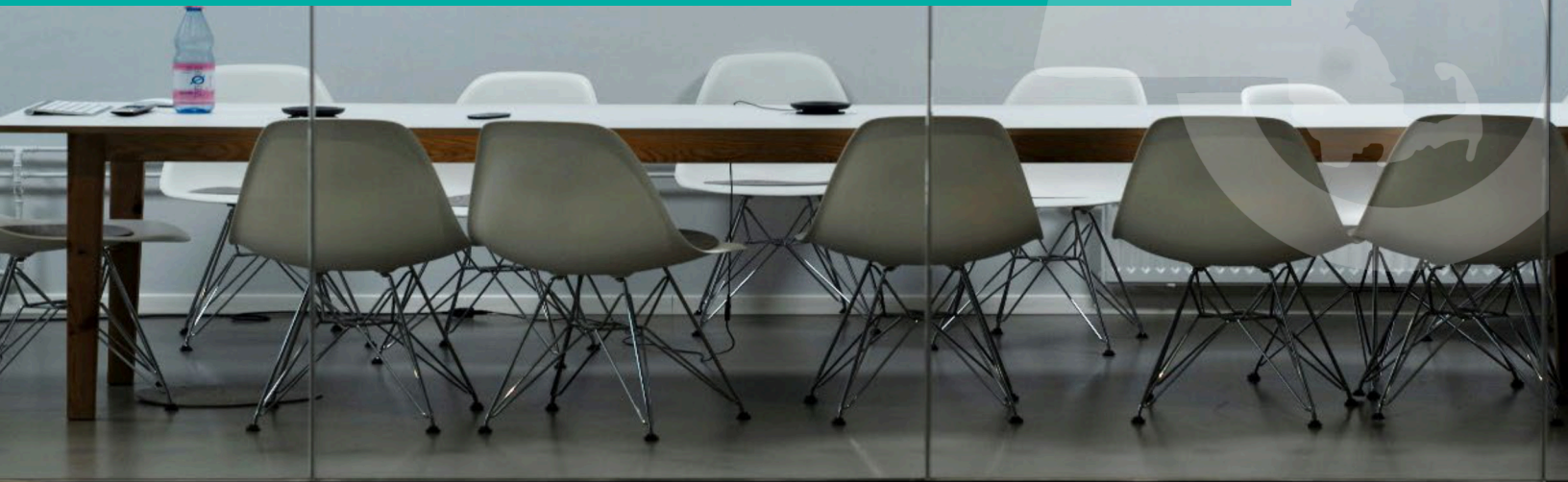




**OFFICE OF THE
INSPECTOR GENERAL**
MASSACHUSETTS

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



Guide for Members of Public Boards and Commissions

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Commonwealth of Massachusetts

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About the Office of the Inspector General

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

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

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Guide for Members of Public Boards and Commissions

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

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

Public boards take many forms, such as:

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

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

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

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

Practices for Effective Board Members

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

Learn about the public organization.

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

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



What is the public organization's mission or mandate?

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

How does the organization carry out its mission or purpose?

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

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



How is the organization structured?

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

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

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

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

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

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



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

What matters typically come before the board?

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

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

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

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

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

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



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

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

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

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

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

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

Board members who adhere to the fiduciary principles will be active participants in board matters, will stay informed and will act in the best interests of the organization. Fiduciary principles remind the board that it must act on behalf of the organization, not its executive. They will lead the board to actively oversee the executive

and to expect accountability from the executive, which will help the public organization operate effectively, transparently and in accordance with its mission.

Exercise care when making decisions and voting.

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



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

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

What is the procedure for asking individuals from the organization to attend the meeting to provide additional information?

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

Before voting on a matter, ask:



What statutes or regulations apply to the requested action?

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

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

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

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

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

Actively oversee the executive who leads the organization.

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

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



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

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

What are the financial costs of achieving these objectives?

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

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

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

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

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



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

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

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

What is the public organization's expense reimbursement policy?

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

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

Actively monitor and protect public expenditures.

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

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

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

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



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

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

What are the public organization's written procurement policies?

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

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

If you are a member of a local board that serves a local public organization, inquire about whether there is an electronic resource like CTHRU, so that you may have more information at your fingertips about the budget, salaries and spending of the organization. This will help you make meaningful determinations about financial matters that come before your board.

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

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

digital records and other types of data. Massachusetts residents have entrusted these public resources to your care.

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

- The segregation of duties performed by employees to ensure no one individual can commit and cover up their own wrongdoing.
- Approval processes for expenditures, with increased oversight for larger expenditures.
- Methods to track and monitor employee time and attendance, including the use of leave time.
- Controls to track the public organization’s acquisition and disposition of public assets, such as vehicles, equipment, supplies and petty cash.
- Fraud-reporting mechanisms, including a telephone or email hotline or an independent complaint review process.
- An anti-fraud policy, as well as employee training on the policy and annual reminders to follow the policy.
- A code of conduct with standards related to conflict of interest and other professional standards that align with the public organization’s mission.
- Tone at the top: communication from the organization’s administration about its commitment to the highest ethical and professional standards.
- Careful vetting of employees – both before and after hiring – to ensure that their background and professional certifications meet the entity’s standards and support the entity’s mission.

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



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

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

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

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

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

IGO-FightFraud@mass.gov.

All reports are confidential.

Legal Obligations of Public Board Members

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

Conflict of Interest Law

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

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

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

Open Meeting Law

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

Specifically, the law states that:

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

The Massachusetts Attorney General's Office (AGO) is responsible for interpreting and enforcing the open meeting law. Visit the AGO's website, available at www.mass.gov/the-open-meeting-law, or contact the AGO's Division of Open Government at (617) 963-2540, to learn more about the open meeting law.

Public Records Law

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

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

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

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

Conclusion

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

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

Appendix A: Sources of Advice and Assistance

<p>Office of the Attorney General</p> <p>The Office of the Attorney General interprets and enforces the open meeting law.</p> <p>www.mass.gov/service-details/open-meeting-law-training-videos.</p>	<p>Telephone: 617-963-2540</p> <p>Email: openmeeting@mass.gov</p> <p>Website: www.mass.gov/ago</p>
<p>Office of the Comptroller</p> <p>The Office of the Comptroller is responsible for developing internal control guidelines for Commonwealth departments, including state agencies and quasi-state agencies.</p>	<p>Telephone: 617-727-9140</p> <p>Email: comptroller.info@mass.gov</p> <p>Website: www.mass.gov/comptroller</p>
<p>Office of the Inspector General</p> <p>The Office of the Inspector General is an independent agency that prevents and detects fraud, waste and abuse of public resources.</p>	<p>Telephone: 617-727-9140</p> <p>Email: MA-IGO-Training@mass.gov</p> <p>Website: www.mass.gov/ig</p>
<p>Secretary of the Commonwealth</p> <p>The Secretary of the Commonwealth administers the public records law.</p>	<p>Telephone: 617-727-2832</p> <p>Email: pre@sec.state.ma.us</p> <p>Website: www.sec.state.ma.us</p>
<p>State Ethics Commission</p> <p>The State Ethics Commission administers and enforces financial disclosure and conflict-of-interest law. It also renders written advisory opinions upon request.</p>	<p>Telephone: 617-371-9500</p> <p>Website: www.mass.gov/ethics</p>

Appendix B: Reasons for Entering Executive Session

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

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual;
2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
- (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
 - (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.
10. To discuss trade secrets or confidential, competitively sensitive or other proprietary information provided:
- in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to G.L. c. 164, § 1F.

Public Body Checklist for Entering Into Executive Session

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

- ☐ Executive session listed as a topic for discussion on meeting notice, including as much detail about the purpose for the executive session as possible without compromising the purpose for which it is called. See G.L. c. 30A, § 20(b); 940 CMR 29.03(1)(b).
- ☐ Public body convened in open session first. G.L. c. 30A, § 21(b)(1).
- ☐ Chair publicly announced the purpose for executive session, citing one or more of the 10 purposes found at G.L. c. 30A, § 21(a). (see above)
- ☐ Chair stated all subjects that may be revealed without compromising the purpose for which the executive session was called. G.L. c. 30A, § 21(b)(3). For example, the Chair identified the party a public body may be

negotiating with, or the litigation matter the public body will be discussing.

- Chair stated whether the public body will adjourn from the executive session or will reconvene in open session after the executive session. G.L. c. 30A, § 21(b)(4).
- For Executive Session Purposes 3, 6, and 8:
 - o Chair publicly stated that having the discussion in open session would have a detrimental effect on the public body's negotiating position, bargaining position, litigating position, or ability to obtain qualified applicants. G.L. c. 30A, §§ 21(a)(3), (6), (8).
 - o A majority of members of the body voted by roll call to enter into executive session G.L. c. 30A, § 21(b)(2).

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

RECOGNIZE AND REPORT WORKPLACE FRAUD

Office of the Inspector General - Commonwealth of Massachusetts

WHAT IS WORKPLACE FRAUD?



Time fraud: getting paid for hours not worked.



Larceny: selling or using publicly owned equipment for your own benefit.



Kickbacks: awarding a contract to a vendor in exchange for payment.



Billing fraud: submitting false invoices or expense reports.



RED FLAGS

Living beyond means: vacations, jewelry, cars, clothes.
Sudden financial pressure: divorce, illness, job loss.
Unusually close relationship with vendor/customer.
Control issues: unwilling to share duties, go on vacation.
Defensive when questioned.
Resistant to new controls.

REPORT

If you suspect fraud, make a confidential report to the Office of the Inspector General's Fraud hotline.



1-800-322-1323

IGO-FightFraud@mass.gov

