



TOWN OF NEEDHAM

Office of the Town Clerk

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THE OPENING MEETING LAW¹

Chapter 39, Section 23A of the Massachusetts General Laws

Section 23A. The following terms as used in sections twenty-three B and twenty-three C shall have the following meanings: --

"Deliberation", a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any meeting of a governmental body which is closed to certain persons for deliberation on certain matters.

"Governmental body", every board, commission, committee or subcommittee, of any district, city, region or town, however elected, appointed or otherwise constituted, and the governing board of a local housing, redevelopment or similar authority.

"Made Public", when the records of an executive session have been approved by the members of the respective governmental body attending such session for release to the public and notice of such approval has been entered in the records of such body.

"Meeting", any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public business or public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

"Quorum", a simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body.

Section 23B. All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

¹ A compilation of the Open Meeting Law as amended by Chapter 372 of the Acts of 1978.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(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 forty-eight 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 in said executive session.

(c) to speak in his own behalf.

(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 forty-eight 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.

(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, and to conduct collective bargaining sessions.

(4) To discuss the deployment of security personnel or devices.

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

(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 government body and a person, firm or corporation.

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

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction, or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town and such secretary shall post such notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting

shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town. The notice shall be printed in easily readable type and shall contain the date, time, and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or town clerk with a copy of this section. Each such member shall sign a written acknowledgement that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof any justice of the supreme judicial court or the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or town is located. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter

as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of such complaint the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by Section eleven A½ of Chapter 30A, by section nine G of Chapter thirty-four or by this section. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

This compilation of The Open Meeting Law prepared in August, 1978 by the Office of the Secretary of State, Public Records Division, Room 1701, One Ashburton Place, Boston, MA 02108; (617) 727-2832.

Section 23C. No person shall address a public meeting of a governmental body without permission of the presiding officer at such meeting, and all persons shall, at the request of such presiding officer, be silent. If, after warning from the presiding officer, a person persists in disorderly behavior, said officer may order him to withdraw from the meeting, and, if he does not withdraw, may order a constable or any other person to remove him and confine him in some convenient place until the meeting is adjourned.

STANDARDS OF CONDUCT

In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth in this section, are established for all state, county and municipal employees. When a current employee is found to have violated these provisions, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency.

No current officer or employee of a state, county or municipal agency shall:

- (1) accept other employment which will impair his independence of judgment in the exercise of his official duties;
- (2) use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others;
- (3) by his conduct give reasonable basis for the impression that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is unduly affected by the kinship, rank, position or influence of any party or person.

No current or former officer or employee of a state, county or municipal agency shall:

- (1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;
- (2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interests.

Upon qualification for office following an appointment or election to a municipal agency, such appointed or elected person shall be furnished by the city or town clerk with a copy of this section. Each such person shall sign a written acknowledgement that he has been provided with such a copy.

Appendix P – Massachusetts Conflict of Interest Law Summary

(Provide to all newly sworn in commission members)

The conflict of interest law (Chapter 268A of the General Laws) covers all municipal employees, whether elected or appointed, full or part-time, paid or unpaid. The law also regulates the activities of former employees and partners of current and former employees.

“Special Municipal Employee” Designation

Some municipal employees can be designated as special municipal employees by the city council, board of selectmen, or board of aldermen. For these individuals, the law applies less restrictively.

You may be designated as a special municipal employee if you are not a mayor, an alderman, a city councilor, or a selectman in a town with a population in excess of 5,000, provided:

- you are not paid; or
- you hold a part-time position which allows you to engage in other employment during normal working hours; or
- you were not paid by the municipality for more than 800 hours during the preceding 365 days.

All employees holding the same office or position must be treated equally—having the same classification as “special municipal employee.”

ACTIVITIES RESTRICTED OR PROHIBITED BY THE CONFLICT LAW

ACTIONS ON THE JOB (Section 19)

The law recognizes that your financial interest and those of your partners or close relatives could influence the way you do your job. To discourage “self-dealing”, the law prohibits you from participating in a particular matter in which you or any of the following have a financial interest: your immediate family; your partner(s); a business organization in which you serve as an officer, director, trustee, partner or employee (including a non-profit organization); and any person or organization with whom you are negotiating or have any arrangement concerning prospective employment.

A “particular matter” is defined as an activity involving decision making or judgment and refers to specific projects and proceedings rather than general issues. If such a matter comes up, you would be allowed to participate in it only if your appointing official makes a written determination that your interest is not so substantial as to affect the integrity of your services. This exemption is not available to elected officials.

MUNICIPAL CONTRACTS (Section 20)

Section 20 prevents you from using your position to benefit from municipal contracts and to avoid the public perception that municipal employees have an “inside track” on municipal contracts. In general, as a municipal employee, you are prohibited from having a direct or indirect financial interest in a contract made by any agency of your same municipality. This section of the law also prohibits an employee from holding more than one paid position in the same town or city.

However, there are a number of exceptions to this general prohibition which you can take advantage of as long as certain specific conditions set out in the statute are met; there are also exceptions for special municipal employees. We suggest you call the Commission or contact your city solicitor or town counsel for specific advice on Section 20.

ACCEPTING GIFTS (Section 3)

Extra payments, gifts or privileges offered because of (but not necessarily to influence) your official actions are prohibited. In other words, it is illegal to accept anything of “substantial value” beyond your salary in return for performing work that you were hired or elected to perform, even if given by a private party simply out of gratitude for a job well done. The courts and the Commission have deemed “substantial value” to be \$50 or more, in most cases.

In addition, Section 2 of the conflict law prohibits the most obvious kinds of corruption: cases where you were offered payment to perform official duties (or not to perform them) in a certain way. The law imposes civil and criminal penalties, not only on employees who seek to receive payoffs or kickbacks, but also on private parties who offer or pay them.

OUTSIDE ACTIVITIES (Section 17)

The law limits what you may do for someone other than the municipality which employs you—in other words what you may do on the side. This section is designed to protect the municipal employee and municipality from the problems resulting when people “serve two masters”.

While you are a municipal employee, you cannot be compensated by anyone else in relation to any “particular matter” in which any agency of the same municipality is a party or has a direct and substantial interest. Similarly, you cannot act as agent or attorney for anyone in such matters, even if you are not paid. (This section of the law also applies less restrictively to special municipal employees.)

STANDARDS OF CONDUCT (Section 23)

The Standards provide a general code of ethics for all public employees. Essentially, the conflict law prohibits you from using or attempting to use your official position to secure an unwarranted privilege or from giving a reasonable basis for the impression that you can be improperly influenced in the performance of your official duties. The law also prohibits you from disclosing confidential information obtained on the job and from accepting outside employment that will impair your independence of judgment in the exercise of your official duties.

FORMER MUNICIPAL EMPLOYEES (Section 18)

The conflict law aims to prevent the “revolving door syndrome”. It prohibits former employees from deriving unfair advantage by improperly using friendships and associations formed or confidential information obtained while serving the government. The law is not designed to prevent you from using general expertise developed while a municipal employee. Rather, it focuses on particular matters you worked on while a municipal employee.

If you participated in a particular matter as a municipal employee, you can never become involved in that same particular matter after you leave municipal service, except on behalf of the municipality. (This same restriction applies to the partners of former municipal employees for one year.)

If you had official responsibility for a particular matter in your municipal position even if you did not actually participate in it, you may not appear personally before any municipal agency on behalf of a private party in connection with that matter for one year after leaving government.

The law also restricts the activities of partners of current municipal employees. Partners may not act as agent or attorney for anyone other than the city or town in connection with particular matters in which the municipal employee participates or has official responsibility for.

Advisory Opinions

This summary presents a brief overview of the conflict law and suggests activities that you, as a municipal employee, must avoid. It is not a comprehensive review. You may call the State Ethics Commission’s Legal Division at 727-0060 for individualized advice on the conflict law, as well as seek an advisory opinion from your city solicitor or town counsel. If you have a question about your own activities, you are urged to request an opinion from your local counsel or directly from the Commission prior to engaging in the activity in question.