

ATTACHMENT B

BID FORM

To: Town of Monterey:

The undersigned bidder proposes to furnish one 2021 Or Newer Tandem Axle Dump Truck (the "Truck"), in full compliance with the requirements of the specifications and subject only to any exceptions thereto noted on the separate page marked "Exceptions to Specifications" submitted herewith,

for the Contract Price of: 165,851
(\$ 165,851), to be paid upon final acceptance of the apparatus by the Town.

The apparatus will be delivered to the Town of Monterey, at the location directed by the Town, within approximately 30 days after execution of a written contract.

For payment of the price associated with the bidder's procurement of the truck at the time of delivery to the bidder, the bidder will accept a Contract Price as follows:

Payment upon delivery: \$ 165,851
Balance, upon final acceptance: \$ 165,851
Total: \$ 165,851

The bidder understands that the Town's payment for the Truck upon delivery to the bidder is subject to the transfer of title to the Truck to the Town at that time.

The bidder acknowledges receipt and acceptance of the following Addenda .

The bidder's certificate of non-collusion is attached hereto.

DATED: 12/28/2021

Bidder: New England Kenworth
By: [Signature]
Name: Dustin Rushlow
Title: Sales Professional

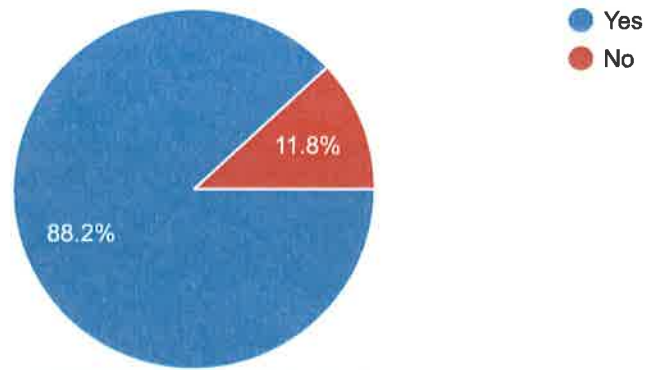
ARPA Survey

76 responses

[Publish analytics](#)

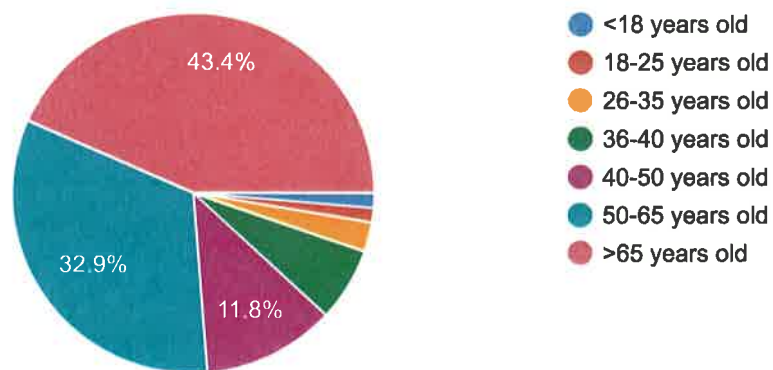
Are you a resident of the Town of Monterey?

76 responses



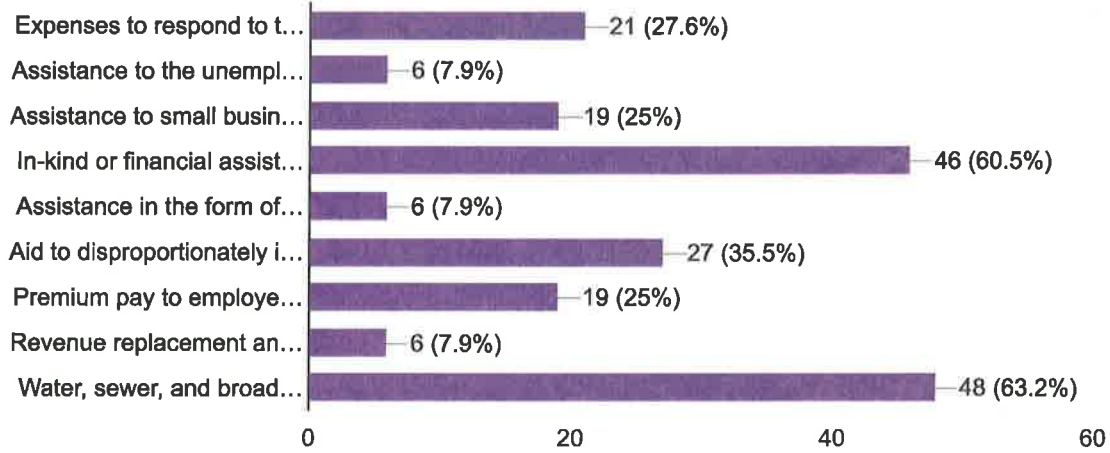
What is your age?

76 responses



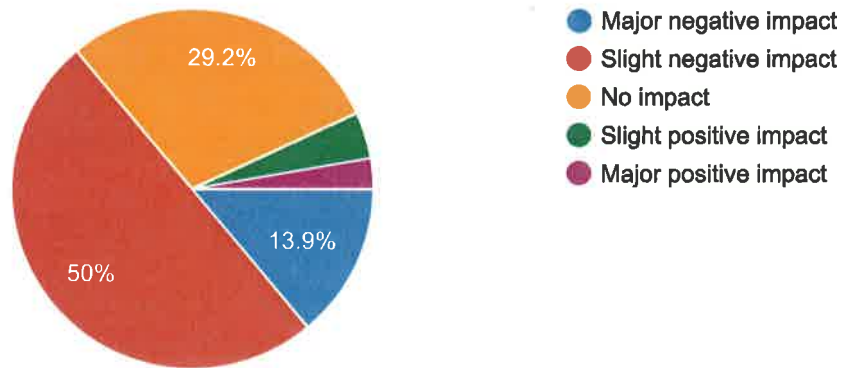
Please select three (3) areas (based on eligibility guidance from the Treasury Department) Monterey should invest ARPA funding.

76 responses



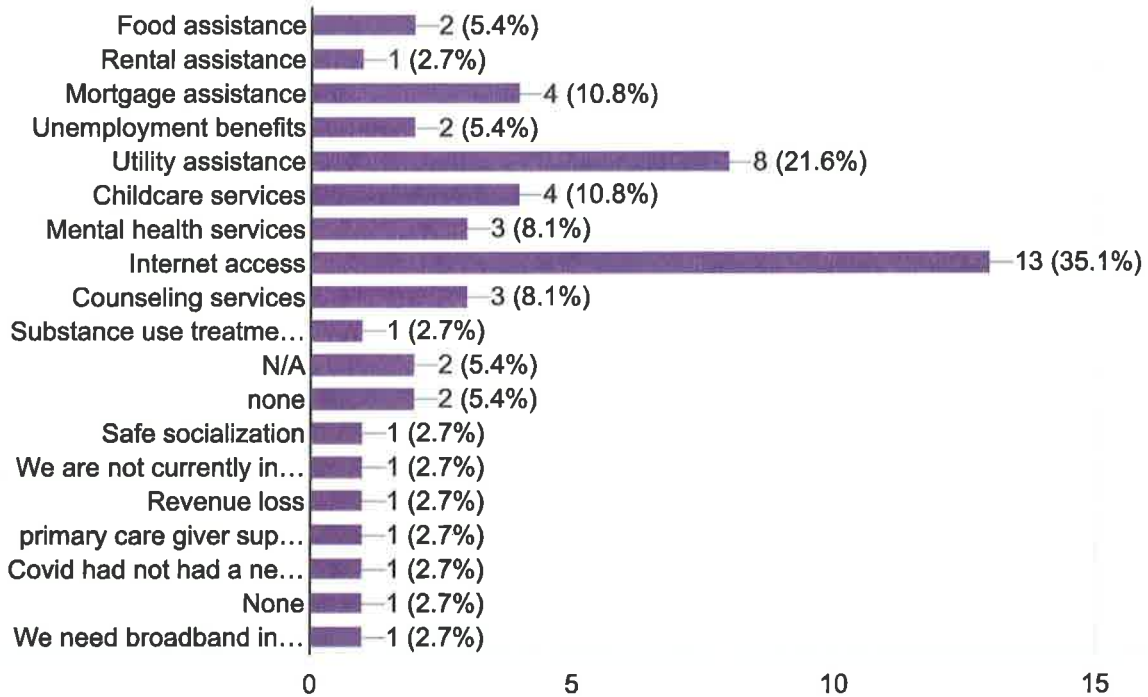
If you are comfortable answering this anonymous question it would be helpful to know the level of impact COVID-19 has had on your household.

72 responses



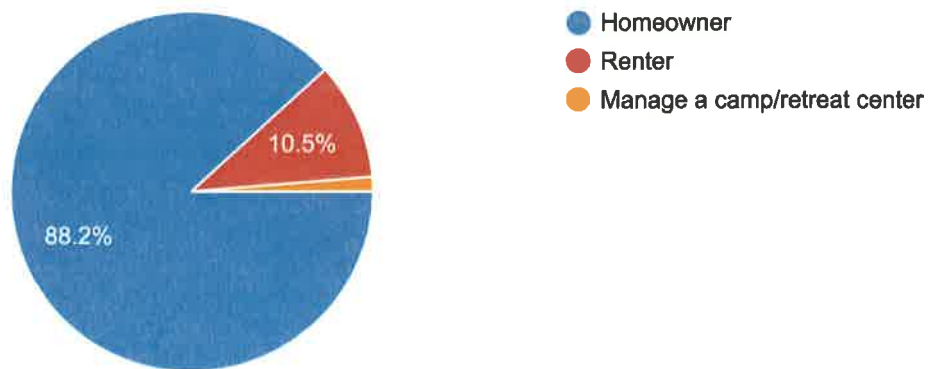
Again, if you are comfortable answering this anonymous question. If COVID-19 has had a negative impact on your household, what assistance do you need? Please choose up to three (3).

37 responses



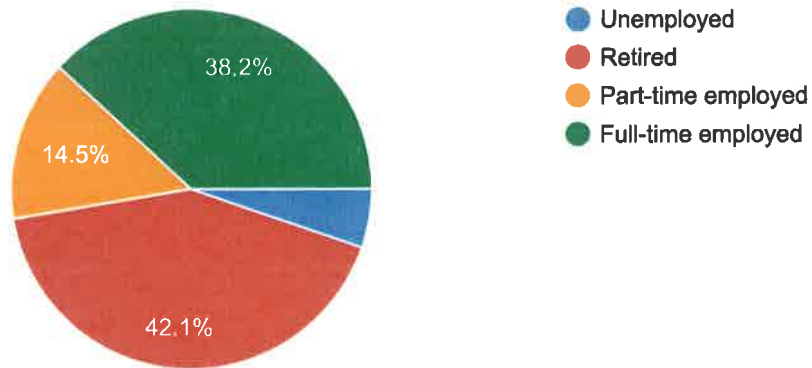
What is your home-ownership status?

76 responses



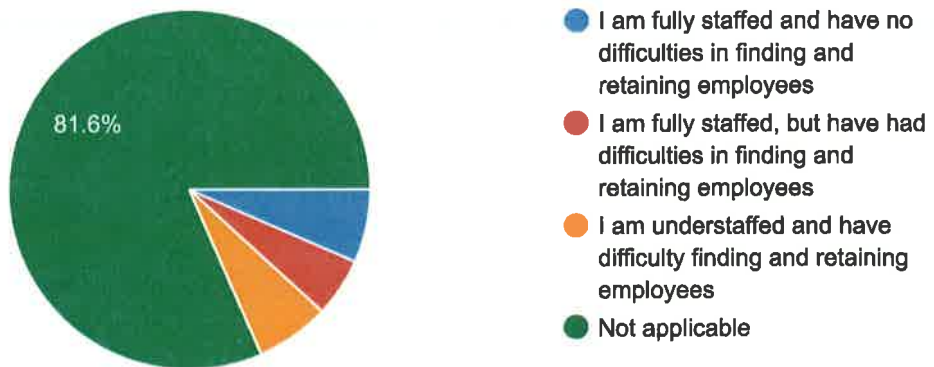
What is your employment status?

76 responses



If you are an employer, which of the following statements best describes your current employee situation?

76 responses



Other comments or suggestions on possible uses of ARPA funds

Would love to put money into the playground at the town hall. Outdoor activities are so important for the future of the pandemic, our playground is awful

broadband and electric grid expansion and reinforcement. bury powerlines?

Keep it simple, give it to people in need, make access easy

I feel very strongly that some of these funds should be used to expand affordable housing in Monterey. Right now, there is no affordable housing to speak of in this town. The high proportion of second homeownership in Monterey (and throughout the Southern Berkshires) has driven the cost of housing in this town far out of reach of county residents holding typical local jobs. Monterey's zoning laws militate against rental housing and also against any kind of moderate-density homebuilding, pretty much ensuring that anyone in need of even relatively affordable housing cannot find a home here. These are probably factors outside the scope of Monterey's ARPA funds; nonetheless, since affordable housing development is

Infrastructure.

Lower property taxes, broadband financial help for low income households with low income status remaining unknown to company. I know the broadband provider and would do without if he was aware of

Broadband. Broadband. We urgently need reliable and fast internet service.

I did not see a choice which supports alternative energy implementation which was mentioned in the opening paragraph. I would have chosen it as one of my 3 areas of concern.

Please, no more unemployment benefits. No one is working. Everyone needs help.

Installation of solar power on community-owned properties.

I hope that some funds can be directed toward the Monterey Community Center, specifically to be able to have a tent outside for citizens to socialize and exercise while maintaining good air circulation and social distancing. With the new Covid -19 variant posing a threat,

1- Pay for a tent so the Community Center can have outdoor events again this spring. 2- Provide some funding for the Monterey Food Pantry. 3-Establish a fund to build moderate income housing in the town.

I would like to see support for creating an increase in affordable housing in Monterey.

(mailed response) Yes to investing in Monterey infrastructure - roads, water, broadband internet - for sure! Yes to addressing "inexpensive" housing or lowering tax rates. No to any further stealing of funds from taxpayers to support COVID policies that are bankrupting us at the same time

Last mile internet connection assistance for Gould Farm would be a huge help. With the pandemic, and continued duration of the pandemic, we have maxed out our wireless broadband network capacity. We have many more remote/virtual meetings, doctor's appts etc.

Fiber connection for all of our buildings will cost us a significant amount of money (Est. to be about \$20K) at the same time that we have lost over \$100,000 in revenues with closing the Harvest Barn bakery and reduced service at Roadside during the pandemic. I am happy to talk more about Gould Farm COVID impact at your convenience. Lisanne Finston, 413-528-1804 ext 40

test kits for covid; Library or Community Center Lectures on Monterey for community development or celebration of community.

Provide \$5,000 in funding to the Monterey Pantry./ Provide \$15,000 for a Solar PV Action Plan for Municipal Buildings / Provide \$20,000 for Broadband for Disadvantaged Residents

This survey was poorly written. In fact, it is perhaps one of the worst I have ever participated in. If the funds could pay for someone to write a proper survey I would have chosen that. What is more important is that there should be citizen involvement in the decision making process, that is to say that all who are involved in a clearly dysfunctional town hall and seem incapable of transparency in decision making should step aside. The process, which seems to be ignored more often than not by the current leadership, should be laid out clearly and given to the citizens to make the decisions. Certainly the town has had expenses directly due to covid, and will continue for years to come. The tent at the community center is an example of this. That the last mile has not been resolved for some houses in town, which is clearly another covid issue that will be with us for years to come since it is expected that everyone should have access to high speed internet for the reasons we all should know, is perhaps another important issue. Has any work been done since Fiber Connect's agreement to solve the issue of houses not being served? This funding that is now available would

Senior population impacted by isolation brought on by covid

Townsfolds need to be able to meet outside easily & safely for physical health and mental health reasons. People gather at the library, community center, pavilion and town hall. Plus the public beach. Is ventilation adequate at town hall? COVID test kits need to be made available at some of these places or at least one place, library or pantry. The Community Center tent should be funded or a smaller pavilion built there that the fire company has. The parking at the current pavilion is not delineated well, same at the beach and community center. Parking has problems with



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
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December 8, 2021

OML 2021 – 181

VIA EMAIL

Katherine Feodoroff, Esq.
Mead, Talerman & Costa, LLC
730 Main Street, Suite 1F
Millis, MA 02054
[REDACTED]

RE: Open Meeting Law Complaint

Dear Attorney Feodoroff:

This office received eight complaints from Patrick Higgins from July 19 through October 20, 2021, alleging that the Rehoboth Board of Selectmen (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaints were originally filed with the Board from June 23 to October 3, and you responded on behalf of the Board by letters dated July 13, October 6 and 19.¹ In his complaint, Mr. Higgins alleges that the Board failed to approve meeting minutes in a timely manner and posted insufficiently specific meeting notices.²

We resolve this complaint by **informal action** in accordance with 940 CMR 29.07(2)(a), and find that the Board violated the Open Meeting Law by posting insufficiently specific meeting notices and failing to timely approve numerous sets of meeting minutes. In reaching this determination, we reviewed the original complaints, the Board’s responses to the complaints, and the complainant’s requests for further review. We also reviewed relevant meeting notices and minutes for the Board’s meetings which Mr. Higgins alleged were insufficiently specific or not timely approved. Finally, we reviewed the Board’s website to confirm the meeting dates of the Board’s other meetings.

1. The Board posted several meeting notices which were insufficiently specific.

The Open Meeting Law requires a public body to post notice 48 hours in advance of a meeting and include a “listing of topics that the chair reasonably anticipates will be discussed at

¹ Unless otherwise specified, all dates refer to 2021.

² Mr. Higgins alleges that the Board failed to timely approve minutes for the following meetings: May 17, May 6, May 3, April 26, April 20, April 12, March 29, March 22, February 3, January 25, January 11 and December 14, 2020.

the meeting.” G.L. c. 30A, § 20(b). Public bodies are required to list topics in a meeting notice with “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03(1)(b). We generally consider a topic sufficiently detailed when a reasonable member of the public could read the topic and understand the anticipated nature of the public body’s discussion. See OML 2015-35.³ The Open Meeting Law does not require a public body to anticipate the course of deliberation or the outcome of a discussion, only that it identify the discussion topic with sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting. See G.L. c. 30A, § 20(b); 940 CMR 29.03(1)(b); OML 2017-186; OML 2014-127; OML 2014-58; OML 2014-38. The Open Meeting Law also does not require a public body to list each and every detail about a topic in order for the listing of topics to be sufficiently specific. See OML 2018-60.

Mr. Higgins alleges that the notice for the June 7 meeting of the Board contained an insufficiently detailed agenda item, “Reserve Fund Transfer.” The Board concedes, and we agree, that the Board should have included more detail for this item, as the chair anticipated discussing only a single reserve fund transfer authorizing the payment of \$6,730 for tree pruning to be completed by Lewis Tree Service. See OML 2019-70; OML 2019-77. In response to the complaint, the Board has ratified this vote at a subsequent meeting. By contrast, we find that “Approve Board of Health Agent’s Contract” on the June 1 notice, which Mr. Higgins alleges should have included details of the Health Agent’s contract, was sufficiently specific as it reasonably advised the public of the issues to be discussed at the meeting. The Open Meeting Law does not require the level of detail Mr. Higgins seeks in this respect.

Mr. Higgins also alleges that the Board failed to list the names of individuals the Board would consider regarding appointments, resignations and licenses for the following meetings: May 24, June 1, June 7, June 14 and June 21. The Board argues that the meeting notices specified that the Board would consider appointments, resignations and licenses, “as submitted.” We have consistently stated that the names of interviewees and applicants for appointment which are known 48 hours in advance of a meeting should be included on a meeting notice. See OML 2019-24; OML 2016-150; OML 2013-163. The Board has not claimed that the specific appointments were not reasonably anticipated by the chair. We therefore conclude that the meeting May 24, June 7, June 14 and June 21 notices should have included the names of the individuals to be considered by the Board.⁴ Accordingly, the Board violated the Open Meeting Law in this regard.

Mr. Higgins also alleges that the Board failed to attach documents to the notices for both the September 27 and October 4 meetings, which the notice indicated would be attached. The Open Meeting Law does not require that a public body attach any documents to the meeting notice, and therefore we find no violation of the Open Meeting Law. We take this opportunity to note that the opposite is true. Attaching documents cannot cure a defective notice; the meeting notice itself must contain all information that the Open Meeting Law requires. See OML 2021-138; OML 2021-57; OML 2019-22.

³ All previous determinations issued by the Division can be found on the Attorney General’s website: <https://www.mass.gov/the-open-meeting-law>.

⁴ We find no violation with respect to the June 1 notice, which did not contain a generic appointment, resignation, or license item.

Finally, the Board's notice for the June 1 meeting contained the topic "MGL CHAPTER 30A, §21," which provided no further information to the public about the subject of the executive session. The Open Meeting Law requires that all meetings of a public body be conducted in an open session, with some exceptions. G.L. c. 30A, §§ 20(a), 21(a). Public bodies may enter a closed, executive session for any of the ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). Executive session topics must be described, both in the meeting notice and in an announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) ("[a] precise statement of the reason for convening in executive session is necessary ... because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper").

One purpose for executive session permits a public body to "conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel." G.L. c. 30A, § 21(a)(2) ("Purpose 2"). When convening in executive session pursuant to Purpose 2, a public body must identify the nonunion personnel with whom it will be negotiating, if doing so will not compromise the lawful purpose for secrecy. See OML 2017-53; OML 2016-43; OML 2016-12; OML 2013-151. At a minimum, the Board's June 1 meeting notice should have specified that the Board planned to enter executive session under Purpose 2, as providing this general information would not have compromised the purpose for the executive session. A general citation to the section of the Open Meeting Law which lists all ten permissible purposes for convening in executive session is clearly inadequate. We therefore find that the Board's June 1 meeting notice was insufficiently specific, in violation of the Open Meeting Law.

2. The Board failed to approve numerous sets of meeting minutes in a timely manner.

The Open Meeting Law requires that a public body "create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes." G.L. c. 30A, § 22(a). The meeting minutes must be reviewed and approved in a timely manner. G.L. c. 30A, § 22(c). "Timely manner" means "within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay." See 940 CMR 29.11; OML 2018-48.⁵ Whenever possible, we recommend that minutes of a meeting be approved at the next meeting. See OML 2021-155; OML 2017-133.

Here, we find that the Board failed to approve meeting minutes in a timely manner on numerous occasions. For example, the Board approved minutes from its February 3, January 25, January 11 meetings on September 13, despite meeting more than thirty times in the interim. In

⁵ The Open Meeting Law defines "meeting" as "a deliberation by a public body with respect to any matter within the body's jurisdiction." The Open Meeting Law and regulations make no exception for executive sessions, special meetings or meetings not "normally scheduled," for purposes of timely approval of minutes. See OML 2019-115; OML 2019-84; OML 2017-103 (public body should have created complete minutes for its "workshop" meetings, because topics discussed were matters within the public body's jurisdiction).

another example, the Board approved minutes from its December 14, 2020, meeting on May 24, 2021, which far exceeded either 30 days or three meetings. In its response, the Board asserts that it had good cause to delay the approval of these meeting minutes, because the Board approved the meeting minutes as soon as they were created by the Board's staff. We disagree. The responsibility for complying with the Open Meeting Law rests with public bodies and members of such bodies, not with individual public employees, such as administrative staff. See OML 2018-105. If staff resources are not available to create minutes for a public body to approve, then public body members must take on this responsibility to ensure compliance with the Law. See OML 2018-111. We therefore find that the Board violated the Open Meeting Law by failing to timely create and approve meeting minutes.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by posting insufficiently specific meeting notices and failing to timely approve meeting minutes. We order the Board's immediate and future compliance with the Open Meeting Law and caution the Board that a determination by our office of a similar violation in the future may be considered evidence of intent to violate the Open Meeting Law.

In light of the various Open Meeting Law violations found here, we order all members of the Board to attend an Open Meeting Law webinar training provided by our office within **ninety (90) days** of the Board's receipt of this letter. We also order the Board to certify to our office that each Board member has completed the webinar training within **ninety-five (95) days** of the Board's receipt of this letter. As the Board represents that it is current on its approval of meeting minutes, we order no further remedial action in that regard.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Sarah Monahan
Assistant Attorney General
Division of Open Government

cc: Patrick Higgins (via e-mail: [REDACTED])
Rehoboth Board of Selectmen c/o Interim Town Administrator Deborah Arruda
(via e-mail: [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.

Policy Name:	Public document availability	Approval Authority:	Select Board
		Applies to:	All Boards & Committees
Adopted:		Revised: --	Reviewed:

Whereas on June 12, 2021, Town Meeting passed the following motion:

“To instruct the Board of Selectmen to create a town policy regarding:

All public documents shall be posted via a link onto the town’s website and shall be searchable and available to the public for viewing. All public procurement contracts shall be posted via a link onto the town’s website and shall be searchable and available to the public for viewing. After signature by the Selectboard all warrants shall be posted onto the town’s website and available to the public for viewing. All documents used in any board, committee, or commission meetings shall be posted via a link on the town website for public review along with the minutes. There shall be no charge for any public documents, town documents, requested by one town governmental body seeking documents from another town public body, department, committee, commission etc.”

Multimember bodies of the Town of Monterey (boards, committees, commissions, etc.) are encouraged to post public documents used in their meetings along with the approved minutes of the meeting, to a degree reasonably possible. Multimember bodies should make an effort to post the public documents used in their meetings along with their minutes to promote transparency, voter education, and citizen involvement in government. Posting public documents along with minutes also satisfies the above motion passed by Town Meeting on June 12, 2021.

To the extent that posting documents used at meetings would unreasonably burden a multimember body of the Town of Monterey with spending time and resources without substantially achieving transparency, voter education, and citizen involvement, the multimember body shall not be compelled to post the documents to the website. To the extent that documents are subject to confidentiality or redaction and pose an undue burden in return for the benefit of posting, the multimember body shall not be compelled to post the documents to the website.

All documents used at public meetings are subject to the Open Meeting Law requirements of availability and Massachusetts Public Records Law. This policy aims to go beyond the requirements of the Open Meeting Law and Public Records Law to encourage and increase transparency, education, and involvement of citizens in Town government business.

**Town of Monterey
Policy Statement**

Policy Name:	Agenda Posting Requirements	Approval Authority:	Board of Select Boardmen
Adopted:	June 30, 2021	Applies to:	All Boards & Committees
		Revised: --	Reviewed: 6/30/21

This policy's purpose is to provide information to the elected and appointed public bodies in the Town of Monterey regarding meeting posting requirements and guidelines. This policy has been adopted by the Board of Select Boardmen and includes mandates under the state's Open Meeting Law.

Definitions:

- **Public Body:** An appointed or elected group of two or more people. Typical terms include but are not limited to: board, committee, commission, or council.
- **Official:** Any member of a public body.
- **Meeting Notice:** The notice that includes when a public body is meeting and details about the meeting.
- **Meeting Posting:** The act of making the meeting notice public and compliant with state Open Meeting Laws.
- **Bulletin Board:** The Town website www.montereyma.gov. This is the legal place for meeting notices to be posted. Notices must be posted to the Town website 48 hours in advance of the meeting (not including holidays or weekends).

The Open Meeting Law Guide produced by the Office of Attorney General should be consulted for any questions, as the following list is just a few of the key requirements of the law.

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Massachusetts Open Meeting Notice Requirements: Meeting notices must contain the following per state law:

- **the name of the Public Body convening**
- **the date and time of the meeting**
- The date and time of the meeting
- The location of the meeting- as specific as possible
- **the place of the meeting, as specific as possible**
 - (i.e. "Town Hall Meeting Room," "Monterey Pavilion behind the Firehouse," "Monterey Community Center," "Monterey Library," "Zoom," "Go To Meeting")
 - Each notice must also include any remote sign-in instructions, numbers, links and passwords to access the meeting if the meeting will be held remotely.
- The name of the Official calling the meeting. Meetings may be called by any member of the Public Body, not just the chairperson.
- **all topics that the chair reasonably anticipates, 48 hours in advance, will be discussed at the meeting**

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Town of Monterey Policy Statement

- The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. An agenda that includes a list of the items reasonably anticipated to be discussed by the Official calling the meeting. Any items that are added between the 48-hour posting deadline and the meeting may only be addressed if it cannot wait until a subsequent meeting. Items should be as detailed as possible.
- Topics should avoid abbreviations and acronyms, and spell out all words and phrases for maximum clarity.
- (i.e. "Contract" is not acceptable, "Procurement Contract with John SmithABC, Inc" is.)
- Meeting notices must also indicate the date and time that the notice was posted, either on the notice itself or in a document or website accompanying the notice, and should reference when the copy was filed with the Town Clerk (usually the same time as the posting).
- If a notice is revised, the revised notice must also conspicuously record both the date and time the original notice was posted as well as the date and time the last revision was posted.
- A copy of the agenda meeting notice must be posted to the legally recognized posting place (in Monterey's case, it is the Town website) at least 48 hours prior to the meeting time. This does not include weekends (both Saturday and Sunday) and holidays.
- The Notice must state the name of the individual making the Posting, the date and time the meeting was posted, and should reference when the copy was filed with the town clerk (usually the same time as the posting).
- Each notice must also include any remote sign-in instructions, numbers, links and passwords to access the meeting if the meeting will be held remotely.

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Procedure for posting a meeting in Monterey:

- Meeting notice/agendas should be submitted by going to (<https://www.montereyma.gov/town-clerk/webforms/meeting-notice-postings>) and completing the form. When submitted properly a copy goes to the Town Administrator (responsible for posting to the website) as well as the Town Clerk (who will post it on the bulletin board outside of town hall).
 - <https://www.montereyma.gov/> → Citizen Action Center → Post Meeting Agenda
- When submitted properly, a copy of the meeting notice goes to both the Town Clerk and the Town Administrator. The Town Clerk or the Town Administrator, depending who is most readily available after receipt of the submission, shall post the meeting notice to the Town website (the legal posting place) and the bulletin board outside of Town Hall.
- The Town website is the legal posting place which must be posted to 48 hours before the meeting in advance in order to meet the requirements of the Open Meeting Law; whereas, the bulletin board outside the Town Hall shall be kept updated as possible for the convenience of the public, but it is not legally necessary to meet the requirements of the Open Meeting Law.
- Notices must be submitted at submitted with enough time to permit posting of the notice at least 48 hours in advance of the meeting least 48 hours in advance. (Town Hall office hours and staff time The working hours of the Town Clerk and Town Administrator, and time off, should be taken into consideration when deciding to posting a meeting).
 - ~~Notices sent less than 48 hours in advance will not be posted.~~
 - The Town Clerk and Town Administrator will not be responsible for any missed postings or noncompliance with the state's Open Meeting Law requirements. The official calling

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**Town of Monterey
Policy Statement**

the meeting is responsible for ensuring that the posting and meeting is in compliance with the Open Meeting Law.

○ Submitting a notice 72 hours in advance of the meeting should in most cases allow plenty of time for it to be posted before the 48 hour requirement.

○ Notices sent less than 48 hours in advance will not be posted.

○

Notice/Posting Recommendations: The following items are suggested, but not required:

- Agendas should be in bulleted/numbered list format, preferably in the order that the items will be discussed in the meeting.

-

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Monterey Town Administrator

From: Steven Weisz <steve@montereyma.gov>
Sent: Wednesday, January 5, 2022 4:06 PM
To: Monterey Town Administrator
Subject: Fwd: Monterey/Conservation Commission
Attachments: Con Com December motions (1).docx; Untitled attachment 00732.htm

Melissa,

These are the answers from Town Counsel.

Please distribute them to the appropriate parties.

Thanks,
Steven

Begin forwarded message:

From: "Brian M. Mascr" <BMascr@k-plaw.com>
Date: January 5, 2022 at 11:54:22 AM EST
To: Steven Weisz <steve@montereyma.gov>
Subject: Monterey/Conservation Commission

Steven:

I am writing in response to the e-mail received yesterday regarding various motions made by the Conservation Commission. I will address them in turn. My comments are in red below. Please let us know if we can be of further assistance.

Brian

(1) Whether or not the disciplinary letter written for Kim Wetherell, previously serving as the Con Com Agent, may be attached to the minutes of the Con Com meeting held in September as voted upon at that meeting by the Commissioners, irrespective of her resigning from that position prior to the BOS considering the inclusion of the letter in the Agent's personnel file, and (2) if included in the minutes, is the letter subject to any confidentiality provisions?

Disciplinary letters issued to a public employee are confidential, personnel records that are exempt from disclosure under the Public Records Law. Release or disclosure of personnel records that are exclusively to be maintained as part of an employee's personnel file should not be attached to public minutes as the release of the record would be subject to challenge by the employee who is the subject of the disciplinary record. We recommend against attaching the letter to the minutes of the Commission's meeting.

(2) The Conservation Commission is requesting a meeting with the BOS, to be held in Executive Session, and no later than the end of February 2022, to consider the role that the Town Administrator has played in negatively affecting the work of the Con Com for calendar year 2021.

The Conservation Commission will cancel future Con Com public meetings scheduled for December 2021 and January 2022. The February meeting will be announced and posted appropriately. Holding the February meeting may be dependent on holding an executive committee session between the Con Com and the BOS.

It is our understanding that various and several complaints are currently being investigated by an independent investigator retained by the Board. It is appropriate for the investigator to investigate this allegation as part of her investigation as compared to the Board convening a Purpose 1 meeting to discuss the complaint with the Town Administrator. Pending the completion of that investigation, the Commission should continue to meet to perform their statutory functions.

(3) The Conservation Commission will place an ad in the appropriate local periodicals and social media sites to search for and hire an Agent at the earliest possible date.

The placement of an advertisement to seek qualified replacements for the Commission Agent is an acceptable approach to take by the Commission.

Monterey Town Administrator

From: michael germain [REDACTED]
Sent: Sunday, January 2, 2022 12:33 PM
To: Greg Carnese; Justin Makuc
Cc: Steve Snyder; Monterey Town Administrator; Steve Weisz
Subject: Re: Open Meeting Law Complaint
Attachments: 12-27-21 - COMPLAINT.pdf; Untitled attachment 00017.htm

Can we forward this to the town council so they can represent the LGWG
Sent from my iPhone

*NOT necessary at
this time - resend
both complaints
to Steve +
Justin*

On Jan 2, 2022, at 11:38 AM, Greg Carnese <gregcarnese@oldlymelaw.net> wrote:

Dear All:

I wish you all a safe and healthy and happy New Year. I have cut and pasted email chain below and attachment in reply to my request for an extension per Attorney Benedon. I did forward to her the original complaint Melissa sent to us. I have no further information at this point in time and we should schedule a meeting to specifically discuss the complaints and an appropriate response.

Attorney Benedon wrote:

Greg,

My apologies if my prior email did not include the attachment. Please see attached, which is the December 27th OML complaint.

In response to your other question, it is permissible for you to forward my emails and attachments to the rest of the Working Group outside of a posted meeting. The Open Meeting Law specifically excludes from the definition of "deliberation" the distribution of reports or documents that may be discussed at an upcoming meeting, provided no opinion of a public body member is expressed. Therefore, although you may share my communications, you should be careful not to include your own commentary or opinion.

I would be happy to speak with you on Tuesday, January 4th. I will be available between 11:00-12:30 and 1:00-2:30; please let me know if any of those times work and the best number to reach you. I will have more availability on January 5th if those time windows don't work.

Sincerely,

Carrie Benedon (she/her/hers)
Assistant Attorney General
Director, Division of Open Government
Massachusetts Office of the Attorney General
(617) 963-2540



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

January 3, 2022
SPR21/3294

Melissa Noe
Town Administrator
Town of Monterey
435 Main Road
Monterey, MA 01245

Dear Ms. Noe:

I have received the petition of Jon Sylbert appealing the response of the Town of Monterey (Town) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On December 16, 2021, Mr. Sylbert requested, "...the tape recording of the 12/14/21 Finance Committee meeting."

On December 20, 2021, the Town responded. Unsatisfied with the Town's response, Mr. Sylbert petitioned this office and this appeal, SPR21/3294, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv) (written response must "identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based..."); 950 C.M.R. 32.06(3); see also *Dist. Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

The Town's December 20th response

In its December 20th response, the Town stated, “[t]he meeting on 12/14 was cancelled due to lack of a quorum and therefore was not recorded as the meeting did not occur.”

Current Appeal

In his appeal, Mr. Sylbert asserts, “[t]he meeting was opened and recorded; therefore, it did occur. A ‘lack of a quorum’ does not mean the meeting wasn’t recorded or that it did not occur. The meeting was ended, not ‘canceled,’ during the meeting time, by the Chair of the committee, and this was recorded. The meeting wasn’t ‘canceled’ until 7:34am the next day, 12/15/21, as is shown on the Monterey town website. ...”

Records in Possession, Custody, or Control

Please be advised that the duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Additionally, in accordance with the Public Records Law, custodians are expected to use their superior knowledge of the records in their custody to assist requestors in obtaining the desired information. See 950 C.M.R. 32.04(5). However, under the Public Records Law, a public employee is not required to answer questions, or do research, or create documents in response to questions. See G. L. c. 66, § 10(a); 32 Op. Att’y Gen. 157, 165 (May 18, 1977).

Based on a conversation between a Public Records Division staff attorney and a Town representative, it is my understanding that no recording occurred on 12/14. Consequently, no responsive records exist.

Conclusion

Accordingly, I will now consider this administrative appeal closed. If Mr. Sylbert is not satisfied with the resolution of this administrative appeal, he is advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G.L. c. 66 §10(A)(c).

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Jon Sylbert