



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

March 26, 2018

Honorable Board of Aldermen
Committee on Confirmation of Appointments
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Re: Board Item #205372

Dear Honorable Committee Members:

You have asked if the Committee on Confirmation of Appointments may review, in executive session, the minutes of prior executive sessions. The Attorney General has opined that

[A] public body may convene in executive session to review and approve executive session minutes. A public body may convene in executive session under the original purpose for the executive session, or it may convene in executive session pursuant to G. L. c. 30A, § 21(a)(7) “[t]o comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements” (“Purpose 7”), citing to the Open Meeting Law, G. L. c. 30A, §§ 22(f), (g). That section of the Open Meeting Law requires public bodies to review executive session meeting minutes and allows them to withhold executive session minutes and documents used therein from the public until the purpose for confidentiality has expired.

See attached copy, as found at <https://www.mass.gov/service-details/frequently-asked-questions-about-the-open-meeting-law-executive-session>.

Please contact me if you have any questions. Thank you.

Sincerely,

Francis X. Wright, Jr.
City Solicitor

encl.



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Executive session minutes

What process must public bodies follow for reviewing executive session minutes for approval?

Executive session minutes must be approved in a timely manner, just like open session minutes. Executive session minutes may be withheld from disclosure “as long as publication may defeat the lawful purposes of the executive session, but no longer.” G.L. c. 30A, § 22(f). If a public body reviews confidential portions of executive session minutes in open session, it may risk publicly disclosing confidential information. For this reason, a public body may decide to designate the chair or another individual to review and approve executive session minutes, or it may review the minutes together in executive session (see below).

Can a public body convene in executive session to approve executive session minutes?

Yes, a public body may convene in executive session to review and approve executive session minutes. A public body may convene in executive session under the original purpose for the executive session, or it may convene in executive session pursuant to G.L. c. 30A, § 21(a)(7) “[t]o comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements” (“Purpose 7”), citing to the Open Meeting Law, G.L. c. 30A, §§ 22(f), (g). That section of the Open Meeting Law requires public bodies to review executive session meeting minutes and allows them to withhold executive session minutes and documents used therein from the public until the purpose for confidentiality has expired.

What process must public bodies follow for reviewing executive session minutes for release to the public?

The Open Meeting Law requires that a public body, or its chair or designee, review the minutes of its executive sessions at reasonable intervals to determine if the Open Meeting Law warrants continued non-disclosure. G.L. c. 30A, § 22(g) (1). Upon a request for executive session meeting minutes, it shall review those minutes and release “the non-exempt minutes, or any portion thereof, not later than the body’s next meeting or 30 days, whichever first occurs.” G.L. c. 30A, § 22(f).

The law requires a two-stage review of executive session minutes, with both stages occurring within 30 days of a request. G.L. c. 30A, § 22(f), (g)(2). First, the public body must determine whether the executive session purpose continues to warrant confidentiality. G.L. c. 30A, § 22(f). Second, if the purpose no longer warrants confidentiality, then the public body must determine whether the attorney-client privilege or one or more of the exemptions under the Public Records Law apply to withhold the minutes, or a portion thereof, from disclosure. *Id.* At the conclusion of this review, the public body must respond to the requester and either make the minutes available or provide an explanation of what is being withheld and why. A public body may not charge the requester a fee for this review.