Navigating Open Meeting Laws During COVID-19
Speakers:

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James Malloy, Town Manager, Lexington, Massachusetts
• Questions at the end of the webinar
• Use the Q & A Box button in the lower part of your screen
• You can also chat ALL participants or individual panelists using the chat feature
• We are recording this webinar and will share and post
What is public engagement?

Public engagement: the activities by which people’s concerns, needs, interests, and values are incorporated into decisions and actions on public matters and issues. It usually includes a combination of:

• Circulating information
• Gathering input
• Discussing and connecting
• Providing choices
• Deliberation on major decisions
• Volunteering and public work
Engagement is about the relationship between citizens and the institutions that serve them...
...and also about the relationships among citizens (social networks, social capital)
What kinds of engagement are there?

- **Conventional Engagement**: Top down, relatively transparent
- **Thick Engagement**: Informed, deliberative, emotional, full of choices for groups to make
- **Thin Engagement**: Fast, easy, full of choices for individuals to make
Conventional engagement
Three minutes at the microphone:

• The status quo and default process
• No discussion outside the agenda
• Oriented to getting comments in the record
• Easy to disrupt
• Even the physical layout makes people angry
LEGAL FRAMEWORK FOR PUBLIC ENGAGEMENT IN INDIANA and COMMUNITY VOICES FOR HEALTH IN MONROE COUNTY

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PROCESSES ACROSS THE POLICY CONTINUUM

Upstream → Midstream → Downstream

Legislative
Quasi-legislative
Making policy

Public Management
Implementing Policy

Quasi-judicial
Judicial
Enforcing Policy

Collaborative Public Management

Public Engagement
Deliberative Democracy

Dispute Resolution
U.S. EXECUTIVE BRANCH: MISMATCH BETWEEN LAW AND PRACTICE

Upstream → Midstream → Downstream

Quasi-legislative Making policy → Public Management Implementing Policy → Quasi-judicial Enforcing Policy

GAP

Admin. Procedure Act, FOIA, Sunshine Law

Negotiated Rulemaking Act

Administrative Dispute Resolution Act

Federal Advisory Committee Act

Public Participation Statutes
LEGAL FRAMEWORK FOR LOCAL GOVERNMENT PE

• State legal framework analogous to Federal
• LOCAL GOVERNMENT CREATURE OF STATE LAW - ONLY THOSE POWERS DELEGATED.
• Home Rule Acts provide broader powers like those of person, but generally silent on public engagement
• Generally no express authority
Why “Making Public Participation Legal”?

- “Public participation” sometimes mandated
- Generally not defined
- State APAs silent on PE except in agency rulemaking.
- Sunshine laws public notice requirements limit changing the agenda.
- No broad-based authority for deliberative or participatory democracy.
- Limits creative thinking in dialogue among elected officials and public.
PROPOSED STATUTE: Amend Sunshine Act

- Agency policies
- Public Participation Specialists
- Decision to use particular process insulated from judicial review
- Create a new Public Participation Meeting so electeds and the public can deliberate think outside the box
- Similar Proposed Local Ordinance
Indiana Rulemaking Power & Authority

• State agencies, *but not local governments*, are governed by Indiana’s Administrative Procedure Act (“The Act”). Ind. Code 4-22-2.
  — May “solicit comments from all or any segment of the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action.”
  — “The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views.” § 4-22-2-23.1(b).

• May adopt rules that *supplement* Ind. Code 4-22-2’s procedures for the agencies’ own rulemaking actions. § 4-22-2-43.
  — INERENCE: Agencies may adopt rules that establish public engagement procedures that give people a voice in the public health rulemaking.

• **LOCAL GOVERNMENT NOT COVERED BY STATE APA, BUT MAY USE IT AS PERSUASIVE AUTHORITY.**
The Indiana Open Door Law

- Requires governing bodies of public agencies to keep their meetings open to the public, to observe and record meetings. Ind. Code § 5-14-1.5-3 [includes local government].
- Does not require that public may speak at meetings or public comment.
- Requires public notice of a meeting at least 48 hours in advance. Ind. Code § 5-14-1.5-5.
- Does not require agendas, but if so, agenda must be posted at the entrance to the meeting location before it starts. Ind. Code § 5-14-1.5-4.
The Open Door Law During COVID-19

• Governor Holcomb issued Executive Order 20-09, which suspends some of the Open Door Law’s requirements.
  •

• May now hold public meetings via phone or videoconference.

• Meetings must still be open to the public and media, but online access is sufficient.

• May post public notice of the meeting and any meeting agendas online.
INDIANA LAW: Opportunities in Public Engagement and Health

• **Cooperation/Collaboration:** Ind. Code §12-14-23-10: Community action agencies, which work to assist the poor, *can enter into interlocal cooperation agreements with local governments* in order to better facilitate local public engagement.

• **Consultation/Assistance/Advice:** “Each community action agency shall consult neighborhood based organizations composed of: (1) Residents of the area served; or (2) Members of the groups served; to assist the agency in the planning, conduct, and evaluation of components of the community action program.” Ind. Code § 12-14-23-8.

• **Awareness/Education:** The office of women’s health (part of the state health department) is established “[t]o educate and advocate for women’s health by requesting that the state department, either on its own or in partnership with other entities, establish appropriate forums, programs, or initiatives.” Ind. Code § 16-19-13-3(1).

• **Public Comment & Public Hearing:** Before a syringe exchange program can be operated in a county, “[t]he legislative body of the municipality or the executive body of the county must . . . [c]onduct a public hearing that allows for public testimony.” Ind. Code § 16-41-7.5-5(2).
Lexington Virtual Town Meeting

2020
Decisions, Decisions, Decisions...

We started discussing holding a remote Town Meeting in early March...
... in mid-March we received an opinion from our Town Counsel that he believed we were already entitled to hold Town Meeting remotely
... but other concerns raised by bond counsel, caused us to rethink and consider legislative avenues...
... the Select Board, Town Moderator, Town management staff and Appropriation Committee all supported and committed to the idea of moving forward with a remote Town Meeting.

We just needed to figure out how...
We worked with Town Counsel and Bond Counsel to pursue legislation that would confirm the legality of our remote Town Meeting.

5/4/2020  Senate  Text of S2673, printed as amended
5/4/2020  Senate  Passed to be engrossed
5/7/2020  House  Read; and referred to the committee on House Ways and Means
5/26/2020 House  Committee recommended ought to pass with an amendment, striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4752
5/26/2020 House  Referred to the committee on House Steering, Policy and Scheduling
5/26/2020 House  Committee reported that the matter be placed in the Orders of the Day for the next sitting for a second reading, with the amendment pending
5/26/2020 House  Rules suspended
5/26/2020 House  Read second, amended (as recommended by the committee on House Ways and Means) and ordered to a third reading
5/26/2020 House  Rules suspended
5/26/2020 House  Read third and passed to be engrossed
6/1/2020  Senate  Rules suspended
6/1/2020  Senate  Senate concurred in the House amendment with a further amendment striking out all after the enacting clause and inserting in place thereof the text of S2733
6/2/2020  House  Referred to the committee on Bills in the Third Reading
Nice Clear Language...

The latest version included retroactive language (we believe...)

SECTION 17. If this act does not take effect at least 15 days prior to the date of a scheduled representative town meeting to be held during the governor’s March 10, 2020 declaration of a state of emergency, the actions of a town moderator, select board or board of selectmen, and town meeting that are substantially consistent with the requirements of section 8 shall be ratified, validated and confirmed in all respects as if this act had been in place prior thereto.

Just in case, we have a Special Town Meeting article to authorize the Select Board to petition the legislature for a Special Act confirming the legality of our remote Town Meeting.

If all else fails, we’ve also filed a Motion for Injunctive Relief in Middlesex Superior Court seeking to have the courts confirm the legality of our remote Town Meeting (the second hearing is this afternoon).

Not a Clear Path!
Technical Stuff

• For the video platform we decided on Zoom Webinar with the 500 attendee option.

• For the voting platform we are using the same system as our electronic voting called Vvoter from Option Technology

• For the debate platform, one of our talented Lexington Select Board members developed an online web portal to provide secure login for all 198 members of our Town Meeting.
Ramping UP!

- The Select Board, Moderator, Town Meeting Member Assn President and Town staff worked together to get information out to TM members.
- We developed a dedicated Remote Town Meeting website, all presentations were pre-recorded videos posted on this site weeks in advance.
- Held training sessions by Precinct starting May 12 (all 9 precincts) every Tues, Wed & Thurs, plus one make-up session. One separate training for Select Board and the one for Appropriation Committee.
- Held a mock Town Meeting on May 27.
- All pomp and circumstance was eliminated...
- It took a team of approximately 20 town staffers to staff help lines, manage presentations, read questions from the public, etc. to make it all happen.
Results...June 1\textsuperscript{st} night jitters

- We had 190 of 198 Town Meeting members present, nobody recalls that high of a voter turn out in recent history.
- June 1 we held our first (first ever in MA?) online Town Meeting and completed 27 articles that were included on a LARGE consent agenda, including the budget (General, Water, Sewer, Recreation), capital plan, two home rule petitions, CPA projects and a land swap amongst others including a major zoning change.
- People have been patient (no one more than our Town Moderator), curious, had fun and were ready and eager to participate to ensure the Town’s business was carried out.
## Online engagement can include:

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<th>General purpose</th>
<th>Some representative examples</th>
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<td>AllOurIdeas; MindMixer; IdeaScale</td>
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<td>Gathering feedback on problems and services</td>
<td>SeeClickFix; FixMyStreet; PublicStuff</td>
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<td>Crowdfunding</td>
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<td>Petitions</td>
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<td>Mapping and wikis</td>
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<td>Illustrating options and voting on them</td>
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<td>Hyperlocal community-building</td>
<td>Nextdoor; Front Porch Forum</td>
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<td>Deliberative discussion</td>
<td>Common Ground for Action</td>
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<td>Polling</td>
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A combination we use frequently: Mentimeter + Zoom
Access, equity, and inclusion

Questions to ask:
- What does it cost to use this tool?
- How much bandwidth is required?
- Will people find it easy to use?
- Where are people ‘gathered’ online?
- How does this mesh with other things?

Things to do:
- Create ‘user stories’
- Test tools with people
MAP OF ONLINE COMMUNITIES
SIZE ON MAP REPRESENTS VOLUME OF DAILY SOCIAL ACTIVITY (POSTS, CHATS, ETC.), BASED ON DATA GATHERED OVER THE SPRING AND SUMMER OF 2010.
There are three kinds of engagement happening in most communities today. "Conventional" engagement is by far the most common, but "thick" and "thin" engagement are both on the rise.

Conventional engagement is what happens in most official public meetings today. Community members and government agencies are separated from one another, there are no breakouts or small group discussions and citizens have brief opportunities (typically limited to two or three minutes) to address the whole group. This is generally not a strong form of engagement and it tends to be frustrating for everyone.

Thick engagement is more intensive, informed and deliberative. Most of the action happens in small group discussions. Organizers assemble large and diverse numbers of people and give the participants opportunities to share their experiences, present them with a range of views or policy options and encourage action and change at multiple levels.

Thin engagement is faster, easier and more convenient. It includes a range of ways for activities that allow people to express their opinions, make choices or affiliate themselves with a particular group or cause. It is less likely to build personal or community connections.

One way of understanding the difference between thick and thin engagement is to say that thick engagement empowers small groups and thin engagement empowers individuals.

Thick engagement opportunities are more likely to be face-to-face, and thin ones are more likely to happen online. However, many thick engagement strategies include both online and face-to-face elements, and some examples of thin engagement (signing a petition, for example) can certainly exist long before the internet.

Thick and thin engagement differ in their strengths and limitations and they complement each other well. Both of them — along with some conventional engagement opportunities — should be part of a stronger infrastructure for engagement.