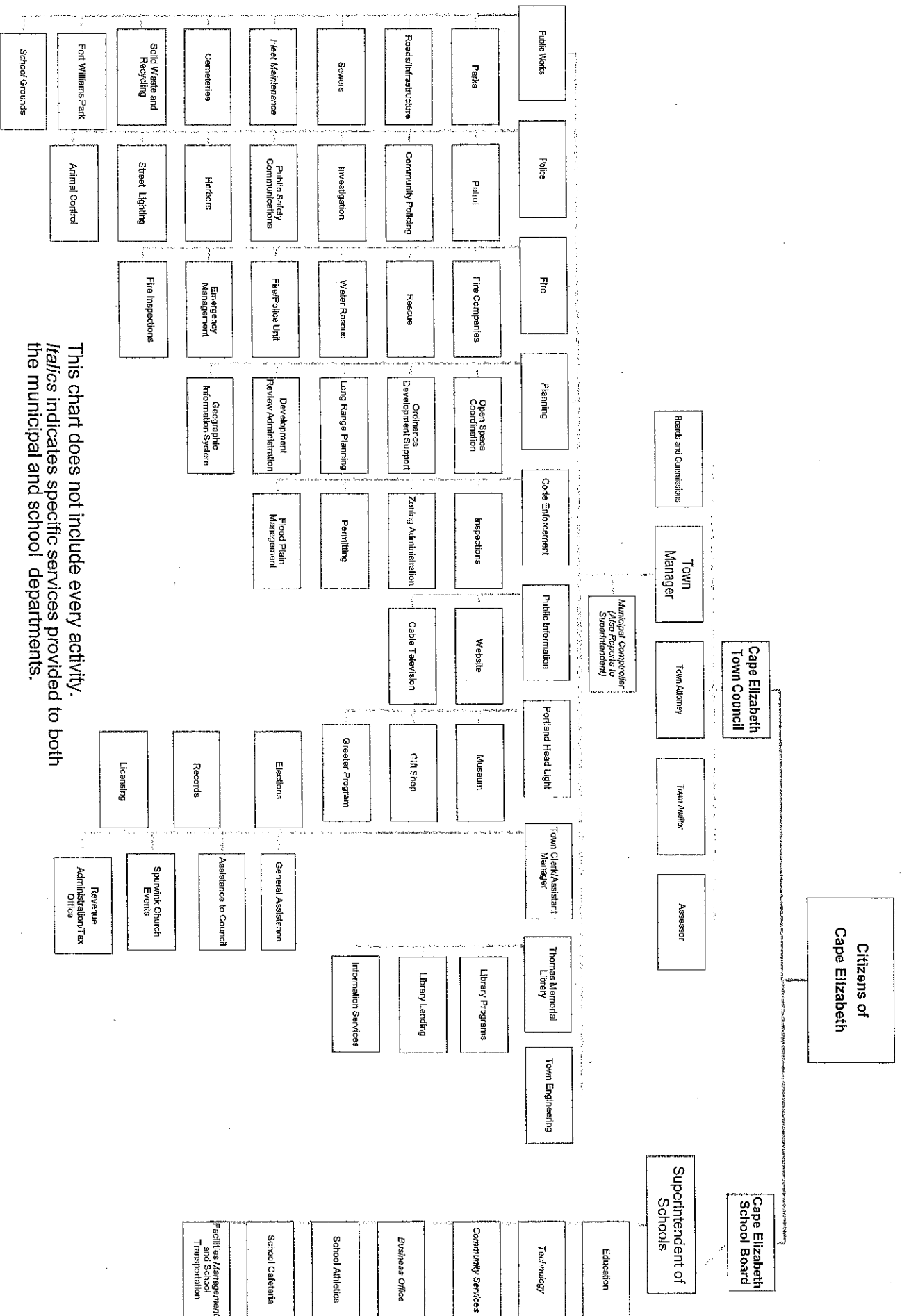


# Town of Cape Elizabeth Organization



This chart does not include every activity. *Italics* indicates specific services provided to both the municipal and school departments.

TOWN of CAPE ELIZABETH  
STATEMENT of POLICY  
APPOINTMENTS to STANDING BOARDS & COMMISSIONS

Amended November 8, 2010

The Cape Elizabeth Town Council believes that citizens are best served through a high degree of citizen participation in their government. One important opportunity for participation is through appointments to Town boards and commissions. Our standing boards and commissions perform many vital functions in providing for the public health, safety and welfare. As these functions are so important, it is advisable to have citizens serving on boards who have varied expertise and who represent a broad cross section of our community. It is also advisable to have turnover on boards to ensure as extensive participation as is possible and to encourage new ideas and new approaches to come forward. These views are the basis for the following statement of policy:

1. The Appointments Committee shall annually advertise all expiring terms on standing boards and commissions. The advertising shall include notice in the Cape Courier, on the Town's website and on the Town's Cable Access Station.
2. The Appointments Committee shall seek to meet with all prospective appointees in order to discuss special qualifications, expertise and interest of applicants.
3. The Appointments Committee shall review attendance records to ensure that citizens seeking reappointment have been active members. Attendance records shall be maintained for each standing board and commission. Staff members shall be responsible to ensure the maintenance of attendance records. Issues relating to non-attendance of a board member shall be reported to the Town Manager by the staff member.
4. A citizen may serve up to two full consecutive terms as a regular member of a standing board or commission, except the Trustees of the Riverside Cemetery, and members of the Planning Board, Zoning Board of Appeals and the Conservation Commission may serve up to three consecutive terms. Reappointment to that same board or commission may then occur only after a one-year period of non-service on that board or commission. Provided, however, despite the term limitations of this paragraph, for good cause shown the Town Council may appoint a board or commission member for an additional one year.

5. Citizens may serve on only one standing board or commission at one time unless they represent a particular board in an ex-officio capacity.
6. Chairmen of boards and commissions shall not serve more than two consecutive one-year terms as Chairman.
7. The secretary of each board and commission shall be elected from among the membership. The Town provides paid secretarial assistance only for regular meetings of the Zoning and Planning Boards.
8. Members of the Planning Board may not concurrently serve as members of the governing board of the Cape Elizabeth Land Trust.
9. The Town Council, as the appointive authority, reserves the right to collectively and individually use whatever additional factors it deems appropriate in considering the appointment or reappointment of a citizen to a town board or commission.
10. A schedule of board and commission meetings shall be provided to the Town Clerk. Immediately following each meeting, minutes shall be provided to the Town Clerk. Electronic transmittal of minutes is requested.
11. Employees of the Town of Cape Elizabeth may not serve on standing boards and commissions, except by ex-officio appointment. This limitation does not apply to individuals who are hired by the Town to serve as temporary election workers or wardens, occasional instructors in the Community Services programs, or volunteer fire, rescue, and fire-police personnel. Such individuals may serve on a board or commission unrelated to their work for the town.

**Responsibility of and for Boards and Commissions**  
**Adopted December 12, 1988**  
**Amended December 8, 2003**

On December 12, 1988, the Cape Elizabeth Town Council adopted the following outline of responsibilities of and for Boards and Commissions. Any reference to "Boards" shall also include Commissions and Committees.

Town Council Responsibility

1. Create and dissolve Boards.
2. Determine Board responsibilities.
3. Appoint members of Boards upon recommendation of the Appointments Committee unless expressed authorization is given to another appointing authority.
4. Review and adopt Board budgets.
5. Determine town manager and board chairman responsibility vis a vis Boards.
6. Adopt Board by-laws.
7. Oversee policy direction of Boards.
8. General orientation for Board members.

Town Manager Responsibility

1. Resolve non-policy citizen complaints regarding Boards.
2. Prepare Board budgets after consultation with board chairman.
3. Convene Board meetings, in cooperation with staff assigned to the Board, if inactive Boards.
4. Assign staff to Boards when within budgets and when needed.
5. Secure professional services for Boards when within budget and when town manager agrees that such services are needed.
6. Inform the Town Council Chairman of chronic non-attendance by any Board member.
7. In cooperation with staff assigned to Board, assess training needs of Board members.

### Assistant Town Manager Responsibility

1. Assist Appointments Committee with administrative details of the appointments process.
2. Maintain list of Board members and terms for the town record, public view and distribution.
3. Inform town manager and Appointments Committee of Board vacancies throughout the year.
4. Assist Appointments Committee with Board orientation.
5. Maintain electronic lists and documents when possible.

### Town Clerk Responsibility

1. Maintain record of Board meeting schedule.
2. Provide public notice of Board meetings.
3. Retain minutes of Board meetings for the town record, public view and distribution.

### Staff Member Responsibility

1. Schedule regular meetings of the Board.
2. Provide Board with meeting schedule, agenda and packet material.
3. Ensure public notice of meetings and workshops. Provide meeting schedules and/or agendas to the town clerk for public notice and public review.
4. Ensure meeting minutes are provided to the town clerk immediately following each meeting. Meeting minutes are maintained for the town record, public view and distribution.
5. Ensure the maintenance of attendance records.
6. Report issues relating to non-attendance of a Board member to the town manager.
7. Electronically transmit Board schedules, agendas and minutes.
8. When applicable, review annual budget request with Board members.
9. In cooperation with the town manager, assess training needs of Board members.
10. Inform assistant town manager and town manager of vacancies. Written resignations are requested.
11. Direct questions regarding potential conflict of interest with a Board member to the town manager.

### Board Members Responsibility

1. Regularly attend Board meetings. Notify staff member and/or Board chairman, in advance, if Board member is unable to attend a meeting.
2. Observe the provisions of the Council-Manager Charter and ordinances of the Town of Cape Elizabeth and statutes of the State of Maine and faithfully discharge the duties of the office to which the Board member is appointed.
3. Follow the spirit and the letter of the Maine Right To Know Law. Board meetings must be publicized. The public has a right to attend meetings and receive Board correspondence and packet information, unless otherwise expressed by state statute.
4. Attend appropriate orientation and training sessions.
5. Respect the views of other Board members.
6. Differentiate between personal views and Board policy in order to avoid confusion by the public.
7. Reveal any potential conflict of interest to the staff member and Board chairman prior to discussion and voting on the issue. Board members shall abstain from discussion and voting on any item deemed to be a conflict of interest.
8. Direct concerns to the Board chairman. In the absence of the Board chairman, direct concerns to the staff member.
9. Board chairman: Ensure the maintenance of attendance records; ensure minutes are provided to the staff member, Board and town clerk immediately following each meeting; minutes shall be provided electronically; schedule meetings; provide public notification of each meeting; notify staff member of potential conflicts of interest, non-attendance by Board members, Board resignations and other concerns, questions and issues.

To All Cape Elizabeth Board, Commission and Committee Members:

Welcome, and thank you for your commitment to the Town of Cape Elizabeth – we value your service! We have a variety of boards and commissions advising the Town Council and staff on a number of ideas, plans, and opportunities for our community. The Town Council encourages citizen engagement and participation and strives to fill these boards and commissions with a diverse group of individuals representing a wide range of opinions, life and work experiences, willing to share their time and talent.

The Council has provided this memorandum to help you to understand your role within the board or commission you serve on, to ensure your board/commission operates effectively and efficiently, and to ensure all members comply with legal requirements. We hope you'll find it useful and encourage you to reach out to your board/commission chair, the Council chair, or the Town Manager if you have any specific questions.

### **Public's Right to Know**

In order for the public's business to be conducted in public, we all must follow certain protocols and legal requirements. Convenience, avoidance of embarrassment and conflict, informality and simplicity can lead to avoidance or circumvention of the public's right to know as it is spelled out in both Maine statute (FOAA) and Federal law (FOIA). However, the public always has the right to hear and see why actions and recommendations are being formulated; therefore, the law requires public notice for a meeting of a body or agency consisting of 3 or more persons. This requirement and structure allows for public attendance and in some cases public participation.

While emails are of course allowed between individual board/commission members, no actions may be taken and no votes held in this format, nor should any matters of a substantive nature be discussed. Remember, while it may be convenient for you, this sort of discussion defeats the intent of the public's right to know laws and must be avoided. Additionally, any emails discussing any business related to the town or committee proceedings are subject to FOAA requests and must be made available upon such request. All emails discussing town business should be copied to [file@capeelizabeth.org](mailto:file@capeelizabeth.org).

### **Board & Committee Roles and Responsibilities**

Finally, we all serve together for the good of the community and the following points will help us all work together most efficiently and effectively.

### Attendance at Meetings

As with any volunteer organization, regular attendance by all members is necessary for the board or commission's operations. Of course we all have occasional scheduling conflicts, but if you find that you're unable to make meetings on a regular basis please work with your board/commission chair and you may need to consider resigning and making room for another volunteer in your place.

### Effective Group Communication

Disagreements between board/commission members may occasionally happen, and this can often lead to a better result in the long-term outcome of the work of the group. When such disagreements lead to ineffective and unproductive group dynamics, an outside mediator may be available to resolve such disputes. Please speak to your chair if you think this would be helpful.

Finally, please be aware that according to the Town Charter, the Council always has the ability to remove uncooperative board/commission members. We of course hope this will not be necessary!

We hope this information is useful, and we hope that you enjoy your time serving in the role on the board or commission for which you've volunteered. Please don't hesitate to ask if you have any questions, and again, thank you for helping make Cape Elizabeth the community it is.

Sincerely,

*Molly MacAuslan*

Martha "Molly" MacAuslan, Chair  
Cape Elizabeth Town Council



## **State of Maine Freedom of Access Act (FOAA)**

As an appointed member to a board or commission you are a representative of the Town of Cape Elizabeth.

Elected officials and appointed board and commission members (advisory, ad hoc, quasi-judicial) must adhere to the State of Maine Freedom of Access Act statutes (FOAA).

### **1 M.R.S. §401 Declaration of Intent**

“The Legislature finds and declares that public proceedings exist to aid in the conduct of the people’s business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.”

### **What does FOAA cover?**

#### ➤ Public Records

*Written, printed, graphic or electronic records that are in the possession or custody of an agency or official of State or political subdivisions. The records are received, prepared or contain information related to the transaction of public business.*

#### ➤ Public Proceedings

*The transaction of any function affecting citizens by one of the covered bodies including subcommittees and task forces.*

## **Public Records**

### **1 M.R.S. §402 (3)**

The law contains a broad definition of "public record." There are exemptions to the law however they are construed narrowly due to public policy in favor of open government.

With limited exceptions, public records are open.

Examples of public records include agendas, minutes, reports, correspondence and other related board material.

In addition public records include electronic mail, text messages and other electronic communication.

*Board members may be asked to produce public records, related to town business, in response to a FOAA request. All public records would be required to be provided no matter how the correspondence is transferred. For example if town related business is transacted on a personal computer, using personal email or personal social media it is considered a public record.*

**Where can a member of the public review board materials?** *Board materials are available for inspection in the office of the staff person and most meeting materials are posted on the town's website.*

**Are electronic mail, text messages and other electronic communications covered in FOAA?** *Yes, if it relates to the transaction of town business with only limited exceptions whether it is sent from a personal email account or not or posted from a privately owned computer or not.*

**Is your social media account a public record?** *Yes, if it relates to the transaction of town business whether it is posted from a privately owned computer or not.*

Steps to minimize the risk of your social media account as a public record.

- Include a disclaimer that this is a personal account.
- Do not use your title as a board member.
- Do not solicit “friends” or use contacts gained through your duties as a board member.
- Do not reference your site at public meetings or in any official town documents.
- Do not use your site to gain or disseminate information about official town business.

**How does a member of the public provide comment or correspondence to a board?** *If someone wants to obtain information, ask questions or provide comments to a board a) they may do so by writing or calling the staff person b) email from the town’s website. Emails are directed to the staff person to ensure that the record is forwarded to the board, available for public inspection and that the record is retained as required by statute.*

**If I receive an email related to the board I serve on what should I do?** *Forward the email to the staff person to make certain the email is shared with the full board, available for public inspection and retained as required by statute.*

**If a member of the public asks about a matter pending before the board what should I do?** *Advisory committees may share date, time, place, agenda and advise the person they may attend the meeting, provide comments and ask questions, watch the meeting on CETV (if applicable) review meeting materials, review/obtain copies of agendas and minutes. It is appropriate to provide information to help the public in obtaining information and keeping them informed. Boards acting in a quasi-judicial manner should not be discussing matters pending before the board.*

**If I have questions regarding a matter before the board and would like additional information what should I do?** *Requests for information are handled through the staff person and chairman. A request may be made at a meeting. If a request is made outside of the meeting the request will be announced at a meeting. Information gathered will be shared with the full board. Note: Information requests by board members will need to be deemed within the purview of the board to collect. Requests of boards beyond their scope may be forwarded to the appropriate body.*

## **Record Retention & Management**

Written and electronic communications may create "public records" for the purposes of both access and retention.

The public record (written and electronic) must be retained during your term on the board or commission.

Emails and written correspondence should be organized to make retaining and retrieving them easier.

*Public records should be retained during your tenure on the board. To help in the ease of access, create an electronic file for emails received related to your board and files for hard copy correspondence. Sub-folders may be created by subject for ease of access.*

## **Public Access Officer**

**1 M.R.S. §413**

**1 M.R.S. § 408-A(8)(A)**

**1 M.R.S. § 408-A**

"Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person" with regard to requests for public records under this subchapter.

An acknowledgement of the request is required within 5 working days of the receipt of the request and a good faith, nonbinding estimate of how long it will take to comply within a reasonable time of receiving the request.

Fees may be applied including a reasonable fee for copying and time spent for searching for, retrieving, compiling or redacting confidential information from requested records at a rate of \$15.00 per hour after the first hour of staff time per request.

## **Public Proceedings**

### **1 M.R.S. §402(2)**

“Public proceedings” is defined as “the transactions of any functions affecting any or all citizens of the State by any of the following:...

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision...”

“*Transactions* of any functions affecting any or all citizens of the State...” would not include communicating as to scheduling of meetings, transmitting agendas, minutes, reports or other information gathered by one member to the full board and distributed to board members.

### **1 M.R.S. §403 Meetings to be open to public; record of meetings**

“Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.”

Public attendance is not limited to town residents.

### **1 M.R.S. §406 Public Notice**

“Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons...” The reference to 3 or more is the number members of the board, not the number of attendees at the meeting.

*The town requires the complete agenda in advance of the meeting to give the public notice of the meeting and topics to be discussed.*

### **Rights of the Public at Meetings**

- The public may attend any public proceeding however they may not speak unless the body permits it
- The meeting may be recorded or broadcast but not in a way that interferes with the meeting
- Advance notice of when and where is required even for emergency meetings if practicable
- To challenge in Superior Court the legality of final actions taken in executive session and have the court declare the action null and void

*Each board and commission provides an opportunity for public comment at meetings.*

Communications outside of public proceedings between members of a public body are not prohibited in FOAA unless those communications are used to defeat the purposes of this subsection.

**Can a Board or Committee Meet Privately?** *No, committees and subcommittees must conduct the people's business in public with limited exceptions for executive session topics. Notice of meeting time and place must be given in advance. Members must be present to participate. Current law prohibits participation by phone, Skype, video conference etc.*

**Can email or other electronic communications between two or more board members (e.g. text message, social media) turn into a meeting?** *Yes, if two or more board members discuss or deliberate the transaction of any business affecting citizens.*

**When can email be used to communicate between board members?** *If the email is limited to non-substantive matters including the scheduling of meetings, one-way dissemination of information or reports and developing agendas.*

**Can a discussion between two or more board members turn into a meeting?** *Yes, the same as electronic communications. FOAA does not discriminate based on the medium or way public information is transferred. Communications used to defeat the purposes of FOAA are prohibited.*

**What should I do if an electronic communication between board members becomes a substantive discussion?** *If the communication becomes a discussion please bring it to the attention of the staff person and chairman who will remind board members of the law, request the communication to stop and bring the topic to the full board at a properly noticed meeting.*

**What should I do if a discussion between board members becomes a substantive discussion?** *If you find yourself in a discussion with another board member(s) and you begin to talk about substantive issues of a pending issue before the board simply stop the line of discussion and bring the topic to the full board at a properly noticed meeting.*

## **Penalties**

- ❖ A willful, intentional, or knowing violation of FOAA is subject to a civil penalty of not more than \$500
- ❖ Class D crime to intentionally remove, alter or destroy public records
- ❖ Class E crime to violate the record retention law