments that are approved by the Select Board, the request for appointment shall be made at one Board meeting, and action on the request shall be taken not later than the next Board meeting.

6. Except in unusual circumstances, the Appointing Authority shall endeavor to make appointments within two months of the announcement of a vacancy.

**(j) Orientation Procedure**

Upon appointment, all Committee members shall present themselves at the Town Clerk's Office in order to take the oath of office. The Town will provide the new Committee member with an informational packet referred to as the "Committee Handbook" which shall include: a copy of the Committee charge or relevant administrative code, and copies of the Open Meeting, Public Records, and Conflict of Interest laws.

It shall be the responsibility of the Committee chair to provide for the orientation of new members to familiarize them with the work of the Committee, current projects, and Town government operations in general as they may impact the Committee's work.

**(k) Removal from Committees**

As provided in the Town Charter, the Select Board may remove, after such hearing as the Select Board may deem advisable, any Committee members appointed by the Board. Further, the Town Manager may remove any Committee member appointed by the Town Manager for cause, with or without a hearing. "Cause" shall include, for example, the repeated failure to attend Committee meetings, the commission of an ethical violation (as found by the State Ethics Commission) or a violation of the Open Meeting Law, as found by the Office of the Attorney General, if the Town Manager believes such action to be necessary to preserve public confidence in Town government.

**IX. CONFLICTS WITH LAW**

In case of a conflict between any provision of this Appointment Policy and the laws of The Commonwealth of Massachusetts or the Town Charter, Massachusetts law or the Town Charter, as the case may be, shall take precedence.

# Records Management



# RECORDS MANAGEMENT GUIDELINES FOR BOARDS AND COMMITTEES

The [Massachusetts Open Meeting Law](#) and the [Public Records Law](#) require that all public boards and committees keep accurate written records of their public meetings. All committees, commissions, boards, sub-committees and ad-hoc committees shall appoint a clerk/secretary to be responsible for posting meeting notices and agendas, taking minutes of all meetings, and serving as records custodian. If a clerk/secretary is not appointed, the chair shall be responsible.

## Meeting Minutes

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. Please review the best practices for creating minutes on page 15.

Once meeting minutes are accepted by committee vote they become the official record of the meeting and become a permanent public record. All Boards and Committees should submit the approved minutes to the Town Clerk's Office ([meetings@concordma.gov](mailto:meetings@concordma.gov)) electronically for filing and public access once they are approved. Supporting documents used at the meeting should be forwarded with the minutes to the Town Clerk for filing and public access if those documents are not already filed with the supporting department.

## Communications

Emails and text messages sent or received by committee members acting in their role as a committee member are public records. **The Town recommends creating a separate email account for the purpose of sending or receiving emails on behalf of the committee and discourages the use of text messaging for committee business.** If extensive email communication is required for the committee to function, the Town can provide a single Town email account accessible to the chair of the committee for this purpose. Committee chairs should contact the Municipal Archivist/Records Manager to make a request for a Town email account. Utilizing a Town account will ensure that the Town can respond to any public records requests without having to request individual members emails.

## Committee Records

Committees may store other files via cloud storage sites such as Google Drive, Dropbox, or OneDrive. **However, these should be used for reference purposes and individual work only. Collaboration between committee members via these services is strongly discouraged and may violate the Open Meeting Law.** The Town can provide file storage for the committee if it is needed. Committee chairs should contact the Municipal Archivist/Records Manager to make a request for a cloud storage location. Utilizing a Town account will ensure that the Town can respond to any public records requests without having to access individual members storage accounts.

## Dissolution of a Committee

Upon dissolution of a board, committee, or commission, the records of the committee (hardcopy and electronic) should be transferred to the Municipal Archivist/Records Manager for final disposition.

These guidelines were created by Nathaniel Smith (Municipal Archivist/Records Manager) in August 2023. For any records related questions please contact them at [nsmith@concordma.gov](mailto:nsmith@concordma.gov) or 978-318-3064.



# Remote Participation Policy

# UPDATED GUIDANCE ON HOLDING MEETINGS PURSUANT TO THE ACT EXTENDING CERTAIN COVID-19 MEASURES

Guidance Update - April 8, 2025

On March 28, 2025, Governor Healey signed into law [Chapter 2 of the Acts of 2025, An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency](#) which, among other things, further extends temporary provisions pertaining to the Open Meeting Law to June 30, 2027. The temporary provisions were first implemented by Executive Order in March 2020 and subsequently enacted by [Section 20 of Chapter 20 of the Acts of 2021, An Act Relative to Amending Certain COVID-19 Measures Adopted During the State of Emergency](#) ("Section 20") (as further amended to extend the expiration of the temporary provisions).

The temporary provisions in Section 20 pertaining to the Open Meeting Law contain two primary provisions.

First, public bodies may continue providing live "adequate, alternative means" of public access to the deliberations of the public body, instead of holding meetings in a public place that is open and physically accessible to the public. "Adequate, alternative means" may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body in real time.

Second, any or all members of a public body may continue participating in meetings remotely; the Open Meeting Law's requirement that a quorum of the body and the chair be physically present at the meeting location remains suspended.

A public body is not required to provide remote access to a meeting if the meeting is held in a physical location that is open and accessible to the public. Nonetheless, we encourage public bodies to provide multiple methods of access to a meeting when feasible.

## **What means of access will be considered "adequate, alternative means?"**

"Adequate, alternative means" may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body as they are occurring (i.e., "live" or "in real time"). The methods listed are non-exhaustive, and we recognize that there are myriad methods that will be acceptable. "Adequate, alternative means" could include Zoom, a high-capacity telephone conference line, Facebook Live, YouTube Live, and broadcasting on live TV, including local cable access television. The brief delay of approximately 20 seconds when Zoom meetings are streamed to Facebook or YouTube Live is acceptable.

**May a public body post a recording or transcript of the meeting afterwards, instead of providing access to the meeting as it is occurring?**

A public body must provide the public with real-time access for the duration of the meeting, excluding lawful executive sessions. If a meeting is posted as a remote meeting and technical difficulties prevent the public body from providing the public with consistent, clear remote access, the meeting should be canceled or adjourned and rescheduled for a later date. A municipal public body that, for reasons of economic hardship *and* despite best efforts, is unable to provide alternative means of public access that will enable the public to follow the proceedings in real time, may instead post a full and complete transcript, recording, or other comprehensive record on its website as soon as practicable after the meeting. However, in light of the various free and low-cost methods that could be used to provide the public with real-time access, the Division of Open Government strongly recommends that a municipal public body consult with our office before determining that it is unable to provide the public with real time access to a meeting.

**May public body members meet in person, while requiring the general public to follow the proceedings remotely?**

Yes. Subsection (b) of Section 20 allowing public access through adequate, alternative means is independent from subsection (c), which allows members of the public body to participate remotely. The public body may conduct its proceedings under the relief provided in subsection (b) or subsection (c) or both.

**If a public body will provide access to its meeting through "adequate, alternative means," what information must be included on the meeting notice?**

Public bodies must continue to post notice of every meeting at least 48 hours in advance of the meeting, not including weekends or state holidays, using the official notice posting method (physical notice or website), even if the clerk's office is closed. The notice must include the "location" of the meeting. If access to the meeting will be provided through "adequate, alternative means," the meeting notice must include clear instructions for accessing the meeting remotely. A public body may require members of the public to call, email, or "register" (such as in the Zoom Webinar platform) to obtain access information for the meeting, provided that the meeting notice includes clear instructions, and that members of the public can gain meeting access up until and throughout the duration of the meeting (members of the public cannot be required to register in advance).

**What other requirements apply to remote meetings?**

The Open Meeting Law regulations governing remote participation, 940 CMR 29.10, remain in effect, except where Section 20 specifically suspends certain requirements. In

particular, when any—or all—public body members participate in a meeting remotely, the following requirements apply:

1. At the start of the meeting, the chair must announce the name of the member or members who are participating remotely; such information must also be recorded in the meeting minutes.
2. All votes must be taken by roll call.
3. Members of the public body must be clearly audible to each other and to members of the public at all times.
4. When holding an executive session remotely, the public body must still take all required procedural steps for entering into executive session in open session. At the beginning of the executive session, each public body member participating remotely must state 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.

Should the public body encounter technical problems while meeting remotely, the person chairing the meeting may decide how to address the technical difficulties, 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. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred must be noted in the meeting minutes.

### **What about public comment, public participation, and public hearings?**

The Open Meeting Law does not require that public bodies allow public comment or public participation during meetings -- to the contrary, the Open Meeting Law specifies that no person shall address the public body without permission of the chair. However, the Attorney General encourages public bodies to allow public comment and/or public participation when feasible. Because the Open Meeting Law does not require that public bodies allow for public comment or public participation during meetings at all, the manner that public bodies may choose to accept comment or questions is outside the scope of the Open Meeting Law. Public hearings, on the other hand, are governed by separate laws that impose additional requirements, and may require opportunity for public comment or testimony. Those requirements are outside the scope of the Open Meeting Law and therefore do not fall within the Division of Open Government's jurisdiction. Public bodies and members of the public should consult with legal counsel for guidance on the requirements for public hearings.

# A GUIDE TO HOSTING SECURE AND EFFECTIVE PUBLIC MEETINGS IN MASSACHUSETTS WITH ZOOM

Holding public meetings is a cornerstone of democratic governance, and in Massachusetts, the Open Meeting Law (OML) provides a framework for how these meetings must be conducted. With the widespread use of remote meeting platforms like Zoom, municipalities and public bodies can now host meetings in a hybrid or fully remote format. This guide outlines best practices for using Zoom to ensure Concord's public meetings are secure, compliant with OML, and accessible to all.

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## Part 1: Zoom Security and Features

### Safety and Security Settings

The following settings are essential for protecting your meetings from disruption, such as Zoom-bombing.

- **Waiting Room (on by default):** This is the most crucial setting for any public meeting. It acts as a virtual lobby where all participants are held before being allowed into the meeting. The host can admit participants one by one, verifying their identity if necessary. This prevents any uninvited guests from entering the meeting.
- **Require a Passcode (on by default):** A passcode, which can be embedded in the invitation link, adds another layer of security. It ensures that only those with the correct information can access the Waiting Room.
- **Disable "Join Before Host" (on by default):** This setting is vital to prevent meetings from starting without a host present to manage the meeting and admit people from the Waiting Room.
- **Manage Screen Sharing (on by default):** To prevent anyone from sharing inappropriate images or content, set the "Who can share?" option to "Host Only." A host can still grant permission to a specific participant to share their screen during the meeting if needed by promoting them to co-host.
- **Disable Participant Chat (on by default):** In many public meetings, the chat function can be a source of distraction or inappropriate content. Consider disabling it entirely or limiting it to "Host Only."

- **Mute Participants Upon Entry (on by default):** This automatically mutes everyone who joins the meeting, which helps control background noise and prevents unwanted interruptions.
- **Disable “Allow Participants to Rename Themselves”:** This prevents attendees from changing their display name to something offensive or misleading.
- **Report a User:** If a user is disruptive, the host can quickly report them to Zoom’s Trust and Safety team and remove them from the meeting.

## How to Quickly End a Zoom-Bombing in Process

If a meeting is being actively disrupted, a host has several options to regain control.

- **“Suspend Participant Activities” (under “Host tools” on the menu bar:** This is a powerful, one-click button in the Security menu that immediately:
  - Mutes all participants.
  - Turns off all participant videos.
  - Disables screen sharing.
  - Locks the meeting to prevent new participants from joining.
- **“Lock Meeting”:** If you have all your attendees and no more are expected, lock the meeting. This prevents anyone else, even those with the meeting ID and passcode, from joining. This should not be employed during open public meetings but is good for executive sessions happening with the same meeting ID.
- **Remove and Report the Participant:** Go to the Participants list, hover over the disruptive person’s name, and click “Remove.” You can also report them to Zoom. A removed participant cannot rejoin the meeting.
- **End the Meeting:** In a severe case of Zoom-bombing, the fastest and most effective option is for the host to end the meeting for all participants. You can then restart the meeting with a new link and tighter security settings.

## Actions to Take after a Zoom Bombing

Zoom bombings can be crimes and should always be reported to the police department for investigation. They may ask for information like the recording or meeting attendance records. You should also report Zoom bombings to the IT Department in the event they can assist with training or modifying settings to prevent them again. Finally, you will need to notify Minuteman Media Network about the Zoom bombing, as they will be processing the

file and posting it on YouTube. A brief note about the nature of the incident is helpful, including when in the meeting it took place and the format (audio only, visual, name change, annotations, etc.).

## Part 2: Massachusetts Open Meeting Law Compliance

### Hybrid and Remote Meetings

As of March 28, 2025, Governor Healey signed legislation that extends the ability for public bodies in Massachusetts to hold meetings virtually or in a hybrid format until June 30, 2027. This extension allows public bodies to:

- **Conduct meetings remotely** without a quorum of the public body physically present at a meeting location.
- **Provide “adequate, alternative means”** of public access, such as through video or audio conferencing platforms like Zoom, as an alternative to a physical meeting location.

It is crucial to be aware of the following requirements when holding remote or hybrid meetings under this law:

- **Live Access:** The public must be able to follow the proceedings in real time.
- **Roll Call Votes:** All votes must be taken by roll call.
- **Audibility:** All members of the public body must be clearly audible to each other and to the public.

### Protecting Free Speech

While it is necessary to censor obscene and graphic content, it is also essential to uphold the principles of free speech during public meetings. Disagreeable or unpopular opinions should not be censored.

- **Obscenity vs. Unfavorable Speech:** Obscenity, which is not protected by the First Amendment, is different from speech that is simply critical, angry, or offensive to some.
- **Public Comment Guidelines:** Clearly state the rules for public comment at the beginning of the meeting. This includes time limits and a clear warning that any obscene content will result in immediate removal from the meeting.

## The Zoom Webinar Format

For very large public meetings that would be difficult to manage as a standard Zoom meeting, the **Zoom Webinar** format is a powerful alternative. While it requires a separate license and cost, it is well-suited for very large public forums that would otherwise be difficult to manage as a traditional Zoom meeting. Please reach out to IT should you need to create a webinar meeting.

### Key Differences from a Standard Meeting:

- **View-Only Attendees:** Attendees are automatically view-only. They cannot turn on their video or microphone unless promoted by the host or a panelist.
- **Panelists:** Only designated “panelists” (e.g., elected officials, presenters) have their video and audio enabled. This creates a more professional, television-like format.
- **Q&A and Chat:** Public participation is managed through the Q&A and Chat features, which a host or co-host can moderate. This prevents interruptions and ensures questions are addressed in an organized manner.

## Handling a Meeting without a Host

A significant risk arises when a meeting link is created by an employee, but no staff member is present to serve as the host. In this scenario, the meeting is vulnerable to all the security issues discussed above.

### To avoid this, a public body should:

- **Use the “Alternative Host” feature:** If the employee who created the link cannot be present, they should designate another staff member or public official as an “Alternative Host” when scheduling the meeting. An alternative host has the same controls as the host and can start the meeting on their behalf.
- **Enforce Security Settings:** Ensure that all Zoom accounts for public officials have the account-level security settings (e.g., Waiting Room, “Join Before Host” disabled) locked in place by an account administrator. This provides a safety net even if a meeting is scheduled without proper oversight.
- **Understand that the first attendee who joins will be asked to become host:**  
The first committee member to arrive in the Waiting Room will get a prompt from Zoom asking them to “Claim Host.” This is the magic step. Zoom will only offer this option to the first person who joins a meeting when “Join Before Host” is disabled. They will not need the “Host Key.”

# *Town Resources*

## **A. Committee Paperwork and Finance**

### 1. Use of Clerical Staff

Each committee is responsible for its own clerical work. In some cases, arrangements can be made between a committee and the Town Manager for Town staff to undertake committee clerical work.

### 2. Management/Professional Staff

Several committees have responsibilities that are complex and of significant volume and require support from management/professional staff. The department or division head liaison assists the committee with general meeting coordination, analysis of issues through research and written reports, and coordination of communications with other committees, town departments, and the Town Manager. The staff member may be responsible for compiling a budget, to be reviewed by the committee prior to submission to the Town Manager. The Town Manager provides general management, direction, and supervision to the staff member and his/her daily operations.

### 3. Stationery

Committee members may acquire stationery from the Town Manager's Office or from the clerical staff of the committee's staff liaison. Paper and envelopes with the Town seal are also available.

### 4. Mailings

Committees with no other staff support may bring envelopes to the Town Manager's Office so that they can be run through the postal meter machine. Committees are responsible for addressing these envelopes. For large mailings (those in excess of 300), arrangements may be made with the Town Manager to have labels printed by computer.

### 5. Photocopying

A photocopier is located on the second floor outside of the Town Manager's Office and is available for official committee use during business hours 8:30 AM - 4:30 PM Monday - Friday, to be scheduled with the Town Manager's or The Select Board's administrative staff.

### 6. Use of Volunteer Cards

The Town maintains an electronic file of volunteer cards submitted by Concord residents who have expressed an interest in serving on a committee. Requests for cards can be made through the Select Board/Town Manager's Office or through the Town Clerk's Office. Committee members are encouraged to "recruit" Concord residents who may have special skills or interests that may be of use to the particular board or committee. Such people are encouraged to submit a volunteer card online or come to The Select Board's/Town Manager's Office or the Town Clerk's Office and submit a card in person.

7. Request for Services from other Departments

Requests for services from other Town departments such as police, fire, public works, and finance should be made through the committee's staff liaison or the Town Manager's Office.

8. Committee Finances

A few committees have their own budget, but most committees do not. Instead, they use the budget of the department with which the committee is associated. All purchases are made for committees by the committee's staff liaison, with prior approval by the department head. The Town Manager's Office can make exceptions to this general practice, when necessary.

**B. Telephone Procedures**

1. Phone Messages

People who call The Select Board's/Town Manager's Office requesting to get in touch with a committee member will be given the committee member's home phone number (as it appears on their green card). Business phone numbers will not be given out. Any committee member who prefers not to allow his/her phone number to be given out at all, or who would rather his/her office phone number to be given out should make such a notation on his/her green card.

2. Emergencies

In case of an emergency at a Town building, please notify the police/fire dispatch at 911. Personnel from the Water & Sewer Division of the Public Works Department are on call, as are Concord Municipal Light Plant staff, each through the Police Department.

## PUBLIC MEETING ROOM RESOURCES

Town House - 22 Monument Square

Select Board Room, Capacity 40

Zoom Capable, Microphones, Speakers, 2 Display Panels, Cameras

Public Hearing Room, Capacity 120

Zoom Capable, Microphones, Speakers, 2 Display Panels, Cameras

Eileen Blanchette - [eblanchette@concordma.gov](mailto:eblanchette@concordma.gov) - 978.318.3000

Department of Planning and Land Management - 141 Keyes Road

First Floor Conference Room, Capacity 40

Zoom Cart (camera, display, and microphone)

Second Floor Conference Room, Capacity 29

Zoom Cart (camera, display, and microphone)

Department Phone - 978.318.3290

Municipal Light Plant - 1175 Elm Street

Meeting Room, Capacity 49

Zoom Cart (camera, display, and microphone)

Operations Meeting Room, Capacity 18

Zoom Cart (camera, display, and microphone)

Karin Farrow - [kfarrow@concordma.gov](mailto:kfarrow@concordma.gov) - 978.318.3103

Harvey Wheeler Community Center - 1276 Main Street

Auditorium, Capacity 110

Clock Tower Room, Capacity 25 chairs or 20 with tables

Lecture Room, Capacity 25 chairs or 15 with conference table

Conference Room B, Capacity 8

Zoom cart available for all rooms.

Claudia Curran - [ccurran@concordma.gov](mailto:ccurran@concordma.gov) - 978.318.3020

Concord Free Public Library, 129 Main Street  
Trustees Room, Capacity 25  
Lower-Level Meeting Room, Capacity 15

Fowler Branch Library, 1322 Main Street  
Conference Room, Capacity 50

Book online at:

<https://concordlibrary.org/services/meeting-and-study-rooms>

## CONSULTING WITH LEGAL COUNSEL

The Town Manager is ultimately responsible for the expenditure of all town funds, including the expenditure on legal fees.

It is the Town's policy that a committee/board must take a formal vote to request utilization of Town Counsel or special counsel. After voted approval, the committee chair or his/her designee must relay such vote to the Town Manager to request authorization to engage Town Counsel or Special Counsel. The request must include the subject, justification for engaging counsel, and a time or budget estimate of counsel's review.

If the Town Manager approves such a request, all copies of correspondence and/or work products to and from counsel must be provided to the Town Manager within a reasonable period of time. Invoices for the work of counsel shall be issued directly to the Town Manager or their designee.

The Town Manager, or their designee, is solely responsible for directing the legal defense of the Town. Any committee member who has knowledge of a potential or threatened litigation must immediately relay that in writing to the Town Manager.

Town Counsel or Special Counsel, properly engaged, has a duty to protect the Town's interests and shield the Town, and by extension its elected members, staff, committees, and committee volunteers, from liability. Counsel is available to provide legal advice to committee volunteers in their capacity as a committee member. Counsel is not available to provide advice on any personal liability matters. When an employee or committee volunteer or elected member utilizes private legal counsel in an action arising in the course of his/her official duties with the Town (either as defendant or plaintiff), such person is solely responsible for the costs of such legal work.

## PROTECTION FROM LEGAL LIABILITY AS A COMMITTEE MEMBER

The Town will indemnify and hold harmless municipal officers, elected or appointed (including committee volunteers) from personal financial loss and expense including reasonable legal fees and costs, if any, in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgment by reason of any act or omission, except an intentional violation of civil rights of any person, if the official at the time of such act or omission was acting within the scope of his official duties or employment.

Town Meeting voted in April 1978 to adopt certain legal protections for committee volunteers, specifically Mass. Gen. Laws Chapter 41, § 100(I). M.G.L. c. 258, § 13 states that any city or town which accepted M.G.L. c. 41, § 100(I) on or before July 20, 1978, shall be deemed to have accepted M.G.L. c. 258, § 13.



# Ethics Summary

# *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. Town meeting members and charter commission members are not municipal employees under the conflict of interest law.

## **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.

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.

# Open Meeting Law Guide and Educational Materials



COMMONWEALTH OF MASSACHUSETTS

**OFFICE OF ATTORNEY GENERAL**  
**ANDREA JOY CAMPBELL**

 JUNE 2025

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Dear Massachusetts Residents:

One of the most important functions of the Attorney General's Office is to facilitate openness and transparency for state and local government, through our Division of Open Government. For our democracy to work, the public must have access to and understand the reasoning behind government policy decisions. Without that access, government lacks the accountability that ensures true public representation.

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 Division of Open Government works with our community partners to promote and provide educational materials about the Open Meeting Law, like this Guide. We provide outreach and training sessions to ensure that public bodies and residents 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 resident, you are taking part in a tradition that is a cornerstone of Massachusetts: an active and engaged public.

I want to thank you for taking the time to understand the Open Meeting Law.

For 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](http://www.mass.gov/ago/openmeeting) for more information.

With Gratitude,

A handwritten signature in black ink, appearing to read 'A. Joy Campbell', with a long horizontal flourish extending to the right.

Attorney General Andrea Joy Campbell

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# *Attorney General's Open Meeting Law Guide*

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## **Overview**

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### **Purpose of the Law**

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

### **Attorney General's Authority**

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

### **Certification**

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

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

## [Open Meeting Law Website](#)

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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/the-open-meeting-law](http://www.mass.gov/the-open-meeting-law). Members of public bodies, other local and state government officials, and the public are encouraged to visit the website regularly for updates on the law and the Attorney General's interpretations of it.

## Meetings of Public Bodies

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### [What meetings are covered by the Open Meeting Law?](#)

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With certain exceptions, all meetings of a public body must be open to the public. On June 16, 2021, Governor Charles Baker signed into law An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency, Chapter 20 of the Acts of 2021 ("Chapter 20"). Relevant to the Open Meeting Law, Section 20 of Chapter 20 allows public bodies to provide the public with "adequate, alternative means" of public access to a meeting, rather than in-person access to a meeting. "Adequate, alternative means" of access includes access through telephone, internet or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body while those activities are occurring. The Attorney General encourages public bodies to provide multiple methods of access to a meeting when feasible to maximize access and transparency, but only one method of access—in-person or remote—is required by the law. The provisions in Section 20 of Chapter 20 of the Acts of 2021 allowing a public body to provide "adequate, alternative" means of public access rather than in-person access expire on June 30, 2027, unless further extended.

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?

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While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches<sup>1</sup> 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 superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.<sup>2</sup>

### What constitutes a deliberation?

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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

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

<sup>2</sup> See Connolly v. School Committee of Hanover, 409 Mass. 232 (1991).

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?

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

#### What are the exceptions to the definition of a meeting?

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

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and

5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

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

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as a board of selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore, the Attorney General will not investigate complaints alleging violations in these situations. Note, however, that this is a matter of interpretation and future Attorneys General may choose to apply the law in such situations.

## Notice

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### What are the requirements for posting notice of meetings?

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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?

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

Prior to utilizing the municipal website, the Chief Executive Officer of the municipality must authorize or vote to adopt such website as the official method of posting notice. The clerk of the municipality must inform the Division of Open Government of its notice posting method and must inform the Division of any future changes to that posting method. Public

bodies must consistently use the most current notice posting method on file with the Division. A description of the website, including directions on how to locate notices on the website, must also be posted on or adjacent to the main and handicapped accessible entrances to the building where the clerk's office is located. Note that meeting notices must still be available in or around the clerk's office so that members of the public may view the notices during normal business hours.

### [What are the requirements for posting notices for regional, district, county and state public bodies?](#)

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For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website. The regional school district committee must file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district. A copy of the notice must be filed and kept by the chair of the public body or the chair's designee.

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

State public bodies must post meeting notices on the website of the public body or its parent agency. The chair of a state public body must notify the Attorney General in writing of the specific webpage location where notices will be posted and of any subsequent changes to that posting location. A copy of each meeting notice must also be sent to the Secretary of State's Regulations Division at [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us).

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

### [A note about accessibility](#)

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Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice.<sup>3</sup> The Attorney General’s Civil Rights Division is available to answer questions about accessibility and may be reached at (413) 523-7710.

### What information must meeting notices contain?

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

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

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

### Executive Session

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<sup>3</sup> 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.

## When can a public body meet in executive session?

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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

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

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

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

This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against

the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body. It may, however, include a review of résumés and multiple rounds of interviews by the screening

committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of the members of the parent public body. The committee may also contain members who are not members of the parent public body.

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

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

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

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

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

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

## Remote Participation

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### May a member of a public body participate remotely?

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Section 20 of Chapter 20 of the Acts of 2021, which provisions expire on June 30, 2027, unless further extended, suspended the requirements under the Open Meeting Law and the Attorney General's Open Meeting Law regulations that a quorum of a public body, including the

chair, be physically present at the meeting location. Instead, Section 20 of Chapter 20 allows some or all members of a public body to participate in a meeting remotely.

If a meeting is held in person at a location that is physically open and accessible to the public with a quorum of the public body physically present in person, the public body is not required to permit members of the public to access the meeting remotely, even if some members of the public body participate remotely.

#### 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. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
2. 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, including a meeting where all members participate remotely, the chair must announce the name of any member who is participating remotely; such information must also be recorded in the meeting minutes. The chair's statement does not need to contain any detail about the reason for the member's remote participation.

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

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

is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

## Public Participation

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### What public participation in meetings must be allowed?

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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 (subject to constitutional protections outside the purview of the Open Meeting Law), the Attorney General encourages public bodies to allow as much public participation as time permits.

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

## Minutes

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### What records of public meetings must be kept?

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Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes 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.

Notably, the minutes must include a summary of the discussions on each subject, not merely a statement that a discussion was held. Although a transcript of the discussions is not required, and the minutes need not include every remark or opinion presented, minutes must include a substantive summary of the discussion on each topic. Minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

Minutes, and all documents and exhibits used, are public records and a part of the official record of the meeting. Records may be subject to disclosure under either the Open Meeting Law or Public Records Law. The State and Municipal Record Retention Schedules are available through the Secretary of the Commonwealth's website at: <http://www.sec.state.ma.us/arc/arcmu/rmuidx.htm>.

### Open Session Meeting Records

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The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. A "timely manner" is considered to be within the next three public body meetings or 30 days from the date of the meeting, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages minutes to be approved at a public body's next meeting whenever possible. The law requires that existing minutes be made available to the public within ten calendar 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 are public records and must be provided in their entirety in response to a public records request.

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

## Executive Session Meeting Records

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The Open Meeting Law requires public bodies to create and maintain minutes of executive sessions, and to review executive session minutes at reasonable intervals to determine whether continued nondisclosure of the executive session minutes is warranted. 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. Although the Open Meeting Law does not define the “reasonable interval” at which executive session minutes must be reviewed, the Attorney General’s Office has found a review every three to six months to be appropriate. The result of the review (whether each set of reviewed minutes will be disclosed or will continue to be withheld) must be announced at the public body’s next meeting following the review and recorded in the minutes of that meeting.

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

## Open Meeting Law Complaints

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

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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?](#)

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### *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/the-open-meeting-law](http://www.mass.gov/the-open-meeting-law). When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

### *Step 2. The Public Body's Response*

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

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

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

A complaint is ripe for review by the Attorney General 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note

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

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

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

#### [When is a violation of the law considered “intentional”?](#)

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

## Training on the Open Meeting Law

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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, <https://www.mass.gov/the-open-meeting-law>, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials, checklists, the Attorney General's determination letters resolving complaints, and other resources. The Attorney General offers frequent webinar trainings for members of the public and public bodies; dates of upcoming webinars are posted to the Open Meeting Law website.

## Contacting the Attorney General

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

Division of Open Government  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
Tel: 617-963-2540

[www.mass.gov/the-open-meeting-law](https://www.mass.gov/the-open-meeting-law)  
[OpenMeeting@mass.gov](mailto:OpenMeeting@mass.gov)



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# *Appendix*

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## The Open Meeting Law, G.L. c. 30A, §§ 18-25<sup>4</sup>

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

### *Section 18: [DEFINITIONS]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Section 21. Executive Sessions*

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

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

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

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

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

## *Section 22. Meeting Minutes; Records*

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

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

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

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

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

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

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

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

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

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

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

*Section 25. Regulations; Letter Rulings; Advisory Opinions*

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

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

Section

29.01: Purpose, Scope and Other General Provisions

29.02: Definitions

29.03: Notice Posting Requirements

29.04: Certification

29.05: Complaints

29.06: Investigation

29.07: Resolution

29.08: Advisory Opinions

29.09: Other Enforcement Actions

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29.01: Purpose, Scope and Other General Provisions

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

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

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

29.02: Definitions

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

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

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

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

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

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

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

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

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

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

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

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

## 29.03: Notice Posting Requirements

### (1) Requirements Applicable to All Public Bodies.

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

### (2) Requirements Specific to Local Public Bodies.

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

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

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

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

#### 29.04: Certification

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

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

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

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

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

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

## 29.05: Complaints

(1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints. A public body need not address a complaint that is not signed by the complainant. A public body need not address a complaint that is not filed using the Attorney General's complaint form.

(2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law Complaint Form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.

(3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body.

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

(5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(b), the public body shall meet to review the complaint's allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the Attorney General that it has sent such materials to the complainant and shall provide the Attorney General with a copy of the complaint, the response, and a description of any remedial action taken.

- (a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.
- (b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after receiving the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

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

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

(9) Mediation to Resolve a Complaint.

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

#### 29.06: Investigation

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

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

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

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

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

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

#### 29.07: Resolution

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

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

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

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

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

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

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

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

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

#### 29.08: Advisory Opinions

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

## 29.09: Other Enforcement Actions

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

## 29.10: Remote Participation

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

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

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

- (3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.
- (4) Minimum Requirements for Remote Participation.
- (a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other as required by M.G.L. c. 30A, § 20(d);
  - (b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location as required by M.G.L. c. 30A, § 20(d);
  - (c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.
- (5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting in accordance with the procedures described in 940 CMR 29.10(7) only if physical attendance would be unreasonably difficult.
- (6) Technology.
- (a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.
    - 1. telephone, internet, or satellite enabled audio or video conferencing;
    - 2. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.
  - (b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.
  - (c) The public body shall determine which of the acceptable methods may be used by its members.
  - (d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged wherever possible to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.
  - (e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).
- (7) Procedures for Remote Participation.
- (a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.
  - (b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.

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

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

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

#### 29.11: Meeting Minutes

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

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

#### REGULATORY AUTHORITY

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



The Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108

## OPEN MEETING LAW COMPLAINT FORM

### Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

#### Instructions for filing a complaint:

- o Fill out the attached two-page form completely and sign it. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
  - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
  - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
  - o Complaints may be filed by mail, email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

#### Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the Attorney General a copy of the complaint and a description of any action the public body has taken to address it. At the same time, the body must send the complainant a copy of its response. The public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

#### Once the public body has responded to the complaint:

- o If you are not satisfied with that the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, e-mail, or by hand, but only once you have waited for 30 days after filing the complaint with the public body.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by e-mail at [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).





## OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

### Your Contact Information:

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Ext. \_\_\_\_\_

Email: \_\_\_\_\_

Organization or Media Affiliation (if any): \_\_\_\_\_

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual     Organization     Media

### Public Body that is the subject of this complaint:

City/Town     County     Regional/District     State

Name of Public Body (including city/  
town, county or region, if applicable): \_\_\_\_\_

Specific person(s), if any, you allege  
committed the violation: \_\_\_\_\_

Date of alleged violation: \_\_\_\_\_

**Description of alleged violation:**

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

**Review, sign, and submit your complaint**

**I. Disclosure of Your Complaint.**

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

**II. Consulting With a Private Attorney.**

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

**III. Submit Your Complaint to the Public Body.**

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

<i>For Use By Public Body</i>	<i>For Use By AGO</i>
<i>Date Received by Public Body:</i>	<i>Date Received by AGO:</i>

# Public Body Checklists



# Public Body Checklist for Posting a Meeting Notice

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

## Notice Contents

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

## Notice Publication

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

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



## *Public Body Checklist for Entering Into Executive Session*

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

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

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



## *Public Body Checklist for Creating and Approving Meeting Minutes*

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

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

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



# Public Records Law





The founding fathers of our nation strove to develop an open government formed on the principles of democracy and public participation. An informed citizen is better equipped to participate in that process.

Laws mandating the disclosure of public records have existed in the Commonwealth of Massachusetts since 1851. The federal Freedom of Information Act was signed into law in 1966 by President Lyndon B. Johnson. In 1974, Congress amended the federal Freedom of Information Act in order to make government records more accessible to the public.

The Massachusetts Public Records Law parallels federal law, with some variation. Every government record in Massachusetts is presumed to be public unless it may be withheld under a specifically stated exemption.

As Secretary of the Commonwealth and chief public information officer for the Commonwealth, I am pleased to publish this guide explaining the Public Records Law. The full text of the law is provided, as well as a brief description of each of the exemptions to the law.

Also included is a section of frequently asked questions about a requester's right to access public records, as well as a government records custodian's duty to respond to those requests.

Any additional questions regarding the Public Records Law should be directed to the Division of Public Records at (617) 727-2832 during regular business hours.

You may access Division of Public Records publications and other information at [www.sec.state.ma.us/pre/preidx.htm](http://www.sec.state.ma.us/pre/preidx.htm).

A handwritten signature in black ink that reads "William Francis Galvin". The signature is written in a cursive, flowing style.

William Francis Galvin  
Secretary of the Commonwealth

## Frequently Asked Questions

### ***What is the difference between the federal Freedom of Information Act and the Massachusetts Public Records Law?***

The federal Freedom of Information Act is a statute that applies to federal records. The Massachusetts Public Records Law applies to records created by or in the custody of a state or local agency, board or other government entity.

### ***Who can help me with questions regarding the Public Records Law?***

The Division of Public Records (Division) has always provided an “attorney of the day” to assist any person seeking information regarding the Public Records Law.

The hours of operation for the Division are Monday-Friday, with the exception of holidays, from 8:45 a.m. to 5:00 p.m. The telephone number for the Division is (617) 727-2832, and the email address is [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

### ***What is a “public record”***

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. There are non-statutory exemptions as well called common law exemptions. Non-statutory exemptions include the common law attorney client privilege and the work product privilege. These exemptions permit the agency or municipality to withhold a record from the public. A records access officer (RAO) must prove with specificity why it should be allowed to withhold any public record.

The exemptions to the Public Records Law are described in this guide. If an RAO claims an exemption and withholds a record, the RAO has the burden of showing how the exemption applies to the record and why it should be withheld.

### ***How do I find the records I seek?***

A person seeking access to government records must obtain them from the government office that created or received the records.

### ***Does the Division of Public Records have my records?***

The Division of Public Records (Division) is not a warehouse for government records. The only records kept in the Division are those that are essential to the business operations of the Division.

## 2 • A Guide to the Massachusetts Public Records Law

To obtain public records a person must directly contact the municipal or state agency office that is the custodian of the sought for records.

### ***Does the Public Records Law apply to court, legislative or federal records?***

The Public Records Law does not apply to records held by federal agencies, the legislature or the courts of the Commonwealth. Accordingly, the Supervisor is unable to assist requesters seeking such records.

### ***What is a Records Access Officer?***

A Records Access Officer (RAO) is the person responsible for responding to requests for public records. Information on how to contact an RAO is usually available on the website for the applicable municipal or state entity holding the records sought by requesters.

### ***What is a records custodian?***

A records custodian means any governmental entity that makes or receives public records.

### ***How do I obtain copies of public records?***

To obtain a copy of a record, you must make a request to the RAO for the municipal or state agency that you believe has records you are seeking.

### ***What do I do if my request is denied?***

An RAO must respond to your request as determined by the Public Records Law. If the RAO fails to respond or denies a request, a requester may appeal the matter to the Supervisor within ninety days.

Under the Public Records Regulations, all appeals to the Supervisor must include a copy of the original request, any response by the RAO and a statement indicating the reason for the appeal. The requester must also provide a copy of the appeal petition to the RAO.

### ***May I also go to court to seek public records?***

A requester may also commence a civil action in superior court to enforce the requirements of the Public Records Law. Where applicable, the superior court may award reasonable attorney's fees and costs in cases where the requestor obtains relief.

***My appeal was closed because I did not provide the necessary information. What do I do now?***

The Supervisor will close an appeal without a finding if a requester fails to provide a copy of the request or the response. The Supervisor will close an appeal without a finding if the requester fails to provide a copy of the request to the RAO, or fails to provide a copy of the petition for appeal to the RAO.

In such cases, a requester may seek a new appeal, provided the appeal is filed in compliance with the Public Records Regulations.

***What are the requirements for an RAO response to a public records request?***

An RAO's response must be in writing, and must provide the name of the RAO. The response must include a good faith estimate of any cost of providing the record.

The response must also include a specific exemption to the Public Records Law to justify the denial of access to any record, and an explanation of how that exemption applies to the records. Any denial must include instructions on how to appeal to the Supervisor of Records.

***Must my request be in writing, and do I need to use a specific form?***

A written request is not required but is strongly recommended. An oral request made in person is permitted. An RAO is not permitted to require a written request, but may write an oral request on its own form to assist in prompt response.

To appeal an RAO response to the Supervisor, however, a request must be in writing.

***May I appeal a failure to answer a question?***

The Public Records Law only applies to records. An RAO is not required by the Public Records Law to answer questions or create a record in response to a request; however, an RAO must provide any records that exist that respond to a question.

***What is the cost for copies of public records; what about electronic records?***

Absent a specifically identified statute or regulation, an RAO may charge no more than \$0.05 per page for single and double-sided black and white paper copies or computer printouts. There is no longer a separate charge for police or fire reports, or for computer printouts.

#### 4 • A Guide to the Massachusetts Public Records Law

The Public Records Law and its Regulations apply to all Massachusetts government records, regardless of form, and regardless of the location of the records.

Provision of public records in electronic form is preferred where available. An RAO is not permitted to assess a copying fee for electronic records. The \$0.05 fee applies only to paper copies of records.

##### ***Is an RAO required to provide a fee estimate?***

The Public Records Regulations require that an RAO provide a detailed, written, good faith estimate for the cost of complying with a public record request.

The fee estimate must contain a statement advising the requester that the actual cost of producing the record might vary once the agency or municipality begins preparing the record. An agency or municipality is permitted to require payment of the estimated fee before commencing work.

All agencies and municipalities 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 RAO 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. Many of these records are required to be placed on the RAO's website.

##### ***May the RAO charge a fee for search and segregation of records?***

An RAO may charge and recover a fee for the time spent searching, redacting, photocopying and refiling a record. Agencies shall not assess a fee for the first four hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of over 20,000 shall not assess a fee for the first two hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of 20,000 and under are permitted to charge for the first two hours of time spent searching for, compiling, segregating, redacting and reproducing a requested 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. Generally, an RAO is not permitted to charge an hourly rate in excess of \$25.00 per hour to search for records. Municipal RAOs may petition the Supervisor for permission to charge a fee in excess of \$25.00.

***Does a requester have greater right of access to records if he is the subject of a record?***

Under the Public Records Law, every requester is treated equally; therefore, even a person who is the subject of the record is not granted any greater access right than any other person.

Some statutes and regulations allow requesters to obtain records in a manner that does not require a request under the Public Records Law. It should be noted that once a record is deemed public it may be obtained by anyone upon request.

A list of statutes limiting access to public records is found in the back of this book. This list includes student records, criminal offender record information, and other records the access to which is limited by law.

***Is a requester required to disclose the intended use of the public record requested?***

With the possible exception of situations where the RAO is anticipating the withholding of records pursuant to Exemption (n) of the Public Records Law, determining whether the records are being requested for a commercial purpose, or determining whether to grant a fee waiver, a records custodian may not ask a requester the reason for the request or the intended use of the requested records.<sup>3</sup>

***How should an RAO respond to an unclear request?***

RAOs must help the requester to determine the precise record or records responsive to a request; however, a requester must provide a reasonable description of the requested records. If a request is unclear the RAO is expected to seek clarification from the requester.

***What if a records custodian claims that it is not subject to the Public Records Law?***

The Public Records Law only applies to Massachusetts governmental entities. The burden lies with the entity to show that the Public Records Law does not apply.

***Are RAOs required to forward a request for records not in their possession?***

RAOs must use their knowledge of the records to ensure that a request for records is delivered to the appropriate party. A large public records request may include items for which the RAO is not directly responsible, as it may

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<sup>3</sup> G. L. c. 4, § 7(26)(n); 950 C.M.R. 32.06(2)(h).

include a request for records of another division or department of the RAOs' agency or municipality. An RAO is expected to forward such requests to the appropriate parties in responding to a public records request, and inform the requester he or she has done so.

## Overview

The Massachusetts Public Records Law (Public Records Law) and its Regulations provide that each person has a right of access to public information.<sup>4</sup> This right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee.<sup>5</sup>

The Public Records Law broadly define “public records” to include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee” of any Massachusetts governmental entity.<sup>6</sup>

There are strictly and narrowly construed exemptions and common law privileges to the broad definition of “public records.”<sup>7</sup> This guide will briefly review the application of these exemptions as well as explore some of the other issues that arise when a request is made for access to government records.

### *Updated Public Records Law*

The Public Records Law and its Regulations were updated with changes effective January 1, 2017. Among other things, the updated law sets limits on fees, provides deadlines for the provision of records, and requires the designation of a “Records Access Officer.” The updated law also distinguishes between “agencies” and “municipalities” and assigns certain duties to each entity.

The Regulations define “agency” as the following:

Any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth that is identified in M.G.L. c. 66, § 6A and c. 4, § 7, clause Twenty-sixth and makes or receives “public records”, as defined in 950 CMR 32.02. Agency includes any person, corporation, association, partnership or other legal entity which receives or expends public

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<sup>4</sup> G. L. c. 66, § 10(a).

<sup>5</sup> Id.; 950 C.M.R. 32.

<sup>6</sup> G. L. c. 4, § 7(26).

<sup>7</sup> G. L. c. 4, § 7(26); see also Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 625 (1980) (the statutory exemptions are to be strictly and narrowly construed).

funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in M.G.L. c. 32, § 1.<sup>8</sup>

The Regulations define “municipality” as the following:

Cities and towns, local housing, redevelopment or similar authorities. A consortium, consolidation or combination of entities within a single political subdivision of the commonwealth or among multiple political subdivisions of the commonwealth shall be deemed a municipality.<sup>9</sup>

A “Records Access Officer” (RAO) is an employee of a governmental records custodian. An RAO is the employee designated within a governmental entity to perform certain duties, including coordinating a response to requests for access to public records, assisting individuals seeking public records in identifying the records requested, and preparing guidelines that enable requesters to make informed requests regarding the availability of such public records electronically or otherwise.<sup>10</sup>

### **The Request**

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 in person, by mail, facsimile or email.<sup>11</sup> An RAO must provide information on her custodian’s website with respect to requests for public records.

A requester must provide the RAO with a reasonable description of the desired information.<sup>12</sup>

### **The Response**

The RAO must respond to requests without unreasonable delay and within ten business days.<sup>13</sup> The RAO may offer to provide records; provide a fee estimate, where applicable; or deny access to records in a manner consistent with G. L. c. 66, § 10(a-b).<sup>14</sup>

A denial must detail the specific basis for withholding the requested materials.<sup>15</sup> The denial must include a citation to one of the statutory or

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<sup>8</sup> 950 C.M.R. 32.02

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 950 CMR 32.06(1)(c).

<sup>12</sup> 950 CMR 32.06(1)(b).

<sup>13</sup> G. L. c. 66, § 10(a-b); 950 CMR 32.06(2)(a).

<sup>14</sup> *Id.*

<sup>15</sup> G. L. c. 66, § 10(a-b).

common law exemptions upon which the RAO relies, and must explain why the exemption applies.<sup>16</sup>

A denial must also advise the requester of the right to seek redress through the administrative process provided by the Supervisor of Records (Supervisor) as well as the judicial remedy available in superior court.<sup>17</sup>

The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received.<sup>18</sup> Consequently, there is no obligation to create a record for a requester or to honor prospective requests. It should be noted, however, that the Regulations do not prohibit an RAO from responding to such requests.

Information contained in a database is presumed to exist at the time of the request. Provision of an extract of requested data does not constitute creation of a public record. An RAO may not deny a request for data contained in such a database on the theory that extraction results in creating a new record. To do so would deny access to information that does exist at the time of the request, though not in a form easily accessible by the requester.

All requests for public records must be honored in accordance with the Public Records Law. With the exception of situations in which an RAO is determining whether the records are being requested for a commercial purpose, whether to grant a fee waiver, or the applicability of Exemption (n), an RAO may not ask a requester the reason for the request or the intended use of the requested records. Inquiries by an RAO into a requester's status or motivation for seeking information are prohibited.<sup>19</sup>

## Fees

An RAO may charge a reasonable fee to recover the costs of complying with a public records request.<sup>20</sup> An RAO is encouraged, but not required, to waive fees where disclosure is in the public interest.<sup>21</sup>

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<sup>16</sup> Id.

<sup>17</sup> 950 CMR 32.06(3)(c).

<sup>18</sup> G. L. c. 4, § 7(26) (defining “public records” as materials which have already been “made or received” by a public entity); see also 32 Op. Att’y Gen. 157, 165 (May 18, 1977) (custodian is not obliged to create a record in response to a request for information).

<sup>19</sup> See G. L. c. 66, § 10(a) (public records are to be provided to “any person”); but see G. L. c. 4, § 7(26)(n) (a records custodian may ask the requester to voluntarily provide additional information in order to reach a “reasonable judgment” regarding disclosure of responsive records); 950 CMR 32.06(2)(h).

<sup>20</sup> G. L. c. 66, § 10(a); see also 950 CMR 32.07.

<sup>21</sup> 950 CMR 32.07(2)(k).

The Supervisor does not have the authority to order a waiver of reasonable fees. An RAO assessing a fee must do so in accordance with any applicable statutory provisions, the Regulations or an enabling provision.<sup>22</sup>

The updated Public Records Law and its Regulations provide for the following with respect to fees to access public records:

### *Fees for segregating and redacting*

An agency or municipality shall not assess a fee for time spent segregating and redacting a requested record unless such segregation or redaction is required by law or approved by the Supervisor of Records through a petition discussed below.<sup>23</sup>

“Segregation time” means the time used to review records to determine what portions are subject to redaction or withholding under M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges. Segregation time shall not include time expended to review record for accuracy and correct errors.<sup>24</sup>

“Redact” means to delete, or otherwise expurgate that part of a public record that is exempt from disclosure under M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges from non-exempt material.<sup>25</sup>

### *Fees for Copies*

In addition to the search and segregation fees, records custodians may charge \$0.05 for either single and double-sided black and white paper copies or printouts.<sup>26</sup> When the request is for materials that are not susceptible to ordinary means of reproduction, such as photographs or computer tapes, the actual cost of reproduction may be assessed to the requester.<sup>27</sup> There are also specific statutes that establish fees for copies of public records.<sup>28</sup>

### *Agencies*

Agencies may not assess a fee for the first four hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Agencies may not assess a fee of more than \$25 per hour for the cost to comply with a request for public records.<sup>29</sup>

<sup>22</sup> See e.g., G. L. c. 66, § 10(a); see also 950 CMR 32.07.

<sup>23</sup> G.L. c. 66, §10(d); 950 CMR 32.07(2)(d).

<sup>24</sup> 950 CMR 32.02.

<sup>25</sup> *Id.*

<sup>26</sup> 950 CMR 32.07(2)(e).

<sup>27</sup> 950 CMR 32.07(2)(h).

<sup>28</sup> See e.g., G. L. c. 262, § 38 (copies of records at the Registry of Deeds).

<sup>29</sup> 950 CMR 32.07(2)(l).

### *Municipalities*

Municipalities with a population of over 20,000 may not assess a fee for the first two hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of 20,000 and under may assess a fee, including the first two hours, for time spent searching for, compiling, segregating, redacting and reproducing a requested record.<sup>30</sup>

Population data shall be determined by the decennial US. Census and it shall be the burden of the RAO to provide population data information when responding to a request.<sup>31</sup>

A municipal records access officer may not assess a fee of more than \$25 per hour for the cost to comply with a request for public records unless approved by the Supervisor through a petition discussed below.<sup>32</sup>

### **RAO Petitions**

Under the updated Public Records Law and Regulations, RAOs may request an extension from the Supervisor of Records if more time is needed to provide records. Such a request for extension must occur within 20 business days of receipt of request or within 10 business days after receipt of a determination by the Supervisor of Records that the requested record constitutes a public record. The Supervisor may grant an extension of 20 business days to an agency and 30 business days to a municipality, or longer depending on the circumstances.<sup>33</sup>

RAOs may also petition the Supervisor of Records to charge for time spent segregating or redacting records. Only a municipal RAO may petition the Supervisor for permission to charge fees in excess of the maximum hourly rate of \$25 per hour for time required to comply with a request.<sup>34</sup>

Filing a petition does not affect the requirement that an RAO shall provide an initial response to a requester within ten business days after receipt of a request for public records.<sup>35</sup>

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<sup>30</sup> 950 CMR 32.07(2)(m).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 950 CMR 32.06(4)(e).

<sup>34</sup> 950 CMR 32.06(4)(h).

<sup>35</sup> 950 CMR 32.06(4)(b).



## Appendix

The provisions in this book are not the official versions of the Massachusetts General Laws (MGL) or Code of Massachusetts Regulations (CMR). Reasonable efforts have been undertaken to assure the validity of the information provided at the time of publishing; however, do not depend on this information without first consulting an official edition of the MGL or CMR.

### Public Records Law

#### G. L. c. 4, § 7(26)

Twenty–sixth, “Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, or any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in section 1 of chapter 32, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) 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;
- (c) 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;
- (d) inter–agency or intra–agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;
- (e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;

(f) 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;

(g) 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 subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;

(h) 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;

(i) 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;

(j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;

(k) [Stricken.]

(l) 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;

(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

(n) 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, cyber security 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 under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

(o) the home address, personal email 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; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address, personal email 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 subclause (o).

(q) Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.

(r) Information and records acquired under chapter 18C by the office of the child advocate.

(s) 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; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed.

(t) statements filed under section 20C of chapter 32.

(u) trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns.

Any person denied access to public records may pursue the remedy provided for in section 10A of chapter sixty-six.

## **Records Access Officers**

### **G. L. c. 66, § 6A**

(a) Each agency and municipality shall designate 1 or more employees as records access officers. In a municipality, the municipal clerk, or the clerk's designees, or any designee of a municipality that the chief executive officer of the municipality may appoint, shall serve as records access officers. For the purposes of this chapter the term "agency" shall mean any entity, other than a municipality, that is identified in clause twenty-sixth of section 7 of chapter 4 as possessing "public records," as defined therein.

(b) A records access officer shall coordinate an agency's or a municipality's response to requests for access to public records and shall facilitate the resolution of such requests by the timely and thorough production of public records. Each records access officer shall:

(i) assist persons seeking public records to identify the records sought;

(ii) assist the custodian of records in preserving public records in accordance with all applicable laws, rules, regulations and schedules; and

(iii) prepare guidelines that enable a person seeking access to public records in the custody of the agency or municipality to make informed requests regarding the availability of such public records electronically or otherwise.

Guidelines shall be updated periodically and shall include a list of categories of public records maintained by the agency or municipality. Each agency and municipality that maintains a website shall post the guidelines on its website.

(c) Each agency and municipality shall post in a conspicuous location at its offices and on its website, if any, the name, title, business address, business telephone number, and business email address of each records access officer. The designation of 1 or more records access officers shall not be construed to prohibit employees who have been previously authorized to make public records or information available to the public from continuing to do so. Any