

New York Coalition



For Open Government, Inc.

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

May 19, 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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The following members also contributed to the completion of this report: **Susan Laurilliard, Ronald Fraser, Mary Louise Cebula, Susan Kims.**

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 twenty town Planning Boards.

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

- Western New York – Allegany, Cheektowaga, Lewiston, Pomfret
- Finger Lakes – Greece, Leroy
- Southern Tier – Horseheads, Union
- Central NY – Clay, Sullivan
- North Country – Massena, Plattsburgh
- Mohawk Valley – Amsterdam, New Hartford
- Capital District – Colonie, Rotterdam
- Hudson Valley – Poughkeepsie, Ramapo
- Long Island – Islip, Oyster Bay

Focus of Report

This report focuses on the posting of Planning Board meeting documents online as required by the New York Open Meetings Law. The New York State Open Meetings Law requires towns that have regularly updated websites as best as practicable to post meeting documents online prior to a meeting occurring.

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 as determined by the agency or the department, prior to or at 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 as determined by the agency or the department, prior to the meeting.** An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.

Grading Criteria

The grading criteria is a simple pass or fail. Looking at the Planning Board meetings held in March 2021, were the meeting documents posted online prior to the meeting occurring for the public to see or not? If a meeting was not held in March, then we looked backwards to the most recent meeting agenda posted online to see if documents were posted.

Grades

Town Planning Boards That Received a Passing Grade For Posting Meeting Documents Online In Alphabetical Order:

- 1) Colonie
- 2) Oyster Bay
- 3) Poughkeepsie
- 4) Ramapo
- 5) Rotterdam

A disappointing passage rate of 25%.

Town Planning Boards That Received a Failing Grade For Not Posting Meeting Documents Online In Alphabetical Order:

Allegany
Amsterdam
Cheektowaga
Clay
Greece
Horseheads
Islip
Leroy
Lewiston
Massena
New Hartford
Plattsburgh
Pomfret
Sullivan
Union

An incredible failure rate for not complying with the Open Meetings Law of 75%!

A Brief Overview For Each Planning Board In Alphabetical Order

- Allegany** (population 14,400)
- In 2020 a one page meeting agenda was posted without any documents. Nothing posted for 2021.

- Amsterdam** (population 6,000)
- Agenda for 3/3/21 posted without meeting documents.
- Colonie** (population 83,000)
- Agenda for 3/23 meeting posted with links to meeting documents.
- Cheektowaga** (population 87,000)
- Agenda for 3/11 meeting posted without any documents.
- Clay** (population 59,000)
- Agenda for 3/24 meeting posted without any documents.
- Greece** (population 95,000)
- Agenda for 3/17 meeting posted without any documents.
- Horseheads** (population 19,000)
- Last meeting agenda posted is for 7/1/20, without any documents.
- Islip** (population 333,000)
- Agenda for 3/24 meeting posted without any documents.
- Leroy** (population 7,000)
- Nothing posted on the website for Planning Board meetings.
- Lewiston** (population 16,000)
- Agenda for 3/18 meeting posted without any documents.
- Massena** (population 12,000)
- Last meeting agenda posted is for 7/16/20, without any documents.
- New Hartford** (population 22,000)
- Agenda for 3/8 meeting posted without any documents.
- Oyster Bay** (population 298,000)
- Last meeting agenda posted is for 1/20/21. Links contained in meeting agenda don't work. Copying and pasting the links into website search box does not work. Meeting documents are posted but not on Planning Board page. We are being generous by giving Oyster Bay a passing grade.

- Plattsburgh** (population 11,000)
- Agenda for 3/16 meeting posted without any documents.
- Pomfret** (population 14,000)
- Meeting agendas or documents are not posted on website at all.
- Poughkeepsie** (population 43,000)
- Meeting agenda with documents linked posted for 3/18.
- Ramapo** (population 137,000)
- Meeting agenda with documents linked posted for 3/9.
- Rotterdam** (population 29,000)
- Meeting agenda with documents posted for 3/16.
- Sullivan** (population 15,000)
- Agenda for 3/2 meeting posted without any documents.
- Union** (population 54,000)
- Agenda for 3/9 meeting posted without any documents.

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”. There is no practicable reason as to why meeting documents cannot be scanned and posted online prior to a meeting. Assembly Member Amy Paulin and Senator Anna Kaplan have introduced **A.1228/S01150**, which requires meeting documents to be posted online at least 24 hours before a meeting occurs. The Assembly passed this legislation on May 4, 2021, and hopefully the Senate will do the same.

The findings of this report document the need for an amendment to the Open Meetings Law. Although seventy-five percent of Planning 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.

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 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 and the State Comptroller have broad powers and an elected position, 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 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.

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 Planning Board members are discussing and voting on.

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