

New York Coalition



For Open Government, Inc.

***Town Boards
Across New York State Are
Violating the Open Meetings Law***

November 30, 2022

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

Board of Directors

Paul Wolf	President
Joseph Kissel	Vice President
Janet Vito	Treasurer
Alberta Roman	Secretary
Larry Vito	Director
Sonia Dusza	Director
Maria Tisby	Director
Steven Lyle	Director
Suzanne Kelly	Director
Mary Lou Cebula	Director
Michelle Allen	Director
Patricia Irving	Director

The following members also contributed to the completion of this report: **Axel Ebermann, Danielle Erb, Susan Kims, Susan Laurilliard, and Mary O'Malley.**

Board President Paul Wolf, Esq. can be contacted at (716) 435-4976, or by email at paulwolf2@gmail.com. Our website is www.nyopengov.org and you can also follow our Facebook page.

Our Study

The New York Coalition For Open Government reviewed the websites of eighteen towns. Excluding New York City, which does not have any town governments, there are nine different regions in New York State. We reviewed town boards from each of these nine regions across New York State by randomly picking towns that begin with the letter “H”.

Western New York	–	Hamburg, Hanover
Finger Lakes	–	Hamlin, Hopewell
Southern Tier	–	Hamden, Hartsville
Central NY	–	Hamilton, Hannibal
North Country	–	Harrietstown, Henderson
Mohawk Valley	–	Hartwick, Herkimer
Capital District	–	Hadley, Hague
Hudson Valley	–	Hamptonburgh, Hardenburgh
Long Island	–	Hempstead, Huntington

Focus of Report

This report focuses on the posting of town Board meeting documents online as required by the New York Open Meetings Law. The New York State Open Meetings Law requires towns that have high-speed regularly updated websites as best as practicable to post meeting documents online at least 24 hours prior to a meeting occurring. Meeting minutes or a meeting recording are required to be posted online within two weeks of a meeting if a town has a website.

The Open Meetings Law states the following in Section 103(e):

Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable at least twenty-four hours prior to the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable at least twenty-four hours prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.

The Open Meetings Law in Section 106(3), additionally requires that meeting minutes or a recording of a meeting be posted online within two weeks of a meeting.

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 except that minutes taken pursuant to subdivision two of this section shall be available to the public within one week from the date of the executive session. 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 except that minutes taken pursuant to subdivision two of this section shall be available to the public within one week from the date of the executive session. For purposes of this subdivision unabridged video recordings or unabridged audio recordings or unabridged written transcripts may be deemed to be meeting minutes. Nothing in this section shall require the creation of minutes if the public body would not otherwise take them.

Grading Criteria

The grading criteria is a simple pass or fail. The town websites were reviewed in September/October 2022, to see whether meeting documents were posted online prior to the meeting occurring. The second item we looked at was whether meeting minutes or a meeting recording were posted online timely.

Grades

Town Boards That Received a Passing Grade For Posting Meeting Documents and Meeting Minutes Online:

- 1) Hamburg
- 2) Hartwick
- 3) Hempstead
- 4) Hopewell
- 5) Huntington

A disappointing passage rate of 28%.

Town Boards That Received a Failing Grade For Not Posting Meeting Documents and Meeting Minutes Online:

- 1) Hadley
- 2) Hague
- 3) Hamden
- 4) Hamilton
- 5) Hamlin
- 6) Hamptonburgh
- 7) Hannibal
- 8) Hanover
- 9) Hardenburgh
- 10) Harrietstown
- 11) Hartsville
- 12) Henderson
- 13) Herkimer

An incredible failure rate for not complying with the Open Meetings Law of 72%!

A Brief Overview For Each Town Board

Hadley (population 1,976)

- Meeting minutes posted, meeting documents are not posted. On November 10, 2022, an email was sent to the town clerk asking why meeting documents are not posted. As of November 29th, we have not received a response to our email.

Hague (population 633)

- Meeting agenda is posted but meeting documents and minutes are not posted. On November 2nd an email was sent to the town clerk asking why meeting documents are not posted and why meeting minutes have not been posted since August 30th. The town clerk did not answer the question regarding the meeting documents but did post the missing meeting minutes later in the afternoon.

Hamburg (population 60,000)

- Meeting documents and minutes posted.

Hamden (population 1,137)

- Meeting minutes posted, documents not posted. On November 10th an email was sent to the town clerk asking why meeting agendas and documents are not posted online. According to the clerk, the agenda for the next month is posted with the minutes from the previous month. When asked why the meeting documents are not posted the clerk did not respond.

Hamilton (population 6,379)

- A one page agenda is posted without any meeting documents. August meeting minutes posted after the 14 days required by law, on 10/29, the minutes for 9/8 meeting not posted. On October 29th an email was sent to the town clerk asking to confirm if our information was correct and asking why meeting documents are not posted online. As of November 29th, we have not received a response to our email.

Hamlin (population 8,725)

- Meeting minutes posted, meeting documents not posted. On November 1st an email was sent to the town clerk asking why meeting documents were not posted. As of November 29th, we have not received a response to our email.

Hamptonburgh (population 5,489)

- Meeting minutes posted, meeting agendas are posted but meeting documents are not posted. On November 1st an email was sent to the town clerk asking why meeting documents are not posted. As of November 29th, we have not received a response to our email.

Hannibal (population 3,931)

- Meeting minutes are posted. Meeting agenda and meeting documents are not posted. On October 29th, an email was sent to the town clerk asking why meeting documents are not posted. As of November 29th, we have not received a response to our email.

Hanover (population 6,972)

- Meeting agendas, documents and minutes are not posted online. Names and email addresses for the town clerk or town board are not provided on the website.

Hardenburgh (population 221)

- Meeting minutes are posted. Meeting agendas and meeting documents are not posted. The town clerk was contacted by email on October 29th (Sat. night) and a response was received Monday morning October 31st. The town clerk stated that she was appointed on October 13th and that she would be posting meeting agendas soon.

Harriestown (population 5,254)

- Meeting agendas are posted, meeting documents are not posted. Meeting minutes are posted. On November 3rd, an email was sent to the town clerk asking why meeting documents are not posted. As of November 29th, we have not received a response to our email.

Hartsville (population 558)

- In September last meeting minutes posted were from May. After being contacted by the Coalition, meeting minutes brought up to date. The minutes for the September 14th meeting were posted after the two week requirement by law. On October 29th, an email was sent to the town clerk asking why meeting agendas and documents are not posted. As of November 29th, we have not received a response to our email.

Hartwick (population 1,952)

- Meeting documents and minutes posted.

Hempstead (population 793,409)

- Meeting documents and minutes posted.

Henderson (population 1,438)

- Meeting minutes are posted, meeting agendas and documents are not posted. On November 10th, an email was sent to the town clerk asking why meeting documents are not posted. As of November 29th, we have not received a response to our email.

Herkimer (population 9,566)

- Meeting documents and meeting minutes not posted. On November 1st, an email was sent to the town clerk asking why meeting documents are not posted. As of November 29th, we have not received a response to our email.

Hopewell (population 3,931)

- Meeting documents and minutes posted.

Huntington (population 204,000)

- Meeting documents and minutes posted.

Recommendations

New York's Open Meetings Law is weak and in need of improvement. Current law requires public bodies if they have a regularly updated website to post meeting documents online before a meeting occurs as best as "practicable" at least 24 hours prior to a meeting. There is no practicable reason as to why meeting documents cannot be scanned and posted online prior to a meeting.

1) There Should Be Mandated Open Meetings Law Training

The findings of this report document the need for elected officials to receive training regarding the requirements of the Open Meetings Law. Members of a planning board, zoning board, school board and industrial development agencies are required to receive various types of training. Elected officials are not mandated to receive any type of training and there should be a requirement to receive training regarding the Freedom of Information Law and the Open Meetings Law.

2) We Need An Entity With Enforcement Power

Although seventy-two percent of Town Boards 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 government officials to change how they are conducting the public's business.

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. If a municipality is successfully sued for violating the Open Meetings Law it should be mandatory that the plaintiff's attorney fees be paid.

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.

3) The New York Attorney General Should Be Assisting The Public

In Arizona, Florida, Illinois, Kentucky, and Massachusetts, their Attorney Generals assist the public with Open Meetings Law and Freedom of Information Law complaints. 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 Generals across the country have sued local governments for violating open meeting laws, but no lawsuits have been done by the New York State Attorney General.

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 has broad powers and is an office which can 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 becoming more involved as a statewide elected official with open government matters.

4) There Should Be Mandatory Attorney Fees For Open Meetings Lawsuits

It is going to take time to create a new entity with enforcement powers as previously recommended. It is incredibly difficult for members of the public to retain and pay for the services of an attorney to pursue legal action. Government officials know this and it creates an uneven playing field. The responsibilities public bodies have to post meeting documents and meeting minutes are not hard tasks to complete. If a public body is not complying with the law and that has been proven in a lawsuit, then the public body should be mandated to pay for the plaintiff's attorney fees. Amending the law to require mandatory attorney fees, will certainly bring about greater compliance with the law.

Conclusion

Since 2012, public bodies have been required to post meeting documents online. This is not a new requirement and the fact that only 28% of the towns reviewed are complying with the law is incredible.

It is disappointing that of the twelve towns that we contacted by email to communicate with them regarding their failure to post meeting documents online, only three replied. When our organization brought to the town clerk's attention that documents were not posted online and asked why, nine of them could not be bothered to respond.

This report should be viewed as constructive criticism aimed at ensuring the public is being fully informed. 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 town board members are discussing and voting on. The public should be able to learn what happened at a town board meeting through the timely posting online of meeting minutes or a recording.

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