

# Public Notice Requirements for Local Governments

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## Why Are Notices Required?

- To keep citizens informed about what gov't has done and plans to do
- To ensure public officials know what gov't is doing
- To keep media informed of gov't activities

## When Are Notices Commonly Needed?

- Prior to meeting of public body
  - Regular meetings: notice filed, posted, on website
  - Special meetings: 48 hour notice to “sunshine list”; posted on principal bulletin board or door of usual meeting room; posted on website
  - Emergency meetings: notice to news media who have requested it, in same manner as given to members of the public body
  - Recessed meetings: post on website

## When Are Notices Commonly Needed? (cont'd)

### **Prior to public hearings?**

- General Rule: No extra notice required for hearings at public meetings.
- BUT subject matter of hearing may trigger statutory notice requirements.

## When Are Notices Commonly Needed? (cont'd)

- What notice is required if a local governing board continues a hearing?
- What notice is required if a hearing is delayed because no quorum exists (e.g., in case of inclement weather)?

## When Are Notices Commonly Needed? (cont'd)

### **Prior to certain types of gov't action**

- Opening of bids on purchase contracts for \$90,000 or more or construction contracts for \$500,000 or more (143-129(b))
- Public hearing on annual budget (159-12)  
Resolution authorizing private sale of local gov't property (153A-176; 160A-267)

## When Are Notices Commonly Needed? (cont'd)

- Hearing on adoption, amendment, or repeal of development regulation (153A-323; 160A-364)
- Hearing on quasi-judicial zoning decision (special or conditional use permit application, variance request) (153A-345.1; 160A-388(a2))

## Types of Commonly Used Notices

- Filed Notices
  - Regular meeting schedule w/clerk (143-318.12(a)(2)&(3))
- Posted Notices
  - Special meeting notices (143-318.12(b)(2))
  - Rezoning (153A-343(d); 160A-384(c))
    - Notice of rezoning hearing must be posted on site affected or adjacent street right of way.
  - Hearing on quasi-judicial zoning decision (153-345.1; 160A-388(a2))
    - Notice must be posted on site involved in hearing at least 10 but not more than 25 days before hearing.

## Types of Commonly Used Notices (cont'd)

- Mailed Notices
  - Special Meetings (143-318.12(b)(2))
  - Quasi-judicial Zoning Decisions
    - Pre-hearing (160A-388(a2))
      - Notice must be mailed to owners of affected & abutting properties at least 10 but not more than 25 days before hearing.
    - Post-hearing (160A-388(e2)(1))
      - Board must make decision “within reasonable time.”
      - If decision is mailed, first class mail must be used.

## Types of Commonly Used Notices (cont'd)

- E-mailed Notices
  - Special Meeting (143-318.12(b)(2))
  - Emergency Meeting (143-318.12(b)(3))
  - Quasi-judicial zoning decision (160A-388(e2)(1))
- Delivered Notices
  - Individual governing board members prior to special meeting (153A-40(b); 160A-71(b)(1))
  - Quasi-judicial zoning decision (160A-388(e2)(1))

## Types of Commonly Used Notices (cont'd)

- Published Notices
  - Annual budget ordinance (159-12)
  - Sale of county property (various statutes)
  - Construction/purchase contracts subject to bidding requirements (143-129(b))
    - 7 calendar days between publication and bid opening

## Types of Commonly Used Notices (cont'd)

- Published notices (cont'd)
  - Amendment to development ordinance (153A-323(a); 160A-364(b))
    - Notice published twice (*i.e.*, once a week for 2 successive calendar weeks).
    - 1st publication at least 10 and not more than 25 days before hearing on proposed amendment.

## Types of Commonly Used Notices (cont'd)

- Website Notices
  - Regular, special, and recessed meetings (143-318.12(d)&(e))
  - Construction/purchase contract subject to bidding requirements (143-129(b))
    - 7 days between publication and bid opening
    - Advertisement may be solely by electronic means if approved by governing board

## Publication Rules

- Advertising must be in “newspaper of general circulation.” (1-597)
  - Actual paid subscribers
  - Admitted to U.S. mails in “Periodicals” class in county/subdivision where publication required
  - Have been regularly & continually issued in county at least one day in each calendar week for 25 of 26 consecutive weeks immediately preceding publication

## Publication Rules (cont'd)

- What if a county has no newspaper?
- Publication may occur in newspaper of adjoining county or other county in same judicial district if clerk of superior court finds as fact that the paper otherwise satisfies 1-597 and has general circulation in county w/o qualifying newspaper (1-597)

## Publication Rules (cont'd)

- Where must publication occur if a city is located in 2 or more adjoining counties?
- In any qualified newspaper published in the city, regardless of particular county in which the newspaper's plant or the post office where the newspaper is admitted to the mails is located. (1-597)

## Publication Rules (cont'd)

Publication may occur in newspaper that doesn't satisfy requirements of 1-597 if:

- County has only one newspaper; or
- None of newspapers in county satisfy 1-597 (1-599).

## Computing Time

- Do not count day of publication.
- Do count last day of period to be computed, unless that day is Saturday, Sunday, or legal holiday.
- If period of time < 7 days, don't count intermediate Saturdays, Sundays, or holidays.

## Computing Time (cont'd)

Specific statutory requirements sometimes overrule general calculation rules.

- Construction/purchase contracts subject to bidding requirements (143-129(b))

## Proving Publication

A newspaper can provide proof of proper publication, which the clerk may include in minutes. (1-598, 1-600)

A properly sworn statement is prima facie evidence that the newspaper satisfied the requirements G.S. 1-597 when the notice at issue was published.

## More Publication Rules

- Required notices need only be published once unless a statute specifically requires otherwise.
- Some laws require publication after an action is taken.
  - Charter amendment by ordinance (160A-102)
- In many cases no published or other notice is required.

## Why Publication Rules Matter

- Improper publication or failure to publish can be grounds for invalidating government's action.
- Notification requirements must be followed to the letter, including rules about
  - when notices are mandated
  - where they must be published
  - what they must contain

## Determining Notice Required

- How should you go about determining whether or what kind of notice is required?
- Don't forget Chapter 13 of the *M.O.R.E. Manual*, available at [http://www.ncamc.com/nc\\_document.php](http://www.ncamc.com/nc_document.php)
- What if you have no other options?

## Questions?

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