



TOWN OF MEDFIELD MEETING NOTICE

Posted:

Town Clerk

Posted in accordance with the provisions of M.G.L. c. 30A, §§18-25

This meeting will be held in a hybrid format. Members of the public who wish to participate to the meeting may do so in person or via Zoom by one of the following options:

1. To join online, use this link:

<https://medfield-net.zoom.us/j/86814894515?pwd=K01pRIVzaEJmeFZDdktnEtES0ovZz09>

- a. Webinar ID: 868 1489 4515
- b. Password: 988378

2. To join through a conference call, dial 309-205-3325 or 312-626-6799 or 646-931-3860 or 929-436-2866 or 301-715-8592 or 386-347-5053 or 564-217-2000 or 669-444-9171 or 669-900-6833 or 719-359-4580 or 253-215-8782 or 346-248-7799
 - a. Enter the Webinar ID: 868 1489 4515
 - b. Enter the password: 988378

Warrant Committee

PLACE OF MEETING	DAY, DATE, AND TIME
Chenery Hall, Medfield Town House Also available remotely on Zoom	Tuesday, April 25, 2023 at 7:00 pm

Agenda (Subject to Change)

Call to Order

Disclosure of video recording

Approval of Minutes

Discussion With Town Counsel for Town Meeting Regarding Article Format and Related Motions

Warrant Article Discussions and Potential Votes

- Article 19: Construction of Garage at the Center (Discussion and Vote)
- Article 29: Citizens Petition - Compensation Transparency (Discussion and Vote)

- Article 28: Citizens Petition - School Committee Public Hearings (Discussion and Vote)
- Article 27: Water Conservation: Private Well Restrictions (Discussion and Vote)
- Article 30: Citizens Petition - Creation of a Groundwater Protection Committee (Discussion and Vote)

Reserve Fund Transfer Requests

- Town Clerk - \$3,000 for costs associated with printing updated versions of the Medfield Code and holding town elections (Discussion and Vote)
- Town Counsel - \$55,000 for legal fees (Discussion and Vote)
- Town Report/Meeting - \$15,322.62 for costs associated with printing and delivering Town Meeting Warrants and printing Annual Reports for 2019, 2020, 2021, 2022 (Discussion and Vote)

Update From Town Finance

Informational Items

Next Meeting Dates

May 1st - Annual Town Meeting

From: **Eileen Murphy** <emurphy@medfield.net>
Date: Fri, Apr 21, 2023 at 3:10 PM
Subject: Warrant Article 27 -
To: <callahanstephend@gmail.com>
Cc: Kristine Trierweiler <ktrierweiler@medfield.net>

Hi Steve,

Yesterday, I was talking with Kristine about warrant article 27. I mentioned to her how your question to me last week as to whether I had spoken with any well owners, struck a chord. Acknowledging the importance of hearing from all citizens I let Kristine know that I am going to ask if the Select Board can re-vote our position for article 27, prior to the start of our ATM. Our current vote stands 2-1 in support of it.

I don't believe the warrant committee has taken a final position on the article so before you do I want to make you aware of my request to Kristine.

I genuinely appreciate your suggestion to me to give all well owners an opportunity to meet with the board and share their comments and concerns. To hear from them for the first time, on the floor of our ATM, is not the right way to go about this. I am certain this will upset some residents that are in support of this article. I will explain at our ATM my reasons for changing my support for the article at this time. As I mentioned to Kristine, based on my conversations with well owners and what more I learn in regard to the legal exposure this article could have on the town, I may or may not opt to address it again next year.

If you or anyone on the warrant committee have any questions, please do not hesitate to contact me.

Thanks again and have a nice weekend.

Eileen Murphy
emurphy@medfield.net

Medfield Annual Town Meeting 2023

Article 28 Motion:

I move that the town accept Article 28 with an addition to Town Charter Section 5, Article 5-2 School Committee Powers and Duties to read as follows:

Medfield School Committee shall hold a public hearing, if not already required by law and not already scheduled within 30 days, on a topic within its scope of authority if requested in writing by at least 25 registered Medfield voters with signatures verified by the Town Clerk.

The hearing shall be held not less than 14 days after publication of a notice thereof in a newspaper having general circulation in the town.

At least 48 hours prior to such public hearing, School Committee shall make available to the public via electronic means its meeting packet containing relevant documents for the hearing.

At the time and place of the hearing, as properly advertised, all interested persons shall be given the opportunity to be heard on the topic at hand under School Committee authority, which primarily concerns the school budget, superintendent performance, and district educational goals and policies.

Requests for a hearing related to school personnel (other than the superintendent) or students will be generally prohibited.

WARRANT COMMITTEE QUESTIONS FOR SCHOOL COMMITTEE ON
ARTICLE 28 – CITIZENS PETITION- SCHOOL COMMITTEE PUBLIC HEARINGS

Legal Matters

- (1) Are you aware of any other town or municipality in Massachusetts that has a bylaw or charter provision approved by the Attorney General's Office that is like that proposed under the citizen petition? If so, please provide the name of the town and a copy of the bylaw/charter provision.
- (2) Has legal counsel to the School Committee provided an opinion on this article and did they express an opinion on whether the article, as currently worded, is consistent with Massachusetts State Law? If so, please provide a copy of this opinion in advance of our meeting. Has any member of the School Committee been in touch with the Attorney General's Office about this proposed article?

Policy Matters

- (1) What are the various methods and ways in which members of the public can interact with and communicate with the School Committee and its members? How do school committee members currently ensure that they hear and are listening to all concerns of the public on important matters?
- (2) Please provide examples of public hearings and/or forums that the School Committee has placed on its meeting agendas over the past few years (include both those required under law and those voluntarily added to agendas based on public input).
- (3) Has the School Committee ever denied a formal request to have a public hearing or forum on a matter raised by the public? If so, what were the reasons?
- (4) What is your opinion of a 25-voter threshold to require a public hearing on an important matter determined by a group of 25 residents? How many families have students in the Medfield School system? (if you know)
- (5) Are there any implications in proposed article to how you would exercise your executive authority over meetings and agendas? If so, what are they?
- (6) Do you feel that this proposed article reflects a sense that in the past the School Committee has been unresponsive to concerns raised by Medfield voters? If so, how would you tell voters that you intend to be responsive to concerns that they raise?
- (7) What is the current process the School Committee currently follows to evaluate the performance of the Superintendent? How is this information shared with the public and does the public currently have an opportunity to share their opinions?

INFORMATION FOR WARRANT COMMITTEE –

ARTICLE 28 – CITIZENS PETITION-SCHOOL COMMITTEE PUBLIC HEARINGS (2023 ATM)

(submitted by Chris McCue Potts, lead petitioner)

Arguments Presented to Date:

1) The article constitutes an invalid directive from the legislative branch (Town Meeting) to the Executive Branch.

School Boards (including School Committees in Massachusetts) are not part of the Executive Branch. Only mayors, select boards and the town manager/administrator are considered the Executive Branch in Massachusetts municipalities. [Source here](#). This point has also been referenced multiple times in AGO Municipal Law Unit determinations, including **Case 7277 from Town of Dedham** (2014).

The additional problem with Dedham was the direct conflict with existing law as it relates to regulating public comment at public meetings against Open Meeting Law, which is different than Public Hearings (see **OML determination 2020-114**).

Because future versions of Article 28 would never be allowed to dictate actions to Select Board, it also **wouldn't be allowed to dictate the actions of any boards the Select Board governs**, greatly reducing the risk of copycat citizen's petitions being brought forth in the future.

School Committees, according to [MA Department of Elementary & Secondary Education](#) (MA DESE), are **legislative bodies**: "The school board is a legal agent of the state and must, therefore, fulfill both state and federal mandates. At the same time, the board **must be responsive to the community it serves**. The board is a **legislative body** that develops, evaluates, and oversees education policies."

2) Article 28 takes away statutory & policymaking authority from School Committee to set its own agendas, and is in opposition to Open Meeting Law

Per MA DESE, Medfield School Committee has a **statutory responsibility to be responsive to the community it serves**. If numerous constituents are concerned with a particular matter, and perceive due process is not available to them as granted under the 14th Amendment and MA Constitution, they should have a mechanism for requesting to be heard.

Additionally, the Attorney General's Office has consistently made a distinction between public meetings and public hearings with regard to Open Meeting Law. In its 2020-114 Danvers determination, it clearly stated that "**the Open Meeting Law does not govern the requirements for conducting a public hearing**" and as a result, it declined to review the OML complaint that was submitted. The AGO's determination letter also makes it clear that per Executive Order, Section 1, allowance for active, real-time participation by members may apply to public hearings, and not just those mandated by the state but also ones governed by a local ordinance or bylaw.

Also regarding the school attorney opinion letter from Andy Waugh, it was stated that Article 28 would take away school committee authority, yet in another sentence, it is stated that the superintendent and chair set the agenda even though the superintendent has no such legal power.

In fact, the very Massachusetts Association of School Committees agenda-setting policy (BEDB) that was referenced by Waugh in his letter, was [removed by MASC](#) from its reference manual last month (March 2023). (Along with BEDB, the **BEDH-E policy that provided guidelines for public comment model policy**

was also removed from the MASC reference manual. Both policies incorrectly gave the superintendent authority over school committee that is clearly not allowed under the Education Reform Act.)

Lastly, MASC's own [School Committee Norms & Protocol document](#) states in a footnote that "the public does not have an inherent right to speak or participate without recognition by the chair **or entitlement through your municipal charter.**"

3) The proper procedure for Article 28 to amend Town Charter was not followed, and a bylaw change would not be appropriate.

Town Counsel described a different process in January 2023 than the one recently shared with Select Board.

Consider the documented procedure that was followed to amend our Town Charter for the Select Board name change:

- At 2022 Town Meeting, citizens voted on the charter change as laid out in a Warrant Article. That article noted it was in accordance with [Home Rule Procedures Act, G.L. Chap. 43B, Sec. 10 & 11](#) (our charter language reflects the same statutes regarding amendments – see screenshot below).
- Under the cited law of Sec. 10, a public hearing must be held **4 months** after the amendment (in this case, citizens petition) is filed with the Town, and it is stated the **hearing does not need to be entirely focused on the petition – it can be included with other articles.** Per Town Administration, no public hearing solely dedicated to the name change was ever held. However, the article was included in the 2022 Warrant Hearing.
- The citizen's petition for Article 28 was filed on Jan. 9, 2023; the legally noticed Warrant Hearing (which included the citizen's petition) was held on April 11, 2023, so it was within the required four-month time frame.
- For a charter change under the Home Rule Petition law, Sec. 10, a 2/3 Town Meeting vote is required. This wasn't noted in last year's ATM Warrant Report, but it's a moot point since it was near-unanimous. However, I would assume Article 28, if it proceeds on a Town Charter change route, would require the 2/3 vote.
- A charter commission appears to be needed for changes related to a **select board**; it is not required for a charter change related to school committee.
- Town Counsel told me earlier in the year that if I went the Town Charter route, the request would need to be put forth to voters in next year's election (similar to Select Board vote). That step is clearly articulated in the state statute, Sec. 11.

Charter
Code
New Laws (0)
Index

← Town of Medfield, MA / The Charter / Charter Article 10 GENERAL PROVISIONS →

SECTION 10-5 Publication of Charter and Bylaws.
Bylaws and copies of this Charter shall be made available in suitable form in the office of the Town Clerk. An amount not to exceed the actual cost per copy of reproduction may be charged.

SECTION 10-6 Charter revision.
Amendments to this Charter relating in any way to the composition of the Town Meeting or the composition or mode of election or terms of office of the Board of Selectmen may be proposed only by a Charter Commission elected under the Massachusetts General Laws.
Proposed amendments under this Charter shall be acted upon by ballot of the whole Town at a regular or special election of Town officers in accordance with the Massachusetts General Laws.
The Board of Selectmen shall, every 10 years, form a committee to study the working of Town government and recommend procedures to revise the Charter if that is deemed advisable.

- Regarding the alternative **bylaw amendment option for Article 28**, AGO determination **Worthington-7327 (10/14/2014)** clearly allowed the addition of a new bylaw section related to Worthington School Committee powers and duties.

Other Warrant Committee Questions (not already addressed above)

- (1) School committee practice regarding public engagement on important matters...
 - Conversations with 1-2 members (via publicized coffees or Zoom forums), but these are legally not considered talking with the entire school committee.
 - Little to no documentation of key issues discussed in informal forums; information not brought forth publicly to full committee; and
 - Forums may be held, but advanced notice has traditionally been lacking.
- (2) Past public hearings and/or forums that the School Committee has placed on its meeting agendas over the past few years...
 - It is not enough to ask about public hearings and/or forums. Warrant Committee needs to see documentation and timelines that indicate **how the public was informed about the hearings and/or forums, and how much advanced notice was given**. A public meeting only requires 48-hour notice, whereas a school budget hearing, for example, legally requires a minimum of seven days' notice in a local newspaper (and a Legal Notice is required - not a newspaper retail ad or Patch article – see screenshot below.) What's the point of holding a public hearing if the public doesn't know about it? Even Chair Tim Knight recently noted at the last SC meeting that it needed to advertise the hearings/forums.
 - For a number of years, I had to repeatedly ask about the **mandatory Legal Notices that had failed to appear in the local newspaper and on the database** for both the budget and School Choice public hearings. At one point, I shared my concerns with Town Counsel and DESE. I was informed that the fine for not publishing legal notices was small – maybe \$200 at the time – as if cost was no big deal. But what about public knowledge of the hearings? How is it acceptable to bypass a Legal Notice requirement and not provide online access to the notice? (Former town officials would regularly reach out to me wondering where they might find the notices.)

Retail ad vs. Legal Notice for public hearing



Christine McCue <christine.mccue@verizon.net>
To: 'publicnotices@njpa.org'

Fri 1/22/2021 11:30 AM

Dear Mass. Public Notices,

Our school department continually places budget hearing notices as retail ads vs. legal notices in the local newspaper of record. This is at least the third year in a row it has bypassed the legal notice system, and as a result, the notices never appear online on the masspublicnotices.org website.

Any idea what can be done about this?

Thank you,

Chris McCue Potts

(3) School Committee denial of a formal request to have a public hearing or forum on a matter raised by the public?

- How is “formal” defined? A public hearing (typically with noticing requirements) is also different than a public forum. The current Medfield School Committee with most members with barely a year or less of service, will have no historical knowledge of the requests that have been made over time. Attached is one of several e-mails I sent over the years expressing concern that no formal public hearing (not a forum or regular meeting with just 48 hours of notice) was scheduled on a significant topic of community concern. And while the particular e-mail enclosed was addressed to Board of Selectmen, the SC chair was on the distribution, previous outreach specifically to school committee had been made in an effort to seek a public hearing on the proposed grade reconfiguration (as well as initial school building project kickoff). SC ultimately held a forum, but it wasn’t sufficiently publicized by the Committee (all the dates have been documented).
- As previously noted, the 2018 proposal for a 6.16% school budget increase was another example, as was extension of elementary school day, K-5, in 2015.

(4) 25-voter threshold for requesting a public hearing...

- As previously noted, 10 certified voters can bring a citizen’s petition forth to Town Meeting and it is guaranteed to be added to the Warrant to allow for a deliberative process, so why is 25 petitioners for a public hearing considered low?
- One cannot compare number of signatures on an election ballot with the ability to make major decisions impacting families over a candidate’s term with a request for a one-time public hearing that has no direct decision-making ability.
- And how can one compare 25 signatures on a Public Hearing request with the 250 signatures required to hold a Special Town Meeting? A Town Meeting petition not only mandates the meeting itself, it also mandates that the town/taxpayers cover the cost of the meeting. There is a big difference between holding a Special Town Meeting in

response to citizen wishes vs. adding one agenda item to an already scheduled Town Meeting.

(5) Should we trust that School Committee will be more responsive in the future?

- Please look at the actual documentation of past practice vs. validating personal opinions. There are too many examples to cite:
 - Only one strategic plan focus group was recently held with the community (vs. multiple ones held seven years ago) and there was no SC involvement in shaping the consultant RFP, approving the consultant contract, and shaping the overall plan and timeline, including how steering committee members would be chosen;
 - Multiple Open Meeting Law violations (plus Ethics Commission issues documented by meeting tapes and photos);
 - Lack of SC adherence to its own policies (including use of school attorney);
 - A failed school building vote that was precipitated by School Committee not understanding its own legal role of needing to represent the community, and not holding the superintendent accountable for holding public forums early on in the process – even when directly requested to do so (per meeting recording), or, for failing to hold a public forum on grade reconfiguration (e-mail enclosed); and
 - Change to the Public Comment policy – without sufficient community outreach. This was unacceptable, and the change itself was not needed or necessary, especially when other school policies were grossly outdated and out of compliance (and still are). School districts comparing themselves based on such things as salaries, bus fees and start times is one thing, but no district should be adopting a public comment policy to be in line with neighboring towns since every community is unique and different.
 - Hundreds of school policy changes are now underway, with a few significant ones buried in the mix. It's wrong for School Committee to push these all through without dedicating significant time to gather community feedback on the ones that will matter most to people. It's especially disconcerting considering we now have inexperienced members who don't yet understand the significance of the policy updating process.

(6) Public engagement in superintendent evaluations & sharing opinions?

- The bigger question: Where are our annual District, School Committee and Superintendent goals that should have been set prior to **each academic year**? Over the past decade, the district has operated without such goals.
- How was district performance (SC & superintendent) measured against the **former strategic plan**? I saw this happen for a short time at the request of one school committee member, but it fell by the wayside.
- Without annual goals, how are annual **budget priorities** determined?

- How often does Medfield School Committee conduct a self-evaluation and seek public input on how it might better meet community needs (as recommended by MASC)? This self-evaluation was only conducted once over the past 9-10 years.

Responses to Recent Comments

1) The 30-day requirement as stated in the article is not valid because it's not clear if it refers to time from request submitted to schedule hearing, or that the hearing needs to be held. (Public comment at School Committee meeting.)

Neither is an accurate interpretation. The Article states that a quorum of Medfield School Committee members would be required to hold a public hearing “**if not already required by law and scheduled within 30 days**, on a topic within its scope of authority.” This wording was designed to prevent duplication of effort in the event the Committee had already scheduled a public hearing on the same topic within the 30-day window.

2) The Article allows anyone to request a hearing on any subject – even “popsicle sticks in the lunch room.” (Statement by School Committee member Leo Brehm.)

This is absolutely untrue, and if the actual Article 28 had been in the last School Committee meeting packet, the members would have been able to see the actual wording. The Article clearly states that the topic of the requested hearing must be “within scope of (SC) authority” and “which primarily concerns the school budget, superintendent performance, and district educational goals and policies.” (Of course, since I was sitting right there in the audience, the Chair could have asked me directly to explain the article to ensure accurate information was relayed – just as Select Board did – but he did not.)

3) The Article is unnecessary – I/we can just talk one-on-one with people to hear their concerns. (Statement by multiple School Committee members.)

School Committee members **have no power when speaking as individuals** – they can only exercise their authority when present as a quorum. This is a point relayed in MASC new member orientation sessions and material, including the Norms & Protocols document referenced earlier. A public hearing allows all or a majority of School Committee members to hear testimony from constituents at the same time and respond as a group.

This point also applies to two School Committee members answering Warrant Committee questions on 4/25 even though they did not previously discuss the questions among a quorum of the Committee. The responses of two individuals (unless they break Open Meeting Law and discuss the questions among themselves beforehand) are solely personal opinions that risks unfairly misrepresenting other Committee member views.

April 13, 2023

Andrew J. Waugh, Esq.
awaugh@mhtl.com

VIA EMAIL ONLY

Mr. Timothy Knight
Vice-Chair
Medfield School Committee
459 Main Street
Medfield, MA 02052

Re: Opinion on citizens' petition for School Committee public hearings

Dear Mr. Knight:

I am writing in response to a request from the Medfield School Committee for an opinion on the propriety of a citizens' petition for this spring's annual town meeting. The petition, captioned "Citizen Request for School Committee Public Hearings", seeks to amend the Town Charter or to create a new bylaw that would require a quorum of Medfield School Committee members to hold a public hearing within thirty (30) days on a topic within its scope of authority if requested by at least 25 registered Medfield voters (Article 28).

In my opinion, Article 28 unduly infringes on the School Committee's authority to set the agenda for its meetings, contrary to both state law and School Committee policy. The Massachusetts Legislature has, in certain instances, mandated that school committees hold public hearings on particular topics. To cite two examples, MGL c. 71, Section 38N mandates that all school committees must hold a public hearing on their proposed budget annually, and it spells out the requirements that must be met prior to the public hearing. Similarly, MGL c. 76, Section 12B requires that all school committees hold an annual meeting to decide whether they want to withdraw from their obligation to enroll nonresident students (school choice). These statutes, however, are the exception to the general rule that a school committee may, subject to its own policies, set an agenda that meets the particular needs of the school district. In the absence of any explicit statute mandating a public hearing, school committees are not required to hold public hearings unless a majority of the school committee votes to do so.

This is consistent with the Medfield School Committee's own policy on establishing an agenda. Policy BEDB, entitled "Agenda Format", states in relevant part that, "**[t]he superintendent, conferring with the chairman of the school committee, will arrange the order of items on meeting agenda so that the committee can accomplish its business as expeditiously as possible. . . Items of business may be suggested by any school committee member, staff member, or citizen. The inclusion of such items, however, will be at the discretion of the chairman of**

Mr. Timothy Knight
April 13, 2023
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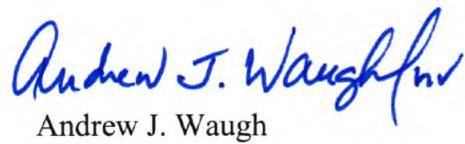
the committee.” (emphasis added). As Policy BEDB makes clear, the superintendent and the chair of the School Committee set the agenda for individual School Committee meetings in a manner intended to allow the School Committee to accomplish its business as efficiently as possible. The School Committee members, through their chair and the superintendent, have the exclusive purview to determine the topics and order of agenda items on their agenda.

Article 28 attempts to take away the School Committee’s statutory and policy-making authority to set its agenda as it sees fit. Under Article 28, citizens could file petition after petition with the School Committee, thereby tying up its agendas with items which the School Committee did not support. This article attempts to invalidate the School Committee’s legal authority to set agendas and requires that the Committee defer to petitions filed by citizens in the community, rather than allowing the Committee to make decisions that they deem to be in the best interests of the school district.

In addition to the foregoing reasons for rejecting Article 28, the article requests that Town Meeting take an action which, respectfully, Town Meeting does not have the authority to take. As the Town’s legislative body, Town Meeting cannot infringe on the School Committee’s statutory and policy-making authority to set agendas that meet its needs. The attempt by the authors of Article 28 to dictate how the School Committee sets its agenda is beyond the authority of Town Meeting.

In summary, Article 28 unduly infringes on the Medfield School Committee’s statutory and legal authority to make determinations related to setting agendas for its meetings. These are, unless explicitly mandated by statute, exclusively School Committee matters and should be left to this entity. Given the numerous legal issues associated with Article 28, I recommend that it be passed over at Town Meeting and deferred to the School Committee.

Very truly yours,



Andrew J. Waugh

Cc: Jeffrey Marsden, Ed.D., Superintendent of Schools

----- Forwarded message -----

From: **Timothy Knight** <tknight@email.medfield.net>

Date: Tue, Apr 25, 2023 at 11:00 AM

Subject: Fwd: Opinion letter on citizens' petition for School Committee public hearings

To: MedfieldTown Moderator <medfieldtownmoderator@medfield.net>,

<ktrierweiler@medfield.net>

Cc: Jeff Marsden <Jmarsden@email.medfield.net>, Leo Brehm

<lbrehm@email.medfield.net>, warrant committee <warrantcommittee@medfield.net>

1. Hello Kristine and Scott,
2. As you know, there has been a citizen's petition targeting the operations of the School Committee. (The written Town Meeting guide is showing this as Article 28.). We have been asked to join the Warrant Committee meeting tonight, and in preparation were asked to share the legal opinion which we have obtained. I will highlight some information for you to review below:

- [Legal Opinion on Citizens Petition About School Committee Public Hearings](#)
- School Committee Discussion on this topic during our 4/13 meeting. All members were opposed to this petition. (If you fast-forward to 40 minutes you will hear the discussion - [See Link](#) for details on the discussion.)
- Additional Legal Information from Attorney based on my following up on the Warrant Committee request to check with Attorney General's Office, which eventually led me back to Shool Attorney. (See the email thread below for additional information over and beyond the letter.),

After reviewing the legal opinion, we think it is important for you to seek legal interpretation from the Town Council, and consider removal of the petition based on several factors:

- It violates the MGL authority granted to the local school committee, and may be taking an action that is outside the authority of Town Meeting
- This petition focuses solely on the school committee and no other elected/appointed groups in town without evidence that citizens cannot participate in School Committee meetings, which seems very targeted.
- If you read the last sentence of the "Report on the Warrant" that has already been distributed, it is creating a forum for misinformation that negatively impacts the integrity of the School Committee. I am concerned that this will continue with discussions leading up to and on the floor will cause unnecessary confusion for all citizens which to me is concerning during these challenging times. (I am pasting this from Page 52 below as an example highlighted.)

"Summary from Citizen Petition: Through existing policy, it has the freedom to conduct a public hearing "as it deems advisable." However, there is no language in existing school policy that defines how the committee is to be advised, i.e., the process by which it will confirm a particular topic needs public input and discussion via a hearing. School Committee members are elected by voters to represent the citizens of Medfield. As such, the most effective way to determine if a public hearing is truly needed is for School Committee to listen and respond to feedback from many of its constituents. This citizen's petition is especially important now that it has become even more difficult for citizens to secure items on the agenda for regular school committee meetings.

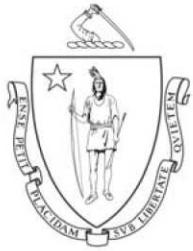
- There is a great deal of time, energy, and resources that are needed to manage the request which distracts us from our core mission of supporting our kids.

Finally, it may be worthwhile for you to join the Warrant Committee meeting tonight. While they have asked us to focus on questions in order to help formulate their opinion, your presence may help us all work efficiently to manage this petition.

Feel free to call or email if you have any questions.

Tim Knight

Tim



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

TEL: (617) 727-2200
www.mass.gov/ago

September 15, 2020

OML 2020 – 114

Danvers Planning Board
c/o David Fields, Director of Planning & Economic Development
Danvers Conservation Commission
c/o Georgia Pendergast, Planner
Town Hall
1 Sylvan Street
Danvers, MA 01923

By e-mail only: dfIELDS@danversma.gov; gpENDERGAST@danversma.gov

RE: Open Meeting Law Complaints

Dear Mr. Fields and Ms. Pendergast:

This office received two complaints from Matthew Duggan on August 24, 2020, and August 28, 2020, alleging that the Danvers Planning Board (the “Board”) and the Danvers Conservation Commission (the “Commission”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The first complaint was originally filed with the Planning Board on July 10; and Board Chair John Farmer responded, on behalf of the Board, by letter dated July 31. The second complaint was originally filed with the Commission on July 14; and Commission Chair Peter Wilson responded, on behalf of the Commission, by letter dated July 31. The complaints allege that the Board and the Commission “prevent[ed] the public from participating in real-time discussions” during their virtual open session meetings held on June 23 and July 9, respectively.

Following our review, we find that neither the Board nor the Commission violated the Open Meeting Law in the ways alleged. In reaching this determination, we reviewed the original complaints, the Board’s and the Commission’s responses to the complaints, and the complaints filed with our office requesting further review. In addition, we reviewed the notice and video recording of the Board’s June 23 meeting, and the notice and open session minutes of the

¹ All dates in this letter refer to the year 2020.

Commission's July 9 meeting, as well as a video recording of that July meeting.² Finally, we spoke with the complainant by telephone on September 14, 2020.

FACTS

We find the facts as follows. On March 10, Governor Charles Baker declared a state of emergency in response to the public health emergency created by the outbreak of the 2019 novel Coronavirus ("COVID-19"). See Exec. Order No. 591 (Mar. 10, 2020). On March 12, Governor Baker issued an executive order temporarily suspending certain provisions of the Open Meeting Law during the state of emergency. See Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20 (Mar. 12, 2020) (the "Executive Order"). The Executive Order temporarily suspends the requirements under the Open Meeting Law and the Attorney General's Open Meeting Law regulations that 1) a quorum of a public body, including the chair, be physically present at the meeting location; and 2) meetings be held in locations that are physically accessible to the public. The Executive Order relieves a public body from the requirement to hold its meetings in locations that are physically accessible to the public only if the public body provides adequate, alternative means of public access, meaning measures that provide transparency and permit timely and effective public access to the deliberations of the public body. See Executive Order at Section (1). All other provisions of the law and regulations remain in effect.

On June 19, the Board posted notice of a meeting to be held on June 23 at 7:00 P.M. The meeting was to be held virtually and live streamed on YouTube and local television. The notice listed the specific topics to be discussed, including two continued public hearings, three new public hearings, and approval of minutes. The notice further indicated that public comments could be submitted by email or by telephone and included a specific email address (publiccomments@danversma.gov) and telephone number (978-777-0001 x. 2).

The June 23 meeting was held as planned and Board members participated remotely; the meeting was broadcast in real-time on YouTube and local television. During each public hearing, the Board heard from the applicants on their specific site plan approval or special permit application that was pending before the Board. In addition, the Board accepted public comments via email and telephone and those comments were read into the record by a staff member and responded to in real-time during the meeting.

On July 7, the Commission posted notice of a meeting to be held on July 9 at 7:00 P.M. The meeting was to be held virtually and live streamed on YouTube and local television. The notice listed the specific topics to be discussed, including two continued public hearings, two new public hearings, and approval of minutes. The notice further indicated that public comments could be submitted by email or by telephone and included a specific email address (publiccomments@danversma.gov) and telephone number (978-777-0001 x. 2).

² A video recording of the Board's June 23 meeting can be found at:

<https://www.youtube.com/watch?v=KMtIRBDSi00>; a video recording of the Commission's July 9 meeting can be found at: <https://www.youtube.com/watch?v=bPM31-g77Ro>.

The July 9 meeting was held as planned and Commission members participated remotely; the meeting was broadcast in real-time on YouTube and local television. During each public hearing, the Commission heard from the applicants on their specific applications that were pending before the Board. In addition, the Commission accepted public comments via email and telephone and those comments were read into the record by a staff member and responded to in real-time during the meeting.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). At the core of the Open Meeting Law is the requirement that meetings of public bodies be open and accessible to the public. G.L. c. 30A, §20(a) (except when meeting in executive session, “all meetings of a public body shall be open to the public.”). Generally, access to a meeting must include the opportunity to be physically present, as well as to see and hear what is being discussed by the members of the public body. See OML 2020-100; OML 2017-135; OML 2016-54.³

The Executive Order suspended the requirement that meetings be physically accessible to members of the public, but only if a public body provides adequate, alternative means for the public to access its meetings. All other provisions of the law and regulations remain in effect, including the authorization of public participation. Specifically, the Open Meeting Law does not require that a public body allow public participation, but rather provides that “[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent.” G.L. c. 30A § 20(f). As such, the law gives the chair of the public body discretion to decide whether to permit public comment during a meeting. See OML 2017-189; OML 2014-23; OML 2012-78.

Here, both the Board and Commission met remotely, provided real-time access to their respective meetings, and provided an email address and telephone number for the public to submit comments. During their respective meetings, the Board and Commission received public comment through the email address and telephone number and read and responded to those comments throughout the meetings. Although the Board and Commission did not specifically allow verbal comments from the public during the meeting, the Open Meeting Law does not require that a public body provide such opportunity but rather gives discretion to the chair of a public body to determine who may speak or otherwise participate at a meeting. See OML 2014-23; OML 2013-64; OML 2012-59. Thus, the allegations that the Board and Commission only allowed public comment via email or telephone, rather than verbal, “real-time” participation, during their meetings would not constitute a violation of the Open Meeting Law.

Although the Open Meeting Law does not require that members of the public be permitted to speak or otherwise actively participate during a meeting, numerous laws in the

³ Open Meeting Law determinations may be found at the Attorney General’s website, <https://www.mass.gov/the-open-meeting-law>.

Commonwealth require that a public hearing be held before the government takes certain action.⁴ The specific procedures for notice and conduct of the public hearing are governed by the law requiring the hearing and such law may require opportunity for public comment. Therefore, the provision in the Executive Order which requires “active, real-time participation by members of the public” may apply to public hearings. See Executive Order at Section 1.⁵ However, the Division of Open Government’s review concerns compliance only with the Open Meeting Law, G.L. c. 30A, §§ 18-25. The Open Meeting Law does not govern the requirements for conducting a public hearing. Therefore, we decline to review, and offer no opinion on, whether any actions taken by the Board or Commission could be a violation of any public hearing law or regulation, including the above provision of the Executive Order. See OML 2014-31; OML Declination 1-25-18 (Rowley Planning Board); OML Declination 1-29-15 (Holbrook Planning Board).

Finally, the complaint alleges that the Board and Commission violated the Open Meeting Law by failing to allow for public participation in compliance with Section 3 of the Executive Order, which states that a public body which conducts a meeting remotely “shall ensure that any party entitled or required to appear before it shall be able to do so through remote means, as if the party were a member of the public body and participating remotely.” See Executive Order at Section 3. We disagree. Both the Board and the Commission provided the public with adequate, alternative access to the remote meeting via a live broadcast on YouTube and local television. Each individual that had a pending application before the Board or the Commission appeared remotely before the respective public body and discussed his or her specific application. Because, as stated above, the Open Meeting Law does not “entitle[] or require[]” members of the public to appear before the public body during a meeting – although other laws might – we find that the Board and Commission did not violate the Open Meeting Law.

CONCLUSION

For the reasons stated above, we find that the Board and the Commission did not violate the Open Meeting Law. We now consider the complaints addressed by this determination to be resolved. This letter does not address any other complaints that may be pending with our office, the Board, or the Commission. Please feel free to contact the Division at (617) 963-2540 if you have any questions regarding this determination.

⁴ See, e.g., G.L. c. 30A, § 2 (state agencies must hold a hearing prior to the adoption, amendment, or repeal of regulations); G.L. c. 114, § 38 (a Commission of health shall hold a hearing before a tomb, burial ground or cemetery is closed); G.L. c. 121A, § 6 (a local planning Commission shall hold a hearing on a proposed redevelopment project); G.L. c. 40A, § 15 (a local Commission of appeal shall hold a hearing on any zoning appeal, application or petition).

⁵ Section 1 of the Executive Order provides that “[w]here allowance for active, real-time participation by members of the public is a specific requirement of a general or special law or regulation, or a local ordinance or by-law, pursuant to which the proceeding is conducted, any alternative means of public access must provide for such participation.”

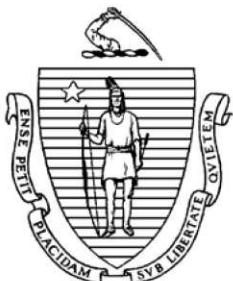
Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Matthew Duggan: By e-mail only – [REDACTED]

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
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WORCESTER, MA 01608

MARTHA COAKLEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
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October 14, 2014

Katrin Kaminsky, Town Clerk
Town of Worthington
P.O. Box 247
Worthington, MA 01098-0247

Re: Worthington Special Town Meeting of July 7, 2014 ----- Case # 7327
Warrant Articles # 2 and 3 (Zoning)

Dear Ms. Kaminsky:

Articles 2 and 3 - We approve Articles 2 and 3 from the July 7, 2014, Worthington Special Town Meeting. Our comments on Article 2 are provided below.

Article 2 - Article 2 amends the Town's general by-laws by adding a new Section XIV, "Worthington School Committee." The new Section XIV establishes the terms of office for school committee members and the school committee's powers and duties. Specifically, Section XIV (2), "Powers and Duties," authorizes the School Committee to appoint officers, employees and agents "as prescribed by law."

General Laws Chapter 71, Section 59B, provides that school superintendents are responsible for hiring school principals, and school principals are responsible for the hiring and firing of teachers and other personnel assigned to a school, as follows:

The superintendent of a school district shall appoint principals for each public school within the district at levels of compensation determined in accordance with policies established by the school committee. Principals employed under this section shall be the educational administrators and managers of their schools and shall supervise the operation and management of their schools and school property, subject to the supervision and direction of the superintendent. Principals employed under this section shall be responsible, consistent with district personnel policies and budgetary restrictions and subject to the approval of the superintendent, for hiring all teachers, athletic coaches, instructional or administrative aides and other personnel assigned to the school and for terminating all such personnel, subject to review and prior approval by the superintendent and subject to this chapter.

The responsibility for hiring and firing teachers and other school personnel shifted from the school committee to school principals, subject to the supervision of school superintendents, pursuant to the Education Reform Act of 1993. School Committee of Pittsfield v. United Educators of Pittsfield, 438 Mass. 753, 759 (2003). Under the Education Reform Act, school committees retain the power to establish educational goals and policies for the schools and to hire and fire school superintendents. However, school superintendents are responsible for hiring school principals and principals are responsible for hiring, disciplining, and terminating teachers and other personnel assigned to the school, subject to approval by the school superintendent. “Prior to passage of the Reform Act, responsibility for hiring and firing of teachers resided with the local school committees [citations omitted], a process that the conference committee’s report described as imposing ‘[b]ureaucratic and political barriers to reform.’” School Committee of Pittsfield, 438 Mass. at 760. We suggest that the Town discuss the application of the Section XIV (2) with Town Counsel to ensure it is applied consistent with G.L. c. 71, § 59B.

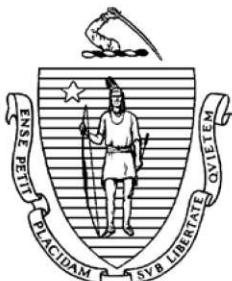
Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MARTHA COAKLEY
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan, Assistant Attorney General
The Municipal Law Unit
Office of Attorney General Martha Coakley
Ten Mechanic Street, Suite 301
Worcester, MA 01608
508-792-7600

cc: Town Counsel Joel B. Bard



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November 13, 2014

Paul M. Munchbach, Town Clerk
Town of Dedham
26 Bryant Street
Dedham, MA 02026

Re: Dedham Annual Town Meeting of May 19, 2014 ----- Case # 7277
Warrant Articles # 23, 24, 25, 26, 27, 28, 29, and 30 (Zoning)
Warrant Articles # 31, 32, and 33 (General)

Dear Mr. Munchbach:

Article 32¹ - As discussed in more detail below, we disapprove and delete Article 32 because, it conflicts with G.L. c. 30A, § 20 (f), and, as applied to the Board of Selectmen (“Selectmen”), it unlawfully interferes with the authority of the executive branch on a matter within the executive power of the executive branch. **[Disapproval # 1 of 1]**

Article 32 adds a new chapter to the Town’s general by-laws that requires all meetings of a multiple member body to set aside time for residents to provide comments on matters within the jurisdiction of the body.

General Laws Chapter 30A, Section 20 (f), applies to all public meetings of governmental bodies, including open meetings of the Selectmen, and establishes the discretion of the board chairperson to allow public comment at meetings, providing in relevant part as follows: “No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent.” Article 32 is in conflict with G.L. c. 30A, § 20 (f), because it removes the discretion from a local board’s chairperson and requires the board to allow public comments on matters within the jurisdiction of the body.

Moreover, as applied to the Town’s Selectmen, Article 32 constitutes an invalid directive from the legislative branch (Town Meeting) to the executive branch (the Selectmen) on a matter

¹ In a decision issued on September 16, 2014, we approved Articles 23, 24, 25, 26, 27, 28, 29, 30, 31, and 33.

within the exclusive authority of the executive branch: the discretion of the Selectmen to set their own meeting agenda in order to carry out their executive authority and their numerous statutory duties. Town Meeting serves as “the legislative body for the town.” Conroy v. Conservation Commission of Lexington, 73 Mass. App. Ct. 552, 558 (2009). As such, Town Meeting is “vested the traditional powers of the legislative branch of any level of government, i.e. the power to make laws (by-laws) and the power of the purse.” Wright v. Town of Bellingham, 2007 WL 1884657 (Mass. Land Ct.) quoting Town Meeting Time, 2d Ed. 1984. However, there are restrictions placed on the legislative power of Town Meeting. A legislative body cannot interfere with the executive branch on a matter which is in the exclusive authority of the executive branch. *See Anderson v. Board of Selectmen of Wrentham*, 406 Mass. 508 (1990) (Selectmen not bound by Town Meeting vote purporting to establish the Town’s rate of contribution for group insurance benefits).¹ The Selectmen have numerous statutory duties which they are required to fulfill and often must work within prescribed time limits. By requiring the Selectmen to devote time at each Selectmen’s meeting for public comment, Town Meeting has potentially limited the Selectmen’s ability to carry out these statutory duties. Massachusetts courts have long recognized that “when a board of selectmen is acting in furtherance of a statutory duty, the town meeting may not command or control the board in the exercise of that duty.” Anderson, 406 Mass. at 512.

We recognize that the possible intent of Article 32 is to promote an open and participatory political process in the Town, a laudable goal. However, because the amended text conflicts with state law and unlawfully interferes with the executive branch, it must be disapproved.²

¹ *See also Russell v. Canton*, 361 Mass. 727 (1972) (Town Meeting could authorize the Board of Selectmen to take land by eminent domain, but could not direct how much land was to be taken); Breault v. Auburn, 303 Mass. 424 (1939) (Town Meeting vote directing board of health to hire an employee was ineffective because hiring power was solely conferred on board); Lead Lined Iron Pipe v. Wakefield, 223 Mass. 485 (1916) (Town Meeting vote directing the board of selectmen to hire an engineer was void).

² There may be other ways to address public comments at local meetings. For example, the by-law could provide the chairmen of local boards with discretion regarding the public comment period, as opposed to mandating the public comment period. *See* decision issued on October 15, 2013 to the Town of Weston, Case # 6895.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MARTHA COAKLEY
ATTORNEY GENERAL

Margaret J. Hurley

By: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
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Ten Mechanic Street, Suite 301
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cc: Town Counsel Lauren F. Goldberg



Making Public Participation Legal



Compiled by the Working Group on Legal Frameworks for Public Participation
October, 2013

Making Public Participation Legal

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Photos on cover:

Top photo is a public domain photo taken at a contentious town hall event.

Bottom photo taken at a 2010 National Coalition for Dialogue & Deliberation workshop in Portland.

COMPILED BY THE WORKING GROUP ON LEGAL FRAMEWORKS FOR PUBLIC PARTICIPATION



Three Minutes at the Microphone

How outdated citizen participation laws are corroding American democracy

By Matt Leighninger

In legislative hearings, school board meetings, zoning hearings, and city council proceedings all over the country, democracy is dwindling, three minutes at a time.

The vast majority of public meetings are run according to a formula that hasn't changed in decades: officials and other experts present, and citizens are given three-minute increments to either ask questions or make comments. There is very little interaction or deliberation. Turnout at most public meetings is very low – local officials often refer to the handful of people who

typically show up as the "usual suspects." But if the community has been gripped by a controversy, turnout is often high, and the three-minute commentaries can last long into the night. On most issues, the public is either angry or absent; either way, very little is accomplished.



A heated and boisterous crowd at a meeting to adopt the San Francisco Bay Area's long-range transportation and housing plan.

Over the last two decades, a wide range of participatory meeting formats and dynamic online tools have emerged – so why do we continue conducting public business

in such an outdated fashion? There are a number of reasons, but one is the legal framework that governs public participation. At the local, state, and federal levels, these laws can stifle innovation and discourage public officials and employees from reaching out to citizens while failing to achieve the intended goal of greater transparency.

When combined with other kinds of engagement opportunities, traditional public hearings can work, mainly by providing a sense of closure and validation to public debate on an issue. But



since our legal framework supports only the bare minimum of deliberation, the pressure of dealing with contentious policy issues falls squarely on a format that isn't up to the task. One survey of local officials concluded that almost every official has experienced "instances of the public-acting-badly and civic-engagement-gone-wrong" in public meetings. "These experiences were personally painful and often degraded the quality of decision-making and policy implementation." A city clerk in California referred to her city's monthly council meeting as a "broken process" dictated by outdated laws. "Public participation in our city has turned into a punishment and hostage-taking process," she says.

For 21st Century citizens, who are more skilled and educated than their predecessors, who have access to endless quantities of information through their smartphones, and who are used to having a wide array choices open to them, these old meetings seem like a waste of time; there is little for them to learn, and little they can contribute. The consequences go far beyond miserable meetings: as the relationship deteriorates between the people and their public institutions, the legitimacy and financial sustainability of governments continue to decline.

New needs, old processes

Most of the laws governing public participation are at least thirty years old; one of the most notorious, California's Brown Act, just turned sixty. They predate the Internet as well as many innovations in face-to-face engagement, and it is unclear how they apply to:

- Use of Twitter and other social media platforms by public officials and public employees;
- Participation by public officials and public employees in neighborhood online forums, email listservs, and other online arenas;
- Participation by public officials and public employees in small-group dialogue and deliberation as part of larger public engagement efforts;
- Use of online tools to announce and proactively recruit for public meetings (rather than the old formula still found in many laws, which require governments simply to post a notice about a meeting in a city bulletin); and
- Collaboration between public institutions and private, nonprofit, charitable, and faith-based institutions in organizing and supporting public participation.

In all of these scenarios, our laws ought to uphold values such as transparency, privacy, inclusion, fairness, and freedom of speech.

In the Knight Foundation's "[Soul of the Community](#)" study, researchers found that attending a public meeting was more likely to reduce a person's sense of efficacy and attachment to community than to increase it. At the federal level, the poorly structured "town hall meetings" on health care reform in the summer of 2009 led to a number of highly publicized clashes



between constituents and members of Congress, and were widely viewed as being detrimental to the policymaking process.

Reframing the relationship

Many local leaders understand the implications of this shift. They know that the financial pressures facing local governments, school systems, and other public institutions are not just the result of the recent economic downturn. “If we think we’re going to come out of this recession and expect everything to go back to normal, we’ve got another thing coming,” says Harry Jones, county executive of Mecklenburg County, North Carolina. “We need to reach out and reframe our relationship with citizens – the people who are the ultimate source of our revenues.”

To support this new relationship, our public participation laws ought to support newer, more meaningful forms of citizen engagement. Over the last two decades, Jones and many other local leaders have pioneered a new generation of participation practices. These range from much more intensive, deliberative face-to-face meetings to a burgeoning array of online tools and arenas.

The most successful of the face-to-face efforts rely on proactive, network-based recruitment to bring more than the “usual suspects” to the table. They use small, facilitated groups that allow people to explain why they care about an issue, become more informed about it, consider a range of policy options, and decide how they can contribute to problem-solving – in addition to making recommendations to government. In some cases, as with the practice of Participatory Budgeting, citizens vote on how public money should be spent. Neighborhood and school online forums have emerged that employ some of the same tactics, giving leaders the chance to interact with sustained networks of citizens. And online tools have been established that allow people powerful and convenient ways to report problems, generate and rank ideas, work in small action teams, and visualize options for public budgeting and land use planning. Many of these efforts have been initiated by people and groups outside government, from community foundations to neighborhood organizers to universities to Chambers of Commerce. But whether or not they are led by public officials, most of



Photo taken by Richard Hastie at a Sustainable Places Project event in Lockhart, TX.

these efforts occur outside the scope of official citizen participation processes and the laws that govern them.

Revising the legal framework

Over the last year, a working group that includes representatives from the International Municipal Lawyers' Association, International City/County Management Association, American Bar Association, National League of Cities, National Civic League, Policy Consensus Initiative, National Coalition for Dialogue and Deliberation, and Deliberative Democracy Consortium have worked to produce new legal tools for public participation. These include:

- A model public participation ordinance for local governments
- A model public participation act for state governments
- A document describing local policy options and techniques for strengthening public participation.



Snapshot from a National Coalition for Dialogue & Deliberation workshop.

The intent of these tools is not to offer cookie-cutter solutions for city councils and state legislatures, but to encourage them to consider their options. This would be a great help to city attorneys and other legal advisors, who often have to make recommendations without clear laws, legal precedents, or policymaker intentions.

The legal tools crafted by the working group are intended to allow innovation, not require it. "We took as our inspiration the laws on alternative dispute resolution (ADR) enacted during the 1980s and 90s," says Lisa Blomgren Bingham of Indiana University, a

public administration scholar who has taken the lead for the working group in the drafting process. "Simply by authorizing public agencies to use mediation, facilitation, and other ADR processes, those laws resulted in a dramatic proliferation of these practices at every level of the legal system."

The same is needed for public participation techniques. We must free public officials and employees to engage the public without abandoning the goals of transparency and accountability. We must enable government to reach out to its constituents, adapt its practices and expectations, and repair the relationship. The success and even the survival of our governments may depend on it.



Policy Options for Strengthening Public Participation at the Local Level

There are many ways in which local governments can strengthen the capacity of elected and appointed local officials, local agency staff and citizens to participate in public decision-making and problem-solving. These measures can help create a community in which:

- Residents, decision-makers, and other stakeholders have regular opportunities – in a variety of ways and places, ranging from online forums to public meetings to gatherings in neighborhoods, schools, and workplaces – to build relationships, discuss issues, and celebrate community.
- People of all backgrounds and viewpoints are actively invited, and feel welcomed to participate.
- People on opposing sides of public issues interact regularly, in respectful, deliberative and productive ways, across their differences.
- Participation has a tangible and readily apparent impact on policy decisions, public plans, and public budgets.
- Public servants, other organizations, and citizens themselves are taking action (often in collaborative or coordinated ways) to address key issues and opportunities.



Photo by Richard Hastie from a Sustainable Places Project event in Lockhart, TX.

- Participation is tracked, measured, and assessed in transparent ways.
- People participate in order to fulfill a range of basic human needs, from improving their community to socializing with their neighbors to raising their children.

Developing policies on public participation: The need to work collaboratively

Collaboration between governments and non-governmental entities – including nonprofit organizations, businesses, faith institutions, and grassroots groups – is beneficial and often essential for strengthening public participation. Some of the necessary tasks can only be accomplished by people and organizations outside government. Above all, the local civic infrastructure for participation must reflect the needs and goals of ordinary people.

It is important, therefore, to develop policies on this issue through some sort of broad-based, cross-sector planning process in which local government is involved, but not dominant. A recent National League of Cities publication, *Planning for Stronger Local Democracy*, provides guidance on how to organize such a process.

Public participation commissions and advisory boards

One potential step for local governments is to create a commission or advisory board that will advise the council on the design, implementation, and evaluation of public participation processes. This body could help direct a participation planning process; alternatively, the planning could be accomplished by an ad hoc group, and the advisory board could be created as an outcome of the process, with the charge of overseeing implementation of the plan.

Depending on its role in the participation planning process, a commission or advisory board could have one or more of the following duties and responsibilities:

- Develop and propose to council a multi-year plan for public participation to guide the public participation activities, programs, and policies;
- Develop guidelines and policy recommendations to council for inclusive public participation;
- Provide advice and recommendations to council regarding the implementation of public participation guidelines and practices;
- Review public participation process evaluation results to provide advice and recommendations to council regarding continuous improvement of public participation policies and practices; and
- Provide an annual report to council regarding the status of public participation activities.



A public participation advisory board ought to be constituted in a way that ensured geographically representative membership. It should adopt its own rules and bylaws, mirroring successful participation practices, and develop its own schedule for meetings.

Policy options

Many measures for strengthening public participation require action by local government. The possibilities include:

- Adoption of more successful and participatory formats for public meetings, including meetings of city/town/county council, school board, planning and zoning, and other elected or appointed bodies.
- Establishment of a system of neighborhood or ward-based associations, councils, or networks, relying on both face-to-face and online communication, with proscribed responsibilities and roles in local decision-making.
- Appointment of a “public participation coordinator” within City Hall (these responsibilities may be incorporated into another position).
- Setting of annual participation goals and plans at the agency, departmental, and government-wide level.
- Incorporation of public participation metrics in performance reviews of relevant government positions.
- Adoption of a document that directs local government staff in what kinds and methods of engagement to use in which situations.
- Adoption of principles and protocols that guide participation practices by local agencies.
- Establishment of a youth council that teaches and models principles of productive public participation.
- Creation of a system for sharing data transparently on engagement processes and outcomes.
- Development of a training program to help public employees, other stakeholders, and citizens learn engagement skills and practices.
- Adoption of a policy to govern how public buildings (schools, libraries, firehouses, policy stations) are used for public participation purposes.

Accepted tools and practices

A number of successful large-group, small-group, and online formats for public participation have emerged in the last twenty years. Most successful participation initiatives utilize a variety





Photo taken at the 2002 National Conference on Dialogue & Deliberation.

of these formats; for example, the best applications of participatory budgeting feature a combination of large-group, small-group, and online interactions.

Large-group formats

Decision-making forums

- Designed to foster communication among citizens, and sometimes between citizens and public officials, to influence a policy decision.
- Often designed to be deliberative: to help people carefully consider different sides of an issue, and to uncover the values underneath different options.
- Main policy options may have been spelled out beforehand, or they may be determined by the participants during the course of the meeting.
- May utilize technology, such as polling keypads, video projection, and laptops, to move between large- and small-group discussions and summarize conclusions quickly.

Visioning forums

- Similar to decision-making forums, but used for planning the “built environment”: the

buildings, parks, streets, and sidewalks of a neighborhood, city, county, or metro region.

- Sometimes use tools that help citizens visualize proposals: maps, three dimensional models, Geographic Information Systems (GIS) data, etc.

Action forums

- Often used after a series of small-group meetings to help citizens act on the ideas they generated in their discussions.
- Sometimes used to help citizens move directly into action planning (action groups will usually require further support and assistance in order to succeed).
- May have different elements: the opportunity for citizens to join committees or task forces to work on particular projects; the involvement of public officials or other decision-makers, who listen to citizen recommendations; booths set up by different organizations to recruit volunteers; or all of the above.

Small-group formats

Facilitated small-group meetings

- Feature an impartial facilitator, ground rules set by the group, and a guide that lays out open-ended questions and sample viewpoints to structure the dialogue.
- Discussion usually begins with participants sharing their experiences with the topic.
- Groups usually meet for several sessions, though not always; sometimes they take the form of breakout groups in the midst of large forums.

Focus groups

- Used primarily as a way of gathering information.
- Groups usually meet only once, for two hours or less.
- Used instead of surveys, or in combination with them, because they can provide more nuanced, comprehensive information about public views.
- Sometimes used to “frame” the various views and options on an issue, in order to create a discussion guide to be used in one of the other formats.

Structured conversations

- Many different kinds of dialogues fall under this category: some are quite simple and easy to organize, while others are highly structured and require a specific kind of facilitation.
- One common use of structured conversations is at the beginning of a public dialogue



project, to engage a small number of people who will then work together to involve much larger numbers of citizens.

- Variations include conversation cafés, wisdom councils, wisdom circles, and world cafés.
- Sometimes used to “frame” the various views and options on an issue, in order to create a discussion guide to be used in one of the other formats.

Online formats

For more detail on the rapidly changing technologies for public participation, see *Using Online Tools to Engage – and be Engaged by – the Public* from the IBM Center for the Business of Government. The following brief list is abridged from that document:

Wikis

- A website that allows a group of people to write and edit any number of interlinked web pages using a web browser.

Listservs

- An ongoing email exchange centered around a common interest, such as a neighborhood or a public issue.

Threaded online discussions

- A web-site that allows people to propose and join conversations on different topics.

Online deliberations

- A variety of sites and online tools that allow organizers to include some common elements of face-to-face deliberation, such as neutral facilitation, into an online discussion.

Crowdsourcing

- A system that allows participants to propose and then vote on ideas or solutions, is perhaps the best-known online engagement technique.

(Produced by the Working Group on Legal Frameworks for Public Participation)

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Model Municipal Public Participation Ordinance

Whereas, direct and active participation in self-governance is a widely held value in the United States, and

Whereas, knowledge and talent are widely dispersed in society, and all benefit when those skills and abilities are directed toward common goals, and

Whereas, public participation and collaboration may enhance local government's effectiveness, expand its range of options, improve the quality of its decisions, and enlist the problem-solving capacities of the general public, and

Whereas, public agencies and municipal authorities may collaborate with the general public and state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders to accomplish public work and deliver public services more efficiently and effectively, and

Whereas, there have been dramatic changes in the techniques of public participation and the technology allowing for greater transparency of government both through broadcast media and the internet,

Now, therefore, the city of _____ enacts the following Public Participation Ordinance:

Section 1: Definitions

For all purposes under this Act,

the phrase "public participation" is defined to include "public engagement," "community engagement," "citizen engagement," "public hearing," and "public comment" and includes, but is not limited to, any form of in-person, technology-aided, or online communication that provides for discussion, dialogue, or deliberation among participants, allowing residents to engage meaningfully in local problem identification, and/or problem solving related to community challenges, problems, and opportunities. "Policy process" means any action in developing, implementing, or enforcing public policy, including but not limited to identifying and defining a public policy issue, defining the options for a new policy framework, expanding the range of options, identifying approaches for addressing an issue, setting priorities among approaches, selecting from among the priorities, implementing solutions, rulemaking, project management, and assessing the impacts of decisions.



Section 2: Public Participation Policy

It is hereby declared a matter of public policy that the active public participation of community members to offer comments, ideas and recommendations, both individually and collectively, on public challenges, problems and opportunities is a public good and will be pursued in the interest of the health, prosperity, safety, and welfare of the community, and in the pursuit of effective and trusted governance. Further, as these ends are best achieved by community members who have the opportunity to become informed and to jointly deliberate on public matters prior to offering their ideas and recommendations, that such deliberative opportunities are to be offered when and where possible, and public input received will be considered in final decision making by the appropriate agency body.

The city and its municipal departments may use any process that meets the principles for public participation set forth in Section 3 in addition to statutorily or federally required forms of public input such as notice and comment or public hearings for public participation.

The city shall adopt and make publicly available a Public Participation Policy to guide the city's use of participation strategies and techniques to satisfy the principles for public participation set forth in Section 3.

Section 3. Principles for Public Participation

a) The following principles govern meaningful and effective public participation:

- **Planning Ahead:** Public participation is an early and integral part of challenge and opportunity identification, planning and design, budgeting, and implementation of city policies, programs, and projects.
- **Inclusive Design:** The design of a public participation process includes input from appropriate local officials as well as from members of intended participant communities.
- **Authentic Intent:** A primary purpose of the public participation process is to generate public views and ideas to actually help shape local government action or policy.
- **Transparency:** Public participation processes are open, honest, and understandable. There is clarity and transparency about public participation process sponsorship, purpose, design, and how decision makers will use the process results.
- **Inclusiveness and Equity:** Public participation processes identify, reach out to, and encourage participation of the community in its full diversity. Processes respect a range of values and interests and the knowledge of those involved. Historically



excluded individuals and groups are included authentically in processes, activities, and decision and policymaking. Impacts, including costs and benefits, are identified and distributed fairly.

- **Informed Participation:** Participants in the process have information and/or access to expertise consistent with the work that sponsors and conveners ask them to do. Members of the public receive the information they need to participate effectively with sufficient time to study.
- **Accessible Participation:** Public participation processes are broadly accessible in terms of location, time, and language, and support the engagement of community members with disabilities.
- **Appropriate Process:** Each public participation process uses one or more engagement formats that are responsive to the needs of identified participant groups and encourage full, authentic, effective and equitable participation consistent with process purposes. Participation processes and techniques are well-designed to appropriately fit the legal authority, scope, character, and impact of a policy or project. Processes adapt to changing conditions as projects move forward.
- **Use of Information:** The ideas, preferences, and/or recommendations contributed by community members are documented and given consideration by decision-makers. Local officials communicate decisions back to process participants and the broader public, with a description of how the public input was considered and used.
- **Building Relationships and Community Capacity:** Public participation processes invest in and develop long-term, collaborative working relationships and learning opportunities with community partners and stakeholders. This may include relationships with other temporary or ongoing community participation initiatives.
- **Evaluation:** Sponsors and participants evaluate each public participation process with the collected feedback, analysis, and learning shared broadly and applied to future public participation efforts for continuous improvement.

Section 4. Public Participation Specialist

The mayor/city manager shall designate a public participation administrator to assist in the implementation of this ordinance and to provide ongoing training in public participation processes for city employees, members of city advisory boards and commissions, and such others as may be determined by the mayor/city manager.

Section 5. Public Participation Advisory Board

a) Establishment. A public participation advisory board for the City of ____ is hereby created.



b) Purpose and Intent. The purpose of this board is to advise the city council on the design, implementation, and evaluation of public participation processes for determining community goals and policies and delivering services.

c) Duties and Responsibilities. The board shall have the following duties and responsibilities:

Develop and propose to the city council a multi-year plan for public participation to guide the public participation policies, protocols, practices, and assessment of the City of _____;

Develop guidelines and recommendations to the city council that support inclusive participation and a diversity of viewpoints in public engagement processes; and

Provide advice and recommendations to the city council regarding the implementation of public participation guidelines and practices.

Review public participation process evaluation results to provide advice and recommendations to the city council regarding continuous improvement of public participation policies and practices;

Provide an annual report to the city council regarding the status of public participation activities.

d) Composition. The public participation advisory board shall consist of numbers of members and terms consistent with the practices of the appointing authority. The appointing authority shall give due consideration to recognized qualifications and experiences in the field of public participation and shall designate representatives reflecting the diversity of interests of the broader community.

e) Procedure. A majority of the board shall constitute a quorum. The commission shall adopt such rules and bylaws as appropriate to further govern its proceedings.

f) Meetings. The board shall hold regular meetings as may be provided by its bylaws, and may hold special meetings on the call of the chairperson or at the request of the city council.



Model State Public Participation Act:

An Amendment to the State Administrative Procedure Act and Government in the Sunshine Act

Comment: Some states include municipalities as agencies subject to the Administrative Procedure Act. Others do not. The model would need to be adapted to each state's context. In each state, the Act should incorporate by reference that state's statutory definition of state agency or municipal authority (city, town, county, water district, etc.).

Whereas, direct and active participation in self-governance is a widely held value in the United States, and

Whereas, knowledge and talent are widely dispersed in society, and all benefit when those skills and abilities are directed toward common goals, and

Whereas, public participation and collaboration enhance the Government's effectiveness, expand its range of options, improve the quality of its decisions, and enlist the problem-solving capacities of the general public, and

Whereas, public agencies and municipal authorities may collaborate with the general public and state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders to accomplish public work and deliver public services more efficiently and effectively, and

Whereas, there have been dramatic changes in the techniques of public participation and the technology allowing for greater transparency of government both through broadcast media and the internet, and

Whereas, existing statutory requirements place limits on the interaction between public agencies, municipal authorities, and members of the general public,

Now therefore, the [state] Administrative Procedure Act and Government in the Sunshine Act shall be amended as follows:

Now therefore, the state of _____ enacts the following Public Participation Act:



Section One: Definitions

For all purposes under this Act,

For all purposes under this Act, the phrase “public participation” is defined to include “public engagement,” “community engagement,” “citizen engagement,” “public hearing,” and “public comment” and includes, but is not limited to, any form of in-person, technology-aided, or online communication that provides for discussion, dialogue, or deliberation among participants, allowing residents to engage meaningfully in local problem identification, and/or problem solving related to community challenges, problems, and opportunities.

Municipal authorities may include [to be defined]

State agencies may include...[to be defined]

“Policy process” means any action in developing, implementing, or enforcing public policy, including but not limited to identifying and defining a public policy issue, defining the options for a new policy framework, expanding the range of options, identifying approaches for addressing an issue, setting priorities among approaches, selecting from among the priorities, implementing solutions, rulemaking, project management, and assessing the impacts of decisions.

Comment: This section is intended to define these terms for all purposes under a state’s statutory code. The intent is to broaden the statutory definition so as to explicitly authorize innovation. Most states use these terms repeatedly across the code, not only in the Administrative Procedure Act, but also in statutes involving land use and transportation planning, the environment, utilities regulation, etc.

Section Two: Public Participation Policy

It is the policy of this state to encourage state agencies and municipal authorities to provide broad, inclusive, deliberative, participatory and meaningful public engagement in the policy process with the general public and stakeholders from the public, private, and nonprofit sectors, including state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders. This act should be construed broadly to promote the fullest opportunity permitted by law to participate meaningfully in governance and the policy process and to provide their Government with the benefits of their collective expertise and information.

Comment: This section establishes that this is a remedial statute to be construed broadly.

Section Three: Commitment to Agency or Municipal Authority Discretion

Each state agency shall and each municipal authority may develop a policy on public



participation that will allow broad, inclusive, deliberative, participatory, and meaningful public engagement in the policy process. The choice of a particular form of engagement or sequence of opportunities for the public to participate is committed to agency or municipal authority discretion and not subject to judicial review, provided the agency or municipal authority provides some form of public participation, hearing, or comment as required by law.

Comment: This section is intended to shield agencies and municipal authorities from litigation over the choice of process model, for example, deliberative polling, deliberative town hall meeting, blog, etc.

Section Four: Public Participation Specialist

The head of each state agency shall designate a staff person to be the public participation specialist. This designation may be a collateral duty appointment. The public participation specialist shall be responsible for the implementation of the public participation policy and other provisions of this Act. Each agency shall provide for training on a regular basis for the public participation specialist of the agency and other employees involved in implementing the public participation policy of the agency. The public participation specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

Comment: This section locates responsibility for public engagement expertise within an agency or municipal authority. The public engagement specialist can obtain training and expertise that he or she can share with other employees in the agency or municipal



A crowd at a meeting to adopt the San Francisco Bay Area's long-range transportation and housing plan.

authority through in house continuing education. This pyramid structure for disseminating training is cost effective.

Section Five: Collaboration

State agencies, municipal authorities, and other public entities may initiate or participate in collaborative arrangements with one another, tribes, nonprofit organizations, businesses, other nongovernmental stakeholders, and the general public in carrying out any of their powers and duties under state law.

Comment: This section allows agencies and municipal authorities to collaborate with one another and the broadest public on anything that they could do independently.

Section Six: Public Participation Meetings

a) State agencies and municipal authorities may conduct meetings for the sole purpose of public participation provided these meetings are: (1) open to the general public; and (2) a notice stating in general terms the subject matter of the meeting is posted and/or published according to Open Meeting Law. Members of state agencies and municipal authorities, including a quorum, may attend these meetings and interact with the public, including responding to issues and ideas not specifically identified within the original agenda, provided these issues or ideas originate with the public. Members of public agencies and municipal authorities, including a quorum, shall not engage in decision making, or vote upon or take official action at a public participation meeting.

b) Public agencies and municipal authorities may consider and make use of information from public participation meetings in a subsequent public meeting at which they take official action, provided that records of the general content of the public participation meeting are made public within three (3) days after the meeting, and are public for a period of at least fourteen (14) days prior to official action.

Comment: This section carves out an exception to the Sunshine Act to permit public officials to attend public engagement meetings and participate in discussion, deliberation, or dialogue with members of the public that may inform their later participation and action on public business.



Model City Charter Language for Citizen Advisory Bodies¹

Note: Local government citizen advisory bodies (CABs) provide existing institutional opportunities for broad engagement of citizens in the policy making and implementation process—one that is neither administrative nor legislative in nature, but rather advisory to both. As advisory bodies, they are not held to the formal requirements of legislative or quasi-judicial decision-making bodies. While CABs may have functioned in a highly formalized manner in the past, it may be legal and relatively simple to repurpose CABs as a venue for broadly inclusive, participatory engagement of the public in policy deliberation without disrupting existing transparency laws. Therefore, this approach is recommended as a first step in expanding public engagement policies and practices. The following language is proposed for inclusion in the National Civic League's Model City Charter, currently in its eighth edition. The revised language could provide guidance and clarity for local charter commissions or councils as communities rethink their approaches to public participation and citizen engagement.

Constitution



From the 2004 National Conference on Dialogue & Deliberation.

Citizen Advisory Bodies shall be formed according to guidance in this charter through municipal ordinance enacted by the governing body.

Commentary: CABs are established through a variety of mechanisms, including the municipality's charter and bylaws, municipal ordinance, citizen petition, administrative request, or governing body resolution. Some state statutes and codes

limit or require certain types of CABs. For the purpose of a model, the most common approach is to constitute the CAB through ordinance. The ordinance should follow generic guidance in regard to the operations of a CAB in terms of authority, scope, and purpose, but must be custom-tailored to the unique substantive area of concern.

¹ Excerpted from a forthcoming article by Margaret Stout in the National Civic Review.



Powers and Duties

Citizen Advisory Bodies shall be authorized to distribute information to the public in delegated issues of concern, convene, deliberate, and make recommendations on their own volition and as directed by the governing body. Deliberations shall be made publicly to meet the goal of transparency in governance, but not according to provisions required of legislative or quasi-judicial bodies. Deliberations shall include the public in open-ended discussion as well as formal public hearing. Community sentiments shall be translated by the advisory body into policy recommendations for consideration by the governing body.

Commentary: In earlier versions of the Model, city planning commissions were charged with providing recommendations to the city council either based on self-identified issues or on issues referred to them by the council. Likely due to the historic pattern of deemphasizing CABs as an institution of government, they have become increasing reactive, often only responding to issues referred to them by the mayor, council, or administrative staff (Dougherty, Stout, & Dudley, 2013). This limits both the instrumental benefits of innovation as well as the legitimizing benefits of issue naming and framing. Indeed, some CAB members wish to be more proactive participants in governance, particularly in regard to planning (Dougherty et al., 2013).

CABs are also typically operated like corporate boards of directors or city councils, employing Robert's Rules of Order and formal public hearing procedures. These particular methods of deliberation also limit innovation and issue naming and framing. Even when they are not quasi-legislative (policy) or quasi-judicial (regulatory) in nature, they are structures that "replicate the limitations and disadvantages of city councils" (Leighninger, 2008, p. 8), as opposed to the more organic and open-ended organizing styles that emerge from citizen-driven collective action (King, 2011). In short, CABs are structured to operate according to parliamentary rules in hierarchical relationships typical to formal organizations, but many CAB members prefer to function more loosely (Dougherty et al., 2013). If left to their own devices, citizens tend to operate according to egalitarian consensus rules in network relationships (King, 2011). The challenge is to integrate these informal processes with formal procedures which have developed "in isolation from each other" (Leighninger, Wright, & Delchad, 2006, p. 6).

To maximize potential benefits, CABs should employ contemporary techniques of public engagement as described by organizations such as the International Association for Public Participation (IAP2). Less formal settings may allow CABs to develop consensus before moving to majority decision rules in the formulation of recommendations. Indeed, many citizen board handbooks and policy manuals



state a primary purpose of gathering information and formulating policy and program options and recommendations for consideration by the governing body. With this purpose, they are ideal forums for deliberative democratic practices that can better mirror the organic processes of citizen-driven collective action.

Functions

Citizen Advisory Bodies shall provide comment and recommendations on any function of government in which public engagement is considered of value.

Commentary: While functions such as water, sewer, utilities, ports, affordable housing, and civil service oversight may often be delegated to quasi-judicial authorities that must operate according to standard formal procedure and transparency laws, many other functions can benefit from the advice of interested, deliberating community members. Common areas of concern include: planning, development review, historic preservation, budgeting and capital improvement programs, parks and recreation, transportation, human rights and diversity, arts and culture, economic development, and neighborhoods (Barnes & Mann, 2010; Dougherty & Easton, 2011). It is important not to create boards that have authority over operational functions, as this would conflict with the executive function, whether held by a city manager or mayor.



Photo by Richard Hastie from a Sustainable Places Project event in Lockhart, TX.

Appointments and Removals

Appointments to and removals from Citizen Advisory Bodies shall be made by the mayor with council advice and consent. Consideration shall be given to geographic and demographic diversity, in addition to knowledge of the substantive area of concern. Qualifications shall be judged by the mayor and council with recommendations from administrative staff.

A member of the administrative staff and a member of the council may be appointed as a liaison to a Citizen Advisory Board, but will serve in an ex-officio capacity.

Commentary: To ensure representative composition and to meet the functional purpose of each CAB, eligibility for service, the application and appointment process, and removal procedures are generally detailed in CAB handbooks and bylaws. To garner the greatest benefits to democratic legitimacy, inclusion should be broad. To garner the greatest instrumental benefit, expertise and experience are desirable. Therefore, selection processes often employ criteria that seek broad representation across a variety of dimensions such as geographic location, income, age, gender, and race or ethnicity.

Furthermore, CAB members are often highly involved community members and act as informal liaisons to other groups (e.g. chambers of commerce, civic organizations, faith-based groups, and parent-teacher associations) (Dougherty et al., 2013). Indeed, the seventh edition of the Model notes this benefit: "Mayoral appointment of boards and commissions with council advice and consent creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity" (NCL, 1989, p. 20).

While some municipalities (e.g. West Virginia) appoint elected representatives to each CAB, it is preferable to appoint them as ex-officio liaisons because if they are voting members, they will, in effect, be advising themselves in their council role. To generate the benefits of all three governance roles—elected representative, expert administrator, and citizen (Stout, 2013)—separation of roles is advisable. Indeed, where there has been friction, it is generally due to unclear boundaries of authority between CABs or between the CAB and council (Dougherty et al., 2013).

Administrative Support

Citizen Advisory Bodies shall be provided adequate administrative support to fulfill assigned duties and functions, including meeting space, clerical support, recordkeeping, orientation and training, and technical assistance.



Commentary: While larger cities may have the capacity to provide adequate administrative and technical support to CABs, this is rare in rural communities (Dougherty et al., 2013). Yet, adequate resources are connected to CAB effectiveness (Busenberg, 2000). Therefore guidance on what to provide could be supported by model policies and procedures that can be broadly disseminated to rural communities through municipal leagues and other professional associations. Of particular concern is the need for orientation and training on the basics of formal duties (Dougherty et al., 2013; Lachapelle & Shanahan, 2010; Rebori, 2004).

Facilitation Support

Citizen Advisory Bodies shall be provided adequate facilitation support to fulfill assigned duties and functions, potentially including a full range of public engagement techniques.

Commentary: Above and beyond the basics of formal operations, if CABs are to provide a venue for broadly inclusive policy deliberation, expert facilitation is necessary. Therefore, municipalities need to either tap into community-based dialogue and deliberation facilitators, or develop such resources within the professional staff or CAB membership through job descriptions, training, and development.

The National Coalition for Dialogue and Deliberation (NCDD) and the International Association for Public Participation (IAP2) have each developed principles that guide general practice in this field, as well as a plethora of techniques that can be employed for specific engagement purposes. Large group, small group, written, and online formats are included. Numerous technical assistance resources are available through these groups' websites, many of which are free.

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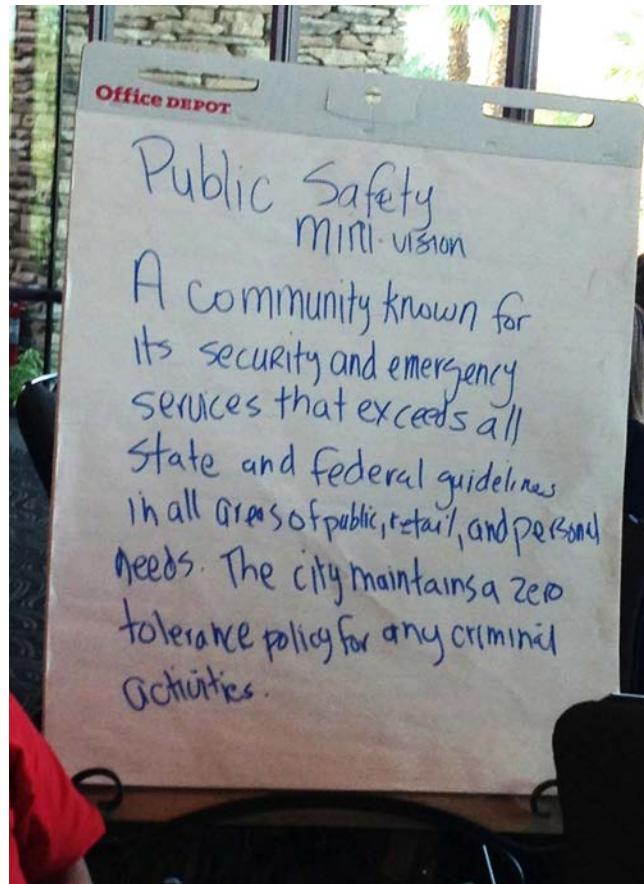
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Local Government: The Legal Framework and Context for Voice

By Lisa Blomgren Amsler

The current legal framework for public engagement in local government must be viewed within the historical context for home rule. As Barron (2003) explains, early 19th century courts viewed municipalities as creatures of the state, and enforced a public/private distinction to limit the scope of municipal action. Local power was privatized; the municipality coordinated wealthy private actors who both sought and then paid for public improvements like streets through special assessments (p. 2282), or property owners who paid for police protection through private deputies or fire protection through volunteers and contributions (p. 2283). This view was reinforced by Dillon's Rule, which conceived of municipalities not as government, but instead as corporate creatures of the state with limited power to administer local affairs and make economic expenditures (p. 2285). They had powers explicitly delegated through legislation, and implicitly delegated by the state's act of incorporation. Beyond these, municipalities were powerless to act.

In the late 19th century, urban reformers began to promote what became known as "home rule" efforts, which attempted to strengthen municipalities by creating a zone of action insulated from state legislative interference, and possibly corruption, through special acts directed at a particular city. Barron (2003) suggests three early conceptions of home rule: the Old Conservative, Administrative, and Social. The Old Conservative vision sought home rule charters over traditional matters of local concern to limit taxation and maintain municipal autonomy as an impartial and neutral coordinator of private markets (p. 2292-93). The Administrative view was an effort to protect a municipality from state legislative interference by entrusting local powers to professional, impartial, and expert administrators (p. 2302; see also Goodnow 1895). In the Social conception, home rule reformers sought to engage broad public cooperation on an expanded scope of important municipal action that included providing public services that had heretofore been private, such as transportation and utilities (p. 2311-12).

While Barron (2003) does not directly address the question of public engagement in local governance, these home rule conceptions implicitly reflect a changing view of who has standing to participate. In the Old Conservative view, business actors and property owners are the express beneficiaries of government, and hence the legitimate participants in decision making. In the Administrative view, objective, professional public administrators are important participants, because they bring scientific and technical expertise to solving practical problems. In contrast, the reformist Social view, known as "the public point of view," recognized the political nature of municipal decisions and the role of the public in making those decisions (p. 2310).



Over time, changing views about the nature of engagement echoed these changing views of standing. Historically, participation focused on gaining and guaranteeing the rights of all citizens to vote for government representation (Keyssar 2000). As various constituents of the public firmly established their suffrage (e.g., voting rights for minorities and women; removal of poll taxes, literacy tests, and other voting booth obstacles), the focus of participation shifted from an emphasis on “the representative nature of government” to an emphasis on “direct participation by the citizenry in day-to-day activities” of government (Stewart 1976: 1).

Although public engagement in U.S. local government dates back to New England town hall meetings, the modern conception of public participation (i.e., participation mandated by law), stems from the emergence and growth of large-scale administrative apparatus at the federal and state levels. A comprehensive review of federal and state mandates is outside the scope of this article, but some examples are useful because the legal framework for public participation provides the backdrop for public engagement. At the federal level, the New Deal birthed numerous administrative agencies (Beierle and Cayford 2002) and prompted the passage of the federal Administrative Procedure Act (APA), which created a form of public participation by requiring opportunities for notice and comment in rulemaking (for analysis of federal law, see Bingham 2010). Among the Great Society programs, the 1964 Economic Opportunity Act mandated “maximum feasible participation” among the poor in community action programs; this led to substantial controversy and ultimately the repeal of the language (Advisory Commission on Intergovernmental Relations 1979; Moynihan 1969). Several other federal laws, executive orders, and agency regulations, guidance, and policy memos in numerous policy areas such as housing, transportation, education, and the environment, among others, also require public participation (for a planning example, see the California Department of Transportation, <http://www.dot.ca.gov/ser/vol1/sec1/ch3public/chap3.htm>). More recently, the Obama Executive Memorandum on Transparent and Open Government requires all federal agencies to be more participatory and provides some limited impetus for innovations in deliberative public participation as a contrast to typical public meetings and town halls (Bingham 2010).

State laws on public participation vary widely. Home rule acts, whether they take the form of a constitutional amendment or state statute, are generally silent on the issue. Instead, public participation at the state and/or local level is addressed in state general legislation on administrative procedure (see Commissioners on Uniform State Laws, Model State APAs dating from 1961, 1980, and 2010), freedom of information and public records, and public meetings in the sunshine. Specific mandates for public participation at the state and/or local level also appear in laws on land use and planning, transportation, elections, budgeting, education, environmental policy, and many other policy areas. Finally, the federal Open Government initiative has provided a model for similar state initiatives.

Preliminary research reveals that at the state level, similar to the federal level, the phrase “public participation” is rarely defined. Thus, while the authority to conduct public participation is clear, government officials have reason to shun more innovative forms of participation in



favor of compliance with minimal standards. Government counsel raise concerns about the legal authority of their clients to move beyond these minima (Bingham 2010). Provisions in sunshine laws that require advance notice and confine public meetings to topics on a specific agenda may limit the capacity of elected officials to respond to public comment outside the scope of the agenda. Monitoring to keep public officials within the agenda requires staff resources. Together, these and other issues may lead municipal authorities to do the minimum required public comment approach using the standard ‘three-minutes-each-at-the-microphone’ tactic rather than more inventive deliberative approach where many people engage in dialogue simultaneously.

In short, the legal infrastructure to support broader and more deliberative and innovative local direct public engagement is problematic. Although sometimes prompted and authorized by law to involve the general public in their work, local governments often seek compliance with the explicit minimal standards for participation instead of examining law to identify their broader implied authority. Local governments have rarely institutionalized (meaning made permanent through ordinance, resolution, or formal policy) new systems of more fully democratic participation at the local level. A few exceptions exist. For instance, some large cities (e.g., Los Angeles, California; Portland, Oregon; Minneapolis, Minnesota) and small cities (e.g., Dayton, Ohio) have created and funded permanent structures, such as neighborhood councils or community boards, that have an official or semi-official role in local decision making; however, these tend to be representative bodies, rather than democratic, empowered ones (Leighninger 2006, 2012). Despite the limited legal infrastructure for public participation in local government, the number of people initiating, organizing, facilitating, and researching direct public engagement is growing.



Photo by Richard Hastie from a Sustainable Places Project event in Lockhart, TX.

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Bingham, Lisa Blomgren. 2010. The next generation of administrative law: Building the legal infrastructure for collaborative governance. *Wisconsin Law Review*, 10(2): 297-356.

Bingham, Lisa Blomgren, Tina Nabatchi, and Rosemary O'Leary. 2005. The new governance: Practices and processes for stakeholder and citizen participation in the work of government. *Public Administration Review*, 65(5): 528-539.

Bingham, Lisa Blomgren and Rosemary O'Leary. 2008. *Big ideas in collaborative public management*. Armonk, NY: M.E. Sharpe.

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Resources for Public Engagement

The ICMA Center for Management Strategies, and its research partners the Alliance for Innovation and Arizona State University, conducted a literature review in 2013 on key documents and writings as well as organizations operating in the field of civic engagement. The purpose of this review was to identify resources and documents that would be helpful to local governments in their work in civic engagement and to identify key research and practitioners for the Center for Management Strategies training and technical assistance offerings. This listing of key resources was compiled in an effort to provide such guidance. While every effort was made to appropriately represent work in the field, it should be noted that the listing does not contain every available resource on the topic.

Organizations

[Center for Management Strategies at ICMA](#)
[Davenport Institute for Public Engagement and Civic Leadership](#)
[Deliberative Democracy Consortium](#)
[Everyday Democracy](#)
[Institute for Local Government](#)
[International Association for Public Participation \(IAP2\)](#)
[Kettering Foundation](#)
[National Civic League](#)
[National Coalition for Dialogue and Deliberation](#)
[National League of Cities' Democratic Governance & Civic Engagement Page](#)
[National Research Center](#)
[Peak Democracy](#)
www.participedia.net

Key Resources & Tools

[International Association or Public Participation \(IAP2\) Spectrum of Public Participation](#)
[IAP2 Core Values of Public Participation](#)
[IAP2 Public Participation Toolbox](#)

General Overviews & Guides

Fagatto, E. & Fung, A.(2009). [Sustaining Public Engagement](#). Everyday Democracy

Lukensmeyer, C.J. and Torres, L.H. (2006). [Public Deliberation: A manager's guide to civic engagement](#). IBM Center for the Business of Government



National Coalition for Dialogue and Deliberation. (2010). [Resource Guide on Public Engagement](#)

Rawlings, K. (Ed.) (2012). [100th Arizona Town Hall Report: Civic Engagement](#). Arizona Town Hall: Phoenix, AZ

Sokoloff, H. et al .(2012). [Building Common Ground \(Public Engagement\)](#). University of Pennsylvania's Fels Institute for Government

Svara, J. & Denhardt, J.V. (Eds.) (2010). [The Connected Community: Local Governments as partners in citizen engagement and community building](#). Alliance for Innovation White Paper

Planning and Evaluating

Institute for Local Government's [Assessing Public Engagement's Effectiveness: Rapid Review Worksheets](#)

Leighninger, M. and Mann, B. (2011). [Planning for Stronger Local Democracy](#). National League of Cities' Center for Research & Innovation

Luckensmeyer, C. et al (2011). [Assessing Public Participation in an Open Government Era: A review of federal agency plans](#). IBM Center for the Business of Government

Nabatchi, T. (2012). [A Manager's Guide to Evaluating Public Participation](#). IBM Center for the Business of Government

Online Tools

Black, L.W. (2011). [The Promise and Problems of Online Deliberation](#). Kettering Foundation

Bryer, T.A. (2011). The Costs of Democratization: Social media adaptation challenges within government agencies. *Administrative Theory & Praxis* 33(3): 341-361

Leighninger, M. (2011). [Using Online Tools to Engage- and Be Engaged By- The Public](#). IBM Center for the Business of Government

Leighninger, M. (2011). Citizenship and Governance in a Wild Wired World: How should citizens and public managers use online tools to improve democracy? *National Civic Review* Summer 2011: 20-29

Academic Articles

Bingham, L., Nabatchi, T. and O'Leary, R. (2005). *The New Governance: Practices and processes*



for stakeholder and citizen participation in the work of government. *Public Administration Review* 65(5):547-558

Brodie et al. (2009). Understanding Participation: A literature review. *Pathways through Participation*

Bryson, J.M. et al. (2012). *Designing Public Participation Processes*. *Public Administration Review*

Chisholm, R.F. and Vansina, L.S. (1993). *Varieties of Participation*. *Public Administration Quarterly* 17(3): 291-315

Cooper, T.L., Bryer, T.A., and Meek, J.W. (2006). *Citizen-Centered Collaborative Public Management*. *Public Administration Review* 66(s1):76-88

Fung, A. (2006). *Varieties of Participation in Complex Government*. *Public Administration Review* (Dec.): 66-75

Mansbridge, J. (1999). *On the Idea that Participation Makes Better Citizens*. In Citizen Competence and Democratic Institutions (Elkin and Soltan, Eds.). University Park, PA: Pennsylvania State University

Nabatchi, T. (2012). *Putting the "Public" Back in Public Values Research: Designing participation to identify and respond to values*. *Public Administration Review*

Nalbandian, J. (2005). *Professionals and the Conflicting Forces of Administrative Modernization and Civic Engagement*. *The American Review of Public Administration* 35(4): 311-326

Roberts, N. (2004). *Public Deliberation in an Age of Direct Citizen Participation*. *The American Review of Public Administration* 34(4): 315-353

Saward, M. (2003). *Enacting Democracy*. *Political Studies* 51: 161-179



Contributors to this publication

Producing the documents in this publication required a high degree of collaboration among a committed group of people and organizations. All of these scholars, practitioners, and public officials participated as volunteers, including Matt Leighninger of the Deliberative Democracy Consortium, who coordinated the process. Travel expenses for face-to-face meetings were supported by the participants' organizations or by the participants themselves.

The authors of the model ordinance and state act are:

Lisa Blomgren Amsler, Indiana University (primary author)

Mike Huggins, National Civic League and former city manager, Eau Claire, Wisconsin

Steve Moore, International Municipal Lawyers Association and city attorney, Yuma, Arizona

Margaret Stout, West Virginia University

Wendy Willis, Policy Consensus Initiative

The primary author of the "Three Minutes at the Microphone" essay is Matt Leighninger, Deliberative Democracy Consortium.

The primary authors of "Policy Options for Strengthening Public Participation at the Local Level" are:

Terry Amsler, Institute for Local Government

Mike Huggins, National Civic League and former city manager, Eau Claire, Wisconsin

Matt Leighninger, Deliberative Democracy Consortium

The primary model of the model charter language for Community Advisory Boards is Margaret Stout, West Virginia University.

The "Civic Engagement Resource List" was compiled by:

Cheryl Hilvert, International City/County Management Association

Kelly Rawlings, University of Southern California

A small group of people helped conceptualize these documents at meetings in Washington, D.C., Chicago, Illinois, and Phoenix, Arizona:

Lisa Blomgren Amsler, Indiana University

Ron Carlee, city manager, Charlotte, North Carolina, formerly of the International City/County Management Association

David Gartner, Arizona State University

Joe Goldman, Omidyar Network

Elena Gonzalez, U.S. Department of the Interior

Sandy Heierbacher, National Coalition for Dialogue and Deliberation

Chris Hoene, California Budget Project, formerly of the National League of Cities

Mary Jacksteit, Public Conversations Project



John Kamensky, IBM Center for the Business of Government
Peter Levine, CIRCLE, Tufts University
Carolyn Lukensmeyer, National Institute for Civil Discourse
Joe Mathews, Zócalo Public Square
Mike McGrath, National Civic League
Bruce Meyerson, American Bar Association
H. Brinton Milward, University of Arizona
Linda Nguyen, Alliance for Children and Families
Pete Peterson, Davenport Institute for Public Engagement, Pepperdine University
Larry Schooler, International Association for Public Participation
Daniel Schugurensky, Participatory Governance Initiative, Arizona State University
Carmen Sirianni, Brandeis University
Janice Thomson, formerly of Involve

A number of other people offered substantive comments on these documents:

Terry Amsler, Institute for Local Government
Alissa Black, California Civic Innovation Project
Ron Carlee, city manager, Charlotte, North Carolina, formerly of the International City/County Management Association
Tom Glaisyer, Omidyar Network
Les Ihara, Jr., Hawaii State Senator, 9th District
Sandy Heierbacher, National Coalition for Dialogue and Deliberation
Cheryl Hilvert, International City/County Management Association
Chris Hoene, California Budget Project, formerly of the National League of Cities



Patrice McDermott, OpentheGovernment.org
Christy McFarland, National League of Cities
Ray Minor, Kettering Foundation
Leanne Nurse, U.S. Environmental Protection Agency and International Association for Public Participation
Pete Peterson, Davenport Institute for Public Engagement, Pepperdine University
John Stephens, University of North Carolina
Margaret Stout, West Virginia University

Mike McGrath of the National Civic League provided essential guidance in the compilation and production of this publication. Sandy Heierbacher of the National Coalition for Dialogue and Deliberation also contributed to this process in many ways, including coordinating a crowdsourcing exercise to gather photographs and providing key support in formatting the publication.

Finally, this work would not have begun if not for the work of the American Bar Association's Task Force on Civil Discourse, chaired by Bruce Meyerson, which led to the adoption of the ABA Resolution on Civil Discourse and helped inspire all of the subsequent work on the model ordinance and state act.



Request for Transfer from the Reserve Fund

Date 4/18/23

Warrant Committee
Town of Medfield

Dear Committee Members:

Request is hereby made for the following transfer from the Reserve Fund in accordance with Chapter 40, Section 6, of the Massachusetts General Laws:

1. Amount requested:
2. To be transferred to:

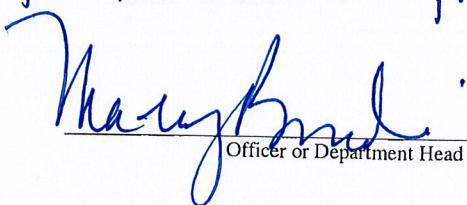
\$ 3,000
011612-523010
(Give Name and No. of Appropriation)

3. Present balance in said appropriation:
4. The amount requested will be used for (give specific purpose):

\$ -1,171.19

5. This expenditure is extraordinary and/or unforeseen for the following reasons.

large general Code - new books (5) in total.
lack of state reimbursement for state elections - price dictum



Mary B. Smith
Officer or Department Head

Action of Warrant Committee

Date of Meeting _____ Number Present and Voting _____

Transfer voted in the sum of \$ _____ Transfer disapproved

Warrant Committee Chair

**Request must be made and transfer voted before any
expenditure in excess of appropriation is incurred.**

Distribution: White - Warrant Comm.

Canary - Town Accountant

Pink - Department

Request for Transfer from the Reserve Fund

Date 4/25/2023

Warrant Committee
Town of Medfield

Dear Committee Members:

Request is hereby made for the following transfer from the Reserve Fund in accordance with Chapter 40, Section 6, of the Massachusetts General Laws:

1. Amount requested:

2. To be transferred to:

\$ 50,000
0115a-5217od: Town Counsel /Consulting + Legal Fees
(Give Name and No. of Appropriation)

3. Present balance in said appropriation:

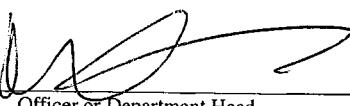
\$ 734.57

4. The amount requested will be used for (give specific purpose):

*Payment of invoices to Norris, Murray, + Pelagrin LLC and
Clifford and Kenny LLP*

5. This expenditure is extraordinary and/or unforeseen for the following reasons.

Unanticipated legal costs



Officer or Department Head

Action of Warrant Committee

Date of Meeting _____ Number Present and Voting _____

Transfer voted in the sum of \$ _____ Transfer disapproved

Warrant Committee Chair

**Request must be made and transfer voted before any
expenditure in excess of appropriation is incurred.**

Distribution: White - Warrant Comm.

Canary - Town Accountant

Pink - Department

Request for Transfer from the Reserve Fund

Date 4/25/2023

Warrant Committee
Town of Medfield

Dear Committee Members:

Request is hereby made for the following transfer from the Reserve Fund in accordance with Chapter 40, Section 6, of the Massachusetts General Laws:

1. Amount requested:
2. To be transferred to:

\$ 15,322.62
011952 - 522500: Town Report/Meeting
(Give Name and No. of Appropriation)

3. Present balance in said appropriation:
4. The amount requested will be used for (give specific purpose):

\$ 13,250.00

- Printing, Postage, and Delivery of Town Meeting Warrants
- Printing of 4 years of Town Reports (2019-2022)

5. This expenditure is extraordinary and/or unforeseen for the following reasons.

- Typically only print one annual report each year
- Printing costs have increased due to supply chain issues
- Color printing for warrant report



Officer or Department Head

Action of Warrant Committee

Date of Meeting _____ Number Present and Voting _____

Transfer voted in the sum of \$ _____

Transfer disapproved

Warrant Committee Chair

**Request must be made and transfer voted before any
expenditure in excess of appropriation is incurred.**

Distribution: White - Warrant Comm.

Canary - Town Accountant

Pink - Department