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MEMORANDUM TO MUNICIPAL CLIENTS

To: BOARD OF SELECTMEN/MAYOR/TOWN AND CITY COUNCIL
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY

Re: Open Meeting Law – A Checklist and Sample Notices and Votes

This is the fourth in a four-part series on compliance with the revised Open Meeting Law. As you are aware, the new version of the Open Meeting Law took effect on July 1, 2010. Since that time, the Attorney General, who has enforcement authority under the revised law, has issued many decisions on complaints filed with that office. Those decisions, issued by the Division of Open Government (the "Division") have provided insight into the manner in which the Division will address future complaints. In an effort to simplify the more stringent requirements applicable to calling for and holding meetings of a public body, we have prepared the attached checklist and sample votes for use by public bodies when calling for and holding public meetings.

Very truly yours,

Lauren F. Goldberg

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OPEN MEETING LAW NOTICE CHECKLIST

1. Post notice of meeting at least 48 hours in advance, excluding Saturdays, Sundays and legal holidays
   a. In general, for a meeting to be held on a Monday, the meeting must be posted on Thursday no later than the time set for the Monday meeting;
   b. In general, for a meeting to be held on a Tuesday, the meeting must be posted on Friday no later than the time set for the Tuesday meeting
2. Ensure that notice is timely posted in <u>all</u> locations required by law
   a. This requirement means that the meeting notice must actually be posted in all locations at least 48 hours in advance calculated as indicated in item 1, including, for example, on the municipality's website if the website is the alternate posting location.
3. List on said notice all topics that the chair of the public body "reasonably anticipates" will be discussed at the meeting.
4. Ensure that the topics are specific, itemized and detailed, as follows:
   a. Generally -
      i. Subject matter;
      ii. Whether any particular speakers will be recognized or presentations made;
      iii. Whether an executive session is anticipated; and
      iv. Whether any vote is anticipated.
   b. For licenses, permits, variances or authorizations -
      i. The matter at issue (i.e., specific permit, license, variance, or authorization requested);
      ii. Name of applicant;
      iii. Location of activity, if applicable; and
      iv. Whether any votes are expected.
   c. For appointments of personnel or officers -
      i. The position at issue;
      ii. Term of appointment, if applicable; and
      iii. Names of possible finalists for appointment, if known.
   d. Exemption 2 - For strategy with respect to, or negotiations with, non-union personnel -
      i. For <u>strategy</u> with respect to negotiations with non-union personnel, the name of such personnel <u>only if</u> inclusion of the same will not negatively impact the negotiating position of the public body; and
      ii. For <u>negotiations</u> with non-union personnel, the name of the non-union personnel.
   e. Exemption 3 - For strategy with respect to collective bargaining negotiations or litigation -
      i. The name of the union or the litigation <u>if</u> stating the same would not negatively impact the position of the public body.
   f. Exemption 3 - For conduct of collective bargaining negotiations -
      i. The name of the union.

g. Exemption 6 - To consider the purchase, exchange or lease of real property -
    i. The address of the real property if inclusion of the name would not have a detrimental effect on the negotiating position of the public body.
h. Exemption 7 - To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements -
    i. Reference to the specific law at issue.

5. Update the meeting notice with any items of which the chair becomes aware that will be discussed at the meeting and that arise after the meeting notice is posted, but before the meeting, even if such information becomes available within the 48 hour window.
6. Exemption 1 (to consider medical condition, reputation and character, or discipline, dismissal or charges or complaints against an individual)– ensure that notice is provided at least 48 hours in advance of the meeting to the individual to be discussed setting forth the date, time and place of the meeting, and the rights afforded to the individual under the Open Meeting Law.
7. Exemption 8 (to consider applicants for appointment by a screening committee) – ensure that at least one applicant for appointment has indicated that they would not take part in the search process if the process was undertaken in open session.

SAMPLE NOTICE AND VOTES TO ENTER EXECUTIVE SESSION

1. General Requirements

The notice should identify the statute, including the specific exemption to be relied upon, and the details identified in the Open Meeting Law Notice Checklist. Below are samples to act as a starting point for preparation of meeting notice items. However, in each case the facts must be reviewed to ensure that the notice contains sufficient detail and otherwise meets the requirements imposed by law.

Note that prior to entering executive session for the purposes set forth below, the public body must first meet in open session. The body must vote, by roll call, to enter executive session for one or more of the purposes set forth below, and that vote must be recorded in the minutes of the open meeting. Moreover, if a public body enters executive session under Exemptions 3, 6, or 8, the chair must also declare that holding an open session would be detrimental to the position of the public body (as specified in further detail, below), and the declaration must also be recorded in the minutes. Finally, the body must indicate whether it intends to return to open session after conclusion of the executive session.

2. Open Session – Sample Notice Items and Votes

Town Meeting.

(early in the process)

Town Meeting Warrant – To consider articles for inclusion on the Annual Town Meeting warrant, including annual operating and capital budgets, revolving funds, enterprise fund budgets, departmental equipment requests, general and zoning bylaw amendments and citizen petitions; votes may be taken.

(later in the process)

Town Meeting Warrant – To review draft warrant, attached hereto, particularly Articles [insert particular items to be discussed]; and to make recommendations on all items in warrant; votes may be taken

(at end of process)

Town Meeting Warrant – To approve and execute draft warrant, attached hereto.

Annual Appointments.

To approve annual appointments as set forth in the attached list

Or

To approve annual appointments as follows:
Position – name
Position – name
Position – name

Renewal of Annual Permits

To approve annual permits as follows:
#496 [Name of Applicant], [address]
#497 [Name of Applicant], [address]

Or:

To approve annual permits as set forth in the attached document

Informational Items

Presentation from Open Space Committee on proposed Open Space Plan; review of matters presented; votes may be taken

John Smith, Company XYC – discussion of use of photovoltaic panels at Middle School, 123 Main Street; review of matters presented; votes may be taken

3. Executive Session Notice Items and Votes

Sample notice items and votes are set forth below with respect to frequently used exemptions under G.L. c.30A, §21(a). In each case, the text of the exemption appears first, followed by a sample notice item and vote. Where appropriate, the declaration as to the detrimental effect of an open session discussion is noted.

Exemption 1. To discuss the 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.

NOTICE:

Executive session under G.L. c.30A, §21(a)(1) to discuss [insert one or more applicable reasons from among the following: the 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]; votes may be taken.

VOTE:

The vote would reiterate the language in the notice, omitting the clause about votes being taken.

Exemption 2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

NOTICE:

(strategy – substitute the name of the non-union personnel if doing so would not negatively impact Town's negotiation position)

Executive session under G.L. c.30A, §21(a)(2) to conduct strategy sessions in preparation for negotiations with non-union personnel; votes may be taken.

(to conduct negotiations)

Executive session under G.L. c.30A, §21(a)(2) to conduct negotiations with Police Chief (insert name); votes may be taken.

VOTE:

The votes would reiterate the language of the notice, omitting the clause about votes being taken.

Exemption 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 public body and the chair so declares.

NOTICE:

(strategy – substitute the name of the collective bargaining unit or litigation if doing so would not negatively impact Town's negotiation position)

Executive session under G.L. c.30A, §21(a)(3) to discuss strategy with respect to [collective bargaining or litigation, as appropriate]; votes may be taken.

VOTE:

The vote would reiterate the language of the notice, omitting the clause about votes being taken.

*Note: If the public body intends to enter executive session to strategize under this exemption, the chair of the public body must also declare that discussing the matter at an open meeting may have a detrimental effect on the position of the public body.

Exemption 6. To consider the 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.

NOTICE:

(substitute the description of the location of the real property at issue if doing so will not negatively impact the body's negotiation position)

Executive session under G.L. c.30A, §21(a)(6) to consider the [insert, as appropriate, purchase, exchange, lease or value of] real property; votes may be taken.

VOTE:

The vote would reiterate the language of the notice, omitting the clause about votes being taken.

*Note: If the public body intends to enter executive session under this exemption, the chair of the public body must also declare that discussing the matter at an open meeting may have a detrimental effect on the position of the public body.

Exemption 7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.

NOTICE:

Executive Session under G.L. c.30A, §21(a)(7) to comply with, or act under the authority of, [insert citation to general or special law or federal grant-in-aid requirement]; votes may be taken.

VOTE:

The vote would reiterate the language of the notice, omitting the clause about votes being taken.

Exemption 8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants.

NOTICE:

Executive Session under G.L. c.30A, §21(a)(8) to consider [insert "and interview", as appropriate] applicants for [insert name of position]; votes may be taken.

VOTE:

The vote would reiterate the language of the notice, omitting the clause about votes being taken.

*Note: If the screening committee intends to enter executive session under this exemption, the chair of the public body must also declare that discussing the matter at an open meeting may have a detrimental effect obtaining qualified applicant.