

# Open Meeting Law- Overview

Presentation to Town Council  
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February 2, 2024

# Open Meeting Law Overview

## **Basic Principles:**

- Whenever a public body holds a meeting, the public must be given proper notice of the meeting.
- All meetings must be open and accessible to the public, unless the public body properly enters executive session for one or more of the 10 statutory purposes and follows all of the procedural requirements.
- Public bodies must create and maintain accurate minutes for all meetings, including both open and executive sessions.

# Open Meeting Law Overview

**The Open Meeting Law (OML) applies to all “deliberations” of a quorum of a public body on matters within the body’s jurisdiction. All such deliberations are meetings that require compliance with the OML.**

**“Deliberation”** – an oral or written communication through any medium, including email, between or among a quorum of a public body on any public business within its jurisdiction.

**“Public bodies”** – multiple-member boards, commissions, committees of the Town, including sub-committees, established to serve a public purpose

**“Quorum”** – a simple majority of the members of the body, unless otherwise provided in a general or special law or other authorizing provision. The Town Charter provides that the Town Council quorum is nine (9).

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**“Meeting”** – a deliberation by a public body with respect to any matter within the body’s jurisdiction. Any time a quorum of a public body is discussing matters within that body’s jurisdiction, they are having a meeting which must be properly noticed and open to the public.

**Exceptions:** As long as they do not deliberate, a quorum may:

- attend an on-site inspection
- attend an event or a training session
- attend a meeting of another public body

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- Serial communications among a quorum of the members of the public body are deliberations; e.g., if 5 Councilors meet to discuss Council business and then after the meeting, they each relay that discussion to another Councilor, the discussion has now reached 10 Councilors.
- It is not a meeting subject to the OML if less than a quorum meets and discusses business matters. However, this is not a good practice since you run the risk of violating the law if any of those members subsequently relays those discussions to other members of the public body.
- A member of a public body can distribute to the other members via email an agenda, procedural or scheduling information, and reports or documents to be discussed at a meeting, but the distributor cannot express an opinion on the report or document or matters within the body's jurisdiction.

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## Takeaways:

- Councilors should avoid email communications with other Councilors whenever possible to prevent the emails from being forwarded and eventually reaching a quorum.
- If emails are sent to a quorum or more of the Council by an outside party or by Town staff, Councilors should not “Reply All.”
- If a Councilor wishes to share reports or other documents with Councilors, the better practice is to ask the Town Council administrator to do so.
- Subcommittee members must be particularly careful because the risk of communicating with a quorum is much greater when the quorum is smaller. For example, a 5-member subcommittee will have a quorum of 3. If 3 members discuss matters under the jurisdiction of their subcommittee, they will violate the OML if those discussions take place outside of a properly noticed meeting.

# Open Meeting Law Overview

## Notice Requirements

Except in an emergency, meeting notices (the agendas) must be posted at least **48 hours in advance**, excluding Saturdays, Sundays and legal holidays.

The notice must include: **date, time and place of the meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The notice and any revised notice must include the date and time it was posted.** If a notice is revised within 48 hours of a meeting, the revised notice must include the date and time that the original notice was posted and the date and time of the revision.

***Matters not reasonably anticipated for discussion*** may be discussed at a meeting if they were not reasonably anticipated by the chair 48 hours in advance of the meeting. The AG's Office strongly advises, however, that the board not take action on any such matter until appropriate notice of the discussion can be given to the public. If the public body becomes aware of a new topic within the 48-hour period before the meeting, the meeting notice should be updated if possible.

# Open Meeting Law Overview

## **Executive Session – should consult with Legal**

- 10 Purposes
- Procedural Requirements
  - Must first convene in open session before going into executive session
  - The chair must publicly state the purpose(s) for going into executive session with as much detail as possible without compromising the purpose for confidentiality
  - Need a roll call vote to enter executive session and a majority vote of the members
  - The chair must state publicly whether the public body will reconvene in public session after the executive session
  - All votes taken in executive session must be roll call votes and recorded as such in the minutes



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## Meeting Minutes

Public bodies must create and maintain minutes of every open and executive session meeting. They must be created and approved in a timely manner, i.e., within the next 3 public meetings or 30 days after the meeting, whichever is later.

**Minutes must include:** date, time, place of the meeting, list of members present or absent, summary of the discussion on each topic (not a transcript), every decision made and action taken, including a record of all votes; list of documents and exhibits used by the public body at the meeting; and the names of any member who participated remotely.

## Requests for Minutes

**Open Session minutes** must be provided within 10 days of the request, whether in draft or final form and regardless of whether the public body has approved them.

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**Executive Session minutes**, including all documents used during an executive session, must be disclosed once a determination has been made that disclosure will no longer defeat the purpose for having entered into executive session, **UNLESS** the minutes and/or documents are exempt from disclosure under the public records law or because of the attorney-client privilege.

Executive Session minutes must be periodically reviewed by the Chair or by the public body to determine whether continued non-disclosure is warranted. The determination must be announced during the next meeting and must be included in the minutes. The public body may go into executive session to review executive session minutes. Our practice has been to have the President conduct this review with the Town Clerk and the Town Attorney.

# Complaint Process

## 1. Administrative Complaint Process

Any person who believes a public body has violated the OML may file a complaint. To do so, they must:

- Use the complaint form available on the Attorney General's website
- File the complaint with the Chair of the public body and the Town Clerk
- File within 30 days of the alleged violation or within 30 days of the date the complainant reasonably should have discovered the violation

If the complainant is not satisfied with the public body's response, he or she may file the complaint with the Division of Open Government in the Attorney General's Office, but cannot do so until 30 days after filing the complaint with the public body.

**Upon receipt of a complaint, consult with Legal! There are deadlines for responding.**

# Complaint Process

If the complaint is filed with the AG's Office, the Division of Open Government will review and resolve the complaint with a letter. If they find that a violation has occurred, they may:

- Order immediate and future compliance with the OML, essentially putting the public body on notice that future similar violations may be found to be intentional;
- Order the public body to attend an OML training session;
- Order the release of executive session minutes;
- Nullify any action taken by a public body in violation of the OML;
- Impose a civil penalty of up to \$1,000 on a public body for each intentional violation of the law, but this would not happen until after a hearing before an administrative law judge;
- Order such other relief as the Attorney General deems appropriate.

**2. Alternatively, the Attorney General or 3 or more registered voters may initiate a civil action in court to enforce the OML.**

# Open Meeting Law Overview

## Resources:

- Open Meeting Law: G.L. c. 30A, §§ 18-25
- Regulations: 940 CMR 29.00 et seq.
- Office of the Attorney General's Open Meeting Law Guide
- Website: [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting)
- Attorney General's Office checklists
- Legal Department