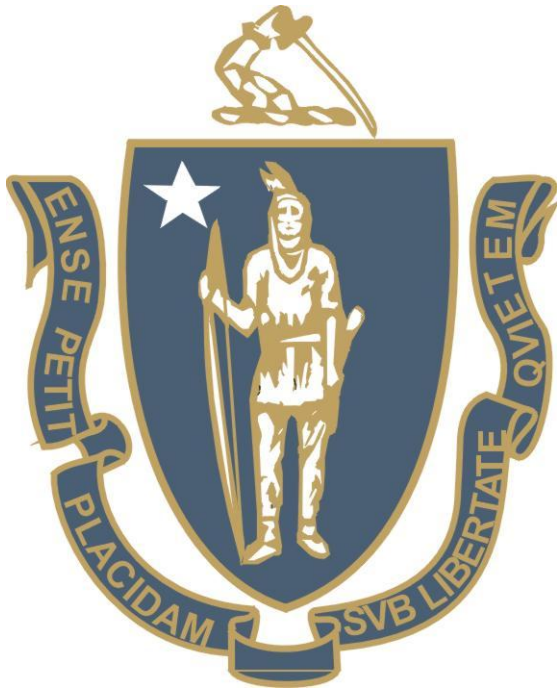


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OPEN MEETING LAW

**GENERAL LAWS,
CHAPTER 39,
SECTIONS 23A-D & 24**

PURPOSE

- **To require town business to be conducted in public**
- **To open town business to public observation, not participation**

Who is subject to the Open Meeting Law? Governmental Bodies

**Every board, commission, committee
or subcommittee**

Of any district, city, region or town,

**However elected, appointed or
otherwise constituted, and**

**The board of a local housing,
redevelopment or similar authority**

Who is not subject to the Open Meeting Law?

- Political parties: e.g. Republican, Democrat, Independent, Green
- Citizens' groups: community watchdog groups, charitable organizations
- Usually, task forces or working groups appointed by an individual public officer, e.g. mayor or superintendent
- Individuals

MEETINGS

**Any corporal convening and deliberation
Of a governmental body for which a quorum
is required in order to make a decision
At which any public business or public policy
matter is discussed or considered
If the governmental body has supervision,
control, jurisdiction or even advisory
power over that issue;
But shall not include any on-site inspection**

**What if we don't take a vote
or reach a decision?**

**Deliberation is enough to constitute a
meeting.**

**Deliberation is a verbal exchange
among a quorum of members of a
governmental body attempting to
arrive at a decision on any public
business within its jurisdiction.**

What if a quorum accidentally gets together?

- Law does not apply to any chance or social meeting
- Chance or social meetings shall not be used to circumvent the law
- Law does not apply to ministerial acts, like scheduling. Pearson v. Board of Selectmen of Longmeadow, 49 Mass. App. Ct. 119 (2000).

Telephones & Internet Communications

A quorum of a board should never exchange views on a public matter within the board's authority or jurisdiction, unless that exchange of views is done in a properly posted meeting.

The Open Meeting Law prohibits governmental bodies from conducting business by means of telephones, e-mail, instant messages, chatrooms, blogs, social networking sites or file sharing applications.

Recent Case

McCrea v. Flaherty and the Boston City Council, 71 Mass. App. Ct. 637 (May 1, 2008) .

- “Revolving door”, “round robin” or “rotating quorum” meetings violate the Open Meeting Law.
- If a Board schedules a meeting, the Board must post that meeting.

The District Attorney
advises governmental
bodies to refrain from
discussions of public
business, outside of a
properly posted meeting.

TAPING MEETINGS

**The governmental body must permit
anyone to record open sessions**

Either audio or video

**But the recording equipment may be
fixed in one or more locations**

**Unless recording interferes with the
conduct of the meeting.**

**Secret recording of communications is
prohibited by the wiretap statute**

Recording must be done openly

VOTING

No votes taken in open session shall be by secret ballot.

Votes in executive session must be recorded roll call votes.

Adjudicatory Hearings

- Applicable if the municipality accepts this section
- When a body holds an adjudicatory hearing, a member shall not be disqualified from voting solely for an absence from one evidentiary session
- Before any vote, the member shall certify in writing that he/she examined all evidence from the missed session, which must include a recording (audio or video) or a transcript of that session; the certification shall be part of the record
- a municipality may adopt minimum additional requirements for attendance at such hearings

NOTICE

A notice of every meeting

Shall be filed with the town clerk

**The notice shall be publicly posted
in the town clerk's office or on
the official bulletin board**

At least 48 hours prior to meeting

Including Saturdays but not

Sundays and legal holidays.

Meetings on Holidays

All public offices must be closed on legal holidays. G.L. c. 136, § 12.

Nothing in the Open Meeting Law statute prevents holding a meeting on a holiday but chapter 136, section 12 prohibits the board from opening a public office on a legal holiday.

What should be on the notice?

- Name of Board**
- Time of Meeting**
- Date of Meeting**
- Place of Meeting**

Agendas are not required.

Blanket Notices are acceptable.

Joint Notices are acceptable.

Emergency Meetings

A sudden, generally unexpected occurrence or circumstance demanding immediate action

No notice is required

The board may only discuss the emergency

No other business may be discussed.

MINUTES

Under the Open Meeting and Public Records Laws, every governmental body must keep minutes of every meeting, including executive sessions.

Minutes must include:

- **Date, Time and Place**
- **Names of members, present or absent**
- **Action taken, with votes recorded exactly**
- **Subjects acted upon**
- **Sometimes the names of individuals discussed must be disclosed**

Are minutes public records?

- **Yes. The records of each meeting shall become a public record and be available to the public within 10 days of a written or oral request.**
- **Verbatim transcripts of meetings are not required.**

What About Minutes Of Executive Sessions?

- **Executive session minutes may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer.**
- **All votes taken in executive sessions shall be recorded roll call votes and shall be included in the minutes.**
- **The vote to enter executive session must be a recorded roll call vote and must be entered into the open session minutes.**

Recent Case

Parker v. Wanderer Com, Inc.,
Plymouth Super Ct. # PLCV-2004-
0459B, pp.8-9 (2005).

Board must disclose executive session minutes once the matter being discussed is complete, even if the matter involves personnel information.

EXECUTIVE SESSION

Before holding an executive session, the board must:

- convene in a properly posted open session**
- vote to go into executive session**
- record the roll call vote**
- enter the roll call vote into the minutes**
- cite the purpose for executive session**
- state whether the board will reconvene**

An executive session may be held only for one of the ten purposes enumerated in the statute.

Yaro v. Board of Appeals of Newburyport, 10 Mass. App. Ct. 587 (1980).

PURPOSE 1

To discuss the reputation, character, physical condition or mental health, rather than the professional competence of an individual.

PURPOSE 2

**To consider the discipline or dismissal of,
or to hear complaints or charges brought against
an individual.**

Does the individual being discussed have any rights under Purposes 1 and 2?

- written notification 48 hours in advance**
- to insist on an open session**
- to be present at the executive session**
- to have counsel or a representative present**
- to speak in his/her own behalf**

However, the statute does not give the individual being discussed, the right to insist on an executive session.

Under the Open Meeting Law, the board may discuss any subject or any person in open session, without limitation.

What if Purpose 1 or 2 applies, but another purpose also applies?

- **The board must provide the individual with his or her rights, regardless of whether another exception applies.**
 - **Failure to do so will result in a violation of the Open Meeting Law and possibly civil liability, if the individual decides to sue.**
- Bartell v. Wellesley Hous. Authority, 28 Mass. App. Ct. 306 (1990).**

PURPOSE 3

- a) To discuss strategy for litigation if an open meeting may have a detrimental effect on the board's litigating position**
- b) To discuss strategy for collective bargaining if an open meeting may have a detrimental effect on the board's bargaining position**
- c) To conduct strategy sessions to prepare for negotiations with non-union personnel**
- d) To conduct collective bargaining sessions**
- e) To conduct contract negotiations with non-union personnel**

PURPOSE 4

To discuss the deployment of security personnel or devices.

PURPOSE 5

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

PURPOSE 6

To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body.

PURPOSE 7

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

PURPOSE 8

- **To consider and interview job applicants**
- **If an open meeting will have a detrimental effect in obtaining qualified applicants**
- **Does not apply to consideration and interview of applicants who have already passed prior preliminary screening**
- **May only be used by a preliminary screening committee or subcommittee**
- **The hiring body may not use this purpose to enter executive session at all**

PURPOSE 9

Mediation with respect to litigation or a decision on any public business within the board's jurisdiction involving another party, group or body

- any decision to participate in mediation shall be made in open session, disclosing the parties, issues involved, and purpose of the mediation**
- no action shall be taken by any governmental body on issues which are the subject of the mediation without deliberation and approval at a properly posted open meeting**

PURPOSE 10

- Applicable to a governmental body acting as a licensed **energy supplier** under G.L. c.164, §1F or acting as a **municipal aggregator** G.L. c.164, §134 or a **cooperative** of governmental entities organized under G.L. c.164, §136
- To discuss trade secrets or confidential, competitively-sensitive or other proprietary information
- When such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy

Open Meeting Law Handbook

A copy of the Plymouth County District Attorney's Open Meeting Law Handbook is available at

www.state.ma.us/da/plymouth

The link to “Open Meeting Law” appears on the left hand side.

ENFORCEMENT

The District Attorney of the county in which the violation occurred shall enforce the provisions of the Open Meeting Law.

District Attorney Timothy J. Cruz

Contact: Mary Lee, Assistant District Attorney

Carolyn Burbine, Assistant District Attorney

Laurie Yeshulas, Assistant District Attorney

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