

Monterey Town Administrator

From: [REDACTED]
Sent: Tuesday, December 21, 2021 10:48 AM
To: admin@montereyma.gov
Subject: The Conservation Commission

Good morning Melissa,

I've just had a long conversation with a neighbor about the problems he and other residents are having because of the Conservation Commission's inability to function at all. The commission's last meeting was cancelled and no meetings are listed for January or February.

This issue should be listed on the very next Select Board agenda. In preparation for that meeting I would ask you or the chair to immediately contact town counsel and pose the following questions regarding the Select Board's power to deal with a non-functioning Conservation Commission:

1. Can the Select Board immediately remove all or some of the members of the Conservation Commission for cause under c.40, section 8c and bylaw Article II section 5?
2. Can the Select Board suspend the operation of the Conservation Commission?
3. Can the Select Board thereafter perform the operations of the Conservation Commission or otherwise give relief to the homeowners whose applications are not being heard?
4. What are the paths forward available to the Select Board to get the work of the Conservation Commission done?
5. Might the path forward include the Select Board temporarily using the services of a conservation agent on an emergency basis?

Don Coburn

Date of Alleged Viola	Date Filed with Public Body	Complainant	Public Body
11/17/2021	11-19-21	Coburn, Donald	Monterey Select Board
11/18/2021	12-17-21	Sylbert, Jonathan	Monterey Finance Committee
11/18/2021	12-15-21	Weingold, John F	Monterey Select Board
11/17/2021	11-23-21	Weisz, Steven	Monterey Select Board
8/12/2021	12-6-21	Weingold, John F	Monterey Lake Garfield Working Group
11/17/2021	11-30-21	Weingold, John F	Monterey Select Board
10/26/2021	11-12-21	Sylbert, Jonathan	Monterey Finance Committee
9/30/2021	10-29-21	Sylbert, Jonathan	Monterey Finance Committee
10/6/2021	10-6-21	Sylbert, Jonathan	Monterey Finance Committee
	10-17-21	Weingold, John F	Monterey Select Board
10/6/2021	10-17-21	Weingold, John F	Monterey Select Board
7/15/2021	8-4-21	Wolin, Rebecca	Monterey Finance Committee
6/1/2021	7-21-21	Sylbert, Jonathan	Monterey Select Board
6/24/2021	7-6-21	Sylbert, Jonathan	Monterey Finance Committee
5/18/2021	6-16-21	Johnson, Emily	Monterey Finance Committee
5/18/2021	6-24-21	Sylbert, Jonathan	Monterey Finance Committee
6/4/2021	6-4-21	Sylbert, Jonathan	Monterey Finance Committee
	3-11-21	Noe, Melissa	Monterey Finance Committee
2/8/2021	3-3-21	Weingold, John F	Monterey Select Board
1/8/2021	1-15-21	Weingold, John F	Monterey Select Board
1/7/2021	1-8-21	Weingold, John F	Monterey Select Board
1/5/2021	1-10-21	Weingold, John F	Monterey Select Board
1/6/2021	1-6-21	Rawitz, Jeremy	Monterey Select Board



TOWN OF MONTEREY

435 Main Rd. P.O. Box 308
Monterey, MA 01245

Jon Sylbert
P.O. Box 463
Monterey, MA 01245

December 29, 2021

Re: Open Meeting Law Complaint

Dear Mr. Sylbert,

The Select Board acknowledges that our 10-6 minutes are not in compliance with the requirements of the OML. We are sorry for making this mistake. Thanks for pointing it out to us.

To remedy the problem, we will add "amending the 10-6 minutes" to the agenda of our next regularly scheduled Select Board meeting on January 5, 2022. At that meeting we will edit the minutes to bring them into compliance with the OML by including the location of the meeting, documents used at the meeting, and other items we left out. We will post the revised minutes to come into compliance with the OML.

Respectfully,


Steven Weisz, Chair
Monterey Select Board


Justin Makue

John Weingold

SB/mn



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Jonathan Last Name: Sylbert

Address: PO Box [REDACTED]

City: Monterey State: MA Zip Code: 01245

Phone Number: +1 (413) 5 Ext. _____

Email: jons@montereyma.gov

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Select Board, Monterey

Specific person(s), if any, you allege committed the violation: Steve Weisz, Justin Makuc

Date of alleged violation: Nov. 18, 2021

OML-Complaint-SB-12-14-21

According to the OML:

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must include:

- the date, time and place of the meeting;
- the members present or absent;
- the decisions made and actions taken, including a record of all votes;
- a summary of the discussions on each subject;
- a list of all documents and exhibits used at the meeting; and
- the name of any member who participated in the meeting remotely.

The Select Board minutes of the October 6, 2021 Select Board meeting, which were posted on November 18, 2021, violate the requirements of the OML:

The minutes do not list the place of the meeting;

The minutes do not list the members present or absent;

The minutes do not contain a summary of the discussion of each subject; namely:

The minutes do not summarize multiple town counsel responses, remarks and advisory opinions. Counsel opined on the reasons for putting the TA on leave, Chair Weisz and others argued the merits of the advice. None of this is contained in the minutes. These discussions were critical to the deliberation of motions and votes.

The minutes do not contain a list of documents used or referred to at the meeting. These include but are not limited to:

The letter of Cohen Kinne Valacenti & Cooke

The letter of town counsel from the Elect Board to the Town Administrator

The emails from town counsel to the Select Board advising leave

The link to the Select Board meeting of 10/6/21 is here:

https://www.youtube.com/watch?v=v_WkNVJ6QII

Please see attached document:

SB-minutes-10-6-21.pdf

[Print](#) | [Close Window](#)

Subject: Select Board Meeting Minutes 10/6/21
From: Monterey MA <cmsmailer@civicplus.com>
Date: Thu, Nov 18, 2021 8:34 am
To: jsylbert <jons@montereyma.gov>

Select Board Meeting Minutes 10/6/21

Minutes of 10/6/2021

The meeting opened at 6:00pm. The Chair introduced Brian Reilly, part of the new legal team at KP Law. Brian was welcomed by the Board and made a few remarks.

The Chair announced that the Board had just received a letter from Attorney Hennessey from the law firm of COHEN KINNE VALACENTI & COOKE.

The Chair read the letter aloud.

The letter demanded that the Town Administrator, Melissa Noe, whom as the letter attested was put on 'Administrative leave' during a previous meeting, be immediately reinstated as Town Administrator.

The Chair acknowledged the unusually large crowd (in person and via GoToMeeting @ 70 people total) and opened the floor for discussion.

Several members of the public made inquiries as to why Ms. Noe was placed on Administrative Leave. Justin informed the public that all discussions about Ms. Noe and 'Administrative leave' were done in Executive Session and thus, could not be discussed in public.

The Chair made a motion to reinstate Ms. Noe. There was no second and the vote failed.

Additional members of the public made comments and questioned why the Town Administrator was placed on leave.

The Chair made another motion to reinstate Ms. Noe. There was no second and the vote failed.

A pattern of public discussion and the Chair making a reinstatement motion transpired.

John objected and made a motion to adjourn the meeting. There was no second and the vote failed.

More public discussion ensued and the Chair made a motion to reinstate Ms. Noe. Justin seconded the motion. The Board voted 2-1 to reinstate Ms. Noe.

A member of the Fire Company asked that the Board approve a date and time for the Special Town Meeting. A motion was made to have the Special Town Meeting on Saturday, the 6th of November at 1pm. The motion passed 3 – 0.

A motion was made to adjourn the meeting. It was seconded and voted 3-0.

8:15pm

[Read more](#)

This is an automatic message from Monterey MA. Please do not reply to this message.
[You can unsubscribe here.](#)

Copyright © 2003-2021. All rights reserved.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: John Last Name: Weingold

Address: PO Box [REDACTED]

City: Monterey State: MA Zip Code: 01245

Phone Number: [REDACTED] Ext.

Email: [REDACTED]

Organization or Media Affiliation (if any):

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/ town, county or region, if applicable): Monterey MA Selectboard

Specific person(s), if any, you allege committed the violation: Justin Makuc
Steve Weisz

Date of alleged violation: 11/18/21

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

The approved SB minutes posted on 11/18/21 for the 11/6/21 Selectboard meet are not factual, accurate, or inclusive and are an intentional violation of the OML

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Redraft the 11/6/21 SB minutes to advise the public of what actually happened during the actual meeting that was recorded and is on Youtube. Public and written apologize for this flagrant disregard of the OML.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: 

Date: 12/15/21

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:



TOWN OF MONTEREY

435 Main Rd. P.O. Box 308
Monterey, MA 01245

John Weingold
P.O. Box 279
Monterey, MA 01245

December 29, 2021

Re: Open Meeting Law Complaint

Dear Mr. Weingold,

Mr. Weingold's complaint dated 12/15/21 states that the minutes posted on 11/18/21 for the 11/6/21 meeting are not factual, accurate or inclusive and are an intentional violation of the OML. Considering the board did not meet on Saturday, November 6, 2021 and no minutes were posted for such a meeting that did not occur, no violation was committed.

Respectfully,

Steven Weisz, Chair
Monterey Select Board

SB/mm

Justin Makuc



The Leader in Public Sector Law

101 Arch Street, Boston, MA 02110
Tel: 617.556.0007 | Fax: 617.654.1735
www.k-plaw.com

November 29, 2021

Brian W. Riley
briley@k-plaw.com

Chief Shawn Tryon
Monterey Fire Company, Ltd.
411 Main Road
P.O. Box 99
Monterey, MA 01245

Re: Fire Company and Finance Committee

Dear Chief Tryon:

With the approval of the Monterey Select Board, I was asked to contact the Finance Committee (“Committee”), specifically Committee member Jonathan Sylbert and former Committee member Rebecca Wolin, and then to address a letter to you outlining their concerns regarding the Fire Company (“Company”) and interactions between the Company and the Committee, over the past year in particular. In addition to my discussion with Mr. Sylbert and Ms. Wolin, I reviewed the Select Board’s vote on March 18, 2021 and Mr. Sylbert and Ms. Wolin’s written response to the form of and allegations in that vote.

It is the Finance Committee’s position that the alleged “harassment” of you and the Company by the Committee was nothing more than the Committee performing its statutory duty to collect relevant information from every Town department, in order to prepare reasonable budget recommendations for the voters and monitor the financial situation and needs of the Town. The Committee’s concerns over the Fire Company’s failure to comply with state requirements to maintain its tax exempt status was clearly within the Committee’s legitimate jurisdiction, as was the discrepancy over the Fire Station ramp and railing project and how Town-appropriated funds were being expended. The Committee members have been able to work with the Company over the years and that should be the goal of both parties going forward.

If, as you told the Board of Selectmen last March, you believe that that you are being “harassed” by any Committee members, or that any contact with you from Mr. Sylbert or Ms. Wolin was a “reckless attack,” please specifically identify any facts that support those claims and serious allegations. In addition, Ms. Wolin in particular feels that your allegations against her have damaged her standing and record of service to the community, and she requests a public apology from you for those unsubstantiated statements.

Very truly yours,

{Name of Recipient}
November 29, 2021
Page 2

Very truly yours,



Brian W. Riley

BWR/

cc: Select Board
Finance Committee

789662/MONT/0001

Monterey Town Administrator

From: Brian Riley <BRiley@k-plaw.com>
Sent: Wednesday, December 15, 2021 3:29 PM
To: 'jons@montereyma.gov'; Rebecca Wolin
Cc: Monterey Town Administrator; 'Steven Weisz'
Subject: RE: Monterey Finance Committee request for Counsel services

Hi, Jon. As you say, it has been two weeks so it appears that the Fire Company may be ignoring the letter I sent on behalf of the Finance Committee. However, I don't think that it would serve any purpose or be an appropriate use of Town Counsel for me to do anything further on this at this time. The Select Board authorized me to work with you and Rebecca on the letter, but there is nothing I can do to compel Chief Tryon to respond. This is a dispute between the members of the Fire Company and Finance Committee, and it would be to the Town's great benefit for it to be resolved, but there is no legal issue for the Town involved, and it is not the role of Town Counsel to attempt mediate such a dispute between town departments.

Brian

Brian W. Riley, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 654 1722
F: (617) 654 1735
C: (617) 909 9084
briley@k-plaw.com
www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and its attachments, if any, and destroy any hard copies you may have created and notify me immediately.

From: jons@montereyma.gov <jons@montereyma.gov>
Sent: Tuesday, December 14, 2021 10:12 AM
To: Brian Riley <BRiley@k-plaw.com>; Rebecca Wolin <[REDACTED]>
Subject: RE: Monterey Finance Committee request for Counsel services

Hi Brian, how are you?

It's been 2 weeks since the letter went out. Should we resend and/or ask for a reply?

Sincerely,
Jon

Jonathan Sylbert
Finance Committee
Monterey

----- Original Message -----

Subject: RE: Monterey Finance Committee request for Counsel services
From: Brian Riley <BRiley@k-plaw.com>
Date: Wed, December 08, 2021 9:24 am
To: "'jons@montereyma.gov'" <jons@montereyma.gov>, Rebecca Wolin
<[REDACTED]>

Monterey Town Administrator

From: Pignatelli, Smitty - Rep. (HOU) <Smitty.Pignatelli@mahouse.gov>
Sent: Thursday, December 16, 2021 1:50 PM
To: Monterey Administrative Assistant; steven@montereyma.gov
Cc: Harrington, Andrea (BER); Hinds, Adam (SEN); Murphy, Julia (HOU); Kelly, Christian (SEN); Jason, Kathryn (SEN)
Subject: Hinds/Pignatelli - Monterey Home Rule Response
Attachments: 12.16.21 Hinds Pignatelli - Monterey Follow-Up.docx

Hello everyone,

On behalf of myself and Senator Hinds, please accept the attached in response to the materials and information sent to us by Town Administration Melissa Noe this morning.

Sincerely,
Smitty

Smitty Pignatelli
State Representative
4th Berkshire District
Vice Chair, House Committee on Rules
State House Room 473F
(413) 637-0631



THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

December 16th, 2021

Ms. Terry Walker, Clerk
Town of Monterey
435 Main Road | P.O. Box 277
Monterey, MA 01245

Mr. Steve Weisz, Select Board Chair
Town of Monterey
435 Main Road | P.O. Box 308
Monterey, MA 01245

Re: Town of Monterey – Recall Election Home Rule Petition – Follow Up

Dear Madame Clerk and Mr. Chairman,

We write in follow-up to our previous correspondence, dated December 8, 2021, and in acknowledgment of receiving additional information from Town Administrator Melissa Noe on December 16, 2021, regarding the Town of Monterey's petition for a special act to establish a recall election procedure.

Upon reviewing the information sent to our offices this morning by Ms. Noe via email – specifically the official record of certifiable signatures and the explanation of the procedure expressed by Town Counsel Brian W. Riley, Esq. – we believe that we, in both good conscience and in adherence to the advice provided by House and Senate Counsel, can move forward in filing this legislation in the General Court of the Commonwealth of Massachusetts.

We want to emphasize that at no point should any of what we have said be interpreted as a commentary on any matters occurring within the Town. We are obligated to ensure that, upon introducing special legislation for a particular municipality, there is a valid homerule authorization to support the request. This remains our priority and will be our only involvement in this matter at this time. We also would like to reiterate that after the homerule petition is filed, there is not an explicit timeline for how long it will take for the legislation to be reviewed by Committee, passed by both the House and Senate, and signed into law by the Governor of the Commonwealth. We strive to file homerule petitions in a timely manner and will keep the Town updated as necessary.

As we previously mentioned, with concerns of potential irregularities with the procedure by which this matter was placed on your Town Meeting Warrant, we were advised by House and Senate Counsel to delay in filing this legislation, without taking any stance on this matter or any other matters currently occurring within the Town.

Thank you for your understanding and we look forward to working with you.

Sincerely,

ADAM G. HINDS, *State Senator*
Berkshire, Hampshire, Franklin & Hampden

SMITTY PIGNATELLI, *State Representative*
Fourth Berkshire District

Monterey Town Administrator

From: michele@montereyma.gov
Sent: Thursday, December 23, 2021 1:17 PM
To: rep.smitty@mahouse.gov; adam.hinds@masenate.gov; OpenMeeting (AGO); Monterey Assistant
Cc: Justin Makuc; Steven Weisz; Brian Riley; Monterey News
Subject: Re: Sylbert correspondence

To whom it may concern:

The communication of Sylbert below has been forwarded to me.

As the Chair of the Monterey Finance, I must add context and correction to the overwrought description of our most recent meeting. It was a reprise of a scheduled meeting 12/14 cancelled due to lack of quorum. Recordings and minutes have been a singular focus of Sylbert's endless stream of document requests and OML Complaints filed against me, often without merit but nonetheless requiring response.

In an effort to simplify the stream, I asked Sylbert to take the minutes of the meeting. In spite of it's having been a shared responsibility in the Committee, Sylbert refused. I had already disabled the recording function for the Meeting as per this communication of Elizabeth Carnes Flynn of the AG's Office:

"The OML does not require that public bodies audio or video record their own meetings, just that they create and maintain accurate minutes of all meetings."

When Sylbert requested to record the meeting I assumed that he was using his own devices and acquiesced. He demanded that I record the meeting which I refused to interrupt the meeting to do. We returned to the Agenda and voted 2-1 (Sylbert without reason) to accept our 11/30 Minutes. Coburn asked that Sylbert take the opportunity to explain his vote. He did not. The 3 OML Complaints (Sylbert) were next on the Agenda. By voice vote I was chosen to respond after assurance that they had been reviewed by Committee members. Sylbert had already removed himself.

Please note that Sylbert declined to be the Chair as he ought and by default I became Chair. On three occasions I offered to step aside but he has preferred to be a "back seat driver" or is it "Monday morning quarterback". He delivers pronouncements and criticism to anyone who will listen, posing as an authority on the FC without consensus from the duly elected body and without informing us of his intentions. His "deliberative expressions" are delivered via other boards or his comrade in arms Weingold.

JM

Monterey Town Administrator

From: Brian Riley <BRiley@k-plaw.com>
Sent: Monday, December 13, 2021 5:28 PM
To: 'Monterey Town Administrator'
Cc: 'Steven Weisz'
Subject: RE: prevailing wage

Apparently the AG's office issued a number of these last week. There is nothing the Board needs to do regarding this specific notice, in my opinion. However, the prevailing wage law applies to most construction or similar contracts issued by the Town where contractors are performing work on a Town building or property. We can assist with seeing that this requirement is complied with for any future contracts; this specific notice appears to be more of a "FYI" from the Attorney General's office.

Brian W. Riley, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 654 1722
F: (617) 654 1735
C: (617) 909 9084
briley@k-plaw.com
www.k-plaw.com

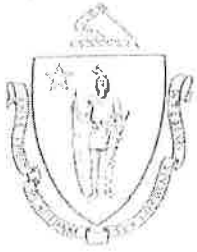
This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and its attachments, if any, and destroy any hard copies you may have created and notify me immediately.

From: Monterey Town Administrator <admin@montereyma.gov>
Sent: Monday, December 13, 2021 8:41 AM
To: Brian Riley <BRiley@k-plaw.com>
Subject: FW: prevailing wage

From: clerk@montereyma.gov [mailto:clerk@montereyma.gov]
Sent: Sunday, December 12, 2021 8:26 AM
To: Steven Weisz <steve@montereyma.gov>; justin@montereyma.gov; John Weingold <johnweingold@gmail.com>
Cc: Monterey Assistant <admin@montereyma.gov>
Subject: prevailing wage

Please see attached

Terry Walker
Monterey Town Clerk



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

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

December 9, 2021

Terry Walker, Town Clerk
Town of Monterey
435 Main Road
PO Box 277
Monterey, MA 01245

Dear Terry Walker:

The Massachusetts Prevailing Wage Laws establish minimum wage rates for workers on public works projects. The prevailing wage rates include the basic hourly pay and payments to certain fringe benefit plans by employers. The laws apply to all covered public works projects in your town, regardless of the cost or size of the project and apply to projects that are exempt from bidding requirements.

The contractor listed below was cited by the Office of the Attorney General for work performed during 12/31/2018 to 5/15/2019, on the Town of Monterey's *Public Library* project. The General Contractor for this project was: Allegrone Construction Co., Inc.

Robert Hinton, Individually, and
CMV Construction Services, Inc.
16091 Route 22
Stephentown, NY 12168

have been cited following violation(s) of Massachusetts General Law:

- M.G.L. c. 149, § 27: Failure to pay prevailing wages for work performed from 12/31/2018 to 5/15/2019; restitution: \$13,677.40; civil penalty: \$3,000.00;
- M.G.L. c. 149, § 27B: Failure to submit true and accurate certified payroll records to the awarding authority on a weekly basis for work performed 12/31/2018 to 5/17/2019; civil penalty: \$1,500.00;
- M.G.L. c. 151, § 15,19(3): Failure to keep true and accurate payroll records from 12/31/2018 to 5/15/2019; civil penalty: \$1,000.00.

Information regarding the above-listed citation(s) will be posted to the Attorney General's Office/Fair Labor Division's website: www.mass.gov/ago/fairlabor/data (scroll to *Fair Labor Division enforcement data* section).

This correspondence serves as a reminder that with regard to projects covered by the prevailing wage laws, every awarding authority should:

- Request official prevailing wage rate schedules from the Executive Office of Labor and Workforce Development, Department of Labor Standards (DLS) before bids or quotes are solicited for public works projects.
- Make copies of the wage rate schedule available (free of charge) to all bidders or persons providing price quotes. Since DLS does not issue wage rate schedules directly to contractors, the awarding authority must provide them to all bidders.
- Review all bids carefully to ensure that bidders are accounting for the payment of prevailing wage rates in their labor costs.
- Include the wage rate schedule in the contract, once a contractor has been selected.
- Ensure that no contractor with whom you are contracting is debarred from engaging in public work. Check the Attorney General's debarment list at www.mass.gov/ago/fairlabor/data.
- Monitor the contractors' compliance with the prevailing wage laws. For construction projects, the prevailing wage rate schedule must be posted in a conspicuous location at the job site. Weekly certified payroll records (CPRs) must be collected from all contractors (and subcontractors) and kept on file. Please notify the Attorney General's Fair Labor Division if contractors fail to comply with these provisions or if you believe that a contractor is not paying prevailing wages.

For future prevailing wage projects, please be advised that under certain circumstances, workers who are not paid the proper prevailing wage rate for all hours worked have a right of action against the city or town to recover said wages in accordance with M.G.L. c. 149, §28.

Should you have questions about awarding authority and/or contractor requirements under the prevailing wage laws, please visit: www.mass.gov/ago/fairlabor.

Sincerely,

Greg Reutlinger

Supervising Investigator, Fair Labor Division
Office of Attorney General Maura Healey
One Ashburton Place
Boston, MA 02108
Phone: (617) 963-2323
greg.reutlinger@mass.gov

*Encl.: The Massachusetts Prevailing Wage Laws – An Important Guide for Awarding Authorities
The AGO Prevailing Wage Law Overview webinar flyer*

CC: Jeremia Pollard, Counsel for the Town of Monterey
Suzette Waters, Contractor Certification Unit, DCAMM *w/out enclosure*

Robert Hinton, CMV Construction Services, Inc.

Encl.: The Massachusetts Prevailing Wage Laws – An Important Guide for Contractors

Monterey Town Administrator

From: Justin Makuc <[REDACTED]>
Sent: Friday, December 24, 2021 8:15 AM
To: Monterey Administrative Assistant
Subject: Fwd: [FWD: Electronic voting for for town meeting]

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

From: <jons@montereyma.gov>
Date: Tue, Dec 14, 2021 at 10:24 AM
Subject: [FWD: Electronic voting for for town meeting]
To: Steve Weisz <steve@montereyma.gov>, John Weingold <johnw@montereyma.gov>, Justin Makuc <[REDACTED]>

Dear Select Board,

I suggested electronic voting almost two years ago.

Never received a response from the Select Board.

See below.

Sincerely,
Jon

Jonathan Sylbert
Finance Committee
Monterey

----- Original Message -----

Subject: Electronic voting for for town meeting
From: Jon Sylbert <jons@montereyma.gov>
Date: Thu, January 23, 2020 6:23 pm
To: Steven Weisz <steve@montereyma.gov>, Kenn Basler <kenn@montereyma.gov>, Don Coburn <don@montereyma.gov>

Hello Select Board, I mentioned using electronic voting at town meeting to Steve the other night and I am passing along an article in the Eagle about Lenox using it.

In a small town like ours where everyone at town meeting is looking at everyone else as they vote, this system might provide a more private environment in which voters can vote their conscience without fear or exposure.

First try is free.

See article below.

<https://www.berkshireagle.com/stories/lenox-to-try-out-electronic-balloting-system-at-november-special-town-meeting,586336?>

Sincerely,
Jon

Jonathan Sylbert
Finance Committee
Monterey

Lenox to try out electronic balloting system at November special town meeting

By Clarence Fanto, Eagle correspondent

LENOX — Town leaders have agreed to a "no-cost, no-obligation" test of an electronic ballot system at the Nov. 7 special town meeting, with an eye toward renting or buying the equipment for future use if all goes well.

Greg Alexander of Turning Technologies, a vendor used by more than a dozen towns statewide, gave a public demonstration at Town Hall this week on the hand-held electronic clickers, which resemble a miniature TV remote. He explained an essentially foolproof approach to making the system secure and restricting the devices, called response cards by the company, to registered voters when they check in for a meeting.

Alexander acknowledged that the Nov. 7 trial run is designed to address citizen concerns.

"There are going to be people here who are very much against this, and some will be really excited about it," Alexander said. "If you don't know about it and have never experienced it, how can you feel either way? So let's at least try it out and if you like it, great, and if it don't, you won't do it."

After the demonstration, Town Moderator John McNinch said that "it will be good to try it out, and I'd like to see what people think about it. It's easier, it's very straightforward and simple to use. It's definitely worth the trial run to see how it goes. Why wouldn't you, it would be dumb not to."

"A decision on how to run the meetings, with or without technology, is ultimately up to the moderator," said Lee-Lenox Chief Administrator Christopher Ketchen. Whether to purchase or lease the equipment and service would be up to Ketchen and to Town Clerk Kerry Sullivan.

"We would work closely with the Moderator to determine what is the smartest decision, financially," Ketchen said.

Sullivan told the Town Hall audience on Monday that other town clerks she has consulted have offered enthusiastic feedback about the Turning Technologies system.

Using the clicker, town meeting participants register a yes or no vote on warrant articles displayed on a large PowerPoint slide and can even change their mind, since the last button pushed before voting is closed is the one that will be counted by the software system. A green light on the device confirms that a vote has been registered, and a small LCD screen indicates a yes or no ballot on a specific item.

"It's a two-way wireless communication between the device and a small receiver plugged into a computer," Alexander said. "What you're seeing is the software saying this is the vote

I got from you, so you can be assured that the vote you meant to cast is the vote that was accepted and is being counted by the town."

Each device carries a unique ID so voting is limited to the list of registered voters at a specific meeting, though the users remain anonymous when they cast an electronic ballot. It would be virtually impossible to hack into the system, Alexander said. "The security is there on the encrypted software side, and it's more on who's allowed to vote, and that's where we have the device IDs."

The likelihood of a security breach is "so minuscule, less than even a percent of a percent," he assured Zoning Board Chairwoman Shawn Leary Considine in response to her queries. "I don't know how it could happen."

Voters return the clickers after adjournment, since they can't be used for a future meeting or any other purpose.

"It's extremely simple," Alexander said, noting that he has worked with 16 towns elsewhere in Massachusetts and those that choose to own the equipment run it by a town clerk or other official. Equipment can be rented for a town meeting with on-site assistance by Turning Technologies personnel.

Either way, the company offers free maintenance, training and tech support if needed, as well as software updates. The cost of leasing or purchasing the system varies, depending on the number of clickers needed. Amherst, Natick and Wayland have purchased electronic systems at prices ranging from \$17,598 to \$21,748, according to published reports, while Turning Technologies has rented 400 devices for \$2,095, and 500 for \$2,495.

Some towns use the clickers for all items on a town meeting agenda, Alexander said, while others use them only for specific, contentious warrant articles, still relying on voice votes for routine matters based on the decisions of town moderators.

Other points about the system based on questions gathered by Richard DeFazio, a local citizen and advocate of e-voting, and by participants at the public demonstration included:

- It can accommodate up to 1,000 responses at a time and the coverage range is up to 300 feet from the computer-receiver. Systems have a useful life of well over 10 years, only requiring annual battery changes for the clickers.

- There's no internet involvement, since the system is based on direct radio-frequency contact between the devices and the receiver.

- For towns choosing to own the equipment, the more it's used for various events, the better the return on investment. Besides town meetings, the systems can be used for training of town employees and in-service training of police or fire department members as well as in classrooms by the school department. Yes or no, true or false and up to 10 multiple-choice answers can be handled.

Lenox would be the first town in the county to use electronic balloting for local meetings if there's a decision to purchase or lease the equipment.

Clarence Fanto can be reached at cfanto@yahoo.com, on Twitter @BE_cfanto or at 413-637-2551.



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

Rebecca S. Murray
Supervisor of Records

December 27, 2021
SPR21/3259

Melissa Noe
Town Clerk
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 September 20, 2021, Mr. Sylbert requested two categories of “all communications between [named individuals], both sent and received, from May 4, 2021 to the present.” Over the course of multiple responses, the Town provided numerous responsive records. Unsatisfied with the Town’s response, Mr. Sylbert appealed, and this case 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 agency or municipality 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); 950 C.M.R. 32.06(3); see also *Dist. Att’y for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

Current Appeal

In his appeal petition, Mr. Sylbert states the following:

- a) additional records were produced upon request after the RAO stated “all” records had been provided.
- b) in one record is a reference to another record that has yet to be produced, even after [Mr. Sylbert] had specifically requested it.

G. L. c. 66, § 10

As to the first part of Mr. Sylbert’s appeal, please be advised that in compliance with the Public Records Law, the Supervisor of Records may only issue determinations where a violation of G. L. c. 66, § 10 has occurred. G. L. c. 66, § 10A(a). Given that no violation of G. L. c. 66, § 10 has been asserted by Mr. Sylbert in the first part of his appeal petition, I am unable to issue a determination on that part of the appeal.

Records in Possession, Custody, or Control

As to the second part of Mr. Sylbert’s appeal, 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).

In a phone conversation with this office on December 21, 2021, the Town’s Records Access Officer explained that she has reached out to the individuals named in Mr. Sylbert’s request, and they have confirmed that they found no additional emails responsive to the request.

Conclusion

Where the Town confirmed that it does not possess additional records responsive to Mr. Sylbert’s request, I will now consider this administrative appeal closed. If Mr. Sylbert is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, §§ 10(b)(ix), 10A(c) (pursuing administrative appeal does not limit availability of judicial remedies).

Melissa Noe
Page 3
December 27, 2021

SPR21/3259

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, looping "M" and a long, sweeping tail on the "y".

Rebecca S. Murray
Supervisor of Records

cc: Jon Sylbert