

Town of Douglas



Committee Handbook

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Board of Selectmen
1994

Revised by the Board of Selectmen
June 4, 2024

DOUGLAS

COMMITTEE HANDBOOK

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This handbook has been prepared by the Town of Douglas for use by boards, committees and commissions involved in Town Government. Although the handbook is designed to provide guidance to primarily appointed boards and committees, it serves also as a valuable framework to all boards and committees. It provides information concerning legal obligations, procedural matters and advice for the effective operation of these groups. We are grateful to the many residents of Douglas who serve in these positions and hope that this handbook will assist them in their duties and responsibilities.

Board of Selectmen
Douglas, MA
1994

1.0 INTRODUCTION

1.1 PURPOSE

The purpose of this handbook is to assist the many boards, committees and commissions of the Town. It provides a brief description of procedures which may be well known to many but are less familiar to others. It also provides details about important state statutes, such as Open Meeting Laws and Conflict of Interest Law.

1.2 ADDITIONAL PUBLICATIONS

All committee members should read the Annual Town Report and the Town Bylaws for information regarding boards and committees. In addition, all committee members should review each set of laws that pertain to a certain board, committee or commission.

2.0 FORMATION OF COMMITTEE AND MEMBERSHIP

2.1 TYPES OF COMMITTEES

There are two types of appointed committees involved in Douglas Town Government:

- A. Permanent Committees of the Town (e.g. Planning Board, Finance Committee, Personnel Board, Conservation, etc.). These are established by Bylaw, state statute, or by Town Meeting vote. These committees are assigned specific responsibilities for certain functions of the Town.
- B. Study and Advisory Committees. These committees are established by Town Meeting vote or by the Board of Selectmen to study problems facing the Town and to bring back recommendations to the Town Meeting and/or the Board of Selectmen.

2.2 COMMITTEE FORMATION

Appointments to committees in Douglas are made by any one or several elected boards, the Town Moderator, or by some combination thereof (hereinafter referred to as the “appointed agencies”). State statutes outline the authority and duties of many boards, and the Bylaws or Town Meeting vote further defines the work of some boards. Town Meeting may request the appointment of a committee by approving an article for that purpose. The appointing agency prepares the charge and receives the reports and recommendations of the committee. If appropriate, the committee may also report to Town Meeting.

2.3 COMMITTEE APPLICATION PROCEDURE

When openings on committees are available, the openings are generally published in a local newspaper or advertised on Douglas cable TV. Candidates hoping to get on a particular committee are urged to send a letter of interest to the appointing agency as identified in the advertisement. For anyone interested in serving on a committee and no opening exists, the letter of interest will be held on file for consideration when an opening becomes available.

As well-written letter of interest will assist the appointing agency in making the best decision on committee appointments. Ideally, the application should list education, work experience and outside accomplishments that will significantly contribute to the committee’s area of responsibility.

2.4 APPOINTMENT

The goal of the appointing agencies is to appoint qualified and interested Douglas residents who are broadly representative of the Town. The appointing agencies carefully consider letters of interest and recommendations by committees. The appointee receives formal written notification of appointment and the term of office from the appointing agency. The appointee shall appear before the Town Clerk or Town moderator to take the oath of office prior to attending a committee meeting as an official member. The Town Clerk gives

committee members information about the Open Meeting Law (MGL Chapter 39, Section 23B) as state statutes require. Members must sign a written acknowledgment of receipt.

Permanent committee appointments are generally for three-year terms or as designated by the Bylaw or appointment notification.

NOTE: The above procedure does not apply to the filling of vacancies on elected boards. Vacancies on elected boards are filled by the remaining board members and Board of Selectmen until the next general election. A specific procedure must be followed and the Board of Selectmen should be consulted relative to the specifics.

Citizens who assist committees are not official committee members and, as such, have no vote in committee proceedings.

2.5 COMMITTEE ORIENTATION

New members to a committee or board should be informed about the committee's specific role, authority and duties, rules and regulations, and any issues frequently encountered by the board or committee. Such information can be provided by the committee Chairperson, other members, and/or staff personnel.

2.6 CONFLICT OF INTEREST STATUTE (MGL Chapter 268A)

2.6.1 PURPOSE

The purpose of the conflict law is to ensure that public employees' private financial interests and personal relationships do not conflict with their public obligations. The law is broadly written to prevent a public employee from becoming involved in a situation which could result in a conflict or give the appearance of a conflict. The law restricts what a public employee may do:

1) On the job; 2) After hours; and 3) After leaving public service.

2.6.2 PROVISIONS

The law prohibits a variety of actions, including bribery, extra pay, receipt of gifts or privileges because of committee members' official actions, and acting as an agent or attorney for anyone in a claim against or doing business with the Town. The law prohibits all municipal employees from participating in a particular matter in which committee members or any of the following have a financial interest:

- Immediate Family: Includes the employee and spouse, their parents, children, brothers and sisters. Cousins, nephew and nieces, aunts and uncles, etc. are not considered immediate family members. Also, under the definition of the immediate family, some brothers-in-law are immediate family, while others are not (if your brother-in-law is your spouse's brother then he is immediate family. If he is your sister's husband then he is not immediate family for the purposes of the conflict law).
- Partner or Business Associates.
- A Business Organization in which the committee member serves as an officer, director, trustee, partner or employee (including a non-profit organization).
- Any Person or Organization with whom the committee member is negotiating or has any arrangement concerning prospective employment.

If board or committee members have a conflict of interest or an appearance of conflict in any matter before the board or committee, they should not be counted in the quorum nor participate in or be present for any pertinent discussion or votes. The law provides for the legal determination of conflict of interest status for any employee submitting a request to the appointing agency or State Ethics Commission.

NOTE: "Municipal Employee" refers to anyone holding any office, position, employment or membership in any municipal agency. Unpaid members of local

Town Boards and committees are municipal employees as are private citizens serving on a special advisory committee.

The law also provides for continued service in certain circumstances if full disclosure is made or a special exemption is granted by the Board of Selectmen. If committee members have any questions about their activities, they should file a written request for an opinion from Town Counsel through the Board of Selectmen or seek a legal opinion from the State Ethics Commission legal department. The answer to the request will be in writing and become a matter of public record.

2.7 REAPPOINTMENT

Reappointment is based on an evaluation by the appointing agency of the citizen's contribution to the committee, the desirability of widespread involvement, and the changing needs of the committee and the Town. There is no fixed limit on length of service. If a person chooses not to be appointed, the appointing agency should be advised in advance. A committee member is under no obligation to accept reappointment nor is the appointing authority obligated to offer reappointment.

It is incumbent upon the committee chairperson to make recommendations regarding the reappointment of committee members. Specific reasons for positive or negative recommendations should be stated.

2.8 RESIGNATION

A committee member who is no longer able to serve should resign promptly so that the vacancy may be filled. A written resignation should be submitted to the Town Clerk, with a copy to the committee chairperson and the appointing agency (this procedure is specified in MGL Chapter 41, Section 109).

2.9 OTHER TERMINATIONS

In rare circumstances such as continued unexplained absences or conflict of interest, the appointing agency may ask for a member's resignation or, if necessary, revoke the appointment. Prompt, written notification to the committee member will be given by the appointing agency in the event of such action.

2.10 COMPOSITION

The Composition of most appointed committees is specified by Town Bylaw, Town Meeting vote or state statute.

3.0 OFFICERS

3.1 ELECTIONS

Committees elect a chairperson, vice-chairperson and a secretary annually (unless otherwise provided by State law or Bylaw), usually at the first meeting after new terms begin. It is the responsibility of the chairperson to notify the appointing agency, the Board of Selectmen, and the Town Clerk of changes in officers. Committees are not required to elect a secretary if that committee has a paid part-time secretary.

3.2 CHAIRPERSON

The Chairperson presides at all meetings, decides questions of order, calls special meetings, and signs official documents that require the chairperson's signature. The chairperson has the same rights as other members to offer resolutions, make or second motions, discuss questions, and vote thereon.

3.3 VICE-CHAIRPERSON

The vice-chairperson acts for the chairperson whenever the latter is absent from meetings and performs other necessary duties.

3.4 SECRETARY

The secretary is responsible for the following duties of the committee:

- Take and transcribe the committee's minutes.
- Prepare agendas and any other materials.
- Copy meeting materials and make available packets to committee members using, if necessary, facilities and materials at the Municipal Center.
- Schedule a place, date, and time of meeting and post the meeting with the Town Clerk no later than 48 hours before a meeting. The Town Clerk will insure that the notice is posted on the Municipal Center bulletin board.

4.0 MEETINGS

4.1 DEFINITION

A public meeting occurs at any time a quorum of the committee (or subcommittee) members get together to discuss or consider any public business or policy over which the committee (or subcommittee) has some jurisdiction or advisory authority. No action of the committee (or subcommittee) is valid or binding unless ratified by the affirmative vote of the majority of the full board.

4.2 OPEN MEETING LAW

The Massachusetts Open Meeting Law requires that all meetings of elected or appointed boards, committees, subcommittees, or commissions be open to the public except in eight (8) specific situations where Executive Session is allowed (see Section 4.4 Executive Session). The law does not apply to chance meetings or social occasions; however, such meetings cannot be used to circumvent the requirement of discussing and deliberating at public meetings. The law does not apply to administrative meetings or to a group appointed by a single administrator to advise on administrative responsibilities.

Any person may record a meeting with a tape recorder or any other means of sonic reproduction and/or videotape equipment provided there is no active interference with the conduct of the meeting. The manner in which this right is to be exercised is subject to the reasonable direction of the chairperson.

4.3 GENERAL GUIDELINES

A committee may adopt formal rules or order. Although most small committee discussions may seem to be casual to be called debate, it is advisable for the committee to observe a minimum of generally accepted procedures. Attentive guidance by the chairperson and adherence to adopted procedures can increase efficiency as well as maintain objectivity and order.

The chairperson should limit all participation to concise, non-repetitive statements. Although desirable, it is not necessary for the committee to continue discussion until complete consensus is achieved. Other actions such as calling for a vote, postponing until more information is available, or referring to a subcommittee may be required.

The Open Meeting Law does not require that visitors be allowed to participate. It may be advisable for the chairperson to remind speakers of time and repetition limits. No one may speak at a committee meeting without permission of the chairperson. If a speaker refuses to be silent after warning from the chairperson, the chairperson has the authority to order the speaker removed from the meeting by the police. Nevertheless, all committee members represent and serve the Town. They should treat all visitors and other committee members with courtesy and consideration.

4.4 EXECUTIVE SESSION

An Executive Session is closed to the public, but before an Executive Session can be called, the following procedures must be followed:

1. An open session, for which notice has been given, must be convened.
2. The presiding officer must cite the purpose for the Executive Session and state whether the board will reconvene thereafter in open session.
3. A majority of board members must vote, by roll call, to go into Executive Session and the vote must be recorded in the committee minutes.

Records of any Executive Session remain closed to the public only as long as publication may defeat the purpose(s) of the Executive Session. Topics discussed in Executive Session are confidential. Attendees do not discuss these matters with anyone until the purpose for the Executive Session no longer exists and the minutes can be released to the public. Releasing minutes is completed by majority vote of the appropriate committee.

Executive Sessions can be held only when the following matters are being discussed or considered:

1. The reputation and character, physical condition or mental health, rather than the professional competence of a single individual. Individuals involved must receive 48 hours notice, in writing, of the proposed Executive Session.
2. Discipline or dismissal or the hearing of complaints or charges against an individual. Individuals involved must receive 48 hours notice, in writing, of the proposed Executive Session.
3. Strategy for collective bargaining or litigation where open discussion of the same may have a detrimental effect; collective bargaining itself may be conducted in Executive Session.
4. Deployment of security personnel or devices.
5. Allegations of criminal misconduct.
6. Transactions of real property where open discussion may have a detrimental effect on such transactions.

7. Complying with the provisions of any general or special law or federal grant-in-aid requirements.
8. Initial screening, including interviews if they are part of the initial screening process, of candidates for governmental employment if an open meeting would have a detrimental effect in obtaining qualified candidates.

When the Executive Session has been concluded a majority of members must vote, by roll, call, to come out of Executive Session. Following this, the regularly scheduled open meeting continues if there is additional business.

4.5 FIRST MEETING

The first meeting of a committee will be called by the chairperson of the committee or, being none, then by the appointing agency. At that time it is advisable to review the goals of the appointed committee so that all members understand and agree upon the objectives of the committee. Copies of the goals shall be distributed to all committee members, the Board of Selectmen, and the appointing agency.

4.6 MEETING SCHEDULE AND LOCATION

To accomplish committee objectives, regular meeting times and locations should be established. Depending upon the committee's workload, meetings may be held weekly, bimonthly, or, at the very least, monthly. The chairperson calls each meeting except for the first one, which is called by the appointing agency.

When possible, a regular meeting day, hour, and location should be established. By law, meetings must be conducted in a public building, but not scheduled for holidays, election days, or Sundays. Ideally, the location must also be accessible to the handicapped. Each committee member will need a key to the building as well as information pertaining to any alarm system.

4.7 PUBLIC POSTING

By law, public notice of all committee meetings must be posted with the Town Clerk a minimum of 48 hours before any meeting; Saturdays are counted; Sundays and holidays are not. The Town Clerk will insure that the notice is posted on the Municipal Center bulletin board. They should contain the name of the committee and the date, time and place of the meeting.

4.8 MEETING NOTICES

All committee members should be notified in writing of each committee meeting, if the committee is operating on an irregular schedule, and of each special meeting. Otherwise, at the conclusion of any meeting, the chairperson should announce the date and time of the next meeting, with written notice being sent to any absent member(s).

4.9 RECORD KEEPING

State law requires that a committee keep accurate records of its public meetings. The committee must formally vote to accept all minutes. The records of each regular meeting are public information, and chairpersons or their designees must maintain a copy of all approved minutes for public inspection. In addition, a copy of all approved minutes must be filed with the Town Clerk's Office within a reasonable amount of time and a copy provided to the Selectmen and all other standing committees, boards, or commissions in order to maintain good communication.

Minutes must include:

- The names of committee members present and absent at the meeting.
- The names of others present if Executive Session.
- Date, time, place convened, and time adjourned.
- All agreements reached by vote or consensus.

Minutes should include:

- Assignments to committee members.
- Mention of topics discussed.

- Exact wording of all motions including who made the motion and who seconded. Also, the vote of each member and those members who did not participate in the vote should be recorded.
- Names of additional participants (not press or observers).

Minutes may include:

- Summary of discussions.
- Future meeting schedule.

Once minutes are accepted by committee vote, they become the official record of the meeting. Verbatim copies of proceedings, such as audio or video recordings, may be retained.

4.10 PUBLIC RECORDS LAW

The Massachusetts Public Records Law (MGL Chapter 4, Section 7(26), as amended, provides right of access to public records, broadly defined to include all documentary materials except specific exemptions such as personnel and medical files, proposals and bids, and appraisals of property. The minutes, informational data, memoranda and circulating materials of any Town board or committee are mostly all public information. Any committee should consult the Board of Selectmen if questions arise concerning freedom of information.

4.11 QUORUM

A committee should establish a quorum necessary for conducting business. This quorum must be greater than fifty percent (50%) of committee members. This may deviate depending on the criteria used to establish the committee. State statute may dictate the quorum. If you have any questions, you should contact the Board of Selectmen.

5.0 FINANCES

5.1 COMMITTEE BUDGETS

If a committee anticipates a need to expend funds, it can request a budget for the next fiscal year through the Finance Committee. In the fall of each year, each committee should determine the necessary budget for committee operations over the next fiscal year, which begins on July 1st. The budget figures with appropriate narrative, are due on the date to be set by the Finance Committee, which shall inform all committees. If funds are needed during the fiscal year for unforeseen or extraordinary purposes, the committee can make a request (on the form attached to this handbook as Appendix "A") for a transfer from the Reserve Fund to the Finance Committee.

Committees which operate under appropriations voted at Town Meeting should check their balances with the Accountant's Office to make sure that they will have sufficient funds to continue their operations.

Requests for an appropriation to cover the cost of Capital Outlay should be submitted in writing with justification to the Finance Committee. A Capital Outlay item is any item in excess of \$5,000 having a life expectancy of three years or more.

5.2 SOURCE OF FUNDS

A. Town Meeting Committees (standing committees of the Town Meeting and study committees established by Town Meeting).

1. Budget – Town Meeting will decide what sums, if any, shall be appropriated; provides modest sums for general office supplies, postage and clerical assistance; requires authorization of a majority of the committee before funds can be released.

2. Special Articles – Provide large sums for specific projects resulting from recommendations of particular committees. These funds may be disbursed by majority vote of the committee.

B. Permanent Appointed Committees.

1. Individual elements of the budget provide the funds for the ongoing activities of the committee. These may be disbursed by majority vote of the committee.
2. Special Articles – See above.

5.3 DISBURSEMENTS

After a vote of approval, bills (vouchers) should be signed by a majority of the members of the committee and submitted to the Town Accountant's Office for processing and payment by the Treasurer. When authorization by the Board of Selectmen or other authority is required, their signature should be added to the bill (voucher) before submission for payment. The Town Accountant will review the specific paperwork needed to process bills.

6.0 REPORTING PROCEDURES

6.1 APPOINTING AUTHORITY

The Board of Selectmen recommends that the committee chairperson report regularly to the appointing agency about the committee's actions and plans. If needed, the chairperson may request a meeting with the appointing agency to report progress. A written request for an appointment with the appointing agency should be made as far in advance of the necessary meeting date as possible. The request should indicate the items to be discussed.

6.2 COMMUNICATION WITH BOARD OF SELECTMEN

There should be regular communication of all committees and the Board of Selectmen. All committees should distribute a copy of each meeting's approved

minutes to all other interested committees and boards. If any committee is undertaking a major project the chairperson may want to give notice of the project on local cable TV to solicit input or request comment from residents. The Board of Selectmen will host general meeting of all relevant committees and boards from time to time to discuss issues of mutual concern.

6.3 PUBLIC INFORMATION MEETINGS

The success of a committee's endeavors often depends on effective communication with the public. The committee should hold public meetings and hearings when necessary both to inform citizens of work in progress and to gain public reaction and comment. Such public meetings should be advertised in a local newspaper and on local cable TV.

6.4 WARRANT ARTICLES

All warrant article for the May Annual Town Meeting shall be submitted in writing to the Board of Selectmen by the established deadline in the Town Bylaws. Early submission is preferable. Articles for any other Special Town Meeting shall be submitted upon notification from the Board of Selectmen that warrant articles are due. Full documentation of the background and reasons for the proposed articles should accompany the article request.

By Bylaw, the Board of Selectmen shall prepare the warrant for all Town Meetings. Articles may be submitted, in writing, in the following forms:

1. By an elected official or by a member of an elected board or committee, with the approval of the Board of Selectmen.
2. By an appointed committee or board, acting by a majority vote of its members, with the approval of the Board of Selectmen.
3. Any person or agency authorized through the bylaws or in any other legal manner, with the approval of the Board of Selectmen.
4. A written petition to the Board of Selectmen by any ten voters of the Town of inclusion of any article in the warrant for the Annual Town

Meeting, and a petition of at least two hundred registered voters for inclusion of an article in the warrant for any Special Town Meeting. The timing and procedures for such actions are outlined in the Town Bylaws. The Town Clerk may be consulted for information and advice regarding petition forms and related issues.

6.5 TOWN REPORTS

All appointed committees are expected (and required) to file an annual report of committee operations, which will appear in the annual Town Report. The report should detail committee membership, including changes, and describe the major accomplishments of the committee over the calendar year and highlight plans for the ensuing year. The report is due in the beginning of February and should be submitted to the Selectmen's Office.

7.0 PLANNING

7.1 GOALS and PURPOSES

A committee is expected to formally document its understanding of the committee's goals and purposes. Verification of these goals with the appointing agency will preclude wasted efforts through a misdirection of initiatives.

7.2 PLAN OF ACTION

A plan of action should be developed, outlining how the committee is to accomplish its goals. Reporting of major accomplishments should be done so that the appointing agency may audit and be informed of the committee's progress toward its goals. Distribution of such reports may result in positive feedback and constructive comment from other Town officials.

7.3 PROCEDURE

Each committee should draw up a list of procedures, fees and appropriate information to be made available to assist others in knowing how to work with the committee.

8.0 MISCELLANEOUS

8.1 DISSOLUTION

When a special committee or task force has completed its assigned goals, if approved by the Town Meeting or Board of Selectmen, as appropriate, the committee should request dissolution by appropriate action. Other committees can request formal dissolution from the establishing (appointing) authority, or accomplish the same by filing a "Final Report". Upon dissolution, the committee should deliver to the Town Clerk all records deemed by them to be appropriate for inclusion in the permanent records.

- Chapter 39, Section 23B: Open Meeting Law
- Chapter 268A, Conflict of Interest Law

8.2 SOURCES OF INFORMATION

- "Committee Handbook" Town of Sturbridge, MA, 1993
- "Appointed Committee Handbook" Town of Amherst, MA 1990
- Massachusetts General Laws

Chapter 4, Section 7 (26): Public Records

APPENDIX A

Town of Douglas Code of Conduct - Boards, Commissions, and Committees

All members of Boards, Commissions, and Committees (hereinafter, "Committees") shall:

1. Be well informed concerning the duties and responsibilities of their Committee. Discuss or act upon only those matters their Committee is authorized to consider, as defined in federal and state laws, Town bylaws, and Town policies.
2. Make decisions only after all the facts and analyses have been presented and discussed. Acknowledge and respect all lawful, majority decisions of the Committee once made.
3. Conduct themselves in a professional and dignified manner, refraining from any activity that would reflect negatively on the Town and its processes. Members shall acknowledge in writing at the time of appointment that the use of profane language, racial, ethnic, or religious slurs, or the display of offensive materials or symbols while in a meeting of the Committee, shall be grounds for corrective action up to and including removal from office by the appointing authority.
4. Not use their Committee position for financial or political gain. Committee members shall not use their position to influence other Committees or Town staff to make decisions to which they are not otherwise entitled, either through any form of intimidation or promised benefit.
5. Comply with the Ethics, Open Meetings, and Access to Public Records laws established by the State. Committee members shall, upon appointment and annually thereafter, complete on-line conflict of interest training provided by the Ethics Commission and submit proof of completion to the Town Clerk. Members shall be subject to corrective action, up to and including removal from office, for failure to comply with Ethics laws or the training requirement.
6. Not make statements or promises of how he/she will vote on matters that will come before the Committee before all sides of the issue have been heard during a public meeting of the Committee.
7. Treat all members of the Committee, Town staff, and the public respectfully despite differences of opinion.

8. Never publicly criticize an employee of the Town. Concerns about staff performance that affect the Committee in the performance of its mission must be discussed in executive session and voted to be brought to the Town Administrator in formal written communication, or similarly, to the Superintendent of Schools for School Department staff.
9. Comply with the Town of Douglas social media policy, as amended from time to time.
10. If serving as Chair of a Committee, maintain decorum at all times during public meetings, enforcing this Code of Conduct and the procedural Rules of Order, to allow for the effective and efficient work of the Committee. Committees shall not meet for more than two (2) hours, or past the hour of 10:00 PM, whichever comes first, without a motion and vote on the record to extend the meeting beyond those limits.
11. Candidates seeking appointment shall review and sign a written copy of this Code of Conduct prior to being considered for appointment as part of the application process, and shall be bound to this Code for the duration of their term if appointed.

I, _____ have read, understand, and will comply with the Town of Douglas Code of Conduct for Boards, Committees, and Commissions.

Signature

Date

For Office Use Only***Board/Committee/Commission:***

Received By:

Date:

*Approved by the Board of Selectmen – October 6, 2009
Amended by the Board of Selectmen – July 5, 2022*

APPENDIX B

MEETINGS AND MINUTES GUIDE FOR BOARDS, COMMISSIONS AND COMMITTEES

Compliments of the City Solicitors and Town Counsel Association

Most public business can and should be conducted in Open Session. In addition, accurate records are to be kept of a board's, commission's or committee's meetings. There are instances however where a closed, or Executive Session is appropriate. For a variety of reasons, problems may arise in going into Executive Session. This overview is intended to provide you with a general understanding of the Open Meeting Law and the requirements for maintaining accurate records of your meetings. It is by no means all-inclusive. When problems are anticipated or arise, you should call your municipal legal counsel.

An *Executive Session Quick Index Guide* is attached. It is an excerpt from this memo of the statutory reasons you can go into Executive Session, as well as suggested motions, which have been included in this memo. Note that the *Quick Index Guide* is not a detailed explanation of the terms of the law. It should be used in conjunction with the memo as needed.

All meetings must be in Open Session, unless one or more of the following exceptions apply. To go into Executive Session, you must (a) first meet in Open Session; (b) vote by roll call vote to go into Executive Session by identifying the specific exemption or exemptions applicable; and (c) indicate in the motion whether you intend to reconvene in Open Session after the Executive Session. If you do not intend to go back into Open Session, you need not say so. While in Executive Session, you can only discuss matters coming within the reason (s) stated for the Executive Session.

Unless your meeting is an appropriate emergency meeting (for a "sudden, generally unexpected occurrence or set of circumstances demanding immediate attention", G.L. c. 39, section 23A), the meeting must have been properly posted at least 48 hours in advance. Thus, if your meeting was not properly posted, you could not convene it in open session to go into Executive Session. Many problems arise with the improper posting of meetings. Be sure- to check prior to the meeting.

Note that in some instances there are conditions which must exist to be in Executive Session. These include requirements in some instances to notify the subject of the Executive Session in advance of the meeting, to allow the person

to be present and to speak and to have a legal representative present to advise the person. While the law provides that the advisor is not there to speak, common courtesy and issues of fundamental fairness warrant you allowing the person's attorney to speak. Another condition is that the Open Session may have a detrimental effect on the litigation, negotiating or bargaining position or be detrimental in obtaining qualified candidates if interviews of initial applicants are done in Open Session.

A safe guideline to follow is to treat all persons before you with the same courtesy and fair treatment you would expect and want if you were before a board or committee. This may be difficult at times, as some people may be very disagreeable and in some instances purposely try to make you commit an error upon which they can base an appeal or other legal action. If things start to get too heated, take a break. If necessary call your counsel.

The presiding officer of a meeting has control of the meeting and no one can speak without being first recognized by the presiding officer. While the presiding officer also has the authority to order the police to remove and detain any person who is disruptive, it is urged you never to do so. Such action is bound to lead to complications and possible claims. If someone becomes disruptive and does not heed the presiding officer's directives to stop, the better practice would be to take a recess and even to adjourn the meeting. In almost all such instances, after a recess the person usually stops the disruptive conduct. Ordering people removed from a meeting is fraught with danger.

If there is a violation of the Open Meeting Law, civil action can be taken against the Board of Committee in violation. The result can be a Judge issuing an order against the Board of Committee relative to their conduct, invalidating the action taken and imposing a civil fine against the governmental body of up to \$1,000.00 dollars. Most problems which result in court action can be avoided. When in doubt, or if something does not seem right, call your municipal counsel.

What follows is a listing of the statutory exceptions, together with a suggested motion, which should be modified as appropriate.

Exception 1. To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least 48 hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) to be present at such executive session during discussion or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.

(c) to speak in his own behalf.

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

Exception 2: **To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual**, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least 48 hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.

(c) to speak in his own behalf.

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

Exception 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 governmental body, **to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.**

Suggested Motion - Move to go into Executive Session to discuss strategy with respect to collective bargaining, and to reconvene in Open Session.

Suggested Motion - Move to go into Executive Session to discuss strategy with respect to litigation, and to reconvene in Open Session.

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

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

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

Exception 4. **To discuss the deployment of security personnel or devices.**

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

Exception 5. **To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.**

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

Exception 6. **To consider the purchase, exchange, lease or value of real property**, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

Suggested Motion - Move to go into Executive Session to consider the purchase, exchange, lease or value of real property, and to reconvene in Open Session.

Exception 7. **To comply with the provisions of any general or special law or federal grant-in-aid requirements.**

Suggested Motion - Move to go into Executive Session to comply with the provisions of [specify the law or grant-in-aid requirement applicable], and to reconvene in Open Session.

Exception 8. **To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if 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 or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.** **[Note: The motion for this exemption can only be made by the preliminary screening committee or subcommittee. The preliminary screening committee may**

wish to go into Executive Session to consider the applications, interview people or both; adapt the motion to serve your needs.]

Suggested Motion - Move to go into Executive Session to consider [and if applicable-] and interview applicants for employment, and to reconvene in Open Session.

Exception 9. To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group, or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice may be required in this section.

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

MINUTES

Accurate minutes are to be kept and maintained of all meetings. The law requires the minutes to set forth: (a) the date; (b) the time); (c) the place; (d) the members present or absent; (e) the actions taken and for Executive Sessions, (f) the votes, by recorded roll call votes.

Minutes need not be transcripts of everything said. They should accurately reflect what business was before the board or committee.

Open Session minutes become public records once made, not necessarily approved. Thus, even if the minutes have not been approved, they are subject to disclosure, unless an exemption applies.

Executive Session minutes remain confidential until the reason for the Executive Session no longer exists. Executive Session minutes should be approved just as Open Session minutes for content. Such approval does not however authorize their release. You need to separately determine that the purpose of the Executive Session no longer exists. At that point, the minutes are public.

The law does not permit secret ballots in voting, nor does it sanction telephone votes or votes by proxy.

Papers presented at a meeting or hearing should be marked as being received on that date and time and initialed. If there is a matter involving a lot of documents coming in, such as a hearing, it is helpful to make a document list and assign each document a number.

Importance of the Record - Many matters before boards and committees are reviewable by a court on an appeal. In many of these matters, the appeal is based on the record developed before the board or committee. Thus it is very important to adequately develop a record which is going to reflect accurately what went on and most importantly, support your decision. The record can consist of testimony and exhibits. Be sure that the documents which need to be presented to sustain your decision have been introduced into the record. If something is not part of the record, it is not going to go before the judge and that may cause your decision to be reversed. Do not presume that because you may know something that it need not appear in the record as an exhibit.

This memo and the *Quick Index Chart* presents an overview of the law on meetings and minutes. There are many exceptions to the rules and other technical points. However, the above should give you sufficient guidance for most of the matters you are going to deal with. When in doubt or if you are uncertain about anything, call your local municipal legal counsel to discuss it further. An ounce of prevention is worth an avoided lawsuit.

Provided as a public service by the City Solicitors & Town Counsel Association, the professional bar association of attorneys representing municipalities and related agencies. For more information on the Association, please contact us at 115 North Street, Bingham, KA 02043, 781-749-9922; FAX 781-749-9923. This material is provided as general information. Since laws frequently change and the application of laws to a particular set of circumstances depends on a variety of factors, you should consult with an attorney for specific legal advice and provide the attorney with all the pertinent facts.

(rev. January 1999)

APPENDIX C

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 for more information.

With Gratitude,



Attorney General Andrea Joy Campbell

Attorney General's Open Meeting Law Guide

Overview

[Purpose of the Law](#)

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

[Attorney General's Authority](#)

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

[Certification](#)

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

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. 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

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

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?

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

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

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

What constitutes a deliberation?

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

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

² 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?

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

What are the exceptions to the definition of a meeting?

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

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

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

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

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

Notice

[What are the requirements for posting notice of meetings?](#)

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

[What are the requirements for filing and posting meeting notices for local public bodies?](#)

For local public bodies, meeting notices must be filed with the municipal clerk with enough time to permit posting of the notice at least 48 hours in advance of the public meeting. Notices may be posted on a bulletin board, in a loose-leaf binder, or on an electronic display (e.g. television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in, 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?**](#)

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.

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**](#)

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.³ 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?

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

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

When can a public body meet in executive session?

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

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

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

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

The Ten Purposes for Executive Session

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

May a member of a public body participate remotely?

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

What public participation in meetings must be allowed?

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

What records of public meetings must be kept?

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

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

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

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/arcrmu/rmuidx.htm>.

[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.

[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

[What is the Attorney General's role in enforcing the Open Meeting Law?](#)

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

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

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

[What is the Open Meeting Law complaint procedure?](#)

[Step 1. Filing a Complaint with the Public Body](#)

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

the violation. The complaint must be filed on a [Complaint Form](#) available on the Attorney General's website, www.mass.gov/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. 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

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

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Office of the Attorney General
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Appendix

The Open Meeting Law, G.L. c. 30A, §§ 18-25⁴

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

⁴ 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).

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.

_____ (Name)

_____ (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.