

Town of West Boylston 2015

Handbook for Elected and

Appointed Officials



Kim D. Hopewell, Town Clerk

TOWN OF WEST BOYLSTON

COMMITTEE HANDBOOK PREFACE

This handbook provides a brief description of elected and appointed officials' duties, which may be well known to many, but are less familiar to others. Your contributions of time and consideration of the many issues and problems confronting the Town are greatly appreciated. Through service to the community you will have a unique opportunity to get to know the workings of the Town from an insider's viewpoint. It can be a rewarding and informative experience.

The Selectmen and Town Administrator, in carrying out their duties as prescribed by law and by the votes of Town Meeting, expend considerable time and effort to make logical appointments to the various committees of the Town by appointing qualified and interested West Boylston residents who are broadly representative of the Town. During your appointment you will be working with many new people who, like yourself, have volunteered to address specific problems and to bring back to the Selectmen or perhaps Town Meeting your recommendation for a course of action or solution that is best for the Town. State statutes outline the powers and duties of many Boards. The Bylaws adopted by Town Meeting, and the policies and charges to committees adopted by the Board of Selectmen further define the work of others.

It is important that you remember the best interests of the Town, present or future, be considered. It is equally important to remember that you represent the entire Town, and not only one segment. Single approach solutions to problems may be the best option for your committee, but may not be in the best interest of the Town in the broader sense. All plausible solutions need to be explored with many factors in mind. Your decision may have impact on other programs or plans.

The Annual Town Report and General Bylaws are excellent sources of information regarding the duties and responsibilities of individual boards and committees. These items are available at the Town Clerk's Office. In addition, Town Hall staff is a valuable resource and willing to be of assistance.

The Board of Selectmen, Town Administrator and Town Clerk wish to thank you for giving of your time and effort in the improvement of our community. We hope you find this handbook informative and useful.

Notices:

To all appointees, volunteers, elected officials and vendors of the Town of West Boylston;

- The Town has written policies to promote a workplace free of **sexual harassment** and supports and fosters a culture of zero tolerance towards **fraud** in all its forms. *Policies are located within this document;*
- In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from **discriminating** on the basis of race, color, national origin, sex, age, or disability.
 - To file a complaint of discrimination, write to;

USDA, Director
Office of Civil Rights
1400 Independence Ave. S.W.
Washington, D.C. 20250-9410

Or call 800.795.3272 (voice) or 202.720.6382 (TDD).
USDA is an equal opportunity provided employer and lender.

Kim D. Hopewell, Town Clerk

Elaine S. Novia, Assistant Town Clerk

940 CMR 29.00: Open Meeting Law Regulations

- 29.01: Purpose, Scope And Other General Provisions, 45
- 29.02: Definitions, 45
- 29.03: Notice Posting Requirements, 46
- 29.04: Certification, 47
- 29.05: Complaints, 47
- 29.06: Investigation, 48
- 29.07: Resolution, 49
- 29.08: Advisory Opinions, 49
- 29.09: Other Enforcement Actions, 50
- 29.10: Remote Participation, 50

Attorney Generals Open Meeting Law

- Section 18: [Definitions], 38
- Section 19. [Division Of Open Government; Open Meeting Law Training; Open Meeting Law, 39
- 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], 39
- Section 21. [Executive Sessions, 40
- Section 22. [Meeting Minutes; Records], 41
- Section 23. [Enforcement Of Open Meeting Law; Complaints; Hearings; Civil Actions], 42
- Section 24. [Investigation By Attorney General Of Violations Of Open Meeting Law], 43
- Section 25. [Regulations, Letter Rulings, Advisory Opinions], 44

A

- Ad Hoc Committees, 12
- Adoption Of Rules And Regulations, 9
- Amended Minutes, 12
- Application To Serve On A Town Board Or Committee, 53
- Attorney General's Authority, 28
- Attorney General's Open Meeting Law Guide, 28

B

- Budget, 14

C

- Certification, 28
- Chapter 30a § 18, 60
- Chapter 30a, §§18-25, 38
- Chapter 30a §§ 22(A), 60
- Chapter 30a §22(C), 60
- Chapter 66 § 5a, 60
- Chapter 66 §10, 60
- Committee Leadership, 9
- Committee Meetings, 12
- Committee Paperwork And Finance, 14
- Community Responsibility, 5
- Conduct For Members Of Boards, Committees & Commissions, 5
- Contacting The Attorney General, 37
- Creating And Approving Meeting Minutes, 10
- Criteria For Selection, 8

D

- Deadlines, 13
- Deliberations, 20
- Deliberations- E-Mail Opinions Prohibited, 20
- Deliberations- Matter That Require A Posted Meeting, 20
- Dissolution Of Any Committee, 13
- Draft Minutes, 15, 20
- Duties Of Boards, Committees, Commissions, 8

E

- Emergencies, 17
- Emergency Meetings, 12
- Executive Session Exceptions, 24
- Executive Session Meeting Records, 36
- Executive Session Quick Index Guide, 23
- Executive Session Records, 24

F

- Federal Laws, 27
- Forms, 27

H

- How Can The Practice Of Remote Participation Be Adopted?, 34
- How Specific Must The Listing Of Topics Be In The Meeting Notice?, 18

I

- 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?, 20
- Importance Of The Record, 11
- Intentional Violations, 20

M

- Management/Professional Staff, 15
- Massachusetts Laws, 27
- Massachusetts Regulations, 27
- May A Member Of A Public Body Participate Remotely?, 34
- Meeting Cancellations, 16
- Meeting Minutes, 10
- Minutes, 10
- 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?, 27

N

- Naming The Electronic File, 13

O

- Oml Faq: Meeting Notices, 18
- Open Meeting Law Website, 28
- Orientation Procedure/Appointment, 7

Orientation Procedure/Appointment, 7

P

Participation In Town Government, 8
Phone Messages, 17
Photocopying, 16
Policy On Fraud Prevention And Detection, 56
Posting Of Meeting Notices, 17
Proper Format For Posting A Meeting And Agenda, 21
Public Hearing And Notice, 22
Public Hearing Postings, 21
Public Records, 15
Public Records Law, 15
Public Records Requests., 15
Purchases/Public Bidding Requirements, 14
Purpose Of The Law, 28

Q

Quorum, 13

R

Reappointment, 7
References To Massachusetts General Law, 60
Removal From Office, 10
Reservation Of Public Meeting Rooms, 16
Residency, 7
Resignations / Filling Of Vacancies, 9
Rule Of Necessity, 13

S

Sexual Harassment Policy, 54
Signatures On Minutes, 11
Submission And Payment Of Bills, 14

T

Telephone Procedures, 16
Term Of Office, 8
Town Meeting, 15
Town Reports, 15
Turning In Receipts, 14

U

Use Of Town Buildings, 16
Use Of Town Telephones, 16

V

Voting, 13

W

What About Other Committee Records?, 12
What Are The Acceptable Means Of Remote Participation?, 34
What Are The Minimum Requirements For Remote Participation?,
34
What Are The Permissible Reasons For Remote Participation?, 34
What Are The Requirements For Posting Notice Of Meetings?, 30
What Are The Requirements For Posting Notices For Regional,
District, County And State Public Bodies?, 30
What Is A Meeting?, 10
What Is The Attorney General's Role In Enforcing The Open Meeting
Law?, 36
What Materials Must Be Distributed To Newly Appointed Members
Of Public Bodies?, 27
What Meetings Are Covered By The Open Meeting Law?, 28
What To Do With Approved Minutes, 12
When Is A Violation Of The Law Considered "Intentional"?, 37
Will The Attorney General's Office Provide Training On The Open
Meeting Law?, 37

CONDUCT FOR MEMBERS OF BOARDS, COMMITTEES & COMMISSIONS

Conduct of members of Municipal Boards, Committee, and Commissions, as well as employees is regulated by the provisions of Chapter 268A of the Massachusetts General Laws, and enforced by the Massachusetts Ethics Commission. The statute assigns personal responsibility to regular and special municipal employees (including elected and appointed volunteers) in five general areas, as follows:

- A. Community Responsibility**
- B. Responsibility to Municipal Administration**
- C. Relationship to other Board Members**
- D. Prohibited Conduct**
- E. Mandatory Training**

A. COMMUNITY RESPONSIBILITY

A member of any Board, Committee or Commission in his/her relations with the community shall:

1. Realize that his/her basic function is to make policy, not administer it, unless otherwise empowered by state and/or local law.
2. Realize that he/she is one of a team and should abide by, and carry out, all board decisions once they are made.
3. Be well informed concerning the duties of a board member on both local and state levels.
4. Remember that he/she represents the entire community at all times.
5. Accept the appointment as a means of unselfish service, and not for the purpose of personal or political benefit from his/her board activities.
6. In making all decisions relative to individual appointments, he or she shall avoid political patronage by judging all candidates on merit, experience and qualifications only.
7. Avoid voting on any manner in which the individual member has a conflict of interest, as defined under the Massachusetts Conflict of Interest Law, G.L. c. 268A.

B. RESPONSIBILITY TO MUNICIPAL ADMINISTRATION

A member of any Board, Committee or Commission, in his/her relations with administrative officers of the Town, shall:

1. Endeavor to establish sound, clearly defined policies that will direct and support the administration for the benefit of the people in the community.
2. Recognize and support the administrative chain of command and refuse to act on complaints as an individual outside the administration.
3. Direct all questions or concerns to the Appointing Authority. However, an initial contact with the Town Administrator will expedite any necessary action and will deal most directly with an issue, which needs to be clarified, changed or corrected.

Please remember, however, that the Town Administrator and Board of Selectmen do not have control over issues dealing with elected officials or committees/individuals appointed by the Moderator.

C. RELATIONSHIP TO OTHER BOARD, COMMISSION OR COMMITTEE MEMBERS

A member of any Board, Commission or Committee, in his/her relations with fellow board members, shall:

1. Recognize that action at an official legal meeting is binding and that he/she alone cannot bind the Board outside of such meeting.
2. Not to make statements or promises of how he/she will vote on matters that come before the Board until he/she has had an opportunity to hear the pros and cons of the issue during a board meeting.
3. Uphold the intent of Executive Session and respect the privileged communication that exists in Executive Session.
4. Make decisions only after all facts on a question have been presented and discussed.
5. Treat with respect the rights of all members of the board, despite differences of opinion.

D. PROHIBITED CONDUCT

A member of any Board, Committee or Commission, in accordance with Massachusetts General Law, Chapter 268A, shall:

1. Not accept gifts or other consideration or engage in any business or professional activity which might appear to impair his/her independence of judgment in the exercise of his/her official duties.
2. Not improperly disclose confidential information acquired by him/her in the course of his/her official duties, and not use such information to further his/her personal interests.
3. Not use or attempt to use his/her official position to secure unwarranted privileges or exemptions for himself/herself or others.
4. Not by his/her conduct give reasonable basis for the impression that any person can improperly influence him/her or unduly enjoy his/her favor in the performance of his/her official duties, or that he/she is unduly affected by the kinship, rank, position or influence of any party or person.
5. Not pursue a course of conduct which will raise suspicion among the public that he/she is likely to be engaged in acts that are in violation of his/her trust.
6. Not participate in any matter before the Board, Commission, or Committee in which he/she has a direct financial interest, or an immediate family member has a direct financial interest.

E. MANDATORY ETHICS TRAINING

All state, county and municipal employees are required by law to complete online training within 30 days of appointment. The conflict of interest law every two years.

Municipal Employee Definition-

A "Municipal employee " is 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. State Ethics Commission)

There are two new programs: one for state and county employees; and one for municipal employees. The link to access the program for municipal employees is:

<http://www.muniprog.eth.state.ma.us>

Click the Municipal Employee link to begin the training

Disclaimer: *The information presented in the program provides general information about the conflict of interest law and the compliance requirements. The information in this program is not designed to be a*

substitute for legal advice and should not be viewed as constituting legal advice. If you encounter a conflict of interest situation, you are urged to contact the Ethics Commission's Legal Division at 617-371-9500 to obtain advice. The following are instructions and tips if you are having trouble downloading the link;

- **All Pop-up Blockers must be turned off.**
In Internet Explorer, click the **Tools** drop-down menu; then select **Pop-up Blocker**. If Pop-up Blocker is on, click **Turn Off Pop-up Blocker**. If you are running another browser, refer to the **Help** option for that browser
- After you complete the appropriate course assessment, follow the prompts on the screen for instructions on printing your completion certificate.
- It is mandatory that you submit the completion certificate to your employer, the Town Clerk, and keep a copy for your records.

The Town Clerk's Office is available for questions regarding the status and renewal dates of your ethics training.

If you have any questions regarding the conflict of interest law training programs or the requirements for completion, please contact the Town Clerk's Office at 508-835-6240, or the Commission's Public Education and Communications Division Chief David Giannotti at 617-371-9505 or dgiannotti@eth.state.ma.us.

You may also find the State Ethics Commission's website helpful, at <http://www.mass.gov/ethics> .

Email- kim.hopewell@westboylston-ma.gov and enovia@westboylston-ma.gov

A Summary of the Conflict of Interest Laws is attached at the end of this document

If you have a question concerning a potential conflict, you should contact the Town Clerk.

ORIENTATION PROCEDURE/APPOINTMENT

The appointed individual receives formal written notification of his or her appointment from the appointing agency. The individual shall then appear before the Town Clerk to take their Oath of Office before taking his or her seat on a committee or board. Permanent committee appointments are generally for three year terms or as designated by the Annual Town Election Vote or appointment papers. Vacancies on elected boards do not apply. Citizens who assist committees are not official committee members and, as such, have no vote in committee proceedings.

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.

REAPPOINTMENT

Reappointment is based on an evaluation by the appointing authority of the citizen's contribution to the committee, the desirability of widespread involvement and the changing needs of the committee and the Town. It is the policy of the Board of Selectmen, wherever possible, to limit one-year term appointments to 5 consecutive terms, and 3-year appointments to two consecutive terms. A committee member is under no obligation to accept reappointment, nor is the appointing authority obligated to offer reappointment.

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 RESIDE and be a REGISTERED VOTER in the Town of West Boylston.

TERM OF OFFICE

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

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.

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.

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

DUTIES OF BOARDS, COMMITTEES, COMMISSIONS

Many committees such as the Conservation Commission, the Historical Commission, Planning Board, Zoning Board of Appeals, Council on Aging, Board of Assessors, Board of Health and Cultural Council have duties and responsibilities established by state law. Other Committees have charges prepared by the Board of Selectmen who appoint prospective members to the Committee.

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.

Upon appointment to one of these Committees, the Committee Chairman will give you a copy of the applicable law.

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.

COMMITTEE LEADERSHIP

Unless otherwise specified by Town Meeting Vote, the Chairman and other (usually Vice Chairman and Clerk) officers of every board, committee or commission are chosen by the voting members of the committee. The name of the Chairman should be made known to the Office of the Selectmen to enhance communication with the group.

If appointments are made by another elected board other than the Selectmen, the members' names must also be given to the Selectmen's Office so that all members will be acknowledged in the Annual Town Report.

ADOPTION OF RULES AND REGULATIONS

State law permits some committees, such as the Board of Health, Conservation Commission, Planning Board, and Zoning Board of Appeals, to adopt rules and regulations, and the procedures set forth in state law should be observed when adopting such rules and regulations. Other Committees' Rules and Regulations (including fees) must be adopted by the Board of Selectmen. As a general principle, the board or committee should advertise and hold a public hearing relative to the proposed rules and regulations prior to adoption. Any such rules and regulations be advertised two (2) weeks (14 days) prior to the meeting on the proposed changes in a local newspaper. Please check with the Town Clerk's Office for further details/clarification.

RESIGNATIONS / FILLING OF VACANCIES

A committee member who is no longer able to serve, or moves out of Town, should resign promptly so that the vacancy may be filled as soon as possible. Repeated non-attendance at meetings, or other failure to discharge the duties of office, is grounds for removal from office. Any resignation must be submitted in writing to the Committee Chairman, and appointing authority, the Town Clerk and the Board of Selectmen. Formal notification ensures that vacancies are filled promptly. If a vacancy occurs on an elected Board, the remaining committee members should, within one month of the vacancy, give the Board of Selectmen written notice of the vacancy, in accordance with G.L. c. 41, § 11. The remaining committee members may recommend individuals who have demonstrated an interest in the work of the committee for consideration as a replacement member. They will be considered along with others who have expressed an interest and have filed a Town Committee Volunteer Application. The statute requires that the Board of Selectmen, together with the remaining elected members of the committee, convene a joint open meeting within two weeks of the written notice of vacancy, and by majority roll call vote, appoint a registered voter of the Town to fill the vacancy. In the absence of a written notice of vacancy provided by the Committee to the Board of Selectmen, the Selectmen may fill the vacancy within the time frame provided under G.L. c. 41, § 11.

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.

Each committee or board is expected to:

- Encourage individuals to complete letters of interest to be appointed to a board or committee
- State the qualifications they are looking for in appointments.
- 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.

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.

WHAT IS A MEETING?

Basically, a meeting occurs any time a quorum (usually a simple majority) of the members gets together and discusses or considers any public business or policy over which the agency has some jurisdiction or advisory power. A quorum shall not meet in private for purposes of deciding or deliberating toward a decision on public business. This includes discussions or deliberations that occur via e-mail. A meeting must be held in public even if there will be no vote or decision reached. Polling of Board members for a decision prior to an Open Meeting of the Board is illegal and in violation of the Open Meeting Law.

MINUTES

Meeting Minutes

State Law addressed the keeping of minutes in Chapters 66 § 5A i and Chapter 30A §§ 22(a)ii 22(c)iii 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:

Public Body Checklist for Creating and Approving Meeting Minutes

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

- Minutes must accurately set forth the date, time, place of the meeting, and a list of the members present or absent. G.L. c. 30A, § 22(a).
- Minutes must include an accurate summary of the discussion of each subject. See G.L. c. 30A, § 22(a). The summary does not need to be a transcript, but should provide enough detail so that a member of the public who did not attend the meeting could read the minutes and understand what occurred and how the public body arrived at its decisions.
- The minutes must include a record of all the decisions made and the actions taken at each meeting, including a record of all votes. G.L. c. 30A, § 22(a).
- The minutes must include a list of all of the documents and other exhibits used by the public body during the meeting. G.L. c. 30A, § 22(a). Documents and exhibits used at the meeting are part of the official record of the session, but do not need to be physically attached to the minutes. See G.L. c. 30A, §§ 22(d), (e).

- If one or more public body members participated remotely in the meeting, the minutes must include the name(s) of the individual(s) participating remotely, and their reason(s) under 940 CMR 29.10(5) for remote participation. 940 CMR 29.10(7)(b).
- If one or more public body members participated remotely in the meeting, the minutes must record all votes as roll call votes. 940 CMR 29.10(7)(c).
- Executive session minutes must record all votes as roll call votes. G.L. c. 30A, § 22(b).
- The minutes must be approved in a timely manner. G.L. c. 30A, § 22(c). Generally, this should occur at the next meeting of the public body.

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

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.

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. Minutes are permanent records.

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.

What to do with approved minutes

Once the minutes are approved (accepted) by the committee, the draft minutes may be discarded.

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 archive filed decisions and minutes for 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.

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.

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.

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^{iv}** 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.

VOTING

Quorum

A quorum for a meeting of any Town board shall be a majority of the maximum complement of the board. No action of a Town board shall be valid and binding unless taken or ratified by an affirmative vote of the majority of the members, unless another quantum of vote is allowed or required by the Massachusetts General Laws.

Rule of Necessity

Under certain circumstances the members of the board may invoke the "Rule of Necessity" to allow disqualified members to act. The Rule of Necessity provides that a board may invoke this rule for a member(s) who would be disqualified from participating on a specific Town board action, (e.g., because of a conflict of interest) to participate because of a lack of a quorum needed to take action.

The Rule of Necessity may be invoked should the following three conditions exist:

- a. one or more members of a Town board or commission are disqualified from acting on a matter before the board due to a conflict of interest; and
- b. thereby the disqualified member(s) would deprive the board of the number of members required to take an affirmative vote; and
- c. that there is no other board empowered to hear the matter.

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;

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

Example;

For a **March 10, 2011** meeting of the Planning Board the file name will be as follows;

2011.03.10 Pl Bd Min.pdf

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

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

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.

Deadlines

All Committees should be cognizant of the following deadlines:

1. In general, a Town Board does not have a budget unless one is authorized by Town Meeting. If a board anticipates a need to expend funds, it can request a budget for the next fiscal year. For the purposes of enabling the Town Administrator to make up the annual estimate of expenditures, all board shall, upon

his/her written request, furnish all information in his/her possession and submit to the Town Administrator, in writing, a detailed estimate of the appropriations required for the efficient and proper conduct of the board during the next fiscal year.

2. 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.
3. All Committees are required to write an Annual Report for use in the Town Report. These are due in early January.
4. Draft Warrant Articles are to be discussed with the Town Administrator and filed in the appropriate time frame.

COMMITTEE PAPERWORK AND FINANCE

Budget

If your board or committee already has an established budget, prior to November 1, you will receive a budget package from the Town Administrator. The budget package will include directions for filing, time the budget forms must be filed, and other pertinent information. Your committee's annual operating budget form should be filled out and returned to the Town Administrator as instructed in the budget package. Your board or committee will be asked to meet with the Town Administrator, Finance Committee and Board of Selectmen to discuss your budget request before the warrant for the Annual Town Meeting goes to press. These meetings usually take place during the months of January and February. Under Article VI of the Town's General By-Law, the Finance Committee shall consider and make recommendations on all articles of a financial nature, including any articles involving or affecting expenditures, appropriations, debt, budgets, estimates, purchases or sales of property.

Submission and Payment of Bills

After a vote of approval bills should be signed by a majority of the members of the committee and submitted to the Town Accountant's office for processing and payment. All requests for payment of bills must be given to the Town Accountant on a bill schedule provided by the Accountant and all appropriate receipts must be attached. There are very strict laws for collecting, accounting and expending public money. Any questions regarding expenditures should be directed to the Town Accountant or Town Administrator.

Turning In Receipts

If your board or committee charges a fee for any of your services or programs, that money must be kept in a secure place and then turned over to the Town Treasurer with a duplicate accounting of the receipts given to the Town Accountant. To eliminate security problems and facilitate a positive cash flow, plan to turn in whatever money you have on a weekly basis or sooner if the amount exceeds \$100.00.

Purchases/Public Bidding Requirements

All purchasing must be done in compliance with Massachusetts Public Procurement Law (G.L. c.30B). Committee expenditures will usually not be large enough to require formal bidding; however, the following are general guidelines.

Purchases for amounts less than \$5,000.00 do not require formal bids. Good business practices should be followed.

Purchases for amounts between \$5,000.00 and \$25,000.00 require three price quotes and the lowest responsive price quote accepted. The quotes can either be telephone or written quotes.

Purchases estimated to cost in excess of \$25,000.00 requires formal bidding procedures.

The provisions of G.L. c. 30B apply to the acquisition and disposal of real property, and other procurement laws apply to public works contracts and public construction contracts (G.L. c. 30, § 39M).

The Town Administrator's office should be contacted for assistance and guidance for all purchasing and bidding.

Town Reports

All appointed committees are expected to file an annual report of committee operation which will appear in the Annual Town Report. The report should detail committee membership; including changes, and explain the major accomplishments of the committee over the calendar year and highlight plans for the ensuing year. The report is due the first part of January and should be submitted to the Town Administrator's Office.

Town Meeting

A General Committee article is always included in the warrant for the Annual Town Meeting. Any committee wishing to make a verbal report of its activities to the Town Meeting may do so under this article. The Moderator should be informed in advance of any such intended reports. A copy of the report must be given to the Town Clerk in writing prior to the Town Meeting.

Written reports to the Town Meeting may be distributed by placing sufficient copies on the table outside the door of the meeting place.

Public Records

Public Records Law

The Massachusetts Public Records Law (G.L. c. 4, § 7, cl 26; G.L. c. 66, § 10v) provides right of access to public records, broadly defined to include all documentary materials made or received by any town official or employee, except eleven specific exemptions such as personnel and medical files, proposals and bids, and appraisals of property. All minutes, informational data, memoranda and circulating materials of any Town board or committee are usually public information. The committee should consult the Town Administrator's office if questions arise concerning the public records status of documents.

Public Records Requests.

Every board or committee should coordinate any responses to public records requests with the Town Administrator's office, prior to responding to same.

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 (a-c)vi. (see endnotes)

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 available for official Committee use during business hours 8:00-4:30 Monday – Friday.

RESERVATION OF PUBLIC MEETING ROOMS:

Use of Town Buildings

Every committee should establish a regular meeting schedule to suit the needs and convenience of the members; however, they must be scheduled in *public locations* and accessible to the disabled. Space is generally available at Town Hall. If you wish to schedule a meeting for Town Hall it must be done through the Municipal Assistant to the Board of Selectmen office by calling 508.835.3490. Some coordination with other boards and committees for space may be necessary.

- 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.
- c) 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, as well as a posting a note on the entrance to Town Hall.

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.

POSTING OF MEETING NOTICES

Public Body Checklist for Posting a Meeting Notice

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

Notice Contents

- The notice contains the date, time, and location of the meeting. G.L. c. 30A, § 20(b).
- If the meeting is a joint meeting of several public bodies, the names of all bodies meeting are listed.
- The notice contains all of the topics that the chair reasonably anticipates will be discussed at the meeting. G.L. c. 30A, § 20(b). The topics are sufficiently specific to reasonably advise the public of the issues to be discussed at the meeting, including executive session topics. See G.L. c. 30A, § 20(b); 940 CMR 29.03(1)(b).
- The notice is printed in a legible, easily understandable format. G.L. c. 30A, § 20(b).
- The date and time that the notice is posted is conspicuously recorded on the notice. 940 CMR 29.03(1)(b).

Notice Publication

- 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. G.L. c. 30A, § 20(b).
- The notice is posted with the proper authority. G.L. c. 30A, § 20(c); 940 CMR 29.03(2)-(6).
 - Local public bodies - Filed with the municipal clerk, who must post it either:
 - In a location conspicuously visible to the public at all hours in or on the municipal building where the clerk's office is located; or
 - If an alternative posting method, such as a website, has been adopted, at the alternative location, with a description of the alternative method posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the building in which the clerk's office is located.

Meeting notice must also be available in or around the clerk's office so that members of the public may view the notices during normal business hours.

- State public bodies – Posted to a website, and a copy sent to the Secretary of State's Regulations Division.
- Regional public bodies – Posted in every municipality within the region, unless the public body has adopted an alternative notice posting method.
- County public bodies - Filed with the office of the county commissioners and a copy of the notice is publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose, unless the public body has adopted an alternative notice posting method.

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

OML FAQ: Meeting Notices

May two or more public bodies hold a joint meeting? Yes, two or more public bodies may hold a joint meeting. However, each public body participating in the meeting must provide notice pursuant to G.L. c. 30A, § 20. The public bodies must provide independent notice of their meetings, or if posting a single notice, must clearly state that each public body will be meeting.

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. Although a public body may consider a topic that was not listed in the meeting notice if unanticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if those topics were not listed in the meeting notice.

The Attorney General has taken the position that a public body cannot discuss a matter that should have been reasonably anticipated unless that matter appears on a meeting notice. Thus, if a matter is raised by a single selectman or councilor, or if a citizen raises a matter during a citizen participation period, the public body may discuss, and even act, on the matter at issue provided that the chair should not reasonably have anticipated the matter would be discussed at the meeting.

*Be aware, however, The Attorney General take the position that although the law does not prohibit such action, it should be avoided. **They caution public bodies to carefully consider whether a topic not listed in the meeting notice- particularly one that is controversial in nature- is appropriate for lengthy deliberation and decision by the public body at the time it is raised.** Nevertheless, they realize that topics may be raised during meetings, either by members of the public or by members of the public body, which were not anticipated. Accordingly, public bodies are advised that discussions on topics that are not listed in the meeting note **should be avoided when possible and, if they must occur, should be general and brief.** This is particularly true given the nature of the deliberation. Although the Attorney General's Office are constrained to find that the Board acted within the letter of the OML because the topic was not anticipated in advance of the meeting, the Board failed to act within the spirit of the OML. The intent of Open Mtg. Law would have been better served if the discussion had been postponed until a future, duly posted meeting.*

The Attorney General's Office wants to "encourage" public bodies to put off matters not reasonably anticipated. A public body may want to keep in mind that if an objection is raised with respect to consideration of the matter at the meeting, it is always possible that a complaint will be filed with the AG.

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 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.

What is the posting method for state public bodies?

State public bodies have different notice posting requirements than local public bodies. A state public body must post its meeting notice on its website or, if none exists, then the website of its parent agency. It must also submit a copy of the meeting notice to the Secretary of State's Regulations Division. It is not necessary to send meeting notices to the Attorney General, however, the public body must notify the Attorney General of the website location where its meeting notices will be posted.

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.

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 meeting notice for a regional public body is filed in all the towns in the region, with the exception of one, is the meeting notice posted adequately?

No, the meeting notice must be filed with the municipal clerk in each city and town within the district. As an alternative method of notice, a regional public body may post a meeting notice on the regional public body's website.

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.

Deliberations- E-mail Opinions Prohibited

The revised OML specifically defines the term “deliberation” to include e-mail. However, the law exempts from the definition the distribution of a meeting agenda, scheduling information, or distribution of documents that might be discussed at a meeting “Provided that no opinion of a member is expressed”. The AG finds an e-mail sent to a quorum of members requesting a meeting violated the law where it included the following statement, “when we took the language about the opportunity for a public hearing out of the out of the bylaw, it rendered it no longer compatible with the procedure language we approved. I think we need to meet to resolve this issue.” The AG determined that this portion of the e-mail constituted and “opinion” in violation of the law. When requesting agenda items, therefore, care must be taken to ensure that the reasons for requesting the inclusion of the agenda item not be sheared via e-mail among a quorum of members of a public body. Be reminded that an e-mail made or received by a governmental officer or employee is a public record subject to mandatory disclosure upon request, subject to the application of any exemptions to the law.

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 (a-c)vii. (see endnotes)

Deliberations- Matter that Require a Posted Meeting

The Attorney General concludes that although scheduling and distribution of various materials may be accomplished by e-mail, other types of “procedural or administrative matters” cannot. The AG indicates that the following matters constitute deliberations and must appear on a properly posted meeting notice to be discussed by the members of a public body; organization and leadership of the public body; committee assignments; rules or bylaws for the body; and discussions of whether the body should consider or take action on specific topics at a future meeting. It is likely the last item in this list that will pose the greatest challenge, as members of a public body requesting inclusion of an agenda item in an e-mail will need to be careful not to “explain” their reasoning for requesting such an agenda item in an e-mail to a quorum of members of the public body, as discussed above. For 5 member boards, this risk may be minimized by coping only the chair or administrative staff when requesting agenda items.

Intentional Violations

In virtually all cases in which the AG finds a violation of the law, the decision indicates that future similar violations may be considered an intentional violation.” This is significant, as the revised version of the OML allows for imposing a civil penalty of \$1,000 against a public body for each intentional violation.

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.

Proper format for posting a Meetings and Agendas;

An agenda is a written plan of topics that will be addressed in a meeting, presentation or event. Regardless of the venue in which the agenda will be utilized, it is important that the agenda contain certain information.

Example:

Planning Board

AGENDA

Wednesday, April 8, 2015 @ 7:00 p.m.

West Boylston Town Hall

140 Worcester Street, West Boylston MA 01583

- 7:00 p.m. Public Hearing **continued** (CLT Park LLC) – Site Plan Review for the construction of two new buildings on 137 Shrewsbury Street in West Boylston
- 7:45 p.m. Old Business/Outstanding Issues/Follow-Ups:
- 1) Olde Century Farm Homeowners Association Town Counsel Inquiry – C. Olson
 - 2) Local Wetland Bylaw Draft Review/ConCom Meeting Follow-Up – V. Vignaly
 - 3) CMRPC Village District Bylaw Initiative Meeting – C. Olson
- 8:15 p.m. New Business/Review of Correspondence/Emails Received:
- 1) ANR Plan – 4 Marsh Hawk Way (Thompson-Liston Associates)
 - 2) Preliminary Site Plan Review Discussion – 555 Prospect Street (Pinecroft Dairy Business Center)
 - 3) Site Plan Review Application – 99 Hartwell Street (Quinn Engineering)
- 8:45 p.m. Reports from Other Boards
- 9:00 p.m. Citizens’ Comments

(Except in unforeseen or emergency circumstances, any matter presented for consideration of the Board by a member of the public shall neither be acted upon, nor a decision made the night of the presentation. A scheduled time on a future agenda may be necessary, at the Board’s discretion.)

- 9:15 p.m. Review and Approve Payment of Invoices/Review Draft Meeting Minutes of March 25, 2015

The Completed form must be e-mailed to the Town Clerk’s Office for proper posting. Email to the Town Clerk and Asst. Town Clerk; kim.hopewell@westboylston-ma.gov and enovia@westboylston-ma.gov

**As noted, the posting is required to include those matters that the chair reasonably anticipates will be discussed at the upcoming meeting. If something else comes to the attention of the chair after the posting deadline but before the meeting, and that matter was not something the chair should have reasonably anticipated, the Attorney General has indicated that the chair is required to update the meeting notice with the additional item or items as soon as possible, to the extent feasible.*

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^{viii} and 15^{ix}**

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 property;*
- 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 on the town's website and on local WBPA-TV fourteen (14) calendar 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 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, 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 on the town's website a notice of such changes in public policies, rules, regulations, fee schedules, hours of operation, or levels of service on at least (1) occasion at least seven (7) calendar days prior to said effective date.*

EXECUTIVE SESSION QUICK INDEX GUIDE

Public Body checklist for Entering into Executive Session

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

Remember, you must;

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

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.

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 §§ 22 (g)(f)** ^x

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.

Executive Session Exceptions

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:

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.

- **-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 may be 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.

Exception 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.**

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.

MASSACHUSETTS LAWS

- Definition of Public Records [MGL c.4 s. 7 cl. 26](#)^{xi}
- Public Records [MGL c.66](#)
- Fair Information Practices Act [MGL c.66A](#)§ 3^{xii}

MASSACHUSETTS REGULATIONS

- [940 CMR 11](#) Fair Information Practices Act
- [950 CMR 32](#) Public Records Access Regulations
- [950 CMR 33](#) Information Practices Regulations

FEDERAL LAWS

- [5 USC 552](#) Freedom of Information Act

FORMS

[Freedom of Information Forms](#)

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.

APPENDIX A

Attorney General's Open Meeting Law Guide

Dear Massachusetts Residents:

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

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

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

Sincerely,

Maura Healey
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.

Attorney General's Authority

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

Certification

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

In the event a Certificate has not yet been completed by a presently serving member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law.

Open Meeting Law Website

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

What meetings are covered by the Open Meeting Law?

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

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

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

What constitutes a public body?

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

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

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

What constitutes a deliberation?

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

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

Note that the expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

What matters are within the jurisdiction of the public body?

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

What are the exceptions to the definition of a meeting?

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

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;

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

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

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

What are the requirements for posting notice of meetings?

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

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

For local public bodies, meeting notices must be filed with the municipal clerk with enough time to permit posting of the notice at least 48 hours in advance of the public meeting. Notices may be posted on a bulletin board, in a loose-leaf binder, or on an electronic display (e.g. television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in or on the municipal building in which the clerk’s office is located. In the event that the meeting notices posted in the municipal building are not visible to the public at all hours, then the municipality must either post notices on the outside of the building or follow one of these alternative posting methods approved by the Attorney General in 940 CMR 29.03(2)(b):

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

Prior to utilizing an alternative posting method, the clerk of the municipality must inform the Division of Open Government of its notice posting method and must inform the Division of any future changes to that posting method. Public bodies must consistently use the most current notice posting method on file with the Division. A description of the alternative posting method must also be posted on or adjacent to the main and handicapped accessible entrances to the building where the clerk’s office is located. Note that, even if an alternative posting method has been adopted, meeting notices must still be available in or around the clerk’s office so that members of the public may view the notices during normal business hours.

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

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

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

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

A note about accessibility

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

What information must meeting notices contain?

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

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

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

When can a public body meet in executive session?

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

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

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

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

The Ten Purposes for Executive Session

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
- (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

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

- in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164;
- in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or

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

May a member of a public body participate remotely?

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

Note that the Attorney General's regulations enable members of public bodies to participate remotely if the practice has been properly adopted, but do not require that a public body permit members of the public to participate remotely. If a public body chooses to allow individuals who are not members of the public body to participate remotely in a meeting, it may do so without following the Open Meeting Law's remote participation procedures.

How can the practice of remote participation be adopted?

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

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

Note about Local Commissions on Disability: Beginning on April 7, 2015, local commissions on disability may decide by majority vote of the commissioners at a regular meeting to permit remote participation during a specific meeting or during all commission meetings. G.L. c. 30A, § 20(e). Adoption by the municipal adopting authority is not required.

What are the permissible reasons for remote participation?

Once remote participation is adopted, any member of a public body may participate remotely if the chair (or, in the chair's absence, the person chairing the meeting) determines that one of the following factors makes the member's physical attendance unreasonably difficult:

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

What are the acceptable means of remote participation?

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

What are the minimum requirements for remote participation?

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

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

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

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely and which of the five reasons listed above requires that member's remote participation.

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

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

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

What public participation in meetings must be allowed?

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

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

What records of public meetings must be kept?

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

- the date, time and place of the meeting;
- the members present or absent;
- the decisions made and actions taken, including a record of all votes;
- a summary of the discussions on each subject;
- a list of all documents and exhibits used at the meeting; and
- the name of any member who participated in the meeting remotely, along with the reason under 940 CMR 29.10(5) for his or her remote participation.

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

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

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. The Open Meeting Law does not provide a definition of "timely manner," but the Attorney General recommends that minutes be approved at a public body's next meeting whenever possible. The law requires that existing minutes be made available to the public within 10 days of a request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within 10 days of a request.

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

Executive Session Meeting Records

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

A public body must respond to a request to inspect or copy executive session minutes within 10 days of the request. If the public body has determined, prior to the request, that the requested executive session minutes may be released, it must make those minutes available to the requestor at that time. If the body previously determined that executive session minutes should remain confidential because publication would defeat the lawful purposes of the executive session, it should respond by stating the reason the minutes continue to be withheld. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review whichever occurs first. In such circumstances, the body should still respond to the request within 10 days, notifying the requestor that it is conducting this review.

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

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

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

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

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

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

Step 2. The Public Body's Response

Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to review the complainant's allegations, take remedial action if appropriate, notify the complainant of the remedial action, and forward a copy of the complaint and description of the remedial action taken to the Attorney General. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so.

The public body may request additional information from the complainant. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government and should include a copy of the complaint and state the reason for the requested extension.

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

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

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

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

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

When is a violation of the law considered “intentional”?

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

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

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

Contacting the Attorney General

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

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APPENDIX B

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

* * *

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

* * *

Section 18: [DEFINITIONS]

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 19. [Division of Open Government; Open Meeting Law Training; Open Meeting Law

Advisory Commission; Annual Report]

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law;
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
- (3) the role of the attorney general in enforcing the open meeting law; and
- (4) penalties and other consequences for failure to comply with this chapter.

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

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

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general; (3) a summary of the determinations of violations made by the attorney general;
- (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
- (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
- (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
- (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

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

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

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

the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

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

The attorney general 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. [EXECUTIVE SESSIONS]

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

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

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

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

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

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

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
 - (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
 - (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or
10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. [Meeting Minutes; Records]

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

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

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

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

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

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

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

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

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to

compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

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

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. [REGULATIONS, LETTER RULINGS, ADVISORY OPINIONS]

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

APPENDIX C

940 CMR 29.00: Open Meeting Law Regulations

940 CMR 29.00: Open Meetings

Open Meetings

[29.01 Purpose, Scope and Other General Provisions](#)

[29.02 Definitions](#)

[29.03 Notice Posting Requirements](#)

[29.04 Certification](#)

[29.05 Complaints](#)

[29.06 Investigation](#)

[29.07 Resolution](#)

[29.08 Advisory Opinions](#)

[29.09 Other Enforcement Actions](#)

[29.10 Remote Participation](#)

29.01: Purpose, Scope and Other General Provisions

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

(2) **Purpose** . The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, [M.G.L. c. 30A, sec. 18-25](#).

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

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

29.02: Definitions

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

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

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

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

Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of [M.G.L. c. 30A, sec. 18-25](#). Evidence of an intentional violation of [M.G.L. c. 30A, sec. 18-25](#) shall include, but not be limited to, that the public body or public body member (a) acted with specific intent to violate the law; (b) acted with deliberate ignorance of the law's requirements; or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to [940 CMR 29.07](#) or [940 CMR 29.08](#), that the conduct violates [M.G.L. c. 30A, sec. 18-25](#). Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements or, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel, such conduct will not be considered an intentional violation of [M.G.L. c. 30A, sec. 18-25](#).

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

Post notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, cable television channel, newspaper or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with [940 CMR 29.03](#).

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

Qualification for Office means the election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biannual basis on January 1st of a calendar year beginning on January 1, 2011. Where a member's term of office began prior to July 1, 2010, and will not expire until after July 1, 2011, the member shall be deemed to have qualified for office on January 1, 2011.

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

29.03: Notice Posting Requirements

(1) Requirements Applicable to All Public Bodies

(a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with [M.G.L. c. 30A, sec. 20](#). In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting

(b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting. The date and time that the notice is posted shall be conspicuously recorded thereon or therewith.

(c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2)-(5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used

(2) Requirements Specific to Local Public Bodies

(a) The municipal clerk, or other person designated by agreement with the municipal clerk, shall post notice of the meeting in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located. Such notice shall be accessible to the public in the municipal clerk's office. If such notice is not conspicuously visible to the public during hours when the clerk's office is closed, such notice shall also be made available through an alternative method prescribed or approved by the Attorney General under 940 CMR 29.03(2)(b). A description of such alternative method, sufficient to allow members of the public to obtain notice through such method, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.

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

1. Public bodies may post notice of meetings on the municipal website;
2. 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;
3. 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;
4. 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;
5. Public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

(3) Requirements Specific to Regional or District Public Bodies.

(a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website. A copy of the notice shall be filed and kept by the chair of the public body or the chair's designee.

(4) Requirements Specific to Regional School Districts.

(a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional school district committee may post a meeting notice on the regional school district's website. A copy of the notice shall be filed and kept by the secretary of the regional school district committee or the secretary's designee.

(5) Requirements Specific to County Public Bodies.

(a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(b) As an alternative method of notice, a county public body may post a meeting on the county public body's website. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

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

29.04: Certification

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

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

29.05: Complaints

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

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

(3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who

shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body. The complaint shall be filed within 30 days of the alleged violation of [M.G.L. c. 30A, sec. 18-25](#), or if the alleged violation of [M.G.L. c. 30A, sec. 18-25](#), could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(4) The public body shall review timely complaints to ascertain the time, date, place and circumstances which constitute the alleged violation. If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within 10 business days after he or she receives the request. The public body will then have an additional 10 business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5)..

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

(a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.

(b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other materials the complainant believes are relevant. The Attorney General may decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of [M.G.L. c. 30A, sec. 18-25](#), unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

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

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

29.06: Investigation

Whenever the Attorney General has reasonable cause to believe that a violation of [M.G.L. c. 30A, sec. 18-25](#), has occurred that has not been adequately remedied, then the Attorney General may conduct an investigation.

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

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

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue subpoenas to obtain the information in accordance with [M.G.L. c. 30A, sec. 24](#), to:

- (a) Take testimony under oath;
- (b) Examine or cause to be examined any documentary material; or

(c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to [940 CMR 29.06](#) shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or other action taken to conduct or resolve the investigation pursuant to 940 CMR 29.00.

29.07: Resolution

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

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

(a) **Informal action.** The Attorney General may resolve the investigation with a telephone call, letter or other appropriate form of communication that explains the violation and clarifies the subject's obligations under [M.G.L. c. 30A, sec. 18-25](#), providing the subject with a reasonable period of time to comply with any outstanding obligations.

(b) **Formal order.** The Attorney General may resolve the investigation with a formal order. The order may require:

1. Immediate and future compliance with [M.G.L. c. 30A, sec. 18-25](#);
2. Attendance at a training session authorized by the Attorney General;
3. That minutes, records or other materials be made public; or
4. Other appropriate action.

Orders shall be available on the Attorney General's website.

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

(a) Immediate and future compliance with [M.G.L. c. 30A, sec. 18-25](#);

(b) Attendance at a training session authorized by the Attorney General;

(c) Nullification of any action taken at the relevant meeting, in whole or in part;

(d) Imposition of a fine upon the public body of not more than \$1,000 for each intentional violation;

(e) That an employee be reinstated without loss of compensation, seniority, tenure or other benefits;

(f) That minutes, records or other materials be made public; or

(g) Other appropriate action.

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

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

29.08: Advisory Opinions

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

(1) The Attorney General shall ordinarily make a draft advisory opinion available for comment on the Attorney General's website at least 60 days prior to the planned issuance of the opinion. Notice of the posting shall be provided to the Commission.

(2) Comments on the draft advisory opinion shall be submitted, in writing, to the Attorney General at least 30 days prior to the planned issuance of the opinion.

(3) Action taken by a public body in good faith compliance with an advisory opinion, provided that the circumstances are not materially different, shall not constitute an intentional violation of the [M.G.L. c. 30A, sec. 18-25](#).

29.09: Other Enforcement Actions

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

29.10: Remote Participation

(1) **Preamble.** Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating these regulations, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

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

(a) **Local Public Bodies.** The Chief Executive Officer, as defined in [M.G.L. c. 4, sec. 7](#), must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) **Regional or District Public Bodies.** The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(c) **Regional School Districts.** The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(d) **County Public Bodies.** The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) **State Public Bodies.** The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(f) **Retirement Boards.** A retirement board created pursuant to [M.G.L. c. 32, sec. 20](#) or [M.G.L. c. 34B, § 19](#) must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

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

(4) **Minimum Requirements for Remote Participation.**

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other;

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by [M.G.L. c. 30A, sec 20\(d\)](#);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of [M.G.L. c. 39, sec. 23D](#).

(5) **Permissible Reasons for Remote Participation.** If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), if the chair or, in the chair's absence, the person chairing the meeting, determines that one or more of the following factors makes the member's physical attendance unreasonably difficult:

(a) Personal illness;

(b) Personal disability;

(c) Emergency;

(d) Military service; or

(e) Geographic distance.

(6) **Technology.**

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

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

(ii) any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

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

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) **Procedures for Remote Participation.**

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.

(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.

(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with [M.G.L. c. 30A, sec. 22](#).

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

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

APPENDIX D

TOWN OF WEST BOYLSTON

APPLICATION TO SERVE ON A TOWN BOARD OR COMMITTEE

NAME: _____

ADDRESS: _____

E-MAIL ADDRESS: _____

HOME TELEPHONE: _____ **WORK TELEPHONE:** _____

Are you a registered voter of the Town of West Boylston? Yes No

Voter registration confirmation by Town Clerk _____

BOARD, COMMITTEE, OR COMMISSION FOR WHICH YOU WISH TO APPLY

(Please list in order of preference, if you are willing to be considered for appointment to more than one committee, or if you wish to serve on a board where there is no present vacancy.)

PLEASE LIST ANY EDUCATION, EXPERIENCE, PROFESSIONAL ACHIEVEMENT, SKILLS, OR SPECIAL INTEREST YOU MAY HAVE THAT WILL ASSIST YOU WITH THE BOARD OR COMMITTEE ASSIGNMENT(S) FOR WHICH YOU ARE APPLYING.

COMMENTS:

SIGNATURE: _____

DATE: _____

APPENDIX E

Policy No. K-1
Adopted Dec. 4, 1996
Updated Dec. 15, 2008

Sexual Harassment Policy

Purpose:

It is the goal of the Town of West Boylston to promote a workplace that is free of sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.

Because the Town of West Boylston takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

Policy:

II. Definition of Sexual Harassment

In Massachusetts, the legal definition for sexual harassment is this:

“sexual harassment” means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

(a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions;

or, (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances - whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual contact, gossip regarding one’s sex life; comment on an individual’s body, comment about an individual’s sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one’s sexual experiences; and,
- Discussion of one’s sexual activities.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint, is unlawful and will not be tolerated by this organization.

III. Complaints of Sexual Harassment

If any of our employees believes that he or she has been subjected to sexual harassment, the employee has the right to file a complaint with our organization. This may be done in writing or orally.

If you would like to file a complaint you may do so by contacting Leon A. Gaumont, Jr., Town Administrator, Municipal Office Building, 127 Hartwell Street, West Boylston, Massachusetts 01583, (508) 835-3490. Mr. Gaumont is also available to discuss any concerns you may have and to provide information to you about our policy on sexual harassment and our complaint process.

III. Sexual Harassment Investigation

When we receive the complaint we will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include a private interview with the person filing the complaint and with witnesses. We will also interview the person alleged to have committed sexual harassment. When we have completed our investigation, we will, to the extent appropriate inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where it is appropriate we will also impose disciplinary action.

V. Disciplinary Action

If it is determined that inappropriate conduct has been committed by one of our employees, we will take such action as is appropriate under the circumstances in conformity with the procedures outlined in the Town of West Boylston Personnel By-law. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as we deem appropriate under the circumstances.

VI. State and Federal Remedies

In addition to the above, if you believe you have been subjected to sexual harassment, you may file a formal complaint with either or both of the governmental agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a time period for filing a claim (EEOC - 300 days; MCAD – 300 days).

1. The United States Equal Employment Opportunity Commission (“EEOC”)

10 Congress Street - 10th Floor
Boston, Massachusetts 02114
(617) 565-3200

2. The Massachusetts Commission Against Discrimination (“MCAD”)

Boston Office:	Springfield Office:
One Ashburton Place	424 Dwight Street
Room 601	Room 220
Boston, Massachusetts 02108	Springfield, Massachusetts 01103
(617) 994-6000	(413) 739-2145

APPENDIX F

POLICY No. F-6
DATE ADOPTED: JUNE 4, 2008

Policy on Fraud Prevention and Detection

Purpose:

The Board of Selectmen and Town Administrator agree to establish procedures to follow for fraud prevention and detection.

Policy:

1. BACKGROUND

This Town of West Boylston Fraud Prevention and Detection Policy (Policy) is established to facilitate the development of controls, which will aid in the prevention and detection of fraud against the Town of West Boylston (Town). It is the intent of the Town to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and conduct of investigations.

Furthermore, the purpose of this document is to confirm that the Town supports and fosters a culture of zero tolerance towards fraud in all of its forms.

2. AUTHORITY

This Policy derives its authority from Section 3 of MGL Ch 23 of 1995, which states: The executive power of the town shall be vested in the Board of Selectmen who shall serve as the chief policymaking board of the town.

3. APPLICABILITY

This Policy applies to the Board of Selectmen, the School Committee and all other elected Town officials; their appointees; all employees of the Town of West Boylston, including all enterprise operations and all members of its Boards, Committees or Commissions.

This policy also applies to any other person's "acting on behalf of the Town", vendors and contractors, consultants, volunteers, temporary and casual employees and grant sub-recipients.

4. SCOPE

This Policy applies to any suspected fraud, abuse, or similar irregularity against the Town.

5. OBJECTIVE

This Policy is set forth to communicate the Town's intentions regarding prevention, reporting and investigating suspected fraud, abuse and similar irregularities. The Town desires to create an environment in which employees and/or citizens can report any suspicion of fraud.

Further, this policy is set forth to communicate the Town's desire to protect the assets, resources and reputation of West Boylston. It is through this policy that the Town also seeks to protect all officials, employees and associated parties from false or erroneous allegations by providing them with sufficient knowledge and training relative to the Town's fraud prevention policies and procedures to ensure that they fully understand the culture of the environment they are operating within.

This Policy provides management with specific guidelines and responsibilities regarding appropriate actions in conducting investigations of alleged fraud and similar improprieties.

6. DEFINITIONS

Abuse refers to, but is not limited to:

- Improper or misuse of authority,

- Improper or misuse of Town property, equipment, materials, records or other resources,
- Waste of public funds, or
- Any similar or related irregularity.

Abuse can occur in financial or non-financial settings. When considering if an event or action might be construed as being abusive, one should consider if it would pass public scrutiny.

Any Other Persons “Acting on behalf of the Town” shall mean all persons responsible for or to the municipal government and/or the Town’s enterprises placed in that position by some official relationship with the Town of West Boylston.

Appointed Officials shall mean all persons responsible for or to the municipal government and the Town’s enterprises placed in that position via an appointment.

Consultants shall mean all individuals and organizations conducting business with or on behalf of the municipal government and all of the enterprises of the Town.

Elected Officials shall mean all persons responsible for or to the municipal government and the Town’s enterprises placed in that position by the voters of West Boylston via a town ballot.

Fraud or other irregularity refers to, but is not limited to:

- Any dishonest or fraudulent act,
- Forgery or alteration of any document or account,
- Forgery or alteration of a check, bank draft, or any other financial document,
- Misappropriation of funds, securities, supplies or other assets,
- Impropriety in the handling or reporting of money or financial transactions,
- Profiteering as a result of insider knowledge of Town activities,
- Disclosing confidential and/or proprietary information to outside parties,
- Accepting or seeking anything of material value from consultants, contractors, vendors or persons providing services or materials to the Town,
- Destruction, removal or inappropriate use of records, furniture, fixtures, and equipment,
- Any claim for reimbursement of expenses that are not made for the exclusive benefit of the Town,
- Any computer related activity involving the alteration, destruction, forgery or manipulation of data for fraudulent purposes, or
- Any similar or related irregularity.

Grant Sub-recipients shall mean all individuals and organizations that receive any programmatic funding or “in-kind assistance” from the municipal government and the Town’s enterprises.

Management shall mean those individuals who have been placed in a position of trust by a lawful Town of West Boylston appointing authority to assist in carrying out the objectives of that department of the Town for which they are employed.

Town Administrator shall mean highest-ranking person responsible for the municipal government and the Town’s enterprises.

Town Employee shall mean all employees of the municipal government and all of the enterprises of the Town. This definition is inclusive of all employees regardless of the designations full-time, part-time, temporary or casual.

Town of West Boylston is a Massachusetts municipal corporation managed as provided under Chapter 23 of the Acts of 1995 and, and shall include all its enterprise activities, as well as all Boards, Committees, and Commissions elected or appointed by the Board of Selectmen and other appointing authorities.

Vendors and Contractors shall mean all individuals and organizations conducting business with or on behalf of the municipal government and all of the enterprises of the Town.

Volunteers shall mean all contributors of unpaid personal services to the municipal government and all of the enterprises of the Town.

7. GENERAL POLICY AND RESPONSIBILITIES
RESPONSIBILITIES

The Town has a responsibility to investigate and report to appropriate governmental authorities, as required, any violations of compliance with Town policy, State and Federal Laws and regulations, internal accounting controls and questionable accounting matters.

Town of West Boylston management is responsible for establishing and maintaining policies and controls that provide security and accountability for the resources entrusted to them. Internal controls are intended to aid in preventing and detecting instances of fraud and related misconduct. Management is also expected to recognize risks and exposures inherent in their area of responsibility and be aware of indications of fraud or related misconduct. Responses to such allegations or indicators should be consistent.

Every employee has the responsibility to assist the Town in complying with policies and legal and regulatory requirements, and in reporting known violations. It is the policy of the Town to encourage the support and cooperation of all employees in meeting the Town's commitment and responsibility to such compliance.

REPORTING

Employees should report suspected instances of fraud or irregularity to their immediate supervisor or their next appropriate management level. However, in certain circumstances, it may be appropriate for employees to report suspected instances of fraud or irregularity directly to the Finance Director (If the alleged fraud has been committed by the Employee's supervisor.)

It is the responsibility of a supervisor or relevant manager to ensure that the suspicion of fraud and/or irregularity that is reported to them is reported as soon as practical to the Finance Director. The written or verbal report should be sufficiently detailed and inclusive to ensure a clear understanding of the issues raised. In the event that the Finance Director is the subject of, or otherwise identified as involved in the acts underlying such report, the person making the report may notify and forward such report to the Town Administrator who will then lead the investigation and the Town Administrator shall immediately report such allegations to the Chairman of the Board of Selectmen.

Town employees are not to initiate investigations on their own. However, anyone may report suspected violations or concerns by letter to the Finance Director and should indicate that he or she is an employee of the Town. The report should be sufficiently detailed and inclusive to ensure a clear understanding of the issues raised. Mark the envelope "Confidential and Private". It is the policy of the Town that anyone who reports a violation may make such report confidentially and offsite.

There shall be no retaliation by the Town's employees against any employee who makes a report pursuant to this policy even if after investigation the Finance Director determines that there has not been a violation of any applicable Town policy, State or Federal laws and regulations or internal accounting controls. However, employees who make reports or provide evidence which they know to be false or, without a reasonable belief in the truth and accuracy of such information, may be subject to disciplinary action.

ANONYMOUS ALLEGATIONS

The Town encourages individuals to put their names to allegations. Concerns expressed anonymously are difficult to investigate; nevertheless they will be followed up at the discretion of management. This discretion will be applied by taking into account the following:

- Seriousness of the issue raised;
- Credibility of the concern; and
- Likelihood of confirming the allegation.

FALSE ALLEGATIONS

Employees or other parties must understand the implications (resources and costs) of undertaking investigations and should therefore guard against making allegations, which are false and made with malicious intent. Evidence of malicious intent will result in disciplinary action, and may include termination.

TRAINING, EDUCATION, AND AWARENESS

In order for the Policy to be sustainable, it must be supported by a structured education, communication and awareness program.

It is the responsibility of management to ensure that all employees and other parties, are made aware of, and receive appropriate training and education with regard to this Policy, and the related policies and procedures of the Town.

INVESTIGATION

It is the Town Administrator's intent to fully investigate any suspected acts of fraud, abuse, or similar irregularity. An objective and impartial investigation will be conducted regardless of the position, title, length of service, or relationship with the Town of any party

involved in such an investigation. In conducting investigations, the Finance Director will consult with and receive guidance from the Town Attorney, the West Boylston Police Department and others they identify.

MEDIA ISSUES

Any staff person contacted by the media with respect to an audit investigation is encouraged to refer the media to the appropriate public communications official of the Town. The alleged fraud or audit investigation should not be discussed with the media by any person other than those trained to do so. The Town Administrator and Finance Director will consult with the management of the department involved and assist them in responding to any media requests for information or interview.

REPORTING TO EXTERNAL AUDITORS

The Finance Director will report to the external auditors of the Town all information relating to fraud investigations, in accordance with Statement on Auditing Standard 99 - Consideration of Fraud in a Financial Statement Audit, as issued by the Financial Accounting Standards Board.

WHISTLEBLOWER PROTECTION

In addition to whistleblower protections provided by federal and state laws, this policy provides that retaliation against employees is prohibited.

A. Except as provided in subsection B of this section, no appointing authority or supervisor shall initiate or administer any disciplinary action, deny a promotional opportunity, write an adverse job performance evaluation or in any way adversely affect an employee on account of the employee's disclosure of information. This section shall not apply to:

1. An employee who discloses information that the employee knows to be false or who discloses information with disregard for the truth or falsity of the information.
2. An employee who discloses information from public records that are closed to public inspection pursuant to the Massachusetts Public Records Law.
3. An employee who discloses information that is confidential under any other provision of law.

B. It shall be the obligation of an employee who discloses information under this part to make a good faith effort to provide to their supervisor or appointing authority or the Finance Director, the information to be disclosed prior to its public disclosure.

SECURITY AND CONFIDENTIALITY

All work products of the Finance Director's investigations, including but not limited to working papers, notes, interviews, and other information relating to investigations will not be shared, discussed, or given to anyone without an absolute need to know or pursuant to Court Order. The Finance Director will provide a secure environment for the storage of all work-in-process regarding investigations, subject to law.

APPENDIX G

END-NOTES

REFERENCES TO MASSACHUSETTS GENERAL LAW

i Chapter 66 § 5A

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 §§ 22(a)

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)

Section 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 30A § 18

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

v Chapter 66 §10

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.

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.

vi Chapter 66 § 10

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.

vii Chapter 66 § 10

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.

viii Chapter 40A § 9

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.

ix Chapter 40A § 15

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.

x Chapter 30A §§ 22 (g) (f)

(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.

xi Chapter 4 § 7 subclause 26

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

(a) specifically or by necessary implication exempted from disclosure by statute;

(b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;

(c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;

(d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;

(e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

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

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

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

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

[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.

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

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

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

xii Chapter 66A §3

Section 3. The secretary of each executive office shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to all agencies, departments, boards, commissions, authorities, and instrumentalities within each of said executive offices subject to the approval of the commissioner of administration. The department of housing and community development shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to local housing and redevelopment authorities of the cities and towns. Any agency not within any such executive office shall be subject to the regulations of the commissioner of administration. The attorney general, the state secretary, the state treasurer and the state auditor shall adopt applicable regulations for their respective departments.