

MEETINGS AND MINUTES GUIDE FOR BOARDS, COMMISSIONS AND COMMITTEES

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Most public business can and should be conducted in Open Session. In addition, accurate records are to be kept of a board's, commission's or committee's meetings. There are instances however where a closed, or Executive Session is appropriate. For a variety of reasons, problems may arise in going into Executive Session. This overview is intended to provide you with a general understanding of the Open Meeting Law and the requirements for maintaining accurate records of your meetings. It is by no means all inclusive. When problems are anticipated or arise, you should call your municipal legal counsel.

An *Executive Session Quick Index Guide* is attached. It is an excerpt from this memo of the statutory reasons you can go into Executive Session, as well as suggested motions which have been included in this memo. Note that the *Quick Index Guide* is not a detailed explanation of the terms of the law. It should be used in conjunction with the memo as needed.

All meetings must be in Open Session, unless one or more of the following exceptions apply. To go into Executive Session, you must (a) first meet in Open Session; (b) vote by roll call vote to go into Executive Session by identifying the specific exemption or exemptions applicable; and (c) indicate in the motion whether you intend to reconvene in Open Session after the Executive Session. If you do not intend to go back into Open Session, you need not say so. While in Executive Session, you can only discuss matters coming within the reason(s) stated for the Executive Session.

Unless your meeting is an appropriate emergency meeting (for a "sudden, generally unexpected occurrence or set of circumstances demanding immediate attention", G.L. c. 39, section 23A), the meeting must have been properly posted at least 48 hours in advance. Thus, if your meeting was not properly posted, you could not convene it in open session to go into Executive Session. Many problems arise with the improper posting of meetings. Be sure to check prior to the meeting.

Note that in some instances there are conditions which must exist to be in Executive Session. These include requirements in some instances to notify the subject of the Executive Session in advance of the meeting, to allow the person to be present and to speak and to have a legal representative present to advise the person. While the law provides that the advisor is not there to speak, common courtesy and issues of fundamental fairness warrant you allowing the person's attorney to speak. Another condition is that the Open Session may have a detrimental effect on the litigation, negotiating or bargaining position or be detrimental in obtaining qualified candidates if interviews of initial applicants are done in Open Session.

A safe guideline to follow is to treat all persons before you with the same courtesy and fair treatment you would expect and want if you were before a board or committee. This may be difficult at times, as some people may be very disagreeable and in some instances purposely try to make you commit an error upon which they can base an appeal or other legal action. If things start to get too heated, take a break. If necessary call your counsel.

The presiding officer of a meeting has control of the meeting and no one can speak without being first recognized by the presiding officer. While the presiding officer also has the authority to order the police to remove and detain any person who is disruptive, it is urged you never to do so. Such action is bound to lead to complications and possible claims. If someone becomes disruptive and does not heed the presiding officer's directives to

stop, the better practice would be to take a recess and even to adjourn the meeting. In almost all such instances, after a recess the person usually stops the disruptive conduct. Ordering people removed from a meeting is fraught with danger.

If there is a violation of the Open Meeting Law, civil action can be taken against the Board of Committee in violation. The result can be a Judge issuing an order against the Board of Committee relative to their conduct, invalidating the action taken and, under a recent amendment to the law, imposing a civil fine against the governmental body of up to \$1,000.00 dollars. Most problems which result in court action can be avoided. When in doubt, or if something does not seem right, call your municipal counsel.

What follows is a listing of the statutory exceptions, together with a suggested motion, which should be modified as appropriate.

Exception 1. To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least 48 hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) to be present at such executive session during discussion or considerations which involve that individual.
- (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.
- (c) to speak in his own behalf.

Suggested Motion- Move to go into Executive Session to discuss the reputation, character, physical condition or mental health of an individual, and to reconvene in Open Session.

Exception 2. To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least 48 hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) to be present at such executive session during discussions or considerations which involve that individual.
- (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.
- (c) to speak in his own behalf.

Suggested Motion- Move to go into Executive Session to consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual and to reconvene in Open Session.

Exception 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 governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

Suggested Motion- Move to go into Executive Session to discuss strategy with respect to collective bargaining, and to reconvene in Open Session.

Suggested Motion- Move to go into Executive Session to discuss strategy with respect to litigation, and to reconvene in Open Session.

Suggested Motion- Move to go into Executive Session to conduct strategy sessions in preparation for negotiations with nonunion personnel, and to reconvene in Open Session.

Suggested Motion- Move to go into Executive Session to conduct collective bargaining sessions, and to reconvene in Open Session.

Suggested Motion- Move to go into Executive Session to conduct collective bargaining sessions or contract negotiations with nonunion personnel, and to reconvene in Open Session.

Exception 4. To discuss the deployment of security personnel or devices.

Suggested Motion- Move to go into Executive Session to discuss the deployment of security personnel or devices, and to reconvene in Open Session.

Exception 5. To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

Suggested Motion- Move to go into Executive Session to investigate charges of criminal misconduct or to discuss the filing of criminal complaints, and to reconvene in Open Session.

Exception 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 and a person, firm or corporation.

Suggested Motion- Move to go into Executive Session to consider the purchase, exchange, lease or value of real property, and to reconvene in Open Session.

Exception 7. To comply with the provisions of any general or special law or federal grant-in-aid requirements.

Suggested Motion- Move to go into Executive Session to comply with the provisions of [specify the law or grant-in-aid requirement applicable], and to reconvene in Open Session.

Exception 8. To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if 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 or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening. [Note: The motion for this exemption can only be made by the preliminary screening committee or subcommittee. The preliminary screening committee may wish to go into Executive Session to consider the applications, interview people or both; adapt the motion to serve your needs.]

Suggested Motion- Move to go into Executive Session to consider [and if applicable-] and interview applicants for employment, and to reconvene in Open Session.

Exception 9. To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group, or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice may be required in this section.

Suggested Motion- Move to go into Executive Session to meet or confer with a mediator and to reconvene in Open Session.

Violations of the Open Meeting Law can subject the community to fines of up to \$1,000.00 for each meeting in violation of the law. A Court can also invalidate the action taken in violation of the law. Following the law and consulting with your legal counsel will minimize and hopefully avoid violations of the Open Meeting Law.

MINUTES

Accurate minutes are to be kept and maintained of all meetings. The law requires the minutes to set forth: (a) the date; (b) the time; (c) the place; (d) the members present or absent; (e) the actions taken; and for Executive Sessions, (f) the votes, by recorded roll call votes.

Minutes need not be transcripts of everything said. They should accurately reflect what business was before the board of committee.

Open Session minutes become public records once made, not necessarily approved. Thus, even if the minutes have not been approved, they are subject to disclosure, unless an exemption applies.

Executive Session minutes remain confidential until the reason for the Executive Session no longer exists. Executive Session minutes should be approved just as Open Session minutes for content. Such approval does not however authorize their release. You need to separately determine that the purpose of the Executive Session no longer exists. At that point, the minutes are public.

The law does not permit secret ballots in voting, nor does it sanction telephone votes or votes by proxy.

Papers presented at a meeting or hearing should be marked as being received on that date and time and initialed. If there is a matter involving a lot of documents coming in, such as a hearing, it is helpful to make a document list and assign each document a number.

Importance of the Record- Many matters before boards and committees are reviewable by a court on an appeal. In many of these matters, the appeal is based on the record developed before the board or committee. Thus it is very important to adequately develop a record which is going to reflect accurately what went on and most importantly, support your decision. The record can consist of testimony and exhibits. Be sure that the documents which need to be presented to sustain your decision have been introduced into the record. If something is not part of the record, it is not going to go before the judge and that may cause your decision to be reversed. Do not presume that because you may know something that it need not appear in the record as an exhibit.

This memo and the *Quick Index Chart* presents an overview of the law on meetings and minutes. There are many exceptions to the rules and other technical points. However, the above should give you sufficient guidance for most of the matters you are going to deal with. When in doubt or if you are uncertain about anything, call your local municipal legal counsel to discuss it further. An ounce of prevention is worth an avoided law suit.

Provided as a public service by the City Solicitors & Town Counsel Association, the professional bar association of attorneys representing municipalities and related agencies. For more information on the Association, please contact us at 115 North Street, Hingham, MA 02043, 6170749-9922; FAX 617-749-9923. This material is provided as general information. Since laws frequently change and the application of laws to a particular set of circumstances depends on a variety of factors, you should consult with an attorney for specific legal advice and provide the attorney with all the pertinent facts.