

Massachusetts Office of the Attorney General
Division of Open Government

Open Meeting Law Posting Requirement
Request for Comments on Proposed Alternative Notice Posting Methods
April 9, 2010

Effective July 1, 2010, the Open Meeting Law, G.L. c. 30A, § 19(c), requires that, for local public bodies, “notice of public meetings must be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk’s office is located.” The law does not specify the ways in which cities and towns can satisfy this requirement, but an outdoor, weather-proof bulletin board would seem the most obvious means. Concerned about their practical ability to post numerous meeting notices outdoors, many municipalities have requested that the Attorney General approve alternative notice posting methods as allowed by the Open Meeting Law.¹ Specifically, numerous municipalities have requested that they be permitted to satisfy the “at all hours” requirements by posting their meeting notices on their town websites. The Division of Open Government is requesting public comment on proposed alternatives to the notice posting requirement in the Open Meeting Law. **The Division requests that comments be submitted by April 23, 2010.**

According to Common Cause Massachusetts, in January of 2010, 326 of 351 municipalities have some sort of presence on the Internet with the remaining 26 having no website at all.² Of those with a website, 23 do not post any governance documents. While the report does not specifically address posting of meeting notices, it found that only 181 municipalities, or 51.5%, post essential records online such as the governing body’s meeting agenda and minutes, while only 90 municipalities, or 25.6%, post additional materials such as a calendar or the agenda and minutes of another board or committee. Based on this study, at least half of all Massachusetts cities and towns are not currently in a position to post their meeting notices on their websites. Even if the Attorney General were to allow website posting of meeting notices to satisfy the “at all hours” requirement, many cities and towns would nevertheless need to install outdoor bulletin boards in order to comply with the law. Moreover, according to the Census Bureau, only 62% of U.S. households have Internet access in their homes, making access to public meeting notices inaccessible for more than one-third of households when the municipal building is closed.

Balancing the apparent need for some flexibility with the Open Meeting Law’s requirement that any alternative form of notice be “more effective,” the Division of Open Government is seeking public comment on several proposed alternative posting methods. Such methods would permit municipalities whose meeting notices are otherwise posted

¹ Under the Open Meeting Law, “[t]he attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.” G.L. c. 30A, § 19(c)

² “Transparency in Massachusetts Municipal Websites”, Common Cause Massachusetts (2010)

in or on the municipal building in which the clerk's office is located to meet the statutory requirement that the notice be conspicuously visible to the public "at all hours" as follows:

- 1) posting notices on the town website, **AND**, posting in or on an alternate town building (e.g., police or fire station) where the notice would be visible at all hours;
- 2) posting notices on cable television, **AND**, posting in or on an alternate town building (e.g., police or fire station) where the notice would be visible at all hours;
- 3) placing a computer monitor or electronic bulletin board in a door or window of the municipal building in such a manner as to be visible to the public (including the disabled) from outside the building; or,
- 4) providing an audio recording of meeting notices, available to the public by telephone at all hours.

DISCUSSION

1. Website Posting³

Given that more than one-third of households do not have home Internet access and that there is limited public Internet access during hours in which the municipal building is closed, Internet posting alone does not meet the requirement that the meeting notices are available to the public at all hours, nor does it meet the requirement that the alternative method affords more effective notice to the public. While cities and towns are encouraged to provide meeting notices on an official website, that method alone is insufficient.

While posting of meeting notices on the Internet is not alone sufficient, this method will comply with the revised law if the town also posts its meeting notices in or on another municipal building such as a police or fire station where the notice would be visible to the public at all hours. In the event that a municipality elects this posting method, it will need to post a sign on the municipal building directing the public to the website and alternate location.

2. Local Cable Television

According to the Census Bureau, approximately two-thirds of households have access to cable television, a statistic slightly higher than that for home Internet access. Like websites, posting notices on local access cable channels will help further the goal of

³ All of the allowable posting methods must comply with Title II of the Americans with Disabilities Act and the Massachusetts Public Accommodation Law (M.G.L. c. 272, §§ 92A, 98 and 98A).

providing the public with access to meeting notices at all hours, but it is not, in itself, sufficient to meet the requirement of the statute as one-third of households will be unable to obtain access to this information in this manner.

While not alone sufficient, this method will comply with the revised law if the town also posts its meeting notices in or on another municipal building such as a police or fire station where the notice would be visible to the public at all hours. In the event that a municipality elects this posting method, it will need to post a sign on the municipal building directing the public to the cable television channel and the alternate location.

3. Electronic Bulletin Boards

Several municipalities have requested approval for the use of an electronic bulletin board or outward facing computer monitor that would be visible to the public from the outside of the building. So long as the display is “conspicuously visible to the public at all hours,” the statutory requirements are met. Municipalities that elect to provide public access to meeting notices through this method should assure that the board or monitor is of sufficient size so that the notice contents are readable from the outside of the building, including by those with physical disabilities.

4. Recorded Telephone Messages

According to the Census Bureau, 99.1% of Massachusetts residents have a telephone in their home. This number increased from 95.7% a decade earlier. With an increasing number of low-income individuals having cell phones, telephone access has become near universal. Municipalities may comply with the requirements of the revised Open Meeting Law by providing the public with an audio recording of the contents of their public meeting notices. This may be accomplished either through a dedicated phone line or telephone PBX system that automatically routes callers to a recording of the contents of the meeting notices (e.g., “press ‘1’ to hear public meeting notices”). This alternative method of notice will be more effective than the manner prescribed by the statute because it will allow those with neither access to transportation to the municipal building nor home Internet access to obtain the information at all hours.

CONCLUSION

It is likely that no single alternative posting method will be workable in every city and town. The Division of Open Government proposes to provide municipalities with a range of options that would satisfy the statutory requirement and allow the municipality to select the posting method that is most feasible. Once the municipality selects a posting method, it should inform the Division of Open Government, in writing, of its choice and should inform the Division, again in writing, if it changes posting methods in the future.

Comments on the proposed alternatives should be directed to Robert A. Nasdor, Director, Division of Open Government, Office of Attorney General, One Ashburton

Place, 20th Floor, Boston, MA 02108 or by sending comments by email to openmeeting@state.ma.us . All comments should be submitted by April 23, 2010 so that the Division of Open Government can provide timely guidance on this issue.