

Chapter 5

OPEN MEETINGS AND PUBLIC RECORDS

Reviewed January 2, 2009

OPEN MEETINGS

Municipal councils and boards of aldermen are "public bodies" and therefore are subject to the state's Open Meetings Law [R.S. 42:1-7]. It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and made aware of the performance of their public officials and the deliberations and decisions which shape public policy [R.S. 42:4.1].

Quorum. To transact business, a quorum of the board of aldermen must be present at the meeting. A quorum is a simple majority of the total membership of a public body [R.S. 42:4.2].

It should be noted here that a "chance meeting" or a "social gathering" of the members of a public body at which there is no vote or other action taken, including formal or informal polling of the public body's members, is not considered a public meeting under the definition of the Open Meetings Law [R.S. 42:4.2].

In the Lawrason Act form of government, the mayor shall preside at all meetings of the board of aldermen, and in the case of a tied vote, shall cast the deciding vote. In the mayor's absence, the mayor pro tempore assumes the role of the presiding officer. The mayor pro tempore shall be selected by the board of aldermen, and have the same power and perform all duties of the mayor in the absence or disability of the mayor, *except* the veto power of the mayor. In the absence of the mayor and the mayor pro tempore, the board may select another alderman to preside temporarily and perform the duties of the mayor [R.S. 33:405].

Notice of Meeting. All public bodies are required to give notice of all council or board meetings, including special or rescheduled meetings, to its members and the public. The notice shall be in writing and given 24 hours prior to the meeting. The notice shall include the date, time, and place of such meeting [R.S. 42:7]. Further, Act No. 467 of the 1999 Regular Session amended R.S. 42:4.1(B), which now requires all public bodies to post a copy of R.S. 42:4.1 through 13.

All public bodies shall provide a **unanimous approval** of the members present at a meeting of a public body to take up a matter not on the agenda. Any such matter shall be identified in the motion to take up the matter not on the agenda with reasonable specificity, including the purpose of the addition to the agenda, and entered into the minutes of the meeting. Prior to any vote on the motion to take up a matter not on the agenda by the public body, there shall be an opportunity for public comment on any such

motion in accordance with R.S. 42:5 or 5.1. The public body shall not use its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of RS. 42.4.1 through 8. (Act 131 of 2008 Regular Session)

Types of Meetings. Municipal governing bodies have four basic types of meetings:

1. Regular Meetings. By law, Lawrason Act municipal governing bodies are required to meet regularly, at least once a month, at a time, place, and date fixed by ordinance [R.S. 33:405]. Regular meetings are conducted for the purpose of discussing the municipality's general and routine business and to enact necessary ordinances and resolutions.

2. Special Meetings. On the call of the mayor or of a majority of the members of the board of aldermen, the board may hold a regular meeting [R.S. 33:405]. The board shall establish by ordinance how notice of the special meeting shall be provided to members of the board and the mayor. The notice for a special meeting shall specify the business to be considered at the special meeting. No business, except that specified in the notice of the special meeting, shall be considered at the meeting unless approved by a two-thirds majority of the aldermen present at the meeting.

3. Executive Sessions. In conducting public business, occasions arise when it is necessary and in the best interest of the municipality for council or board members to meet and discuss certain matters in meetings closed to the general public. A public body may hold executive sessions only upon an affirmative vote, taken at an open meeting for which notice has been given, pursuant to R.S. 42:7, of two-thirds of its constituent members present. The vote of each member on the question of holding such an executive session and the reason for holding such an executive session shall be recorded and entered into the minutes of the meeting. No final or binding action, however, shall be taken during an executive session [R.S. 42:6].

A board of aldermen may go into executive session for the following reasons:

- Discussion of the character, professional competence, or physical or mental health of a person, unless that person requests that the discussion be held at an open meeting. A public body can not go into executive session for a discussion of the appointment of a person to a public body [R.S. 42:6.1].
- Strategy sessions or negotiations with respect to (a) collective bargaining, (b) prospective litigation after formal written demand, or (c) litigation when an open meeting would have a detrimental effect on the bargaining or litigation position of the public body [R.S. 42.6.1(A)(2)].
- Discussion regarding security personnel, plans, or devices [R.S. 42:6.1(A)(3)].
- Investigative proceedings regarding allegations of misconduct [R.S. 42:6.1(A)(4)].

- Cases of extraordinary emergency, such as a natural disaster or civil disturbance [R.S. 42:6.1(A)(5)].
- Certain meetings of the State Mineral Board where confidential records or matters are discussed [R.S. 42:6.1(A)(6)].
- Conferences between a school board and individual student, tutors, or parents regarding problems of such student, tutors, or parents, unless such student, tutors, or parents request an open meeting [R.S. 42:6.1(A)(7)].

4. Emergency Meetings. A public body shall call an emergency meeting for "cases of extraordinary emergency," such as a natural disaster, threat of epidemic, civil disturbances, suppression of insurrection, repelling of invasions, or other matters of similar magnitude.

Public Comment. Act 285 of the 2001 Regular Legislative Session amended and enacted R.S. 42:5(D) which requires each public body (excluding school boards) conducting a meeting which is subject to the notice requirements of the open meetings law (R.S. 42:7(A) **shall** provide an opportunity for public comment at such meeting, subject to reasonable rules, regulations, and restrictions **as adopted by the public body**. The comment period applies generally to items on the agenda only [**Attorney General's Opinion 01-367, January 23, 2002**].

Minutes. All public bodies shall keep written minutes for all of their open meetings.

The minutes shall contain the following:

- Date, place, and time of the open meeting
- Members of the public body recorded as being either present or absent
- Substance of all matters decided and, at the request of any member of the public body, a record -- by individual member -- of any votes taken
- Any other information that the public body requests be included or reflected in the minutes [R.S. 42:7.1(1)]

All actions taken in violation of the Open Meetings Law shall be voidable by a court of competent jurisdiction. A suit to void any action must be commenced within 60 days of the action [R.S. 42:9].

Official Journals. Every public body must choose and maintain an official journal. The newspaper selected for this purpose shall publish all minutes, ordinances, resolutions, budgets, and other official proceedings of the public body (police jury, municipality, and school board) [R.S. 43:143].

PUBLIC RECORDS

The right of access to public records is very strong in Louisiana. Article XII, Section

3 of the *Louisiana Constitution* provides that no person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in those cases established by law. Louisiana citizens have an unequivocal constitutional and statutory right to examine public records. The state's Public Records Law must be liberally interpreted to enlarge rather than restrict the public's access to public records [*Treadway v. Jones*, 583 So.2d 119].

All public bodies are governed by the Public Records Law. A public body is defined as any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, or any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function [R.S. 44:1(A)].

What Is a Public Record? All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristic, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business transaction, work duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body, or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or laws of this state, are public records [R.S. 44:1(A)(2)].

Exemptions Affecting Municipalities. The Public Records Law exempts numerous records [R.S. 44:4]. Act No. 882 of the 2001 Regular Legislative Session amended and reenacted R.S. 44:4.1 which lists, by citation, those public records which are specifically exempt from the Public Records Law. Some of the exemptions which affect or pertain to municipalities include:

- Police records pertaining to pending or reasonably anticipated criminal litigation [R.S. 44:3];
- Home address and telephone numbers of public employees when the employees request that they be kept confidential, and medical and insurance records of public employees [R.S. 44:4(11) and (12)];
- Any tax return or the information contained in any tax return. However, the name and address of any person who obtains an occupational license, the information on the face of the license, and information as to whether an occupational license has been issued to a particular person shall be public records [R.S. 44:4(1)];
- The courts have ruled that certain records may be exempt from the Public Records Law because the nature of the information is so personal that the

disclosure of the records would constitute an invasion of privacy, according to Article 1, Section 5 of the *Louisiana Constitution*. The courts have ruled that performance evaluation reports of public employees are exempt [*Trahan v. Larivee*, 356 So.2d 294 (3rd Cir. 1979)]; and,

- Records of the Office of Risk Management of the Division of Administration, relating to pending claims or similar records, or any municipal or parish office with similar duties [R.S. 44:4(15)].

Right to Inspect. Any person of the age of majority may inspect any public record. Act No. 759 or the 2004 Regular Louisiana Legislative Session now allows any person, regardless of age, to obtain a copy or reproduction of any public record [R.S. 44:31].

A municipality shall not charge a fee to any person who wants to examine or review any public records unless the person requests to view the records outside of regular office hours, in which case the person examining the records shall pay reasonable compensation to the custodian or his representative. However, the public body may charge a reasonable fee for the duplication of public records [R.S. 44:32(A) and (C)].

Duration of Records. All persons and public bodies having custody or control of any public records, other than conveyance, probate, mortgage, or other permanent records required by existing law to be kept for all time (permanently), shall exercise diligence and care in preserving the public records for a period or periods of time specified for such public records in formal records retention schedules developed and approved by the state archivist and director of the division of archives, records management, and history of the Department of State.

However, in all instances in which a formal retention schedule has not been executed, such public records shall be preserved and maintained for a period of at least three years from the date on which the public records was made [R.S. 44:36(A)].

Violations and Penalties. Any person having custody or control of a public record, who violates the Public Records Law, or any person not having such custody or control who by any conspiracy, understanding, or cooperation with any other person hinders or attempts to hinder the inspection of any public record subject to inspection, shall upon the first conviction be fined not less than \$100.00, and not more than \$1,000.00, or shall be imprisoned for not less than one month, nor more than six months.

Upon any subsequent conviction, he shall be fined not less than \$250.00, and not more than \$2,500.00, or imprisoned for not less than two months, nor more than six months, or both.