

New York Coalition



For Open Government, Inc.

***Village Governments
Across New York State
Provide Limited Information
To The Public***

March 4, 2021

New York Coalition For Open Government

About:

The New York Coalition For Open Government is a nonpartisan non-profit charitable organization comprised of journalists, activists, attorneys, educators, news media organizations, and other concerned citizens who value open government and freedom of information.

Mission Statement:

Through education and civic engagement, the New York Coalition For Open Government advocates for open, transparent government and defends citizens' right to access information from public institutions at the city, county, and state levels.

Statement of Purpose:

We believe that, if government is of the people, by the people and for the people, then it should also be open *to* the people. Government exists to serve its citizens. Access to public information should be simple. Freedom of Information Laws and the New York Open Meetings Law make access to public records a right.

When government operates openly and honestly, we, the people, can hold our elected officials accountable, fulfilling our duties as an informed citizenry. The New York Coalition For Open Government works to ensure that all people have full access to government records and proceedings on the city, county, and state levels. Such access fosters responsive, accountable government, stimulates civic involvement, and builds trust in government.

The New York Coalition For Open Government

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New York's Open Meetings Law

The Open Meetings Law has been in effect since 1977, and among its requirements are that:

- Every meeting of a public body must be open to the public.
- Notice must be given to the public and the news media prior to a meeting.
- Meeting documents shall be posted on a local government's website to the extent practicable prior to a meeting.
- Meeting minutes must be made available within two weeks of a meeting occurring.

The Open Meetings Law does not require that the public be heard during a meeting. While the law does not require hearing from the public, most local governments provide an opportunity for public comment during their meetings.

The New York Coalition For Open Government believes that it is important for the public to be heard during every meeting and especially during this emergency time and we have focused on this as part of our report.

Governor's Executive Orders

On March 7, 2020, Governor Cuomo issued Executive Order Number 202.1, declaring a State disaster emergency for the entirety of New York State due to the COVID-19 pandemic. This order suspended a subset of the standard Open Meetings Law requiring meetings to be held in public and in-person. As a result, local governments received authorization to hold governmental meetings by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed. This executive order has been extended by way of additional orders through March 16, 2021.

Our Study

The New York Coalition For Open Government reviewed the websites of twenty village governments

Excluding New York City, which does not have any village governments, there are nine different regions in New York State. We reviewed village governments from each of these nine regions across New York State.

- Western New York – Fredonia, Kenmore, Lewiston, Wellsville
- Finger Lakes – Brockport, Geneseo
- Southern Tier – Johnson City, Horseheads
- Central NY – Chittenango, North Syracuse
- North Country – Potsdam, Lowville
- Mohawk Valley – Cobleskill, Illion
- Capital District – Colonie, Scotia
- Hudson Valley – New Paltz, Port Chester
- Long Island – Garden City, Lindenhurst

Focus of Report

This report focuses on four items:

- Posting of all 2020 Village Board meeting minutes online;
- Posting of Village Board meeting agendas online in February 2021;
- Posting of Village Board meeting documents online prior to the February 2021 meeting;
- Are public comments allowed during Village Board meetings.

Grading Criteria

The four items listed above were weighted as follows:

- | | |
|--|------------------|
| • Posting all 2020 meeting minutes | 15 Points |
| • Posting agendas for February 2021 | 35 Points |
| • Posting meeting documents for Feb. 2021 | 35 Points |
| • Allowing public comments during meetings | <u>15 Points</u> |
| | 100 Points |

- | | |
|---------------------|---|
| 100 points | A |
| 85 points | B |
| 70 points | C |
| 65 points | D |
| 64 points and under | F |

The New York State Open Meetings Law requires villages that have regularly updated websites as best as practicable to post meeting documents online prior to a meeting occurring. Given this legal requirement, the posting of meeting agendas and meeting documents were given greater weight.

Grades

Village	Grade	
Johnson City	100	A
New Paltz	100	A
Brockport	85	B
Fredonia	85	B
Port Chester	85	B
Colonie	65	D
Garden City	65	D
Horseheads	65	D
Lindenhurst	65	D
Scotia	65	D
Lewiston	50	F
Wellsville	50	F
Chittenango	30	F
Geneseo	30	F
Illion	30	F
Kenmore	30	F
Lowville	30	F
N. Syracuse	30	F
Potsdam	15	F
Cobleskill	0	F

A (100) (2 out of 20 Villages, 10%)

Johnson City (population 14,400)

- Did all four of the items we reviewed. All meeting minutes were posted for 2020, meeting agendas with documents were posted online and the public is allowed to comment during Zoom meetings.

New Paltz (population 7,100)

- Did all four of the items we reviewed. All meeting minutes were posted for 2020, meeting agendas with documents were posted online and the public is allowed to comment during Zoom meetings. New Paltz does a great job posting video and document links in their meeting minutes. The public is provided three ways to submit comments:
1) Through chat; 2) in writing prior to the meeting; 3) by participating in the Zoom meeting.

B (85) (3 out of 20 Villages, 15%)

Brockport (population 8,300)

- 2020 minutes for May, July, August, Sept., and December are not posted online. Meeting agendas with documents are posted, meetings being held by video and public comments are accepted by email.

Fredonia (population 10,400)

- 2020 minutes not posted for Feb, March, April, May, June, July, August, September, November 2nd and December 28th; Meeting agenda for February meeting posted; Meeting resolutions are posted but other documents not posted; Meetings held by video, public comments accepted by email which are read during the meeting.

Port Chester (population 29,300)

- Meeting minutes for 2020 not posted online. Meeting agenda and documents were posted for February meeting; public comments accepted by telephone during the meeting.

D (65) (5 out of 20 Villages, 25%)

Colonie (population 7,600)

- Meeting documents for February 2021 meeting were not posted online prior to the meeting. 2020 minutes were posted; meeting agenda for February meeting was posted; public comments accepted by email.

Garden City (population 22,500)

- Documents for February 2021 meeting were not posted online prior to the meeting; public comments by telephone/Zoom; 2020 minutes were posted; meeting agenda for February meeting was posted.

Horseheads (population 6,400)

- Meeting documents for February 2021 meeting were not posted online prior to the meeting. 2020 minutes were posted; meeting agenda for February meeting was posted; public comments accepted by Zoom.

Lindenhurst (population 27,000)

- Meeting documents for February 2021 meeting were not posted online prior to the meeting. 2020 minutes were posted; meeting agenda for February meeting was posted on the day of the meeting; public comments accepted by email.

Scotia (population 7,600)

- Meeting documents for February 2021 meeting were not posted online prior to the meeting. 2020 minutes were posted; meeting agenda for February meeting was posted; public comments accepted by Zoom.

F (10 out of 20 Villages, 50%)

Lewiston (50 points) (population 2,600)

- Missing Jan. & Feb. 2020 minutes; Meeting agenda for Feb. 2021 meeting posted without documents; Meetings held in person where public is allowed to speak.

Wellsville (50 points) (population 4,400)

- Minutes for 12/28/20 not posted; Meeting agenda for Feb. 2021 meeting posted without documents; Meetings held in person where public is allowed to speak.

Chittenango (30 points) (population 4,900)

- Meeting minutes for 2020 posted; Agenda and meeting documents not posted for February meeting; comments from public by video.

Geneseo (30 points) (population 8,100)

- Meeting agenda and meeting documents for February 2021 meeting were not posted online prior to the meeting. 2020 minutes were posted; public comments accepted by Zoom.

Illion (30 points) **(population 7,800)**

- Meeting minutes for 2020 posted; meeting agenda and meeting documents were not posted for February meeting. Meetings are held in person and public comments are taken.

Kenmore (30 points) **(population 15,100)**

- Meeting minutes for 2020 posted; meeting agenda and meeting documents were not posted for February meeting. Meetings are held by telephone conference call and public comments are taken by telephone.

Lowville (30 points) **(population 3,200)**

- Meeting minutes for 2020 posted; meeting agenda and meeting documents were not posted for February meeting. Meetings are held in person and public comments are taken.

N. Syracuse (30 points) **(population 6,700)**

- Meeting minutes for 2020 posted; meeting agenda and meeting documents were not posted for February meeting. Meetings are held in person and public comments are taken in person and through Facebook.

Potsdam (15 points) **(population 9,000)**

- All meeting minutes for 2020 not posted, as the December minutes are missing; meeting agenda and meeting documents were not posted for February meeting. Meetings are held in person and public comments are taken.

Cobleskill (0 points) **(population 4,300)**

- Meeting minutes, agendas, documents not posted. Without agendas or minutes posted, cannot tell if public is allowed to comment.

Posting of 2020 Meeting Minutes

Thirteen out of twenty villages (65%), posted all of their 2020 meeting minutes online. The thirteen villages that posted all of their meeting minutes were:

Chittenango, Colonie, Garden City, Geneseo, Horseheads, Illion, Johnson City, Kenmore, Lindenhurst, Lowville, New Paltz, North Syracuse, Scotia

The seven villages (35%), that did not post all of their 2020 meeting minutes were:

Brockport, Cobleskill, Fredonia, Lewiston, Port Chester, Potsdam, Wellsville,

Posting of Meeting Agendas

Thirteen out of twenty villages (65%), posted a meeting agenda online in February 2021 for the public to see prior to the meeting occurring.

The thirteen villages that posted a meeting agenda online were:

Brockport, Colonie, Fredonia, Garden City, Johnson City, Lewiston, Lindenhurst, New Paltz, North Syracuse, Port Chester, Potsdam, Scotia, Wellsville,

The seven villages that did not post a meeting agenda (35%) were:

Chittenango, Cobleskill, Geneseo, Horseheads, Illion, Kenmore, Lowville,

Not posting a meeting agenda listing the topics being discussed, completely leaves the public in the dark regarding a village meeting. The public should have some idea as to what topics the village board plans on discussing and voting on.

Posting of Meeting Documents Before Meeting Occurs

Five out of twenty villages (25%) posted their meeting documents online for the public to see before their meeting.

The Five local governments that posted their meeting documents were:

Brockport, Fredonia, Johnson City, New Paltz, Port Chester.

Fifteen villages (75%) did not post their meeting documents online prior to the meeting for the public to see, which is a violation of the Open Meetings Law.

Chittenango, Cobleskill, Colonie, Garden City, Geneseo, Horseheads, Illion, Kenmore, Lewiston, Lindenhurst, Lowville, North Syracuse, Potsdam, Scotia, Wellsville,

Posting a meeting agenda without documents provides limited information to the public. The public should be able to see the meeting documents that are being discussed.

As all of the villages reviewed with the exception of Cobleskill, have websites which are updated regularly, the failure to post meeting documents online prior to a meeting is a violation of New York’s Open Meetings Law.

Public Comments

Nineteen out of twenty villages (95%), provide the public some way to comment during their meetings. The methods used to obtain public comments were:

Zoom	–	6 villages
In Person	–	5 villages
Email	–	4 villages
Telephone	–	2 villages
Facebook	–	2 villages

It is unclear whether the village of Cobleskill allows public comments at their meetings as minutes and an agenda are not posted on their website.

Last year the New York Coalition For Open Government did a report early in the Covid-19 pandemic which determined that only 33% of twenty one local governments studied were allowing public comments during their remote meetings.

It is good to see that local governments appear to have adapted to conducting business remotely and have figured out ways to obtain feedback and input from the public during their meetings. Hearing from the public is always important and perhaps even more important now during an emergency situation.

The Open Meetings Law does not mandate that the public be heard during a local government meeting- a lacking requirement we are seeking to change.

The New York State Open Meetings Law should be amended to mandate that the public be given an opportunity to be heard at every meeting held by a public body. According to research done by the Reporters Committee for Freedom of the Press, thirteen states mandate that the public be heard during meetings: California, New Jersey, Pennsylvania, Vermont, Delaware, Florida, Hawaii, Louisiana, Montana, Nebraska, Nevada, North Carolina and Alaska.

Recommendations

New York’s Open Meetings Law is weak and in need of improvement. Most people are shocked to learn that the Open Meetings Law does not mandate:

- The posting of meeting minutes online;
- That the public must be heard at public meetings;
- The livestreaming of meetings and the posting of meeting videos online;
- That there is no entity with the power to monitor and enforce compliance with the law.

New York State Assemblymember Amy Paulin and Senator Anna Kaplan have introduced the following bills, which the New York Coalition For Open Government supports:

A.1108/S04704 - require posting meeting minutes/transcripts, within two weeks of a meeting.

A.1228/ S4863 - requires meeting documents to be posted online at least 24 hours before a meeting occurs.

The findings of this report document the need for amendments to the Open Meetings Law. Thirty-five percent of Villages reviewed are not posting meeting minutes online in a timely fashion. Seventy-five percent are not posting meeting agendas and documents online prior to their meetings.

Although seventy-five percent of Villages reviewed are violating the Open Meetings Law, the only recourse is for organizations like ours to draw attention to these issues in an effort to advocate, inform and embarrass elected officials to change how they are conducting the public's business.

The New York State Legislature has amended the Open Meetings Law twice to create sanctions for public bodies that violate the law. In 2008, the Legislature allowed courts to award attorney fees to citizens who successfully challenge a board action for violating the Open Meetings Law. In 2010, Courts were granted the authority to require the members of a public body to receive Open Meetings Law training by the New York State Committee on Open Government.

The reality is that other than citizen lawsuits which are expensive and difficult to undertake there is no entity that ensures compliance with the New York State Open Meetings Law.

The New York State Committee on Open Government is a state created agency that serves as a tremendous resource for information but the Committee does not have any enforcement power. State legislation that provides enforcement power to the New York State Committee on Open Government or some other entity would be a great benefit to addressing the clear lack of compliance with the Open Meetings Law identified in this report and others completed by the New York Coalition For Open Government.

The Massachusetts Attorney General since 2009 has had a division dedicated to addressing open government issues. The Attorney General in Massachusetts investigates open government complaints from citizens and by law has the authority to impose \$1,000 fines on local governments that violate the law. If the local governments disagree with the Attorney General's decision they can sue in Court. State Attorney General's across the country have sued local governments for violating open meeting laws, but no such lawsuits have ever been filed by the New York State Attorney General's Office.

While other Attorney General websites have information regarding their open meeting laws and online forms to file a complaint, no such information or forms exist on the New York State Attorney General's website.

The Attorney General and the State Comptroller have broad powers and an elected position, which could be used to educate, monitor, and report local government officials that are not complying with the Open Meetings Law.

We would welcome the Attorney General and the State Comptroller becoming more involved as statewide elected officials with open government matters.

Conclusion

The New York Coalition For Open Government recognizes the unprecedented situation we all find ourselves in. We understand the chaos local governments across the state are going through, and their work through these difficult times is greatly appreciated.

We hope this report is viewed as fair, constructive criticism aimed at ensuring the public is being fully informed. There is room for significant improvement for many local governments across the state, whether it be in posting meeting minutes online or posting meeting agenda documents for the public to review prior to a meeting.

Failing to post meeting minutes online although not required by law is a basic step of providing information to the public, which thirty-five percent of villages failed to do. Likewise, failure to post a meeting agenda prior to a meeting is a basic informational item that thirty-five percent of villages failed to perform.

Even worse, seventy-five percent of villages reviewed failed to post meeting documents online prior to their meetings, which is a violation of the Open Meetings Law. The failure to post meeting documents online as required by law means that limited information is being provided to the public. The public should be able to see the documents that their elected village representatives are discussing and voting on.

We hope that village officials will take corrective action to post their meeting minutes, meeting agendas and documents, which will provide more information to the public and allow for meaningful public participation in village proceedings.