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# A Reference Guide for Municipal Boards

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*The people's right to witness and observe the governmental decision-making process in action is basic to our society. Access to public portions of meetings of public bodies must be protected and maintained.*

*NYS Open Meetings Law*

This reference guide was created as a general source of information to aid elected and appointed municipal officials, and anyone in general, in understanding and quickly defining the structure and conduct of municipal governments. Many times, newly elected, appointed, and often currently serving officials are not familiar with certain aspects of meeting protocol, regulations and requirements. This guide is a listing of common verbiage with definitions and regulations that are a common occurrence at municipal meetings.

This is a general guide. More detailed information can be found from the NYS Tug Hill Commission, as well as the references to laws that are listed at the end of this guide.



Providing Municipal Assistance to Northern Oneida County Since 1981

The **Northern Oneida County Council of Governments**, often referred to as **NOCCOG**, is one of five councils of governments working directly with the NYS Tug Hill Commission. It is comprised of 17 towns and villages in Northern Oneida County formed by an intermunicipal agreement.

## WHAT DOES NOCCOG DO?

- provides a collaborative voice on critical issues
- works on behalf of the towns and villages in the Oneida County area of the Tug Hill region for over 30 years
- helps communities protect what they value through a local “home rule” approach
- serves towns and villages through shared services and information
- responds to requests for technical, planning, and development assistance
- serves as a link between local officials and Tug Hill Commission resources



## WHAT ARE EXAMPLES OF ASSISTANCE?

- technical assistance and training on topics such as budgeting, adopting local laws, and compliance with state regulations
- local land use planning, development of comprehensive plans and local road mapping
- infrastructure projects, including water and sewer
- shared services opportunities and intermunicipal cooperation
- project planning and potential grant funding opportunities
- natural resource management, such as watershed protection and recreational assets

*Our mission is providing technical assistance, including planning, grant writing and training, as well as creating a framework for intermunicipal cooperation and communication among member communities and with outside organizations, on behalf of the NOCCOG municipalities.*

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## FUNCTIONS OF MUNICIPAL BOARDS

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Towns and villages are general purpose units of local government. Town and village boards (also referred to as town or village councils, or village board of trustees) comprise the legislative body of the town or village. In New York State, town and village governments have what is called "home rule" authority, which refers to the constitutional and statutory powers given local governments to enact local legislation (i.e. laws) to regulate their "property, affairs or governments" so long as they are not inconsistent with the state constitution or any state law."

### **Town Boards**

Town boards are always composed of a supervisor and four councilmembers. Town law does not provide for a separate executive branch of town government, meaning the supervisor is part of the *legislative branch*. Because the supervisor occupies the leader's position on the town board, and because town residents often turn to the supervisor with their problems, often people think the supervisor's position is the executive position of town government. Although they are the presiding officer of the town board, the supervisor is still part of the legislative branch and is a full member of the board. Supervisors vote on all questions and have no tie-breaking or veto power. The supervisor is more of an administrator than an executive. The supervisor's duties under law are to:

- Act as treasurer and have care and custody of monies belonging to the town; disburse monies; sign orders to pay claims
- Keep an accurate and complete account of all monies; generate reports as required
- Pay fixed salaries and other claims
- Lease, sell, and convey properties of the town, when so directed by the town board
- Prepare and file an annual financial report

### **Village Boards**

Village boards are composed of a mayor and typically four trustees. However, the number of trustees can be increased or decreased by local law. For most villages in New York State, the chief executive officer is the mayor. The mayor may vote on all motions coming before the board and must vote to break a tie. The mayor is responsible for:

- Presiding over all meetings of the board of trustees
  - Enforcing laws within the village
  - Supervising the police and other officers and employees of the village
  - Appointing all department and non-elected officers and employees subject to approval of the board of trustees
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## MEETING GUIDELINES

- For meetings scheduled at least a week in advance, notice must be given to the public and news media not less than 72 hours prior to the meeting
- If less than a week in advance, notice must be given to the public and news media “to the extent practicable” at a reasonable time prior to the meeting
- Notice of all meetings must be posted in one or more designated public locations

## CONTENT OF NOTICE OF MEETING GUIDELINES FOR TOWNS AND VILLAGES

- Time, date and location
- Name of public body holding the meeting
- Brief statement of purpose
- Name and phone number of contact person
- Where a copy of meeting agendas can be obtained

## ORGANIZING THE MEETING: AGENDA

Whenever a public meeting is held, an agenda should guide the order of business to ensure nothing is forgotten. The chair, typically the supervisor or mayor, guides the meeting through the agenda, which should indicate the topics of conversation and the order in which they will occur. A typical agenda may include:

- *Reading of the minutes of the previous meeting*
- *Amendment and approval of the previous meeting minutes*
- *Hearing the reports of standing committees*
- *Hearing of the reports of select committees*
- *Consideration of unfinished/old business*
- *Consideration of new business*
- *Audit and approval of bills for payment*
- *Setting the time and place for the next meeting (towns and village typically choose the same week and day each month)*
- *Adjournment*

While an agenda is important, it is simply a tool and is not required by law. Agenda items may be added, deleted, or rearranged. ***However, if one of the items on the agenda is a public hearing, it may not be moved to a spot earlier on the agenda if that move would result in it starting prior to the time stated in the legal notice.***

Make sure to reserve a room for the meeting, one big enough to handle the expected audience. ***A change to section 103 of the Open Meetings Law now requires the board to meet in a room large enough for anticipated attendance.***

*All reasonable efforts must be made to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in the public buildings law. A public body shall provide an opportunity for the public to attend, listen and observe meetings in at least one physical location at which a member participates.*

## **PUBLIC MEETINGS**

Public meetings are defined by NY's Open Meetings Law (Public Officers Law Article 7, Section 100-111) as "the official convening of a public body for the purpose of conducting public business."

- A quorum is required to conduct official public business (see page 7.)
- Proper written, published and/or posted notice of the must be given of the time, date, location and purpose of the meeting.
- Regardless of the name the gathering is called, if it meets the definition of a meeting, it must be open to public attendance, unless the body enters executive session (Public Officers Law, Section 105) or the meeting fits a statutorily excepted purpose (Public Officers Law, Section 108.)
- There is NO requirement to allow the public to speak at a meeting, although the public body may allow public participation and may provide rules for speakers to follow at meetings (see box below.)
- Minutes must be taken at all public meetings (see page 5.)

### ***Can the public speak at a public meeting?***

The law is silent with respect to public participation. While a public body does not have to allow the public to speak, many choose to permit public participation. In those instances, it has been advised that a public body must treat all persons in the same manner. The public body can adopt reasonable rules to ensure fairness. For example, allowing those who want to speak a specific period of time to express their views, but restricting every speaker to the same specific amount of time.

## **PUBLIC HEARINGS**

A public hearing is a formal meeting where members of the public are accorded the right to be heard and thus can provide testimony or express their views on a specific local issue or proposed government action. Public hearings involve obtaining public input for the purpose of making legal decisions.

- Public bodies hold hearings when required by state law (for example, a ZBA variance application or town board local law approval.)
- Public bodies also hold hearings when required by local law, even when there is no state law requirement (for example, planning board site plan applications.)
- There are specific public notice requirements that must be met prior to a public hearing depending on the action, most require 5 days' notice published in the municipality's official newspaper (see page 3.)
- Public hearings are important to get mitigation conditions into the record for some land use approvals.
- Occasionally used in a voluntary manner to gauge the public's opinion on a controversial matter or unusual current issue (for example, a new municipal building proposal.)

### ***Is a site visit a meeting?***

A site visit by a board is not a meeting subject to the Open Meetings Law so long as its purpose is not for anything other than to "observe and acquire information." The leading case is *Matter of Riverkeeper, Inc. v. Planning Board of the Town of Somers*. It is difficult for many people to participate in a site visit without talking about what they see, how it relates to the site plan, and how the plan might be modified. The Department of State advises boards to avoid this Open Meetings pitfall by either visiting the site with less than a quorum of the board, or by treating it as a public meeting and complying with the requirements of the Open Meetings Law.

## RECORDING MINUTES GUIDELINES

- Minutes shall be taken at all open meetings of a public body and shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon. *Minutes need not consist of a verbatim account of what was said at a meeting.*
- Minutes shall be taken at executive sessions of any action that is taken by formal vote and shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law.
- Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting. Executive session minutes taken shall be available to the public within one week from the date of the executive session.
- There is nothing in the Open Meetings Law that requires that minutes be approved. Nevertheless, as a matter of practice or policy, many public bodies approve minutes of their meetings. If the minutes have not been approved, mark them "draft," "unapproved," or "non-final" and make them available.
- If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high-speed internet connection, such minutes shall be posted on the website within two weeks from the date of such meeting. Executive session minutes taken shall be available to the public within one week from the date of the executive session. Unabridged video recordings or unabridged audio recordings or unabridged written transcripts may be deemed to be meeting minutes.
- There are no requirements for the creation of minutes if the public body would not otherwise take them.
- Minutes are not taken during an executive session where no action is taken by formal vote.

### ***Can the public record a meeting?***

Public bodies are required to allow meetings to be photographed, broadcast, webcast or otherwise recorded as long as the equipment used to do so is not disruptive or obtrusive. If the public body adopts rules regarding such activities, they must be reasonable and conspicuously posted, and be provided to those in attendance upon request. POL § 103(d).

- No consent required: You don't need consent from participants to record a public meeting.
- Reasonable rules: Public bodies can create reasonable rules for recording equipment and personnel, such as where to place cameras and how to secure cords. These rules must be posted and available to attendees.
- No blanket bans: Public bodies can't ban recording or require advance notice.
- No privacy interest: There's no expectation of privacy in public meetings, so statements made there can be recorded.
- Eavesdropping law: Don't record conversations that aren't part of the public meeting.

*If a public body is leveraging "extraordinary circumstances videoconferencing" pursuant to POL § 103-a to conduct its meeting, the public body must provide the same opportunity for members of the public to view the meeting (and participate, if such body permits public participation), both by remote technology or in person, in real time.*

## MOTIONS and RESOLUTIONS

A **motion** is a proposal by a member of the governing body, requesting the governing body to take a certain action, as specified in the motion (e.g. to adopt a certain ordinance or resolution, to approve an expenditure, to table a proposal, to adjourn, etc.) Motions require a second. If the motion is not seconded, then the motion dies, and the board moves on.

If the matter concerns the adoption of local legislation, the governing body should adopt a resolution proposing the law, ordinance, rule or regulation in question. A **resolution** is an official statement or decision made to express position, establish a policy, or address a specific issue within the municipality. The best way to view a resolution is as a formal declaration of the governing body concerning a certain subject which does not have the force of law.

### MOTIONS

A motion:

- is a proposal to take certain action, made by a member of the board
- can be verbal or written
- can be debated and discussed before a vote takes place
- requires a "second" before the board debates and votes on the matter
- if no one seconds, the motion dies
- can be amended or withdrawn before a vote takes place
- is used to initiate a proposal for action on a resolution

### RESOLUTIONS

A resolution:

- is a formal statement of a decision or action that is made by the board as a whole
- is always written and recorded
- is typically voted on without any further discussion or debate
- is binding once implemented by board members, and cannot be changed or withdrawn, only rescinded by a superseding resolution
- is used to formally approve a decision or action taken by an organization

**For passage and approval, all motions and resolutions must be approved by the majority of the board.**

#### ***Can board votes be taken via zoom?***

Public Officers Law Section 103 allows limited videoconferencing by public bodies. However, a minimum number of members must be present to fulfill the quorum requirement in the same physical location or locations where the public can attend as long as the governing board of a county, city, town or village has adopted a local law authorizing the use of videoconferencing. The minutes of the meetings involving videoconferencing shall include which, if any, members participated remotely. The public notice for the meeting shall inform the public that videoconferencing will be used, where the public can view and/or participate in such meeting, where required documents and records will be posted or available, and identify the physical location for the meeting where the public can attend. The public body must also record and post or link the recording to the website of the public body within five business days following the meeting and shall remain so available for a minimum of five years thereafter. This section of Public Officers Law is currently scheduled to be repealed on July 1, 2026.

#### ***Can the mayor or town supervisor vote during a meeting?***

- The mayor has the authority to vote on all matters and questions coming before the board and is required to vote in the case of a tie (Village Law, §4-400[1][a]).
- The supervisor votes on matters before the town board as do all the other board members (Town Law, Sections 60 and 63).

## ABSTENTIONS and RECUSALS

Recusal and abstention occur when a municipal officer or employee does not participate in any decision or official action. Participating in a decision or official action includes, but is not limited to, any form of pre-decisional communications (including e-mails), informal or formal discussions, and voting on the matter. The Model Code (Sections 6 and 7) generally requires recusal and abstention on any matter requiring the exercise of discretion when the municipal officer or employee knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

### ABSTENTION

An abstention refers to withholding a vote and is the decision by a board member to not vote.

- Abstention doesn't mean the board member is in favor of or against a vote - it simply means the board member made a conscious decision to not vote.
- Mainly used when the member feels there is a conflict of interest, they have internal conflict on an issue or lack sufficient information to make a decision.
- An abstaining board member's presence can be counted towards the existence of a quorum, but the abstention is not counted in favor of or against the action.
- A majority of the fully constituted board is still required to approve the action.

### RECUSAL

A recusal is the removal of oneself as judge or policymaker in a particular matter, especially because of a statutorily defined conflict of interest.

- The board member cannot vote on the action, they must abstain and should remove themselves from the meeting when the issue comes up for discussion. They should not even discuss the matter or give their opinion prior to exiting.
- A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of the member, but any action taken must still be approved by at least a majority of the required quorum for that meeting to affect.

**Abstentions and recusals should be limited in scope, and abstentions should not be used to avoid controversial or preclusive issues in the community.**

### COMMON DEFINITIONS

- **Meeting** - The official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body. Every meeting of a public body shall be open to the general public, except that of an executive session, including "workshops" "work sessions" and "agenda sessions."
- **Public Body** - Any 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 as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body consisting of members of such public body or an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members. A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory, and which does not require further action by the state or agency or department thereof or public corporation as defined in section sixty-six of the general construction law.
- **Quorum** - A simple majority of the members of a public body, unless otherwise provided in a general or special law, executive order, or other authorizing provision. For example, for a five-member town board, at least three members need to be present to have a quorum.
- **Executive Session** - A portion of a meeting that is not open to the general public.
- **Public Hearing** - an official proceeding of a governmental body or officer, during which the public is accorded the right to be heard.



### ***Can a municipal board set fines?***

Yes. Additionally, as long as the fee schedule was originally adopted by resolution, then no public hearing is needed to amend the fee schedule. In the case of a fee associated with a "policy" (which is also generally accepted by resolution) the fees would also be adopted by resolution. However, if the fee schedule is within the local law that it is associated with, then the law needs to be amended and that would require a public hearing. Typically, fee schedules are separate from policy or local law and are adopted (and amended) by resolution.

### **EXECUTIVE SESSION**

Public Officers Law provides for closed or "executive" sessions under certain circumstances prescribed in the law. It is noted that an executive session is not separate from an open meeting but rather is a portion of an open meeting during which the public may be excluded. The Law requires that a public body take several steps to close the meeting. First, a motion must be made during an open meeting to enter into executive session; second, the motion must identify the general area or areas of the subject or subjects to be considered; and third, the motion must be carried by a majority vote of the total membership of a public body. The same process occurs to close executive session and re-enter the open meeting.

### **CONDUCT OF EXECUTIVE SESSIONS**

Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for purposes listed below only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

- matters which will imperil the public safety if disclosed
- any matter which may disclose the identity of a law enforcement agent or informer
- information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed
- discussions regarding proposed, pending or current litigation
- collective negotiations pursuant to article fourteen of the civil service law
- 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
- the preparation, grading or administration of examinations
- the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof

***Any vote to expend public monies must be taken in public.***

### **SEEKING LEGAL ADVICE**

*When a municipal board seeks legal advice from an attorney and the attorney renders legal advice to the board, they establish an attorney-client relationship based on which communications are privileged and confidential; therefore, the Open Meetings Law would not apply in such a situation. The attorney-client exemption is considered confidential under §4503 of the Civil Practice Law and Rules. Such a legal session is exempt, so there is no need for a board to enter into an open meeting before meeting in private with its attorney. And since it is not a meeting, there is no need for meeting minutes. If the board is in an open meeting and decides it needs legal advice, it should recess or adjourn the meeting. This is different than entering into executive session, where receiving legal advice is not one of the permissible reasons listed in the law, with the exception for the discussion of proposed, pending, or current litigation. Additional details on the attorney-client relationship as it relates to the Open Meetings Law can be found in the Opinions of the Committee on Open Government, which are posted on the Department of State website.*

## PERMISSIVE REFERENDUM

*Municipal Home Rule Law Section 24, Town Law Section 90, Village Law Section 9-900*

A permissive referendum, also known as a referendum by petition, is required by state statute for specific actions of the municipal board (for example, certain local laws, removal from reserve funds).

- Cannot be used to get things on the ballot unless specified by state statute
- Can be accomplished by petition of voters or action of the municipal board
- Where required, the municipal board approves the law or action by resolution, then within 10 days of the resolution, the clerk must post and publish a notice with the date of the adoption, an abstract of the resolution with the purpose or effect explained, and must specify “adopted subject to permissive referendum”
- People have 30 days (generally) from the date of resolution to file a petition following specific petition requirements to force the matter to be placed on a municipality-wide ballot
- If no petition is properly filed within 30 days, the action takes effect

A permissive referendum enables the electorate (voters) to petition for an authorized resolution to appear on a ballot. Once on the ballot, registered voters decide the fate of the resolution, either support or overturn, by majority vote.

Some of the subjects for which voters may petition for a referendum, include: propped bonding for a project; dispensing with a public notice requirement in local law making; increasing the salary of a public official during his or her term; altering purchasing, contracting, assessment, auditing, or condemnation practices; and revising policy regarding publicly owned property.

## MANDATORY REFERENDUM

*Municipal Home Rule Law Section 23*

A mandatory referendum, also known as an obligatory referendum, is used for statutorily required matters to be placed on a municipality-wide ballot (such as changing an elected official’s term of office).

- The issue must be placed on the ballot in a general election of state or local officials not less than 60 days after the adoption of the resolution/local law, **unless** the law allows for a special election, or a petition properly filed within 30 days calls for a special election.
- The matter becomes operative only if it is approved at such election by an affirmative vote of the majority of qualified electors voting on said proposition.

Except as otherwise provided by, or under authority of, a state statute, a local law shall be subject to mandatory referendum if it:

- changes the membership or composition of the legislative body or increases or decreases the number of votes which any member is entitled to cast
- changes the veto power of the elective chief executive officer
- changes the law of succession to the office of the mayor of a city or village or the supervisor of a town
- abolishes an elective office, or changes the method of nominating, electing or removing an elective officer, or changes the term of an elective office, or reduces the salary of an elective officer during his term of office, abolishes, transfers or curtails any power of an elective officer
- creates a new elective office

***If an initial local law is subject to a referendum, is the local law repealing or modifying the initial local law subject to a referendum?***

No, unless there is specific statutory authority calling for a referendum (1985 NY Op Attorney General 85-15). Example 1: Cannabis Law stated the local law to opt out of cannabis dispensaries was subject to a permissive referendum under MHRL § 24; however, there is no authority stating that a local law repealing the opt-out local law is subject to a permissive referendum.

Example 2: The town adopted a local law changing the terms of office for an elected position. Local laws changing terms of office are subject to a mandatory referendum under Municipal Home Rule Law § 23. If the town wants to adopt a local law repealing the initial law, the repealing law would be a local law changing the terms of office and therefore would also be subject to a mandatory referendum

***Note: Even if a municipality just wants to make a small change to a local law, it is necessary to repeat the process of adopting a whole other local law.***

**Sources:**

New York State Department of State, <https://dos.ny.gov/services-and-support>

- **Conducting Public Meetings and Public Hearings, 2024,**  
<https://dos.ny.gov/conducting-public-meetings-and-public-hearings>
- **Local Government Handbook, 2023,**  
[https://dos.ny.gov/system/files/documents/2023/06/localgovernmenthandbook\\_2023.pdf](https://dos.ny.gov/system/files/documents/2023/06/localgovernmenthandbook_2023.pdf)

Committee on Open Government, <https://opengovernment.ny.gov/>

Office of the State Comptroller, <https://www.osc.ny.gov/local-government>

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