

MAHBB

Assisting Massachusetts Boards of Health through
training, technical assistance and legal education



How to Hold Public Hearings

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MAHBB Certificate Program

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DISCLAIMER

- This information is provided for educational purposes only and is not to be construed as legal advice.
- Municipal attorneys provide legal advice.
- MAHB does not enter into attorney-client relationships.

TWO TYPES OF HEARINGS

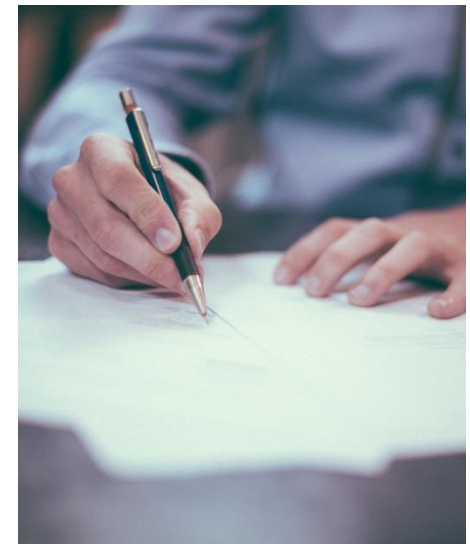
- **Quasi-Legislative**
 - When considering whether to enact a local public health regulations
 - G.L. c. 111, §31
 - No requirement for a hearing, except for Title 5
 - JUST BECAUSE YOU CAN DOESN'T MEAN YOU SHOULD.
 - If an Agricultural Commission exists, proposed regulation is referred to the Ag. Comm for review.
 - BOH not bound by the review.
- **Quasi-Judicial**
 - When considering whether to suspend a permit, hearing an appeal of a fine or other order.



QUASI-LEGISLATIVE HEARINGS

FIRST -DRAFT REGULATION

- **Do not reinvent the wheel.**
 - MAHB has templates and can provide technical assistance.
 - Colleagues have relevant, current regulations.
 - Provide draft to municipal attorney for their review.
- **Statement of legal authority**
 - G.L. c. 111, § 31, and any other specific statute or state regulation
 - Nuisance, Title 5, Noisome Trade, etc.
- **Statement of rationale**
 - Demonstrate conditions that make the regulation “reasonable.”
- **“May” v. “Shall”**
 - Discretionary v. required.

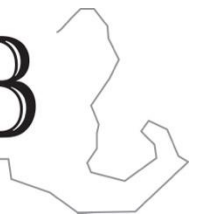


PUBLISH AND POST NOTICE OF HEARING

- Required pursuant to G.L. c. 111, § 31 for Title 5 hearings.
 - Check for typos and/or clerical errors.
 - If you designate a time for the hearing, you must stick to that time (Boston).
 - Describe subject matter “sufficient for identification”
 - Brief summary (one or two sentences)
- Publish it twice.
 - One in each of 2 consecutive weeks in newspaper of general circulation.
 - First publication must be at least 14 days before scheduled hearing date.
 - Could post notice in city/town hall for 14 days as an alternative to publishing.
 - MAHB recommends doing both.

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CONDUCTING THE ACTUAL HEARING

- Decide whether you want copies of the proposed regulation available at the hearing.
 - Advisable.
- Do not begin the hearing until the time indicated on the legal notice.
- Open meeting law requires that everyone can see and hear the public hearing.
 - Seating not required, but you may want to consider a larger room.
- Have someone in charge of a sign-in sheet for persons who testify.

HEARING PROCESS

- Chair calls meeting to order, stating time, date and name of meeting (BOH meeting) and indicates who is in the meeting room from the health department.
- Chair asks for a Motion to Open the Hearing.
- Motion made and seconded.
- Members vote on Motion.
- Chair opens Hearing.



EXAMPLE OF SCRIPT

- This public hearing is to discuss proposed tobacco sales regulation for the city/town of OZ. Copies of the proposed regulations are available tonight, and they have been available online as well.
- It is the duty of the board of health to promote and protect the public health of the residents of OZ. The Board derives its legal authority to enact regulations from the Massachusetts Legislature.
- Except for Title 5 regulations, it is not legally required for the Board of Health to hold a public hearing. However, the Board feels that it is important to provide a public forum.

SCRIPT (CONTINUED)

- The purpose of this hearing is to collect information and opinions.
- The Board will not ask for a vote from the audience, nor will the Board itself vote on the proposed regulation at this public hearing.
- The Board will announce the meeting date at which they will discuss and vote on the proposed regulation.
- The ground rules for the hearing are as follows:



GROUND RULES

- Any person wishing to make a comment should sign in. The sign-in sheet is located _____.
- When addressing the Board, you must identify yourself by name, address, and any professional affiliation you may have that impacts your comments.
- Limit your comments to ___minutes. This will be strictly enforced.
- Be considerate of those persons speaking, whether you agree or disagree with them; and do not comment out of turn.

GROUND RULES (CONTINUED)

- Applauding and booing will not be tolerated. The hearing will be stopped and continued to another date and time if it happens.
- Board members will not engage in dialogue with commenters but will accept their testimony.
- The Board schedule a meeting at which time a discussion and vote will be taken. No additional testimony will be considered at that time.
- Written testimony will be accepted until _____.
 - If you chose to accept written testimony after the hearing.





AND OFF YOU GO!

- Gather sign-in sheets.
- Begin calling on those listed on the sheets.
- Stick to the ground rules.
- Chair asks for Motion to Close the Hearing.
- Moved and seconded.
- Vote taken to close the hearing.

STICK TO THE GROUND RULES!



Our Playground Rules

1. Respect other children's games.
2. No bullying or fighting.
3. Be polite to everyone.
4. Keep to the playground areas.
5. Stop when whistle blows.

NOT EVERYBODY
PLAYS BY THE
SAME RULES!

Westminster Crowd Takeover





QUASI-JUDICIAL HEARINGS

When considering whether to suspend a permit or hearing an appeal of a fine or another order.

- Open meeting law applies.
- Can occur at a regularly scheduled board of health meeting.
 - Must be on the posted agenda.
- Can be scheduled for a meeting on another date and time.
 - Must be properly posted.
- Can hold several hearings at the same meeting.



HEARING PROCESS

- Chair asks for a Motion to Open the Hearing.
- Motion made.
- Motion seconded.
- Members vote on Motion.
- Chair opens hearing.

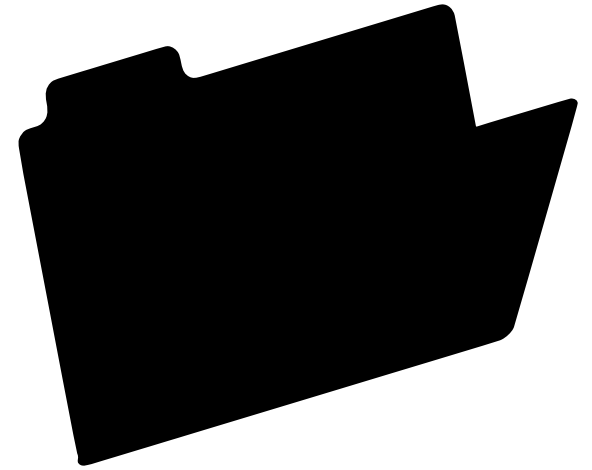


HEARING PROCESS (CONT.)

- Chair introduces the issue before the Board and applicable law/regulation.
 - Selling tobacco to a person under 21; violation of housing code; allegation of a nuisance, etc.
 - Emphasis on the singular issue before the Board.
 - Avoids irrelevant testimony (the dog ate my homework, I was distracted, the clerk was new, etc.)
- Chair turns hearing over to relevant health inspector.

INSPECTOR'S TESTIMONY

- Should have a file that includes:
 - Copies of inspection report;
 - Copies of any orders served on alleged violator;
 - If tobacco violation, the product sold, tagged and labeled;
 - Copies of any previous violations; and
 - Copies of relevant laws.
- Copies of all documents should be given to alleged violator and their attorney.

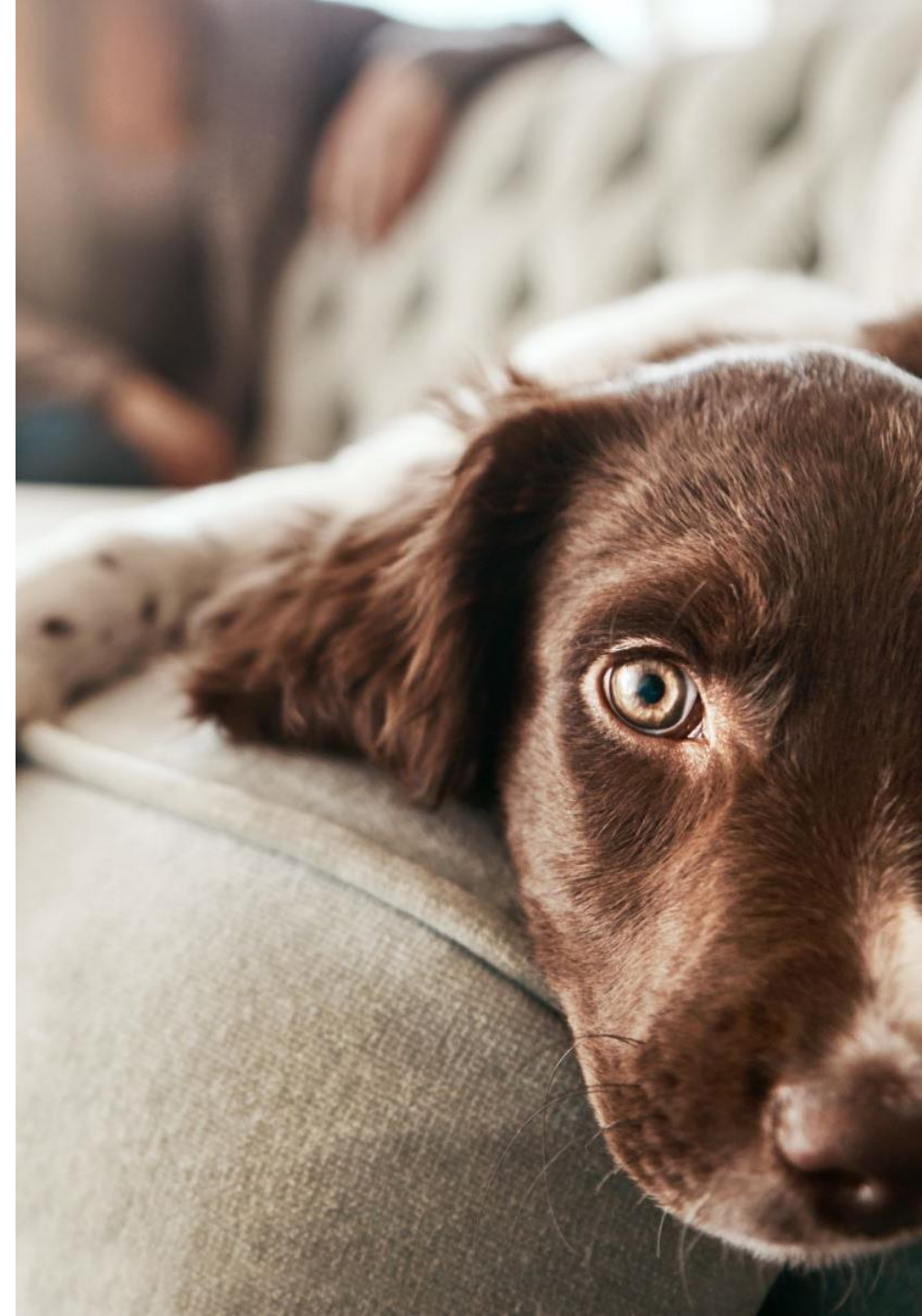


ACTUAL TESTIMONY SHOULD INCLUDE:

- Time and date of inspection
- Violation found
- Procedure followed
- History of prior offenses if relevant (tobacco sales)
- Order issued (fine issued and suspension/revocation suggested)
 - If relevant, emphasize that fines are mandated by state law.
- When testimony is complete, Chair asks violator to testify.

CHAIR SHOULD REITERATE

- Question before the Board is whether the violation occurred.
 - Reiterate this.
 - Not **why** it might have happened (the dog ate my homework).
- No one should comment on the testimony.
- At conclusion of testimony the Chair should ask if there is any other testimony.
- If there have been misstatements, inspector can clarify.
- Provide violator opportunity to reply.



CHAIR ASKS FOR MOTION TO CLOSE HEARING

- Motion made and seconded.
- Vote to close hearing taken.
- Board holds discussion on the hearing.
 - Chair makes it clear that attendees cannot comment.
- Board votes to either:
 - Affirm or dismiss the violation and assess penalties.
 - If relevant, stress that penalty is mandated by state law (tobacco fines).
 - Take matter under advisement for a vote at a subsequent meeting.
 - OML applies.

TEXTBOOK HEARING PROCEDURES FOLLOWED

FULL DISCLOSURE:

*The disruptor was
anticipated and board
consulted MAHB in
advance*



POST-HEARING PROCESS

- Written notice of Board's decision must be sent to violator after vote is taken.
 - Notice must include any penalties assessed.



