

OPEN MEETING LAW

M.G.L. c. 30A, §§ 18-25

Purpose of Open Meeting Law

- Recognizes the necessary balance between government accountability and government efficiency
- Ensures transparency by public bodies by requiring:
 - Notice
 - Open deliberations
 - Public access to minutes and documents
- Allows government to efficiently and effectively manage its operations by:
 - Providing for certain deliberations in executive session
 - Maintaining confidentiality of certain executive session records

Attorney General's Role

- Division of Open Government
 - ▣ Educate and train public officials and members of public bodies
 - ▣ Promulgate regulations
 - ▣ Provide guidance on OML
 - ▣ Address OML Complaints

OML Basics

1. Notice to be posted for meetings
2. Meetings must be open to the public unless executive session
3. Minutes must be kept for both open & executive session
4. Complaint process
5. Public body member certification

Public Body

- Definition: a multi-member board, commission, committee or subcommittee, however created, elected, appointed or otherwise constituted, that's established to serve a public purpose
- Excludes
 - ▣ Legislature and its committees
 - ▣ Bodies of the judicial branch
 - ▣ Bodies that do not serve public purpose
 - ▣ Groups that are not established with jurisdiction to make decisions collectively

Deliberation

- Definition: 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
- Excludes: Distribution of agenda, scheduling or procedural information
 - ▣ Distribution of documents to be discussed
 - Distribution should not express opinion of members of a public body

Meetings

- Definition: Deliberation by the public body with respect to any matter within the body's jurisdiction
- Excludes:
 - ▣ On-site inspection provided no deliberation
 - ▣ Attendance by a quorum at an event
 - ▣ Attendance by a quorum at another public body
 - ▣ Meetings of a quasi-judicial board for sole purpose of making a decision in an adjudicatory proceeding
 - ▣ Town meeting

Meeting Notices

- Notice 48 hours in advance
- Notice must include:
 - ▣ Date
 - ▣ Time
 - ▣ Place of meeting
 - ▣ List of topics
- Emergency: a sudden, generally unexpected occurrence or set of circumstances demanding immediate action
 - ▣ Post notice as soon as reasonably possible prior to a meeting

Meeting Notices: State Public Bodies

- Public body's website or website of parent agency
- Notify the AG of location of website
- Send copy of each notice to Regulations Division of Secretary of State's Office
 - regs@sec.state.ma.us

Common Concerns

- Update notice when made aware of new topic within 48 hours before meeting
- Chairs should not post notice so far in advance that there will be high likelihood of new topics
- Sufficient time for posting
- Meeting cancellations do not require 48 hours
- Continued meetings must comply with 48 hour posting requirement

Accessibility

- Public bodies must abide by state and federal law governing accessibility for the disabled
 - ▣ Americans with Disabilities Act
 - ▣ Federal Rehabilitation Act of 1972
 - ▣ State Constitutional Provisions
- Civil Rights Division of the AG's Office

Remote Participation

- Must be adopted before members can use
- Minimum Requirements:
 - ▣ Remote participants and all present at meetings location must be clearly audible to each other
 - ▣ A quorum must be physically present
 - ▣ Remote participants may vote and may not be deemed absent

Remote Participation

- Permissible Reasons: one or more circumstance makes physical attendance unreasonably difficult
 - Personal illness
 - Personal disability
 - Emergency
 - Military service
 - Geographic distance
- Procedure
 - Notify chair
 - Announcement by chair, must state reasons
 - Roll call vote

Public Participation

- Public right to attend open session but no right to participate
- Public must have permission of chair to participate and may not disrupt the meeting
- Public may make audio or video recording upon notification to the chair and subject to reasonable requirements
- Chair must inform other attendees at beginning
- Chair may order disruptive person to leave

Executive Session

- Public bodies may conduct closed, or executive meetings in certain circumstances
- Requirements:
 - ▣ Convene in open meeting session prior to going into executive
 - ▣ Publicly state the purpose
 - ▣ Conduct roll call vote
 - ▣ Statement by remote participant that no other person is present or able to hear
 - ▣ Maintain minutes and documents
 - ▣ Discuss matters for which executive session is called
 - ▣ Roll call vote

Purpose for Executive Session

1. Discuss reputation, character, health, discipline, charges but not professional competence of individual
2. Strategy sessions for negotiations, collective bargaining or contract negotiations
3. Strategy for collective bargaining or litigation if open meeting would have a detrimental effect & chair so declares on the record beforehand
4. Security personnel or devices
5. Criminal Misconduct
6. Acquisition of real property, if chair declares detrimental effect
7. Comply with law or grant-in-aid request
8. Preliminary screening for employees, if chair declares detrimental effect
9. Confer with mediator on litigation or
10. decision
11. Trade secrets in activity conducted by public as energy supplier

Meeting Minutes

- Date, time, place of meeting, absent & present members
- Must Include:
 - ▣ A summary of the discussion of each topic
 - ▣ Decisions made & actions taken including record of all votes
 - Secret ballots explicitly prohibited
 - ▣ List of documents and exhibits
 - ▣ Name of remote participants and reason under 940 CMR 29.10(5)

Complaint Process

- Form on AG's website
- Complaint within 30 days of the alleged violation or within 30 days of the date the complainant reasonably should have discovered the alleged violations
- Public body has 14 days to respond and inform AG's office of remedial action
- May request time extension for good cause
- May be discussed in executive session MGL 30A §21(a)(1)

Complaint Process

- May file with AG's office within 90 days of original alleged violation
- AG acknowledges receipt and may investigate
- Request for documents and interviews
- Violation
 - ▣ Was it intentional?
 - ▣ Was action taken by public body adequate?
- Resolution: through letter
- Public body appeal within 21 days
- Superior Court action alternative

Statutory Remedies

- Compel immediate & future compliance
- Compel training
- Compel public release of documents
- Nullify action taken in violation of the OML
- Reinstate employee
- Civil penalty of up to \$1 000 for intentional violation

Contact Information

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Thank you!