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Open Meeting Law and How to Hold a Public Hearing

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OPEN MEETING LAW G.L. C. 30A, §§ 18-25

- Meetings of public bodies must be open to the public.
- Ensures transparency in the deliberations on which public policy is based.
 - Balance transparency with government efficiency.
- Virtual meetings permissible until March 31, 2025 with “adequate, alternative” remote access.



WHAT IS A PUBLIC BODY?

- Any governmental multi-member board, commission, committee or subcommittee within any county, district, city, region or town, if established to serve a public purpose.
- Excludes the Legislature.
- Municipal staff are not subject to OML.
 - Town manager, health director can meet with one another to discuss public business.



WHAT IS A MEETING?

- A **deliberation** by a **quorum** of a public body with respect to any **matter within the body's jurisdiction**.
 - 3-member v. 5-member board
- What is a **deliberation**?
 - A **communication** between or among a **quorum** of members of a public body on any public business within its jurisdiction.
 - Includes **expression of opinion**, even if not responded to.
- What is **NOT** a deliberation?
 - **Distributing** agendas and other materials for an upcoming meeting, scheduling, procedural information.

EXCEPTIONS TO TERM “MEETING”

- May conduct on **on-site inspection** of a project or program
 - May not deliberate.
- May attend a **conference**, training or event.
 - May not deliberate.
- May attend **meeting of another public body**.
 - May not deliberate.
- Attendance at **town meetings** not governed by Open Meeting Law.

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WHAT ARE MATTERS WITHIN THE BODY'S JURISDICTION?

- No specific definition.
- Any matter of **public business** on which a quorum may make a decision or recommendation.

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POSTING NOTICE OF A PUBLIC MEETING

- Municipal clerk must post at least 48 hours in advance, excluding weekends and holidays.
- Emergency meetings – posted as soon as reasonably possible prior to meeting.
- Notice must be visible.
 - Not locked inside a building unless it's also posted outside or on a website.
- PHE Collaborative-District – must post in all municipalities or on District website.
 - Host community/public body's website is acceptable – follow requisite process
 - Guidance document on www.mahb.org
- If website is down, all posting are void after 6 hours.

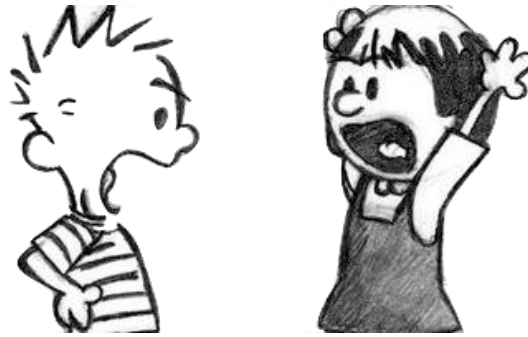
CONTENT OF NOTICE

Date	Time	Place	List	Date and time
Date of meeting	Time of meeting	Place of meeting	List of topics reasonably anticipate	Date and time of posting of notice

MEMBERS
OF THE
PUBLIC MAY
SPEAK ONLY
WITH
CHAIR'S
PERMISSION

- G.L. c. 30A, § 20 (g)
 - (g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. **No person shall disrupt the proceedings of a meeting of a public body.** If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.
- Do NOT have to allow public speak.
 - But if you do, it is the same for all.
 - If you don't, you will probably not be re-elected or re-appointed.

COURT'S
HOLDING
IN
BARRON
V.
KOLENDA
3.23



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- Public Comment Policy violates rights protected under Articles 19 and 16.
- Civility restraints in policy are forbidden.
- “While **civility** is, of course, to be encouraged, it **cannot be required** regarding the content of what may be said in a public comment session of a governmental meeting without violating the MA Declaration of Rights.”
- Provides for a *robust protection of public criticism of governmental action and officials.*
- **Time, place and manner restrictions are permissible.**
 - *When public comments are allowed.*
 - *Time limits.*
 - *Preventing speakers from disrupting others and removing speakers when they do.*
- *Judgement reversed and policy with civility restraints is declared unconstitutional.*
- *You can only restrict **words calculated to incite imminent violence.***

The New York Times

***Residents' Right to Be Rude Upheld by
Massachusetts Supreme Court***

In an age of division, the court ruled that towns could not mandate polite discourse at public meetings. One official called the decision “very dispiriting.”



SUGGESTED STRATEGIES

- Public cannot speak until recognized by Chair.
- Public speak can be for a limited overall time-period, and at a time determined by the Chair.
 - Beginning or end of meeting.
- Limit speakers to a certain number of minutes (3 – 5).
- Speakers can be required to address a matter within the jurisdiction of the public body.
 - Or limited to items on the agenda or not on the agenda or some combination.
- Audience cannot interrupt speakers.
 - If they are warned and persist, they can be required to leave meeting.



CONDUCTING PUBLIC HEARINGS

- **Judicial-like** hearings – when considering whether to issue a find, suspend a permit or hearing an appeal.
- Open meeting law applies – must be posted on the agenda of a regularly-scheduled meeting or on the agenda of a special “hearing” meeting.
 - If a time is designated on the posted agenda – must stick to the time posted.



HEARING PROCESS

- Chair calls meeting to order, stating time, date and name of meeting (BOH meeting) and indicates who is in the meeting room from the health department.
- Chair asks for a Motion to Open the Hearing.
- Motion made and seconded.
- Members vote on Motion.
- Chair opens Hearing.



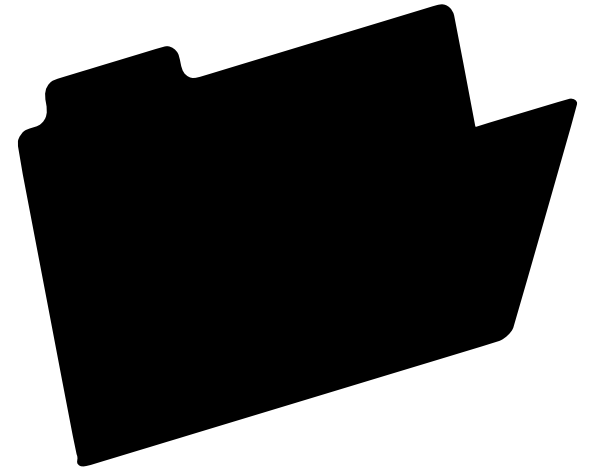
HEARING PROCESS (CONT.)

- Chair introduces the issue before the Board and applicable law/regulation.
 - Selling tobacco to a person under 21; violation of housing code; allegation of a nuisance, etc.
 - Emphasis on the singular issue before the Board.
 - Avoids irrelevant testimony (the dog ate my homework, I was distracted, the clerk was new, etc.)
- Chair turns hearing over to relevant health inspector.



INSPECTOR'S TESTIMONY

- Should have a file that includes:
 - Copies of inspection report;
 - Copies of any orders served on alleged violator;
 - If tobacco violation, the product sold, tagged and labeled;
 - Copies of any previous violations; and
 - Copies of relevant laws.
- Copies of all documents should be given to alleged violator and their attorney.

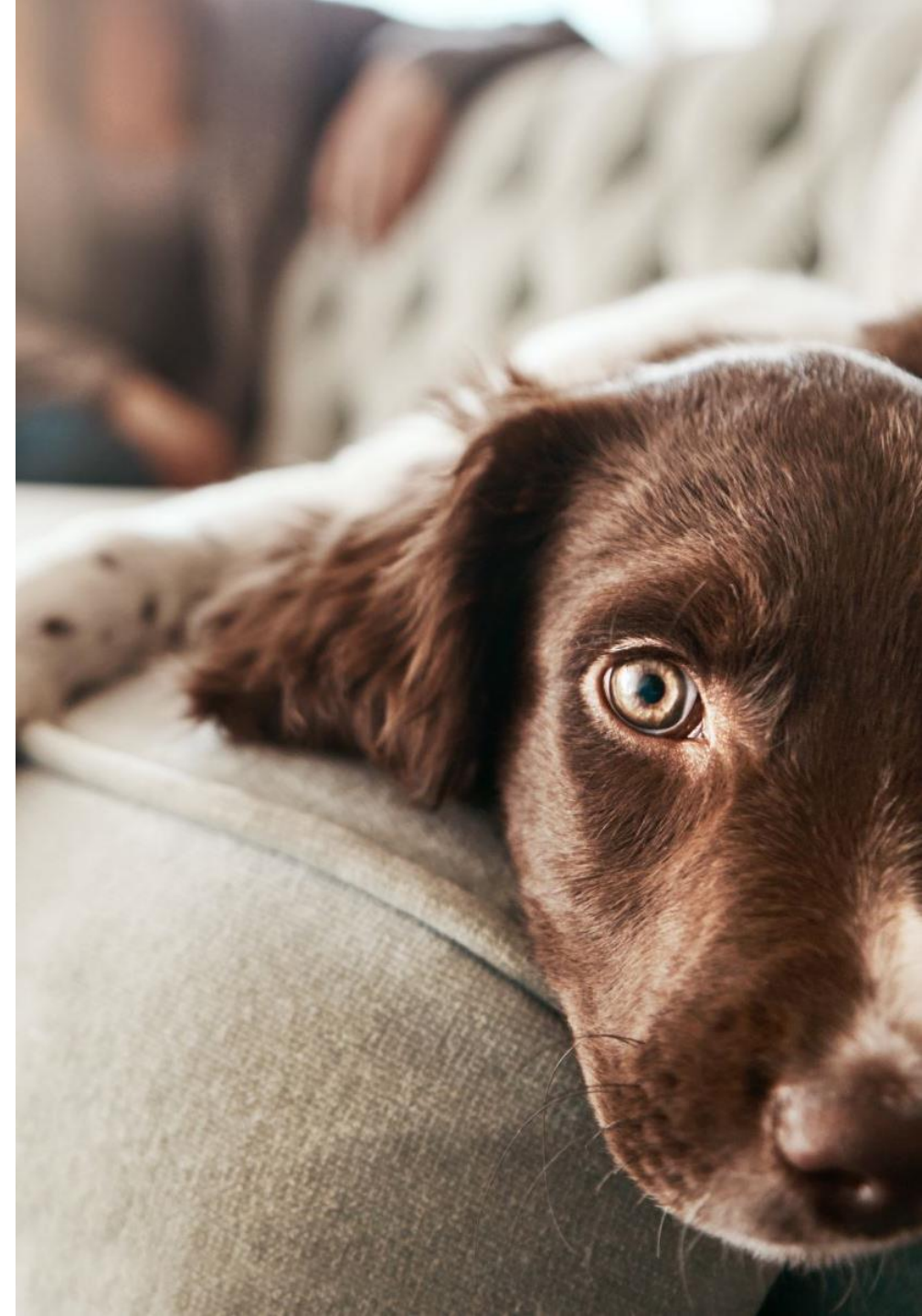


ACTUAL TESTIMONY SHOULD INCLUDE:

- Time and date of inspection
- Violation found
- Procedure followed
- History of prior offenses if relevant (tobacco sales)
- Order issued (fine issued and suspension/revocation suggested)
 - If relevant, emphasize that fines are mandated by state law.
- When testimony is complete, Chair asks violator to testify.

CHAIR SHOULD REITERATE

- Question before the Board is whether the violation occurred.
 - Not **why** it might have happened (the dog ate my homework).
- No one should comment on the testimony.
- At conclusion of testimony the Chair should ask if there is any other testimony.
- If there have been misstatements, inspector can clarify.
- Provide violator opportunity to reply.



CHAIR ASKS FOR MOTION TO CLOSE HEARING

- Motion made and seconded.
- Vote to close hearing taken.
- Board holds discussion on the hearing.
 - Chair makes it clear that attendees cannot comment.
- Board votes to either:
 - Affirm or dismiss the violation and assess penalties.
 - If relevant, stress that penalty is mandated by state law (tobacco fines).
 - Take matter under advisement for a vote at a subsequent meeting.
 - OML applies.

POST-HEARING PROCESS

- Written notice of Board's decision must be sent to violator after vote is taken.
 - Notice must include any penalties assessed.



CONDUCTING PUBLIC HEARINGS

- **Legislative-like** hearings – when considering whether to vote to enact a local board of health regulation.
- Open meeting law applies – must be posted on the agenda of a regularly-scheduled meeting or on the agenda of a special “hearing” meeting.
 - If a time is designated on the posted agenda – must stick to the time posted.



WHEN CONSIDERING WHETHER TO ENACT A LOCAL REGULATION

- G.L. c. 111, § 31.
- Only legally required for regulations strengthening septic and sewer regulations (Title 5)
- But:
 - JUST BECAUSE YOU CAN DOESN'T MEAN YOU SHOULD.



PUBLISH AND POST NOTICE OF HEARING

- Required pursuant to G.L. c. 111, § 31.
 - Check for typos and/or clerical errors.
 - Describe subject matter.
 - Brief summary (one or two sentences)
 - Publish it twice.
 - One in each of 2 consecutive weeks in newspaper of general circulation.
 - First publication must be at least 14 days before scheduled hearing date.
 - Could post notice in city/town hall for 14 days as an alternative to publishing.
 - MAHB recommends doing both.

CONDUCTING THE HEARING

- Have copies of proposed regulation available.
- Do not begin the hearing until the time indicated on the notice.
- Open Meeting Law requires that everyone can see and hear the hearing.
 - Seating not required, but you may want to consider a larger room.
 - Have someone in charge of a sign-in sheet for those who are testifying.

PUBLIC HEARING PROCEDURE

- Chair announces that it's time to open the hearing.
- Chair asks for Motion to Open Hearing.
- Motion made and seconded.
- Members vote to open hearing.
- Chair opens hearing.
- Chair describes the process the Board will follow.



EXAMPLE OF SCRIPT

- This public hearing is to discuss proposed tobacco sales regulation for the city/town of _____. Copies of the proposed regulations are available tonight, and they have been available online as well.
- It is the duty of the board of health to promote and protect the public health of the residents of _____. The Board derives its legal authority to enact regulations from the Massachusetts Legislature.
- Except for Title 5 regulations, it is not legally required for the Board of Health to hold a public hearing. However, the Board feels that it is important to provide a public forum.

SCRIPT (CONTINUED)

- The purpose of this hearing is to collect information and opinions.
- The Board will not ask for a vote from the audience, nor will the Board itself vote on the proposed regulation at this public hearing.
- The Board will announce the meeting date at which they will discuss and vote on the proposed regulation.
- The ground rules for the hearing are as follows:



GROUND RULES

- Any person wishing to make a comment should sign in. The sign-in sheet is located _____.
- When addressing the Board, you must identify yourself by name, address, and any professional affiliation you may have that impacts your comments.
- Limit your comments to ___minutes. This will be strictly enforced.
- Be considerate of those persons speaking, whether you agree or disagree with them; and do not comment out of turn.

GROUND RULES (CONTINUED)

- Applauding and booing will not be tolerated. The hearing will be stopped and continued to another date and time if it happens.
- Board members will not engage in dialogue with commenters but will accept their testimony.
- The Board schedule a meeting at which time a discussion and vote will be taken. No additional testimony will be considered at that time.
- Written testimony will be accepted until _____.
 - If you chose to accept written testimony after the hearing.



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AND OFF YOU GO!

- Gather sign-in sheets.
- Begin calling on those listed on the sheets.
- Stick to the ground rules.
- Chair asks for Motion to Close the Hearing.
- Moved and seconded.
- Vote taken to close the hearing.

STICK TO THE GROUND RULES!



