

*Town of West Boylston 2011
Handbook for Elected and
Appointed Officials*



Kim D. Hopewell
Town Clerk

The Commonwealth of Massachusetts

Town of West Boylston



SECTION 1. COMMITTEE PROCEDURES

SECTION 2. APPOINTMENT PROCEDURES

SECTION 3. COMMITTEE PAPERWORK AND FINANCES

SECTION 4. EDUCATIONAL MATERIALS AND CERTIFICATION

"ETHICS ADVISORY OPINION "

- 268A GIFTS
- 268A CONDUCT OF PUBLIC EMPLOYEES
 - SECTIONS 17-23

"ZONING"

- Chapter 40A, SECTIONS 11

"CONFLICT OF INTEREST LAW"

- STANDARDS OF CONDUCT
- CHAPTER 268A SECTIONS 17-20, 23
- CHAPTER 268A- MANDATORY ETHICS TESTING

"OPEN MEETING LAW REGULATIONS"

- OPEN MEETING LAW GUIDE, OFFICE OF THE ATTORNEY GENERAL
- 940 CMR 29.00

"END NOTES"

9

940 cmr 29.00 50

A

A note about accessibility 39, 52
Acknowledgment of receipt 59
Acting as attorney or receiving compensation 23
Ad hoc committees 7
After you leave municipal employment. 33
After-hours restrictions 31
Ago authority 37, 50
Amended minutes 7
Appearance of conflict. 31
Appointment procedures 17
Appointment procedures general 17
Are you a municipal employee for conflict of interest law purposes? 29
Attorney general's open meeting law certification form 21

B

Bribes. 29

C

Certification 37, 50
Chapter 268a: section 20. Municipal employees; financial interest in contracts; holding one or more elected positions. 24
Chapter 268a: section 23. Supplemental provisions; standards of conduct 25
Chapter 28 of the acts of 2009 59
Committee meetings 8
Committee paperwork and finance 19
Committee procedures 5
Conduct of public officials and employees 22
Confidential information. 31
Conflict of interest 28
Conflict of interest ethics 28
Conflict of interest law - summary for municipal employees 29
Contacting the attorney general 43, 57
Criteria for selection 18

D

Deadlines 8
Deliberation 43
Dissolution of any committee 8
Divided loyalties 31
Draft minutes 7

E

Educational materials and certification 20

Eligibility for appointments 18
Emergencies 20
Emergency 44
Emergency meetings 7
Ethics advisory opinion 21
Executive session 44
Executive session meeting 13
Executive session meeting records 42, 56
Executive session quick index guide 14
Executive session records 14
Exempt from public disclosure 14

F

F. Role of committee or board in appointments 18
False claims 31
Financial interest 23
Forever ban 33
Forever ban. 33

G

Gift or receipt of compensation from 22
Gifts and gratuities. 29

I

If a public body holds a properly noticed meeting, and decides to continue the meeting until a future date, is the public body required to post another meeting notice? 12
If a subcommittee of a public body holds a meeting and members of the public body, who are not members of the subcommittee, wish to attend the meeting, must the public body post a meeting notice? 13
Importance of the record- 6
Inside track 32
Intentional violation 44
Is it a violation of the open meeting law for the chair of a public body to neglect to inform other members of a meeting? 11

M

Management/professional staff 19
May a member of the public body participate remotely? 41, 55
May a public body consider a topic at a meeting that was not listed in the meeting notice? 10
May a public body hold a meeting on a sunday? 12
May our public body list a section for "new business" to cover topics which come up for the first time at the meeting in the meeting notice? 11
Meeting 44
Meeting cancellations 20
Meeting posting requirements 8
Meeting postings & notice of meetings 8
Minutes 5
Misuse of position. 30

N

Notice of mandatory compliance	28
Naming the electronic file	8
New executive session requirement	14
Notice requirements for public hearings	26

O

Officers of committees	5
One year cooling-off period.	33
On-the-job restrictions	29
Open meeting law	44
Open meeting website	37
Open session meeting records	42, 56
Orientation procedure/appointment	19

P

Participation in town government	5
Partners	33
Photocopying	19
Post notice	44
Powers and duties	5
Preliminary screening	44
Proper format for posting a meeting and agenda;	11
Public body	44
Public hearing and notice	9
Public hearing postings	9
Purpose of open meeting law	50
Purpose of the law	37, 50
Purposes of executive session	13

Q

Quorum	44
--------	----

R

Records management procedures	7
Removal from office	19
Reservation of public meeting rooms: open doors	19
Residency	18
Role of committee or board in appointments	18

S

Selection procedures	18
----------------------	----

Self-dealing and nepotism	30
Signatures on minutes	6

T

Taking a second paid job	31
Telephone procedures	20
Term of office	17
The open meeting law	33
The ten purposes for executive session	39

U

Use of clerical staff	19
Use of town buildings	19

W

What about other committee records?	8
What are the requirements for filing and posting meeting notices of local public bodies?	38, 52
What are the requirements for posting meeting notices for regional district, county, and state public bodies?	39, 52
What constitutes a deliberation?	38, 51
What constitutes a public body?	37, 51
What information must meeting notices contain?	39, 53
What is the attorney general's role in enforcing the open meeting law?	42
What is the open meeting law complaint procedure?	42, 56
What materials must be distributed to newly appointed members of public bodies?	21
What matters are within the jurisdiction of the public body?	51
What public participation in meetings must be allowed?	41, 55
What records of public meetings must be kept?	41, 55
What to do with approved minutes	7
When can a public body meet in executive session?	39
Will posting meeting notices on the municipal website fulfill the meeting notice requirements of the open meeting law?	12
Will the attorney general's office provide training on the open meeting law?	43, 57

Z

Zoning	26
--------	----

Section 1

Committee Procedures

Error! Bookmark not defined.

A. Powers and Duties

While all Committees appointed by the Moderator, the Selectmen or Town Administrator are an essential part of our Town government, the responsibility and authority of some are governed by statute, in addition to the Committee Charge. These include the Board of Appeals, Finance Committee, Conservation Commission, Planning Board, Board of Registrars, Board of Assessors, Historical Commission, Parks and Recreation Commission, Council on Aging, Board of Health, Municipal Light Board, Library Trustees, Water Commissioners, and Cemetery Trustees. 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 Board of Selectmen and or Town Administrator.

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 shall take positions, which have been endorsed by the Town, and they shall keep Town Officials fully informed concerning all such liaison activities.

B. Participation in Town Government

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

- ◇ Board or Committee Meetings
- ◇ Finance Committee Hearings on Budgets
- ◇ Planning Board Hearings on Warrant Articles
- ◇ Selectmen's Meetings
- ◇ 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 on Town government in general. Broad participation is essential to maintenance of an Open Town Meeting, which, otherwise, could be dominated by those having only a limited range of special interests.

C. 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, which have become inactive, the Selectmen or Town Administrator 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 Chairperson has been elected, a committee member should notify the Town Administrator's Office of the new Chairperson.

D. Minutes

Meeting Minutes

State Law addressed the keeping of minutes in **Chapters 66 § 5Aⁱ** and **Chapter 30A §§ 22(a)ⁱⁱ 22(c)ⁱⁱⁱ**. (see endnotes) These sections of law require that all boards, keep accurate written records of its public meetings. All committees, commissions, boards, sub-committees and ad-hoc committees shall appoint a clerk/secretary who will be responsible for posting meeting notices, taking minutes of all meetings, and serving as records custodian.

All minutes are considered a **permanent record** and must be maintained and stored appropriately. (Contact the Town Clerk regarding the Municipal Record Retention Schedule as it relates to other records your board or committee maintains)

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. The law requires the minutes set forth shall include the following information:

- Date, time and place of the meeting;
- Members present;
- Any actions taken at the meeting, including Executive Sessions;
- Assignments to committee members;
- Statements of topics discussed;
- Exact wording of all motions, including who made and seconded the motion;
- The vote of each member. Those members present and not participating in the vote should be recorded as abstentions;
- Votes in Executive Session must be recorded in the minutes by a roll call;
- Papers presented at a meeting or hearing should be marked as being received on that date, timed and initialed. If there is a matter involving a lot of documents coming in, such as a hearing, it is helpful to make a document list and assign each a document number.
- The board may ask the presenter to supply the board with a legal size copy of the presentation for easier storage of multiple documents
- Minutes may include summaries of discussions and a schedule of future meetings. Once minutes are accepted by committee vote, they become the official record of the meeting and a permanent public record. Any secretarial notes, if not destroyed once the official minutes are accepted, are considered a public document under the public records law.

In most instances, Committee minutes should be reviewed and approved within six weeks of the original meeting date. Minutes may be approved only at an open meeting at which a quorum of members is present, by majority vote upon a motion made and seconded. The clerk, or if there is no clerk the chairman of the committee should sign the minutes and indicate on the minutes the date of the meeting at which the minutes were accepted and file a copy of the approved minutes with the Town Clerk immediately upon approval.

For Committees which meet monthly or more frequently, the minutes shall be reviewed and approved not later than the next regular meeting following the one being reported. Committees, which meet less frequently, shall adopt a procedure, which will assure approval within one month of the original meeting date.

Chapter 30A § 22 (d) *Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.*

Chapter 30A § 22 (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.*

Importance of the Record-

Many matters before boards and committees are reviewable by a court on an appeal. In many of these matters, the appeal is based on the record developed before the board or committee. Thus it is very important to adequately develop a record which is going to reflect accurately what went on and most importantly, support your decision. The record can consist of testimony and exhibits.

Signatures on minutes

Approval is by a majority vote of a quorum at a later meeting of the committee, even if those members who attended the

prior meeting are not present. The quorum may include committee members who did not attend the prior meeting and may include current members who were not members when the meeting occurred. The minutes need not be signed by any member other than the clerk or chairman.

Must documents used by a public body at a meeting be retained with the minutes?

No, documents used by a public body at a meeting may be retained separately from the minutes. However, once used by the public body at a meeting, the documents become part of the official record and therefore must be maintained in accordance with the public record retention schedule issued by the Secretary of State. The minutes must still list all the documents used by the public body.

Must the minutes of meetings list all members of the public body?

The Open Meeting Law requires that the minutes of a meeting list the names of the members present *or* absent. However, the best practice is to list the names of all members present *and* absent in the minutes of the meeting.

Draft Minutes

Draft minutes may be sent to members for review prior to a later meeting at which they are to be voted upon. Deliberation regarding the contents of the draft minutes of an open meeting must occur at a subsequent open meeting, not by e-mail or telephone (other than to point out scrivener's errors such as wrong date, time or place, wrong person named as present or absent, spelling errors.)

Draft minutes of all open sessions and electronic tapes must be made available upon request, under the public records as defined under the provisions of **Chapter 66 § 10^v**. (see endnotes)

Once the minutes are approved (accepted) by the committee, the draft minutes may be discarded and the electronic recording is submitted to the Office of the Town Clerk to be placed on the municipal website and kept on file.

Refer to the section on RECORDS MANAGEMENT on the proper naming format required.

Ad Hoc Committees

Every multiple member committee or subcommittee must keep and maintain minutes.

Emergency Meetings

The filing and posting requirements for meeting notices do not apply to emergency meetings. Emergency is defined in **30A § 18** as a "**sudden, generally unexpected occurrence or set of circumstances demanding immediate action**". For example, a meeting of the Board of Health to take action with respect to a matter endangering the public health due to a sudden flooding of an area would be considered an emergency meeting. A meeting simply called in a hurry to take action prior to the expiration of a deadline would not qualify as an emergency meeting.

RECORDS MANAGEMENT PROCEDURES

What to do with approved minutes

- The original approved set of minutes should be retained in the department office for committees.
- All Boards, Committees and Commissions **MUST SUBMIT** the approved minutes and postings to the Town Clerk's Office for filing and public access in **both an electronic format and printed copy.**

The Town Clerk will catalogue, store and create PDF files of all electronically filed decisions and minutes for internal review and research.

Amended Minutes

If approved minutes are amended, what should be filed with the Town Clerk? The prior approved minutes, with the changes that have been voted shown by "redlining" or by handwritten marginal notes, and the date of the amendment, should be filed with the Town Clerk.

May approved minutes that have been filed with the Town Clerk be amended? Yes- Approved minutes may be amended, provided prior notice has been given to committee members by inclusion as an item on an agenda distributed prior to the

meeting; approved minutes may be amended at a meeting at which a quorum is present, by majority vote; the members voting on the amendment need not have been present at the original meeting or at the meeting at which the minutes were previously approved, and need not have been members of the committee at that time.

Naming the Electronic File

In order for all boards to be consistent in the manor of which the file is named, please use the following format in naming your minutes and decisions;

FORMAT-

Year, Month, Day, Name of Committee, Agenda or Minutes

Example;

For a March 3rd 2011 meeting of the Planning Board the file name will be as follows;

2011.03.03 Planning Board Minutes.pdf

e-mail your minutes to the Town Clerk's Office;

kim.hopewell@westboylston-ma.gov , enovia@westboylston-ma.gov

What about other committee records?

Besides minutes, it is important to retain other documents that will be helpful to the town and or committee member in future years. In particular, it is important to retain supporting documents and correspondence for events or decisions that are of major significance to the committee or town. These documents should be turned over periodically to the Town Clerk for placement in the Town Archives.

Dissolution of any 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 should be organized in a reasonable and understandable manner and turned over to the Town Clerk for appropriate filing and archival storage.

E. Deadlines

All Committees should be cognizant of the following deadlines:

1. Budgets are prepared by department heads with committee review and input on matters relating to policy. The department head submits a proposed budget to the Town Administrator.
2. All Committees are required to write an Annual Report for use in the Town Report. These are due in early January.
3. Draft Warrant Articles are to be discussed with the Town Administrator and filed in the appropriate time frame.

F. Committee Meetings

A meeting of a committee occurs any time a majority quorum of the Committee (or a subcommittee) members 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 a place, which is open to the public. The Selectmen urge 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. 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.

G. Meetings/Postings

1. Meeting Posting Requirements

Except in an emergency, a public body must post notice of meeting at least 48 hours in advance, **EXCLUDING**

SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS. Emergency is a sudden generally unexpected occurrence or set of circumstances demanding immediate action. In an emergency, a public body shall post notice as soon as reasonably possible prior to a meeting. Take note of the office hours of the Town Clerk to ensure your meeting is timely posted.

The meeting Posting may be sent to the Town Clerk's office by FAX 508.835.6240, 508.835.4102, in person, through inter-office mail, mail or via E-mail kim.hopewell@westboylston-ma.gov; enovia@westboylston-ma.gov,

Town Clerk, 127 Hartwell Street, Suite 100, West Boylston, MA 01583

- Please make sure you take into consideration the Town Clerks hours to ensure that the posting has been received.
- Meeting notices should contain the following information:
 - Name of the Committee
 - Date, Day of Week and Starting Time of Meeting
 - Location of Meeting. Specify Name of Town Building and Room
 - A listing of topics that the chair reasonably anticipates will be discussed at the meeting (Topics must give enough specificity so that the public will understand what will be discussed)
 - Public bodies are encouraged to update the notice when made aware of new topics within the 48 hour period before the meeting
- Chairs should not post notices so far in advance that there is a high likelihood that new topics will arise, unless the chair updates the notice with any such new topics 48 hours in advance of the meeting.
- The posting shall be posted in a manner conspicuously visible to the public at all hours in or on municipal building housing the clerk's office. The postings will be available on the West Boylston Website Meeting Calendar, the Town Clerk's Official Posting Bulletin Board, the West Boylston Fire Department and the Agenda Book located outside of the Town Clerk's Office.

A copy of the meeting notice will be kept on file with the Town Clerk for one year. This will provide proof that the notice was not only filed but also posted in case a question of compliance with the notice requirements of the Open Meeting Law is raised at a later time.

Public Hearing Postings- MUST be posted two weeks prior to the meeting date of which the public hearing is held.

Any continuation of a Public Hearing meeting MUST be posted along with an agenda within 48 hours of the meeting.

No Public Hearing for any special permit, variance or appeal can be held on any day on which a state or municipal election, caucus or primary is held in the community.

A Zoning Board of Appeals or Special Permit Granting Authority can continue a Public Hearing to a date certain and give public notice pursuant to the Open Meeting Law (G.L. c.30A §§ 18-25) without having to send new notice by mail to parties of interest.

A Public Hearing ends when rights of interested parties to present information and argue is cut off.

The decision and voting requirements for Special Permit Granting Authorities and Zoning Boards of Appeal can be found in **G.L. c.40A §§ 9 and 15.**^v

Town of West Boylston General Bylaws Public Hearings and Notice Requirements

ARTICLE XXIII PUBLIC HEARING AND NOTICE

Section 1 Circumstances requiring a public hearing and hearing notice.

No town department, board, committee, commission, or officer, including the Municipal Light Plant, shall take any action which:

- a) infringes, limits, detracts, alters, or otherwise affects the rights of the citizens of the Town of West Boylston to utilize and enjoy town facilities, buildings or properties.

- b) increases, decreases, alters, or modifies any fee schedule for municipal services, use of town facilities and buildings, or municipal licenses and permits in instances where the authority for establishing such fee schedule is vested in a local authority;
- c) increases, decreases, or alters the hours of operation and accessibility to the public of a municipal department, program or service
- d) increases, decreases, or alters the level of a municipal service or program provided to the citizens of West Boylston; and
- e) promulgates, eliminates, alters, or modifies any local rule or regulation in instances which affects the rights of the citizens of West Boylston to lawfully use and enjoy their private property, and to operate lawful businesses within the Town of West Boylston, and where the authority to promulgate such rules or regulations is vested in a local authority, without first holding a public hearing, notice of such hearing is to be published in a local newspaper on two (2) occasions, the first of which is to be at least fourteen (14) calendar days prior to the public hearing and the second publication to be at least seven (7) days prior to the public hearing.

Section 2

Notice to the public of a change in town rules, regulations, fee, schedules, and hours of operation

Prior to the effective date of any change in:

- a) policies, rules and regulations that govern the use of town buildings, facilities, and property;
- b) policies, rules and regulations that increases, decreases, alters or modifies any fee schedule for municipal services, use of town facilities and buildings, or municipal licenses and permits in instances where the authority for establishing such fee schedule is vested in a local authority;
- c) policies, rules and regulations that increases, decreases, alters the hours of operation and accessibility to the public of a municipal department, program or service.
- d) Policies, rules and regulations that increases, decreases, or alters the level of a municipal service or program provided to the citizens of West Boylston.
- e) Policies, rules and regulations that promulgates, eliminates, alters, or modifies any local rule or regulation in instances which affects the rights the citizens of West Boylston to lawfully use and enjoy their private property, and to operate lawful businesses within the Town of West Boylston, and where the authority to promulgate such rules or regulations is vested in a local authority, the town department, board, committee, commission, or officer, including the Municipal Light Plant, responsible for promulgating such change in policies, rules and regulations shall notify the public of such changes by causing to be published in a local newspaper a notice of such changes in public policies, rules, regulations, fee schedules, hours of operation, or levels of service on at least one (1) occasion at least seven (7) calendar days prior to said effective date.

How specific must the listing of topics be in the meeting notice?

The listing of topics must contain enough specificity to give the public an understanding of each topic that will be discussed. It is not sufficient to list broad topic categories, such as "Old Business." For example, when the Chair of a Board of Selectmen reasonably anticipates a discussion about on-going traffic improvement projects in town at the next Board meeting, it would be appropriate for the Chair to list that topic in the notice as: "Discussion of Traffic Improvement Projects at the intersection of Main and Pleasant Streets; and at the intersection of Elm and Oak Streets." In some instances, there may be overlap in the posting requirements of the Open Meeting Law and other statutes. In most cases, the information required by the controlling statute will satisfy the Open Meeting Law meeting notice requirements, however for specific questions please contact the Division of Open Government

May a public body consider a topic at a meeting that was not listed in the meeting notice?

Yes, if it is a topic that the chair did not reasonably anticipate 48 hours before the meeting. If a meeting topic is proposed after the meeting notice is posted, the public body is encouraged to update its posting to provide the public with as much notice as possible of what subjects will be discussed during a meeting.

May our public body list a section for “New Business” to cover topics which come up for the first time at the meeting in the meeting notice?

Yes, this category may be used for topics that the Chair did not reasonably anticipate for discussion when filing the meeting notice to be posted. Some public bodies use this to category for their public comment or open forum periods. The best practice would be to explicitly state in the notice that the time is being reserved for topics that the chair did not reasonably anticipate would be discussed.

Is it a violation of the Open Meeting Law for the Chair of a public body to neglect to inform other members of a meeting?

No, provided that the meeting is posted in accordance with the requirements of the Open Meeting Law. The Open Meeting Law requires that public bodies post meetings at least 48 hours in advance of the meeting excluding Saturdays, Sundays and legal holidays, but the law does not include a requirement that the Chair notify other members of meetings. The best practice is for the Chair to notify all members of the public body of the meeting sufficiently in advance to allow members to make plans to attend but in no case later than 48 hours in advance of the meeting.

Notices and agendas are to be posted 48 hours in advance of the meetings excluding Saturdays, Sundays, and legal holidays. Please note the hours of the Town Clerk’s Office to ensure that your posting has satisfied this requirement.

List of the topics that the chair reasonably anticipates will be discussed at the meeting below and submit to the Town Clerk. Use additional sheets if required.

Proper format for posting a Meeting and Agenda;

Type the Committee Name here	MEETING POSTING		Date the Notice was submitted to the Town Clerk’s Office
	IN ACCORDANCE WITH THE PROVISIONS OF MGL 30A §§ 18-25		
The physical location of the meeting and room in which the meeting will take place	PLANNING BOARD	3/19/2011	
	Board/Cmte Name	Date of Notice	
	TOWN HALL	MEETING RM 2	
	Meeting Place	Conference Rm. No.	
The Date and Time the Meeting will occur is placed here	3/23/2011 7 p.m.	<i>Susan Abramson</i>	
	Date/Time of Meeting	Clerk of Board or Bd. Member Signature	
	Meeting canceled/Postponed to: _____		The Signature of the person submitting the posting is placed here.
	Date of cancelation/Postponement _____		

Example:

Planning Board Agenda

Approve Minutes of Previous Meeting(s): Jan. 3, 2011, Feb.23, 2011

Business:

- 7:00 ANR: 304 Lancaster Street: A&E Realty: Smith / Mazzoleni
Reference Doc.: Plan of Land 304 Lancaster Street, West Boylston, 03-03-11
- 7:10 Joe Evangelista: Discussion re Possible Implementation of Incentive Zoning Bylaw
- 7:30 Discussion of Proposed Amendments to Incentive Zoning Bylaw
Reference Doc.: Incentive Bylaw Draft Amendments: 03/10/11
- 8:00 Discuss Continued "On-Call Engineering Consulting Services Contract": VHB
Reference Doc.: VHB Client Authorization Form, dated 3/9/2011
- 8:15 Old Business
- Gerardo's: Use of Un-owned Land North of Building
Chapter 40B: Follow-up on Contact With DHCD
- 8:30 New Business
- Submittal of "Annual Report of The West Boylston Planning Board Fiscal Year 2010"
Setting Salaries for Elected Officials: Discussion
- 8:35 Reports From Other Boards
- 8:50 Other Topics Not Reasonably Anticipated by the Chair 48 Hours Before the Meeting
- 9:00 Minutes/Bills

Completed form must be e-mailed to the Town Clerk's Office for proper posting

May a public body hold a meeting on a Sunday?

While the Open Meeting Law is silent with regard to holding public meetings on Sundays, the best practice is not to hold public meetings on Sundays or holidays when access to public buildings may be limited and when the public does not normally anticipate the scheduling of a public meeting.

If a public body holds a properly noticed meeting, and decides to continue the meeting until a future date, is the public body required to post another meeting notice?

Yes, the public body must treat the meeting as though it is a new meeting for purposes of notice posting. The public body must post the meeting 48 hours in advance and post a new meeting notice.

Will posting meeting notices on the municipal website fulfill the meeting notice requirements of the Open Meeting Law?

Yes, provided that website is the designated alternate posting method for the municipality and the meeting notice satisfies all the other requirements of the Open Meeting Law: 1) it is posted at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays; 2) it is displayed in a legible, easily understandable format; 3) it contains the date, time and place of the meeting; 4) it lists the topics that the Chair reasonably anticipates will be discussed at the meeting with sufficient specificity to advise the public of the issues the public body will discuss; and 5) the date and time that the notice was posted is conspicuously recorded on the notice. Public bodies are encouraged to coordinate with the municipal clerk, or the person designated by agreement with the municipal clerk, to ensure that meeting notices are filed sufficiently in advance of the meeting to allow the municipal clerk or the designee to post the meeting 48 hours in advance.

For example, if a Board of Selectmen plans to meet on a Monday night at 6:00 p.m. but the municipal clerk's office closes at 1:00 on Thursday, the Chair of the Board should plan to submit the notice for filing and posting in advance of 1:00 to allow the municipal clerk ample time to post the meeting notice. It is the public body's responsibility to ensure that the meeting notice is received for posting by the municipal clerk or the clerk's designee.

If a subcommittee of a public body holds a meeting and members of the public body, who are not members of the subcommittee, wish to attend the meeting, must the public body post a meeting notice?

No, as long as the public body does not engage in a deliberation. Members of a public body may wish to attend a meeting of a subcommittee of that public body, even where those members are not part of the subcommittee. In those cases, they may sit in the audience and participate as members of the public. They may address the public body with the permission of the chair, and may state their opinion on matters under consideration by the subcommittee. They may not discuss matters as a quorum, or discuss topics which are not under consideration by the subcommittee. Doing so would constitute a deliberation, and a separate meeting notice for the public body would be required. The subcommittee convening the meeting must still post its regular meeting notice.

EXECUTIVE SESSIONS

Executive Session Meeting

Before going into the Executive Session, the chair must state the purpose for the session, "stating all subjects that may be revealed without compromising the purpose for which the Executive Session was called"

No Executive Session (a meeting closed to the public) may be held until the governmental body has convened in an open session for which notice has been given and a majority of its members have voted to go into Executive Session.

- Majority of members of public body must vote to go into Executive Session and a roll call vote is taken and recorded
- Chair must publicly 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
- Chair must announce whether open session will reconvene at end of Executive Session
- Must maintain accurate records of Executive Session including roll call of votes taken
- May not discuss any matter other than purpose for which Executive Session is lawfully called

Purposes of Executive Session

- Discuss reputation, character, health, discipline, charges, complaints, but not professional competence of individual
- Conduct strategy sessions in preparation for negotiations, to conduct collective bargaining sessions or contract negotiations, with nonunion personnel
- Discuss strategy for collective bargaining or litigation
- Security personnel or devices
- Criminal misconduct
- Acquisition of real property

- Comply with law or grant-in-aid requirement
- Preliminary screening for employment
- Confer with mediator on litigation or decision
- Trade secrets in the course of activities conducted by a public body as an energy supplier

Executive Session Minutes

- Must be disclosed once publication will no longer defeat the purpose for having entered into Executive Session, unless within an exemption to the public records law, or attorney-client privileged
- Must be reviewed periodically by the chair or public body to determine if purpose of Executive Session remains
- Must be provided within 10 days in response to a request, unless a review has not yet been undertaken, in which case the minutes must be reviewed by the board at its next meeting or within 30 days, whichever comes first

Executive Session Records

- Not required to disclose the minutes, notes or other materials used in a Executive Session for so long as the disclosure of those records would defeat lawful purposes of the Executive Session
- Periodic review to determine whether continued nondisclosure is warranted; determination must be included in subsequent meeting minutes
- Documents and exhibits used by public body must be retained

Detailed requirements for review/disclosure of Executive Session minutes. Chapter 30A **Chapter 30A §§ 22 (g)(f)^{vi}**

-

Exempt from Public Disclosure

Public bodies are not required to disclose the minutes, notes or other materials used in an executive session where 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, minutes and other records from that executive session must be disclosed unless they are within an exemption to the Public Records Law, **Chapter 4 § 7 clause 26^{vii}** or are attorney-client privileged.(see endnotes)

The following materials **are exempt** from public disclosure:

- Materials used in a performance evaluation of an individual bearing on his/her professional competence that were not created by members of the body for purposes of evaluation
- Materials used in deliberations about employment or appointment of individuals, including applications and supporting materials but excluding resumes, which must be disclosed

Refer to the Executive Session Quick Index Guide for the proper wording and format of your minutes.

EXECUTIVE SESSION QUICK INDEX GUIDE

Courtesy of the City Solicitors and Town Counsel Association and your municipal attorney.

Remember, you must;

- 1 Already be in open session;
- 2 Use roll call vote to go into Executive Session;
- 3 Chair must specify the specific reason or reasons (see below) stating all subjects that maybe revealed without compromising the purpose for which the Executive Session was called; and
- 4 Chair must specify if you intend to reconvene in open session.

NOTE:

Listed are suggested motions for each of the exceptions to the Open Meeting Law. You can of course edit them to suit the occasion. You can combine more than one exception if applicable. Highlighted is the beginning of the pertinent parts of each suggested motion by "shadowing" and **underlining** the word "**to**", so that if you do combine reasons, all you

need to do is to include the portion of the suggested motions beginning with the highlighted word "to". Also similarly highlighted in "shadow" and underlining are the four most frequently used exceptions for Executive Session. Accurate minutes are to be kept and maintained of all meetings, including Executive Sessions. The law requires that the minutes are to set forth:

- (a) the date;
- (b) the time;
- (c) the place;
- (d) the members present or absent;
- (e) a summary of the discussions on each subject;
- (f) a list of documents and other exhibits used at the meeting;
- (g) the decisions made and the actions taken at each meeting, including the record of all votes and for Executive Sessions,
- (h) the votes, by recorded roll call votes.

You should also consult with your local municipal counsel as to the ability to meet in Executive Session or other session with legal counsel for the purposes of obtaining legal advice.

Exception 1. To discuss the reputation, character, physical condition or mental health rather than the 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 provided that the individual involved in such Executive Session has been notified in writing by the governmental body, at least 48 hours prior to the proposed Executive Session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an Executive Session is held, such individual shall have the following rights, in addition to any other rights he or she may have under contract or other laws or sources:

- (a) to be present at such Executive Session during deliberations which involve that individual.
- (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said Executive Session.
- (c) to speak in his own behalf.
- (d) to cause an independent record to be created of said Executive Session by audio-recording or transcription, at the individual's expense.

[(d) is a new requirement.]

-Suggested Motion- Move to go into Executive Session to discuss the reputation, character, physical condition or mental health of an individual, and to reconvene in Open Session.

-Suggested Motion- Move to go into Executive Session to consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual and to reconvene in Open Session.

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

-Suggested Motion- Move to go into Executive Session to conduct strategy sessions in preparation for negotiations with nonunion personnel, and to reconvene in Open Session.

-Suggested Motion- Move to go into Executive Session to conduct collective bargaining sessions, with nonunion personnel and to reconvene in Open Session.

-Suggested Motion- Move to go into Executive Session to conduct contract negotiations with nonunion personnel, and to reconvene in Open Session

[Note- it maybe appropriate and necessary to combine all three into one motion.]

Exemption 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;

Exception 4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

-Suggested Motion- Move to go into Executive Session to discuss the deployment of security personnel or devices or strategies with respect thereto, and to reconvene in Open Session.

Exception 5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

-Suggested Motion- Move to go into Executive Session to investigate charges of criminal misconduct or to consider the filing of criminal complaints, and to reconvene in Open Session.

Exception 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 governmental body.

-Suggested Motion- Move to go into Executive Session to consider the purchase, exchange, lease or value of real property, and that the chair declare that an open meeting may have a detrimental effect on the negotiating position of the body and to reconvene in Open Session.

[Note: chair must separately declare that an open meeting may have a detrimental effect on the negotiating position of the body.]

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

-Suggested Motion- Move to go into Executive Session to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements, and to reconvene in Open Session.

Exception 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;

[Note: the motion for this exemption can only be made by the preliminary screening committee. The preliminary screening committee may wish to go into Executive Session to consider the applications or interview people or both; you can adapt the motion to serve your needs.]

-Suggested Motion- Move to go into Executive Session to consider [and if applicable-] and interview applicants for employment or appointment, and that the chair declare that an open meeting will have a detrimental effect in obtaining qualified applicants, and to reconvene in Open Session.

[Note: Chair must separately declare that an open meeting may have a detrimental effect in obtaining qualified applicants]

Exception 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;

-Suggested Motion- Move to go into Executive Session to meet or confer with a mediator and to reconvene in Open Session.

Exemption 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;

-Suggested Motion- Move to go into Executive Session 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. [or if applicable- in the course of activities conducted as a municipal aggregator under Section 134 of said chapter 164; or if applicable- in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to Section 136 of said chapter 164J and to reconvene in Open Session.]

[Note: that the governmental body, municipal aggregator or cooperative must have determined that disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.]

This material is provided as general information and does not constitute the providing of legal advice. Other legal requirements may be applicable to a particular situation. **The law encourages meetings to be in open as much as possible. These exceptions to open meetings should only be used when necessary.**

SECTION 2

APPOINTMENT PROCEDURES

A. Appointment Procedures General

It is the policy of the various appointing authorities to enlarge the general pool of applicants through active solicitation of Town organizations and through publicity in the press. The Board of Selectmen, based on its judgment of appropriateness and need shall determine the timing and extent of specific active solicitations.

The Town Administrator makes a special effort to seek out roughly equal numbers of women and men as candidates for appointments over which he has the authority, and makes appointments in accordance with the Massachusetts Equal Rights Amendment which states that "Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin."

- Recommendations from town organizations or individuals;
- Suggestions from committee with vacancy;
- Suggestions by prospective appointee;
- Research of skills available in town; and
- Individual responses to publicity regarding vacancies.

B. Term of Office

1. Unless prescribed by statute, Town Meeting vote, or specific committee charge, three years shall be the standard term of office.
2. All terms of office 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.

3. 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.
4. All Committees are authorized to set up "ad hoc" subcommittees for specific purposes, with the permission of the appointing authorities.

C. Eligibility for Appointments

All residents of the Town are eligible for appointment, except the following:

1. Town employees whose service on a given committee, in the opinion of the appointing authority, would create the appearance of a conflict of interest.

D. Criteria for Selection

The Board of Selectmen and Town Administrator on the basis of shall make actual appointments from the pool of applicants:

1. 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

E. Residency

In most instances, committee members should be residents of the Town of West Boylston. There may be occasional exceptions when an individual's unique skills or experience support the appointment of a non-resident and would be beneficial to the committee's work.

In the event a committee member becomes a resident of another community, the member or the committee chair shall promptly notify the appointing authority.

All Elected officials must be registered to vote and reside in West Boylston.

F. Role of Committee or Board in Appointments

Each committee or board is expected to:

1. Encourage individuals to complete letters of interest to be appointed to a board or committee
2. State the qualifications they are looking for in appointments.
3. Make suggestions on potential members

Committees should not make any representation to candidates concerning the likelihood of appointment nor provide their suggestions with any rank order, but may invite prospective members to attend meetings to familiarize themselves with the work of the committee.

G. Selection Procedures

1. The individual member and the committee chairperson shall notify the appointing authority in writing as soon as a vacancy occurs.
2. The vacancy will be announced on the Town Website; www.westboylston-ma.gov, , the Town Administrator's Blog, and a notice will be prepared for release to the press and for public posting.
3. No action will be taken on a vacancy for at least two weeks after the announcement of the vacancy.
4. For Board of Selectmen appointments, nominations shall be made at one Board meeting, and formal action will not be taken until a subsequent Board meeting.
5. For Town Administrator appointments that are approved by the Board of Selectmen, 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 appointments shall be made within two months of the announcement of a vacancy.

H. Orientation Procedure/Appointment

All members appointed or reappointed to a committee will receive an appointment slip. Upon receipt of the appointment slip, all committee members shall present themselves at the Town Clerk's Office in order to take the oath of office.

Also, upon appointment, each committee member shall receive from the Town Clerk's Office an informational packet with a copy of this "Committee Handbook" which shall include: the copies of the Open Meeting Law, 940 CMR 29.0, Chapter 268A and Mandatory Ethics testing.

It is the responsibility of the committee chair to provide for the orientation of new members to familiarize the individuals with the work of the committee, current projects, and town government operations in general as they may impact the committee's work.

I. Removal from Office

The Selectmen by majority vote may investigate the affairs of any committee or board member appointed by the Board of Selectmen or by the Town Administrator. The Selectmen shall have access to any or all records, which they deem necessary for this purpose. The Selectmen may remove, after a hearing, any Committee, or Board member thereof.

The Town Administrator has similar powers of investigation and removal with cause for Committees and Board appointed by the Town Administrator.

SECTION 3 COMMITTEE PAPERWORK AND FINANCE

A. Committee Paperwork and Finance

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 Administrator for an appropriately related Department Head to have clerical staff process some Committee work.

Management/Professional Staff

Several committees have responsibilities that are complex and have significant volume, and require support from management/professional staff. The Department Head 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 Administrator. The staff member may be responsible for compiling a budget, to be reviewed by the committee, prior to submission to the Town Administrator. The Town Administrator provides general management, direction, and supervision to the staff member and his/her daily operations

Photocopying

A photocopying machine is located in the hallway behind the Town Clerk's Office, and is available for official Committee use during business hours 8:00-4:30 Monday – Friday.

B. Reservation of Public Meeting Rooms: Open Doors

Use of Town Buildings

Public meeting rooms are available for Committee and Board use in various Town Buildings, and reservations should be made in advance by contacting the appropriate staff as follows:

- Town Hall – Municipal Assistant to the Board of Selectmen (508) 835-3490.
- a) Chairpersons of all standing Committees who meet regularly in the Town Hall may pick up a key from the

Selectmen's Municipal Assistant.

b) If a Committee or Board is holding a meeting at the Town Hall and does not have a key, then they should pick up a key that morning from the Selectmen's Municipal Assistant and the key should be returned the next business day.

Committees or Boards, which meet in any public building, are responsible for insuring that the front doors are unlocked while their meeting is occurring. The first Committee or Board to meet in the evening or on the weekend will have to unlock the doors of the building.

The Committee or Board utilizing the meeting room is responsible for insuring that the lights are turned off when the meeting is finished. The last Committee or Board to leave the building should also insure that any remaining lights are turned off and that all doors are locked.

Where a staff member is assigned to a particular Committee, the staff member is responsible for insuring that the doors are unlocked and later re-locked.

When the Town Hall is used for special committee related events, the Town Administrator's Office will be notified in advance of such an event but it is the responsibility of the Committee/user to clean the room upon completion of the event.

Meeting Cancellations

In order to support a uniform procedure upon cancellation of Committee or Board meetings due to inclement weather or any other unforeseen event, outlined below is a procedure for notifying the public.

The decision to cancel a meeting is up to the individual Committee or Board. Should it be necessary to cancel a meeting due to inclement weather or any other unforeseen event, the Committee Chair or the assigned staff person should notify the Town Clerk's Office of the cancellation, or if time allows, send a written notice to the Town Clerk's Office. The Chairman or staff person should arrange for the posting of a cancellation notice.

C. Telephone Procedures

Use of Town Telephones

Should the need arise, lines are available to Committee and Board members who want to make a phone call.

Telephones may be used to make local calls. Long distance calls can only be made for Committee business and require the permission from the Town Administrator's Office. In order to place an outside call it is necessary to press an available line key, dial "9" and then dial the number you are calling.

Phone Messages

People who call the Selectmen's/Town Administrator's Office or the Town Clerk's Office requesting to get in touch with a Committee member will be given the Committee members home phone number. Business phone numbers will not be given out without permission. 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 with the aforesaid offices.

Emergencies

In case of an emergency at the Town Hall, please notify the Police/Fire dispatch at 911.

SECTION 4

Educational Materials and Certification

Must all members of a public body sign the Attorney General's Open Meeting Law Certification Form, or only newly appointed and elected members of a public body?

All members of any public body must receive the educational materials prepared by the Attorney General upon taking the oath of office, if required or, if no oath is required, then before entering into the performance of the office. The municipal clerk is responsible for providing the educational materials to the members of local public bodies. The appointing authority, executive director or other appropriate administrator is responsible for providing the educational materials to members of regional, county or state public bodies. Within two weeks after receipt of the educational materials, the member shall certify the receipt of the materials on the form provided by the Attorney General and available on the AGO's website. Members of public bodies who do not have defined terms of office are considered qualified for their office every two years, beginning on January 1, 2011.

What materials must be distributed to newly appointed members of public bodies?

Members of public bodies must receive the Open Meeting Law, G.L. c. 30A, §§18-25; the Open Meeting regulations, 940 CMR 29.00; and the Guide to the Open Meeting Law published by the Attorney General. All materials are available on the Attorney General's website.

ETHICS Advisory Opinion

CHAPTER 268A. Municipal Advisory Opinion

Koppelman and Paige, PC - March 21, 2011

Gifts to Public Employees:

While a bribe made to or accepted by a public employee with "corrupt intent" is of course illegal pursuant to GL c.268A, §2, a more complicated restriction is set forth in §3. This section prohibits a public employee from accepting a gift of "substantial value" that is offered "for or because of official acts performed or to be performed." The Regulations define "substantial value" as \$50 or greater. Section 3 applies to gifts without regard to the intent of the donor, so any gift worth more than \$50 that is merely offered for goodwill or to say "thank you" is still prohibited by §3. If a gift is made to a public employee is truly unrelated to the employee's duties or actions, it is not covered by Chapter 268A Regulations.

1. Gifts to Teachers and Others

One obvious conflict this creates is the long-standing practice of students and/or their parents wishing to make small gifts to a public school teacher. The Regulations now state that a teacher may accept a gift of up to \$150 aggregated value during the school year, provided that the gift is made as a class gift (individual donors not identified). The teacher is not required to make any written disclosure of such a gift. If an individual parent or small group of parents wish to make a personal gift to a teacher, however, it cannot exceed \$50 and the teacher is required to file a written disclosure of the gift with his or her appointing authority in accordance with GL c.268A, §23(b)(3). Similarly, any public employee may accept a gift worth up to \$50 but must file a written disclosure if the gift may create an appearance of bias, favoritism or undue influence. The \$150 aggregate exception applies only to teachers, however.

2. Substantial Value

The term “substantial value” has long been interpreted by the State Ethics Commission as anything worth \$50 or more, and it is now defined in the Regulations as such. The Regulations further provide that the Commission may aggregate the value of gifts offered within a 365 day period and may also consider the “fair market value” of a gift. If, for example, an individual makes three \$20 gifts to a public employee over a period of weeks or months, the Commission may view this as prohibited single gift worth \$60. Moreover, if a \$40 event ticket has a fair market value substantially higher than the face value due to the scarcity of such tickets, the Commission may find the ticket to be a prohibited gift. More examples may be found at 930 CMR 5.05.

3. Exemptions Allowing Gifts Exceeding \$50 in Value

There are several circumstances, now addressed in the Regulations, where the Commission will find that a particular gift worth over \$50 is not prohibited by §3. These exemptions, which are described in detail at 930 CMR 5.08, include;

- Travel expenses, where the purpose of the travel is related to a legitimate public purpose (but excluding the expenses of the employee’s family members.)
- In-state travel for educational purposes (training)
- Legitimate speaking engagements related to the employee’s position.
- Public employee discounts, if offered to all public employees.
- Ceremonial or retirement gifts.

Chapter 268A - CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES

A. Chapter 268A: Section 17. Municipal employees; gift or receipt of compensation from other than municipality; acting as agent or attorney.

Section 17

(a) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Whoever violates any provision of this Section shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

A special municipal employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This Section shall not prevent a municipal employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This Section shall not prevent a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the official responsible for appointment to his position approves.

This Section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

This Section shall not prevent a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This Section shall not prevent a municipal employee from applying on behalf of anyone for a building, electrical, wiring, plumbing, gas fitting or septic system permit, nor from receiving compensation in relation to any such permit, unless such employee is employed by or provides services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency.

B. Chapter 268A: Section 18. Former municipal employee; acting as attorney or receiving compensation; from other than municipality; partners.

Section 18.

(a) A former municipal employee who knowingly acts as agent or attorney for or receives compensation, directly or indirectly from anyone other than the same city or town in connection with any particular matter in which the city or town is a party or has a direct and substantial interest and in which he participated as a municipal employee while so employed, or

(b) a former municipal employee who, within one year after his last employment has ceased, appears personally before any agency of the city or town as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and which was under his official responsibility as a municipal employee at any time within a period of two years prior to the termination of his employment, or

(c) a partner of a former municipal employee who knowingly engages, during a period of one year following the termination of the latter's employment by the city or town, in any activity in which the former municipal employee is himself prohibited from engaging by clause (a), or

(d) a partner of a municipal employee who knowingly acts as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which the municipal employee participates or has participated as a municipal employee or which is the subject of his official responsibility, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

If a partner of a former municipal employee or of a special municipal employee is also a member of another partnership in which the former or special employee has no interest, the activities of the latter partnership in which the former or special employee takes no part shall not thereby be subject to clause (c) or (d).

Notwithstanding the provisions of clause (b), a former town counsel who acted in such capacity on a salary or retainer of less than two thousand dollars per year shall be prohibited from appearing personally before any agency of the city or town as agent or attorney for anyone other than the city or town only in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which he participated while so employed.

This Section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

C. Chapter 268A: Section 19. Municipal employees, relatives or associates; financial interest in particular matter.

Section 19

(a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any

arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

(b) It shall not be a violation of this Section

(1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or

(2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files, with the clerk of the city or town, a statement making full disclosure of such financial interest, or (3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

D. Chapter 268A: Section 20. Municipal employees; financial interest in contracts; holding one or more elected positions.

Section 20.

(a) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

This Section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This Section shall not apply

(a) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this Section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or

(b) to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family, and if in the case of a contract for personal services

(1) the services will be provided outside the normal working hours of the municipal employee,

(2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year,

(3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and

(4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this Section, or (c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or

(c) to a special municipal employee who files with the clerk of the city, town or district a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee, approve the exemption of his interest from this Section, or

(d) to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of his residence to the extent permitted by the funding agency, or

(e) to a municipal employee if the contract is for personal services in a part time, call or volunteer capacity with the police, fire, rescue or ambulance department of a fire district, town or any city with a population of less than thirty-five thousand inhabitants; provided, however, that the head of the contracting agency makes and files with the clerk of the city, district or town a written certification that no employee of said agency is available to perform such services as part of his regular duties, and the city council, board of selectmen, board of aldermen or district prudential committee approve the exemption of his interest from this Section or

(f) to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority, unless the employee is employed by the local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs or

(h) to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving a rental subsidy administered by a local housing authority, unless such employee is employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.

This Section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive; provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and, provided further, that no such selectman shall be eligible for appointment to any such additional position while he is still a member of the board of selectmen or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This Section shall not prohibit any elected official in a town, whether compensated or uncompensated for such elected position, from holding one or more additional elected positions, in such town, whether such additional elected positions are compensated or uncompensated.

This Section shall not prohibit an employee of a municipality with a city or town council form of government from holding the elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that no councillor shall be eligible for appointment to such additional position while a member of said council or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by a municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling such action on such terms as the interest of the municipality and innocent third parties require. No such elected councilor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive.

This Section shall not prohibit an employee of a housing authority in a municipality from holding any elective office, other than the office of mayor, in such municipality nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such elected officer shall not, except as otherwise expressly provided, receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive; provided further that no such elected official may vote or act on any matter which is within the purview of the housing authority by which he is employed; and provided further that no such elected official shall be eligible for appointment to any such additional position while he is still serving in such elective office or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by the housing authority in any matter shall be grounds for avoiding, rescinding, or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This Section shall not prohibit an employee in a town having a population of less than three thousand five hundred persons from holding more than one appointed position with said town, provided that the board of selectmen approves the exemption of his interest from this Section.

E. Chapter 268A: Section 23. Supplemental provisions; standards of conduct.

Section 23.

(a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county, and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;

(2) use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by Section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other Section of this chapter shall also be exempt from the provisions of this Section. The state ethics commission, established by chapter two hundred and sixty-eight B, shall not enforce the provisions of this Section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this Section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this Section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) Upon qualification for office following an appointment or election to a municipal agency, such appointed or elected person shall be furnished by the city or town clerk with a copy of this Section. Each such person shall sign a written acknowledgement that he has been provided with such copy.

CHAPTER 40A. ZONING

Chapter 40A: Section 11.

Notice requirements for public hearings

Section 11.

In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The permit granting authority or special permit granting authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than five nor more than ten additional days to reply.

Publications and notices required by this Section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

Zoning ordinances or by-laws may provide that petitions for special permits shall be submitted to and reviewed by one or more of the following and may further provide that such reviews may be held jointly:--the board of health, the planning board or department, the city or town engineer, the conservation commission or any other town agency or board. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

[Paragraph inserted following third paragraph by 2008, 239, Sec. 1 effective November 2, 2008.]

When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by Sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk.

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This Section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of Section 6. The fee for recording or registering shall be paid by the owner or applicant.

Publications and notices required by this Section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

Zoning ordinances or by-laws may provide that petitions for special permits shall be submitted to and reviewed by one or more of the following and may further provide that such reviews may be held jointly:--the Board of Health, the planning board or department, the city or town engineer, the conservation commission or any other town agency or board. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate

and shall send copies thereof to the special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk. No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, and if it is a variance or special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit or petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed and no appeal has been filed and that the grant of the application or petition resulting from such failure to act has become final or that if an appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

CONFLICT OF INTEREST- ETHICS

When administering the Oath of Office, you must be supplied with the following documents;

- **Ethics Review;**
- **940 CMR 29.00, and**
- **The Open Meeting Guide**

There are pages at the end of this booklet that need to be signed and returned to the Town Clerk's Office. The Office requires a copy of the Certificate of Completion of the Ethics Test on the Attorney General Website; http://db.state.ma.us/ethics/quiz_MEthics/index.asp

This test MUST be taken every two years.

CONFLICT OF INTEREST- ETHICS Changes in the Open Meeting Law

NOTICE OF MANDATORY COMPLIANCE

On July 1, 2009 Governor Patrick signed into law Chapter 28 of the Acts of 2009 (the "Bill") making changes to the state's conflict of interest law and the State Ethics Commission's enabling act. On September 29, 2009 portions of the Bill that relate to the conflict of interest law go into effect.

Each municipal employee is required to sign a written acknowledgement that he/she has been provided with a summary of the bill and such written acknowledgement must be filed with the town clerk. (See attached.)

The Bill also adds a new Section 28 to the conflict of interest law, which provides that every "municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the employee shall provide notice of such completion to be retained for 6 years" by the city/town clerk.

The Commission currently has on its site: http://db.state.ma.us/ethics/quiz_MEthics/index.asp an online training program, which, until such time as it is revised, should be the program used by municipal employees to comply with this training requirement. Upon completion of the program, employees should print out the completion certificate, as well as the acknowledgement receipt, keep a copy themselves and provide a copy to the Town Clerk.

Municipal employees should complete the online training program provided on the Commission's website on or before April 2, 2010, and every 2 years thereafter. Municipal employees hired after April 2, 2010, should complete the online training program within **30 days of the date on which they commence employment, and every 2 years thereafter**. Please contact the Town Clerk (508) 835-6240 with any questions.

***Definition of a Municipal Employee-** (g) "Municipal employee ", a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution. Includes school employees both local and regional.*

Conflict of Interest Law - Summary for Municipal Employees

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

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

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

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

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

II. On-the-job restrictions.

(a) Bribes.

Asking for and taking bribes is prohibited. (See Section 2) A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

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

(b) Gifts and gratuities.

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

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official

action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these Sections.

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

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

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

(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.

(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 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 housing-related benefits, public safety positions, certain elected positions, small towns, and other specific situations. Please call the Ethics Commission's Legal Division for advice about a specific situation.

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

(a) Forever ban.

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

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

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

(b) One year cooling-off period.

For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.

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

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

(c) Partners.

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

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

Example: A former town counsel joins a law firm as a partner. Because she litigated a lawsuit for the town, her new partners cannot represent any private clients in the lawsuit for one year after her job with the town ended.

The Open Meeting Law

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.

The Open Meeting Law

Effective July 1, 2010, responsibility for the state-wide enforcement of the Open Meeting Laws, relative to local, county, regional, and state public bodies has been centralized in the office of the Attorney General. The Open Meeting Law supports the principle that the democratic process depends on the public having knowledge about the considerations underlying governmental action. The Open Meeting Law requires that most meetings of governmental bodies to be held in public. There are some exceptions, which are designed to ensure that, public officials are not "unduly hampered" by having

every discussion among public officials open to the public. As a result, the Open Meeting Law provides for particular circumstances under which a meeting may be held in executive, or closed, session. You may also contact the Division of Open Government, within the Office of Attorney General Martha Coakley, at (617) 963-2540 or openmeeting@state.ma.us.

Open Meeting Law Guide



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF ATTORNEY GENERAL
MARTHA COAKLEY

MARCH 24, 2011

Dear Massachusetts Residents:

On July 1, 2010 the Attorney General's Office assumed responsibility for the enforcement of the Open Meeting Law (OML) from the state's District Attorneys. We believe that transferring all enforcement to one central statewide office will allow for greater consistency and will ensure that local officials have access to the information they need to comply with the law.

Our office is committed to ensuring that the changes to the Open Meeting Law will provide for greater transparency and clarity—both of which are hallmarks of good government. We are focused on providing educational materials, outreach and training sessions to ensure that all members of the public understand the law.

Whether you are a town clerk or town manager, a member of a public body, or an involved resident, I want to thank you for taking the time to understand the Open Meeting Law. We strive to be a resource to you, and encourage you to contact the Division of Open Government at 617.963.2540 or visit our website at www.mass.gov/openmeeting for more information.

Cordially,
Martha Coakley
Massachusetts Attorney General

Overview

Purpose of the Law

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

AGO Authority

The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for state-wide 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 revised 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 takes 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 for violating it. The certification must be retained where the body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, Attorney General's regulations, and this Guide.

Where no term of office for a member of a public body is specified, the member must complete the Certificate of Receipt on a biannual basis by January 14 of a calendar year, beginning on January 14, 2011. Where a member's term of office began prior to July 1, 2010, and will not expire until after July 1, 2011, the member should have completed the Certificate of Receipt by January 14, 2011. In the event a Certificate has not yet been completed by a 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.

Click to download and print a copy of the [Certification Document](#).

Open Meeting Website

This Guide is intended to be a clear and concise explanation of the Open Meeting Law's requirements. A more in-depth explanation of the law along with up-to-date regulations, training materials, advisory opinions and orders can be found on the Attorney General's Open Meeting website, <http://www.mass.gov/ago/openmeeting>. Local and state government officials, members of public bodies and the public are encouraged to visit the website regularly for updates, as well as to view additional Open Meeting Law materials.

What meetings are covered by the Open Meeting Law?

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

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

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

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, council, authority, committee or subcommittee within the Executive branch of state government, or within any county, district, city, region or town, which has been 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 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 for the purpose of advising a constitutional officer.

Boards of selectmen and school committees are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Neither individual government officials, such

as a mayor or police chief, nor members of their staffs, are “public bodies” 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.

Bodies appointed by a public official solely for the purpose of advising on a decision that the individual could make himself or herself are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a four 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.¹

¹See *Connelly v. School Committee of Hanover*, 409 Mass. 232, 565 N.E.2d 449 (1991).

What constitutes a deliberation?

The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distributing a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at the meeting will not constitute deliberation, so long as the material does not express the opinion of a member of the public body. E-mail exchanges between or among a quorum of members of a public body discussing matters within the body’s jurisdiction may constitute deliberation, even where the sender of the email does not ask for a response from the recipients.

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 fewer 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 would together be a communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a manner that seeks to evade the application of the law. Thus, in some circumstances, communications between two members of a public body, when taken together with other communications, may be a deliberation.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any “matter within the body’s jurisdiction.” The law does not specifically define “jurisdiction.” But as a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation would be considered a matter within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

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

1. Members of a public body may conduct an onsite inspection of a project or program; however, they cannot deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they cannot 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 cannot 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 are not subject to the Open Meeting Law. See G.L. c. 39, § 9.

For “quasi-judicial boards or commissions,” the AGO interprets this exemption 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.

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

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.

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

- Public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

The clerk of the municipality must inform the AGO of its notice posting method, and update the Division of any future change. All public bodies shall consistently use the most current notice posting method on file with the Attorney General.

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

- For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies, in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website. A copy of the notice shall 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 a meeting on the county public body's website. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.
- State public bodies must file meeting notices by posting the notice on the website of the public body or its parent agency. A copy of the notice must be sent to the Secretary of State's Regulations Division. State public bodies should also forward a copy of notices to the Executive Office of Administration and Finance, which maintains a listing of state public body meetings.

A Note About Accessibility

Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website utilizes technology that is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice.² The Attorney General's Disability Rights Project is available to answer questions about accessibility and may be reached at (617) 727-2200.

²The Massachusetts Commission for the Deaf and Hard of Hearing will assist with arrangements for a sign language interpreter. The Commission may be reached at 617-740-1600 VOICE and 617-740-1700 TTY.

What information must meeting notices contain?

Meeting notices must be posted in a legible, easily understandable format; contain the date, time and place of the meeting; and list the topics that, as of the time the notice is filed, the chair reasonably anticipates 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. While not required under the Open Meeting Law, public bodies are encouraged to make a revised list of topics to be discussed available to the public in advance of the meeting if the body intends to discuss topics that come up after posting but before the meeting convenes.

When can a public body meet in executive session?

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

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

While in executive session, the public body must keep accurate records and must take a roll call vote of all votes taken and may only discuss matters for which the executive session was called.

The Ten Purposes for Executive Session

The law defines ten specific Purposes for which an executive session may be held, and emphasizes that these are the only purposes 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, it appears at least that 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 on the part of an individual who is the subject of the discussion. The individual's right to choose to have his or her dismissal considered at an open meeting takes precedence over the general right of the public body to go into executive session.

While the proposed 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;

Collective Bargaining Sessions: These include not only the bargaining sessions but also include grievance hearings that are called for under 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;

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussions of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, carries the burden of proving that an open meeting might have a detrimental effect on its bargaining position to justify an executive session on the basis of this Purpose. The showing that must be made is that the open discussion may have a detrimental impact on the collective bargaining process; the body is not required to demonstrate or specify a definite harm that would have arisen. 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 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: 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. Also, unlike Purpose 5, 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. 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;

Under this Purpose, as with the collective bargaining and litigation Purpose, an executive session may only be held 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 certain statutes or federal grants which require or specifically allow that a public body consider a particular issue in a closed session. Additionally, as the following section discusses, where Purpose (8) does not apply, Purpose (7) may nevertheless apply to the initial stage of a hiring process.

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 a candidate or candidates to its parent body. 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 fewer 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.

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 that has been provided under the following circumstances:

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

b. in the course of activities conducted as a municipal aggregator under [G.L. c. 164 § 134](#), or

c. in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to [G.L. c. 164 § 136](#), and

d. when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy

May a member of the public body participate remotely?

The Attorney General is authorized under the Open Meeting Law to permit remote participation by members of a public body not present at the meeting location. This issue is under consideration by the AGO. While the issue is under consideration, remote participation by members of public bodies is not permitted under the Open Meeting Law.

What public participation in meetings must be allowed?

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. Any member of the public also has a right to 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 such recording at the beginning of the meeting.

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 is not permitted to 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, and if the person does not leave, the chair may authorize a constable or other officer to remove the person.

What records of public meetings must be kept?

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must state the date, time and place of the meeting, a list of the members present or absent, and the decisions made and actions taken including a record of all votes. While the minutes must also include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session

must be by roll call and the results recorded in the minutes. In addition, the minutes must include a list of the documents and other exhibits used at the meeting. While public bodies are required to retain these records in accordance with records retention laws, the documents and exhibits listed in the minutes need not be attached to or physically stored with the minutes.

The minutes, documents and exhibits 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 and must be retained in accordance with the Secretary of State's record retention schedule. The State and Municipal Record Retention Schedules are available through the Secretary of State's website at: <http://www.sec.state.ma.us/arc/arcmu/rmuidx.htm>.

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. The law requires that existing minutes be made available to the public within 10 days upon 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 also to be made available to the public within 10 days upon 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 resume submitted by an applicant which is always subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials.

Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

Executive Session Meeting Records

Public bodies are not required to disclose the minutes, notes or other materials used in an executive session where 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, minutes and other records from that executive session must be disclosed unless they are within an exemption to the Public Records Law, [G.L. c. 4, § 7, cl. 26](#), or are attorney-client privileged. The public body is also required to periodically review the executive session minutes to determine whether continued non-disclosure is warranted, and such determination must be included in the subsequent meeting minutes. A public body must respond to a request to inspect or copy executive session minutes within 10 days of request and promptly release the records if they are subject to disclosure. If the body has not performed a review to determine whether they are subject to disclosure, it must do so prior to its next meeting or within 30 days, whichever is sooner.

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

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to take and investigate complaints, bring enforcement actions, issue advisory opinions and issue 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, and will provide online and in-person trainings on the Open Meeting Law. The Division of Open Government will also respond to information requests from public bodies and the public.

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

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

Individuals who allege a violation of the Open Meeting Law must first file a complaint *with the public body* alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a [Complaint Form](#) available on the AGO website. 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. The public body has 14 business days from the date of receipt to review the complainant's allegations; take remedial action if appropriate; notify the complainant of the remedial action; and forward a copy of the complaint and description of the remedial action taken to the AGO. The public body may request additional information from the complainant. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government, and should 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 AGO 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 AGO 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 AGO after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation. When filing the complaint with the AGO, 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 remedial action taken by the public body. Complaints filed with the AGO are public records.

The AGO will review the complaint and any remedial action taken by the public body. The AGO may request additional information from both the complainant and the public body. The AGO 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 AGO may decline to investigate a complaint where more than 90 days have passed since the date of the alleged violation.

Public bodies and members of the public should consult the Attorney General's [Open Meeting Website](#) for the most up-to-date procedural regulations and other materials related to the law.

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

The Open Meeting Law directs the AGO to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The AGO has established an Open Meeting Law website, www.mass.gov/ago/openmeeting, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials and other resources. The AGO will provide regional trainings for members of public bodies and will hold periodic online webinars.

Contacting the Attorney General

If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the AGO's Division of Open Government. The AGO 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

(617) 963-2540

www.mass.gov/ago/openmeeting

OpenMeeting@state.ma.us

M.G.L. c.30A, §§18-25

Section 18: Definitions applicable to Sections 18 to 25

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 by violating 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 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

“Minutes”, the written report of a meeting created by a public body required by subsection (a) of Section 23 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 and a duplicate copy of said notice shall be filed with the regulations division of the state secretary's office by posting on a website in accordance with procedures established for this purpose.

The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative 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) 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 such recordings.

(f) 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.

(g) 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: Meeting of public body in executive session

(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: Minutes of meetings

(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; hearing; civil action

(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 (b).

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: Authority of attorney general to promulgate rules and regulations, letter rulings and 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.

940 CMR 29.00: Open Meeting Law Regulations

Purpose of Open Meeting Law

Overview

Purpose of the Law

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

AGO Authority

The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for state-wide 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 revised 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 takes 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 for violating it. The certification must be retained where the body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, Attorney General's regulations, and this Guide.

Where no term of office for a member of a public body is specified, the member must complete the Certificate of Receipt on a biannual basis by January 14 of a calendar year, beginning on January 14, 2011. Where a member's term of office began prior to July 1, 2010, and will not expire until after July 1, 2011, the member should have completed the Certificate of Receipt by January 14, 2011. In the event a Certificate has not yet been completed by a member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law.

Open Meeting Website

This Guide is intended to be a clear and concise explanation of the Open Meeting Law's requirements. A more in-depth explanation of the law along with up-to-date regulations, training materials, advisory opinions and orders can be found on the Attorney General's Open Meeting website, <http://www.mass.gov/ago/openmeeting>. Local and state government officials, members of public bodies and the public are encouraged to visit the website regularly for updates, as well as to view additional Open Meeting Law materials.

What meetings are covered by the Open Meeting Law?

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

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

- 1) is the communication between members of a **public body**;
- 2) does the communication constitute a **deliberation**;
- 3) does the communication involve a matter within the body’s **jurisdiction**; and
- 4) does the communication fall within an **exception** listed in the law.

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, council, authority, committee or subcommittee within the Executive branch of state government, or within any county, district, city, region or town, which has been 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 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 for the purpose of advising a constitutional officer.

Boards of selectmen and school committees are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Neither individual government officials, such as a mayor or police chief, nor members of their staffs, are “public bodies” 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.

Bodies appointed by a public official solely for the purpose of advising on a decision that the individual could make himself or herself are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a four 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.¹

¹See *Connelly v. School Committee of Hanover*, 409 Mass. 232, 565 N.E.2d 449 (1991).

What constitutes a deliberation?

The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distributing a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at the meeting will not constitute deliberation, so long as the material does not express the opinion of a member of the public body. E-mail exchanges between or among a quorum of members of a public body discussing matters within the body’s jurisdiction may constitute deliberation, even where the sender of the email does not ask for a response from the recipients.

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 fewer 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 would together be a communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a manner that seeks to evade the application of the law. Thus, in some circumstances, communications between two members of a public body, when taken together with other communications, may be a deliberation.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any “matter within the body’s jurisdiction.” The law does not specifically define “jurisdiction.” But as a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation would be considered a matter within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

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

1. Members of a public body may conduct an onsite inspection of a project or program; however, they cannot deliberate at such gatherings;

2. Members of a public body may attend a conference, training program or event; however, they cannot 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 cannot 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 are not subject to the Open Meeting Law. See G.L. c. 39, § 9.

For “quasi-judicial boards or commissions,” the AGO interprets this exemption 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.

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

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.

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

The clerk of the municipality must inform the AGO of its notice posting method, and update the Division of any future change. All public bodies shall consistently use the most current notice posting method on file with the Attorney General.

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

- For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies, in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body’s website. A copy of the notice shall 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 a meeting on the county public body’s website. A copy of the notice shall be filed and kept by the chair of the county public body or the chair’s designee.
- State public bodies must file meeting notices by posting the notice on the website of the public body or its parent agency. A copy of the notice must be sent to the Secretary of State’s Regulations Division. State public bodies should also forward a copy of notices to the Executive Office of Administration and Finance, which maintains a listing of state public body meetings.

A Note About Accessibility

Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the

website utilizes technology that is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice.² The Attorney General's Disability Rights Project is available to answer questions about accessibility and may be reached at (617) 727-2200.

²The Massachusetts Commission for the Deaf and Hard of Hearing will assist with arrangements for a sign language interpreter. The Commission may be reached at 617-740-1600 VOICE and 617-740-1700 TTY.

What information must meeting notices contain?

Meeting notices must be posted in a legible, easily understandable format; contain the date, time and place of the meeting; and list the topics that, as of the time the notice is filed, the chair reasonably anticipates 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. While not required under the Open Meeting Law, public bodies are encouraged to make a revised list of topics to be discussed available to the public in advance of the meeting if the body intends to discuss topics that come up after posting but before the meeting convenes.

When can a public body meet in executive session?

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

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

While in executive session, the public body must keep accurate records and must take a roll call vote of all votes taken and may only discuss matters for which the executive session was called.

The Ten Purposes for Executive Session

The law defines ten specific Purposes for which an executive session may be held, and emphasizes that these are the only purposes 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, it appears at least that 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 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 on the part of an individual who is the subject of the discussion. The individual's right to choose to have his or her dismissal considered at an open meeting takes precedence over the general right of the public body to go into executive session.

While the proposed 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;

Collective Bargaining Sessions: These include not only the bargaining sessions but also include grievance hearings that are called for under 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;

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussions of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, carries the burden of proving that an open meeting might have a detrimental effect on its bargaining position to justify an executive session on the basis of this Purpose. The showing that must be made is that the open discussion may have a detrimental impact on the collective bargaining process; the body is not required to demonstrate or specify a definite harm that would have arisen. 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 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: 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. Also, unlike Purpose 5, 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. 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;

Under this Purpose, as with the collective bargaining and litigation Purpose, an executive session may only be held 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 certain statutes or federal grants which require or specifically allow that a public body consider a particular issue in a closed session. Additionally, as the following section discusses, where Purpose (8) does not apply, Purpose (7) may nevertheless apply to the initial stage of a hiring process.

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 a candidate or candidates to its parent body. 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 fewer 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.

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 that has been provided under the following circumstances:

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

b. in the course of activities conducted as a municipal aggregator under [G.L. c. 164 § 134](#), or

c. in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to [G.L. c. 164 § 136](#), and

d. when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy

May a member of the public body participate remotely?

The Attorney General is authorized under the Open Meeting Law to permit remote participation by members of a public body not present at the meeting location. This issue is under consideration by the AGO. While the issue is under consideration, remote participation by members of public bodies is not permitted under the Open Meeting Law.

What public participation in meetings must be allowed?

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. Any member of the public also has a right to 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 such recording at the beginning of the meeting.

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 is not permitted to 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, and if the person does not leave, the chair may authorize a constable or other officer to remove the person.

What records of public meetings must be kept?

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must state the date, time and place of the meeting, a list of the members present or absent, and the decisions made and actions taken including a record of all votes. While the minutes must also include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. In addition, the minutes must include a list of the documents and other exhibits used at the meeting. While public bodies are required to retain these records in accordance with records retention laws, the documents and exhibits listed in the minutes need not be attached to or physically stored with the minutes.

The minutes, documents and exhibits 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 and must be retained in accordance with the Secretary of State's record retention schedule. The State and Municipal Record Retention Schedules are available through the Secretary of State's website at: <http://www.sec.state.ma.us/arc/arcmu/rmuidx.htm>.

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. The law requires that existing minutes be made available to the public within 10 days upon 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 also to be made available to the public within 10 days upon 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 resume submitted by an applicant which is always subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials.

Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

Executive Session Meeting Records

Public bodies are not required to disclose the minutes, notes or other materials used in an executive session where 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, minutes and other records from that executive session must be disclosed unless they are within an exemption to the Public Records Law, [G.L. c. 4, § 7, cl. 26](#), or are attorney-client privileged. The public body is also required to periodically review the executive session minutes to determine whether continued non-disclosure is warranted, and such determination must be included in the subsequent meeting minutes. A public body must respond to a request to inspect or copy executive session minutes within 10 days of request and promptly release the records if they are subject to disclosure. If the body has not performed a review to determine whether they are subject to disclosure, it must do so prior to its next meeting or within 30 days, whichever is sooner.

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

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to take and investigate complaints, bring enforcement actions, issue advisory opinions and issue 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, and will provide online and in-person trainings on the Open Meeting Law. The Division of Open Government will also respond to information requests from public bodies and the public.

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

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

Individuals who allege a violation of the Open Meeting Law must first file a complaint *with the public body* alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a [Complaint Form](#) available on the AGO website. 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. The public body has 14 business days from the date of receipt to review the complainant's allegations; take remedial action if appropriate; notify the complainant of the remedial action; and forward a copy of the complaint and description of the remedial action taken to the AGO. The public body may request additional information from the complainant. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within

14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government, and should 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 AGO 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 AGO 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 AGO after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation. When filing the complaint with the AGO, 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 remedial action taken by the public body. Complaints filed with the AGO are public records.

The AGO will review the complaint and any remedial action taken by the public body. The AGO may request additional information from both the complainant and the public body. The AGO 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 AGO may decline to investigate a complaint where more than 90 days have passed since the date of the alleged violation.

Public bodies and members of the public should consult the Attorney General's [Open Meeting Website](#) for the most up-to-date procedural regulations and other materials related to the law.

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

The Open Meeting Law directs the AGO to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The AGO has established an Open Meeting Law website, www.mass.gov/ago/openmeeting, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials and other resources. The AGO will provide regional trainings for members of public bodies and will hold periodic online webinars.

Contacting the Attorney General

If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the AGO's Division of Open Government. The AGO 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
(617) 963-2540

www.mass.gov/ago/openmeeting
OpenMeeting@state.ma.us

END NOTES

i Chapter 66 Section 5A. *The records, required to be kept by sections eleven A of chapter thirty A, nine F of chapter thirty-four and twenty-three B of chapter thirty-nine, shall report the names of all members of such boards and commissions present, the subjects acted upon, and shall record exactly the votes and other official actions taken by such boards and commissions; but unless otherwise required by the governor in the case of state boards, commissions and districts, or by the county commissioners in the case of county boards and commissions, or the governing body thereof in the case of a district, or by ordinance or by-law of the city or town, in the case of municipal boards, such records need not include a verbatim record of discussions at such meetings.*

ii Chapter 30A Section 22. (a) *A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.*

iii Chapter 30A § 22(c) *Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.*

iv Chapter 66 Section 10. (a) *Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.*

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

[Second paragraph of paragraph (d) effective until November 4, 2010. For text effective November 4, 2010, see below.]

The executive director of the criminal history systems board, the criminal history systems board and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

[Second paragraph of paragraph (d) as amended by 2010, 256, Secs. 58 and 59 effective November 4, 2010. For text effective until November 4, 2010, see above.]

The commissioner of the department of criminal justice information services, the department of criminal justice information services and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, shall not be public records in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

v Chapter 40A Section 9. *Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.*

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low

or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

Zoning ordinances or by-laws may provide that special permits may be granted for multi-family residential use in nonresidentially zoned areas where the public good would be served and after a finding by the special permit granting authority, that such nonresidentially zoned area would not be adversely affected by such a residential use, and that permitted uses in such a zone are not noxious to a multi-family use.

Zoning ordinances or by-laws may provide for special permits authorizing the transfer of development rights of land within or between districts. These zoning ordinances or by-laws shall include incentives such as increases in density of population, intensity of use, amount of floor space or percentage of lot coverage, that encourage the transfer of development rights in a manner that protect open space, preserve farmland, promote housing for persons of low and moderate income or further other community interests.

Zoning ordinances or by-laws may also provide that cluster developments or planned unit developments shall be permitted upon the issuance of a special permit.

Notwithstanding any provision of this section to the contrary, zoning ordinances or by-laws may provide that cluster developments shall be permitted upon review and approval by a planning board pursuant to the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41 and in accordance with its rules and regulations governing subdivision control.

"Cluster development" means a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land. A cluster development shall be permitted only on a plot of land of such minimum size as a zoning ordinance or by-law may specify which is divided into building lots with dimensional control, density and use restrictions of such building lots varying from those otherwise permitted by the ordinance or by-law and open land. Such open land when added to the building lots shall be at least equal in area to the land area required by the ordinance or by-law for the total number of units or buildings contemplated in the development. Such open land may be situated to promote and protect maximum solar access within the development. Such open land shall either be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the city or town, a restriction enforceable by the city or town shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

"Planned unit development" means a mixed use development on a plot of land containing a minimum of the lesser of sixty thousand square feet or five times the minimum lot size of the zoning district, but of such larger size as an ordinance or by-law may specify, in which a mixture of residential, open space, commercial, industrial or other uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district to the extent authorized by the ordinance or by-law. Such open space, if any, may be situated to promote and protect maximum solar access within the development.

Zoning ordinances or by-laws may also provide for the use of structures as shared elderly housing upon the issuance of a special permit. Such zoning ordinances or by-laws shall specify the maximum number of elderly occupants allowed, not to exceed a total number of six, any age requirements and any other conditions deemed necessary for the special permits to be granted.

Zoning ordinances or by-laws may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law. Such special permit granting authority shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.

Zoning ordinances or by-laws may provide for associate members of a planning board when a planning board has been designated as a special permit granting authority. One associate member may be authorized when the planning board consists of five members, and two associate members may be authorized when the planning board consists of more than five members. A city or town which establishes the position of associate member shall determine the procedure for filling such position. If provision for filling the position of associate member has been made, the chairman of the planning board may designate an associate member to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the planning board or in the event of a vacancy on the board.

Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy of said application, including the date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner with the special permit granting authority. The special permit granting authority shall hold a public hearing, for which notice has been given as provided in section eleven, on any application for a special permit within sixty-five days from the date of filing of such application; provided, however, that a city council having more than five members designated to act upon such application may appoint a committee of such council to hold the public hearing. The decision of the special permit granting authority shall be made within ninety days following the date of such public hearing. The required time limits for a public hearing and said action, may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the city or town clerk. A special permit issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board, and a unanimous vote of a three member board.

Failure by the special permit granting authority to take final action within said ninety days or extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner who seeks such approval by reason of the failure of the special permit granting authority to act within such time prescribed, shall notify the city or town clerk, in writing within fourteen days from the expiration of said ninety days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The special permit granting authority shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk and shall be deemed a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use

thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Zoning ordinances or by-laws shall also provide that uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

In any city or town that accepts this paragraph, zoning ordinances or by-laws may provide that research and development uses, whether or not the uses are currently permitted as a matter of right, may be permitted as a permitted use in any non-residential zoning district which is not a residential, agricultural or open space district upon the issuance of a special permit provided the special permit granting authority finds that the uses do not substantially derogate from the public good.

"Research and development uses" shall include any 1 or more of investigation, development, laboratory and similar research uses and any related office and, subject to the following limitations, limited manufacturing uses and uses accessory to any of the foregoing.

"Limited manufacturing" shall, subject to the issuance of the special permit, be an allowed use, if the following requirements are satisfied: (1) the manufacturing activity is related to research uses; (2) no manufacturing activity customarily occurs within 50 feet of a residential district; and (3) substantially all manufacturing activity customarily occurs inside of buildings with any manufacturing activities customarily occurring outside of buildings subject to conditions imposed in the special permit.

A hazardous waste facility as defined in section two of chapter twenty-one D shall be permitted to be constructed as of right on any locus presently zoned for industrial use pursuant to the ordinances and by-laws of any city or town provided that all permits and licenses required by law have been issued to the developer and a siting agreement has been established pursuant to sections twelve and thirteen of chapter twenty-one D, provided however, that following the submission of a notice of intent, pursuant to section seven of chapter twenty-one D, a city or town may not adopt any zoning change which would exclude the facility from the locus specified in said notice of intent. This section shall not prevent any city or town from adopting a zoning change relative to the proposed locus for the facility following the final disapproval and exhaustion of appeals for permits and licenses required by law and by chapter twenty-one D.

A facility, as defined in section one hundred and fifty A of chapter one hundred and eleven, which has received a site assignment pursuant to said section one hundred and fifty A, shall be permitted to be constructed or expanded on any locus zoned for industrial use unless specifically prohibited by the ordinances and by-laws of the city or town in which such facility is proposed to be constructed or expanded, in effect as of July first, nineteen hundred and eighty-seven; provided, however, that all permits and licenses required by law have been issued to the proposed operator. A city or town shall not adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an existing facility on any locus zoned for industrial use, or require a license or permit granted by said city or town, except a special permit imposing reasonable conditions on the construction or operation of the facility, unless such prohibition, license or permit was in effect on or before July first, nineteen hundred and eighty-seven; provided, however, that a city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of general application that has the effect of prohibiting the siting or expansion of a facility in the following areas: recharge areas of surface drinking water supplies as shall be reasonably defined by rules and regulations of the department of environmental protection, areas subject to section forty of chapter one hundred and thirty-one, and the regulations promulgated thereunder; and areas within the zone of contribution of existing or potential public supply wells as defined by said department. No special permit authorized by this section may be denied for any such facility by any city or town; provided, however, that a special permit granting authority may impose reasonable conditions on the construction or operation of the facility, which shall be enforceable pursuant to the provisions of section seven.

Chapter 40A Section 15. Any appeal under section eight to a permit granting authority shall be taken within thirty days from the date of the order or decision which is being appealed. The petitioner shall file a notice of appeal specifying the grounds thereof, with the city or town clerk, and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the permit granting authority, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the board of appeals or zoning administrator all documents and papers constituting the record of the case in which the appeal is taken.

Any appeal to a board of appeals from the order or decision of a zoning administrator, if any, appointed in accordance with section thirteen shall be taken within thirty days of the date of such order or decision or within thirty days from the date on which the appeal, application or petition in question shall have been deemed denied in accordance with said section thirteen, as the case may be, by having the petitioner file a notice of appeal, specifying the grounds thereof with the city or town clerk and a copy of said notice including the date and time of filing certified by the city or town clerk shall be filed forthwith in the office of the zoning administrator and in the case of an appeal under section eight with the officer whose decision was the subject of the initial appeal to said zoning administrator. The zoning administrator shall forthwith transmit to the board of appeals all documents and papers constituting the record of the case in which the appeal is taken. An application for a special permit or petition for variance over which the board of appeals or the zoning administrator as the case may be, exercise original jurisdiction shall be filed by the petitioner with the city or town clerk, and a copy of said appeal, application or petition, including the date and time of filing, certified by the city or town clerk, shall be transmitted forthwith by the petitioner to the board of appeals or to said zoning administrator.

Meetings of the board shall be held at the call of the chairman or when called in such other manner as the board shall determine in its rules. The board of appeals shall hold a hearing on any appeal, application or petition within sixty-five days from the receipt of notice by the board of such appeal, application or petition. The board shall cause notice of such hearing to be published and sent to parties in interest as provided in section eleven. The chairman, or in his absence the acting chairman, may administer oaths, summon witnesses, and call for the production of papers.

The concurring vote of all members of the board of appeals consisting of three members, and a concurring vote of four members of a board consisting of five members, shall be necessary to reverse any order or decision of any administrative official under this chapter or to effect any variance in the application of any ordinance or by-law.

All hearings of the board of appeals shall be open to the public. The decision of the board shall be made within one hundred days after the date of the filing of an appeal, application or petition, except in regard to special permits, as provided for in section nine. The required time limits for a public hearing and said action, may be extended by written agreement between the applicant and the board of appeals. A copy of such agreement shall be filed in the office of the city or town clerk. Failure by the board to act within said one hundred days or extended time, if applicable, shall be deemed to be the grant of the appeal, application or petition. The petitioner who seeks such approval by reason of the failure of the board to act within the time prescribed shall notify the city or town clerk, in writing, within fourteen days from the expiration of said one hundred days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the board failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The board shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk and shall be a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated

the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.

^{vi} **Chapter 30A §§ 22 (g)(f)**

(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.

(3); 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.

vii Chapter 4 Section 7 Subclause 26-

"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, 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;

[There is no subclause (k).]

(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 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 (b) of section 10 of chapter 66, is likely to jeopardize public safety.

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

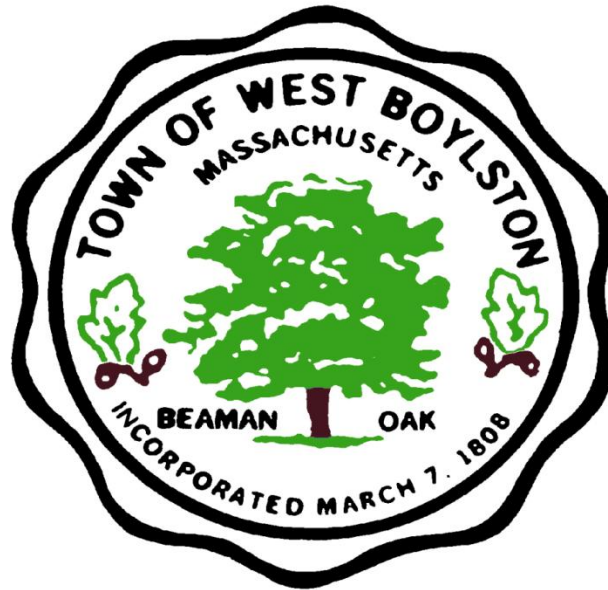
(p) the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

(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.

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



Kim D. Hopewell
Town Clerk
West Boylston Town Hall
127 Hartwell Street, Suite 100
West Boylston, Massachusetts 01583

April 2, 2011 v2

Please note that on July 1, 2009 Governor Patrick approved legislation that makes significant amendments to Massachusetts General Laws related to Open Meetings of governmental bodies and public records. This legislation was effective as of July 1, 2010. On July 1, 2010 the Attorney General released "Open Meeting Law Guide". A copy of the amended guide is included in this booklet. *(please discard previous copies of both this handbook and the OML and replace with these documents)*

State Ethics Commission
Conflict of Interest Law Changes
Chapter 28 of the Acts of 2009

Acknowledgment of Receipt

In accordance with Massachusetts General Laws, Chapter 303 of the Acts of 1975, I hereby attest that I have been furnished a copy of the Conflict of Interest Law (MGL Chapter 268A) as amended by Chapter 28, Acts of 2009 by the Town Clerk of West Boylston.

Print Name

Signature

Date

Town Department/Board/Committee Name

This page and a copy of your printed receipt from the State Ethics Commission Online Training Program, completed in your name, must be returned to the West Boylston Town Clerk, 127 Hartwell Street, Suite 100, West Boylston, MA 01583.

Town Clerk / Assistant Town Clerk

Date Recorded

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, _____, who qualified for the office of
(Name)

_____, on _____, certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for 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 in the Open Meeting Law during my term of office.

(Name)

(Name of Public Body)

(Date)

Pursuant to G.L. c. 30A, § 20(g), 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.