

Open Meeting Act Overview



This is an overview of main ideas contained within Nebraska Open Meetings Act as they pertain to Boards of Health in Nebraska. Information related to specific details and circumstances can be found throughout the document and in the linked resources.



Introduction

Per Section 84-1408 of the Nebraska Revised Statutes, *“Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.”* Open meetings laws exemplify a commitment to openness in government.

Local Boards of Health must adhere to open meeting acts in Nebraska.



Which Board of Health meetings are subject to the act in Nebraska?

In Nebraska, meetings that are subject to the act include, “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.” (Neb. Rev. Stat. 84-1409(2))

The following meetings fall under the Open Meetings Act in Nebraska:

- Annual Board meeting where officer elections take place
- Monthly, Bi-Monthly, or Quarterly meetings where regular business of the board takes place
- Special meetings where the formation of tentative policy or actions takes place (eg. special meeting called to address a disease outbreak in the community)
- Informational sessions that include briefings of members of the Board
- An action of the board on a motion duly made and seconded shall be by roll call vote, which shall be recorded in the board minutes

The following meetings do not fall under the Open Meetings Act in Nebraska:

- A meeting in which there is no quorum of the board present
- Subgroup meetings of the Board in which there is no quorum present (e.g. financial sub- committee of the board which meets prior to board meetings to consider the financial statements of the health department and make recommendations to be heard at the public board meetings.)
- Social events or meetings (eg. Annual Holiday party)
- Meetings where a quorum of the Board of Health is present, but no discussion or interacting regarding policymaking for their specific jurisdiction occurs (eg. Nebraska Association of County Officials meeting)
- Conventions or workshops (eg. A workshop for board members on change management skills with an outside facilitator)

Open Meetings and Virtual Conferencing

Local Boards of Health may meet by video conferencing, however there are stipulations:

- No more than half of the meetings are held virtually in a calendar year.
- Hybrid meetings are not virtual meetings under the Act. This means that during an in-person meeting, a member of the Board of Health may join virtually (for example, due to illness or travel), but may not vote on matters before the Board.
- Virtual meetings, emails, faxes, or other electronic communications among board members must not be used to circumvent the open government principles of the Open Meetings Act.
- Board members must assure that even at events such as workshops and social events, there is no discussion of public business involving a quorum of the board.



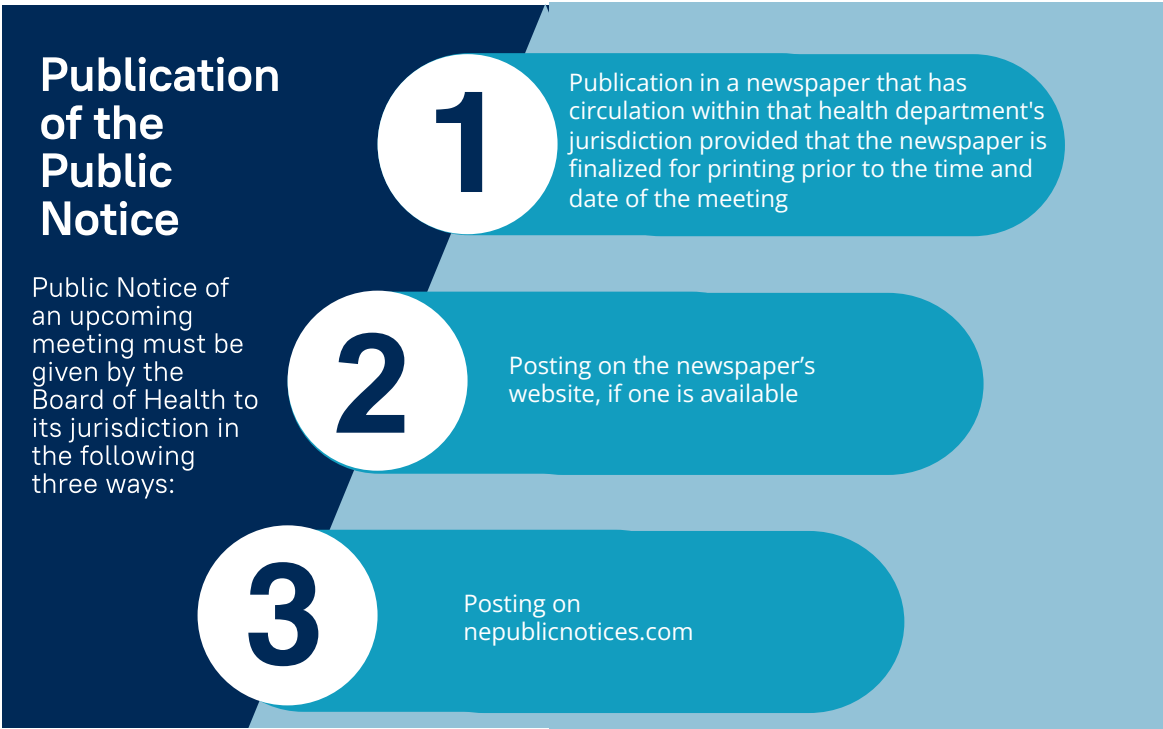
Additionally, the following are requirements of every virtual Board of Health public meeting:

1. Reasonable advanced public notice is given in the same manner as in-person meetings, and that notice includes the dial-in number and/or link to the virtual conference.
2. Reasonable arrangements are made to accommodate the public's right to attend.
3. One physical site is available to the public and identified in the notice.
4. The physical site has at least one Board of Health Member present in the room, or a person designated by the Board. The designee does not have to be a board member, but the attendance of one board member at the physical site is preferred.
5. The physical site has at least one copy of all meeting documents.
6. Links to the agenda, all meeting documents, and the current version of the Open Meetings Act are available for virtual attendees.
7. The virtual meeting is recorded.
8. Members of the public are given reasonable opportunity to provide input, including public comment or questions, to the same extent if virtual conferencing was not used.

Public Notice

The public must be given reasonable advance notice of the time and place of any meeting subject to open meeting laws. An agenda of meeting items—as it currently stands at the time of the notice—must be included. In lieu of an agenda, a statement indicating that an agenda is “readily available for inspection at the Health Department during normal business hours” is acceptable. The Open Meetings Act does not specify a minimum time for advance public notice, but it is a best practice to provide more than a few days advance notice.

Separate and specific advanced notice must be given for every meeting. For example, it does not meet the requirements of the law to publish the dates and times for all meetings in a calendar year in January.



If a print edition of the newspaper will not be released prior to the meeting, notices should be included on the newspaper’s website and posted on nepublicnotices.com. If the newspaper has no website, then a posting on nepublicnotices.com will meet requirements of the law.



NOTE: To publish on nepublicnotices.com, the notice is first given to a newspaper that serves the health department jurisdiction. The newspaper then uploads the notice as a public service of the Nebraska Press Association.



TIP: the Omaha World Herald is a newspaper with statewide reach that can be used when more localized newspapers will not have printed editions in time for a public meeting notice.

The meeting minutes should reflect where and when public notice of the meeting was given. Additionally, the board of health should keep a list of all news media who request to receive notice of meetings and provide such notices to the listed media organizations.

It is a good practice for a board of health to publish notice of its public meetings on the board’s website.

Public Notice Agenda: The purpose of an agenda requirement for public meetings is to give interested parties notice of the matters to be considered at the meeting. The agenda must be made available, and it cannot be altered within 24 hours of the start of the meeting. If needed, an agenda can be modified at the public meeting to include items of an emergency nature, by majority vote of the board. The contents of the agenda must be described sufficiently enough that the public understands the issues that will be discussed and/or actions being considered and does not need to look at past agendas for this understanding.

Public Participation in Local Board of Health Meetings

Members of the public who attend a local board of health meeting have specific rights regarding their participation in that meeting.

The right to attend and speak at local Board of Health Meetings:

- Members of the public have the right to attend and the right to speak at local Board of Health meetings. They may also videotape, record, televise, broadcast, or take photographs during any or all parts of a public meeting except closed sessions.
- Members of the public must be given an opportunity to speak at each meeting, except for closed sessions. Boards of health cannot require members of the public to place their names on the agenda prior to the meeting.
- Members of the public cannot be required to identify themselves as a condition for attending a public meeting. However, boards of health are required to have any member of the public who addresses the body identify himself or herself, including providing an address and the name of any organization represented by such person. The public body may waive the address requirement to protect the security of the individual if they choose.



Ensuring accessibility of the public for participation at local Board of Health Meetings:

- A Board of Health must, upon request, make a reasonable effort to accommodate the public's right to hear discussion and testimony at a public meeting.
- A Board of Health may make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, or recording their meetings, including meetings held by virtual conferencing. These rules may include time limits on each speaker, limits on repetitive statements by multiple speakers, and similar rules of conduct.
- A public body may allow a member of the public to comment through virtual conferencing but is not required to do so.
- A local board of health cannot hold its meeting in a place known to be too small to accommodate the anticipated audience to circumvent public participation. However, a public body would not be in violation of this prohibition if it meets in its traditional meeting place.

What to provide for the public at local Board of Health Meetings:

- One current copy of the Open Meetings Act should be posted in the meeting room at a location accessible to members of the public. At the beginning of any meeting, the public shall be informed about the location of the posted information.
 - “Posting” a copy of the Open Meetings Act means putting it up in some fashion, including attaching it to a bulletin board, hanging it by a chain or fastening it to a wall.
 - “Posting” does not include placing the Act on a table as a loose document which can be removed and therefore might not be available throughout the meeting.
- At least one copy of reproducible written material discussed at an open meeting must be made available at the meeting or at the instate location for virtual conferencing for examination and copying by members of the public. The materials may be provided in paper or electronic form.



Emergency Meetings and Open Meetings Laws

Boards of Health can hold an emergency meeting without advance notice in two cases. In both cases, virtual conferencing is allowed.

1. The content of emergency meetings should require immediate action or a pressing necessity or arise in circumstances in which it is impossible to anticipate and there is not sufficient time available to place it on the agenda of a regular or special meeting. Emergency meetings must also meet the following requirements:

- The nature of the emergency is stated in the minutes, and any formal action taken pertains only to the emergency.
- The Board of Health makes a reasonable effort to provide all news media requesting notifications of meetings advance notice of the time, location, and subject(s) to be discussed at the emergency meeting. The Board also should make reasonable efforts to notify the public of the emergency meeting, such as via its website or through local media.
- Complete minutes specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public no later than the end of the next regular business day.

2. The governor declares an emergency under the Emergency Management Act, and the jurisdiction of the board of health falls within the declaration.

Emergency meetings held under this statute (84-1411(8)) require the following actions:

- Reasonable advance publicized notice
- Public notice includes a dial-in number or link to the virtual conference
- Links to the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act are provided.
- Reasonable arrangements are made to accommodate the public's right to hear and speak at the meeting and record the meeting
- Notice to news media outlets is provided
- Complete minutes of the meeting specifying the nature of the emergency and any formal action taken by the public body are made available within 10 working days or before the next meeting, whichever occurs earlier.

In meetings held within a Governor's declared emergency, any business can be conducted by the board of health, as if it were a regularly scheduled public meeting. This includes briefing of items, discussion of public business of any subject, the formation of policy (tentative or otherwise), and the taking of any needed actions

Closed Sessions for Local Board of Health

Boards of Health may hold closed sessions (sometimes referred to as "executive sessions") if there is an affirmative vote of the majority of voting members taken in open session.

Closed sessions may be held:



For the protection of the public interest

** Closed sessions may not be held to discuss the appointment or election of a new member to the Board of Health **



For the prevention of needless injury to an individual (if the individual did not request a public meeting)

The following are examples of topics that are appropriate for a closed session. These are examples, and other reasons may exist that would allow for closed sessions:

- Strategy sessions related to real estate (purchases, etc.) may be held in a closed session, including discussions of negotiations and pricing. However, deliberations of a public body as to whether an offer to purchase should be made must be done in a reconvened open meeting.
- Strategy sessions discussing pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the Board of Health are permissible. If an attorney for the board is present during the closed meeting, the meeting is protected by attorney-client privilege. A closed session also may be used to obtain general legal advice from an attorney on a matter of Board business.
- Discussion regarding deployment of security personnel or devices or critical infrastructure as to which public discussion could pose a risk to the infrastructure, employees, or members of the public.
- Investigative proceedings regarding allegations of misconduct, including possible criminal misconduct.
- Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting. For example, the annual review of the Health Department Director. However, formal action of a board related to job performance (retaining for a new contract, compensation, termination, etc.) must be done within a reconvened open meeting.



When voting to hold a closed session:

- The subject matter of the closed session and reason necessitating the closed session must be identified in the motion.
- The vote must be taken in open session.
- The entire closed session motion, the vote of each member on the question of holding a closed session, and the time when the closed session commences, and ends must be recorded in the minutes. The vote to come out of closed session must take place in a reconvened open session.

Holding a closed session:

- Immediately prior to entering the closed session the presiding officer must restate on the record the limitation of the subject matter. It is advisable for the presiding officer to state that no votes or other official action will be taken during the closed session.
- During the closed session, the Board of Health must restrict discussion to only those matters set forth in the motion to close.
- The meeting must be reconvened in open session before any formal action may be taken. "Formal action" is defined to mean a collective decision or a collective commitment or promise to decide on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy.

Challenging a closed session:

- Any member of the Board of Health can challenge the continuation of a closed session if he or she determines that the session has exceeded the original reason, or if he or she contends that the closed session is neither clearly necessary for the protection of the public interest or the prevention of needless injury to the reputation of an individual.
- Such a challenge can only be overruled by a majority vote of the members of the public body. The challenge and its outcome must be recorded in the minutes of the open meeting.
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More on the Nebraska Open Meeting Act and Related Laws

Nebraska's Open Meetings Act is a vital tool for maintaining transparency and accountability in government. It ensures public access to meetings of public bodies, fostering informed participation and civic engagement.



[Outline of Nebraska Open Meetings Act - Nebraska Attorney General](#)

[Nebraska Open Meetings Act - DHHS](#)

[Nebraska Revised Statute 71-1631 - Nebraska Legislature](#)

