

**OPEN MEETING AND  
PUBLIC RECORDS LAWS:  
TECHNOLOGY AND EMERGING  
ISSUES**

**MASSACHUSETTS  
SELECT BOARD ASSOCIATION**  

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# Municipal Use of Social Media – Legal

## Issues

- Open Meeting Law, G.L. c.30A, §§18-25
  - Communications among a quorum of board members on social media can constitute an open meeting law violation
  - Click here for a discussion of the OML and social media (See <http://www.k-plaw.com/wp-content/uploads/2017/01/Open-Meeting-Law-and-Social-Media-Potential-Pitfalls.pdf>)
  
- Public Records Law, G.L. c.66, §10
  - Records retention
  - Policy to retain copies of social media pages and posts
    - Current guidance recommends taking a periodic “snapshot” of the social media sites in order to meet records retention obligations
  - Do not post information that is not public record

# Application of OML to E-mail

- E-mail is 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

- Use of social media is also subject to the OML
- Alternative electronic communications have become more prevalent, including blogging, instant messaging, texting, social networking such as Facebook, 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 Town is involved in a matter adjudicating the rights of others, only discuss matter at the hearing

# Remote Meetings - Chapter 20 of the Acts of 2021

## Meeting Notice Requirements

- The Act extended relief first provided by the Governor's Open Meeting Law Executive Order, allowing public bodies to meet remotely provided, generally, that the public has **adequate, alternative means of access**, including:
  - telephone, internet, or satellite enabled audio or video conferencing or
  - any other technology that enables public to follow proceedings in real time
- Notice of the meeting must include clear instructions for accessing meeting remotely, including a link or call in number, or, to avoid so-called "Zoom bombing", the notice may require the public to call in to obtain access information so long as the notice includes clear contact information and the public can obtain access for duration of the meeting (cannot be required to register in advance; someone monitoring call)

## Remote Meetings, Cont.

- Remote meetings can be totally remote or partially remote; a quorum need not be physically present
- To open a remote meeting, the chair must either introduce the board members, or have the board members introduce themselves
- If a board member is participating remotely and has a camera, the camera should be left on during the meeting
- All votes taken will require a roll call (just like what is required in executive session)
- As with meetings conducted fully in person, public participation is not required at remote meetings of a public body.

# Open Meeting Law - Remote Hearings Under Chapter 20 of the Acts of 2021

- If 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 public body and be heard by other 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.
- When meetings are conducted virtually, the meeting notice must provide instructions as to how the public can view and participate in the meeting.
- At the start of the meeting, the chair must announce the name of the member or members who are participating remotely; such information must also be recorded in the meeting minutes.
- All votes taken in a virtual meeting must be by **roll-call vote**, even if the vote is unanimous.

# Open Meeting Law - Remote Hearings, cont.

- 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.
- Should the public body encounter technical problems while meeting remotely, the person chairing the meeting may decide how to address the technical difficulties, but is encouraged wherever possible to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly
- If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred must be noted in the meeting minutes; if the matter is a public hearing, the hearing should not continue until the connection is restored; if not, the hearing should be continued to a time, date and place more than 48 hours following the time and date of the posting

# Conducting the Meeting - Recording

- Chair must make public statement regarding audio or video recording if attendee intends to record (basis – MA wiretap statute)
- Such statement should include, if the meeting is remote in whole or in part, a limited statement at the beginning of each meeting about the remote nature of the meeting.

# Additional Resources

- KP Law: [www.k-plaw.com](http://www.k-plaw.com) (see separate pages on COVID-19, Public Records Law and other topical issues, legal references, reference cards and eUpdates)
- Attorney General's Open Meeting Law Website: <http://www.mass.gov/ago/government-resources/open-meeting-law/>
- Public Records Division Website: <https://www.sec.state.ma.us/pre/preidx.htm>



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# Any questions?

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