



# Town of Carlisle

MASSACHUSETTS 01741

Office of  
*TOWN CLERK*  
66 Westford Street  
Tel. (978) 369-6155



## **Public Member Handbook**

We appreciate that you've chosen to serve Carlisle by participating as a member of a public body. The work you do is important and necessary to the functioning of the Town of Carlisle and its government.

This Handbook includes important information, guides, and resources to assist you in understanding legal requirements and other responsibilities of your role. You can reach our office at [townclerk@carlislema.gov](mailto:townclerk@carlislema.gov) or 978-369-6155.

### **Start here:**

1. All Public Body members must be sworn to their duties before participating in their first meeting as a voting member.
2. Sign the Open Meeting Law (OML) Certification Form and return a copy to the Town Clerk.
3. Complete the Acknowledgement of Receipt of Summary of Conflict of Interest Law and Ethics Training through the state's online portal: [Complete the Conflict of Interest Law Education Requirements | Mass.gov](#). Choose the "sign in or create an account to complete the education requirements" button, then you will be instructed through the process of creating an account and completing the training.

### **Included in this Handbook:**

- OML Certification Form
- Agenda and Minutes Style Guide (Updated June 30, 2023)
- For Public Body Chairs
- Special guidance regarding the use of file-sharing and collaborative software
- Submission Guidelines for Website Changes and Edits (Updated July 21, 2023)
- Guide for Members of Public Boards and Commissions: How to be an Effective Member of a Public Board or Commission (June 2023)
- Open Meeting Law Guide and Education Materials (2018)
- Summary of the Conflict of Interest Law
- Direct links to State Departments and resources

**CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS**

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

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

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

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

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

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

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

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

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



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## Agenda and Minutes Style Guide

Updated June 30, 2023

To improve the efficiency and efficacy of the business of the Office of the Town Clerk, we request all Boards and Committees standardize their submissions for posting as described here.

### Agendas:

#### - File naming the document:

- Use only alphanumeric characters, underscores, and dashes.
- Your group's name/abbreviation, followed by the date, and the word "agenda."
  - Example: The Carlisle School Committee Meeting agenda for 1/1/2020 would be saved as "CSC\_01-01-2020\_Agenda"
  - Include the "0" before single-digit portions of the date.
  - Date can be formatted by year first if easier for your records.
- Save as a PDF document and send as an attachment to **townclerk@carlislema.gov**
- If the agenda is more than one page, please include page numbers, in the form of "Page x of y" where "x" is the current page and "y" is the total pages.
- If you need to send a **revised agenda**:
  - Name the document as above, adding "Rev" and number revisions.
    - Ex: "CSC\_01-01-2020\_Agenda\_Rev1"; if there is a revision after that: "CSC\_01-01-2020\_Agenda\_Rev2"
  - The Office may ask a public body to begin to number all versions of submitted Agendas

#### - Submission deadlines:

- Must be posted **48 hours** before the scheduled meeting time to comply with Open Meeting Law (only business days are counted).
- Submit to townclerk@carlislema.gov **with appropriate time for the office to post.**
- For a morning meeting, agendas need to be submitted before close of business (3:00pm) **three days** before the meeting. As the office doesn't open until 9:00am, we can't guarantee getting to your email and posting the meeting before the 48 hour deadline if the meeting is scheduled before 12:00pm.
  - Ex: Municipal Facilities Committee is meeting at 8am on Thursday. We need the agenda before 3pm on Monday, as we won't be in the office until after the 48 hour deadline.

## Carlisle Office of the Town Clerk

### Agenda and Minutes Style Guide

- Ex: School Committee is meeting 9:45am on Monday. We need the agenda before 3pm on Wednesday because we need enough time to get to the email submission and post it.
  - For an evening meeting, agendas need to be submitted before close of business (3:00pm) two days before the scheduled meeting.
    - Ex: Finance Committee is meeting at 7pm on Tuesday. We need the agenda before 3pm on Friday.
  - Please keep to the 48 hour rule when possible. There is allowance in OML for emergency meeting agendas and revisions that do not meet the 48 hour deadline. If challenged, your public body would need to explain that reasoning to the Attorney General's Office and any other resulting legal action.
- **Required content of an agenda:**
  - Full name of the Board or Committee (no abbreviated names)
  - Date, time, and location of the meeting
    - Note for Virtual locations: you may include the meeting information OR the email address of someone to contact for the public to gain access to the meeting. If including the meeting information, both the web link and the dial-in information must be present. If by email, someone must be monitoring that email account throughout the meeting to allow in any latecomers
    - For Hybrid (virtual and in-person): both locations must be listed
  - Topics anticipated at the time of calling the meeting

### Minutes:

- **File naming the document:**
  - Use only alphanumeric characters, underscores, and dashes.
  - Your group's name/abbreviation, followed by the date, and the word "minutes."
    - Example: The Carlisle School Committee Meeting Minutes for 1/1/2020 would be saved as "CSC\_01-01-2020\_Minutes"
  - Save as a PDF document and send as an attachment to **townclerk@carlislema.gov**
- **Required content of the minutes**
  - Date and time of the meeting on the first page.
  - Location of the meeting on the first page.
  - The full group name (no abbreviated names) and the meeting date on each page.
  - Page numbers in the form of "Page x of y"

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### Agenda and Minutes Style Guide

- Time the meeting adjourned
  - First and last names of the members present, and names of the members absent.
  - Date Minutes were approved
  - Name of individual submitting Minutes
  - Description (summary) of any discussion that takes place during the meeting that reflects the nature of deliberations (transcript is not required)
  - Description of any public participation during the meeting, including the name and address of the individual participating
  - Subjects acted upon, votes taken (including individual votes of members) and any other actions taken
  - Supplemental information and supporting documents, including reports to the Public Body or prepared by the Public Body, do not legally need to be submitted with the Minutes. However, they do legally need to be accessible to the public within 10 days of request and retained in accordance with state schedules. Please reach out to this office if you require assistance.
  - **If your public body would like to include them, all supporting documents need to be saved with the Minutes in one PDF document for posting.** Please do not send supporting documents to be posted separately from the minutes. The web system does not allow for more than one Minutes file to be posted.
- **Submission deadlines:** The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. A “timely manner” is within the next three public body meetings or 30 days from the date of the meeting, whichever is later, unless the public body can show good cause for further delay. **The Attorney General encourages minutes to be approved at a public body’s next meeting whenever possible.** The law requires that existing minutes be made available to the public within ten days of a request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within ten days of a request.
- In the recent experience of this Office, delaying approving and submitting Minutes to this Office opens the Public Body to scrutiny from the public, including public records requests, local news, and OML complaints.

#### Public Hearing Notices:

- **File naming the document:**

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- Avoid using non-alphanumeric characters, including spaces and periods. Use underscores and dashes instead.
- Your group's name/abbreviation, followed by the date, the abbreviation "PHN", and any other identifying information. Whatever identifying information is in the file name is the information that will be posted.
  - Example: The Planning Board legal notice for 123 Main St on 1/1/2020 would be saved as "CSC\_01-01-2020\_PHN\_123\_Main" (or similar). It would be posted with the title "Planning Board Public Hearing Notice 123 Main".
- Save as a PDF document and send as an attachment to **townclerk@carlislema.gov**

#### **Executive Session:**

Open Meeting Law states ten specific purposes for which an executive session may be held. They are the only reasons. You may find a list of the reasons and their explanations beginning on page 11 of the "Guide to Open Meeting Law" (on our website: [Open-Meeting-Law-Guide-and-Education-Materials \(carlislema.gov\)](https://www.carlislema.gov/DocumentCenter/View/12345)).

#### **An agenda for an Executive Session must state:**

- The reason for the executive session (must match an item from the above referenced list), stating all subjects that may be revealed without compromising the purpose for which the executive session was called
- Whether the public body will reconvene in open session at the end of the executive session
- 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.

#### **Minutes:**

"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

## Carlisle Office of the Town Clerk

### **Agenda and Minutes Style Guide**

to periodically review their executive session minutes to determine whether continued non-disclosure is warranted. These determinations must be included in the minutes of the body's next meeting.

A public body must respond to a request to inspect or copy executive session minutes within ten days of the request. If the public body has determined, prior to the request, that the requested executive session minutes may be released, it must make those minutes available to the requestor at that time. If the body previously determined that executive session minutes should remain confidential because publication would defeat the lawful purposes of the executive session, it should respond by stating the reason the minutes continue to be withheld. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. In such circumstances, the body should still respond to the request within ten days, notifying the requestor that it is conducting this review." (2017 Guide to Open Meeting Law pg. 19)

#### **Why are you being asked to do this?**

- The law still requires we keep physical records of minutes in addition to our electronic files. This is unlikely to change soon.
- The File Naming method described is the "best practice" for electronic records directly from the Massachusetts State Archives Records Management Unit to mitigate risk of tech obsolescence, unintended corruption, or loss of data for these permanent records.
- There are consistently over 50 Public Bodies that meet in Carlisle, all of which must submit the required agendas and minutes. Conforming to this Style Guide will save the office time; we will not need to rename every agenda and minutes document that comes in and will streamline digital and hard copy organization.
- Including the group name, meeting date, and page numbers makes it possible for multi-page minutes to be identified, filed correctly, and to ensure pages are not missing or removed when the public or another Public Body reviews the files. The public has access to all agendas and minutes that are on file in the Parlin room.

Please reach out with any questions. The Office is available to share examples of, assist with, or review documents before posting.

While not necessary for efficiency or efficacy, pleasantries in communication are always appreciated.



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## For Public Body Chairs

### Appointments, Resignations, and Roles

Directly communicate with the Office of the Town Clerk in the event of any appointments, resignations, or establishment or change in roles (Chair, Vice-Chair, Secretary, etc.).

#### Appointments

Appointments are made by an appointing authority during their meeting. Most often, the appointing authority is the Select Board but other elected Boards also have authority in some cases.

Contact our office with:

- the name and email address/other contact information of the appointed,
- the date appointed (should match the date of the meeting of the appointing authority),
- and the term expiration date.

If the appointed is fulfilling a vacant term, please also indicate the name of the individual they are replacing.

The term expiration date needs to match the Minutes of the meeting of the appointing authority. I.E. if you, as chair, recommended a three-year appointment but the appointing authority voted for a one-year appointment, it's a one-year appointment until the authority corrects and votes for a three-year.

#### Resignations

All resignations must be filed with the Town Clerk's Office to be complete. Members should directly communicate their resignation in writing; they should not depend on the Chair or an administrator to pass along the resignation.

Resignations should include:

- member's name
- statement of resignation
- name of public body
- effective date

#### Roles

Contact our office each time your Public Body organizes itself or makes changes to members' roles. Roles include positions like Chair, Vice-Chair, Secretary, etc. Roles do not include a change of alternate or associate members to full members. If there is a cause for vacancy or members would like to "switch" their full and alternate/associate status it must be done through a vote of the appointing authority (Select Board).

### Help Us Help You

Agendas and Minutes are required of every Public Body. It makes everyone's life easier if they are submitted in a timely manner and in accordance with the Agenda and Minutes Style Guide. As chair, please keep an eye on the agendas and minutes being submitted and follow up with the member(s) as needed.

As Chair, follow up with your members to make sure they have been sworn in, signed OML and Summary Ethics Acknowledgements, and completed Ethics Training (every two years). With over 50 Public Bodies in Carlisle, it's difficult for our office to follow up with each member.



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## Special Guidance Regarding File-Sharing and Collaborative Software

Guidance from Carlisle Town Counsel, September, 2020  
Edited for Handbook by Gretchen Gallimore, Assistant Town Clerk

The law has not kept up with technology and use of Google Drive or any other sharing platform is strongly discouraged.

The *Open Meeting Law* precludes members of a public body from deliberating outside an open meeting. 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. See *Boelter v. Bd. of Selectmen of Wayland*, 479 Mass. 233 (2018) (Selectmen violated the OML when the Chair circulated a written evaluation of the Town Administrator's performance to the other Board members). OML compliance does not turn on the manner of a document's transmission. Thus, sharing a document via email is the same as posting a document on a shared google drive or Dropbox. If the document contains a member's opinions, the document cannot be circulated outside of an open meeting.

In *Boelter*, the Supreme Judicial Court created a workaround to this general prohibition. In that case, the Court stated that a document containing an opinion of a member may be shared outside an open meeting via a public posting to a municipal website in a manner that is also available to members of public and with copies at the Town Clerk's office. Therefore, a public body can use a google drive or Dropbox provided that the drive is linked to the Town's website, accessible by the public and all documents are also available for inspection at the Town's Clerk Office. No further deliberations on the document are permitted outside an open meeting.

In regard to collaborative documents, any edits to the document, whether in the body of the document or in a comment section, constitutes a deliberation in violation of the *Open Meeting Law*. Use of a collaborative editing platform may also run afoul of the *Public Records Law* and the *Records Retention Act*, which would require the Public Body to retain copies of all "versions" of the document and to make such "versions" available upon request. For these reasons, it is not recommend that public bodies (or staff) utilize collaborative editing software.

# SUBMISSION GUIDELINES

FOR WEBSITE CHANGES AND EDITS

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**CONTACTS & ROLES**

**PERMISSION LEVELS**

Access to edit the website is granted to Town of Carlisle staff. There are different levels of access, called permission levels, given to different staff members depending on their job responsibilities and amount of website training.

There are more permission levels included in the structure of the website than Carlisle uses. These guidelines will only include the levels used in Carlisle: System Administrator and Publisher.

**SYSTEM ADMINISTRATORS**

System Administrators have full access to all the back-end modules, pages, and user administration aspects of the website. This permission level is limited to three staff members. Limiting this level of access is important for security and work-flow consistency. The three staff members and their roles are:

<b>System Administrator Role</b>	<b>Name</b>	<b>Email</b>	<b>Phone</b>
Webmaster	Gretchen Gallimore	<a href="mailto:ggallimore@carlislema.gov">ggallimore@carlislema.gov</a>	978-759-7619
Communications System Administrator	Aubrey Thomas	<a href="mailto:athomas@carlislema.gov">athomas@carlislema.gov</a>	978-371-6694

**WEBMASTER**

The Webmaster serves as the primary contact for website edits, training, and questions. Unless otherwise specified, all requests flow through them first. They are responsible for continuity of website content, style, and design. They train staff members and are the point of contact for public body chairs or their designee(s) for website changes. If the Webmaster is unavailable, requests should be addressed to both other system administrators.

**COMMUNICATIONS SYSTEM ADMINISTRATOR**

The Communications Systems Administrator serves as the primary contact for News Flash submissions. They approve News Flash items to appear under the “News & Events” or “Carlisle

Spotlights” sections of the homepage. In the event of the Webmaster’s absence, edits and questions are submitted to them and the System Administrator.

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## SYSTEM ADMINISTRATOR

The System Administrator supports the Webmaster and Communications System Administrator. In the event of the Webmaster’s absence, edits and questions are submitted to them and the Communications System Administrator.

## PUBLISHERS

All other staff with access to edit the website have Publisher permissions. Publishers can work within assigned pages, modules, and/or categories. This allows a staff member to only have access to edit their department’s content.

They can:

- Create, edit, publish, unpublish, or delete content on their assigned pages and module categories.
- Create and publish a page.

They cannot:

- Delete pages or module categories.
- Assign users or permissions.

## PAGES

### DEPARTMENTAL PAGES

“Departmental Pages” are webpages and subpages that can be edited by the associated department staff at Town Hall.

---

## CONTENT

Page content can be edited by the departmental staff member(s) with Publisher permissions. If you are having trouble with the content appearing as you would like it to or you believe you should have other access, please reach out to the Webmaster.

If you would like to use a Widget you haven’t used before, please reach out to the Webmaster for training.

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## ACCESSIBILITY

It is both a legal requirement and good practice to have a website that is as accessible as possible. To help keep our website accessible for people with disabilities:

- Use the built-in accessibility checker in the Editor widget
- Check documents before uploading, using the built-in accessibility checker in the program you used to create the document (Word, Adobe, etc.)
- Include alt text for all images and other visual aids (graphs, charts, tables). The alt text should reasonably describe the visual information. There is no word limit. A photo of the cranberry bog can simply be “Photograph of the Carlisle Cranberry Bog at dusk”. A chart or graph description should be detailed, explaining the data and conclusions being drawn with the visual aid. “Bar graph of cranberry bog use over time” is not sufficient alt text because it does not give the reader the same information as the bar graph.

---

## INFO COLUMN

You will not be able to edit the right-side column of staff information. Edits to that section need to be made by a system administrator in a back-end module of the site. Please reach out to the Webmaster with any desired edits.

---

## PAGE MENU

The left-side menu items can be rearranged by drag-and-drop. Subpages can use the menu of the parent page or a menu of its own subpages. If you would like to reorganize the page menu, please reach out to the Webmaster.

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## ADDING PAGES

Publishers may add (create) subpages to their departmental pages. If you have not created a page before, please reach out to the Webmaster for training.

---

## DELETING, HIDING, OR UNPUBLISHING PAGES

Deleting, unpublishing, or hiding pages (not the content of the page but the entire page) is done by a system administrator.

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## WHICH ACTION DO YOU WANT TO USE?

**Deleting** (or Archiving) will entirely remove the page from the website. It will only be stored in the off-site (server) location of our website contractor CivicPlus. It will not be easy to get back and would probably require recreation.

**Hiding** a page hides the link to a published page, so it doesn't appear in any menu. The page is still published and, if someone has a direct link, the page can be accessed.

**Unpublishing** a page will place the page back in draft form and will not be visible or accessible on the front-end of the site. You will be able to edit and publish as normal.

---

## SUBMISSION

To submit a page for unpublishing, hiding, or deleting send an email to the Webmaster with:

- Direct link(s) to the page(s)
- Action desired (unpublishing, hiding, or deleting)

That's it!

## PUBLIC BODY PAGES

“Public Body Pages” are webpages and subpages that don't have a specific department or staff member at Town Hall. All edits for these pages will be done through a system administrator. All submissions should be made in an email to the Webmaster with the content as described below. Examples are available in the index at the end of these guidelines.

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## CONTENT SUBMISSIONS

Requests for content changes are submitted to the Webmaster by email and should include:

- Direct link to the webpage
- “Original” text that is being switched out. The beginning and end of the section is sufficient for larger edits.
- Exact text, as you would like it to appear. It will be copied and pasted.
  - Text can be in the body of the email or attached as a word document
  - Format of the text should reflect desired styles (bold, italics)
  - If available, it is helpful if you embed any links (to other pages or documents that already appear on the website or to external websites)
- If you would like to include images:
  - Can be in jpeg, png, or tiff format
  - Include the general location of where you would like that image to appear (top/bottom corner, center, wrapping or not wrapping text)
  - Alt Text for the image. This will be copied and pasted. The alt text should reasonably describe the visual information.
- Any documents to be linked, noting the text that you would like to serve as the link (what you would like people to click on)
  - If available, please use the program's built in accessibility checker before submitting (Microsoft, Adobe, and Google have built-in checkers)
  - File names cannot include special characters. It is best practice to use only alphanumeric characters, dashes, and underscores.
- If your content includes a visual aid, like a graph or chart:
  - Provide a detailed Alt Text description, explaining the data and conclusions being drawn with the visual aid. For example, “Bar graph of cranberry bog use over time” is not sufficient alt text because it does not give the reader the same information as the bar graph.

See Examples 1 and 2 in the index.

---

## ADDING, DELETING, HIDING, OR UNPUBLISHING SUBMISSIONS

See “which action do you want to use?” on page 3 for definitions.

Requests for structural changes to pages are submitted to the Webmaster and should include:

- Direct link to webpage (if adding a subpage, direct link to parent page)
- Action desired
- If adding a subpage, include:
  - Page title
  - Content of page

## NEWS FLASH (“NEWS & EVENTS” OR “CARLISLE SPOTLIGHTS”)

News Flash is the Module that populates content for the “News & Events” and “Carlisle Spotlights” sections on the homepage of the website. All updates to this section of the website will be completed by one of the system administrators.

## SUBMISSIONS

News Flash updates are submitted to the Communications System Administrator by email and should include:

- Title: the text that will appear in bold
- Lead In: the text that will appear as regular text under the bold type; limited characters.
- Full Text: the text that will appear when someone clicks for more information.
- Image, if available, including Alt Text. An image will be chosen if none is provided.
- Direct links to pages or documents, if applicable

It is possible to link the News Flash item to a page or document rather than to the “full text” in the News Flash module of the website. To see an example, click “Take a Hike!” under “Spotlights” on the homepage. If you would prefer that option, include:

- Title and Lead In (this is the only text people will see before clicking)
- Direct link to be opened.
- Image, as above

## WHICH SECTION?

Should your submission appear under “News & Events” or “Carlisle Spotlights”? The final determination will be made by the Communications System Administrator, but knowing the intention of both sections will help determine where you would like to request it appear.

“News & Events” is for timely items related to Carlisle town government functions. This can include events, but the Town should have a direct role in the sponsorship of the event.

“Carlisle Spotlights” is for spotlighting community aspects of Carlisle that do not necessarily relate immediately to functions of government or town hall. It is also for longer-term or open-ended items. See current items for examples. Other items that may appear are Trekker Award recipients, Trick or Treating or Old Home Day information, citizen awards, etc.

## OTHER CHANGES

### UPDATING A DOCUMENT

An updated version of a document that currently appears on the website will be swapped, so only the most recent version is visible to the public. If available, run an accessibility checker before submission (Microsoft, Adobe, and Google have built-in checkers). Requests are submitted to the Webmaster and should include:

- Direct link to the document that is currently on the website.
- PDF file of new version of the document
  - File name cannot include special characters. It is best practice to use only alpha-numeric characters, dashes, and underscores.

### UPDATING LINKS

If content on your page links to an external website, like a page on the mass.gov site, you may need to update the link if the external site makes changes. It is good practice to check the links on your pages every few months to make sure they still work. Requests are submitted to the Webmaster and should include:

- Direct link to page where the external link appears.
- The text/content that serves as the link (what you click on)
- URL of the updated external link

### STYLISTIC CHANGES

The style of the website is limited to the design of the current website. The color scheme and text styles are set. A different style or color cannot be chosen. There is some variability in layout and there are different widgets to better present types of content. Reach out to the Webmaster if there is a stylistic or aesthetic change you'd like, and she'll let you know the possibilities.

The style of the website is set this way so there is continuity across the site. The entire website is under one brand. It would look incredibly strange if one committee or department page looked entirely different from the rest of the website. It is mildly limiting but fosters brand cohesion.

EXAMPLE 1

EMAIL

Music Festival edits



Mark Levitan [redacted]  
To Gretchen Gallimore

*i* You replied to this message on 4/3/2023 1:40 PM.

Attachments: Music Festival.jpg 8 MB main festival page 040323.docx 18 KB

1. <https://www.carlislema.gov/1012/Carlisle-Music-Festival>

replace all copy with attached Word doc content  
please add the attached graphic logo-style (it can be small)

2. <https://www.carlislema.gov/1013/Musician-Bios>

please change dates at top to  
Friday June 23, Saturday June 24 & Sunday June 25, 2023

between "Festival information" links – replace all with **Coming Soon**  
delete one of the [Festival information](#) links  
please add the attached graphic logo-style (it can be small)

Thank you again!

FORMATTING OF WORD DOCUMENT

**Carlisle Music Festival @Old Home Day**

**3 Days of Amazing Hometown Talent!**

**Friday June 23, Saturday June 24 & Sunday June 25, 2023**

**Family-friendly • Carlisle musicians • Diverse styles • Food & fun**

**Hold That Thought • Five O'Clock Shadow • Lloyd Thayer • Walk Like A Cow • Red Velvet Slide  
• Dale Joachim's Carlisle Jazz 3 • Nightflies • Tedesco Duo • The Hansen Brothers • Kenny  
Selcer & Steve Gilligan • Concord Women's Chorus • The Honey Steelers • Ravi Pathak •  
Carlisle Chamber Orchestra String Quartet • Judy Bose & Dan Lennon • Neighborly •  
Soundbites • Mark & Lee's Blues Thing • Chris Brenne & Parul Vakani • Lee Perlman • Carlisle  
Community Chorus**

### Musician Bios

The Carlisle Music Festival @Old Home Day is a celebration of the deep and diverse musical talent in our hometown, featuring both amateur and professional musicians with Carlisle connections, performing in a wide variety of musical styles.

**Come on out to listen and support your local music community!**

#### **Friday June 23: Community Singalong & Open Mic**

Featuring Carlisle Community Chorus

**Main Stage @FRS Yard** early evening, times TBD

#### **Saturday June 24: Music at Old Home Day**

**Main Stage @FRS Yard** 10:30 AM-2:15 PM – diverse lineup of outstanding musicians

**Arts & Crafts Show** @Union Hall 10:30 AM-12:30 PM – music to enhance the show

**Book Swap** @Gleason Library 10:30 AM-12:15 PM – vocal mastery & bluesy tunes

#### **Sunday June 25 Music Event Under The Tent**

**Spalding Field** Noon-7:30 PM

On Sunday, the Carlisle Music Festival @Old Home Day is an all-afternoon family-friendly party **under the big tent and on the lawn at Spalding Field**, featuring 9 talented artists.

Bring a blanket or low chairs, carry in a picnic or enjoy the food trucks, and make a day of it. Meet the musicians after their performances, and visit information tables showcasing Carlisle community organizations.

## Cultural Council text change



Mark Levitan [REDACTED]  
To Gretchen Gallimore

 You replied to this message on 4/24/2023 8:46 AM.

<https://www.carlislema.gov/1012/Carlisle-Music-Festival>

**please replace the musician list for these 2 sections only**

### ***Old Home Day Art & Craft Show***

***Union Hall, First Religious Society 10:30 AM - 12:30 PM***

*Note: the Art & Craft Show is open from 9 AM- 1:30 PM*

10:30 Dale Joaquim  
11:00 Ravi Pathak  
11:35 Chris Brenne  
12:05 Lee & Caleb Perlman

### ***Book Swap, Friends of Gleason Public Library***

***Front lawn, Gleason Public Library 10:30 AM - 12:00 PM\****

10:30 Soundbites  
11:00 Chris Brenne & Parul Vakani  
11:30 Mark & Lee's Blues Thing

*\*Canceled in case of precipitation*

Thank you once again!



**OFFICE OF THE  
INSPECTOR GENERAL**  
MASSACHUSETTS

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



## Guide for Members of Public Boards and Commissions

Jeffrey S. Shapiro, Esq., CIG  
Inspector General  
Office of the Inspector General  
Commonwealth of Massachusetts

October 2024

## ***About the Office of the Inspector General***

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The Office of the Inspector General for the Commonwealth of Massachusetts (OIG) is an independent agency charged with preventing and detecting fraud, waste and abuse in the use of public funds and public property. The OIG investigates allegations of fraud, waste and abuse and identifies vulnerabilities and opportunities for improvement.

The **OIG Academy** offers professional training on a broad range of topics including public procurement, fraud awareness and prevention, and contract management. The class on Boards and Commissions helps public board members oversee their organizations and understand the importance of transparency, efficiency and accountability when making decisions, spending money and using public resources.

### CONTACT US

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# ***Guide for Members of Public Boards and Commissions***

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Congratulations on your appointment to a public board or commission (public board). Your service to the residents of Massachusetts is essential to good government. This guide provides an overview of your duties and responsibilities as a board member and is meant to serve as a starting point for your preparation to serve.

If your board has oversight of or provides advice to an entity that uses public funds and/or public property, use this guide to understand your duties and obligations. Your work is important, whether you are advising a public organization on policy matters, approving salaries, reviewing the budget, or assessing the executive director's performance. Your participation, insights and engagement as a resident and active decision-maker are essential to ensuring that your public organization fulfills its mission and uses public resources appropriately.

*Public boards take many forms, such as:*

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

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

The appendix at the end of this guide contains additional resources, including contact information for state agencies that interpret and enforce the laws applicable to you and your board.

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

# Practices for Effective Board Members

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

## *Learn about the public organization.*

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

In addition, learn *how* the public organization fulfills its mission. Relevant information can be found in past annual reports and budgets, as well as a current organizational chart. Learn about recent achievements and upcoming initiatives or special projects.<sup>1</sup>



What is the public organization's mission or mandate?

What rules, regulations or by-laws govern the public organization, if any?

How does the organization carry out its mission or purpose?

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

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



How is the organization structured?

What is the organization's annual budget? Who sets the budget and who decides how it is spent?

Who are the senior officials in the organization and what are their roles?

What are the major projects or objectives that the public organization is considering over the next few years? What will be the projected cost of these projects?

Are the proposed projects and objectives consistent with the mission of the public organization and with the organization's budget and other priorities?

### ***Educate yourself about the role of your board and your role as a board member.***

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



What is the scope of the board's authority and what is the source of that authority?

What matters typically come before the board?

Based on the board's role with respect to the organization, are there other matters that should be brought before the board?

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



How often does the board meet? Is the board required to meet on a specific schedule and, if yes, what is that schedule?

Who sets the agenda for the meetings? Can board members submit topics for the agenda?

Does your board follow written procedures for meetings, such as *Robert's Rules of Order*?

How does the board vote? Are all votes conducted in the same manner?

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

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

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

Even if you are not a fiduciary under the law, fiduciary principles should guide the decisions that you and your board make. Adhering to fiduciary principles will help the board recognize that it is a steward of the public funds entrusted to the organization, and that the board plays a vital role

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

in ensuring the public organization fulfills its mission. As part of upholding fiduciary principles, the board should always act independently, with care and in the best interests of the organization.

Board members who adhere to the fiduciary principles will be active

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

*Exercise care when making decisions and voting.*

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



How far in advance does the board receive meeting materials so that you can properly prepare for pending actions before voting on a matter before the board?

What is the procedure for requesting the organization to provide additional information, either in advance of or at a meeting?  
What is the procedure for asking individuals from the organization to attend the meeting to provide additional information?

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

Before voting on a matter, ask:



What statutes or regulations apply to the requested action?

What internal procedures apply to the requested action and were those procedures followed?

Does the requested action align with the public organization's mission, responsibilities, priorities and

budget?

Do you need additional data so that you can make an informed decision?

Do you need to hear from others in the organization? For instance, does legal counsel or human resources have information necessary to make this decision?

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

### ***Actively oversee the executive who leads the organization.***

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

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



What are the executive's objectives and priorities for the organization?

Do these objectives align with the organization's mission and values?

What are the financial costs of achieving these objectives?

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

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

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

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

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



What is the organization's budget for the executive's salary?

How much time is the executive required to devote to the public organization?

How does the organization document and verify the executive's work, vacation and sick leave hours?

What is the public organization's expense reimbursement policy? Is it consistent with the public organization's mission and objectives? Does it clearly define how the executive's expenses are reviewed and approved?

Do the executive's reimbursement requests match legitimate expenses related to the public organization's public purpose?

### ***Actively monitor and protect public expenditures.***

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

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

Chances are high that if you are uncertain about the information, other board members are, too.

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

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



What laws must the public organization follow related to purchasing or disposing of goods, services and real property?

What laws must the public organization follow in connection with construction projects?

What are the public organization's written procurement policies?

What audit procedures are in place to ensure that the organization is complying with state law and its internal procedures?

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

If you are a member of a local board that serves a local public organization, inquire about whether there is an electronic resource like

CTHRU, so that you may have more information at your fingertips about the budget, salaries and spending of the organization. This will help you make meaningful determinations about financial matters that come before your board.

### ***Detect and report suspected fraud, waste or abuse of public resources.***

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

Although most employees are honest and hardworking, fraud and other misconduct still occur, so you must diligently apply preventative measures – often referred to as internal controls – to help safeguard public assets and taxpayers' interests. As a result, all organizations need internal controls. Every internal control must be based on the specific organization. Some common elements of an internal control plan to protect public resource include the following:

- The segregation of duties performed by employees to ensure no one individual can commit and cover up their own wrongdoing.
- Approval processes for expenditures, with increased oversight for larger expenditures.
- Methods to track and monitor employee time and attendance, including the use of leave time.
- Controls to track the public organization's acquisition and disposition of public assets, such as vehicles, equipment, supplies and petty cash.
- Fraud-reporting mechanisms, including a telephone or email hotline or an independent complaint review process.
- An anti-fraud policy, as well as employee training on the policy and annual reminders to follow the policy.

- A code of conduct with standards related to conflict of interest and other professional standards that align with the public organization’s mission.
- Tone at the top: communication from the organization’s administration about its commitment to the highest ethical and professional standards.
- Careful vetting of employees – both before and after hiring – to ensure that their background and professional certifications meet the entity’s standards and support the entity’s mission.

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



What fraud risks exist in the public organization your board oversees?

What types of internal controls are in place to properly monitor the use of public resources?

Does the public organization or your board perform compliance reviews or audits?

Does your public organization have an anti-fraud program that includes training, policies, new-hire background checks and a fraud hotline or other fraud-reporting mechanisms?

*Report suspected fraud, waste or other misuse of public funds on our online [form](#), by telephone at (800) 322-1323, or email at*

*[IGO-FightFraud@mass.gov](mailto:IGO-FightFraud@mass.gov).*

***All reports are confidential.***

## ***Legal Obligations of Public Board Members***

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As a member of a public board, you are subject to certain laws with which you should become familiar.

### ***Conflict of Interest Law***

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

- Restricts you from discussing or voting on matters in which you or an immediate family member, or your private business has a financial interest.
- Restricts you from accepting gifts and gratuities, if given because of some official act or because of official position, even if the gift or gratuity would not influence your actions as a board member.
- Requires you to disclose in writing any appearances of a conflict of interest prior to performing your official duties and prohibits favoritism toward a family member or friend or bias against anyone.
- Restricts you from representing business or other interests before your board.
- Requires annual training on the conflict-of-interest law and acknowledge receiving a summary of the conflict-of-interest law.
- Requires board members to file disclosures in certain instances involving actual and potential conflicts of interest.

The State Ethics Commission provides free advice to all public employees on the conflict-of-interest law. Its website, available at [www.mass.gov/ethics](http://www.mass.gov/ethics), also contains helpful advisories, guides and rulings.

## ***Open Meeting Law***

Like the conflict-of-interest law, the open meeting law applies to both your individual conduct and the board's operations. The open meeting law promotes transparency in government and contains specific notice requirements to ensure that the public knows – prior to the meeting – when and where the board will meet and what topics will be discussed at the meeting.

Specifically, the law states that:

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

The Massachusetts Attorney General's Office (AGO) is responsible for interpreting and enforcing the open meeting law. It produces a comprehensive guide to the open meeting law, as well as helpful educational material and rulings. The AGO also provides in-person and online trainings about the open meeting law. Visit the AGO's website, available at [www.mass.gov/the-open-meeting-law](http://www.mass.gov/the-open-meeting-law), or contact the AGO's Division of Open Government at (617) 963-2540, to learn more about the open meeting law.

## ***Public Records Law***

The public records law supports transparency of the decision-making process and promotes the accountability of public employees, public boards and government officials to the taxpayers.

Consequently, the law requires that certain records are retained for a period of time, and that those records are turned over in response to a public records request. *All records related to the board's business are considered public even if they are on a personal computer, personal cellphone or personal email account.*

All public boards receive and generate public records in the regular course of business. You also generate public records when you operate in your official capacity as a public board member. If you communicate with another individual in your official capacity or exchange information about matters under your board's purview, for instance, you may create a public record even if you use your personal email, voicemail or video recording to transmit that information. A common misperception exists that communications on personal email accounts or via text messages are not subject to the public records law; this is incorrect as all board-related communications are subject to public disclosure.

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

## ***Conclusion***

The OIG would like to thank the Office of the Attorney General, the Secretary of the Commonwealth and the State Ethics Commission for their assistance in creating this guide. We hope you find it helpful and will call any one of the agencies on the following page for assistance with fulfilling your important role as a public board or commission member.

Thank you for your service and may you find meaning and fulfillment as you serve the public as a Board Member or Commissioner. The Commonwealth is fortunate to have you serve. Please accept the appreciation for your service from the Office of the Inspector General.

## ***Appendix A: Sources of Advice and Assistance***

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### **Office of the Attorney General**

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

[www.mass.gov/service-details/open-meeting-law-training-videos](http://www.mass.gov/service-details/open-meeting-law-training-videos).

Telephone: 617-963-2540  
Email: [openmeeting@mass.gov](mailto:openmeeting@mass.gov)  
Website: [www.mass.gov/ago](http://www.mass.gov/ago)

### **Office of the Comptroller**

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

Telephone: 617-727-9140  
Email: [comptroller.info@mass.gov](mailto:comptroller.info@mass.gov)  
Website: [www.mass.gov/comptroller](http://www.mass.gov/comptroller)

### **Office of the Inspector General**

The Office of the Inspector General is an independent agency that prevents and detects fraud, waste and abuse of public resources.

Telephone: 617-727-9140  
Email: [MA-IGO-Training@mass.gov](mailto:MA-IGO-Training@mass.gov)  
Website: [www.mass.gov/ig](http://www.mass.gov/ig)

### **Secretary of the Commonwealth**

The Secretary of the Commonwealth administers the public records law.

Telephone: 617-727-2832  
Email: [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)  
Website: [www.sec.state.ma.us](http://www.sec.state.ma.us)

### **State Ethics Commission**

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

Telephone: 617-371-9500  
Website: [www.mass.gov/ethics](http://www.mass.gov/ethics)

## **Appendix B: Reasons for Entering Executive Session**

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

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual;
2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
  - (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

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

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

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

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

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

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

Note that this checklist is intended as an educational guide and does not constitute proof of compliance with the Open Meeting Law. For questions, please contact the Attorney General's Division of Open Government at 617-963-2540 or via email at [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).



## OFFICE OF THE INSPECTOR GENERAL COMMONWEALTH OF MASSACHUSETTS

# RED FLAGS FOR FRAUD

### WHAT IS FRAUD?

Fraud is a knowing misrepresentation of the truth or a deliberate concealment of important information that causes another to act and results in harm, such as a monetary loss.

### WHAT ARE "RED FLAGS" AND WHY ARE THEY IMPORTANT?

A red flag is a sign that something is out of the ordinary and that a closer look may be needed. When a red flag arises, an organization should confirm that its preventive systems are working properly and consider whether increased oversight of a particular person or vendor may be needed.

**Note, however, that red flags alone are not evidence of fraud.**

### WHAT IS THE OFFICE OF THE INSPECTOR GENERAL?

The Massachusetts Office of the Inspector General (OIG) is an independent agency that prevents and detects fraud, waste and abuse of public funds and property.

To help the public and public employees identify and prevent fraud in their jurisdictions, the OIG has created this flier and has a number of guides and resources available at [www.mass.gov/ig](http://www.mass.gov/ig).

Do you suspect fraud may be occurring in your organization?

Call the OIG's Fraud Hotline at (800) 322-1323

or email [IGO-FightFraud@mass.gov](mailto:IGO-FightFraud@mass.gov)

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

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### EMPLOYEE BEHAVIORAL RED FLAGS

- Willingness to cut corners or be deceptive in business dealings.
- Reluctance to share information or control over vulnerable areas.
- Annoyance or defensiveness when questioned about files, decisions or business practices.
- Sudden changes in personal spending.
- Financial pressures, including significant personal debt and credit issues.
- Drug, alcohol or gambling problems.

### MANAGEMENT RED FLAGS

- One individual or small group that dominates decisions.
- Ability of one person to make major decisions without knowledge or approval of second person or group.
- Use of an excessive number of bank accounts.
- Missing documents (especially original versions).
- Inventory discrepancies.
- Irregular or questionable transactions.
- Expenses over budget.

### VENDOR RED FLAGS

- Lack of physical address or providing a wrong or fake address.
- Online complaints, including with the Better Business Bureau and other review sites.
- Use of blocked phone number.
- Unprofessional employees.
- Irregular charges on invoices, or bills that you can't understand.
- Absence in common business directories.
- Giving of gifts to key decision makers.
- "High pressure" or aggressive sales tactics.







# Open Meeting Law Guide and Educational Materials



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

**DECEMBER 2023**

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Dear Massachusetts Residents:

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

The Open Meeting Law requires that most meetings of public bodies be held in public, and it establishes rules that public bodies must follow in the creation and maintenance of records relating to those meetings.

Our Division of Open Government works with our community partners to promote and provide educational materials about the Open Meeting Law, like this Guide. We provide outreach and training sessions to ensure that public bodies and residents understand their rights and responsibilities under the law.

Whether you are a town clerk or town manager, a member of a public body, or a concerned resident, you are taking part in a tradition that is a cornerstone of Massachusetts: an active and engaged public.

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

For additional guidance on the law, I encourage you to contact my Division of Open Government at (617) 963-2540 or visit our website at [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting) for more information.

With Gratitude,

A handwritten signature in black ink, appearing to read 'AJC', with a long horizontal stroke extending to the right.

Attorney General Andrea Joy Campbell

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# *Attorney General's Open Meeting Law Guide*

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## **Overview**

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### **Purpose of the Law**

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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**

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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**

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

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

## [Open Meeting Law Website](#)

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

## **Meetings of Public Bodies**

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

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With certain exceptions, all meetings of a public body must be open to the public. On June 16, 2021, Governor Charles Baker signed into law An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency, Chapter 20 of the Acts of 2021 ("Chapter 20"). Relevant to the Open Meeting Law, Section 20 of Chapter 20 allows public bodies to provide the public with "adequate, alternative means" of public access to a meeting, rather than in-person access to a meeting. "Adequate, alternative means" of access includes access through telephone, internet or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body while those activities are occurring. The Attorney General encourages public bodies to provide multiple methods of access to a meeting when feasible to maximize access and transparency, but only one method of access—in-person or remote—is required by the law. The provisions in Section 20 of Chapter 20 of the Acts of 2021 allowing a public body to provide "adequate, alternative" means of public access rather than in-person access expire on March 31, 2025.

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

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

- 1) is the communication between or among members of a **public body**;
- 2) if so, does the communication constitute a **deliberation**;
- 3) does the communication involve a matter within the body's **jurisdiction**; and

4) if so, does the communication fall within an **exception** listed in the law?

### What constitutes a public body?

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While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches<sup>1</sup> of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

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

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

### What constitutes a deliberation?

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

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

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

discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

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

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

#### [What matters are within the jurisdiction of the public body?](#)

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

#### [What are the exceptions to the definition of a meeting?](#)

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

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

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

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

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

## Notice

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

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

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

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

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

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

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

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

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

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

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

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

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

### What information must meeting notices contain?

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

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

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

## Executive Session

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

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

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

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

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

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

## The Ten Purposes for Executive Session

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Remote Participation

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

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Section 20 of Chapter 20 of the Acts of 2021, which provisions expire on March 31, 2025, suspended the requirements under the Open Meeting Law and the Attorney General's Open Meeting Law regulations that a quorum of a public body, including the chair, be physically

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

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

#### What are the acceptable means of remote participation?

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

#### What are the minimum requirements for remote participation?

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

1. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
2. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

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

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

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

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

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

## Public Participation

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

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

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

## Minutes

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

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

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

- the name of any member who participated in the meeting remotely.

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

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

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### Open Session Meeting Records

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

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

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### Executive Session Meeting Records

Public bodies are not required to disclose the minutes, notes, or other materials used in an executive session if the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, however, minutes and other records from that executive session must be disclosed unless they fall within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or the

attorney-client privilege applies. Public bodies are also required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted. These determinations must be included in the minutes of the body's next meeting.

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

## Open Meeting Law Complaints

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

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

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

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

### What is the Open Meeting Law complaint procedure?

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#### *Step 1. Filing a Complaint with the Public Body*

Individuals who allege a violation of the Open Meeting Law must first file a complaint **with the public body** alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of

the violation. The complaint must be filed on a [Complaint Form](#) available on the Attorney General's website, [www.mass.gov/the-open-meeting-law](http://www.mass.gov/the-open-meeting-law). When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

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

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

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

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

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

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

complaints filed with the Attorney General, and any documents submitted with the complaint, will be considered a public record and will be made available to anyone upon request.

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

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

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

## Training on the Open Meeting Law

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

## Contacting the Attorney General

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

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

[www.mass.gov/the-open-meeting-law](http://www.mass.gov/the-open-meeting-law)

[OpenMeeting@mass.gov](mailto:OpenMeeting@mass.gov)

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## *Appendix*

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

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

### *Section 18: [DEFINITIONS]*

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the

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

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

- (d) The attorney general may, by regulation or letter ruling, authorize remote participation by

members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

- (e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.
- (f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.
- (g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.
- (h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

### *Section 21. Executive Sessions*

- (a) A public body may meet in executive session only for the following purposes:
  - 1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or

individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

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

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

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

- i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
    - ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or
  10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.
- (b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:
1. the body has first convened in an open session pursuant to section 21;
  2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
  3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
  4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
  5. accurate records of the executive session shall be maintained pursuant to section 23.

### *Section 22. Meeting Minutes; Records*

- (a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.
- (b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.
- (c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.
- (d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the

session.

- (e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.
- (f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

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

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

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

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

- (a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.
- (b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.
- (c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:
1. compel immediate and future compliance with the open meeting law;
  2. compel attendance at a training session authorized by the attorney general;
  3. nullify in whole or in part any action taken at the meeting;
  4. impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
  5. reinstate an employee without loss of compensation, seniority, tenure or other benefits;
  6. compel that minutes, records or other materials be made public; or
  7. prescribe other appropriate action.
- (d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.
- (e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with

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

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

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

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

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

- (g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.
- (h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

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

- (a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the

open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

- (b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.
- (c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.
- (d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.
- (e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.
- (f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.
- (g) At any time prior to the date specified in the notice, or within 21 days after the notice has

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

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

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

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

### Section

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### 29.01: Purpose, Scope and Other General Provisions

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

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

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

### 29.02: Definitions

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

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

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

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

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

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

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

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

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

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

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

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

## 29.03: Notice Posting Requirements

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

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

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

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

- (c) A municipality may have only one official notice posting method for the purpose of M.G.L. c. 30A, §§ 18 through 25, either 940 CMR 29.03(2)(a) or (b). However, nothing precludes a municipality from choosing to post additional notices *via* other methods, including a newspaper. Such additional notice will not be the official notice for the purposes of M.G.L. c. 30A, §§ 18 through 25.
- (d) Copies of notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.

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

- (a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
- (b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. A copy of each meeting notice shall be kept by the chair of the public body or the chair's designee in accordance with the applicable records retention schedules. The public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(4) Requirements Specific to Regional School Districts.

- (a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.
- (b) As an alternative method of notice, a regional school district committee may, by majority vote, adopt the regional school district's website as its official notice posting method. A copy of each meeting notice shall be kept by the secretary of the regional school district committee or the secretary's designee in accordance with the applicable records retention schedules. The regional school district committee shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(5) Requirements Specific to County Public Bodies.

- (a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.
- (b) As an alternative method of notice, a county public body may, by majority vote, adopt the county public body's website as its official notice posting method. A copy of the notice shall be kept by the chair of the county public body or the chair's designee in accordance with the applicable records retention schedules. The county public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

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

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

#### 29.04: Certification

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

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

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

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

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

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

## 29.05: Complaints

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

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

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

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

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

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

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

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

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

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

(9) Mediation to Resolve a Complaint.

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

## 29.06: Investigation

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

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

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

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

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

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

## 29.07: Resolution

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

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

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

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

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

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

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

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

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

#### 29.08: Advisory Opinions

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

## 29.09: Other Enforcement Actions

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

## 29.10: Remote Participation

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

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

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

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

(4) Minimum Requirements for Remote Participation.

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

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

(6) Technology.

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

(7) Procedures for Remote Participation.

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

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

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

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

#### 29.11: Meeting Minutes

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

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

#### REGULATORY AUTHORITY

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



# Summary of the Conflict of Interest Law for Municipal Employees

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

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

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

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

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

## *II. On-the-job restrictions.*

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

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

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

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

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

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

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

**Regulatory exemptions.** There are situations in which a municipal employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Another commonly used exemption permits municipal employees to accept payment of costs involved in attendance at educational and training programs. Other exemptions are listed on the Commission's website.

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

*Example where there is no violation:* A town treasurer attends a two-day annual school featuring multiple substantive seminars on issues relevant to treasurers. The annual school is

paid for in part by banks that do business with town treasurers. The treasurer is only required to make a disclosure if one of the sponsoring banks has official business before her in the six months before or after the annual school.

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

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

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

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

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

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

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

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

reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

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

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

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

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

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

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

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

**Regulatory exemptions.** In addition to the statutory exemptions just mentioned, the Commission has created several regulatory exemptions permitting municipal employees to participate in particular matters notwithstanding the presence of a financial interest in certain very specific situations when permitting them to do so advances a public purpose. There is

an exemption permitting school committee members to participate in setting school fees that will affect their own children if they make a prior written disclosure. There is an exemption permitting town clerks to perform election-related functions even when they, or their immediate family members, are on the ballot, because clerks' election-related functions are extensively regulated by other laws. There is also an exemption permitting a person serving as a member of a municipal board pursuant to a legal requirement that the board have members with a specified affiliation to participate fully in determinations of general policy by the board, even if the entity with which he is affiliated has a financial interest in the matter. Other exemptions are listed in the Commission's regulations, available on the Commission's website.

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

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

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

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

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

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

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

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

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

### III. After-hours restrictions.

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

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

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

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

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

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

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

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

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

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

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

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

***Example:*** A member who sits as an alternate on the conservation commission is a special municipal employee. Under town by-laws, he only has official responsibility for matters

assigned to him. He may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him and he will not participate in it.

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

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

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

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

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

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

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

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

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

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else,

whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

Version 7: Revised November 14, 2016.

\* \* \* \* \*

**ACKNOWLEDGMENT OF RECEIPT**

**I, \_\_\_\_\_, an employee at \_\_\_\_\_**  
*(first and last name) (name of municipal dept.)*

**hereby acknowledge that I received a copy of the summary of the conflict of interest law  
for municipal employees, revised November 14, 2016, on \_\_\_\_\_.**  
*(date)*

*Municipal employees should complete the acknowledgment of receipt and return it to the individual who provided them with a copy of the summary. Alternatively, municipal employees may send an email acknowledging receipt of the summary to the individual who provided them with a copy of it.*



# Town of Carlisle

MASSACHUSETTS 01741

Office of  
*TOWN CLERK*  
66 Westford Street  
Tel. (978) 369-6155



## Direct Links to State Departments and Resources

### Open Meeting Law

- Main OML webpage: <https://www.mass.gov/the-open-meeting-law>
- OML Determination Database (to access determinations for the last 5 years): [OML Determination Lookup \(hylandcloud.com\)](#)
- Public Body Member Certification: <https://www.mass.gov/service-details/complete-public-body-member-certification>

### Ethics

- Main page for the State Ethics Commission: <https://www.mass.gov/orgs/state-ethics-commission>
- Training and Summaries: <https://www.mass.gov/complete-conflict-of-interest-law-training-and-summaries>
- Summary: <https://www.mass.gov/service-details/summary-of-the-conflict-of-interest-law-for-municipal-employees>
- Ethics Training: [Complete the Conflict of Interest Law Education Requirements | Mass.gov](#)

### Office of the Inspector General

- Main webpage: <https://www.mass.gov/orgs/office-of-the-inspector-general>
- Guide: <https://www.mass.gov/resource/guide-for-members-of-public-boards-and-commissions>