

## Public Meeting Etiquette Best Practices – Town of Exeter

### **Before the Meeting**

1. Meeting Postings – All meetings MUST be posted 24 hours in advance of meeting. Excludes Sundays and legal holidays. This is a firm requirement under RSA 91-A:2, II. Staff are NOT available weekends and holidays to post meetings. Staff should be given several days notice for meeting postings.
2. EXTV should ALWAYS be informed of a meeting cancellation. Contact Bob Glowacky via phone or email. Chairs of Boards and Committees have this responsibility.
3. One on one meetings with Chair and new Board members – Board Chairs should meet with new members one on one to discuss Board practices, current issues, and “rules of the road.”
4. Subcommittees/task forces – Subcommittees are covered by RSA 91-A. See statutory definition.
5. Conflict of Interest issues – Determine on which issue you may have a conflict of interest (financial or otherwise). Recuse yourself from the issue on which you have a conflict.
6. Meetings shown live on Youtube. Meetings also available on Roku channel and Town website.

### **During/Within the Meeting**

1. Sidebars – Sidebars should be avoided during meetings. Microphones are live, and can often pick up sidebar conversations. Keep microphones away from papers and keyboards. Remember – sidebars become part of the meeting!
2. Document Referrals – Chair/Committee should alert people at home when they are referring to a document they are in possession of, and speaking to, at a meeting.
3. Difference between abstaining and recusing – Abstaining means partaking in the discussion and abstaining on a vote on a particular topic. Outright recusal is stepping down from an issue entirely – normally represented by removing oneself from the position of Board member physically and sitting in the audience, non-participating.
4. Texting during meetings. This is to be generally avoided. Any texts sent or received during a regular meeting can be considered discoverable under a 91-A request and become part of the official meeting.
5. How to open/close a meeting – At end of meeting, Chair entertains a motion to adjourn. Requires a second. Declare the meeting adjourned after vote is taken to adjourn.
6. How to make a motion/take vote – Raise hand. “I move that (motion follows).” Motion requires a second. Call for discussion on the motion. Chair takes vote of the body.
7. How a public hearing differs from a meeting – Move to open the public hearing. Take public input. Move to close the public hearing. Board then deliberates and makes any decisions via motions and votes. Public hearings are often times laid out in statute (requirements, timelines, etc.).



# TOWN OF EXETER, NEW HAMPSHIRE

10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX 777-1514

[www.exeternh.gov](http://www.exeternh.gov)

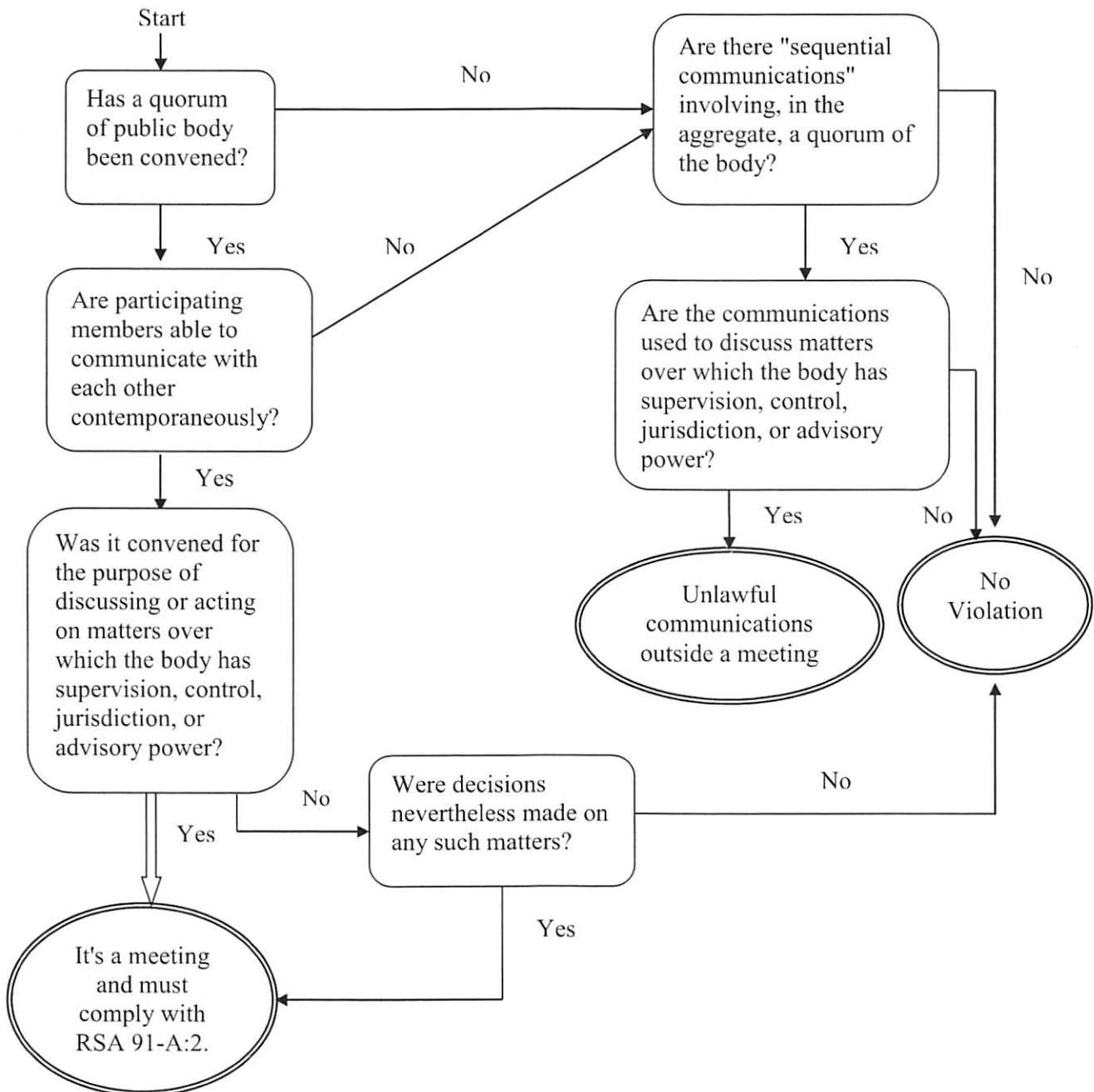
## Board/Committee/Commission Guidelines Summary In Accordance with NH RSA 91-A

1. Meetings must be open to the public and posted 24 hours in advance. Weekends, holidays and non-business hours do not count within the 24 hours notice. Posting is at Town Offices and Town website. Contact Town Office Staff to request meeting space, Zoom/EXTV capabilities and to submit agendas.
2. Email and other forms of non-public communication may only be used between members for scheduling purposes. Meeting topics, discussion and/or voting is prohibited outside of a legally posted meeting. Members must avoid sequential communications via email except for scheduling meetings.
3. A quorum of members must be in-person at a posted location which is open to the public. If a voting member is not available for a quorum, an alternate member may sit as a voting member for that specific meeting (this must be stated in the meeting minutes). If a quorum is not met, the meeting must be cancelled/postponed.
4. All members must be physically in attendance at the open, public location of the meeting unless it is not reasonably practical to attend. In such case, the member may attend via telephone or Zoom, as long as the member is able to be heard by everyone in attendance and can hear everyone in attendance. The member must state the reason they are unable to physically attend, and if they are alone in the room or who is in the room (including pets or possible distracting noises), which will be noted in the meeting minutes.
5. Voting: Only voting member votes shall be counted. If a voting member is attending via Zoom or telephone, all votes must be by **roll call** and noted as such in the meeting minutes. If an Alternate is sitting in for a voting member, this shall be stated in the meeting minutes.
6. Minutes must include names of members present, others participating, a brief summary of subject matter discussed and any decisions or votes. Draft minutes must be posted and available for public request within 5 business days of the meeting date. Minutes should be emailed to Town Office Staff for posting. Draft minutes should be approved at the next meeting, then forwarded to Town Office Staff for updated posting. Minutes will be placed on file with the Town Clerk.
7. General duties of the Chairperson are as follows: Run meetings, schedule meetings and set agendas with Town Office staff, orient new members, make assignments, converse with Town Staff as necessary.
8. Many training opportunities related to general and specific Board/Committee/Commissions are available. Exeter supports and encourages taking advantage of these opportunities. See appropriate Town Staff for more information.



### Is It a Meeting?

Use this flow chart to determine whether communications among members of a public body constitute a meeting subject to the Right to Know Law, or, if they do not constitute a meeting, whether they are unlawful communications outside a meeting.





# Robert's Rules of Order

## Cheat Sheet

Action	What to Say	Can interrupt speaker?	Need a Second?	Can be Debated?	Can be Amended?	Votes Needed
Introduce main motion	"I move to..."	No	Yes	Yes	Yes	Majority
Amend a motion	"I move to amend the motion by // (add or strike words or both)"	No	Yes	Yes	Yes	Majority
Move item to committee	"I move that we refer the matter to committee."	No	Yes	Yes	No	Majority
Postpone item	"I move to postpone the matter until..."	No	Yes	Yes	No	Majority
End debate	"I move the previous question."	No	Yes	Yes	No	Majority
Object to procedure	"Point of order."	Yes	No	No	No	Chair decision
Recess the meeting	"I move that we recess until..."	No	Yes	No	No	Majority
Adjourn the meeting	"I move to adjourn the meeting."	No	Yes	No	No	Majority
Request information	"Point of information."	Yes	No	No	No	No vote
Overrule the chair's ruling	"I move to overrule the chair's ruling."	Yes	Yes	Yes	No	Majority

Action	What to Say	Can interrupt speaker?	Need a Second?	Can be Debated?	Can be Amended?	Votes Needed
Extend the allotted time	"I move to extend the time by ____ minutes."	No	Yes	No	Yes	2/3
Enforce the rules or point out incorrect procedure	"Point of order."	Yes	No	No	No	No vote
Table a Motion	"I move to table..."	No	Yes	No	No	Majority
Verify voice vote with count	"I call for a division."	No	No	No	No	No vote
Object to considering some undiplomatic matter	"I object to consideration of this matter..."	Yes	No	No	No	2/3
Take up a previously tabled item	"I move to take from the table..."	No	Yes	No	No	Majority
Reconsider something already disposed of	"I move to reconsider our action to..."	Yes	Yes	Yes	Yes	Majority
Consider something out of its scheduled order	"I move to suspend the rules and consider..."	No	Yes	No	No	2/3
Close the meeting for executive session	"I move to go into executive session."	No	Yes	No	No	Majority
Personal preference - noise, room temperature, distractions	"Point of privilege"	Yes	No	No	No	No vote

\*A member may make a motion to reconsider a meeting that was already disposed of only if the chair allows it. It may not be reconsidered. A motion to reconsider must be made during the same meeting and cannot add anything that isn't already on the agenda.

**BoardEffect Global 24/7 Support**  
support@boardeffect.com

**United States**  
+1 800 961 6429

**United Kingdom**  
+44 208 819 7320

**Australia**  
+61 1300 731 253

**South Africa**  
+27 21 205 1491

©2021 BoardEffect

## Making a Motion

Board members must discuss one issue at a time to keep order in the boardroom. The board chair should only allow one person to speak at a time. Any member who wants to make a motion must request the floor –and be granted it – before speaking.

Robert's Rules classifies motions into the below categories.

### 6 Categories of Motions

1. **Main motion:** Introduces a new item

2. **Subsidiary motion:** Changes or affect how to handle a main motion (vote on this before the main motion)
3. **Privileged motion:** Brings up an urgent or essential matter unrelated to pending business
4. **Incidental motion:** Questions procedure of other motions
5. **Motion to table:** Kills a motion
6. **Motion to postpone:** Delays a vote (can reopen debate on the main motion)

You can read more about these motions here.

### Robert's Rules of Order Motion Steps

1. **Motion:** A member rises or raises a hand to signal the chairperson.
2. **Second:** Another member seconds the motion.
3. **Restate motion:** The chairperson restates the motion.
4. **Debate:** The members debate the motion.
5. **Vote:** The chairperson restates the motion, and then first asks for affirmative votes, and then negative votes.
6. **Announce the vote:** The chairperson announces the result of the vote and any instructions.

You can read more about the motions and how to use them in this article, "Robert's Rules of Order: Types of Motions".

**TIP!** If the board is in obvious agreement, the chairperson may save time by stating, "If there is no objection, we will adopt the motion to..." Then wait for any objections. Then say, "Hearing no objections, (state the motion) is adopted." And then state any instructions.

If a member objects, first ask for a debate, then vote, and then announce the vote.

## Points in Robert's Rules of Order

Certain situations need attention during the meeting, but they don't require a motion, second, debate, or voting. It's permissible to state a point during a meeting where the chairperson needs to handle a situation right away. Board members can declare a Point of Order, Point of Information, Point of Inquiry, or Point of Personal Privilege.

- **Point of Order:** A member draws attention to a breach of rules, improper procedure, breaching of established practices, etc.
- **Point of Information:** A member can ask for a point of information if they want more information on a motion. A point of information should not be used as a means for the person calling for a point of information to present information.
- **Point of Inquiry:** A member may use a point of inquiry to ask for clarification in a report to make better voting decisions.
- **Point of Personal Privilege:** A member may use a point of personal privilege to address the physical comfort of the setting such as temperature or noise. Members may also use it to address the accuracy of published reports or the accuracy of a member's conduct.

*\*Note: A member may make a motion to reconsider something that was already disposed of; however, the reconsidered motion may not be subsequently reconsidered. A motion to reconsider must be made during the same meeting and can extend to a meeting that lasts for more than one day.*

# Robert's Rules: Tips and Reminders for Chairpersons

Robert's Rules of Order was developed to ensure that meetings are fair, efficient, democratic and orderly. A skilled chairperson allows all members to voice their opinions in an orderly manner so that everyone in the meeting can hear and be heard. The following tips and reminders will help chairpersons run a successful and productive meeting without being run over or running over others.

- Follow the agenda to keep the group moving toward its goals.
- Let the group do its work – don't over-command.
- Control the flow of the meeting by recognizing members who ask to speak.
- Let all members speak once before allowing anyone to speak a second time.
- When discussions get off-track, gently guide the group back to the agenda.
- Model courtesy and respect and insist that others do the same.
- Help to develop the board's skills in the parliamentary procedure by properly using motions and points of order.
- Encourage members to present motions positively rather than negatively.
- Give each speaker your undivided attention.
- Keep an emotional pulse on the discussions.
- Allow a consensus to have the final authority of the group.

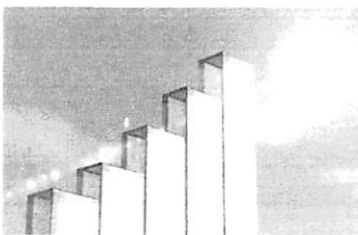
## Furthering Your Board's Knowledge of Robert's Rules of Order

All board members should be familiar with Robert's Rules of Order, which they can find online and in bookstores, and this Robert's Rules of Order cheat sheet for 2023 is a handy resource for your board and all new members.

Now that we've covered the basics, a deeper understanding of Robert's Rules is essential. The next step is to learn how to handle abstentions for a more streamlined board procedure. In our article, the six reasons why nonprofit board members abstain, we discuss this topic in length.

Robert's Rules of Order for meetings is an informative and fascinating topic. The more board members learn about how to use Robert's Rules, the more effectively they will govern, and effective governance is the hallmark of a quality board.

### Most Popular Posts



#### CEO Succession Planning Template for Nonprofits

In the business of nonprofit work, boards often overlook some of

#### How to Enhance Board Performance [Infographic]

Enhancing Board Performance A high-performing board of directors can be an organization's most valuable asset....



#### Recruiting Board Members: A Plan and a Process

Is it better to have several vacant board seats than to have those same seats...

the most important areas...

« 15 Unexpected Costs of Cutting Your Nonprofit Board  
Software

5 Best Practices for Cybersecurity for Community Banks  
»

PHP Code Snippets Powered By : XYZScripts.com



## IV. MEETINGS

Public bodies subject to the Right-to-Know law are required to follow certain procedures with respect to the notice and conduct of meetings. RSA 91-A:2; RSA 91-A:3. In most cases, meeting provisions under the Right-to-Know law do not apply to public agencies. Although the meeting provisions do not apply to most of the work an agency does, there may be occasions when an agency is required by statute, rule, ordinance or charter provision to hold a hearing, which may be subject to public notice and meeting requirements.

### A. What Constitutes a Meeting of a Public Body?

1. A public body holds a meeting when:
  - a. A quorum of the membership of the public body<sup>5</sup> is convened in person so that all members may communicate contemporaneously; and
  - b. The purpose of convening a quorum or a majority of the membership is to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power. RSA 91-A:2; *see also Herron v. Northwood*, 111 N.H. 324, 326-27 (1971) (town budget committee's function of preparing and submitting a budget is subject to the Right-to-Know law and meetings must be held in a manner open to the public).

The attendance by a quorum of a municipal board of selectmen or planning board at public informational meetings of the Department of Transportation for the purpose of advising the Department concerning a highway project can constitute a "meeting" under RSA 91-A:2, I, requiring appropriate notice. Attorney General's Opinion 93-01. Generally, attendance by a quorum of a public body at a meeting being held by a different public body to discuss or act upon a matter within the first body's jurisdiction should be treated as a meeting for Right-to-Know law purposes by both public bodies. Both bodies should provide notice of the meeting and both bodies should keep minutes, which may be the same document, separately adopted as minutes by both.

2. When members of a public body constituting a quorum find themselves together either coincidentally or when gathering for a purpose other than discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power, communications between the members shall not be used to circumvent the spirit and purpose of the Right-to-Know law. RSA 91-A:2-a, II. The convening of a quorum of a public body that does not have a purpose to discuss or act on business, could easily constitute a meeting.

---

<sup>5</sup> In the absence of specific language to the contrary, a quorum is defined as a majority of the membership of the public body. *See* RSA 21:15. Some statutes specifically define a quorum, in which case the specific statutory quorum requirement will control.

Therefore, it is very important to limit any conversation or other communication about the business of the public body. It is explicitly improper to deliberate or act on any business of the public body. RSA 91-A:2-a, II.

3. E-mail use should be carefully limited to avoid an inadvertent meeting, albeit one where there is a failure to have a physical quorum at a noticed meeting place. Simultaneous e-mails sent to a quorum of a public body by a member discussing, proposing action on, or announcing how one will vote on a matter within the jurisdiction of the body would constitute an improper meeting. Sequential e-mail communications among members of a public body similarly should not be used to circumvent the public meeting requirement. For example, e-mail among a quorum of members of a public body in a manner that does not constitute contemporaneous discussion or deliberation and does not involve matters over which the body has supervision, control, jurisdiction, or advisory power does not technically constitute a meeting under the Right-to-Know law. E-mail discussions of a quorum concerning matters over which the public body has supervision, control, jurisdiction, or advisory power would run counter to its spirit and purpose.
4. Unless exempted from the definition of “meeting” under RSA 91-A:2, I, or by another statute, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with, the provisions of RSA 91-A:2-a, I. *See e.g.*, RSA 363:17-c (making Public Utility Commission deliberations exempt from the Right-to-Know law).

#### B. Not a Meeting

1. Chance or social meetings, neither planned nor intended for the purpose of discussing matters relating to official business, and at which no deliberations are conducted and no decisions are made, are specifically exempt from the open meeting requirement. The Right-to-Know law does not apply to isolated conversations among less than a quorum of individual members outside of public meetings, unless the conversations were planned or intended for the purpose of discussing matters relating to official business and the public entity made decisions during the isolated conversation. *Webster v. Town of Candia*, 146 N.H. 430 (2001). Such meetings may not be used to circumvent the spirit of the Right-to-Know law. Therefore, if official deliberations occur or if decisions are made at such gatherings or if the gatherings occur on a regular basis, a court may determine that they constitute improper “meetings” under the Right-to-Know law. RSA 91-A:2, I(a).
2. Strategy or negotiations with respect to collective bargaining, a caucus of officeholders elected on a partisan basis at a state or municipal general election, and consultation with legal counsel are not meetings. RSA 91-A:2, I(b-d). These statutory exclusions are reinforced by the holdings of *Appeal of Town of Exeter*,

126 N.H. 685 (1985) (collective bargaining), *Society for Protection of New Hampshire Forests v. WSPCC*, 115 N.H. 192 (1975) (consultation with legal counsel) and *Talbot v. Concord Union School Dist.*, 114 N.H. 532, 535-36 (1974) (negotiations between school board and union committee not subject to public Right-to-Know statute although approved agreements are subject to the statute).

3. Consultation with legal counsel is neither a “meeting” under RSA chapter 91-A, nor does it fall within the “non-public” meeting provisions.<sup>6</sup> If a public body is meeting in public session and wants to consult with legal counsel, it should vote on the record to adjourn the meeting. See Appendix B for a model motion to adjourn for the purpose of consulting with legal counsel. Please note, however, if members of the public are not present during an open, public meeting, the public body does not need to move into non-meeting with counsel to preserve the privilege. See *Prof. Fire Fighters of N.H. v. N.H. Local Gov’t Ctr.*, 163 N.H. 613, 615 (2012) (holding meeting minutes containing attorney-client privileged communication may be redacted as “[t]he fact that the meeting occurs in a public place does not destroy the privilege, if no one hears the conversation.”). If the public body intends to reconvene the public meeting, it should vote to temporarily adjourn the meeting for the purpose of consulting with legal counsel, giving notice to those present that the meeting will be reconvening. Everyone except the members of the public body should be excluded from the room when any consultation with legal counsel occurs. Minutes are not required or appropriate for consultation with legal counsel. Consultation with legal counsel should be limited to discussion of legal issues. Deliberation about the matter on which advice is sought may not occur during consultation with legal counsel. The public body must reconvene and, unless a statutory exemption allowing deliberation in non-public session exists, conduct deliberation in public session.

To constitute consultation with counsel, there must be a contemporaneous exchange of words and ideas between the public body and its attorney (e.g., physically present, telephonically, video-conference, etc.). A public body may not (a) move into non-meeting merely to discuss the contents of legal documents or advice previously provided by counsel or (b) close a meeting whenever its discussion turns to advice received from its attorney. *Ettinger v. Town of Madison Planning Bd.*, 162 N.H. 785, 789–92 (2011). However, discussion of legal advice in public session may constitute an inadvertent waiver of the attorney-client privilege if members of the public are present during the discussion. Public bodies are encouraged to consult with legal counsel prior to making a decision regarding waiver of the privilege.

---

<sup>6</sup> Note however that RSA 91-A:3,II(e) allows consideration or negotiation of pending claims or litigation in certain circumstances.

C. Notice – RSA 91-A:2<sup>7</sup>

When a public body intends to convene a meeting, notice must be given as follows:

1. Regular Notice

- a. Either of the two following forms of notice is proper under the Right-to-Know law:
  - (1) Notice of the time and place of any meeting (including non-public sessions) shall be posted in two appropriate places 24 hours prior to the meeting, excluding Sundays and legal holidays. RSA 91-A:2, Notices should be posted where people are likely to see them, such as on the public body's website<sup>8</sup>, the location where the checklist or town warrant is posted, the agency's office lobby or front door, and the State House or Town Hall bulletin board; or
  - (2) Notice of the time and place of the meeting shall be printed in a newspaper of general circulation in the city or town at least 24 hours prior to the meeting, excluding Sundays and legal holidays.
- b. If the body decides to go into non-public session during an open meeting, the notice for the open meeting will suffice. If both public and non-public sessions are planned in advance, the notice should so state.
- c. The Right-to-Know law explicitly requires that a notice of the meeting of a public body include the time and place of the meeting. While not required under the Right-to-Know law, it is generally appropriate that the notice include or be accompanied with a brief list of the planned agenda items and a general notice that other matters within the public body's jurisdiction may be considered. Other law may impose requirements that notices of certain hearings and meetings where particular actions may be taken include specific additional information. Members of a public body should maintain familiarity with these additional notice requirements and consult with legal counsel as to the proper form of a meeting notice when uncertainty exists.
- d. Individual notice may not be necessary where particular individuals are affected so long as notice is proper as described above. *See Brown v. Bedford School Bd.*, 122 N.H. 627, 631 (1982) (under the Right-to-Know law probationary teachers not entitled to individual notice of public meeting at which teachers' terminations were on the agenda where public notice was otherwise proper).

---

<sup>7</sup> Effective December 1, 2012, the General Court repealed RSA 91-A:2-b "Meetings of the Economic Strategic Commission to Study the Relationship Between New Hampshire Businesses and State Government by Open Blogging Permit."

<sup>8</sup> Note that only one of the two required postings can be on the internet.

- e. Additional notice may not be necessary for continuation of public meetings. *See Town of Nottingham v. Harvey*, 120 N.H. 889, 894–95 (1980) (recess of a public zoning meeting until a later date without notice of the second date did not violate Right-to-Know law). When practical, posting notice of meetings that are to be reconvened supports the spirit and objectives of the Right-to-Know law.

## 2. Emergency Meeting Notice Procedure

- a. This method of notice may be utilized if the chairperson or presiding officer of the public body decides that an emergency exists and that immediate action is imperative. RSA 91-A:2, II. *See* Section D, 3 below.
- b. Notice shall be made by whatever means are available to inform the public about the meeting. RSA 91-A:2, II. For example, notice may be given over the radio, the body may post notice, and/or may notify by telephone people known to be interested in the subject matter of the meeting. The nature of the emergency will dictate the type of notice which can be given. In any event, a diligent effort must be made to provide some sort of notice and those efforts should be documented.
- c. In the event an emergency meeting is required in an adjudicative proceeding (*see* RSA 541-A:I, I), notice must be provided to all parties unless the body possesses authority to issue an *ex parte*<sup>9</sup> order in the case at hand.
- d. The minutes of the meeting must clearly spell out the need for the emergency meeting. RSA 91-A:2, II.

## 3. Notice of Legislative Meetings

Notice of legislative committee meetings shall be made in accordance with the Rules of the House of Representatives and the Rules of the Senate, as appropriate. *See Hughes v. Speaker of the N.H. House of Representatives*, 152 N.H. 276, 278 (2005) (issue of whether Speaker of the House violated Right-to-Know law by excluding a Representative from meetings of conferees was a nonjusticiable (not appropriate or proper for judicial consideration or resolution) political question); *see also Baines v. NH Senate President*, 152 N.H. 124, 130 (2005) (authority to adopt procedural rules for passing legislation is demonstrably committed to the legislative branch by Part II, articles 22 and 37 of the New Hampshire Constitution).

## 4. Broader Access

---

<sup>9</sup> An order issued on behalf of one party without hearing from other parties.

A municipal charter, ordinance, or rule or guideline adopted by a public body may require broader public access to meetings than what the Right-to-Know law requires. If such charter provisions, guidelines, or rules of order have been adopted and they are more broad (strict), their provisions shall take precedence over the provisions of the Right-to-Know law. RSA 91-A:2. The Right-to-Know law establishes minimum requirements; public bodies must comply with more stringent requirements established by other law.

#### 5. Effect of Failure to Observe Notice Requirements

Failure to give proper public notice subjects the public body to possible judicial sanctions, including an order declaring the meeting invalid, an order enjoining the public body's actions or practices, and/or an order assessing legal costs and fees. RSA 91-A:7 and 8; *see also* Section V (Remedies) of this Memorandum.

#### D. Meeting Procedures

Meetings of public bodies subject to the Right-to-Know law are open to the public unless the body is authorized to hold a non-public session. RSA 91-A:2. Any person may attend an open meeting. The public's right to attend a meeting established by the Right-to-Know law does not convey a right to speak or participate. Other laws may require that the public be afforded some opportunity to speak at public hearings or certain other meetings of public bodies. Many public bodies voluntarily establish appropriate regulated public comment periods at some meetings; however, this is not required by the Right-to-Know law.

##### 1. Member Participation and Attendance at Meetings

- a. Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice. RSA 91-A:2, III(b).
- b. A member of the public body may participate in a meeting other than by attending in person at the location of the meeting only when attending in person is not reasonably practical. RSA 91-A:3(a). The reason for participation from some place other than the location of the meeting shall be stated in the minutes of the meeting. RSA 91-A:2, III(a).
- c. Each member participating remotely, whether by phone, electronically, or otherwise, must be able to simultaneously hear each other member and speak to each other member during the meeting. The member participating remotely must also be audible or otherwise discernible to the public in attendance at the meeting's location. RSA 91-A:2, III(c). One practical solution is participating by telephone, provided there is a speaker phone used in the meeting room that can be heard by the public.

- d. Any member participating remotely must identify all other persons present at the place from which the member is participating. RSA 91-A:2, III(c).
- e. A member participating in a meeting remotely is deemed to be present at the meeting for purposes of voting.
- f. All votes taken during a meeting in which any member participates remotely shall be by roll call vote. RSA 91-A:2, III(e). The Right-to-Know law does not explicitly require that every roll call vote be recorded member by member in the minutes. However, compliance with the roll call requirement should be documented.

## 2. Basic Meeting Requirements

- a. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern the meeting discussion contemporaneously at the meeting location specified in the meeting notice. RSA 91-A:2, III(c).
- b. RSA 91-A:2, III(c) explicitly requires that when a member is participating remotely each part of a meeting required to be open to the public shall be as audible or otherwise discernible to the public as it would be if all members were participating in person.

Generally, a public body should plan to hold meetings in a space that is accessible to persons with disabilities and that will accommodate any reasonably anticipated public attendance. If necessary, the body should make provisions for amplifying the discussions between members and parties presenting to the public body. While outside the scope of this Memorandum, public bodies should consult with legal counsel to ensure the body is prepared to meet the requirements of the Americans with Disabilities Act should any person require accommodation.

If extraordinary unanticipated public attendance results in some members of the public being effectively denied the opportunity to attend the public meeting, it may be necessary to reconvene the meeting in a more suitable space. For example, if a crowd in excess of the fire code limit for the meeting room shows up and others wishing to attend are limited to hallways or other rooms where they can neither hear nor see, the right of public access is put in question. If practical, move the meeting to a sufficiently large nearby space. Ensure those arriving at the location shown on the meeting notice are informed of the new meeting location. If moving is impractical, consult with legal counsel before proceeding with a meeting where members of the public are present who are being denied the opportunity to attend due to space limitations.

- c. Any person shall be permitted to use recording devices including, but not limited to, tape recorders, cameras, and videotape equipment at public meetings. RSA 91-A:2, II; see *WMUR v. N.H. Dept. of Fish and Game*, 154 N.H. 46 (2006) (prohibiting television cameras at a hearing on issuance of a hunting and fishing license because the presence of cameras would impair the applicant's ability to present his case violated the Right-to-Know law where the applicant had not established that he had a due process right to a hearing without cameras present).<sup>10</sup> It is recommended that public bodies whose public meetings are regularly recorded by members of the public establish uniform procedures that allow for a reasonable opportunity to record while not interfering with or disrupting the conduct of the meeting.
- d. No vote in a public meeting may be taken by secret ballot except for:
  - (1) Town meetings and elections;
  - (2) School district meetings and school district elections; or
  - (3) Village district meetings and elections.
- e. Meeting minutes must be kept and must include:
  - (1) The names of the members present;
  - (2) The names of persons appearing before the body;
  - (3) A brief description of each subject discussed; and
  - (4) A description of all final decisions made, including all decisions to meet in non-public session. "Final decisions" include actions on all motions made, even if the motion fails. A clear description of the motion, the person making the motion, and the person seconding the motion should also be included.
- f. Minutes are not required to include stenographic or verbatim transcripts. *DiPietro v. City of Nashua*, 109 N.H. 174 (1968). However, there may be other statutes which require a verbatim record for certain types of public proceedings. *E.g.*, adjudicative hearings conducted under RSA 541-A:31, VII.
- g. Minutes are a permanent part of the body's records and must be written and open to public inspection not more than five business days after the meeting.<sup>11</sup> RSA 91-A:2, II. There are no exceptions to this requirement for

---

<sup>10</sup> The Court did not reach the question of whether the right to due process, if it had been established by the person seeking a license, would outweigh the right to use television cameras at a public hearing. Television cameras should generally be allowed at public meetings and hearings.

<sup>11</sup> RSA 641:7 reflects the importance of keeping minutes which accurately record the proceedings before the public body. This statute imposes a misdemeanor penalty upon persons who "tamper with public records or information." A person is guilty of this crime if he or she:



the minutes of open meetings. Draft minutes can be used to satisfy this requirement, until the final minutes are completed and accepted, but they must be clearly marked "Draft."

- h. Each public body should adopt a uniform character for its minutes and decide, outside the context of any controversial issue, how detailed its minutes will be. Many public bodies choose to keep minutes that go beyond the requirements of the Right-to-Know law and include a summary of discussion or comments on most agenda items. While this practice is generally appropriate, the additional information voluntarily included in minutes is subject to the same disclosure requirements as the information required by the Right-to-Know law. *Orford Teachers Ass'n v. Watson*, 121 N.H. 118, 121 (1981) (Court rejected the contention that "public records" are only those records required to be kept by law) (citing *Menge v. Manchester*, 113 N.H. 533, 536-37 (1973)).

### 3. Emergency Meetings

- a. "Emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. RSA 91-A:2, II.
- b. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body. The facts upon which that determination is based shall be included in the minutes of the meeting. RSA 91-A:2, III(b).
- c. In an emergency there still must be a location specified in the notice which is available for public attendance. Therefore, as a practical matter, most emergency meetings will involve at least one member present at the public location. Other members may attend electronically, provided the requirements described herein are met.

### 4. Characteristics of Non-Public Sessions<sup>12</sup>

- a. A body may exclude the public from a meeting only if the body votes, by roll call vote, to adopt a motion for a non-public session. The motion should state the statutory basis for the non-public session and must be approved by the

- 
- I. Knowingly makes a false entry in or false alteration of anything belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government; or
  - II. Presents or uses anything knowing it to be false, and with a purpose that it be taken as a genuine part of information or records referred to in paragraph I; or
  - III. Purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such thing. RSA 641:7.

<sup>12</sup> Chapter 217, Laws of 1991, deleted the term "executive session" throughout RSA chapter 91-A and replaced it with the term "non-public session."

majority of the members present. The vote to go into non-public session is taken at the public meeting and recorded in the minutes of the public meeting that will be available to the public. The minutes should explicitly identify each voting member and how he or she voted on the motion to enter non-public session.

The allowable grounds for holding a non-public session are limited to the consideration of the following matters:

- (1) The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him, unless the employee affected (1) has a right to a meeting pursuant to statute, rule or applicable law; and (2) requests an open meeting in which case the request shall be granted. RSA 91-A:3, II(a).

Note: The “right to a meeting” provision was added by Laws of 1992, Chapter 34:1, and effectively replaces the holding in *Johnson v. Nash*, 135 N.H. 534 (1992). Any person with a right under some other law to a public hearing or meeting would be entitled to personal notice of that meeting according to the law or contract that grants the right. Where a right to a public hearing and notice exists, generally that right attaches when the public body is considering imposing discipline or discharging the employee. It would generally not apply to non-public sessions held to discuss a complaint when initially received or to decide whether to direct that a complaint be investigated by the appropriate authority.

Public bodies that are hiring authorities with disciplinary and discharge authority that also provide open public comment periods at meetings should consult with legal counsel and establish a procedure to follow when a member of the public makes a complaint about a specific employee.

Nonetheless, if the body plans to hold a non-public “hearing” on the discipline, compensation or promotion of a particular employee, it should state this intention in the notice sent to the parties, and if a right to have that meeting held in public is granted by some legal authority (law, ordinance, contract), include in the notice a statement of the employee’s right to an open meeting.

- (2) The hiring of any person as a public employee. RSA 91-A:3, II(b). Note: Filling a vacancy of an elected or appointed public office is an “appointment” and is not the “hiring” of a public employee. Interviews and deliberation on filling a vacancy in an elected office therefore must occur in public session. *Lambert v. Belknap County Convention*, 157 N.H. 375 (2007).
- (3) Matters which, if discussed in public, likely would adversely affect the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting.<sup>13</sup> This exception shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant. RSA 91-A:3, II(c).
- (4) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, likely would benefit a party or parties whose interests are adverse to those of the general community. RSA 91-A:3, II(d).
- (5) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body or agency or any subdivision thereof, or against any member thereof because of his or her membership in such body or agency, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any body, board or agency for the purposes of this subparagraph. RSA 91-A:3, II(e). However, note that RSA 91-A:3, II(c) makes a non-public session proper if the tax abatement is sought based on inability to pay or poverty.
- (6) Consideration of applications by the Adult Parole Board under RSA chapter 651-A. RSA 91-A:3, II(f).
- (7) Consideration of security-related issues bearing on the immediate safety of personnel or inmates at the county correctional facilities by facility superintendents or their

---

<sup>13</sup> In *Appeal of Plantier*, 126 N.H. 500 (1985), the New Hampshire Supreme Court ruled that the New Hampshire Board of Registration in Medicine could not rely on this section to hold a closed disciplinary hearing to protect the reputation of a complaining witness where another more specific statute entitled the physician complained against to an open hearing if he requested one.

designees. RSA 91-A:3, II(g). A county correctional superintendent acting in his or her executive capacity is not a public body subject to the public meeting requirements of the Right-to-Know law. This provision applies to meetings of the superintendent with the County Commissioners or any other public body for the purposes stated.

- (8) Consideration of applications by the Business Finance Authority under RSA 162-A:7-10 and RSA 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application. RSA 91-A:3, II(h).
  - (9) Consideration of matters relating to the preparation for and carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials for the purpose of thwarting a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. RSA 91-A:3, II(i).
  - (10) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.
- b. Unless a specific statute authorizes a body to deliberate in non-public session on a particular question, public bodies must deliberate in public. RSA 91-A:3, I(a).
  - c. Any motion to go into non-public session must include a specific reference to an appropriate section in RSA 91-A:3, II, as listed above. If the body is relying on other law, a reference to that law should be included in the motion and minutes. *See, e.g.*, RSA 21-G:31, V.
  - d. A public body may take final action in a non-public session on matters which may properly be considered in non-public sessions.
  - e. Minutes of non-public sessions:
    - (1) The roll call vote to adopt a motion to go into non-public session, and the statutory basis for doing so, must be recorded in the minutes of the public meeting.

- (2) Minutes of non-public sessions are required. These minutes (including any decisions reached by the body) must be disclosed within 72 hours unless two-thirds of the members present determine that divulgence of the information would:
  - (i) Likely adversely affect the reputation of any person other than a member of the body or agency itself;
  - (ii) Render the proposed action ineffective; or
  - (iii) Pertain to terrorism.
- (3) A vote by two-thirds of the members present not to divulge the information is a “decision” that must be recorded in the minutes, together with the reasons for non-disclosure. Any decision on the matter under consideration must be recorded in the minutes, although it need not be disclosed until a majority of the members determine that the circumstances set forth in (i), (ii), or (iii) above no longer apply.

*See Appendix B, Model Nonpublic Session Procedures/Motions.*

# *SAMPLE*

XXX Board/Commission/Committee  
XXXXX XX, 2022  
X:XX pm  
Nowak/Wheelwright Room  
10 Front Street, Exeter, NH 03833

## AGENDA

1. XX
2. XX
  - a. Xx
3. XX
  - a. Xx
  - b. Xx

XXX, Chair  
Board/Commission/Committee

Persons may request an accommodation for a disabling condition in order to attend this meeting. It is asked that such requests be made with 72 hours notice.

AGENDA SUBJECT TO CHANGE



# TOWN OF EXETER, NEW HAMPSHIRE

10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX 777-1514

[www.exeternh.gov](http://www.exeternh.gov)

According to New Hampshire Revised Statutes Annotated, Chapter 508:17, "Volunteers; Non-Profit Organizations; Liability Limited" Makes volunteers, such as yourself, "...immune from civil liability in any action brought on by the basis of any act or omission resulting in damage or injury to any person if:

- (a) The non-profit organization or government entity has a record indicating that the person claiming to be a volunteer for such organization or entity; and
- (b) The volunteer was acting in good faith and within the scope of his official functions and duties within the organization; and
- (c) The damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the volunteer".

Please note that all actions you may take on behalf of the \_\_\_\_\_ should be at the direction of the Board/Committee/Commission Chairperson, and in conformance with duties authorized by applicable State Statutes (RSA 91-A Right to Know) and the rules and regulations of the Town of Exeter.

The above statement was read and acknowledged this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Appointee

\_\_\_\_\_  
Printed Name of Appointee

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_ copy given to Volunteer