

372 Union Avenue | Framingham, MA 01702
(Tel) 508-665-4310 | (Fax) 508-665-4313
www.petrinilaw.com

To: Clients & Friends

From: Christopher J. Petrini *C.J.P.*
Amanda Zuretti *AZ*
Petrini & Associates, P.C.

Date: October 19, 2017

**RE: Revisions to Open Meeting Law Regulations at 940 CMR 29.00 – 29.11
Petrini & Associates Client Advisory**

The Massachusetts Attorney General’s Office of Open Government (“AGO”) recently announced revisions to 940 CMR 29.00 – 29.11 (“Regulations”) under the Open Meeting Law, M.G.L. c. 30A, §§ 18-25. The revised Regulations, which become effective on **October 6, 2017**, were promulgated “in effort to help members of public bodies and the public better understand the requirements of the Open Meeting Law and to update the regulations to conform with [AGO] guidance.” The Regulations are available on the AGO’s new website at <https://www.mass.gov/service-details/new-open-meeting-law-regulations-effective-october-6-2017> in clean and redlined format, together with an explanation of the changes to 940 CMR 29.00 – 29.11 and two new checklists for public bodies, namely the “Public Body Checklist for Creating and Approving Meeting Minutes” and the “Public Body Checklist for Posting a Meeting Notice.”

The major changes to the Regulations include new notice posting requirements in Section 29.3, the addition of an option to mediate complaints in Section 29.5, modifications to the AGO’s procedure for resolving complaints in Section 29.7, clarification that the AGO does not provide advisory opinions in Section 29.8, guidance on remote participation at open meetings in 29.10, and instruction on public bodies’ obligations to approve both open and executive session meeting minutes in Section 29.11. Notably, the revised Regulations simplify the conditions for remote attendance at meetings (Section 29.10), but tighten requirements for creation and release of public meeting minutes (Section 29.11) and for response to complaints of Open Meeting Law violations (Section 29.5). The major changes to 940 CMR 29.00 – 29.11 are summarized below.

29.3 Notice Posting Requirements

Section 29.3 of the Regulations eliminates several of the previously available alternatives to traditional posting, leaving the use of a public body's internet website as the sole remaining alternative. Section 29.3(2) further clarifies that the Chief Executive Officer of a municipality is empowered to make the decision to adopt an alternative notice posting method for the municipality. Section 29.3(7) provides that if a public body's website goes down within 48 business hours of a meeting and accessibility to the public is not restored within six business hours of when the deficiency was discovered by the municipal clerk or individual responsible for posting notice, then the meeting cannot go forward and the public body must re-post notice of its meeting for another date and time.

29.4 Certification

The revisions to Section 29.4(1)(a)-(b) provides explicit direction requiring that new public body members receive copies of the AGO's Open Meeting Law Guide, 940 CMR 29.00 – 29.11 and all determinations of Open Meeting Law violations issued to such public body by the AGO over the prior five years. The Office of Open Government explains in its summary of the Regulations that the goal of the revised Section 29.4 is to make sure "that new public body members are aware of their public body's history of compliance with the law and any orders that the AGO may have issued, thus reducing the risk of repeat violations and intentional violations."

29.5 Complaints

Section 29.5(1) clarifies that public bodies need not respond to complaints that are unsigned or not filed using the AGO complaint form. Sections 29.5(6)-(7) provide explicit timelines for responding to complaints, and Section 29.5(9) introduces the option of mediation where a complainant has filed five or more complaints within the prior 12 months. Under Section 29.5(9)(d), if the public body requests mediation and the complainant fails to participate, then the AGO may decline to review the complaint.

29.6 Investigation

The final paragraph of Section 29.6 makes clear that "the AGO may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or other action taken to conduct or in a written determination to resolve the investigation pursuant to 940 CMR 29.0007". The Office of Open Government explains, however, that "[t]he AGO will continue to maintain the confidentiality of executive session minutes and documents where the public body has not yet publicly released the executive session minutes."

29.7 Resolution

Based on revisions to Section 29.7 (2)(b), the AGO may now order nullification of an action taken

October 19, 2017

Page 3

by a public body in violation of the Open Meeting Law “in whole or in part” and may also require reinstatement of an employee “without loss of compensation, seniority, tenure or other benefits” without conducting a hearing, which previously was required for the issuance of such an order. A public body still has the right to appeal the AGO’s order within 21 days.

Under a new Section 29.7(4), public bodies subject to a written order from the AGO are required to certify compliance with the order in writing within 30 days. As the Office of Open Government explains, “[t]ypical orders requiring written certification include approval and release of meeting minutes and attendance at a training,” and “[t]his requirement will help the AGO ensure that public bodies comply with her orders.”

Section 29.7(3)(d) has been revised to confirm the public body’s defense against imposition of fines based on good faith compliance with advice of counsel which is consistent with existing law in the Open Meeting Law statute, G.L. c. 30A, §23(g).

29.8 Advisory Opinions

The revision to Section 29.8 makes clear that the AGO “will generally not issue advisory opinions” regarding the Open Meeting Law, but “may issue written guidance on common requests”, which will be made available on the Frequently Asked Questions page on the AGO website.

29.10 Remote Participation

Section 29.10(5) as revised eliminates the previous five permissible reasons for allowing remote participation, now limiting remote participation only in situations where “physical attendance would be unreasonably difficult.” A new Section 29.10(g) specifically allows members of local commissions on disability to participate remotely in open meetings, if so authorized by majority vote of the commissioners at a regular meeting, confirming existing law in the statute and previous guidance issued by the Division of Open Government. See G.L. c. 30A, §20(e). Remote participation still must be adopted by the pertinent official or board set forth in the regulation before it can be used by the other public bodies in a particular community.

29.11 Meeting Minutes

Under the new Section 29.11, public bodies must create and approve meeting minutes “in a timely manner” which “will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay.”

The revised Regulations respond to many of the common concerns that you may have regarding the compliance with the Open Meeting Law. We at Petrini & Associates are happy to respond to any questions or concerns that you may have regarding the Open Meeting Law or the revised Attorney General Regulations. Thank you.