

EXECUTIVE SESSION QUICK INDEX GUIDE

Courtesy of the City Solicitors and Town Counsel Association and your municipal attorney

REMEMBER, YOU MUST 1. ALREADY BE IN OPEN SESSION; 2. USE ROLL CALL VOTE TO GO INTO EXECUTIVE SESSION; 3. CHAIR MUST SPECIFY THE SPECIFIC REASON OR REASONS (SEE BELOW) STATING ALL SUBJECTS THAT MAY BE REVEALED WITHOUT COMPROMISING THE PURPOSE FOR WHICH THE EXECUTIVE SESSION WAS CALLED; AND 4. CHAIR MUST SPECIFY IF YOU INTEND TO RECONVENE IN OPEN SESSION.

Note: Listed are suggested motions for each of the exceptions to the Open Meeting Law. You can of course edit them to suit the occasion. You can combine more than one exception if applicable. Highlighted is the beginning of the pertinent parts of each suggested motion by "shadowing" and underlining the word "to", so that if you do combine reasons, all you need to do is to include the portion of the suggested motions beginning with the highlighted word "to". Also similarly highlighted in "shadow" and underlining are the four most frequently used exceptions for Executive Session. Accurate minutes are to be kept and maintained of all meetings, including Executive Sessions. The law requires that the minutes are to set forth: (a)- the date; (b)- the time; (c)- the place; (d)- the members present or absent; (e) a summary of the discussions on each subject; (f) a list of documents and other exhibits used at the meeting; (g) the decisions made and the actions taken at each meeting, including the record of all votes and for executive sessions, (h)- the votes, by recorded roll call votes. *You should also consult with your local municipal counsel as to the ability to meet in Executive Session or other session with legal counsel for the purposes of obtaining legal advice.*

Exception 1. To discuss the reputation, character, physical condition or mental health rather than the 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, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least 48 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, in addition to any other rights he or she may have under contract or other laws or sources:

- (a) to be present at such executive session during deliberations 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.
- (d) to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense. [(d) is a new requirement]

-Suggested Motion- Move to go into Executive Session to discuss the reputation, character, physical condition or mental health of an individual, and to reconvene in Open Session.

-Suggested Motion- Move to go into Executive Session to consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual and to reconvene in Open Session.

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

-Suggested Motion- Move to go into Executive Session to conduct strategy sessions in preparation for negotiations with nonunion personnel, and to reconvene in Open Session.

-Suggested Motion- Move to go into Executive Session to conduct collective bargaining sessions, with nonunion personnel and to reconvene in Open Session.

-Suggested Motion- Move to go into Executive Session to conduct contract negotiations with nonunion personnel, and to reconvene in Open Session.

-[Note- it may be appropriate and necessary to combine all three into one motion.]

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;

-Suggested Motion- Move to go into Executive Session to discuss strategy with respect to collective bargaining and that the Chair declare that an open meeting may have a detrimental effect on the bargaining position of the body, and to reconvene in Open Session. [NOTE: CHAIR MUST SEPARATELY DECLARE THAT AN OPEN MEETING MAY HAVE A DETRIMENTAL EFFECT ON THE BARGAINING POSITION OF THE BODY.]

-Suggested Motion- Move to go into Executive Session to discuss strategy with respect to litigation, and that the Chair declare that an open meeting may have a detrimental effect on the litigating position of the body, and to reconvene in Open Session. [NOTE: CHAIR MUST SEPARATELY DECLARE THAT AN OPEN MEETING MAY HAVE A DETRIMENTAL EFFECT ON THE BARGAINING POSITION OF THE BODY.]

Exception 4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
-Suggested Motion- Move to go into Executive Session to discuss the deployment of security personnel or devices or strategies with respect thereto, and to reconvene in Open Session.

Exception 5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
-Suggested Motion- Move to go into Executive Session to investigate charges of criminal misconduct or to consider the filing of criminal complaints, and to reconvene in Open Session.

Exception 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 governmental body.
-Suggested Motion- Move to go into Executive Session to consider the purchase, exchange, lease or value of real property, and that the chair declare that an open meeting may have a detrimental effect on the negotiating position of the body and to reconvene in Open Session. [NOTE: CHAIR MUST SEPARATELY DECLARE THAT AN OPEN MEETING MAY HAVE A DETRIMENTAL EFFECT ON THE NEGOTIATING POSITION OF THE BODY.]

Exception 7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
-Suggested Motion- Move to go into Executive Session to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements, and to reconvene in Open Session.

Exception 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; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;; [Note: The motion for this exemption can only be made by the preliminary screening committee. The preliminary screening committee may wish to go into Executive Session to consider the applications or interview people or both; you can adapt the motion to serve your needs.]
-Suggested Motion- Move to go into Executive Session to consider [and if applicable-] and interview applicants for employment or appointment and that the chair declare that an open meeting will have a detrimental effect in obtaining qualified applicants, and to reconvene in Open Session. [NOTE: CHAIR MUST SEPARATELY DECLARE THAT AN OPEN MEETING MAY HAVE A DETRIMENTAL EFFECT IN OBTAINING QUALIFIED APPLICANTS.]

Exception 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session;
-Suggested Motion- Move to go into Executive Session to meet or confer with a mediator and to reconvene in Open Session.

Exemption 10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy;
-Suggested Motion- Move to go into Executive Session to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164. [or if applicable- in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or if applicable- in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164] and to reconvene in Open Session.]
[Note that the governmental body, municipal aggregator or cooperative must have determined that disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.]

This material is provided as general information and does not constitute the providing of legal advice. Other legal requirements may be applicable to a particular situation. The law encourages meetings to be in open as much as possible. These exceptions to open meetings should only be used when necessary. You should consult with legal counsel as to the applicability of the law to a particular situation. This material is presented by the City Solicitors and Town Counsel Association as a public service. CSTC can be reached at 115 North Street, Suite 3, Hingham, MA 02043; 781-749-9922; fax- 781-749-9923; www.massmunilaw.org; Exec. Dir./Sec.-Treas. Email jlampke@massmunilaw.org © City Solicitors and Town Counsel Association (January 2010) NOTE: REFLECTS CHANGES EFFECTIVE JULY 1, 2010, PER C. 28 OF THE ACTS OF