

Open Meeting and Public Records Requirements for Meeting Postings and Minutes

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Presented by Michele E. Randazzo, Esq.



KOPELMAN AND PAIGE, P.C.



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[Introduction]

- Changes to the Open Meeting Law in 2010 have caused renewed focus on both the content of the meeting agenda, and minute-taking, in terms of content, approval, release, and maintenance.
- The availability of an administrative complaint process for claimed Open Meeting Law violations means that every aspect of public meetings is coming under scrutiny.

[What Laws Govern?]

- The Open Meeting Law,
now G.L. c. 30A, §§18-25
 - Meeting Notices: G.L. c. 30A, §20
 - Minutes: G.L. c. 30A, §22
- 940 CMR 29.00, et seq. (Attorney General's OML Regulations)

[What Laws Govern?]

- The Public Records Law, which is a combination of the following:
 - G.L. c. 66, §10 (Public Records Requests)
 - G.L. c. 4, §7, clause 26 (the exemptions)
 - 950 CMR 32.00, et seq. (the Public Records Access Regulations)
 - Other statutes specifically addressing the public records status of the records to which they relate.

What Do the Laws Require?

- Meeting Notices/Agendas
 - Properly posting a meeting:
 - 1) was it posted timely?
 - 2) was it posted in the correct location(s)?
 - 3) did the notice contain the requisite detail?
 - 4) have executive sessions been properly cited?

- Minutes
 - Must be accurate, and timely prepared and approved – verbatim transcripts are not required.

Before the Meeting – the Meeting Notice

- The meeting notice must be posted at least 48 hours prior to the meeting, not counting Sat., Sun., or legal holidays.
 - The notice must include "the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting." G.L. c. 30A, § 20(b). The list of topics shall have "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03(l)(b).
 - Per the Attorney General's Office, a topic will generally be considered to include sufficient specificity when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion.

[The Meeting Notice]

- Location of Posting
- Who's Responsible for Posting
- Website Postings
- Write out terms that may not be familiar to the general public (i.e. replacing "HUD CPD HOME" with "Department of Housing and Urban Development Community Planning and Development HOME Investment Partnerships Program")
- Executive Sessions – cite to specific statutory reference(s), and/or quote text of executive session purpose. More content may be necessary!

Listing Executive Sessions on the Meeting Notice

- You can either cite to the appropriate statutory provision, or recite the text of the statutory provision, or both.
- Shorthand references are to be avoided (i.e., “personnel”, “contract negotiations,” “real estate,” etc.)

[Pop Quiz]

- Old Business & New Business?
- It's an Emergency!
- But we just found out that we need to....
- The Pledge of Allegiance

“Old Business” & “New Business”

- Regularly occurring items need more detail than generic placeholders

“While the use of such headings alone may be insufficient to give the public a true idea of what will be discussed, see OML 2013-168, **here the Board used the phrases as headings under which more specific descriptions were listed**. This practice does not violate the Open Meeting Law. Furthermore, the Committee's use of "Other" did not violate the law. The Board's response states that the use of the topic "Other" is intended as a placeholder for topics not reasonably anticipated by the chair. Public bodies may include a topic in their notices for the discussion of such matters. See OML 2015-115. While a public body may include this type of item on a meeting agenda, as a best practice we recommend that, when including such a topic, public bodies indicate explicitly that the time is being reserved for topics not anticipated by the chair. See OML 2013-13.” (From AG OML Determination 2015-0127).

[Emergencies]

- There are limited times when a public body can meet without the requisite 48 hours advanced notice/posting.
- Poor planning does not equal an emergency!
- Acts of God and natural disasters do equal an emergency.

[Updating the Meeting Notice]

- “A public body may update its meeting notice with additional detail if it learns that a noticed topic may be confusing to the public.”

(From AG OML Determinations 2013-182; 2013-174).

Updating the Meeting Notice/ “Surprise” Topics

- **May a public body consider a topic at a meeting that was not listed in the meeting notice? (from AG FAQ on “Meeting Notices”)**
- Yes, if it is a topic that the chair did not reasonably anticipate 48 hours before the meeting. If a meeting topic is proposed after the meeting notice is posted, the public body is encouraged to update its posting to provide the public with as much notice as possible of what subjects will be discussed during a meeting. Although a public body may consider a topic that was not listed in the meeting notice if unanticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if those topics were not listed in the meeting notice.

[All Meetings Start in the Open...]

- The Attorney General's Office has concluded that, where an executive session(s) is/are the only agenda item(s) on the meeting notice, there must be some indication to the public on the notice that the body will first convene in open session.

[Content of Meeting Minutes]

G.L. c. 30A, Section 22. (a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the **date, time and place**, the **members present or absent**, a summary of the **discussions** on each subject, a **list** of documents and other exhibits used at the meeting, the **decisions** made and the actions taken at each meeting, including **the record of all votes**.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded **by roll call** and entered into the minutes.



Content of Meeting Minutes

Per the Attorney General's Office, "[m]inutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred."

A verbatim transcript is not required, at least under the Open Meeting Law.

- Sufficiency of meeting notice is judged not only on its face, but also upon what was actually discussed.

[Preparation and Approval]

G.L. c. 30A, §22(c):

Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

The Attorney General “recommends” that minutes be approved at the next following meeting. See AG OML Determinations 2015-43; 2013- 173; 2013-37.



[Documents Used]

G.L. c. 30A, §22(d):

Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.



[Documents Used]

Thus, documents “used” by the public body during a meeting must be listed in the meeting minutes. All records used by a board at an open meeting are presumptively considered “public” records.

- Per the Attorney General’s Office, a document is “used” by the body if, at a minimum, it is:

1. Physically present
2. Verbally identified
3. The contents are discussed by the members of the body during the meeting

Review of Executive Session Meeting Minutes

- Executive session minutes must be reviewed at reasonable intervals by the Chair.
- Such minutes must be provided upon request within 10 days; provided, however, that if the periodic review has not been done, then releasable minutes must be provided not later than the body's next meeting or 30 days, whichever first occurs. No fee may be assessed for this review.

Records Retention

- The Supervisor of Public Records has issued a relatively “new” Municipal Records Disposal Manual that includes all of the applicable disposal schedules and is available at the Secretary of the Commonwealth’s Municipal Archives Division page, or at the following link:

http://www.sec.state.ma.us/arc/arcpdf/MA_Municipal_Records_Retention_Manual.pdf



Records Retention & the Open Meeting Law

- The Records in Common Disposal Schedule has been revised to address various records implicated by the Open Meeting Law, including:
 - Meeting minutes (permanent)
 - Agendas and meeting notices (1 year)
 - Notices to individuals of executive sessions (6 years)
 - OML complaints (3 years)

[Resources]

- Attorney General's Guide to the Open Meeting Law
<http://www.mass.gov/ago/docs/government/oml/oml-guide.pdf>
- A Guide to the Public Records Law
<http://www.sec.state.ma.us/pre/prepdf/guide.pdf>
- Supervisor of Public Records Bulletins
<http://www.sec.state.ma.us/arc/arcrmu/rmubul/bulidx.htm>

Meeting Minutes Template – Open Session

Name of Public Body - Date, Time, Location of Meeting
Members Present and Absent

If any members are participating remotely, the minutes must include the name(s) of said individual(s), and their reason(s) under 940 CMR 29.10(5) for remote participation. If any member is participating remotely, ALL VOTES MUST BE ROLL CALL.

Items Discussed (using agenda as a guide is a good idea for organizing the discussion).

Summary of discussion

Votes Taken (recorded by roll call if any members are participating remotely)

List of documents and/or exhibits “used” by the public body during discussion

(If a document is used only by a non-member [i.e., the Town Administrator/Town Manager], not distributed to the members of the public body, then it is not likely to have been “used” by the body.)

Repeat for each agenda item discussed.

If executive session occurs, prepare separate executive session minutes. Should notate the vote to go into executive session in the executive session meeting minutes; may also record the vote in the open session meeting minutes.

Text of vote to adjourn. Time of adjournment.



Meeting Minutes Template – Executive Session

Name of Public Body, Date, Time, Location of Meeting
Members Present and Absent

Text of Vote to go into Executive Session, with ROLL CALL vote recorded.

If any members are participating remotely, the minutes must include the name(s) of said individual(s), and their reason(s) under 940 CMR 29.10(5) for remote participation. In addition, member(s) participating remotely must state, at the start of the Executive Session, that no other person is present and/or able to hear the discussion, unless approved by a majority vote of the body.

Items Discussed (using agenda as a guide is a good idea for organizing the discussion).

Summary of discussion

Votes Taken – ALL BY ROLL CALL

List of documents and/or exhibits “used” by the public body during discussion

[If a document is used only by a non-member (i.e., the Town Administrator/Town Manager), not distributed to the members of the public body, then it is not likely to have been “used” by the body.]

Repeat for each agenda item discussed.

Text of Vote to exit executive session, by ROLL CALL vote.

Time meeting adjourned or time of return to open session.



Attorney General Checklists

Notice –

<http://www.mass.gov/ago/docs/government/oml/public-body-checklist-notice.pdf>

Minutes –

<http://www.mass.gov/ago/docs/government/oml/public-body-checklist-minutes.pdf>

Executive Session –

<http://www.mass.gov/ago/docs/government/oml/public-body-checklist-executive-session.pdf>



Questions and Contact Information

Michele E. Randazzo, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
(617) 556-0007
mrando@k-plaw.com

