Open and transparent government meetings during the Covid-19 Pandemic

Right to Know New Hampshire (RTKNH)
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Right To Know NH (RTKNH)

We are a nonpartisan organization dedicated to improving adherence to and strengthening the Right-to-Know Law (RSA 91-A)

What We Do

- Educate citizens on their Right To Know what their government is doing
- Assist citizens in exercising their Right To Know
- Provide resources on the Right-to-Know Law
  - RTKNH Blog www.RightToKnowNH.org
  - Facebook www.facebook.com/RightToKnowNH
- Propose legislation to strengthen the Right-to-Know Law (RSA 91-A)
- Monitor and advocate for or against proposed legislative changes to the Right-to-Know Law
Foundation of Right To Know in NH

• Part I, Article 8 of NH Constitution
  • All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. [1784]
  • Government, therefore, should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonably restricted. [1976]
Right-to-Know Law (RSA 91-A)

• Established a citizen’s right of access to:
  • Meetings of public bodies and proceedings of public agencies
  • Governmental records of public bodies and public agencies

Right-to-Know (RTK) Law Preamble:
“Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.”
Meeting Notice

• Time and place of meeting
• Minimum 24 hour notice (excluding Sundays & legal holidays)
• Published or posted in at least two appropriate places
  • One place may be the public body’s website
  • Visible to all at all times – not behind a locked door
  OR
• Published in newspaper of general circulation in city or town with at least 24 hour notice (excluding Sunday & legal holidays)
• Law sets the minimum - must also comply with other laws
Meeting Notice - Website

If a public body posts meeting notices on their website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.
Quorum of a Public Body

• The minimum number of members who must be present to legally transact business
  • Typically this is a majority of the members OR
  • Less than a majority of the members if the rules of that body define "quorum" as less than a majority

• Business cannot legally be conducted unless a quorum is present
State of Emergency
Executive Order 2020-04

Section 8 of Executive Order 2024-04 states:

State and local government bodies are permitted and encouraged to utilize the emergency meeting provisions of RSA 91-A to conduct meetings through electronic means while preserving, to the extent feasible, the public's right to notice of such meetings and ability to observe and listen contemporaneously.
Meeting Open to the Public

• Open to anyone
• Anyone may take notes and use recording devices
• Shall be audible or otherwise discernable to the public at the location specified in the meeting notice *(Waived for State of Emergency)*
• No secret ballot voting*
• Invitation for public to speak not mandatory
  • Law insures public awareness, not public participation
  • Attendees may only speak if the public body allows for public input

* Town meetings, school district/village district meetings, and elections excepted
Non-public Sessions

• Originate in a legal public meeting
  • Proper notice, open to public, quorum present, minutes taken

• Actions by public body to enter non-public session
  • Make a motion that
    • is properly made and seconded during a public meeting
    • states the specific exemption which is relied upon for the session (RSA 91-A:3, II)
  • roll call vote is taken and recorded in the minutes
  • If motion passes, public is excluded and then non-public session begins

• Limitations with non-public session
  • All discussions held and decisions made must be confined to the matters set out in the motion
Remote Participation in Meeting

• A public body may, but is not required to, allow members to participate remotely if
  • Attendance in person is not reasonably practicable (*) A:2 IIIa
  • Emergency excepted, a quorum shall be physically present in the noticed location (*) A:2 IIIb
  • Each member is able to simultaneously hear all members speak, speak to other members, and be discernable to the public in attendance at the meeting’s location (*) A:2 IIIc

(*) These requirements have been waived for the State of Emergency per Executive Order #12
State of Emergency Executive Order 2020-04

- **Emergency Order #12** further states:
  that each part of a meeting of the public body be audible or otherwise discernible to the public “at the location specified in the meeting notice as the location of the meeting, is waived so long as the public body:
  - Provides public access to the meeting by telephone, with additional access possibilities by video or other electronic means;
  - Provides public notice of the necessary information for accessing the meeting;
  - Provides a mechanism for the public to alert the public body during the meeting if there are problems with access; and
  - Adjourns the meeting if the public is unable to access the meeting.
Remote Participation in Meeting

• Reason for remote participation is stated in the minutes
• Member shall identify other persons present at remote location
• All votes must be by roll call vote

• DOJ guidance:
  • www.doj.nh.gov/documents/emergency-meeting-guidance-checklist.pdf
Zoom/Electronic Meeting Issues & Concerns

• Recording of meeting
• Comments & chat are PUBLIC records
• Waiting rooms
• Muting to limit participation of
  • Public body members
  • Public
• Technology difficulties
• Zoom bombing / disruptive intrusions
• Lack of disability accommodations
Questions & Answers
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