

NEW OPEN MEETING LAW

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The New Law

§ 18. Definitions applicable to Secs. 18 to 25

[Text of section added by 2009, 28, Sec. 18 effective July 1, 2010. See 2009, 28, Sec. 106.]

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

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

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

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

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

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

(a) an on-site inspection of a project or program, so long as the members do not deliberate;

(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;

(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notices", 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.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

Historical and Statutory Notes

2009 Legislation

St.2009, c. 28, § 18, was approved July 1, 2009, and by § 106 made effective July 1, 2010.

§ 19. Division of open government; open meeting law training; open meeting law advisory commission; annual report

[Text of section added by 2009, 28, Sec. 18 effective July 1, 2010. See 2009, 28, Sec. 106.]

(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.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

Historical and Statutory Notes

2009 Legislation

St.2009, c. 28, § 18, was approved July 1, 2009, and by § 106 made effective July 1, 2010.

§ 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

[Text of section added by 2009, 28, Sec. 18 effective July 1, 2010. See 2009, 28, Sec. 106.]

(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.

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

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

Historical and Statutory Notes

2009 Legislation

St.2009, c. 28, § 18, was approved July 1, 2009, and by § 106 made effective July 1, 2010.

§ 21. Meeting of public body in executive session

[Text of section added by 2009, 28, Sec. 18 effective July 1, 2010. See 2009, 28, Sec. 106.]

(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.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

Historical and Statutory Notes

2009 Legislation

St.2009, c. 28, § 18, was approved July 1, 2009, and by § 106 made effective July 1, 2010.

§ 22. Minutes of meetings

[Text of section added by 2009, 28, Sec. 18 effective July 1, 2010. See 2009, 28, Sec. 106.]

(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.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

Historical and Statutory Notes

2009 Legislation

St.2009, c. 28, § 18, was approved July 1, 2009, and by § 106 made effective July 1, 2010.

§ 23. Enforcement of open meeting law; complaints; hearing; civil action

[Text of section added by 2009, 28, Sec. 18 effective July 1, 2010. See 2009, 28, Sec. 106.]

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

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this

subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

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

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

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

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

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

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

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

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

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

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

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

Historical and Statutory Notes

2009 Legislation

St.2009, c. 28, § 18, was approved July 1, 2009, and by § 106 made effective July 1, 2010.

§ 24. Investigation by attorney general of violations of open meeting law

[Text of section added by 2009, 28, Sec. 18 effective July 1, 2010. See 2009, 258 Sec. 106.]

(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.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

Historical and Statutory Notes

2009 Legislation

St.2009, c. 28, § 18, was approved July 1, 2009, and by § 106 made effective July 1, 2010.

UNIFORM PROCUREMENT ACT

§ 25. Authority of attorney general to promulgate rules and regulations, letter rulings and advisory opinions

[Text of section added by 2009, 28, Sec. 18 effective July 1, 2010. See 2009, 28, Sec. 106.]

(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.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

Historical and Statutory Notes

2009 Legislation

St.2009, c. 28, § 18, was approved July 1, 2009, and by § 106 made effective July 1, 2010.

Summary Of Law Changes

LOCAL OFFICIALS MUST BE PREPARED FOR CHANGES TO THE Open Meeting Law

BY JAMES LAMPKE

Chapter 28 of the Acts of 2009, generally known as the Ethics Reform Act, included significant changes to the state's open meeting law and public records law. While some parts of Chapter 28 became effective on July 1, 2009, and at other dates, the key changes to the open meeting law and public records law, which will affect how local boards operate, will take effect on July 1, 2010.

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The new law represents significant changes to the way local officials conduct meetings, including new rules for posting meetings, going into executive session, keeping minutes, and more. Since a hearing is a form of a meeting, these new rules will also affect the conduct of local hearings. Many of the changes in the new law are positive, but some will impose additional obligations on local officials and could be problematic, at least until there is further guidance and assistance from the state.

While all the changes to the open meeting law are important, certain key changes are most likely to affect local officials in the very beginning. These changes include appearing before other local boards, new notice and posting requirements, changes to the executive session process, and changes to how minutes and documents used at meetings are to be maintained.

In order to be prepared for July 1, local officials can start training on—and in some cases begin implementing—many of the changes now.

Appearing Before Other Boards

Changes to the open meeting law will affect situations where members of one board attend meetings of another board. Under current law, based on interpretations by many district attorneys, a majority (i.e., a quorum of members) of one board cannot appear, whether by plan or happenstance, at the meeting of another board and speak, unless Board A was posted to meet with Board B. So, if three of the five members of a board of selectmen decided, independently of each other, to attend a meeting of the town's finance committee, and those three selectmen wanted to speak at the finance committee meeting, under prevailing interpretations the three selectmen could not speak, as that would mean that a quorum of the board of selectmen was in essence meeting and engaging in the public's business, unless the board of selectmen had posted a meeting to occur at the finance committee meeting. Two of the selectmen could speak, as that would not constitute a quorum of the board of

selectmen meeting and engaging in the public's business.

The changes to the open meeting law address this problem. By definition, under the new law, it is not a "meeting" if a quorum of a board appears at another board's properly posted meeting, so long as the visiting members communicate only in the form of "open participation" on matters discussed "and do not deliberate." Thus, effective July 1, if a quorum of Board A happens to attend a meeting of Board B and the members of Board A want to participate in Board B's meeting, the members can do so, even if they did not post a meeting of their board, so long as they only participate by "open participation" on matters discussed "and do not deliberate." If Board A knows that a quorum will attend a meeting of Board B, and Board A wants to participate fully as Board A, all it needs to do is post a meeting of Board A to meet with Board B. If there is no plan to attend and deliberate with Board B, however, the members of Board A may attend and



OPEN MEETING LAW

participate in Board B's meeting without prior posting.

Notice and Posting Requirements

A notice of a meeting still must be posted at least forty-eight hours in advance, but under the new law, Saturdays join Sundays and holidays as days not counted for giving the required forty-eight-hours notice.

In a significant change, the board chair will be required to list, in the notice, matters that the chair "reasonably anticipates will be discussed at the meeting." While a "notice" of a meeting is not the same as the agenda, with this new requirement

current law, posting is typically done on a bulletin board maintained by the city or town clerk in the municipal building. Under the new law, the posting must be "conspicuously visible to the public at all hours in or on the municipal building" where the clerk's office is located.

This new requirement is being generally interpreted to mean that the notice of a meeting (which, as noted above, must contain more than the presently required information of time and place of the meeting) must be visible to people even during times that the municipal building is closed. Many interpret this as requiring an enclosed

Executive Sessions

Generally, the same statutory reasons for executive session exist. Reason Number 1 (discussing the character or reputation, physical or mental condition of someone) and Reason Number 2 (discussing discipline or complaints) have now been combined in a new exemption Number 1.

A new right has also been added for executive sessions under exemption Number 1. Now the subject of the meeting also has the right to have "an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense."

The process for going into executive session will change on July 1. In addition to the current requirement of having to specify the reason for the executive session, the chair must also state "all subjects which may be revealed without compromising the purpose for which the executive session was called." Thus, if going into executive session under the litigation or real property exemption, for example, the chair must also announce more details as to the subject of the litigation or real estate issue, unless doing so would compromise the need for the executive session.

For exemptions dealing with litigation, collective bargaining, real property and preliminary screening committee interviews of candidates, under the new law the chair must also declare that an open session may have a detrimental effect on that reason.

The need for board chairs to ensure that they state the correct exemption for an executive session was highlighted in a key open meeting law case—District Attorney for the Northern District v. School Committee of Wayland—that was decided by the Supreme Judicial Court on the last day of 2009. In June 2004, the Wayland School Committee went into executive sessions to discuss a superintendent's evaluation under the stated reasons of "matters relating to Collective Bargaining as set forth in [the open meeting law (M.G.L. Ch. 39, Sect. 23B)]" and for "purposes of matters relating to Collective Bargaining and Personnel as set forth in [the open meeting law]." When

>> In a significant change, the board chair will be required to list, in the meeting notice, matters that the chair 'reasonably anticipates will be discussed at the meeting.'

the notice is becoming more akin to the agenda. Logically, a chair would reasonably anticipate that scheduled items will be discussed; thus, scheduled items need to be included in the notice of the meeting, along with other items that the chair anticipates will be discussed.

This raises the question of whether matters not listed on the notice can be discussed. Prevailing wisdom is that they can. For example, while the chair may have listed on the notice matters that he or she anticipates will be discussed, other members of the board may bring up matters that are not listed. And, presuming that the chair did not anticipate that those items would be discussed, the chair could also bring up new items. In addition, it is very common for members of the public to bring up matters that are not listed in the meeting notice.

The idea is not to limit the public's business from being done, but rather to give as much notice as possible to the public as to what business will be discussed.

The posting requirements for meeting notices will also change on July 1. Under

bulletin board outside of the building where the city or town clerk's office is located. Another possibility being discussed is having a computer monitor visible from outside the municipal building that shows a running "slide show" of meeting notices. As the *Municipal Advocate* went to press, the attorney general's office was soliciting input from local officials and developing guidelines and regulations to clarify this and other provisions of the revised open meeting law.

Conduct of Meetings

Under the new law, the chair is required to announce at the beginning of the meeting if anyone is making a video or audio recording or transmission of the meeting, and a person wishing to do so must inform the chair. This would appear to include the governmental body itself, so chairs should announce whether the board or anyone else is making a video or audio recording or transmitting the meeting.

The new law does not change the present requirement that a person can only speak when recognized by the chair.

the executive session was challenged, the Supreme Judicial Court found that the school committee had incorrectly stated the reasons for the executive session. The court found that the collective bargaining exemption was not applicable, as the superintendent was not union personnel and, therefore, was not covered under collective bargaining. And, based on the minutes, the court found that the discussion in the executive session was on the evaluation of the superintendent, not on contract renewal or salary negotiations, which would have been proper subjects for an executive session if the proper exemption (i.e., for non-union personnel) had been stated.

Among the lessons to be learned from this case is that, when going into executive session, it is critical to state precisely the proper exemption. Starting on July 1, it will also be necessary in many instances to state additional information as noted above. A failure to do so runs the substantial risk of a board being found in violation of the open meeting law, with the actions being voided.

To a large degree, this problem can be avoided with some planning. An "Executive Session Quick Index Guide" available for free from the City Solicitors and Town Counsel Association (www.massmunilaw.org/publications.htm) offers precise language for motions to go into executive

session under each exemption. The guide has been revised to include the requirements under the new law and includes in the suggested motions a reminder that the chair must declare, where necessary, that an open session would have a detrimental effect on the subject matter.

Documents and Minutes

One of the major changes to the open meeting law concerns how documents used at a meeting must be handled. Under the new law, any document or exhibit "used" at a meeting becomes part of the official record of the meeting and must be maintained as such. Thus, going by the plain language of the statute, reports, plans, photographs, studies, memos, etc., used presumably by anyone at the meeting, must now be maintained as part of the official record of the meeting.

This will create administrative burdens on communities, as these documents will have to be maintained and stored as part of the official record. There will also be logistical issues of dealing with people who used documents at a meeting and leave without giving a copy to the board.

The meeting minutes requirements are also different under the new law. Minutes will have to also include a "summary of the discussion on each subject," and they must include a listing of each document and exhibit used at a meeting.

Under the new law, documents used at an open session are not shielded under the public records law exemptions, except for evaluation materials and employment materials.

For executive sessions, the documents used can be withheld if exempted from disclosure under the public records law, but only for so long as the release would defeat the purpose of the executive session. When the purpose of the executive session has been served, the documents must be released unless they remain exempt from disclosure under attorney-client privilege or a public records law exemption.

New requirements call for periodic review of executive sessions to see if the subject matter has been addressed and the minutes can now be released.

Help Is Available

As of July 1, oversight of the open meeting law will be transferred from the various district attorney's offices to the Office of the Attorney General. This change is intended to provide for consistency throughout the state in the interpretation of the law. A new Division of Open Government within the attorney general's office is charged with enforcing the open meeting law and assisting municipalities with compliance. The division, created in March and headed by Robert Nasdor, will work to make the law as beneficial to the public and local governments as possible. The division will be able to issue, through the attorney general, advisory opinions, letter rulings and other important guidelines interpreting the new law. The attorney general will also be able, in certain cases, to authorize alternative notice methods for meetings.

Local officials must learn the new open meeting law procedures in advance of the effective date of July 1, 2010. This can be done by attending training programs offered by many organizations, such as the MMA, county selectmen groups, the City Solicitors and Town Counsel Association, and others. Local officials are urged to consult their municipal counsel for assistance in implementing the new law. This important new law warrants close examination to ensure local compliance. ❁

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any document or exhibit
used at a meeting becomes
part of the official record
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Convening Executive Session

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CONVENING EXECUTIVE SESSIONS UNDER THE OPEN MEETING LAW

M.G.L. CHAPTER 30A, SECTION 21

A. Convening an Executive Session

1. The executive session must be convened at an open meeting that has been properly posted.
2. A majority roll call vote of the governmental body is needed to go into executive session (i.e. each member must state their name and then vote yea or nay). The vote of each member must be recorded in the minutes of the meeting.
3. The presiding officer must state specifically the purpose (see below) for the executive session stating all subjects that may be revealed without compromising the purpose for which the executive session was called, and where necessary, stating that an open session would have a detrimental effect on the subject matter, and state, before executive session, whether the body will reconvene in open meeting after the executive session.
4. All votes taken in executive session shall be recorded roll call votes.
5. The minutes of the executive session must include the date, time, place, members present or absent, a summary of the discussions on each subject, a list of documents and other documents, decisions made, and actions taken including all votes.

B. Purposes for Executive Sessions

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.

It is important for all officials to be familiar with the Open Meeting Law. Town Clerks are required to furnish all members of town governmental bodies (i.e. committees, boards, commissions, etc.) with a copy of M.G.L. c. 30A, § 18 – 25 and any training materials produced by the Attorney General's office. All such members shall sign a written acknowledgement of receipt of these documents.

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Motions

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**EXECUTIVE SESSION MOTION FOR EMPLOYEE ISSUES
AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(1) for the purpose of considering the reputation, character, physical condition or mental health and/or the discipline, dismissal of, or to hear complaints or charges brought against a public officer, employee, staff member, or individual, an open session will have a detrimental effect and further details would compromise the reason for going into executive session

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

All documents and exhibits used must be attached to the executive sessions minutes and made a part of the record.

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**EXECUTIVE SESSION MOTION FOR STRATEGY SESSIONS IN PREPARATION
FOR NEGOTIATIONS
AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(2) to conduct a strategy session in preparation for negotiations with the nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel, an open session will have a detrimental effect and further details would compromise the reason for going into executive session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

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**EXECUTIVE SESSION MOTION FOR DISCUSSION OF STRATEGY FOR
COLLECTIVE BARGAINING OR LITIGATION AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(3) to discuss strategy with respect to (choose one) (1) collective bargaining or (2) litigation, an open session will have a detrimental effect and further details would compromise the reason for going into executive session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

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**EXECUTIVE SESSION MOTION FOR DISCUSSION OF DEPLOYMENT OF
SECURITY PERSONNEL OR DEVICES AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(4) to discuss strategy and/or deployment of security personnel or devices, an open session will have a detrimental effect and further details would compromise the reason for going into executive session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

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**EXECUTIVE SESSION MOTION FOR DISCUSSION OF CRIMINAL
MISCONDUCT OR FILING OF CRIMINAL COMPLAINTS AND PROCEDURE
SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(5) to investigate charges of criminal misconduct or to discuss the filing of criminal, an open session will have a detrimental effect and further details would compromise the reason for going into executive session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

All documents and exhibits used must be attached to the executive sessions minutes and made a part of the record.

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**EXECUTIVE SESSION MOTION TO CONSIDER PURCHASE, EXCHANGE,
LEASE OR VALUE OF REAL PROPERTY AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(6) to consider the purchase, exchange, lease or value of real property, an open session will have a detrimental effect on the negotiating position of the public body and further details would compromise the reason for going into executive session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

All documents and exhibits used must be attached to the executive sessions minutes and made a part of the record.

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**EXECUTIVE SESSION MOTION TO COMPLY WITH OR ACT UNER THE
AUTHORITY OF ANY GENERAL OR SPECIAL LAW OR FEDERAL GRANT IN
AID AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(7) to comply with the provisions of any general or special law or federal grant in aid, an open session will have a detrimental effect and further details would compromise the reason for going into executive session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

All documents and exhibits used must be attached to the executive sessions minutes and made a part of the record.

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**EXECUTIVE SESSION MOTION TO CONSIDER OR INTERVIEW APPLICANTS
FOR EMPLOYMENT BY A PRELIMINARY SCREENING COMMITTEE OR A
SUBCOMMITTEE AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(8) to consider (and if application) to interview applicants for employment by this preliminary screening, an open session will have a detrimental effect and further details would compromise the reason for going into executive session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

All documents and exhibits used must be attached to the executive sessions minutes and made a part of the record.

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**EXECUTIVE SESSION MOTION TO MEET WITH OR CONFER WITH A
MEDIATOR AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(9) to meet with or confer with a mediator, an open session will have a detrimental effect and further details would compromise the reason for going into executive session.

Note: Decision to meet with mediator must have been made in open session, and no action is to be taken on subject of mediation without deliberation and approval for such action in open session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

All documents and exhibits used must be attached to the executive sessions minutes and made a part of the record.

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**EXECUTIVE SESSION MOTION TO DISCUSS TRADE SECRETS OR OTHER
PROPRIETARY INFORMATION MEET WITH OR CONFER WITH A MEDIATOR
AND PROCEDURE SUMMARY**

Note: To be read into the record prior to going into Executive Session

I move that the Board go into Executive Session pursuant to Massachusetts General Law, Chapter 30A, Section 21(10) to discuss trade secrets or other proprietary, an open session will have a detrimental effect and further details would compromise the reason for going into executive session.

Note: Chair should also state all subjects which may be revealed without compromising the purpose for which the executive session was called.

The Board must take a roll call vote (each member stating for the record whether or not they support the motion to go into Executive Session), and then the Board must announce prior to going into Executive Session whether they intend to come back into open session after the Executive Session.

While in Executive Session, the minutes of the Executive Session must reflect the date, time and place of the meeting, 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.

All votes must be by roll call.

All documents and exhibits used must be attached to the executive sessions minutes and made a part of the record.

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Letters To Employees

TOWN LETTERHEAD

Date

Name & Address of Employee

Re: To Consider the Reputation, Character, Physical Condition, Mental Health of a Public Employee

Dear :

Please be advised that the Board will hold a hearing on date at place at time in Executive Session to consider your reputation, character, physical condition, and/or mental health. After hearing all the facts, the Board may take action, which may include placing you on leave, with or without pay, issue a written warning, suspend, or dismiss you depending on the outcome.

The reason(s) for this hearing is/are as follows:

In addition, the following conduct has been noted by the Board and if accurate, you could be placed on leave, with or without pay, and/or subject to discipline up to and including termination for these:

Pursuant to Massachusetts General Laws, Chapter 30A, Section 21(1), you have the following rights:

1. To be notified at least forty-eight (48) hours prior to the proposed Executive Session;
2. To request that the meeting be open to the public;
3. To be present at such Executive Session during discussions or consideration which involve you;
4. To have counsel or a representative of your own choosing present and attending for the purpose of advising you and not for the purpose of active participation;
5. To speak on your behalf; and,
6. To cause an independent record to be created of the Executive Session at your expense.

If you have any questions or concerns regarding this matter, please do not hesitate to contact the Board.

Sincerely,

BOARD

CERTIFICATE OF SERVICE

I, _____, hereby certify that the above Letter of Notice has been served upon the above-named employee, officer, staff member, or individual by _____.

Dated: _____

Signature

TOWN LETTERHEAD

Date

Name & Address of Employee

Re: To Consider the Discipline or Dismissal of a Public Employee and/or to Hear Complaints or Charges Brought Against a Public Employee, Officer, Staff Member, or Individual

Dear :

Please be advised that the Board will hold a hearing on date at place at time in Executive Session to consider the discipline or dismissal of, and to hear complaints or charges brought against you. After hearing all the facts, the Board may take action, which may include placing you on leave, with or without pay, issue a written warning, suspend, or dismiss you depending on the outcome.

The reason(s) for this hearing is/are as follows:

In addition, the following conduct has been noted by the Board and if accurate, you could be placed on leave, with or without pay, and/or subject to discipline up to and including termination for these:

Pursuant to Massachusetts General Laws, Chapter 30A, Section 21(1), you have the following rights:

1. To be notified at least forty-eight (48) hours prior to the proposed Executive Session;
2. To request that the meeting be open to the public;
3. To be present at such Executive Session during discussions or consideration which involve you;
4. To have counsel or a representative of your own choosing present and attending for the purpose of advising you and not for the purpose of active participation;
5. To speak on your behalf; and,
6. To cause an independent record to be created of the Executive Session at your expense.

If you have any questions or concerns regarding this matter, please do not hesitate to contact the Board.

Sincerely,

BOARD

CERTIFICATE OF SERVICE

I, _____, hereby certify that the above Letter of Notice has been served upon the above-named employee, officer, staff member, or individual by _____.

Dated: _____

Signature