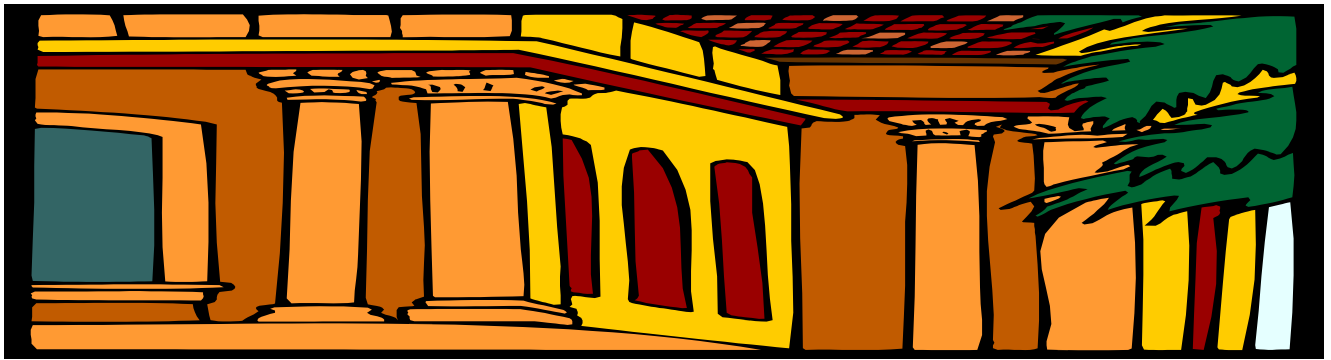


# A CITIZENS GUIDE TO NEBRASKA'S OPEN MEETINGS LAW:

How to stay involved and demand that your government be open

A Publication of  
The Great Plains Environmental Law Center  
5170 Leavenworth Street, Suite 3  
Omaha, NE 68106  
(402) 556-7959  
[www.gpelc.org](http://www.gpelc.org)



## Introduction

One of the key principals to our form of government is “openness.” As a democracy, we prize the ability to witness our government in action at all levels when laws are being made or public policy is being determined. Many times, these decisions have a major impact on our quality of life.



*Citizen participation and oversight is central to protecting our natural resources; and it begins with our government.*

In the area of protecting our natural resources and public places, government decisions can have tremendous impact. The public can lose valued water, air or land quality when new uses are proposed for an area or adequate environmental safeguards are not maintained.

The public has a right to participate in government decisions. This right is protected by statute. Government must be open and the public’s right to participate must be preserved at every level.

This guide will give the basic information you will need to assure that your rights to participate in government are maintained. This guide can not, however, replace the advice of a lawyer regarding your particular concerns. You should contact a lawyer if you feel that your local government has not followed the Open Meetings Law. Also, the information in this guide is based on current laws, check with us to see if the law has changed.

If you have any questions, about this guide or any of our other resources, please contact us at: The Great Plains Environmental Law Center, 5170 Leavenworth Street, Suite 3, Omaha, NE 68106, (402) 556-7959, or [www.gpelc.org](http://www.gpelc.org).

## **Nebraska’s Open Meetings Laws and How they Impact Your Local Government.**

When it comes to creating policy, ordinances, or making decisions affecting your community and natural resources, ask yourself the following questions:

- Are your meetings held at a public place that can accommodate the public?
- Are your meetings advertised so the public is informed in advance of the meetings?
- Are votes recorded by roll call vote?
- Have closed sessions been commenced and completed properly?
- Is board business discussed at chance coffee shop meetings?

If you answer ‘no’ to any of these questions, or if you simply do not know the answer, read on.

**Picture this:**

A new development is proposed for your community. This could be an industrialized animal feeding operation, a heavy pollution factory, a new [dam](#) or a proposed clean-up of contaminated soil or water.



The proposed development is drawing the public’s attention (and opposition), and your local government officials are afraid of taking a public position afraid the public would disagree. For example, a new developer has proposed a large animal feeding operation in your county where agriculture is the primary economy. You know that these kind of feeding operations require approval from the public. You also know that these kinds of operations must meet local zoning regulations and ordinances.

Under local regulations, the county government is required to hold a public hearing about animal feeding operation. Nearly everyone who talks opposes the facility because they want to protect the air, water and quality of life. After hearing all of the testimony, the County Board votes to recess from the meeting so that they can “visit” the site where the operation will be built. Two hours later, the board meets in public again and votes approve the feeding operation.

Is this right?

**The Importance of Public Meetings.**

Government approval is required at many steps in the process of getting approval for a new [development](#). In nearly all counties in Nebraska, at least two governmental bodies must take some action before a zoning permit can be issued. These are the planning board/commission and the county board of commissioners/supervisors.

Under local zoning regulations the County Board has the final decision regarding whether, [for example](#), a new or expanded AFO will be allowed in a community. [The County Board makes the decision](#) by either approving or denying a conditional or special use permit. As a public body of government, County Board’s in Nebraska are required to act in open meetings where the public can attend and make comments, unless there is an important reason for not doing so.

Public participation and oversight at county board hearings, or at any meeting where a governmental body takes action that affects the public, plays an important role in our government.

Public participation is the only means for informed decision making by elected officials and is important to the decision making process for new [community developments](#).

Concerned communities confronted with proposed [community changes](#) that will impact air and water quality should be aware of how the Nebraska Public Meetings Law requires local governmental bodies to act in open public meetings.

### **Nebraska's Public Meetings Law.**

There is no common-law right to attend meetings of government bodies. However, many states have enacted public meeting statutes, often termed "Sunshine Acts," or "Open Meetings Laws" that provide that meetings of public entities within the state must be open to the public at large. The purpose of such statutes is to promote openness and accountability in government and to prevent the government from conducting the public's business in secret.



*Nebraska's Open Meeting Law is a pledge to public oversight and public participation.*

Years ago, the Nebraska legislature took the initiative and declared that "formation of public policy is public business and may not be conducted in secret." Neb Rev. Stat. §84-1408. This means unless some exception exists, any meeting of a public body (like County Boards or Commissions) must be made open to the public. The reason was to ensure that citizens would be able to exercise their "democratic privilege of attending and speaking at meetings of public bodies."

The bottom line is that Nebraska has made it a rule that if policy formation will directly affect the citizens, then the citizens are entitled to have a say in how the policy is formed.

### *EXCEPTIONS*

Nebraska's Open Meetings law should not be interpreted to mean that the public is entitled to be present in every facet of policy making. If this were true, there would be no point in having a legislature. Therefore, Nebraska's Open Meetings Law provides for some exceptions. These exceptions are not a bar to the public expressing their concerns on the laws; [there](#) are simply times in which the particular board does not have to make a formal announcement that policy is being formed. Exceptions include: closed sessions for the State Board of Education, closed sessions of the Board of Regents, and the Nebraska Legislature (The Nebraska Legislature is not covered under the public meetings statutes because the Nebraska Constitution separately provides for public access to that body).

## Who Is Covered by the Open Meetings Laws?

Nebraska has a general list of the public bodies that are subject to the Open Meetings laws. They are (as listed by Neb. Rev. Stat. § 84-1409(1)):

- (1) Governing bodies of all state political subdivisions,
- (2) Governing bodies of all agencies of the executive department of state government created by law,
- (3) All independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created pursuant to state law,
- (4) All study or advisory committees of the executive department of the state whether of continuing or limited existence,
- (5) Advisory committees of the governing bodies of political subdivisions, of the governing bodies of agencies of the executive branch of state government, or of independent boards, commissions, etc., and
- (6) Instrumentalities exercising essentially public functions. (Presumably, this term includes cities, counties, villages, etc., and their governing boards are covered by the public meetings statutes.)

“Advisory Boards” are not necessarily subject to the open meetings law because either the board does not fall within the definition provided by the statute, or because the board performs only administrative functions which are not part of the management of the political sub-division. However, if the review board is making decision about how to use public funds, then it probably is subject to the law.

### *EXCEPTIONS.*

There are three exceptions to the definition of “public body”. These organizations, although part of government, are not subject to the Public Meeting Law’s open meeting requirements.

Subcommittees: The public meetings statutes do not apply to subcommittees of the various bodies described above. However, if a quorum of the public body attends a subcommittee meeting, or if the subcommittees are holding hearings, making policy or taking formal action on behalf of the parent body, then the subcommittee will be subject to the Open Meetings Law.

Judicial Bodies: The public meetings statutes do not apply to judicial proceedings unless the court or other judicial authority is exercising rule making authority, deliberating, or deciding upon the issuance of administrative orders.

“Various Agencies”: The Attorney General has determined that hearings before the following agencies are considered “judicial” and not subject to the public meetings law:

1. A hearing before a County Board of Mental Health

2. A hearing before the Nebraska Equal Opportunity Commission
3. A hearing before a hearing officer appointed by the State Personnel Board.

**Requirements for Public Meetings: Definition of “Meeting”, Notice, Agendas and Minutes.**



*What Qualifies as a “Meeting”?*

A formal definition of a “meeting” is “all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.”

The term "meeting" in public meetings laws generally refers to all official deliberations and formal actions of all governmental boards and commissions. Some courts have stated that a function is a "meeting" only where deliberative decision-making process that lead to the formation and determination of public policy occur. Some courts have gone so far as to have elements for what constitutes a “meeting”. The elements of a "meeting" for the purpose of an open-meetings act are:

- (1) A quorum of a public body's members are present;
- (2) A decision is deliberated or rendered; and
- (3) The decision concerns a matter of public policy.

Some statutes say that the term "meeting" does not include chance or social gatherings that are not intended to circumvent the Open Meetings law. However, luncheons to discuss public-policy issues have been held to violate an open-meetings law. And a discussion between a mayor and two council members concerning a contract the city was considering, which was held during a break in a city planning commission meeting, was a "meeting" within the meaning of the open meeting act. However, in some states, a public body may violate the Open Meetings law by clothing itself as a sham advisory committee or subcommittee of less than a quorum. Other examples include: listening and exposing itself to facts, arguments and statements constitutes a crucial part of a governmental body’s decision making. As a result, receiving information triggers the requirements of the statutes, and the public meetings law applies to meetings at which briefing or the formation of tentative policy takes place, as well as to meetings where action is contemplated or taken.

### *NOTICE AND AGENDA: How Are People Notified?*

Advance notice must be given for all public meetings. The time and place, as recorded in the minutes, must be included. Both the governing body and the public must have notice that the meeting will take place.

Nebraska has set out several requirements for the notice which must be given for a public meeting and for the agenda which must be published:

- (1) The public body must give reasonable advance publicized notice of the time and place of each meeting by a method designated by the body and recorded in its minutes,
- (2) That notice must be transmitted to all members of the body and to the public,
- (3) The notice must contain an agenda of subjects known at the time of the publicized notice or a statement that such an agenda is readily available for inspection at the principal office of the public body.

The notice also must contain an agenda of subjects to be addressed known at the time of the notice is published. An agenda maintained at the office of a public body for public inspection must be kept current and may not be altered later than 24 hours before the scheduled commencement of the public meeting (or 48 hours before commencement of a meeting of a city council if that meeting is noticed outside the corporate limits of the municipality). A public body may modify an agenda to include items of an emergency nature only at an emergency meeting of the public.

### *MINUTES: How Are Records Kept?*

Minutes must be kept of all meetings, showing the time, place, members present and absent, and a summary of all matters discussed. Any action taken should be recorded by roll call vote, indicating how each member voted, or if absent or not voting. The vote to elect leadership within the public body may be taken by secret ballot, but total number of votes for each candidate must be recorded in the minutes. The minutes of all meetings and evidence or documentation received or disclosed during open session is considered public records, open to public inspection. Minutes must be available within 10 working days or prior to the next convened meeting, whichever occurs first.

### **Emergency Meetings**

An emergency is defined as “any event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition.”

If an emergency meeting is called, the news media should be notified, even though advance public notice is not required. The reason for the emergency meeting must be recorded in the minutes and any formal action taken at the meeting must relate only to the emergency. Emergency meetings may be held by phone or other telecommunications device. Complete minutes of the emergency meeting and actions taken must be available to the public no later than the end of the next regular business day.

## **How Your Rights are Protected by the Public Meetings Law.**

Any person has the right to attend and the right to speak at public meetings. A governing body is not required to allow the public to speak at each meeting, but may not forbid public participation at all meetings. No person is required to identify themselves in order to attend a meeting, but the governing body may require identification of those who wish to speak. A reasonable effort must be made to accommodate the public's right to hear the discussion and testimony at a public meeting. At least one copy of reproducible written material discussed at the open meeting should be available at the meeting for the public to examine or copy.

Both the attorney general and county attorney have responsibility to enforce the public meetings statutes. Suit may be filed in district court if an alleged violation has occurred. The court may declare any actions by the governing body void if violations have occurred.

### *CLOSED SESSIONS OF A PUBLIC BODY.*

A closed session may be held if it is necessary to protect the public interest or prevent needless injury to an individual's reputation. Possible reasons for closed sessions include: discussion about collective bargaining, real estate purchases or litigation; security issues; investigating allegations of criminal misconduct; evaluation of an individual's job performance if the person has not requested a public meeting.

Closed sessions may be called by a majority vote of its members, not simply the majority of members present. The vote to go into closed session must be taken in open session. The vote of each member, the reason for the closed session, the time it began and the time it ended must be recorded in the minutes.

When in closed session, only the reason for calling the session may be discussed. Any member may challenge the continuation of the closed session if any other topic is discussed. The challenge and how it is decided must be recorded in minutes. A majority vote of the members could overrule a challenge.

No formal action can be taken in closed session. The open session must be reconvened before a motion and vote can occur.

## **What You Can Do if You Believe The Public Meetings Law has Been Violated.**

### *OJECTION TO ACTION AND THE RISK OF WAIVER.*

Any person who has notice of a meeting and attends the meeting is required to object specifically to a lack of public notice at the meeting. A failure to object leads to a waiver of rights to object under the public meetings statutes. A timely objection will permit the public body to remedy its mistake promptly and defer formal action until the required public notice can be given.

## *ACTIONS FOR ENFORCEMENT.*

There are various enforcement options available to individuals who believe that the public meetings statutes have been violated.



Any motion, resolution, rule, ordinance, or formal action of a public body made or taken in violation of the public meetings statutes shall be declared void by the district court if the suit is commenced within 120 days of the meeting of the public body at which the alleged violation occurred. After four months, the violation of the public meetings statutes would have to be substantial to allow a court to void the action of the public body. In any event, no action could be brought after one year of the public meeting in question.

If an action is successful, any action by the board which is proper under the public meetings statutes may cure defects in actions previously taken by the same board. In such an instance, an action by a public body which previously might have been declared void will be declared proper. On the other hand, under those circumstances, the original improper meeting itself is still void. “Void” means ineffectual and having no legal force or binding effect, while “voidable” means that which may be avoided or declared void, not absolutely void.

## *CRIMINAL SANCTIONS.*

Any member of a public body who knowingly (this requires intentional behavior rather than inadvertence) violates or conspires to violate the public meetings statutes shall be guilty of a misdemeanor. Attending or remaining at a meeting knowing that the public body is in violation of any provision of the public meetings statutes is also punishable in the same manner. This means that if a board conducts a meeting that they know is in violation of the Open Meetings law, each board member can be charged criminally. They each can serve time in jail for failure to follow simple standards designed keep the public abreast of policy changes in the county.

## **Conclusion**

Nebraska’s Open Meetings Laws are designed to ensure the public is able to exercise their right to engage in policy making. County Boards who fail to follow these laws are subject to objections by the public and even criminal sanctions. These laws are not a restriction on policy making, but a protection to ensure that the democratic process is adhered to. Every citizen should be empowered by knowing how their county boards function and how policy changes in their county is conducted.

## Sources

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