

SUMMARY OF OPEN MEETINGS LAW

The statutes governing public meetings can be found in Chapter 143, Article 33C of the North Carolina General Statute:

1. Official meetings of public body shall be open to the public and any person is entitled to attend
 - a. Public body-any elected or appointed body of the state, city, county, etc, that 1) has more than 2 members and 2)exercises legislative, quasi-judicial, administrative or advisory function.
 - i. Does not include meeting solely among staff
 - b. Official meeting- meeting, assembly, gathering with a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or otherwise transacting public business.
2. Public body keep full and accurate minutes
 - a. Open and closed session
 - b. Written, sound or video records- become public record
3. Closed Session- held only for specific reasons.
 - a. Some are: attorney-client privilege; personnel; economic development; purchase contract.
 - b. Closed sessions may be held with a motion citing one of the permissible purposes
4. Notice
 - a. Schedule of regular meetings with time and place kept with clerk to the Board of Commissioners (County). Usually kept with secretary or clerk.
 - b. If change meeting or add special or emergency meeting:
 - i. If announced in open meeting, no further notice required
 - ii. Special meeting- notice at least 48 hours before time of meeting, notice posted on bulletin board or meeting room and sent to sunshine list and media. Must state purpose of meeting.
 - iii. Emergency meeting- notice to media and sunshine list. Can only discuss business connected to emergency at the meeting.
5. Electronic meeting- if official meeting held by conference call or other electronic means, location and means must be provided to the public. Public wishing to participate can be charged up to \$25 dollars
6. Written ballots- public body can't vote by secret or written ballot. In rare instances where it's allowed, ballots must be signed by member and minutes show how each member voted. Ballots must be available for public inspection until official minutes approved
7. Acting by Reference- Members can't vote on anything based on information not available to the public unless copies available to the public so that they public can understand what is going on.
8. Broadcasting- media can broadcast any part of an open meeting. Public body can restrict where equipment placed so it doesn't interfere with the meeting.
9. Remedy for violation of open meeting law
 - a. Injunctive relief may be granted to any person. The person does not have to prove special damages.
 - b. Actions taken at a meeting violating the law can be found null and void. Court will look at how much violation affected action; extent impeded access to meeting; whether violation is isolated occurrence; whether committed in bad faith (not full list of factors).
 - c. Court may award attorney fees- may be ordered to pay by individual members if intentionally or knowingly violated law.
10. Disruption of official meeting- Class 2 misdemeanor

SUMMARY OF PUBLIC RECORDS LAW

The statutes governing public meetings can be found in Chapter 132 of the North Carolina General Statute:

- Public Records include all documents, letters, maps, books, photographs, recordings, etc in connection with the transaction of public business by any agency of NC government or its subdivisions.
 - Agency means any public office, officer, official, board, commission, unit of government, etc.
 - Email Lists: Electronic lists are available for inspection not for copy (New Law) - electronic mailing lists may only be used for set purpose, notify subscribers of an emergency to public health or safety, or to notify subscribers of other lists when list is going to be deleted.
- Not Public Record (not full list)
 - Attorney-client privilege
 - Tax information
 - Public enterprise billing- except when used to get a bond, ensure quality, or assist emergency services
 - Personally identifiable information
 - Trade secret
 - Account numbers for electronic payments
 - Licensed designs
 - Criminal Investigations- can be ordered by a judge
 - 911 phone number and address ID
 - Emergency response and security plans
 - Economic Incentive
- Destruction of Public Records: public record retention duration determined by Department of Cultural Resources
 - Destruction of public records otherwise- Class 3 misdemeanor
- Inspection of public records
 - Reasonable times under reasonable supervision
 - Copies permitted for reasonable fee
 - If public record mixed with confidential information, confidential should be redacted
 - Don't have to give reason for requesting document
 - May be required to make the request in writing
 - Public agencies don't have to provide inspection outside of regular business hours or to create documents that don't current exist or compile data from existing sources.

DISCUSSION QUESTIONS

1. A contentious subject comes up before the Board and the issue is on the agenda for the following month's meeting. Members of the Board start sending emails with reports supporting or opposing various components of the issue along with their comments and opinions regarding the issue.
 - a. Is this an open meeting?
 - b. Is this a public record?
 - c. How should the situation be handled?
2. Do the following situations fall under the open meetings law? What if any problems could arise?
 - a. One member of the board holds a holiday party where a majority of the members attend in fellowship. Is this a public meeting?
 - b. A quorum of the board goes out to lunch together and starts talking about what they want on the next agenda. Is this permissible?
 - c. A quorum of the board goes out to dinner together and does not invite the other members and discuss an upcoming rezoning hearing.
 - d. One member of the board is very interested in a particular issue coming before the board and wants it decided a certain way. He speaks to each board member individually to persuade them to his side and to see how they plan to vote?
3. One Board member sends emails to all the other members and staff inviting them to a party- is this public record?
4. A reporter asks the Planning Department for a list of all the projects approved by Planning Board in the last year, any conditions, and the votes. Can he get this information? In what format?
5. A person requests to listen to the audio recording of the last Zoning Board of Adjustment meeting but says they can only do it at 7pm at night or on the weekend. What is the person entitled to and how do you handle this situation?
6. A project is presented before a Committee for approval. If the project is approved, it will bring in a lot of money to the area but there are environmentally sensitive aspects of the project that some are opposed to.
 - a. One member requests to be recused because the developer and some of the people opposing the project are members of his congregation. Is this a permissible reason for recusal?
 - b. Same as above but the member asks to recuse themselves because the member would be a sub-contractor on the project if it was approved as proposed.
7. A citizen reads about an issue the county is pursuing litigation on in the newspaper and makes a public records request asking for everything about the issue and the litigation- what are they entitled to? What issues may arise?
8. There is a particularly contentious issue so that there are many people present for public comment and the room exceeds capacity for fire code.
 - a. Can you remove people until the population in the room is below the fire code capacity?
 - b. Can you ask anyone who is not planning to speak to go to an overflow room where the meeting will be broadcast?
 - c. Can you ask anyone who does not live in the County to leave the meeting?
 - d. Can you limit the time for public comment?
 - e. Can you limit the time for public comment of individuals who do not reside in the County?
 - f. Can you limit public comment to individuals who had a specific interest in the issue (i.e. those who would have "standing")?
9. One board member likes to send out chain emails to all the members. Can the members delete these items? Are they public record?
10. One member cannot be at a meeting and calls another member after the meeting to find out what happened- is this permitted?