

The New Open Meeting Law

Training for Acton, MA

July 21, 2010

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The New Open Meeting Law

- Chapter 28 of the Acts of 2009
 - Enacted New Open Meeting Law
 - Part of Ethics Reform Legislation
 - Effective July 1, 2010
 - New OML = G.L. c. 30A, 18-25
 - Consolidated Local, County and State OMLs
 - Repealed OMLs

OML Resources

- [AG's Guide to New OML](#)
- [AG's Emergency Regulations 940 CMR 29](#)
- [A&K Memo on New Executive Session Rules](#)
- [AG's Responses to OML Questions](#)
- [**Need More? Visit AG's Website**](#)

What's New?

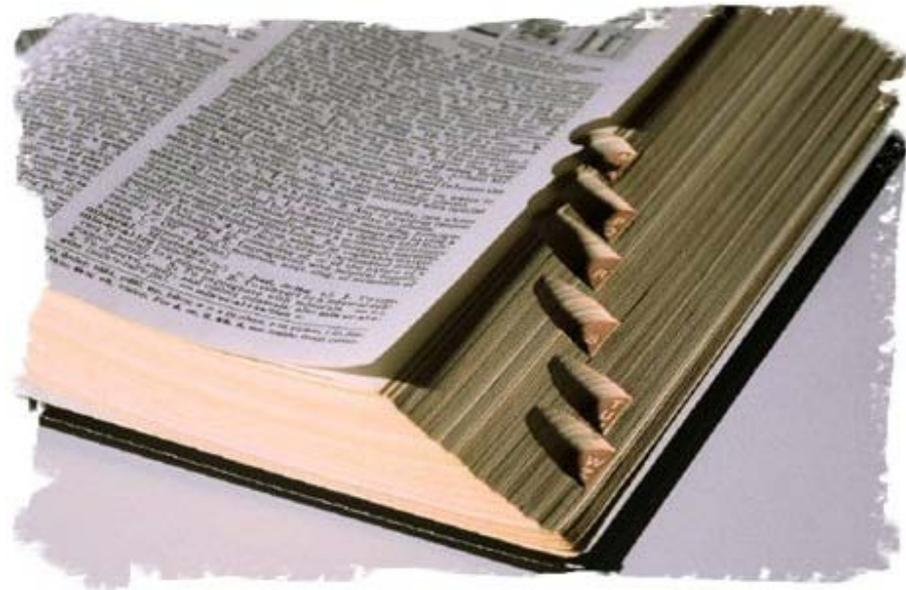
- Definitions
- Certification
- Notice and Posting Requirements
- Meeting Procedures
- Record Keeping Requirements
- Enforcement Mechanisms
- Regulations

Why Today's Training?

- Avoid Mistakes
- Prevent Complaints
- Minimize Cancellations
- Save Time and Money
- Protect Decisions
- Ensure Reputation
- **Yours and the Town's**

Key Definitions

- “Meeting”
- “Deliberation”
- “Public Body”
- “Intentional Violation”



“Meeting”

- “A deliberation by a public body with respect to any matter within the body’s jurisdiction.”
- Exceptions ...

Exceptions to “Meeting”

- “attendance by a quorum of a public body at a **public or private gathering**, including a conference or training program or a media, social or other event, so long as the members **do not deliberate**”
- **This OML training session qualifies – as long as you don’t deliberate.**

Exceptions to “Meeting”

- “an **on-site inspection** of a project or program, so long as the members **do not deliberate**”



Image courtesy of <http://www.sutton.gov.uk/index.aspx?articleid=3383>

Exceptions to “Meeting”

- “attendance by a quorum of a public body **at a meeting of another public body** that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and **do not deliberate**”

Exceptions to “Meeting”

- “a meeting of a **quasi-judicial board** or commission held for the **sole purpose of making a decision** required in an **adjudicatory proceeding** brought before it”
- **Caution: Do not use this exception to justify closed-door deliberations in local permit proceedings.**

Exceptions to “Meeting”

- “a session of a **town meeting** ... which would include the attendance by a quorum of a public body at any such session”
- AG #9: Although boards and committees can attend Town Meetings without being subject to the OML, “they should **not deliberate on matters outside of public view.**”

“Deliberation”

- “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.”
- **Includes Email, Blogs, You-Tube, Twitter, Face-Book, Skype, Chat Rooms**
- **Advice: Keep it to yourself until you get to the meeting.**

Exceptions to “Deliberation”

- Distribution of:
 - Meeting agenda
 - Scheduling information
 - Procedural information
 - Reports or documents
- **Provided “no opinion of a member is expressed”**

“Public Body”

- **This Means You:**
 - Every board, commission, committee or subcommittee
 - Created, elected, appointed or otherwise constituted
 - Established to serve a public purpose
 - Including advisory sub-committees
- **But not Town department staff meetings**

“Intentional Violation”

- Act or omission
- **By a public body or a member**
- Knowingly violates the OML
- Repeated conduct where previously “authoritatively advised” that the conduct violates the OML

New Certification

Exhibit A for the Prosecution

- AG Certification
 - Within 2 weeks of qualification for office
 - Appointing authority or town clerk obtains
- Evidence that the member “has read and understands the requirements of the open meeting law and the consequences of violating it.”

New Notice and Posting Rules

- Contents of Notice
 - Date, Time, Place
 - **Topics the Chair “reasonably anticipates”**
(Agenda items)
 - AG # 2(a): Boilerplate disclaimer is not enough.
 - AG # 2(a): Can discuss items “that were not reasonably anticipated by the chair 48 hours in advance of the meeting.”

Time for Posting Notice

- 48 hours ahead
- **Excluding Saturdays**, Sundays, and Holidays
- Email to clerk@acton-ma.gov
- Emergency – post Notice ASAP

Notice Deadlines – Cliff Notes

- **Meeting Night**

- **Monday** - Post by 4:45PM Thursday
- **Tuesday** - Post by 4:45PM Friday
- **Wednesday** - Post by 4:45PM Monday
- **Thursday** - Post by 4:45PM Tuesday
- **Friday** - Post by 4:45PM Wednesday

- **Don't count intervening holidays**

- E.g., if Monday is a holiday, post a Tuesday night meeting by 4:45PM Thursday

Posting Method

- Town Clerk:
 - Posts notice
 - **Conspicuously visible to the public at all hours**
 - In or on Town Hall
 - Accessible in the Town Clerk’s office
 - If not conspicuously visible 24/7
 - Also uses AG-prescribed alternative method
 - Posts notice of alternative method conspicuously visible 24/7 “on or adjacent to the main and handicapped accessible entrances to” Town Hall

Acton's Posting Method

- Town Clerk's written notice to AG
 - Notice posting method
 - Any change to it



- All public bodies “shall consistently use the municipality’s most current notice posting method on file with the Attorney General”
- [Notice of Acton's OML Posting Method](#)

New Meeting Procedures

Chair Controls

- With Chair's permission, address meeting
- At Chair's request, be silent
- If continued disruption after clear warning:
 - Chair may **order the person to leave**
 - If the person doesn't leave, chair may authorize a constable or other officer to **remove the person** from the meeting.
- ***"Don't tase me, bro"***

Electronic Recording

- **Right to record meeting**
 - Audio or Video
 - Transmit through any medium
- Requirements
 - Notify chair
 - Chair informs public at outset
 - Chair reasonably regulates to avoid disruption

- **Welcome to** 
Broadcast Yourself

Remote Participation

Image courtesy of Cisco.com



Remote Participation

- **Participation by telephone or other media:**
 - Subject to AG's regulation or letter ruling
 - **Not yet allowed**
- If allowed, must meet these requirements:
 - Physical quorum
 - Chair physically present
 - All must be audible

Executive Sessions - **Board Must**

- Convene in open session
- Take roll call vote of majority of members to enter executive session
- Record roll call vote in minutes
- Maintain accurate records of executive session
- Take all votes in executive session by roll call (no secret ballots)
- **Not discuss any matter other than purpose for which executive session is lawfully called**

Executive Sessions - **Chair Must**

- **Publicly state** the purpose for the executive session and **all subjects that may be revealed without compromising the purpose** for the executive session
- Announce whether open session will reconvene at end of executive session

Purposes for Executive Session

- Discuss reputation, character, health, discipline, charges, complaints, but not professional competence of individual
- Conduct strategy sessions in preparation for negotiations, to conduct collective bargaining sessions or contract negotiations, with nonunion personnel
- **Discuss strategy for collective bargaining or litigation***
- Security personnel or devices
- Criminal misconduct
- **Acquisition of real property***
- Comply with law or grant-in-aid requirement
- **Preliminary Screening for employment***
- Confer with mediator on litigation or decision
- Trade secrets in the course of activities conducted by a public body as an energy supplier

*** If holding an open meeting would have a detrimental effect and the chair so declares on record beforehand.**

Expanded Minutes

- Was:
 - Date
 - Time
 - Place
 - Members
 - Actions
 - Votes
- Now Also Includes:
 - **Summary of Matters Discussed**
 - **List of Documents “Used”**



Image courtesy of web.utk.edu/~prssa/resources.html

Open Session Records

- Meeting minutes
 - Create and approve in a timely manner
- Documents and exhibits used
 - List in minutes and retain
- Public Records (unless specifically exempt)
 - **Minutes, even if still in draft form**
 - **Notes, recordings, materials used to prepare minutes**
 - Documents and exhibits used

Executive Session Minutes and Records

- Disclose once publication will no longer defeat executive session purpose unless
 - Exempt from public records law or
 - Attorney-client privileged
- **Review periodically**
 - By chair or public body
 - Determine if purpose of executive session remains
 - Include determination in subsequent meeting minutes

Timetables to Review Minutes

- Open Session Minutes
 - Available on request in 10 days
- Executive Session Minutes
 - Review at regular intervals to determine whether reason for withholding continues
 - Provide within 10 days in response to a request, unless a review has not yet been undertaken, in which case **board must review minutes at its next meeting or within 30 days, whichever comes first**



Image courtesy of <http://www.ivc.edu>

Complaint Process

Self-Correction

- Person Files Complaint
 - File with Town Clerk within 30 days
 - Board members get a copy
- Public Body's Response
 - **Review complaint, send copy to AG, describe actions taken to resolve issues**
 - Within 14 Business Days
 - 24 Business Days if additional info requested from Complainant
 - Further extension discretionary with AG

Escalated Complaint Process

- **“Can’t Get No Satisfaction”**
 - File Complaint with AG
 - Within 90 days after alleged OML violation



"I don't like this complaint department."

AG's Enforcement Tools

- **Increasingly Onerous for Volunteer Board**
 - Investigate
 - Request additional information
 - Conduct hearing
 - Issue subpoenas
 - Take testimony
 - Determine whether violation occurred
 - Determine whether violation was intentional

Attorney General Remedies

- **Increasingly Painful to Board, Individual and Town**
 - Compel OML compliance
 - Compel release of minutes or other materials
 - Compel OML training attendance
 - **Nullify action** taken in violation of OML
 - **Reinstate employee and make whole**
 - **Impose civil penalty** for intentional violation
 - Up to \$1,000 per violation
 - Imposed on public body
 - Specify other appropriate relief
 - File suit to compel compliance with AG's Order



VOTE



Appeal of AG Order

- Appeal
 - **By public body or aggrieved member**
 - To Superior Court
 - Within 21 days of receipt of AG's order
- Appeal stays AG's order
 - But if AG's order nullifies action of public body, "the body shall not implement such action pending judicial review"

Alternative OML Enforcement

- Plaintiff: **AG or 3 or more voters**
- Suit: in Superior Court to enforce OML
- Remedies:
 - Same as AG's plus
 - All other remedies available to Superior Court
- Goal: “speediest possible determination”
- Burden of proof: on defendants (**i.e. you**)

Civil Penalties

- **Can Individual Be Subject to \$\$\$ Penalty?**
 - Statute and regulations speak of “civil penalty” or “fine” upon public body
 - But statute also says, “If any public body **or member thereof** shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to **pay any civil penalty** imposed ...”
 - And alternative enforcement statute says “**no civil penalty may be imposed on an individual absent proof** that the action complained of violated” the OML
- Defense to penalty = “public body, after full disclosure, acted in good faith compliance with the advice of the public body’s legal counsel”
- **You do not want to be the test case.**

Public Comments on AG Regs

- AG's Public Hearing on Regulations
 - Boston – 8/5/10 1:00 pm
 - Worcester – 8/9/10 1:00 pm
- Comments until 8/18/10 at 5:00 pm

Take Aways

- To comply:
 - Observe the formalities
 - Stow opinions for the meeting
- To violate
 - Ignore the formalities
 - Express opinions in e-media
- Complaints
 - Easier to make
 - Easier to prove: Electronic records
- Consequences
 - Increasingly serious
 - Time, money, energy, penalties

An Ounce of Prevention ...

- Posting problem – Postpone the meeting
- Item not listed on posted notice - Save it for later
- Receive problematic email
 - Gently remind board member individually not to do so
 - Remind fellow board members at a meeting not to do so
- Receive several problematic emails
 - Ask Town Manager to admonish offender
- See a pattern of problematic emails
 - Ask Town Manager to involve Town Counsel
- Discussion strays off topic in executive session
 - Speak up – get back on topic
- **Police yourselves before others police you.**



Image courtesy of <http://www.mediabistro.com/fishbowlDC/original/police.png>

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