

City Council
Chairs Meeting
Monday, March 6, 2023
6:30 pm



The City Council will hold this meeting as a Hybrid meeting, virtual and in Room 204 on Monday, March 6, 2023 at 6:30 pm. To view this meeting use this link at the above date and time:

<https://us02web.zoom.us/j/82638911388>

Or One tap mobile : +13017158592,,82638911388# or +13052241968,,82638911388#

Or Dial: +1 301 715 8592

Webinar ID: 826 3891 1388

Agenda:

1. City Council Rules
 - a. Polling committees' procedure
 - b. Section 5. Debate
 - c. Presenting materials – 48-hour notice
2. Sunshine Fund Usage Policy
3. City Council Meeting In-Person Attendance (March 31, extension ends)
4. Open Meeting Law Reminders
 - a. Online groups
 - b. Emails – reply all
 - c. Staying on Agenda
 - d. Other Communications
5. Docket Tracking System
6. Other topics from the floor.

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Board of Aldermen Sunshine Fund

The Board of Aldermen Sunshine Fund will be used to send flowers or a fruit basket, and a card to individuals who experience an event that meets the following criteria. In order to make sure the gifts will be delivered timely, the Clerk of the Board of Aldermen will make final determination and arrangements.

Deaths

Death of a former Alderman

Death of a current Alderman, their spouse, their children, their parents, their in-laws, or their grandparents.

Illness/Accident

Hospitalization of a current Alderman or their spouse

Hospitalization with a life threatening illness or accident of a current City Employee

Births

Birth of a child of a current Alderman

The Sunshine Fund Contribution will be \$24 per year, payable through a payroll deduction of \$2.00 per month. On a regular basis, if excess funds exist, the Clerk will roll the funds into the Aldermanic Scholarship Fund.

An accounting summary of the previous year's expenditures will be provided to the Board each January.

Payroll Deduction Information

There are one time set-up costs of time but once the payroll deduction is set up it will run each month automatically and deposit the funds into an account for you to control.

It could be set up like the a withholding account with a fixed dollar set up in a payroll table so if you wanted to increase the amount the table could be changed and would update all the Alderman with the deduction instead of changing 24 individual accounts.

I think the payroll deduction would be easier and more efficient for all concerned once set up. This would also be easier for you in not having to chase 24 Alderman for a small amount of money and dealing the accounting and with making deposits and preparing cash receipt turnovers to the Treasury.

If I can do anything to help just call

Edward J. Spellman, Jr., CPA
Treasurer-Collector



Memorandum

TO: City Councilors

FROM: Carol Moore, Clerk of the Council

RE: Open Meeting Law – Remote participation

DATE: March 1, 2023

Update on March 2, 2023 House approves extensions on remote and hybrid meetings.
<https://www.mma.org/house-oks-budget-bill-with-pandemic-extensions/>

Councilors:

On July 16, 2022, Governor Baker signed a new session law, which extends certain COVID- 19 related measures. The Act extended the ability of public bodies to continue to hold virtual meetings and hearings until **March 31, 2023**.

This means that public bodies may, until March 31, 2023, continue to provide live “adequate, alternative means” of public access to the deliberations of the public body rather than holding meetings in a public place that is open and physically accessible to the public. This also means that all members of a public body have the option to continue participating in meetings remotely until March 31, 2023.

Absent any further change in the law, we expect the requirements of the Open Meeting Law to resume on April 1, 2023. As discussed below, this will limit the remote participation of City Council members to a much greater degree than that of the public.

At this time, the City Council and its subcommittees may continue to conduct public meetings remotely until March 31, 2023. Public meetings may also be conducted using a hybrid model, where both city councilors and the public have the option to attend either in person or remotely.

We recommend, however, that the City Council prepare, as further detailed below, to shift this month to modified hybrid meetings wherein city councilors are required to attend in person and arrangements are made to enable the public and City staff to attend both in person and remotely.

Please note that all open meeting law requirements apply equally to full City Council meetings and subcommittee meetings.

Absent any further change or extension in the law, all requirements of the Open Meeting Law will resume on April 1, 2023.

Most significant is the legal requirement that public bodies must resume meeting in person. The Open Meeting Law will still allow remote participation of public body members, but only in limited circumstances.

As the Mayor has already authorized remote participation in accordance with the Open Meeting Law by executive order, no action is necessary by the City Council to allow for remote participation after March 31. However such participation will only be allowed in limited circumstances where a quorum of the public body is physically present at the meeting location and public attendance of the member would be unreasonably difficult. Additionally, any member of a public body who wishes to participate remotely after March 31 must notify the person chairing the meeting as soon as reasonably possible prior to the meeting of his or her desire to do so and reason for and facts supporting the need to be remote. (940 CMR: 29.10)

As for public participation, after March 31, the City Council may continue to provide the public with the option to attend and participate in meetings remotely. This will be considered the hybrid model after March 31, where the public body is meeting in person and the public has the option to attend either in person or remotely.



Frequently asked questions about public bodies

Is a committee or board created by a public official subject to the Open Meeting Law?

It depends.

The OML does not apply to committees or boards informally appointed by individual officials to carry out duties that are assigned to such officials. Accordingly, where a public official creates a committee to advise that public official on a decision that he or she has sole responsibility for the committee or board would not be subject to the Open Meeting Law. See *Connelly v. School Committee of Hanover*, 409 Mass. 232 (1991), in which the SJC held that a high school principal selection committee appointed by the school superintendent to assist him in choosing candidates was not a governmental body subject to the OML. Because the superintendent could have chosen a school principal entirely on his own without creating the committee to advise him on a candidates, his informal creation of a committee did not subject the body to the Open Meeting Law.

However, where a public official creates a committee because they are required to do so by law, regulation or at the direction of a governing authority such as a City Council or Board of Selectmen, then the committee will likely be subject to the Open Meeting Law.

Are Special Education Parent Advisory Council (“SEPAC”) groups public bodies subject to the Open Meeting Law?

By law, membership in a SEPAC is open to “all parents of eligible students and other interested parties.” 603 CMR 28.07(4). We have concluded that a body with such a fluid makeup, which has an ever-changing membership and quorum, and which carries out its role based on whoever attends a particular meeting or participates in a particular vote, is not the type of body to which the Open Meeting Law applies. Although it is possible a SEPAC could structure itself in such a way as to satisfy the criteria for being considered a public body subject to the Open Meeting Law, all of the SEPACs we have reviewed have been determined not to be public bodies and not subject to the Open Meeting Law. See OML 2021-150

Through its bylaws, a SEPAC may establish a leadership or governing committee. Whether that group of officers is a public body that must comply with the Open Meeting Law depends on whether the group is structured in such a way as to allow for collective action to be taken by the leadership group, or whether the officers merely perform an administrative function on behalf of the SEPAC as a whole. Leadership groups that are not structured in such a way as to allow for collective action, but rather that merely perform an administrative function on behalf of the SEPAC as a whole (such as scheduling and running meetings, relaying information between the membership and school officials, sharing resources, and planning programs), are not public bodies under the Open Meeting Law. See OML 2021-150; OML 2016-79. Most SEPACs whose bylaws we have reviewed do not invest their officers with independent authority to take collective action, and therefore are not subject to the Open Meeting Law. For further discussion and examples, see OML 2021-150.

A SEPAC may, through its own bylaws, choose to specify that all meetings of the full membership and/or of the group of officers shall be held in accordance with the provisions of the Open Meeting Law.

Are Insurance Advisory Commissions (IACs) and Public Employee Committees (PECs) public bodies subject to the Open Meeting Law?

No, the Attorney General’s Office has determined that IACs created pursuant to G.L. c. 32B, § 3, and PECs created pursuant to G.L. c. 32B, § 19, are not public bodies subject to the Open Meeting Law. See OML 2015-22. Both groups, formed for employee negotiation purposes under the Municipal Health Insurance Reform Act, G.L. c. 32B, serve the interests of public employees, rather than the public, and thus are not public bodies subject to the Open Meeting Law. See G.L. c. 30A, § 18. However, bodies created by a municipality to negotiate with a PEC may be public bodies, though some of their discussions may be appropriate for executive session under G.L. c. 30A, §§ 21(a)(2), (3), the purposes allowing for discussion of strategy with respect to collective bargaining and for conducting collective bargaining sessions.

Are “Special Commissions” or “Special Legislative Commissions” public bodies subject to the Open Meeting Law?

Yes, although they are subject to different requirements from other public bodies for holding executive sessions and posting meeting notices. While state public bodies designated as “Special Commissions” or “Special Legislative Commissions pursuant to G.L. c. 4, § 2A, (collectively “Special Commissions”) are public bodies and must follow the requirements of the Open Meeting Law, G.L. c. 4, § 2A, contains separate requirements for executive sessions and notice for them:

Private or executive meetings of each special commission shall be open to the public unless a majority of the members of such commission shall vote otherwise. A notice of each such meeting shall be filed with the clerk of either branch, and the notice or a copy thereof shall be publicly posted in the office of such clerk at least twenty-four hours prior to such meeting, excluding Saturdays, Sundays, and legal holidays.

Assuming that a majority of a Special Commission votes to do so, the statute appears to provide that a Special Commission may enter into executive session for any purpose, not just the 10 enumerated in the Open Meeting Law. However, the Special Commission must still follow certain procedural requirements for entering into executive session outlined in G.L. c. 30A, § 21(b), including convening first in open session, publicly announcing whether the Special Commission will return to open session following its executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called, and keeping accurate minutes of its executive session.

With respect to meeting notices, Special Commissions must file a meeting notice with the clerk of either the House or Senate. That notice must be published in the office of the House or Senate clerk at least 24 hours prior to the meeting, not including Saturdays, Sundays, and legal holidays. Other than the time and manner of posting, notices must still meet the requirements found at G.L. c. 30A, § 20(b) and 940 CMR 29.03. Although Special Commissions are not required to post notices in the same manner as other state public bodies, in the interest of transparency, the Attorney General recommends that Special Commissions still follow the notice requirements for state public bodies found at G.L. c. 30A, § 20(c), specifically that Special Commissions additionally post their meeting notices to a website at least 48 hours before meetings, not including Saturdays, Sundays, and legal holidays, and that they send a copy of each meeting notice to the Regulations Division of the Secretary of the Commonwealth at regs@sec.state.ma.us.

Frequently asked questions about preliminary screening committees

May a preliminary screening committee, which meets in executive session under purpose 8 to consider candidates for employment or appointment, consist of more than a quorum of the members of the parent body?

No, a preliminary screening committee must consist of fewer than a quorum of the members of the parent body. It may contain additional members who are not members of the parent body. For example, a school committee with seven members may create a subcommittee to conduct a preliminary screening of candidates for superintendent of schools in executive session, and the preliminary screening committee may contain up to three members of the school committee, in addition to several teachers and members of the community.

Frequently asked questions about quasi-judicial public bodies

Which quasi-judicial public bodies fall within exemption (d) to the definition of "meeting" as included in the OML?

The revised Open Meeting Law carves out a specific exception in the definition of "Meeting" for quasi-judicial bodies in certain circumstances. It states that a meeting subject to the Open Meeting Law shall not include "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." [G.L. c. 30A, § 18](#). However, the OML does not define "quasi-judicial" and there is some confusion as to whether the exemption applies to local "quasi-judicial" bodies, such as zoning boards. It generally does not. The exemption applies only to certain state "quasi-judicial" bodies, and a very limited number of public bodies at other levels of government whose proceedings are specifically subject to [G.L. c. 30A](#).

This conclusion is based on the plain language of the definitions included in the revised Open Meeting Law, [G.L. c. 30A, § 18](#), read in harmony with the definition section found at [G.L. c. 30A, § 1](#). That section defines "adjudicatory proceeding" as "a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing." [G.L. c. 30A, § 1\(1\)](#) (emphasis added). [Chapter 30A, § 1\(2\)](#), defines "agency" as:

[A]ny department, board, commission, division or authority of the state government or subdivision of any of the foregoing, or official of the state government, authorized by law to make regulations or to conduct adjudicatory proceedings, but does not include the following: the legislative and judicial departments; the governor and council; military or naval boards, commissions or officials; the department of correction; the department of youth services; the parole board; the division of dispute resolution of the division of industrial accidents; the personnel administrator; the civil service commission; and the appellate tax board.

[G.L. c. 30A, § 1\(2\)](#) (emphasis added). Applying these definitions to [G.L. c. 30A, § 18](#), an adjudicatory proceeding of a quasi-judicial board or commission may only be held by an agency, and an agency is an entity of state government. Therefore, exemption (d) to the definition of "meeting" under [G.L. c. 30A, § 18](#), applies almost exclusively to state public bodies holding adjudicatory proceedings under [G.L. c. 30A](#). It may also apply to a very limited number of other public bodies whose governing statutes specifically direct them to hold adjudicatory proceedings in accordance with [G.L. c. 30A](#).

State "quasi-judicial" public bodies are cautioned that they must still follow the requirements of the Open Meeting Law, including posting notice of meetings, retaining minutes, and opening their meetings to the public. The "quasi-judicial" exemption from the definition of "meeting" is limited to meetings held "for the sole purpose of making a decision required in an adjudicatory proceeding brought before it." *Id.* (emphasis added). The adjudicatory proceeding itself must still be open to the public.

Frequently asked questions about educational materials and certification

Must all members of a public body sign the Attorney General's Open Meeting Law Certification Form, or only newly appointed or elected members?

Upon qualification for office, all members of a public body must certify that they have received and reviewed certain educational materials. Public body members will receive educational materials from the municipal clerk or the appointing authority, executive director, or other appropriate administrator or from the Attorney General's website. Within two weeks after receipt of the educational materials, the member shall certify the receipt of the materials on the [form provided by the Attorney General](#) and available on the AGO's website. Members of public bodies who do not have defined terms of office must recertify receipt of the educational materials every two years following appointment or election to office.

What educational materials must be distributed to newly appointed members of public bodies?

Newly appointed or elected members of public bodies must receive and review the following materials, which are available at the Attorney General's website:

1. The Guide to the Open Meeting Law, published by the Attorney General, which includes a copy of the Open Meeting Law and the Attorney General's regulations; and
2. A copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last five (5) years in which the Attorney General found a violation of the Open Meeting Law.

Frequently asked questions about calculation of quorum and majority

What is a quorum of a public body?

The Open Meeting Law defines a quorum as a simple majority of the members of a public body, unless otherwise provided in a general or special law, executive order, or other authorizing provision. [G.L. c. 30A, § 18](#). If a quorum of a public body wants to discuss public business within that body's jurisdiction, they must do so during a properly posted meeting. See *id.*

How does a public body determine what constitutes "a simple majority of the members," for purposes of calculating quorum, when there are vacancies?

When there is a vacancy on a public body, a quorum is still measured by the number of members of the public body as constituted. See *Gamache v. Town of Acushnet*, 14 Mass. App. Ct. 215, 219 (1982) (noting that a Town bylaw established a board of appeals of five members, and a temporary vacancy did not alter that bylaw). However, a general or special law, executive order, or other authorizing provision may provide for the quorum of a public body to be a majority of the members serving on the body. See [G.L. c. 30A, § 18](#). The Open Meeting Law does not define what constitutes an "authorizing provision," but where a general or special law sets a body's or type of body's number of members or quorum requirement, no other provision can set a different number or requirement. And where a general law says that a body or type of body has a set number of members, then unless a general or special law says otherwise, [G.L. c. 4, § 6, clause 5](#), sets the quorum at a majority of that number, and no other provision can set a different quorum requirement.

Examples:

EX 1 A public body has seven (7) members, therefore a quorum is four (4) members. If the same seven-member public body has two (2) vacancies, then there are only five (5) members serving on the public body. By default, a quorum is still measured as four (4) members.

EX 2 A general law creates a seven (7) member public body and states that a quorum of that body shall be a majority of the members serving on the body. There are two (2) vacancies on the public body, leaving (5) members serving. Because the general law creating the body specifies that quorum is measured as a majority of the five (5) serving members, quorum is now three (3) members.

Frequently asked questions about the Open Meeting Law: deliberation and electronic communication

May a public body member communicate with other public body members over email?

Yes, but only in limited circumstances. A member of a public body may email other public body members on matters within jurisdiction of a public body so long as the email does not reach a quorum of the public body. Communications between and among a quorum of a public body on matters within the jurisdiction of the public body must occur during a noticed meeting. G.L. c. 30A, §§ 18, 20. A public body member may lawfully email a quorum of the public body only to discuss scheduling a meeting, distribute a meeting agenda, or to distribute reports or documents to be discussed at a meeting, provided that no opinion of a member of the public body is expressed. See G.L. c. 30A, § 18.

May members of a public body communicate with the public through social media platforms such as Facebook, Twitter, and webpages?

Yes, members of public bodies may communicate with members of the public through any social media platform. However, members of public bodies must be careful not to engage in deliberation with the other members of the public body through such communications. If a member of a public body communicates directly with a quorum of the public body over social media platforms such as Facebook or Twitter, that communication may violate the Open Meeting Law. Public body members should proceed with caution when communicating via these platforms.

May a members of a public body participate in a listserv?

It depends. A listserv is an electronic mailing list. A member of a public body may subscribe to a listserv. However, where a quorum of the members of a public body subscribe to a listserv, the public body risks unlawful deliberation. Where a quorum of the members of a public body belong to a listserv, public body members cannot participate in discussions which involve subject matter within the jurisdiction of the public body without engaging in unlawful deliberation. Therefore, we recommend that public body members use caution when joining or participating in listservs in which subject matters within the jurisdiction of their public body may be discussed.