

# **THE So-CALLED “SUNSHINE LAWS”: OPEN MEETING, PUBLIC RECORDS AND CONFLICT OF INTEREST LAWS**

**TOWN OF STERLING**

**July 13, 2020**

**PRESENTED BY GREGG J. CORBO, ESQ.**



**THE LEADER IN PUBLIC SECTOR LAW**

**ATTORNEYS AT LAW**

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# Sunshine Laws

- Open meeting, public records and conflict of interest laws exist throughout the country at state and federal levels
- Purpose generally is to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based
- Under the Open Meeting Law (“OML”), public bodies can only conduct business through public meetings, unless an exemption allowing executive session exists
- Under the Public Records Law (“PRL”), virtually any record created or received by a government employee or official is subject to mandatory disclosure
- The Conflict of Interest Law (“COI Law”) is intended to ensure that the Town’s interests, rather than personal interests, dictate action by public employees and officials

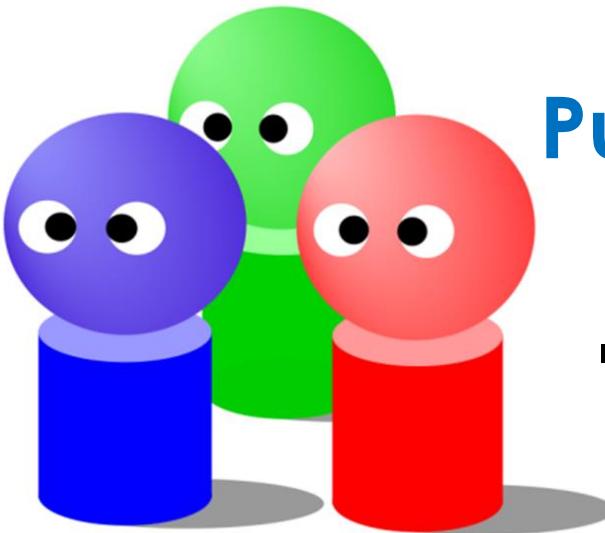
# Open Meeting Law

- ◆ What types of meetings are subject to the law (and why does it matter)?
- ◆ What rules need to be followed to hold a meeting?
- ◆ What are common violations and why?

# OML Definitions

- **Meeting:** A **deliberation** amongst a **quorum** of a **public body** to discuss matters within the jurisdiction of the body
- **Deliberation:** “[A]n 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...”
- **Quorum:** A majority of the full complement of members of a multiple-member body, except in limited circumstances
- **Public body:** A “multiple-member board, commission, committee or subcommittee...within any...city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose....”





# Public Body – Subcommittee

- Subcommittee – any multiple-member body created to advise or make recommendations to a public body:
- Intent to create a subcommittee is not required or determinative;
- AG looks to three factors in determining if group constitutes subcommittee, is it “within government”, “empowered to act collectively”, and serving a “public purpose”.
- **Practical way to avoid violations:**
  - One person does not constitute a subcommittee
  - Conservative approach - when two or more members are tasked to accomplish something together, post meetings and comply with OML
- Note that committees created by sole officer (e.g., Town Manager or Superintendent) who has authority to act independently are excluded, i.e., the so-called “Connelly Rule.”

# OML –Legal Requirements



Addresses three major issues:

## 1. Notice

- a) timing (posted no less than 48 weekday hours)
- b) location (must be posted in location accessible 24-hours a day, including website, and meeting must be held in ADA accessible location)
- c) level of detail (must list specific matters to be discussed reasonably anticipated by chair of public body; no acronyms; include executive sessions if applicable; avoid shorthand references)

## 2. Purpose

- a) presumption for open session
- b) limited authority to meet in closed (executive) session

## 3. Minutes

- a) content (specific enough to allow someone who was not present to know what was discussed)
- b) timing (within three meetings or 30 days, whichever is later)
- c) approval (in accord with above timeframe, either the body or a designee thereof)

# Meetings - Exceptions

Provided no opinions of the governmental body are expressed, attendance or distribution amongst a quorum will not constitute a “meeting” or a “deliberation”:

1. Distribution to the public body by a member of:
  - A meeting agenda;
  - Scheduling or procedural information;
  - Reports or documents that may be discussed at an upcoming meeting, so long as the material does not express the ideas, feelings, beliefs, opinions of a member of the body.
2. Attendance at an on-site inspection
3. Attendance at a public or private gathering or social event
4. Attendance at a posted meeting of another public body, communicating only by open participation on matters there under discussion and not privately among themselves



# Meetings



## Practical approaches to avoid violations:

- If attending a meeting of another body or a social event, avoid creating the appearance that a body is discussing municipal business;
- If attending a site visit or meeting of another body, post follow-up meeting of board or committee if members anticipate that they might want to discuss matters amongst themselves or respond to matters raised;
- If a member wishes to speak at a posted meeting of another public body, the member should be clear that the member is not representing their public body, but instead speaking as an individual; ***OR***
- Post “joint” meeting to be held at same time and place

# Deliberation–Email

-  now explicitly addressed in the OML
- A quorum may not use e-mail to share their ideas, feelings, opinions, beliefs, whether serially or in a single e-mail, on board business, and may not use a non-member to avoid law



## Practical approaches to avoid violations:

- ✓ Beware of “**reply to all**” on emails
- ✓ Limit use of **e-mail to scheduling purposes**, and try to avoid using e-mail to undertake Town business
- ✓ Assume that e-mail may be forwarded to unintended recipients, and therefore limit content to business matters; be prepared to read e-mail in local newspaper or blog
- ✓ Don’t ask for or express opinions, ideas, feelings, beliefs or impressions in an e-mail to other members



# Deliberation—Social Media

- Social media also subject to the OML
- Alternative electronic communications have become more prevalent, including blogging, instant messaging, texting, social networking such as Facebook, Snapchat, and Twitter

## Practical approaches to avoid violations:



- ✓ Do not direct comments to other members of body
- ✓ If matter directly involves issue pending before body, consider not engaging
- ✓ Be thoughtful about manner in which comments are made
- ✓ Consider using separate accounts for campaign purposes and following election
- ✓ Remember that applicants have due process rights; if the board member is involved in a matter adjudicating the rights of others, only discuss matter at the hearing



## **Personal Use Of Social Media – Practical Steps**

- If public official or employee will use social media, make sure to differentiate between any “official site”, and a “private” site, such as a campaign site
- If you post on social media in “personal” capacity, make sure that the post so indicates
- Use municipal e-mail address rather than a private e-mail address for “official business”
- Use social media in “official capacity” for public announcements, emergency alerts, event reminders
- DO NOT debate or discuss matters with members of the public if such matters are or could be pending before the Board



## **Before the Meeting - Notice/Agenda**

- The meeting notice (aka “agenda”) must be posted at least 48 hours prior to the meeting, not counting Sat., Sun., or legal holidays.
- The notice must include “the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.” G.L. c. 30A, § 20(b). The list of topics shall have “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03(l)(b).
  - Per the Attorney General’s Office, a topic will generally be considered to include sufficient specificity when a reasonable member of the public could read the topic and understand the anticipated nature of the public body’s discussion.
  - The sufficiency of the meeting notice will be judged both on its face, and in context of what was actually discussed.

# Posting - Practical Considerations

- For a Monday meeting, notice must be posted on Thursday
- If Monday is a holiday, a Tuesday meeting must also be posted on Thursday.
- Clerk should time stamp notice to ensure accurate record exists of filing.
- If posting is made in an “alternate location”, notice must be timely posted in both locations.
- A meeting may not be continued from one night to the next unless the meeting is properly posted under the OML
- The notice required under the OML *does not substitute for or otherwise supersede* notice requirements under other applicable laws.

## More on Agendas...

- Location of Posting – must be filed with Town Clerk and posted in a manner conspicuously visible to the public at all hours in, on or near Town Hall (and accessible at Clerk's office during normal business hours).
- Write out terms that may not be familiar to the general public (i.e. replacing "HUD CPD HOME" with "Department of Housing and Urban Development Community Planning and Development HOME Investment Partnerships Program").
- Meeting notice must indicate time/date of posting.
- If revised, must state both the date and time of the original posting and the date and time of the revised posting.

# What can we talk about???

- **Matters not reasonably anticipated** by chair MUST be added to agenda after posting deadline to extent feasible
  - ✓ Updated agenda must show time and date of update, as well as change to agenda
- **Matters not reasonably anticipated** by Chair MAY be discussed and acted upon
  - ✓ **AG recommends** that unless matter requires immediate action, should be put off to later meeting and included in posting



## ***Notice – Placeholders Now a “No Go”***

Regularly occurring items need more detail, so, unless included to notify the public that unanticipated issues may be discussed:



# Notice – EMERGENCIES

- Limited instances when a public body can meet without the requisite 48 hours advance notice/posting.
- Poor planning does not equal an emergency!
- Natural disasters and public safety issues do qualify as emergencies.

- **Practical Recommendations:**

- Comply with the law to the extent possible;
- Limit deliberations to emergency matter;
- Take minutes of meeting, and review and include with minutes of next regularly scheduled meeting;
- When posting an emergency meeting, consider posting a regular meeting as well, to allow body to ratify the action taken at emergency meeting.



# REMOTE MEETINGS – STATE OF EMERGENCY

- Ordinarily, all meetings must be held in a public place, that is open to and accessible by members of the public.
- In order to slow the spread of COVID-19, Governor Baker issued an Executive Order suspending certain provisions of the Open Meeting Law.
- For the duration of the State of Emergency:
  - Public bodies are not required to hold meetings in locations that are open to the public, provided that the public body makes provision to ensure public access to the deliberations of the public body for interested members of the public ***through adequate, alternative means.***
  - This means that there must be measures that provide transparency and permit timely and effective public access to the deliberations of the public body. Such means may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology ***that enables the public to clearly follow the proceedings of the public body while those activities are occurring in real time.***

# REMOTE MEETINGS – STATE OF EMERGENCY

- As with meetings conducted in the normal course, public participation is not required in general business meetings of a public body. If, however, the public body allows public participation or if the meeting is a public hearing, members of the public must be able to communicate with the body and be heard by other members of the public.
- A public body may choose to have only the members of the body attend the meeting in person and prohibit attendance by members of the public.
- The Attorney General takes the position that if any members of the public are permitted to attend in person, there must be enough room for all members of the public to attend in person. The Attorney General does not allow public bodies to allow only some members of the public to attend in person.
- If you allow in-person attendance and cannot comply with social distancing requirements, meeting must be postponed or moved to a larger location.

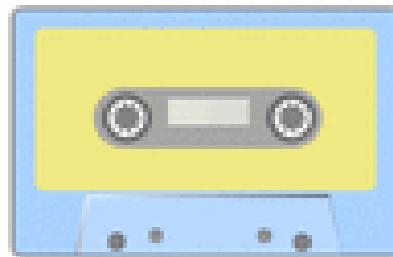
# REMOTE MEETINGS – STATE OF EMERGENCY

## Final Tips

- When meetings are conducted virtually, the meeting notice must provide instructions as to how the public can view and participate in the meeting.
- All votes taken in a virtual meeting must be by roll-call vote, even if the vote is unanimous.
- All other provisions of the Open Meeting Law apply, meaning that notice must be posted at least forty-eight hours prior to the meeting, the notice must contain a detail list of topics the chair anticipates will be discussed, executive session must be identified and for a permissible purpose and minutes must be kept.

# Conducting Meetings - Recording

- Chair must make public statement regarding audio or video recording if attendee intends to record (basis – MA wiretap statute).
- Recording by individuals:
  - Must inform the Chair;
  - Chair must make required announcement;
  - Chair may reasonably regulate recordings (placement, operation of equipment)



# Executive Session



## Process:

- First convene in open session.
- State the purpose(s) of executive session **“stating all subjects that may be revealed without compromising the purpose for which the executive session was called.”**
- Take and record roll-call to go into executive session.
- Announce if open session will reconvene afterward.
- Maintain exhibits and documents used in reasonable proximity to minutes.
- Only discuss matters cited.
- Take all votes by roll-call.

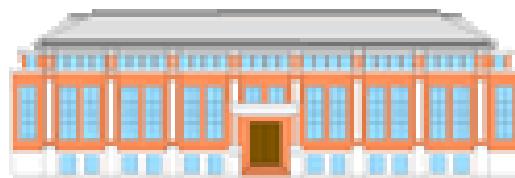
# Executive Session – Purposes



1. Reputation, character, physical condition or mental health, rather than professional competence, **of an individual**, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. (**48 hours NOTICE to individual required**)
2. Conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. 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 public body *and the chair so declares* ...
6. Consider purchase, exchange, lease or value of real property *if the chair declares* that an open meeting may have a detrimental effect on the negotiating position of the public body

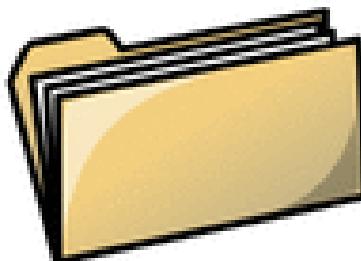
# Executive Session – Practical Issues

- If executive session is anticipated, it must be listed in appropriate detail on **meeting notice**, with such specificity as is possible without compromising purpose of the session.
- Related **vote to enter executive session** must also include all information possible without compromising purpose of session (i.e., name of non-union personnel or union must be identified in notice and vote if bargaining or negotiations will be conducted; case name to be discussed under litigation strategy must be listed, unless doing so would compromise Town's position); **and declaration must be made, as needed.**



# Meeting Minutes - Content

- Date, time, place of meeting, and members present and absent;
- **Detailed** summary of discussion of each topic sufficient to allow a person not present at the meeting to understand the substance of what occurred at that meeting;
- Decisions made, actions taken, and votes recorded (no secret ballots permitted); and
- List of documents and other exhibits **used** by the body at the meeting, which will be “part of record” but not of minutes;
  1. Document is physically present at meeting; and
  2. Document is verbally identified; and
  3. Content of document is discussed by members (OML 2012-42).



# *Minutes - Approval*

**Open session minutes** must be created and approved in timely manner.

- New regulations provide that approval must occur generally within the next 3 meetings or within 30 days, whichever is later.
- Minutes of open meetings are public records as of moment of their creation, regardless of whether they have been approved.
- Upon request, minutes must be made available within 10 days.



# *Executive Session Minutes - Approval*

## **Executive Session Minutes**

- May be withheld until purpose of exemption has been met, **unless otherwise protected under the Public Records Law;**
- Chair of public body directed to review executive session minutes periodically and bring to the body for its approval minutes for which the purpose of the executive session has expired;
- Can approve in executive session, either under purpose for which session was originally held, or, if more than one purpose, under Exemption 7, referencing law that allows the same.
- Must provide a response to a request for executive session minutes within 10 calendar days.



# **ENFORCEMENT**

## **Complaint Process:**

1. Written complaint filed with public body within 30 days of alleged violation;
2. Public body must forward complaint to AG within 14 business days of receipt and inform AG of any remedial action taken; and
3. Complaint may be filed with AG after 30 days from the date complaint was filed with public body.

# ENFORCEMENT

- **Attorney General requires Public Body to consider complaint at properly posted meeting:**
  - Matter must appear on meeting notice
  - Body must acknowledge receipt of complaint
  - Should deliberate concerning allegations *and* possible resolution
  - Vote to resolve complaint
  - If appropriate, authorize response to be prepared and sent to Attorney General and Complainant
- **Cure:**
  - “Public deliberation (at a properly posted open meeting) effectively cure the private discussion which occurred over email because it enabled the public to see the discussion that went into the creation of the policy. To cure a violation of the Open Meeting Law, a public body must make an independent deliberative action, and not merely a ceremonial acceptance or perfunctory ratification of a secret decision.” See OML 2011-14.

# **Enforcement – Attorney General Options**

- Upon finding a violation, the AG has a range of enforcement options from compelling compliance with OML and/or attendance at a training session and/or creation or disclosure of minutes, nullifying action taken, imposition of \$1,000 fine for intentional violation. Public body may seek judicial review in Superior Court within 21 days of receipt (this would stay the AG's order, but the public body may not implement any action taken, pending appeal)
- AG may file action in Superior Court to require compliance.
- 3 registered voters may bring action in Superior Court.





# Recent Notable Court Decisions

- Corey Spaulding v. Town of Natick School Committee, Middlesex Superior Court (November 2018) – public comment during public meetings. Committee improperly limited comments made by members of the public which were critical of the Committee in violation of free speech rights.
  - Where a multiple member body allows “public comment,” or “open forum,” its public comment policies and practices must ensure that any restrictions on such discussions, including as to time, are specific and narrowly tailored to the public body’s interest.
- Town of Swansea v. Maura Healey, Suffolk Superior Court (October 2018) – sufficiency of meeting notices. Division applied subjective criteria, such as available bulletin board space, to determine whether a meeting notice was sufficiently detailed.
- Boelter v. Board of Selectmen of Wayland, 479 Mass. 233 (2018) – employee evaluation process by public bodies. Circulation of employee evaluations containing opinions of Board members as to employee’s performance between a quorum of the Board violated the Open Meeting Law.
  - Updated guidance from the DOG on performance evaluations to track the Boelter decision.

# Public Records Law

- ◆ What is a public record (and why does it matter)?
- ◆ When do records have to be disclosed?
- ◆ When can I destroy records?

# What is a Public Record?



[A]ll books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee...

# Public Records

- The Public Records Law analyzes the CONTENT of a record, not the form.
- May include e-mails and other electronic communications, *even if sent or received from a personal e-mail account.*
- Volunteers and the records they make and receive are not “exempt”
- Use of municipal e-mail addresses or creation of specific e-mail address for public role can address records retention issues
- Could include text messages



# Public Records Requests

- Request may be made in person, or in writing, whether by mail, request form at “counter”, or by e-mail or fax
- Records Access Officer (“RAO”) must respond within ten **business** days – **not calendar days** (Saturdays, Sundays and legal holidays do not count; days Town Hall is closed DO count, however)
- If the response does not provide all requested records, detailed written response is required
- Must list specific exemptions and provide detailed explanation of application of exemption to requested record

**EMEMPT**

# Public Records Requests - Response

- Must respond within 10 **BUSINESS** days; failure to do so means **NO FEE  
MAY BE ASSESSED**
- Work with the Records Access Officer (RAO)
  - Duties include assisting requesters, records custodians, preparing guidelines to enable requesters to make “informed” requests, including a listing of categories of records
- If full response, including provision of records, cannot be made within 10 business days, RAO must respond to the requester in writing
- A full list of required elements for response appear on next page, and requires:
  - Confirming receipt
    - Identifying correct custodian/RAO if not correct
    - Outlining what will be withheld, if known, and reason why
    - Explaining reason for inability to provide the same within the timeframe
    - When a response is expected



# Public Records Requests - Required Elements of Response



1. Confirm receipt and date of request;
2. Identify requested records or categories of records not within possession or custody of RAO; identify agency, municipality, RAO or custodian with custody, if known;
3. Identify records that RAO intends to withhold and/or redact, *detailing with specificity* reasons therefor and asserting applicable exemptions;
4. Identify records produced or intended to be produced and, if necessary, a detailed statement describing why response time in excess of 10 business days is required;
5. Identify anticipated timeframe for production – **cannot exceed 25 business days after receipt of request without extension** – and provide detailed explanation of how request unduly burdens other responsibilities, including, magnitude or difficulty of request, size of office, office hours;
6. If more than 25 days response time is anticipated, notify requester of possible/actual petition to Supervisor for extension of time and include request for requester's voluntary assent to additional time;
7. Suggest a modification of request if appropriate to reduce estimated response time and cost;
8. Itemized good faith estimate of fees, if fees will be charged; if municipality has 20,000 residents or less, population data to justify charging fees for all time incurred; and
9. Statement informing requester of the right of administrative appeal to the Supervisor of Records under 950 CMR 32.08(1), and the right to seek judicial review of any unfavorable decision by commencing a civil action in the superior court pursuant to G.L. c.66, §10A(c).

# Timing for Responses

- Records or initial response within **10 business days**
- If initial written response provided, additional **15 business days** to provide the records, for a total of **25 business days** from receipt of original request to provide full response
- RAO may, within **20 business days** of receipt of request, petition the Supervisor of Records for additional time, **not to exceed an additional 30 business days** “for good cause shown”
- Requestor can grant additional time, and such grant should be confirmed in writing
- If request is in writing, request is deemed received on the first business day following receipt; oral request is deemed received on the day it was made



# Fees

- Copies \$.05/page for black and white, two sided
- Otherwise, actual cost (of storage device, postage, oversize plan copying etc.)
- Eligible for “small town exception” (less than 20,000 people) – first two hours of search time may be charged
- Rate capped at \$25.00 per hour (petition process available)
- Segregation must be “authorized” by law
- The provisions of 950 CMR 32.06 provide. “a records access officer may delay provision of records until all fees related to such requests are paid in full . . . in accordance with 950 CMR 32.07.”

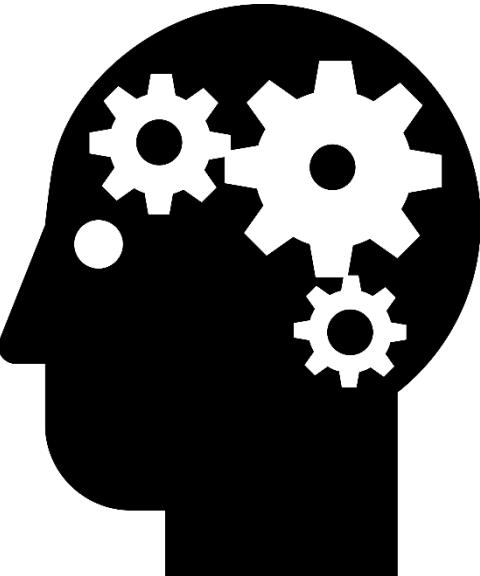
# Commonly Used Exemptions

- Exemption (a) allows withholding of records that are “specifically or by necessary implication exempted from disclosure by statute.”
- Examples include:
  - CORI (e.g., 803 CMR 2.23; 803 CMR 5.14)
  - Domestic Violence Reports (G.L. c. 41, §97D)
  - Student Records (e.g., 603 CMR 23.07)
  - MCAD documents (aside from the initial complaint and investigative determination) (804 CMR 1.04)
  - Abatement Applications (G.L. c. 59, §60)

# Commonly Used Exemptions



- Exemption (c) – Personnel or medical records OR records where privacy rights of record subject outweigh public's "right to know"
- Exemption (d) – Deliberative process documents, including those between governments on matters for which policy positions are being developed, including legal advice



# Commonly Used Exemptions

- Exemption (e) – Personal notes not properly part of the “file” and that have not been shared
- Exemption (f) – Records of ongoing investigations until disclosure will not affect investigation AND records reflecting the names and identifying details of voluntary complainants and witnesses



# Commonly Used Exemptions

- Exemption (n) – Infrastructure exemption for withholding of records that the custodian reasonably believes is “likely to jeopardize public safety”, including ***cyber security***
- Exemption (o) – Personal ***e-mail***, home address and home telephone number of a public employee in public entity’s records where persons are characterized as such



# Appeals



## Forum Options

- To Supervisor of Public Records (decision must issue in **10 days**);
- If dissatisfied with Supervisor decision, requester may appeal decision to Superior Court
- Attorney General may enforce orders of Supervisor, seek to intervene in a pending suit or bring her own suit in Superior Court; and/or
- Requester may appeal directly to Superior Court;

## Risks

- In court, presumption for award of attorneys fees if plaintiff is successful even in part, including if once suit is filed town provides requested records;
- In court, if plaintiff is successful, public records fees will also be waived unless town is able to demonstrate action consistent with previously existing precedent or with prior decisions of Supervisor of Public Records; court has discretion to waive fees even if plaintiff is unsuccessful

# Electronic Records Preference

*Posting of certain records required, if “feasible”, and posting should be monitored by RAO to ensure posting is timely:*

- final opinions, decisions, orders, or votes from proceedings;
- annual reports;
- notices of regulations proposed “under chapter 30A”;
- notices of hearings;
- winning bids for public contracts;
- awards of federal, state and municipal government grants;
- minutes of open meetings;
- budgets; and
- any public record information of significant interest that is deemed appropriate to post



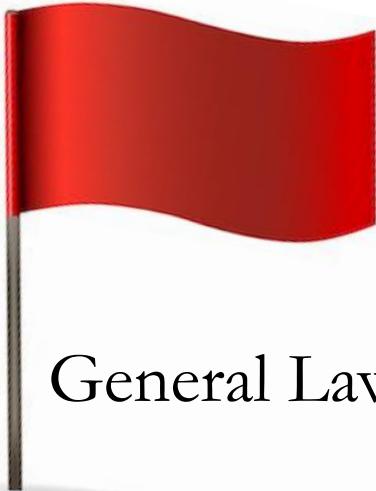
# Creating Records – Best Practices

- Use Town e-mail account for Town business;
- Deliver any records created outside of Town hall or off of Town servers to Town Hall;
- Ensure that when you hit “send” on an e-mail, you are comfortable with that e-mail being forwarded, printed, posted and tweeted;
- Use “formal tone” when conducting Town business in writing (and otherwise);
- Avoid asking for or providing personal information in Town e-mails, including unpublished telephone numbers, medical information, social security numbers, financial account numbers, and the like;
- Consider whether formal record is required (as one Town Manager put it, “Phones still work”)



# Conflict of Interest Law

- ◆ Who is a municipal employee?
- ◆ When am I prohibited from acting because of a financial interest?
- ◆ When do I have to file a disclosure?



# COI for “Municipal Employees”

## General Laws c.268A – Conflict of Interest Law

- 17 - Agency – a municipal employee may not act as agent for any entity other than the municipality, except under very limited circumstances
- 19 - Financial Interests – a municipal employee may not participate in a matter in which they, a business in which they are an owner, director or employee, or an immediate family member has a financial interest
- 20 – Multiple Positions/Contracts – a municipal employee may not have a second paid position with the Town, or a contract with the Town, except under limited circumstances
- 23 - Code of Conduct – a municipal employee may not participate in a matter in which it appears they might act for reasons other than the Town’s best interests

# Chapter 268A, §1 – Key Definitions

“Municipal Employee” ... a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving ~~with~~ or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding : (1) elected members of town meeting, and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.



# Special Municipal Employee

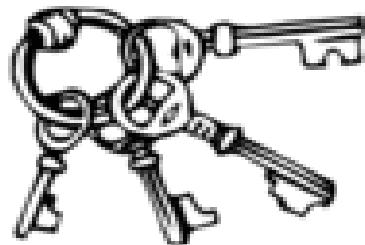
A “Special Municipal Employee” is a position that:

- has been designated by the Board of Selectmen (but cannot include the Board of Selectmen in towns of more than 10,000);
- is unpaid, or part-time up to 800 hours per year; and
- is treated less stringently under certain sections of the COI law.

# Chapter 268A, §1 – More Key Definitions

“Immediate family” – the municipal employee, the employee’s spouse, and each of the employee’s and spouse’s parents, children, brothers and sisters.

“Disclosure” – a writing stating relevant facts and, either submitted by a municipal employee to the employee’s appointing authority, or, if no appointing authority exists, in a manner that is public in nature, such as filing with the Town Clerk.



# "Code of Conduct" – General Standards

G.L. c.268A, §23 establishes a so-called "Code of Conduct" applicable to all municipal employees, regardless of whether they are compensated.

- G.L. c.268A, §23(b)(2) – a municipal employee may not solicit or receive anything of substantial value (\$50) for or because of their position or use or attempt to their office to obtain for any unwarranted privilege of substantial value "not properly available to similarly situated individuals".
- G.L. c.268A, §23(b)(3) – a municipal employee may not "act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances," to conclude that the employee are acting with bias, favoritism or otherwise for personal reasons.



# Restrictions on Gifts



- G.L. c.268A, §3: May not accept gift of “substantial value” [\$50 or more], if given “for or because of” any official act performed or to be performed under your official responsibility.
- Regulations: 930 CMR 5.00. Some gifts are exempt from G.L. c.268A, §3; some require written disclosure; others are prohibited.
- Exempted gifts: If entirely unrelated to employee office or any official action, e.g. birthday present, Town employee phone discount plan, raffle prize, etc.



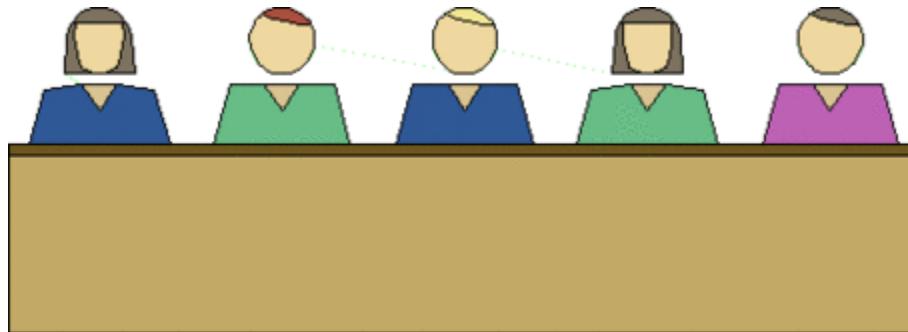
# Certain Gifts - Allowed if Disclosed

- Written disclosure may be required: If related to office or action, and less than \$50.
- Disclosure also necessary to avoid appearance of impropriety, §23(b)(3).
- File disclosure with appointing authority or, if none, Town Clerk.



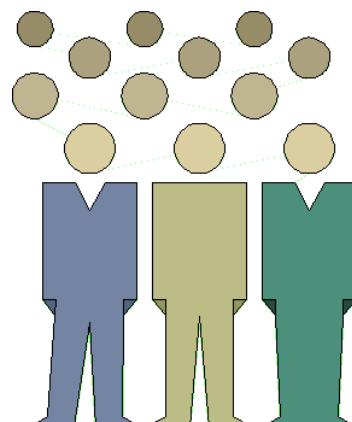
# Restrictions on Gifts - Exemptions

- Exemptions: Several specific exceptions; for example, travel expenses if for legitimate, job-related public purpose. Training events/ conferences = OK, for legitimate public purpose.
- Includes “incidental hospitality” [cost of admission, refreshments]. 930 CMR 5.08



## Receiving Money from or Acting as Agent for Private Party

- G.L. c.268A, §17: May not (a) receive compensation from anyone other than the Town, or (b) act as “agent or attorney” for anyone other than the Town, with regard to any particular matter in which the Town is a party or has a “direct and substantial” interest.
  - Purpose is to avoid appearance of, or actual, divided allegiance;
  - Note: Special municipal employees are prohibited only from acting as agent before ***their own*** board or office.



# Acting as "Agent"

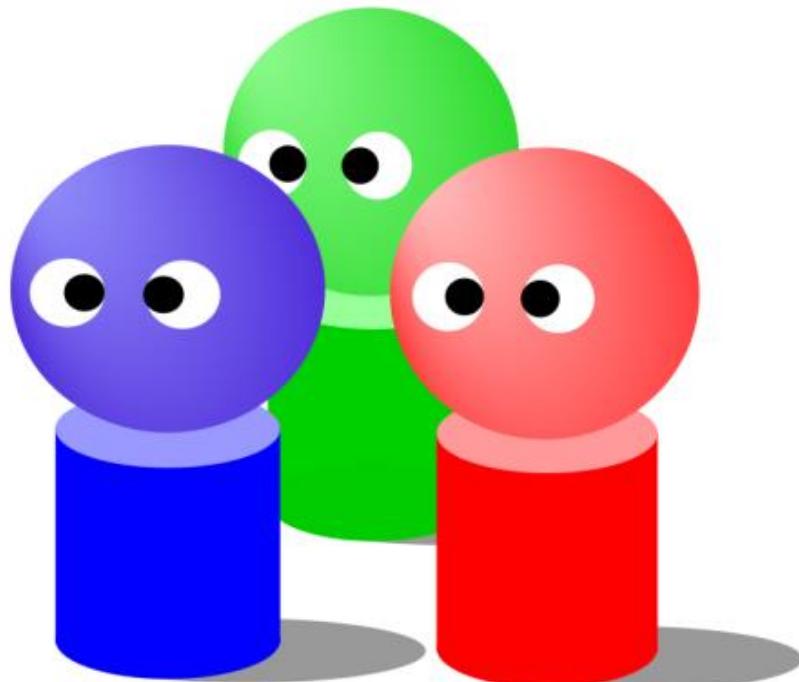
- Definition: A person who represents another person or organization in dealings with a third party, i.e., almost any instance where a municipal employee is acting on behalf of someone else by:
  - contacting or communicating with a Town office
  - acting as a liaison with private party
  - providing documents to a Town office; or
  - serving as spokesperson before a Town authority



# Acting as “Agent” - Exemption

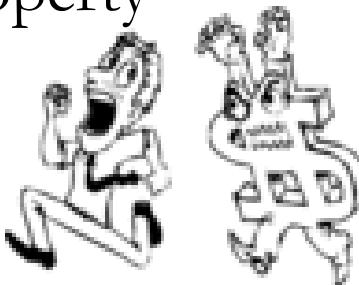
You may always advocate for yourself before any Town board, department or officer.

Doing so is not “acting as an agent.”



# Financial Interests

- G.L. c.268A, 19: A municipal employee may not participate in their official capacity in any particular matter in which they, their “immediate family member” or their private business or employer has a financial interest - regardless of the size of financial interest.
- G.L. c.268A, §(b)(1) Exemption - ***for appointed officials only*** - may disclose prior to participating and seek written approval from appointing authority – approval is not automatic.
- Financial interest is any amount, large or small, positive or negative
- Includes abutters to abutters within 300 feet, property diagonal from or directly across the street, or matter that would otherwise affect value of property



# Financial Interests – Contracts

- G.L. c.268A, §20: A municipal employee may not have a financial interest in a contract with the Town
- A “contract” includes a second office, if paid, unless employee qualifies for one of the §20 exemptions.
- Many exemptions exist, all fact specific – special municipal employees, part-time or call firefighter/public safety officer, housing subsidy programs, etc.
- In accordance with applicable regulations, may add any number of unpaid positions to a paid position without violating the law



# Financial Interest - Contracts

- G.L. c.268A, §20(b): “regular” municipal employee exemption elements allows second contract with Town that is paid if:
  - Contract is with different department;
  - Contract is made after public notice [newspaper at a minimum];
  - Employee files written disclosure with Town Clerk; and, if
  - Contract for “personal services”, such as a second Town position, must be outside normal hours of primary position, no more than 500 hours/yr., head of agency files certification, and Board of Selectmen votes to approve

# Resources

General Municipal Questions? Look at the KP Law website at [www.k-plaw.com!](http://www.k-plaw.com)

OML:

KP Law: [www.k-plaw.com/resources/eupdates](http://www.k-plaw.com/resources/eupdates)

Attorney General's website: <https://www.mass.gov/the-open-meeting-law>

PRL:

KP Law: [www.k-plaw.com/resources/publicrecordsresources](http://www.k-plaw.com/resources/publicrecordsresources)

Secretary of the Commonwealth Public Records Law:

<http://www.sec.state.ma.us/pre/preidx.htm>

COI--State Ethics Commission:

<https://www.mass.gov/orgs/state-ethics-commission>



**KP | LAW**

# Any questions?

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