

Disabilities Commission
Meeting Minutes

Postponed Meeting of
Oct. 27, 2021, 11/2/2021

Nov. 30, 2021

Kim D. Hopewell -Chair Marcia Carnes – Co- Chair Ron Menard- Vice Chair Michael McConville- Clerk Nancy Lucier- Town Admin Pro Temp Patrick Crowley- Elected Edward Ramstrom- Handicap Resident Michael Edwards- Collins Center
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This Zoom Meeting

Meeting Convened
6 p.m.

The Disabilities Commission was invited to a seminar put on by Brian W. Riley, Esq., KP
Law on Open Meeting Law Overview & Practical Consideration for Entities

The following matters were discussed;

Meeting Notices and Agenda

The Meeting Notice must include the Date, Time and Place;

A List of Topics reasonably anticipated that will be discussed at the meeting rather than just a list of topics.

Mr. Riley stated that the if a meeting topic is proposed after the meeting notice is posted, the public body is encouraged to update its posting.

The board may consider an item that not listed on the agenda, the Attorney General strongly encourages public bodies to postpone a discussion and to take 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.

The listing of topics must contain enough specificity to give the public an understanding of each topic that will be discussed.

All postings must be 48 hour in advance, excluding Saturdays, Sundays and legal holidays. Emergency- poor planning does not qualify as an emergency. Natural disasters and public safety do.

Advised not to use acronyms or abbreviations

Zoom Meetings

Due to Covid meetings have been held remotely by Zoom.

The Open Meeting Law requires that we provide “Adequate, alternative means” may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body as they are occurring (i.e., “live” or “in real time”).

In such situations, the meeting notice must include clear contact information, and members of the public must be able to obtain the meeting access information up to and throughout the duration of the meeting (members of the public cannot be required to register in advance). You can give the citizens a call in number or the link to the meeting.

Email and Social Media

Mr. Riley advised not to direct comments to other members of the board such as

Alternative electronic communication, including blogging, instant messaging, texting, social networking such as Facebook and Twitter. Also to be aware of “reply to all” emails”

A member of a public body may email other public body members on matters within jurisdiction of a public body so long as the email does not reach a quorum of the public body.

Mr. Riley stated that communications between a quorum of a public body on matters of the board can only be at a properly posted meeting.

Executive Session

Open in Open Session. Cite to specific statutory reference to Executive Session, quote executive session “stating all subjects that may be revealed without compromising the purpose for which the executive session was called. Conduct Roll call vote to go into executive session. He Stated that all others would have to leave the room that were not involved in the Executive Session. State whether you would reconvene in open session. Once every one has left the meeting you could convene the Executive Session but could only discuss the matters cited. All votes could only be taken by Roll call. Mr. Riley stated that the board could reconvene in open session to conduct other matters or adjourn.

Meetings and Deliberation

Minutes approval within the next 3 meetings or 30 days, Executive Session may be withheld until the purpose of the exemption has been met, unless otherwise protected under the Public Records Law.

Open Meeting Law Complaints

All complaints ***Must*** be filed on Attorney General’s Office official complaint form. The board must bring the complaint up at a duly posted meeting, Delegate the response and must provide a written response to the AG within 14 days of receipt (AG may grant an extension if needed) the complaint must be filed within 30 days after alleged violation

Penalty-Chair violation first time AG ratifies votes, and there is a slap on the hand, do it again and it is intentional, the board and the Town Administrator is warned. An authority hearing conference call with the Selectboard Chairman is called, An Open Meeting Law Training is held for all boards. The Town pays a fine of \$1000 is incurred and the offending Board is removed and replaced.

Public Records Request

Mr. Riley stated that the Open Meeting Law requires that minutes of an open session, even if in draft form, shall be made available upon request by any person within 10 days G.L. c. 30A, § 22(c).

The board has 10 calendar days from the date a request is received to provide a response. Or deny access to the records if they are Executive Session Meeting Minutes the request G. L. c. 66, § 10(a-b)

If minutes do not yet exist at the time of a request, the public body is still required to respond to the request within 10 calendar days with an explanation of whether the

minutes do or do not exist in either approved or draft form. And to ask for an extension to be able to ask for an extension or to provide the records requested.
The board can include a per page fee
Meeting Minutes should not include opinions.

Adourn

Kim D. Hopewell
Chair

**Reasons for Convening Executive Session (M.G.L. c.30A, Sec. 21(a) –
Effective July 1, 2010)**

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or discuss the discipline or dismissal of, or complaints or charges against, a public officer, employee, staff member or individual. (*See Rights of Individuals on reverse.*)
2. To conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel.
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.
4. To discuss the deployment of or strategy regarding security personnel or devices, e.g., a sting operation.
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints.
6. To consider the purchase, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.
8. To consider or interview applicants for employment by a preliminary screening committee, if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants. This shall not apply to any meeting regarding applicants who have passed a prior preliminary screening.
9. To meet with a mediator regarding any litigation or decision; provided that (i) any decision to participate in mediation shall be made in open session and the parties disclosed and (ii) no action shall be taken with respect to the issues involved without deliberation and approval of the action at an open session.
10. To discuss trade secrets or confidential or proprietary information regarding activities by a governmental body as energy supplier, municipal aggregator or

energy cooperative, if an open session will adversely affect conducting business relative to other entities making, selling or distributing energy.

Procedures for Convening Executive Session

1. The meeting must be convened in an open posted session, with executive session listed on the agenda when reasonably anticipated by the chair.
2. The chair states the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose of the executive session (and, under exemptions 3, 6, and 8, makes the required declaration).
3. A majority must vote in a recorded roll call to go into executive session.
4. The chair announces whether the meeting will reconvene in open session.
5. Accurate minutes and other records of the executive session must be maintained, with all votes recorded by roll call.

Rights of Individuals

1. When a governmental body wishes to discuss: (a) the reputation, character, physical or mental health of an individual; or (b) the discipline or dismissal of or complaints or charges brought against a public officer, employee, staff member or individual, it must notify that person in writing at least 48 hours in advance of the meeting, not including Saturdays, Sundays or holidays.
2. Written notice may be waived by the individual.
3. The individual may request that the meeting be held in open session.
4. If an executive session is held, the individual has the right to be present for deliberations and to speak, and to have counsel or a representative of choice present for the purpose of giving advice but not for active participation.
5. The individual may have an independent record of the executive session created by audio recording or transcription, at the individual's expense.

Open Meeting Law – Preparing a Meeting Notice

Prepared for the Massachusetts Municipal Association Meeting, January 2020

The Open Meeting Law requires the chair of the public body to prepare a meeting notice listing those topics that the chair “reasonably anticipates” will be discussed at the meeting. The Attorney General’s Division of Open Government (“Division”) interprets this requirement in a consistently strict manner. This memorandum seeks to summarize some of the more significant decisions regarding notice violations from the Division and courts. The Division’s decisions can be found on its website at <http://www.mass.gov/ago/government-resources/open-meeting-law/>.

Law and Regulations

The Opening Meeting Law requires that the notice be posted forty-eight (48) hours in advance of the meeting, excluding Saturdays, Sundays and legal holidays. The notice must include, along with the date, location, and time of the meeting, “a listing of topics that the chair reasonably anticipates will be discussed at the meeting.” G.L. c.30A, §20(b). [emphasis added].

Regulations promulgated by the Attorney General provide further that public bodies are required to list such topics with “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03.

In 2017, the Attorney General promulgated new regulations permitting town or city websites to serve as “all hours” posting locations. 940 CMR 29.02. A city or town adopting the website method of posting notice must file a written notice of adoption with the Attorney General, 940 CMR 20.03(1)(c), and post a written notice in city or town hall describing the website and how to access it. 940 CMR 29.03(2)(b)(2). The city or town must also “make every effort to ensure that the website is accessible to the public at all hours,” and if it becomes unavailable for any reason access must be restored within six (6) business hours or the meeting re-posted for another date and time. 940 CMR 20.03(7). In order for the website to be the official posting location, the chief executive officer of the municipality must approve the same.

Division of Open Government Determinations

The Division takes the position in a series of decisions that the matters included on the meeting notice must be itemized in specific detail, rather than listing only boilerplate headings or setting forth simple statements of the subject matter anticipated to be discussed. In drafting such topics, therefore, the specific items to be discussed must be individually listed and identified; if it is anticipated that votes may be taken, such information may also be included on the meeting notice. To the extent that the chair of the public body is

aware of any particular speakers or presentations, it is likely that the Division would find that such information must also be listed on the meeting notice. Further, if the chair anticipates that an executive session might be needed, the meeting notice must include an item for such purposes, containing such detail as can be provided without compromising the purpose for the executive session, as well as whether an open session will resume after the executive session. Specific examples follow.

1. Recurring General Business Items

In OML-2016-167, Swansea Board of Selectmen (December 6, 2016), the Division reiterated the need for specificity when posting notices of public meetings. The Board of Selectmen had noticed two items to be discussed, “Annual Re-Appointments” and “Trash Fee Abatements”. The Division concluded that such items were not sufficiently detailed for the public to be informed as to what would occur at the meeting. In particular, these notice items were deemed insufficient on their face because they did not list the candidate for reappointment or for the particular abatements requested.

PRACTICAL IMPLICATIONS: THESE ARE JUST SOME EXAMPLES OF BOILERPLATE HEADINGS THAT ARE NOT PERMITTED. IT IS LIKELY APPROPRIATE TO ASSUME THAT THE TERMS “OLD BUSINESS”, “NEW BUSINESS”, “ADMINISTRATOR’S UPDATE”, “REAPPOINTMENTS”, “LICENSE RENEWALS”, AND THE LIKE, CAN NO LONGER BE USED TO PROVIDE NOTICE OF PARTICULAR MATTERS THAT CAN BE REASONABLY ANTICIPATED BY THE CHAIR OF A PUBLIC BODY. INSTEAD, IF SUCH NOTICE ITEMS ARE USED, BELOW THEM MUST APPEAR A LIST OF THE SPECIFIC DETAILS OF THE TOPICS TO BE DISCUSSED.

In OML-2013-46, Dighton Police Station Building Committee (April 16, 2013), the Division received a complaint that a notice including the item “RFP for professional service” did not contain sufficient specificity to provide the public with an understanding of the topic that would be discussed. While there were additional facts that made the overall notice confusing, including that the original posted included the wrong date and required re-posting, the Division ultimately decided that the term, “professional services” was too vague to sufficiently notify the public of the particular service that would be sought. Of note, the Division also cautioned public bodies against using acronyms in a meeting notice, even if such acronyms are common, “municipal government vernacular.” See also OML-2015-116, Barnstable County Board of Regional Commissioners (August 14, 2015) (Division again cautioned against using acronyms in notices of public meetings).

PRACTICAL IMPLICATIONS: A MEETING NOTICE MUST BE TAILORED TOWARDS A PUBLIC AUDIENCE THAT IS UNFAMILIAR WITH THE MATTERS TO BE DISCUSSED, RATHER THAN TO THE MUNICIPAL EMPLOYEES AND PARTIES THAT OFTEN ATTEND SUCH MEETINGS. THE OVERALL CIRCUMSTANCES CONCERNING THE MEETING AND THE TOPIC AT ISSUE WILL BE CONSIDERED WHEN DETERMINING IF THE NOTICE WAS SUFFICIENT. FURTHER, IT NOW APPEARS WELL ESTABLISHED THAT THE USE OF ACRONYMS SHOULD BE AVOIDED IN MEETING NOTICES.

2. Form of Notice

In Town of Swansea v. Maura Healey, Civil Action No. 2017-3269-E (Suffolk Sup. Ct. October 29, 2018), the Superior Court held that the Division’s determination of how a notice should be posted and the level of detail

required was arbitrary because the Division applied subjective criteria to determine whether a notice was sufficiently detailed. This is one of few court decisions establishing a limit on the Division's authority to enforce the Open Meeting Law.

The Town had used a certain bulletin board to post its notices and, when a public meeting was to involve an unusually large number of appointments, it directed residents to obtain a full list of appointments from the Town Clerk. The Division approved that notice practice, and the Town continued to follow that process for a few meetings. When a shorter notice was posted that could fit on the bulletin board, however, directing the reader to the Town's website, the Division concluded that that notice violated the Open Meeting Law. The Superior Court found such arbitrary approvals of notices based on factors not included in the Open Meeting Law were beyond the authority of the Division and quashed the Division's decision.

PRACTICAL IMPLICATIONS: THE DIVISION NOW CONSISTENTLY REQUIRES ALL NOTICES CONTAIN ALL THE INFORMATION REQUIRED BY LAW, SO CITIES AND TOWNS SHOULD NOT ATTEMPT TO USE SUMMARY NOTICES OR TO DIRECT RESIDENTS TO THE TOWN CLERK TO OBTAIN A FULL LIST OF MEETING ITEMS. THAT BEING SAID, NOTICES DIRECTING RESIDENTS TO VISIT WEBSITES IS STILL PERMITTED WHEN THE WEBSITE SERVES AS THE OFFICIAL MEANS OF NOTICE POSTING.

3. Verbiage

In OML-2019-102, Massachusetts Board of Building Regulations and Standards (August 14, 2019), the Division concluded a notice item stating the Board would "discuss" a letter was insufficiently detailed since the Board ultimately discussed and voted on the items addressed by the letter. The President of the Massachusetts Federation of Building Officials sent the Board a letter reporting that the town of Douglas was considering replacing its building inspector with an inspection company, which the author considered to be a violation of law. At the meeting in which the letter was discussed, the Board discussed the letter and then voted to send the town of Douglas a guidance letter in relation to replacing its building inspector with an inspection company. The Board argued it did not put any more detail in the notice because it did not have any more information with regards to the allegations contained in the letter, and did not want to summarize or repeat false information in the notice. The Division disagreed, concluding that the Board had more verifiable information than it provided in the notice and should have included in its meeting notice that the letter under discussion pertained to the town of Douglas and its building inspector. Further, even if the Board in fact notified the Town, the notice is intended to notify the public, not only the subject of the items discussed.

PRACTICAL IMPLICATIONS: TO ENSURE THAT A NOTICE ITEM IS COMPLETE, IT SHOULD INCLUDE BOTH THE SUBJECT OF THE ITEM AND THE PUBLIC BODY'S REASONABLY ANTICIPATED ACTIONS IN RELATION THERETO. WHILE A PUBLIC BODY MUST, OF COURSE, REMAIN NEUTRAL ON CONTESTED AGENDA ITEMS BEFORE THE MEETING AT WHICH SUCH ITEMS ARE DISCUSSED, THE BODY MUST ALSO PROVIDE DETAILED, ACCURATE, AND SUFFICIENT NOTICE TO THE PUBLIC OF THE ITEMS TO BE DISCUSSED.

4. Executive Session Notices

In OML-2017-49, Peru Board of Selectmen (March 28, 2017), the Division considered whether the Board provided a public officer, who was the subject of a complaint to be discussed in executive session, with sufficient notice and opportunity to be heard. The Division also considered whether the notice “Executive Session to discuss strategy with respect to ongoing litigation” was sufficient to invoke the litigation exception to the Open Meeting Law, G.L. c. 30A, §21(b)(3), and enter executive session to discuss a pending appeal before the Appellate Tax Board. The Division concluded that, while the Board provided verbal notice to the subject of the complaint discussed in executive session, it did not provide written notice as required by G.L. c.30A, §21(a)(1). Further, while the Division noted its willingness to defer to the public body’s determination of the necessity of withholding the details of the litigation, it decided the evidence before it did not provide any reason that disclosing the identity of the litigation in this instance would compromise the purpose of going into executive session, “as it was a publicly filed appeal.” In the absence of such a reason, the executive session notice must identify the particular litigation discussed in executive session.

PRACTICAL IMPLICATIONS: A PUBLIC EMPLOYEE THAT IS THE SUBJECT OF A COMPLAINT MUST BE NOTIFIED IN WRITING NO LATER THAN FORTY-EIGHT (48) HOURS BEFORE THAT THEY WILL BE DISCUSSED IN EXECUTIVE SESSION AND BE PROVIDED THE OPPORTUNITY TO SPEAK ON THEIR OWN BEHALF. FURTHER, WHEN INVOKING THE SO-CALLED LITIGATION EXCEPTION TO THE OPEN MEETING LAW, THE PARTICULAR LITIGATION TO BE DISCUSSED MUST BE DISCLOSED UNLESS THE PUBLIC BODY CAN SPECIFICALLY IDENTIFY REASONS THAT DISCLOSING SUCH INFORMATION

would compromise the municipality’s litigation strategy.

5. Discussion of Particular Permits or Renewals

In OML-2011-11, Freetown Soil Conservation Board (February 15, 2011), the Division considered whether an agenda item entitled “Renewal of Fall Soil Permits” was sufficient notice to allow the Soil Conservation Board to act on particular permit renewals. The Division noted that where the Chair reasonably anticipated action on specific permits, the individual permits were required to be listed with “the details of those specific permits, including the name of the applicant and the location under consideration.” The Division suggests the meeting notice should have taken the following form:

Renewal of Fall Soil Permits

#496 [Name of Applicant], 5 acres on the south side of the Assonet River #497

[Name of Applicant], 53 Dr Braley Road

#499 [Name of Applicant], 5 acres on Braley Road

#498, [Name of Applicant], 4 acres on Chace Road

#500, [Name of Applicant], AA Will Quarry

PRACTICAL IMPLICATIONS: FORM OF NOTICE ITEMS - THIS CASE, AND THOSE THAT HAVE FOLLOWED IT, IS OF PARTICULAR IMPORTANCE TO LAND USE BOARDS, THOSE BOARDS THAT GRANT ANNUAL LICENSES OR PERMITS, AND THOSE THAT MAKE ANNUAL APPOINTMENTS. IN ALL SUCH CASES, THE MEETING NOTICE, TO THE EXTENT POSSIBLE,

must list the particular licenses, permits or appointments to be acted upon, as well as detailed information about the applicant (i.e., name and address for land use applications, and, to the extent applicable, applicant names for appointments). If the meeting notice does not list on the meeting notice itself each such item individually, it may refer to an attached list, or, if the website is the proper posting location, include a link to the complete list.

6. Negotiations with Non-Union Personnel

In OML-2011-15, Melrose School Committee (May 1, 2011), the Division considered whether the following meeting notice was sufficient: “To conduct strategy sessions in preparation for negotiations and, if appropriate, to conduct contract negotiations with nonunion central office administrative personnel.” Although the person with whom the School Committee would be negotiating was likely obvious to persons familiar with the facts, the Division concluded that the notice must also include the name of that person. The Division stated, “Providing the public with this additional information would not have been detrimental to the Committee's negotiating position, particularly as [the individual] was aware of the session and had been invited to attend for the contract negotiation portion.”

PRACTICAL IMPLICATIONS: THIS CASE MAKES CLEAR THAT WHEN A BOARD INTENDS TO ENTER EXECUTIVE SESSION FOR THE PURPOSE OF NEGOTIATING WITH NON-UNION PERSONNEL, THE NAME AND OFFICE OF THE NON-UNION PERSONNEL MUST BE INCLUDED IN THE MEETING NOTICE. THE SAME REASONING IS EQUALLY APPLICABLE TO NOTICE ITEMS FOR CONDUCTING NEGOTIATIONS WITH COLLECTIVE BARGAINING UNITS.

In OML-2011-32, Templeton Board of Selectmen (July 26, 2011), the Division considered whether the following meeting notice was sufficient to allow discussion in executive session of charges against a public officer: “Complaint of charges against a public officer, employee, staff member or individual. May go into Executive Session under exemption #1 under the Open Meeting Law.” The Division found that the notice was sufficient, but stated further:

Given the lack of detail contained within the meeting notice, a member of the public could have had questions about the exact nature of the discussion anticipated by the public body.

However, the meeting notice complied with the letter of the Open Meeting Law because it stated the reason for the anticipated executive session, while balancing the privacy rights of the individual who was the subject of the complaint.

Practical Implications: A board entering executive session pursuant to exemption (1) may, and often must, omit from the meeting notice the name of the individual to be discussed. The ability to utilize such exemption, however, includes a requirement that the public body otherwise preserve the privacy rights of that individual by not disclosing private information concerning that person.

Summary

Summary, the Open Meeting Law now requires that detailed meeting notices be prepared, listing all of the particular items to be discussed at the meeting. The level of specificity required is to be judged from the perspective of an individual who is unfamiliar with the municipality and the action to be taken, and the

notice must be sufficiently specific for any member of the general public to anticipate what might be discussed at the meeting. Preparation of a properly detailed meeting notice will ensure that the public body's hard work is not undermined by technical challenges to its compliance with the Open Meeting Law.

Please contact Attorney Janelle M. Austin (jaustin@k-plaw.com) or any member of our Government Information and Access group at 617-556-0007 with any further questions concerning meeting notices or the Open Meeting Law generally.

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