

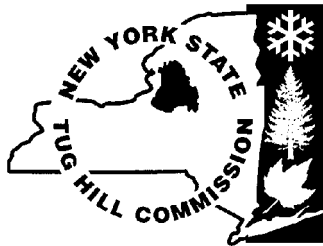
Conducting Public Meetings and Public Hearings

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES



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“Local Government Topics” is a series of papers giving technical guidance on steps to be followed for a variety of problems, issues, and concerns that small local governments in New York State typically face. Other papers in the series are available from the Tug Hill Commission at the above address and phone number.

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INTRODUCTION

Nearly all of a municipal board's work is performed in meetings or hearings open to the public. Such meetings are subject to several state and local procedural requirements, as well as the political climate of the locality. Taken together, these elements can confuse, intimidate and stymie even the most experienced of boards. For this reason, it is the intent of this paper to educate and refresh municipal officials on several of the procedures governing public meetings and hearings. Only with a working knowledge of state procedural requirements will municipal officials be free to focus on the current issues and political needs of their communities.

The Tug Hill Commission wishes to express its gratitude to the New York State Committee on Open Government and its Executive Director, Robert Freeman, for their assistance in the preparation of this paper.

PART ONE: PUBLIC MEETINGS

THE OPEN MEETINGS LAW

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it. (Public Officers Law, Sec. 100)

This legislative declaration clearly sets forth the intent of the Open Meetings law, and the State's idealistic goals for local government. The Open Meetings Law was designed to accommodate public observance of the workings of government and to prevent the deliberate exclusion of the public from the governmental process. To local governments, this means the need to examine their processes in order to determine whether the public is unduly excluded. This self-examination may also need to address perceptions of public exclusion, in addition to exclusions in fact.

What is an Open Meeting — The definition of a “meeting” is, “the official convening of a public body for the purpose of conducting public business.”¹ A public body, as referred to above, is “any public entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation ... or committee or subcommittee or other similar body of such public body.”²

For towns and villages, these definitions mean that any group organized to serve a public purpose, other than charity organizations, must make all its meetings open to the public and must give notice of such meetings, unless the meeting will qualify as an executive session.³

As a result, the following organizations in towns and villages are subject to the requirements of the “Open Meetings Law:” Town Boards, Village Boards, Planning Boards, Zoning Boards of Appeal, Volunteer Fire Companies, Boards of Fire Commissioners, Boards of Trustees of volunteer fire companies, Municipal Water Boards, School Boards, and the committees and subcommittees consisting of members of the above organizations.⁴

The Open Meetings Law applies to all official meetings of a public body. Any time a public body gathers for the purpose of conducting public business, the meeting must be convened open to the public, regardless of whether the public body intends to take action.⁵ Characterizing meetings as “study sessions” or other similar wording does not change the essential nature of the gathering, nor does it remove the requirement for the meeting to be open to the public.⁶ The Open Meetings Law does not apply to social gatherings or chance meetings, even where some item of public business may be mentioned in passing. It also does not apply whenever less than a quorum of the members of a public body get together, since no substantive public business may be done under those circumstances.⁷

Who May Participate — An “open meeting” is a meeting of a public body for which adequate notice has been given to the news media and to the members of the general public, and at which the media and the members of the general public are permitted to attend, observe, and listen as the public body conducts public business.⁸ An “open meeting” is not a meeting where the local public body is required to listen to public fact, opinion, or debate.⁹ The right to participate at an “open meeting” may be limited to members of the public body. However, a public body may permit public participation and may provide rules for participants to follow at public meetings.¹⁰ Included among the requirements for a meeting to be open to the public is the necessity that “all reasonable efforts” be made to ensure that the meeting hall is accessible to the physically handicapped.¹¹

Executive Sessions — An “Executive Session” is a portion of an open meeting during which the public may be excluded.¹² Although public bodies have the authority to exclude the public from some meetings, this authority is limited to those purposes enumerated in the Open Meetings Law.¹³ A public body may only go into executive session if the matters to be discussed:

- will imperil public safety if disclosed;
- may disclose the identity of a law enforcement agent or informer;
- relate to a current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- regard proposed, pending, or current litigation;
- regard collective negotiations pursuant to Article 14 of the Civil Service Law;
- involve the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion,

demotion, discipline, suspension, dismissal, or removal of a particular person or corporation;

- pertain to the preparation, grading, or administration of examinations; and
- relate to the proposed acquisition, sale, or release of real property, or the proposed acquisition, sale, or exchange of securities held by a public body, but only when publicity would substantially affect the value thereof.¹⁴

“These are the only subjects that may be discussed behind closed doors; all other deliberations must be conducted during open meetings.”¹⁵ A public body may only go into executive session following a “majority vote of its total membership, taken in an open meeting.”¹⁶ Any motion made calling for an executive session must be made at an open meeting, must identify the subject matter to be discussed and must be adopted by a majority of a public body’s total membership.¹⁷

Since most of the purposes above do not pertain to municipal boards or will only arise on rare occasions, town and village boards should seldom need to go into executive session.

Where a public body makes an official decision or action during an executive session, it must record or summarize that action and “the date and vote thereon” in its minutes.¹⁸ If no votes are taken during an executive session, no minutes need be prepared.

When a public board lets citizens know when they are meeting and the issues to be addressed, they take an important first step in establishing a climate of government based on respect for constituents' judgment. By facilitating public attendance at board meetings, the board can ensure the circulation of firsthand information about why it acted as it did, and prevent the spread of misinformation. Although concerned citizens may not have been permitted to participate in the debate of a particular issue, nor agree with the board's decision, they will however have had the opportunity to witness the decision-making process, and to hear the true rationale behind the decision.

PREPARING A PUBLIC NOTICE

The Open Meetings Law requires that notice of the time and place of all meetings of a public body be given prior to every meeting. The content of such notice must include reference to the time and location of the meeting.¹⁹ It is recommended that the notice include the name of the public body that will be meeting, and a name of a contact person if additional information is needed. A notice need not include an agenda,²⁰ nor does it have to be published as a legal notice.²¹

The main variable among notice requirements, is the length of time the notice must precede the meeting. Following is a list of notice time length requirements for various meetings:

1. Meetings scheduled a week or more in advance must be preceded by notice given the public and the news media not less than 72 hours prior to the meeting;²²

2. Meetings scheduled less than a week in advance be given to the “extent practicable” at a reasonable time prior to such meeting;²³
3. Notice of town and village hearings on a preliminary budget must be published at least five days in advance of the scheduled hearing;²⁴
4. Notice of village hearings, not otherwise prescribed in the law, must be published at least 7 days in advance of the hearing;²⁵
5. Special notice requirements may be necessary for specific town and village subjects, those requirements can be found in that section of law pertaining to the proposed action.²⁶

If inadequate notice is given, the municipality risks the chance that an aggrieved person will challenge its validity in court. This raises the possibility that any or all actions taken by the public body at the meeting or hearing may be invalidated.²⁷ The enforcement provision of the Open Meetings Law does not permit a judge to automatically throw out a decision made at an inadequately noticed meeting. Rather it protects against invalidating decisions solely on the grounds of an unintentional failure to comply with the notice requirement.²⁸

PLANNING A PUBLIC MEETING

Public meetings are more effective if they are planned properly and organized several days in advance. The following questions should be considered in advance when planning for meetings.

- P** Is a meeting necessary? Why meet?
- P** Who should be involved in the meeting?
- P** What subjects must be covered? Should other subjects be considered at this meeting?
- P** What resources will be necessary for conducting this meeting?
- P** What kind of ground rules will be needed?
- P** Is a public hearing required to discuss any of the subjects which must be covered?

NOTE: Adoption or amendment of village laws and town ordinances, rules, and regulations require a public hearing. [Turn to the “Public Hearing” section of this paper.]

ORGANIZING FOR THE MEETING

Time spent organizing in advance of meetings can improve the quality of the meeting, and facilitate the proper conveyance of information to the public. Discussions at well planned meetings are usually more focused, resulting in shorter meetings. In addition, fewer meetings may be needed to finish business because the right information and the right people are brought together the first time. Following are a few steps and questions to consider when organizing a meeting:

- 1. Preparing an Agenda** — Making a list of topics for discussion, planning a specific amount of time for each item, and distributing the agenda in advance of the day of the meeting helps board members to think about matters in advance.

2. **Inviting Experts and Public Officials**— What outside experts need to be invited for assistance on the scheduled topics? An attorney? An engineer? County or state planners? Should public officials from other units of government be invited to attend?
3. **Preparing Background Information** — What information must be prepared before the meeting? Who will prepare it for the board?
4. **Distributing Information in Advance** — Distribute needed information to members in advance of the meeting so they can become familiar with the matters they will need to decide on.
5. **Space for the Meeting** — What kind of meeting space is required? Who will arrange for the facility, open and set it up in advance?
6. **Special Equipment** — Arrange for equipment such as microphones, amplifier/speaker systems, tape recorders, projectors, power cords, equipment stands, charts, markers, and other items to be available as needed. Where are the electrical outlets needed to operate power equipment?
7. **Other Needs** — Permission to use the meeting space? Key to open the meeting room? Anything else?
8. **Confirm that Members Will Attend** — Call board members to confirm they will attend the meeting.
9. **Review Ground Rules** — Board members each review the ground rules needed to run the meeting.²⁹ The board's by-laws should be checked and the procedures required therein should be followed during the meeting. Familiarity by all participants with these rules makes business go faster.

AT THE MEETING

Many of the steps outlined below are probably well known to the experienced board member, but may not be known to newer members. This section was designed to help this latter group become familiar with the order of a typical meeting.

1. **Setting Up**— The chairman or someone designated by him should plan to arrive at the meeting place a few minutes ahead of time to open the meeting room and to (re)arrange the furniture, set up special equipment, welcome experts, and greet members of the public.
2. **Roll Call and Quorum** — When the members of the public body have arrived and the time has come to open the meeting, the chairman should call the meeting to order. Roll call of the members is taken, and quorum is confirmed.³⁰ The number of members necessary to have a quorum is a majority of the total membership notwithstanding absences or vacancies. If a quorum is not present, no official business can be done until more members arrive.³¹ However, informal discussion can take

place, or the meeting can be adjourned until a specific future date if a quorum of the members is not present.

3. Opening Statement — If a quorum is present, the chairman makes an opening statement, welcoming the public and any invited guests to the meeting, and explains the rules to be followed during the meeting.

4. Order of Business— The chairman guides the meeting through the order of business prescribed by the organization's by-laws. A typical order of business might be:

- P reading of the minutes of the previous meeting;³² amendment and approval;
- P hearing the reports of standing committees;
- P reports of select committees;
- P consideration of unfinished business;
- P consideration of new business;
- P approval of bills for payment;
- P setting the time and place for the next meeting;
- P setting the preliminary agenda for the next meeting;
- P adjournment.

5. Follow up— After the meeting, minutes will need to be prepared and a draft distributed for comments and corrections. A final agenda should be set up for the next meeting. Assignments to get information or to follow up on action agreed to at the meeting should also be made. The cycle of giving notice and setting up the next meeting begins anew.

PART TWO: PUBLIC HEARINGS

HEARINGS REQUIRED BY LAW

New York State Law recognizes that towns and villages have home rule powers to enact local laws and ordinances governing their own property and affairs. This power is limited to certain functions. When local governments must enact laws and ordinances in areas not considered a part of home rule power, state law controls and guides the functioning of town and village governments. For this reason, legal requirements for public hearings may be found in General Municipal Law, Municipal Home Rule Law, Local Government Finance Law, Town Law, and Village Law, as well as in local laws and ordinances adopted by individual towns and villages. If there is any doubt about public hearing and notice requirements associated with town or village business, public officials should contact the municipal attorney for advice.

Section 20 of the Municipal Home Rule Law regarding the procedures for the adoption of local laws by a legislative body requires municipalities, including towns and villages, to hold a public hearing on every proposed local law prior to its adoption.³³ This section applies where a town or village has the authority to proceed under home rule powers to adopt laws or ordinances.³⁴

A municipality may enact a local law prescribing at least a three-day minimum notice period to be given of public hearings on subsequent local laws.³⁵ If no such law has been enacted, a five-day minimum notice period is required, a longer notice requirement may be adopted if a municipality chooses to do so.³⁶ This notice period is long enough to meet the requirements of the state's open meeting laws as discussed in the *Guide to Land Development*.³⁷

What Are Public Hearings? — Public hearings are open meetings conducted by local boards to gather information from the public, and to survey public opinion as part of a local law-making or rule-making process.³⁸ Unlike public meetings at which the citizenry may only observe the members of the municipal body as they conduct business, at a public hearing the citizens are encouraged to speak and comment on the specific subjects addressed at the hearing. Usually such public discussion focuses on public support for or opposition to a particular action considered by the board. Participation by the public is governed by rules of procedure established by the board prior to holding the hearing.

Special Requirements Applicable to Villages — Where a village is adopting local laws under powers granted to it by the state (through the Village Law, the Local Government Finance Law, or the General Municipal Law, for example), it must follow those notice of hearing requirements set forth in that specific law.³⁹ Where notice of hearing requirements are not specified in state or local laws governing the subject of the proposed local law, Section 21-200 of the Village Law provides that a public hearing be held subject to the following requirements:

- P A notice of the public hearing must be published in the official village newspaper, or if there is none, in a general circulation newspaper in the village; and
- P Such notice must be given at least seven days in advance of the public hearing.⁴⁰

Section 21-2102 of the Village Law makes specific requirements for holding hearings by the board of trustees where other sections of state or local law do not govern the type of hearing being held.⁴¹ Below are the requirements of Village Law §21-2102 for conducting a hearing:

- P the hearing shall be held at the time and place designated in the notice;
- P the board conducting the hearing shall have minutes taken of the proceedings;
- P the hearing may be adjourned by the board conducting the hearing provided that the adjourned date is announced at the hearing (if this is done, a new public notice need not be prepared to announce the continuation);
- P decisions based on the hearing must be made within 62 days after the hearing is concluded; and
- P the original copy of the decision, copies of the notice and hearing, affidavits of publication of the notice, written objections received at the hearing, signed testimony and minutes of the proceedings taken on the hearings must be filed by the board of trustees with the village clerk within five days after the decision is rendered.⁴²

Special Requirements Applicable to Towns — Although the notice of hearing requirements for Towns are similar to those required of villages under Village Law section 21-2100, there are

some slight differences that must be observed. Where a town is enacting, amending, or repealing ordinances, rules, and regulations outside the scope of its home rule power, and where specific notice and hearing requirements are not found in state statutes or in local ordinances governing the subject of its ordinance, rule, or regulation, the provisions of Section 130 of the Town Law apply.⁴³ Town Law section 130 provides that a public hearing be held subject to the following requirements:

- P A notice of the public hearing must be published in at least one newspaper circulating in the town; and
- P Such notice must be given at least once, ten days in advance of the public hearing.⁴⁴

Unlike Village Law, Town Law does not have specific requirements for conducting hearings where no other laws govern the type of hearing held. Towns should look to the specific state or local law addressing the issue at the hearing for the requirements for conducting a hearing.

Contents of a Public Notice — A notice for a public hearing on the adoption of a local law or ordinance must include:

- P the time and place of the meeting; and
- P a brief statement of the subject or purpose of the law (this statement does not have to include the full text of the proposed local law).⁴⁵

It may be helpful to also include with such notice:

- P the name and telephone number of the person who can provide additional information about the hearing;
- P where a copy of the full text of the proposed law can be obtained;
- P information on how individuals may testify at this hearing;
- P a suggestion or request that persons testifying at the hearing provide written copies of their testimony.

CONDUCTING A PUBLIC HEARING

Following is a list of steps and suggestions to help in preparing for a public hearing. These items relate to the adoption of a resolution proposing a law, ordinance, rule or regulation.

1. Determine Hearing and Notice Requirements — The board should check with its municipal attorney in order to determine what hearing and notice requirements must be satisfied, as well as the possible necessity of sending special notices to specific individuals, other municipalities, boards or other levels of government affected by the proposed action.

2. Adopt a Resolution — The board should adopt a resolution proposing the law, ordinance, rule or regulation in question. The resolution should appear in the minutes of the meeting, and should

state the date, time, place and subject of the hearing. The board should also instruct the clerk to prepare and place the required public notice.⁴⁶

3. Give Public and Special Notice — Legal notice of the hearing should be published in the official newspaper, if there is one, or in a newspaper having general circulation within the town or village, as required by law.⁴⁷ A public notice should be posted on the official town or village bulletin board and in other local places as required by the Open Meetings Law, or applicable local laws and ordinances. It is advisable that the clerk file an affidavit of publication after publishing the notice, in order to prove that the request for publication was made. The news media should be notified of the public hearing as required by the Open Meetings Law, and special notice should be given to affected individuals and governmental bodies.⁴⁸

4. Collect Information — The board should designate the clerk or someone else to serve as a contact person for the collection of further information about the public hearing. That person collects information, maps, records, and other items for public examination prior to the hearing.

5. Utilize the Municipal Attorney — The municipal attorney should be consulted as to whether an official transcript of the proceedings is required. If so, the board should arrange for a court stenographer to record and transcribe the official proceedings.⁴⁹ If the board determines that the hearing will require the services of the municipal attorney, it should arrange for the attorney to attend the hearing. If special legal procedures must be followed at the hearing, the board may want to request the municipal attorney to conduct the hearing.

6. Determine the Need for Expert Witnesses — A determination should be made by the board as to the need for having expert witnesses attend and give testimony at the hearing. If expert witnesses are needed, appropriate arrangements to secure their services should be made.

7. Arranging Space and Equipment — Space, furnishings and equipment needs should be assessed as soon as possible, and arrangements made thereto according to the following needs:

- P amount of space;
- P number of chairs and tables;
- P lectern for the witnesses to testify from (Having a single location for the witnesses is important if the hearing is being tape recorded.);
- P special equipment, such as microphones, amplifiers, loudspeakers, power cords, easels, chart paper, slide projectors or tape recorders;
- P water, pitchers and cups available and located conveniently for witnesses and board members to ease dry throats; and
- P designated person to open the meeting room.

8. Hearing Procedures — Hearing procedures are important for the smooth procession of witnesses and evidence. In advance of the hearing, the board should check with the municipal attorney to determine whether special legal procedures must be followed when conducting the hearing. Those conducting the hearing need to familiarized themselves with those legal procedures and any procedures required by the board's bylaws and those ground rules established for the hearing.

9. Registration of Persons Wishing to Testify — The clerk should take the names of those persons wishing to testify at the hearing. Participants and the public should be invited to sign in as they enter the hearing room. This is especially useful where a record is desired of individuals and groups who are interested in the subject of the hearing. Witnesses should be arranged to testify according to a pre-determined order. It is recommended that expert witnesses and public officials testify first, then persons representing organizations, followed by individuals. An alternative system would follow a first come, first served order, using the sign-in sheet.

10. Opening the Hearing — After the hearing is called to order, the public should be welcomed to the hearing and the members of the board holding the hearing introduced. An opening presentation should be made by or on behalf of the board setting forth the issue at hand, the board's authority for addressing the issue, and why the board is studying the problem. It should also clarify the board's interest in listening to the public's opinion on this issue at the public hearing. The resolution of the board authorizing the public hearing and the affidavit of publication of the official notice should be read into the record of the hearing, and the text of the proposed law, ordinance, rule or regulation should also be entered into the record. This can be done by either reading the full text aloud, or by giving a copy of the text to the person keeping minutes or recording a transcript of the hearing. If read, the content of the law, ordinance, etc. should be summarized for the benefit of the public.

In addition to reading the resolution and the text of the proposed law, the rules of procedure to be followed by the board at the hearing should clearly and simply be stated for the benefit of the public and the witnesses. Such rules should include reference to the order in which witnesses will be called. Explaining the rationale behind the order for calling witnesses helps the public understand and accept the scheduling of witnesses for the hearing process.⁵⁰

11. Accepting Testimony — In addition to accepting oral testimony of witnesses, the board may also want to accept written comments. If written comments will be accepted by the board, it should notify the public as to how many copies will be needed for the board, and if deemed necessary, for distribution to the media and others present at the hearing.

If the board anticipates a large number of witnesses wishing to testify, it may want to limit the time for each witness' testimony. Limiting statements to 3-5 minutes encourages witnesses to be focused and direct, and permits more people to testify. More lengthy comments can be accepted in written form after the hearing is closed. Provisions may be made so that extra time may be given, should the board consider it necessary.

The chairman should call the witnesses in order, and invite them to present written copies of their testimony to the board. When a witness testifies, it is the chairman's responsibility to prevent him/her from straying too far from the subject, to remind the witness to speak clearly or to speak into the microphone and if necessary, to help witnesses overcome nervousness. The chairman should instruct the witness to present his/her testimony to the board, not the public. This will help keep the testimony focused on the issue before the board and prevent the witness from responding to comments from the assembled public. More importantly, the chairman should prevent others from interrupting the testimony.

The board members may want to ask questions of witnesses in order to clarify facts and opinions presented in their testimony. In addition to questioning witnesses, the board may permit members of the public to question witnesses at the hearing. If it does so, the board should be careful not to turn the hearing into a debate. Open debates of public issues tend to raise people's emotional levels, diminish the board's control over the hearing, and tend to discourage some witnesses from testifying.

If witnesses are being called from a witness list, the board will find that some witnesses will elect not to testify on the grounds that their views were expressed by a previous witness. Also, some prospective witnesses will leave the hearing early.

When the list of witnesses is exhausted, the chairman should ask if anyone remaining wishes to be heard, then as time permits, these persons may be invited to speak.

In hearings where certain facts must be established, the chairman may need to ask for further testimony if those facts are not presented. This situation is most likely to arise with a planning board hearing, a zoning board hearing, or other hearings involving a permit.

13. Adjournment — The chairman may adjourn the hearing until a specified future day, place and time. This is most likely to happen if the board lacks the facts it needs to reach a decision, or where the hearing is reaching a late hour or more witnesses desire to be heard. Where the time, place and date of the continued hearing is clearly announced at the first hearing, no additional notice is required for the continuation of the hearing. An example of a statement adjourning a hearing is:

“This hearing stands adjourned until Wednesday, January 10th at 7:30, when the board will reconvene at the town offices.”

14. Closing the Hearing — A public hearing is usually over when all who wish to speak have been heard or when all the facts needed to reach a decision have been assembled. The hearing should be closed by thanking the public and the witnesses for attending and explaining the steps the board will take to use the information gathered to make a decision. The hearing is closed following a motion and a vote thereupon by the board to close the hearing.

The following issues should be considered in advance of the hearing with regard to its closing:

- P who will make the concluding remarks on behalf of the board;
- P how the information collected at the hearing will be used in reaching a decision;
- P when the board will meet to make its decision;
- P what are the legal time constraints on making a decision.

15. After the Hearing — After the hearing, the information received from witnesses must be assembled and minutes prepared. The board will then make its decision based upon the information before it. After the decision is made, the board should notify all involved parties, including any applicants and other concerned municipalities and agencies of the actions taken at or as a result of the hearing.⁵¹

Village boards must file with the village clerk within five days of its decision the following:

- P the original copy of the decision;
- P copies of the hearing resolution and notice;
- P affidavits of publication of the notice;
- P copies of signed testimony;
- P the minutes of the proceedings, and
- P written objections.⁵²

Unlike Village Law, Town Law does not have specific requirements for conducting hearings where no other laws govern the type of hearing held. Towns should look to the specific state or local law addressing the issue at the hearing for the requirements for conducting a hearing.

CONCLUSION

From a legal standpoint, actions taken at meetings where open meeting procedures are not followed as required may not be valid, and those laws and ordinances so enacted may be overturned in court. Fortunately, the goal of most local governments' is service to the community, not the mere avoidance of legal hassles. For this reason, municipal officials should regard open meeting procedures as serving more than just the state's objective for keeping local governments open to the public. They give the public the full opportunity to observe and participate in its own governance; they help to confirm local government's accountability to its constituents; and they assist in the complete airing of public opinion on community issues.

Hopefully this step-by-step guide has clarified the procedures required of the state's Open Meetings Law, the organization of public meetings and hearings, and the reasons why these procedures should be followed.

IF YOU NEED MORE INFORMATION

OPEN MEETINGS

1. For answers to specific questions about open meetings call: Robert Freeman, Executive Director, Committee on Open Government, (518) 474-2518 or -2791.
2. *Your Right to Know*. Available from: Committee on Open Government, New York State Department of State, 41 State Street, Albany, NY 12231.

PARLIAMENTARY PROCEDURE

1. *Parliamentary Procedure — Teach Yourself*. Written by Chester Freeman, Published by Cooperative Extension. \$1.50.
2. *The Meeting Will Come to Order*. Written by Harold Sponberg. Published by Cooperative Extension. \$0.75.

Robert's Rules of Order: This is a standard reference of Parliamentary Procedure. However, it does not closely follow New York State law in a number of subject areas, and Robert's Rules is far more complex than local governments need. The two brief guides mentioned above contain adequate summaries to enable the smooth flow of a meeting.

COMMUNITY DECISION-MAKING

1. *Citizens Advisory Committees*. Information Bulletin 142. Published by Cooperative Extension. \$1.00.
2. *Leader's Guide to Community Action*. Published by Cooperative Extension. \$2.50.
3. *Who Decides? Participants in Community Decisionmaking*. Information Bulletin 53. Published by Cooperative Extension. \$0.15.

PUBLIC HEARINGS

1. *Public Hearings: A Guide to Effective Participation*. Information Bulletin 161. Published by Cooperative Extension. \$0.75.

For publications available from Cooperative Extension write:

Cooperative Extension Distribution Center
7 Research Park, CL
Cornell University
Ithaca, New York 14853

RESOLUTION FOR PUBLIC HEARING

Sample Resolution for Public Hearing on Proposed Ordinance – Towns:

At a regular meeting of the Town Board of the Town of _____, _____ County, New York, held at the Town Hall, _____ Road, in said Town of _____, on the ____ day of _____, 19__, at ____ o'clock __.M., there were:

PRESENT:

ABSENT:

Mr. _____ offered the following resolution and moved its adoption:

W H E R E A S ,

[State the problem here, e.g., “numerous complaints have been received by this Board with reference to persons trespassing on private property located on the shore of _____ in this Town by riding or driving horses thereon without the consent of and contrary to the expressed wishes of the owners of said property], and

WHEREAS, this Board has been requested to pass an ordinance _____ [e.g., prohibiting the said trespassing] for the purpose of protection and preservation of the property of the Town and all its inhabitants and of peace and good order therein,

NOW, THEREFORE, BE IT RESOLVED: That pursuant to Section 130 of the Town Law of the State of New York, a public hearing on a proposed Town Ordinance _____ [state purpose and effect of ordinance, e.g., prohibit trespass to private and public property by the riding or driving of horses on the shore or beach of _____ in said Town] be held on the ____ day of _____, 19__ at ____ o'clock __.M. Eastern _____ Time, at the Town Hall, _____ Road in the Town of _____, New York, and that notice of the time and place of such hearing describing in general terms the proposed ordinance, be published once on or before the ____ day of _____, 19__, in the _____, a newspaper circulating in said Town of _____.

Seconded by Mr. _____ and duly put to a vote, which resulted as follows:

_____ AYES

_____ NAYS

SAMPLE PUBLIC NOTICE – TOWNS

NOTICE OF PUBLIC HEARING ON A PROPOSED ORDINANCE OF THE TOWN OF _____, AS SET FORTH HEREIN

LEGAL NOTICE IS HEREBY GIVEN that pursuant to Section 130 of the Town Law of the State of New York, and pursuant to a resolution of the Town Board of the Town of _____, adopted _____, 19__, the said Town Board will hold a public hearing at the Town Hall, _____ Road, Town of _____, on the _____ day of _____, 19__ at _____ o'clock __.M., Eastern _____ Time, to hear all interested parties and citizens for or against the adoption of a proposed ordinance to read as follows:

[INSERT TEXT OF ORDINANCE HERE]

TOWN BOARD OF THE TOWN OF _____

By _____, Town Clerk

ENDNOTES

- 1 Public Officers Law §102 (2).
2 Public Officers Law §102.
3 *See Infra*, page 3, notes 12-19.
4 Comm. on Open Govt. OML-Ad. Op. 2154; Comm. on Open Govt.. OML-Ad. Op.2472;
Orange County Publications Div. of Ottaway Newspapers, Inc. v. Council of Newburgh,
89 Misc. 847, 393 NYS2d 298 (1977); Comm. on Open Govt. OML-Ad. Op. 2194;
Kamlet v. Board of Education, 91 Misc. 2d 1105, 399 NYS2d 366.
5 ***Your Right to Know: New York's Open Government Laws***, Committee on Open
Government, p. 12, 1989.
6 ***Your Right to Know: New York's Open Government Laws***, Committee on Open
Government, p. 12, 1989.
7 “Absent a quorum, the Open Meetings Law does not apply; however, if a quorum
convenes a ‘work session’ or a ‘pre-meeting meeting,’ the Open Meetings Law becomes
applicable, notice must be given, procedure of entry into executive session must be
followed.” Committee on Open Government, 1990 Report to the Governor and the
Legislature, citing Buffalo Evening News v. Buffalo Municipal Housing Authority, 510
NYS2d 422 (1986).
8 Public Officers Law §103 (a).
9 Comm. on Open Govt. OML-AO 1281, 2120.
10 Comm. on Open Govt. OML-AO 1281, 2120.
11 “Public bodies shall make or cause to be made all reasonable efforts to ensure that
meetings are held in facilities that permit barrier-free physical access to the physically
handicapped, as defined in subdivision five of section fifty of the public buildings law.”
Public Officers Law §103 (b).
 “[This section] does not impose obligation on public body to construct new facility
or reconstruct or renovate existing facility to permit barrier-free access to
physically handicapped persons; however, if public body has capacity to hold its
meetings in number of locations, meetings should be held in facility that is most
likely to accommodate needs of persons with handicapping conditions.” CLS
Public Officers Law §103, case note 4, citing Committee on Open Government
OML-AO 1185.
12 Public Officers Law §102 (3).
13 Public Officers Law §105.
14 Public Officers Law §105.
15 ***Your Right to Know: New York's Open Government Laws***, Committee on Open
Government, p. 14, 1989.
16 Public Officers Law §105. Note that this does not require **attendance** of the total
membership but that the motion to go into executive session be carried by a vote that
constitutes a majority of the total membership of the board. For example, a seven-person
board with five members present could only go into executive session by vote of four (a
majority of seven total members) rather than three (a majority of five members present).

- 17 “Generalization of matters to be discussed during an executive session such as ‘contractual matters’ or ‘pending litigation’ are insufficient.” CLS Public Officers Law §105, case note 10 citing OML-AO 2451. An example of a proper motion would be: “I move to enter into executive session to discuss matter leading to discipline of a particular person.” The name of the person to be discussed need not be given in the motion. See Gordon v. Village of Monticello, A.D. 3rd Dept., 620 NY 573.
- 18 ***Your Right to Know: New York's Open Government Laws***, Committee on Open Government, p. 14, 1989.
- 19 Public Officers Law §104.
- 20 Committee on Public Access to Records OML-Ad. Op. 832, OML-Ad. Op. 2071.
- 21 Public Officers Law §104.
- 22 Public Officers Law §104 (1).
- 23 Public Officers Law §104 (2).
- 24 Town Law §108; Village Law §5-508 (3).
- 25 Village Law §21-2100.
- 26 No section of Town Law sets forth the general requirements for notice of hearings. The municipality must consult the specific section of law governing the proposed action.
- 27 “[T]he court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this [Open Meetings Law] void in whole or in part.” Public Officers Law, §107 (1).
- 28 Public Officers Law §107 (1). “An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body.”
- 29 Ground rules that should be reviewed are: the need for a quorum (the number of members needed to do business), the order of business, the rules for discussion, public participation, and voting.
- 30 A quorum is the minimum number of members of a board that are necessary for that board to act in its official capacity.
- 31 A quorum cannot be satisfied by the participation of a board member by phone. Public Officers Law §102, case note 2, citing Public Officers Law §97. Committee on Public Access to Records OML-Ad. Op. 588.
- 32 The reading of the minutes of the prior meeting can be, and usually is, dispensed with by a motion and a majority vote of the board to such effect.
- 33 Municipal Home Rule Law §20 (5). Paragraph 5 of section 20 distinguishes between the public hearing requirements for local governments with “elective chief executive officers” and those that do not. Both types of local governments are required to hold public hearings prior to the passage of a local law. Local governments without an “elective chief executive officer” must hold a public hearing before the legislative body. Where a local government has an “elective chief executive officer,” that officer shall not approve a local law until a public hearing has been held before him/her.

An “elective chief executive officer” is defined in section 2 of Municipal Home Rule Law as “...the mayor of a city or village or the supervisor of a town, where such officer is vested with power to approve or veto local laws or ordinances.”

- 34 Municipal Home Rule Law §§10 and 20.
- 35 Municipal Home Rule Law §20 (5). “Such a public hearing [on establishing a local law that prescribes at least a three-day minimum notice period for public hearings on subsequent local laws] held before the legislative body or before the chief executive officer, as the case may be, pursuant to this subdivision shall be on such public notice as has been or hereafter may be prescribed by this section upon five days' notice....”
- 36 Municipal Home Rule Law §20 (5).
- 37 See *Supra*, page 4, note 22. References to when public notices are required and what constitutes a sufficient notice period are scattered throughout Part II of the ***Guide to Land Development***.
- 38 The legal requirements discussed in this section do not reflect the requirements imposed by state law for adjudicative type hearings conducted by zoning boards of appeal and similar public bodies. *Contra*, Town Law §267 (5) and Village Law §7-712.
- 39 Village Law §21-2100.
- 40 Village Law §21-2100. It should be noted that many state statutes affecting village business require the village to give at least ten days notice on a public hearing on a local law.
- 41 Village Law §21-2102.
- 42 Village Law §21-2102.
- 43 Town Law §130.
- 44 Town Law §130.
- 45 “The notice of hearing on a proposed local law need not contain the full text of the proposed local law.” 1965 St. Compt. Opinion #911.
- 46 See sample resolution and sample hearing notice at pages 19 and 20.
- 47 See special requirements applicable to villages and special requirements applicable to towns on page 10.
- 48 General Municipal Law §239-m and other statutes require in certain circumstances for municipalities to notify other governmental entities. A municipality should consult its attorney regarding any such requirements.
- 49 If only minutes of the proceedings are required, the board may have the clerk or secretary to the board record the minutes.
- 50 Some persons who attend meetings want to speak first for reasons which are shared by others at the hearing (need to get home for the sitter, etc.). To be fair to everyone, the board should avoid deviating from a pre-established order for calling witnesses.
- 51 Some sections of law require that a board notify the applicant and/or involved agencies and other municipalities. The board should consult with its attorney in order to determine whether it is legally required to notify these parties.
- 52 Village Law §21-2102.