

City of Dover, New Hampshire
OFFICE OF CITY ATTORNEY

NONPUBLIC MEETING PROCEDURAL
CHECKLIST

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

STEP #1: Open the 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 any final decisions made)

STEP #2: Enter Nonpublic

- 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 anybody 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.
- (m) Consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under RSA 91-A:3, III. However, any vote on whether to disclose minutes shall take place in public session

- **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

- 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: Exit Nonpublic

- 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: Vote on Sealing Motion

- 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
- **Recommended Content of the Sealing Motion:** Two recommended scripts are provided below—choose the most appropriate one for your situation.

GENERAL SEALING MOTION (except for Property Sale/Lease/Acquisition): “I move to seal the minutes of the nonpublic meeting that just concluded on the basis that, pursuant to RSA 91-A:3, III, divulgence of the information discussed would _____ [include justification(s)], and on the further condition that the minutes shall become unsealed and open to public inspection only if and when a future majority vote of this body or its successor determines the aforesaid circumstances no longer apply.”

Seconded by _____.

SEALING MOTIONS RELATED TO PROPERTY SALE/LEASE/ACQUISITION: If the motion relates to a nonpublic session held under RSA 91-A:3, II(d) (consideration of acquisition, sale or lease of real or personal property), then use the following motion language instead:

““I move to seal the minutes of the nonpublic meeting that just concluded on the basis that, pursuant to RSA 91-A:3, III, divulgence of the information discussed would _____ [include justification(s)], and on the further condition that the minutes shall become unsealed and open to public inspection, without further vote of this public body, as soon as practicable once the City Manager and City Attorney determine that either (i) the transaction has closed, or (ii) the City has decided not to proceed with the transaction, either by vote of any necessary body or through passage of time or other circumstances.

Seconded by _____.

- 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. Release of previously sealed minutes becomes mandatory in the event RSA 91-A:3, II(d) is relied upon for the nonpublic meeting and the real estate or property transaction either closes or is passed on by the City.
- Adjourn public meeting when appropriate

General Notes:

- If you have done the required steps, then you should have two sets of meeting minutes, one public and one nonpublic.
- The public minutes should be sent to the clerk for publication within five business days.
- Any unsealed nonpublic minutes should be sent to the clerk for publication within seventy-two (72) hours.
- Any sealed minutes should be placed in an envelope marked “Sealed”, bearing the date of the meeting, the name of the public body, the specific exemption relied upon for the nonpublic meeting, and the date of the decision to seal the minutes.
- Draft minutes may be used to satisfy the requirement to post minutes, but all draft minutes should be clearly marked or watermarked “DRAFT”.
- At a minimum sealed minutes must be reviewed every 10 years to determine if they should remain sealed or be made public.