



# RIGHT TO KNOW LAW: GOVERNMENTAL MEETINGS & NONPUBLIC SESSIONS

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

EST. 1941

Stephen C. Buckley, Legal Services Counsel  
Natch Greyes, Municipal Services Counsel

July 20, 2021

MEETING  
IN  
PROGRESS

# Today's Presenters



*Stephen Buckley*  
*Legal Services Counsel*



*Natch Greyes*  
*Municipal Services Counsel*

# How Do I Ask a Question?



To ask a question:

1. Type your question into the Q&A box. Click **Send**.

**Note:** Check **Send Anonymously** if you do not want your name attached to your question in the Q&A.

2. If the host replies via the Q&A, you will see a reply in the Q&A window.

A screenshot of a web-based Q&A interface. The window title is 'Q&A'. It shows a question and an answer. The question is 'What happens when I raise my hand?' asked at 18:03. The answer is 'I can take you off of mute.' answered by 'Molly Parker' at 18:04. Below the answer is a text input field with the placeholder 'Please input your question'. At the bottom left is a checkbox labeled 'Send Anonymously' which is unchecked. At the bottom right is a blue button labeled 'Send'.

The chat function for this workshop has been disabled.

In order to ask a question of our host or a panelist, please refer to graphic.

Once your question has been answered, it will then appear under the *Answered* tab.

# NHMA's Legal Advisory Services



Open 8:30 a.m. - 4:30 p.m.

- Email: [legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)
- Phone: 603-224-7447

Provide general legal advice

- Not comprehensive legal review of documents
- Not drafting individualized ordinances or charters
- Not reviewing specific applications before local boards
- Not settle intra-municipal disputes

Goal: Response w/in 48 hours


# Agenda



## The Right-to-Know Law:

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

- Governmental Meetings
- Nonpublic sessions



# Governmental Meetings & The Right-to-Know Law



# Overview of How RTK Governs Meetings Content



- I. What is a “meeting”?
- II. What is not a meeting, i.e., a “nonmeeting”?
- III. What are the requirements for holding a proper “meeting”?
- IV. How to hold meetings virtually.

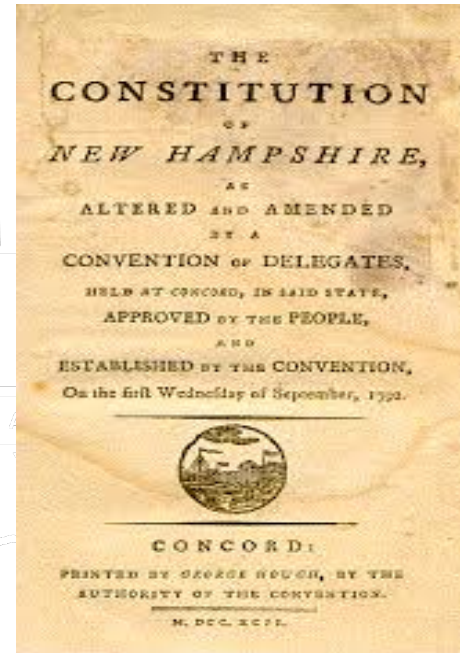
# The Right-to-Know Law RSA Chapter 91-A



PART I, ARTICLE 8 OF THE NH  
Constitution: Government ...  
should be open, ....

SECTION 1 OF RSA 91-A:

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.





# What is a Public Meeting? RSA 91-A:2



Quorum



Public body



Convenes so that they can  
communicate  
contemporaneously



To discuss or act upon a  
something over which the  
public body has supervision,  
control, jurisdiction, or  
advisory power

# “Quorum”



Majority of  
membership



Can't define as more  
than majority to  
circumvent law



Another statute may  
apply

# “Public Body”



RSA 91-A:1-a, VI:

- Any legislative body, governing body, board, commission, committee of any county, town, municipal corporation, school district, SAU or other political subdivision
- Any committee, subcommittee, advisory committee thereto
- New Case: But a committee of city employees providing advice to planning board applicants is not a public body. *Martin v. Rochester*



# Meetings In Ordinary Circumstances

Convenes such that all participating members are able to communicate with each other contemporaneously

- In-person
- Email?
- Phone?

To discuss or act upon matters which the Public Body has Supervision, Control, Jurisdiction, or Advisory Power

- Any “business” the body deals with
- Construe broadly

# What is Not a “Meeting”? (i.e. “Non- meeting”)



Social or other encounter, no decisions



Collective bargaining



Consultation with legal counsel



Circulation of draft documents



***Different than nonpublic session!***

# What are the Requirements of a Public Meeting?



Public notice

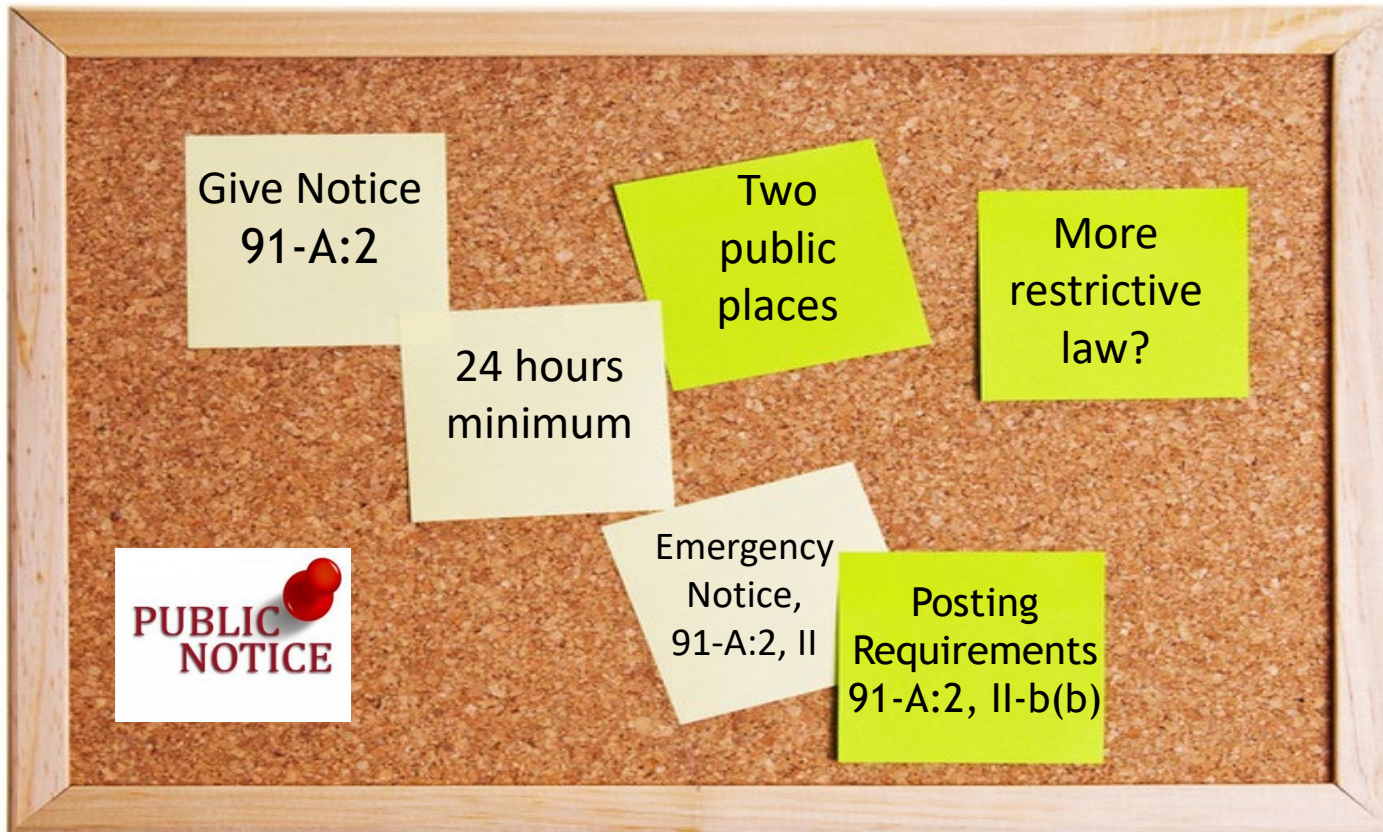


Open to the public



Meeting minutes

# “Posting Requirements”





# Switching Back to In-Person Meetings

- ▶ Emergency Order #12, allowed virtual meetings during the State of Emergency
- ▶ Since State of Emergency expired on June 11, 2021, boards can still have partially remote meetings
  - ▶ There must be a physical location for the public to attend, and, in most cases,
  - ▶ A quorum of the board must be present at that location.
- ▶ Nothing prohibits boards from continuing to offer electronic access (telephonic, Zoom, etc.) to the public.





# Option 1: Remote Board Member Participation - RSA 91-A:2, III(a)



- ▶ Public body *may* allow
- ▶ Personal attendance “not practical” (in minutes)
- ▶ Quorum *present at physical location*
- ▶ All board members can hear and be heard
- ▶ Identify board members in remote location
- ▶ All votes by roll call

## Option 2: “Emergency” RSA 91-A:2, III(b)

- ▶ Chair must declare that “emergency” exists sufficient to satisfy requirements of RSA 91-A:2, III.
- ▶ Still requires physical location.
- ▶ However, a quorum of the board need not be present at the physical location.
- ▶ Everyone can hear and be heard
- ▶ Identify persons in remote location
- ▶ All votes by roll call

# What is an “Emergency?” & Notice Requirements

- ▶ “Emergency”: a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body.
- ▶ That presiding officer shall post a notice of the time and place of such meeting as soon as practicable.
- ▶ Further, the presiding officer shall employ whatever further means are reasonably available to inform the public that a meeting is to be held.
- ▶ “Emergency” meetings do not require 24-hour notice posted in 2 public places but should provide as much notice as practical.

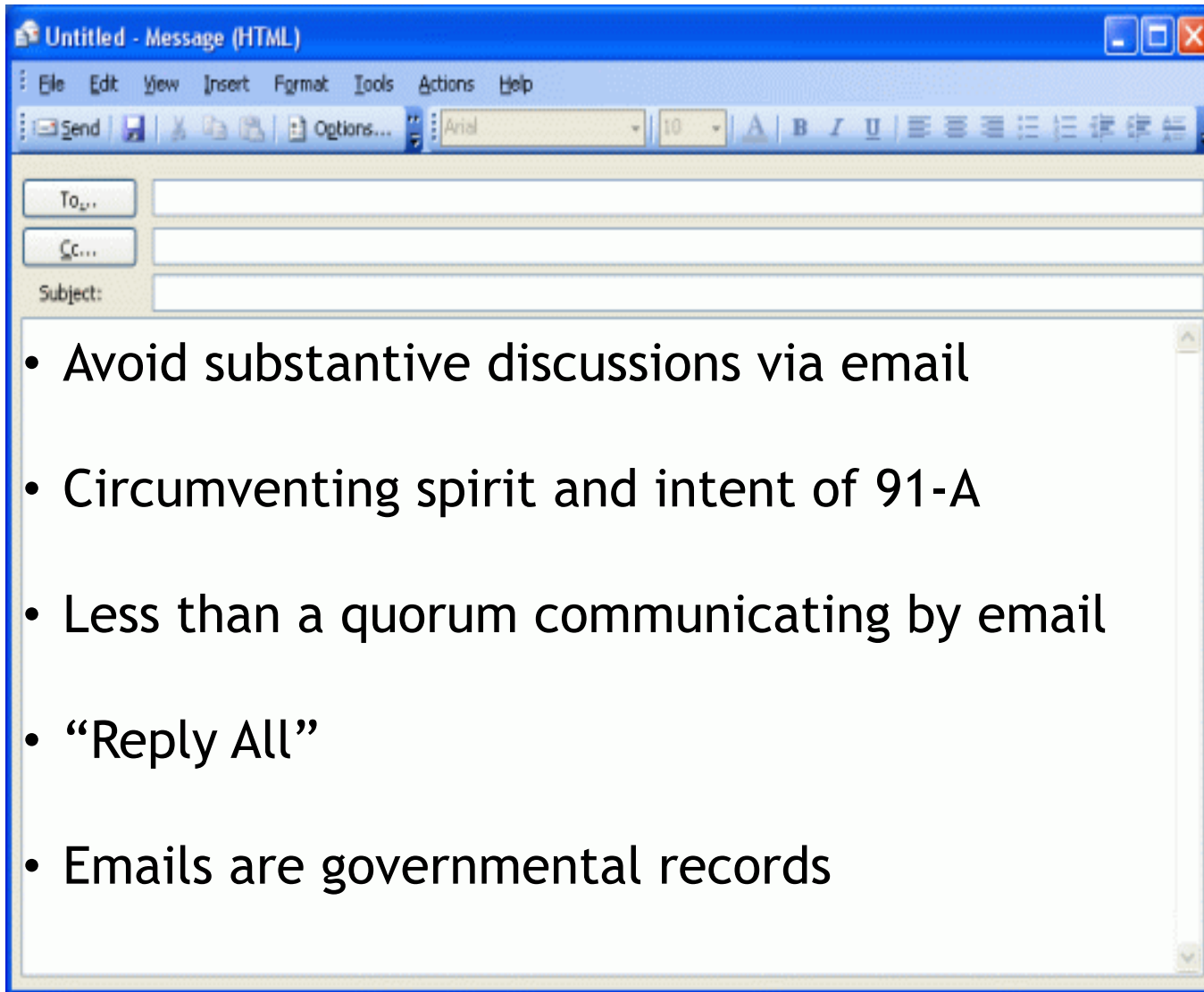




# Ordinary Procedures: Meetings “Open to the Public”

- ▶ “All meetings . . . shall be open to the public.” RSA 91-A:2, II.
- ▶ “Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting.”
- ▶ Public has right to record, etc.
- ▶ No secret ballot voting.
- ▶ Public Comment?

# “Electronic Communications”



# Avoid Temptation to Use Inaccessible Technological Options During Pandemic



Remember that fundamental principal of RSA 91-A is to allow the public access.



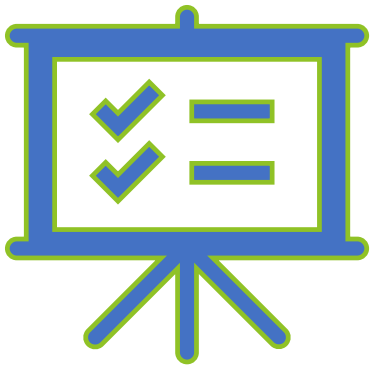
Text messages, emails, and other electronic means of communication which excludes the public should not take the place of publicly accessible meetings.



As much as possible, government should try to maintain normalcy during this abnormal time.

# Public Meeting Minutes

## RSA 91-A:2



- ▶ Minimum required contents:
  - ▶ (1) the names of members, (2) persons appearing before the public bodies, (3) a brief description of the subject matter discussed , (4) state final decisions made, and, (5) state the names of the members who made or seconded each motion shall be recorded in the minutes.
- ▶ Made available within 5 business days
- ▶ Posting requirements-
  - ▶ RSA 91-A:2, II-b(a)
- ▶ If the software used to conduct a remote meeting allows for recording, use it to aid the minute taker, but remember that recordings are not a substitute for written minutes.

# Nonpublic Sessions

## RSA 91-A:3

It's a nonpublic session,  
not a nonpublic meeting

A nonpublic session is  
different from a “non-  
meeting”

Nonpublic session is the  
exception, not the rule

Nonpublic sessions are  
permitted, not required

Boards meeting  
remotely should  
consider technological  
options for holding  
nonpublic sessions: e.g.  
starting a separate call



# When May a Public Body Enter Nonpublic Session?\* RSA 91-A:3, II



- Public employee (specific employee)
- Hiring
- Reputation
- Real or personal property
- Lawsuits
- Emergency preparation
- Discuss legal advice
- Discuss student tuition contract

\*Most common, but not complete list

# How Does a Public Body Enter Nonpublic Session? RSA 91-A:3, I



Motion to enter nonpublic session must be made and seconded.



Motion must state on its face the specific exemption relied upon.



Vote must be by roll call; simple majority is sufficient. RSA 91-A:3, I(b).

# Minutes of Nonpublic Sessions



Minutes must be kept—same as for public session.



Must “record all actions in such a manner that the vote of each member is ascertained and recorded.”

# Conducting the Nonpublic Session

May make decisions in nonpublic session

Member objecting to violations—note objection. If board persists, objecting member may continue to participate without being subject to penalties

RSA 91-A:2, II-a

Returning to public session

# Disclose or Seal?



Minutes must be publicly disclosed within 72 hours unless board determines, by 2/3 vote taken in public session, that:

- Disclosure would have adverse effect on reputation;
- Disclosure would “render the proposed action ineffective”; or
- Discussion in nonpublic session pertained to terrorism.

# Other Considerations

Include nonpublic session on posted agenda.

Timing—beginning or end of meeting?

Attendance by non-members

- If meetings are being conducted with remote participation of board members and public, must plan how to conduct non-public sessions in a manner that preserves their secrecy.

# New Law: HB 108 - Maintain List of Nonpublic meeting minutes



- Effective January 1, 2022 (assuming bill is signed by Governor)
- List of sealed nonpublic meeting minutes must:
  - Identify the public body
  - State the date & time of the nonpublic session
  - State the exemption for the nonpublic session
  - State the date of the decision to seal the minutes
  - State the date of any subsequent decision to unseal minutes
- Minutes sealed under RSA 91-A:3, II (d) (sale or acquisition of real or personal property) “shall be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.”

# FREE VIRTUAL RESOURCES AND INFORMATION FAIR WEBINAR



**FREE!!**  
**Resource Fair**

ARPA Fiscal Recovery Funds in  
NH: Virtual Resources &  
Information Fair Webinar

10:00 am - 11:45 am, Monday, July 26, 2021. This webinar will provide local officials an introduction to how various funds are being implemented in New Hampshire and to potentially spur collaboration and partnership in implementation of ARPA funds.

[REGISTER NOW!](#)

[REGISTRATION OPEN](#)



# COMPLIMENTARY WEBINAR



## Staying Out of the Headlines: Cybersecurity Must-Haves So Your City or Town Is Protected and Out of the News Webinar

12:00 noon - 1:00 pm, Tuesday, July 27, 2021. Joe Howland, Chief Information Security Officer at VC3, will talk about evolving threats, discuss a framework for covering all aspects of your cybersecurity, and provide you an actionable checklist!

**REGISTRATION OPEN!**

**REGISTRATION OPEN**

# COMPLIMENTARY WEBINAR



## Sort, Filter and View Data in Excel Webinar

1:00 pm - 2:00 pm, Wednesday, August 4, 2021. Join recognized expert, KnowledgeWav's Jonathan Hood, in this webinar focused on sorting and filtering of data in Excel and how both features play an important role in organizing and displaying your data.

[REGISTER NOW!](#)



[REGISTRATION OPEN](#)

# COMPLIMENTARY WEBINAR

Wednesday, August 11, 2021 - 12:00pm to 1:00pm

## Microsoft Customer Success Training: *Cyber Security Tips and Best Practices*

Dear NHAC and NHMA Members,

We're inviting you to join us for a curated Microsoft training, featuring **Cyber Security Tips and Best Practices**.

Training objectives:

- How data breaches occur
- Understand your attacker
- Prevention and best practices
- Question and Answer

Please register using the below link. The training will be conducted via Teams Webinar, you do not need to sign up, create an account or download anything to join. Simply click the link in the registration confirmation you receive or save the calendar event that is included to add to your calendar.

[Click to Register for Wednesday August 11th 12PM Eastern Session](#)

We hope to see you there!

**REGISTRATION OPEN**



# COMPLIMENTARY WEBINAR

Wednesday, August 18, 2021 - 12:00pm to 1:00pm

## Municipal Solar in NH: Understanding the Changing Solar Energy Landscape



Hooksett Treatment Plant

There have been a number of recent changes to New Hampshire state policy regarding large-scale solar projects. HB 315 recently passed, creating a lot of questions for municipalities about community power aggregation, the increased 5MW cap, and what these changes mean for net metering.

Also recently announced, the 2021 American Rescue Plan Act (ARPA) is allocating \$350 billion to states, counties, school districts, and municipalities. Clean energy projects that address climate change, such as installing onsite or offsite solar, are eligible for ARPA funds.



### What does this mean for solar in your town or city?

Join [ReVision Energy's](#) Dan Weeks and John Branagan as they dive deeper into these topics and discuss practical applications for individual towns. They'll be looking at community case studies such as Dover, Nashua, Keene, and Hanover, all of whom have successfully developed municipal solar here in the Granite State.

Town and city councilors, administrators, public works directors, and energy committees all play an important role in bringing solar to New Hampshire cities and towns.

Everyone is invited to attend and participate in this webinar and Q&A session.

**REGISTRATION OPEN**





# SAVE THE DATE

**TUESDAY, SEPTEMBER 14**

## **2021 Budget & Finance Virtual Workshop**



NHMA is holding its annual Budget & Finance Workshop on the fundamentals of the municipal budget process from *9:00 am – 4:30 pm on Tuesday, September 14, 2021*, as a virtual workshop in Whova.

*Thank you to our sponsor:*



Attendees receive 2021 supplement to *The Basic Law of Budgeting* publication. Additional materials such as the Power-Point presentation and handouts will be distributed electronically.

Please visit [www.nhmunicipal.org](http://www.nhmunicipal.org) for the latest event information and registration details.

*Whova*



# REGISTRATION TO OPEN JULY 24



*Hope to see you there!*

**SAVE THESE DATES**  
**80th Annual Conference and Exhibition**

**November 17-18, 2021**





for joining  
us today!



## NHMA'S MISSION

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.



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