



City of Dover, New Hampshire
OFFICE OF GENERAL LEGAL COUNSEL

RSA 91-A: N.H. Right-to-Know Law

“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.” RSA 91-A:1

NONPUBLIC MEETING PROCEDURAL CHECKLIST

Five (5) steps to the proper use of nonpublic meetings pursuant to RSA 91-A:3

STEP #1: OPEN A PUBLIC MEETING OF THE PUBLIC BODY – A NONPUBLIC MEETING MUST BEGIN IN AND BE FOLLOWED BY A PUBLIC MEETING

- Open a **public meeting** (previously posted in two (2) appropriate places with 24 hours notice per RSA 91-A:2)
- Take Attendance
- Ensure a quorum is achieved
- Ensure someone is keeping **meeting minutes** (per RSA 91-A:2, minutes of both public and nonpublic meetings must include the names of members, persons appearing before the public body, and a brief description of the subject matter discussed and final decisions made)

STEP #2: MOTION TO ENTER NONPUBLIC MEETING - THERE MUST BE A ROLL CALL VOTE TO ENTER THE NONPUBLIC MEETING TAKEN IN THE PUBLIC MEETING

- Motion to enter nonpublic meeting by _____. Second by _____.
- **The Motion must state one or more** of the following exceptions for nonpublic meeting PURSUANT TO RSA 91-A:3, II, which shall be included in the meeting minutes:
 - (a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.
 - (b) The hiring of any person as a public employee.
 - (c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. (This exemption 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.)

- (d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.
- (e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, 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 public body for the purposes of this subparagraph.)
- (f) Consideration of applications by the adult parole board under RSA 651-A.
- (g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.
- (h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 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.
- (i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.
- (j) 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.
- (k) Consideration by a school board of entering into a student or pupil tuition contract authorized by RSA 194 or RSA 195-A, which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general public or the school district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations. A contract negotiated by a school board shall be made public prior to its consideration for approval by a school district, together with minutes of all meetings held in nonpublic session, any proposals or records related to the contract, and any proposal or records involving a school district that did not become a party to the contract, shall be made public. Approval of a contract by a school district shall occur only at a meeting open to the public at which, or after which, the public has had an opportunity to participate.
- (l) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

- **Roll call vote** (need a majority to pass). If passes, enter nonpublic meeting (members of the public must leave the meeting room). Document the roll call vote in the public meeting minutes.

STEP #3: CONDUCT THE NONPUBLIC MEETING - YOU MAY ONLY DISCUSS THE TOPIC(S) THAT PERMITTED THE BODY TO ENTER THE NONPUBLIC MEETING PER STEP #2 ABOVE

- Take nonpublic meeting minutes separate from the public meeting minutes— general written summary of the events of the meeting (see requirements for meeting minutes in STEP #1 above). Additionally, minutes of nonpublic meetings shall record all actions in such a manner that the vote of each member is ascertained and recorded.

STEP #4: BEFORE ADJOURNING THE NONPUBLIC MEETING

- Discuss, but do not vote on, whether to seal the minutes and determine an appropriate reason for sealing, if any—see Step #5 for permissible reasons to seal the nonpublic meeting minutes. An actual motion, second, and vote to seal, would be made/taken in the public meeting
- Motion to adjourn nonpublic meeting and to re-enter public meeting, with second—vote required
- Hand vote – a majority required. If passes, reenter the public meeting (members of the public may return to meeting room).

STEP #5: AFTER RETURNING TO THE PUBLIC MEETING

- If desired, a motion to seal the minutes of the nonpublic meeting made for only one of the following three reasons pursuant to RSA 91-A:3, III, which shall be included in the meeting minutes, with a second:

- “divulgence of the information likely would affect adversely the reputation of a person other than a member of the body”; or
- divulgence would “render the proposed action ineffective”; or
- divulgence would pertain to terrorism

- Vote on motion to seal the minutes which shall only be passed by **2/3 majority** of those present; **no roll call required**. Document the vote in the public meeting minutes.

- Release of the nonpublic minutes **within 72 hours is required** if the minutes are not sealed

- Adjourn public meeting when appropriate

NOTE: IF YOU HAVE DONE THE REQUIRED STEPS CORRECTLY YOU WILL HAVE TWO SETS OF MEETING MINUTES: 1.) PUBLIC AND 2.) NONPUBLIC – THE NONPUBLIC MAY BE SEALED OR UNSEALED.

THE PUBLIC MINUTES SHOULD BE MARKED “PUBLIC MEETING MINUTES” AND SENT TO THE CLERK FOR PUBLICATION WITHIN FIVE (5) BUSINESS DAYS. DRAFT MINUTES MAY BE USED TO SATISFY THIS REQUIREMENT, BUT THE MINUTES SHOULD BY CLEARLY MARKED “DRAFT”.

THE UNSEALED NONPUBLIC MINUTES SHOULD BE MARKED “NONPUBLIC MEETING MINUTES” AND SENT TO THE CLERK FOR PUBLICATION WITHIN SEVENTY-TWO (72) HOURS/THREE (3) DAYS. DRAFT MINUTES MAY BE USED TO SATISFY THIS REQUIREMENT, BUT THE MINUTES SHOULD BY CLEARLY MARKED “DRAFT”.

THE SEALED NONPUBLIC MINUTES SHOULD BE SEALED IN AN ENVELOPE MARKED WITH THE DATE OF THE MEETING AND ALSO MARKED AS “SEALED NONPUBLIC MEETING MINUTES” (stating the name of appropriate board, commission or committee) AND PROVIDED TO THE CLERK SEALED IN THE ENVELOPE WITHIN FIVE (5) BUSINESS DAYS. DRAFT MINUTES MAY BE USED TO SATISFY THIS REQUIREMENT, BUT THE MINUTES SHOULD BY CLEARLY MARKED “DRAFT”.