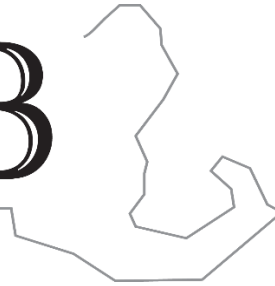


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MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS COVID-19 Notice Requirements for Board of Health Meetings During a Declared State of Emergency 3.30.2020

Public health professionals, especially local health departments and boards of health, are facing many questions from local public officials, residents, parents, health care providers, and others about COVID-19. MAHB’s series of documents are meant to provide answers and guidance to health departments and boards of health. **This document is provided *for educational purposes only* and is not to be construed as legal advice. For legal advice, please contact your city or town attorney.**

QUESTION: During a declared State of Emergency, can a quorum of members assemble and conduct Board of Health (BOH) business, including receiving updates on the status of the emergency, deliberating, and discussing issues anticipated to be part of a subsequent deliberation, without first posting notice?

ANSWER: The open meeting law requires that public bodies, including BOH, must post notice of a meeting “at least 48 hours prior to the meeting.”¹ The only exception is that in an emergency,² notice must be posted “as soon as reasonably possible prior to the meeting.”³

¹ MASS. GEN. LAWS ch. 30A, § 20.

² The open meeting law defines emergency as a “sudden, generally unexpected occurrence or set of circumstances demanding immediate action.” Mass. Gen. Laws ch 30A, § 18.

³ MASS. GEN. LAWS ch. 30A, § 20

The content and notice requirements under the open meeting law are discussed in the applicable Code of Massachusetts Regulations (CMR) section, which we have attached hereto as Appendix I.

The emergency must pose an imminent threat of impending danger. Under the currently declared State of Emergency, unless there is an imminent threat of unforeseen danger, there is no relaxation of the open meeting law notice requirement. The mere declaration of a State of Emergency does not constitute such an imminent threat in and of itself.

During this State of Emergency, BOH are meeting frequently, in some cases more than once a day. Notice of these meetings must be posted before each such meeting. In addition, if a quorum of members are working together in the office or elsewhere on daily, emergent business because of COVID-19 and the declared State of Emergency, the BOH members must not deliberate, or discuss matters that can reasonably be considered deliberation or that lead to deliberation, unless such a discussion is part of a duly posted meeting.⁴

If a BOH is meeting with another public body, such as the Board of Selectmen, City Council, or Planning Board, and the BOH has not posted notice of such meeting, there can be no deliberation. In such a situation, the individual BOH members may report actions or deliberations already undertaken, but BOH members may not deliberate amongst themselves or in conjunction with the other public body. If the other public body has not posted notice of *its* meeting and is receiving information from the BOH, that too would be a violation.

On March 12, 2020, Governor Baker issued an order titled: “Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20” (“Order”), in which he suspended the requirement of holding meetings “in a public place that is open and physically accessible to the public,” opting to allow “adequate, alternative means” of public access to an electronically conducted proceeding or, at a

⁴ The open meeting law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” There are notable exceptions, generally involving ministerial functions, such as scheduling and other “housekeeping” communications. MASS. GEN. LAWS ch. 30A, § 18.

minimum, allowing a transcript of the meeting to be posted on the municipal website.⁵

The Order also provides that, other than relieving public bodies from of the requirement that public meetings be conducted in a public place, “[a]ll other provisions of sections 18 to 25 of chapter 30A and the Attorney General’s implementing regulations shall otherwise remain unchanged and fully applicable to the activities of public bodies.”

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⁵ The Order is available at <https://www.mass.gov/doc/open-meeting-law-order-march-12-2020/download>.

APPENDIX I

940 CMR 29.00: OPEN MEETINGS

29.03: Notice Posting Requirements

(1) Requirements Applicable to All Public Bodies.

- (a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.
- (b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have enough specificity to reasonably advise the public of the issues to be discussed at the meeting.
- (c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2) through (5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used.
- (d) The date and time that a meeting notice is posted shall be conspicuously recorded thereon or therewith. If an amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended shall also be conspicuously recorded thereon or therewith.

(2) Requirements Specific to Local Public Bodies.

- (a) The official method of posting notice shall be by filing with the municipal clerk, or other person designated by agreement with the municipal clerk, who shall post notice of the meeting in a manner conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located.

(b) Alternatively, the municipality may adopt the municipal website as the official method of notice posting.

1. The Chief Executive Officer of the municipality, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to adopt the municipal website as the official method of posting notice. Any municipality that has adopted its website as the official method of posting notice by another method as of October 6, 2017 will have satisfied the adoption requirement.
2. If adopted, a description of the website as the notice posting method, including directions on how to locate notices on the website, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.
3. Once adopted as the official method of notice posting, the website shall host the official legal notice for meetings of all public bodies within the municipality.
4. Notices must continue to be filed with the municipal clerk, or any other person designated by agreement with the municipal clerk.

(c) A municipality may have only one official notice posting method for the purpose of M.G.L. c. 30A, §§ 18 through 25, either 940 CMR 29.03(2)(a) or (b). However, nothing precludes a municipality from choosing to post additional notices via other methods, including a newspaper. Such additional notice will not be the official notice for the purposes of M.G.L. c. 30A, §§ 18 through 25.

(d) Copies of notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.

(3) Requirements Specific to Regional or District Public Bodies.

- (a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
- (b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. A copy of each meeting notice shall be kept by the chair of the public body or the chair's designee in accordance with the applicable records retention schedules. The public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(4) Requirements Specific to Regional School Districts.

- (a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.
- (b) As an alternative method of notice, a regional school district committee may, by majority vote, adopt the regional school district's website as its official notice posting method. A copy of each meeting notice shall be kept by the secretary of the regional school district committee or the secretary's designee in accordance with the applicable records retention schedules. The regional school district committee shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(5) Requirements Specific to County Public Bodies.

- (a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.
- (b) As an alternative method of notice, a county public body may, by majority vote, adopt the county public body's website as its official notice posting method. A copy of the notice shall be kept by the chair of the county public body or the chair's designee in accordance with the applicable records retention schedules. The county public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of the Commonwealth's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its webpage for listing meeting notices and any change to the webpage location. The public body shall consistently use the most current website location on file with the Attorney General. A copy of the notice shall be kept by the chair of the state public body or the chair's designee in accordance with the applicable records retention schedules.

(7) Websites. Where a public body adopts a website as its method of noticing meetings, it must make every effort to ensure that the website is accessible to the public at all hours. If a website becomes inaccessible to members of the public within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, the municipal clerk or other individual responsible for posting notice to the website must restore the website to accessibility within six hours of the time, during regular business hours, when such individual discovers that the website has become inaccessible. In the event that the website is not restored to accessibility within six business hours of the website's deficiency being discovered, the public body must re-post notice of its meeting for another date and time in accordance with M.G.L. c. 30A, § 20(b).