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CLOSING TOWN BOARD MEETINGS

By default, all “meetings” of public bodies in the State of Minnesota must be open to the public.¹ A “meeting” is a “gathering of a quorum or more of the voting members of the governing body at which members “discuss, decide, or receive information as a group on issues relating to the official business of that governing body. *Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510, 518 (Minn. 1983). This requirement, the Open Meeting Law (OML) is often lamented as overbearing, inefficient, a nuisance, and an intrusion into local government operations, but it is deeply rooted in concepts of good government. The OML, described in Chapter 13D of Minnesota Statutes.

The Minnesota Supreme Court has described its’ purposes this way “(1) “to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning [public bodies’] decisions or to detect improper influences”; (2) “to assure the public’s right to be informed”; and (3) “to afford the public an opportunity to present its views to the [public body].” *St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Schs.*, 332 N.W.2d 1, 4 (Minn.1983)

There are, however, circumstances in which a town board may, and sometimes must, close its proceedings to the public. This document aims to be a resource for town boards seeking to comply with their obligations with respect to closures.

- 1) All closed meetings, no matter how sensitive the subject, must begin as open meetings. Minn. Stat. § 13D.04, subd. 5.
- 2) The board may close meetings only if it is specifically authorized by a statute. Most of those authorizations are found in Minn. Stat. § 13D.05.
- 3) When the board is ready to start a closed session, a supervisor must state the statute that allows closure and the statute should be reflected in the minutes.
- 4) The board may close only the part of the meeting that falls within that exception. The board should not take any minutes of the closed session because the minutes would be available to the public and defeat the purpose of the closed session.

¹ Minn. Stat. 13D.01. “Open to the public” includes not just the public being allowed to physically access the meeting, but also concepts like proper notice and access to certain of the body’s materials. *Sullivan v. Credit River Twp.*, 299 Minn. 170, 217 N.W.2d 502 (1974) (Town board meeting of which the public is unaware is not a meeting which is “open to the public.”)

Many exceptions have specific procedures that must be followed, sometimes including audio recording, sometimes including offering a summary of what took place at the next open meeting, sometimes requiring certain additional documentation to be kept. The attached appendix A lists many of the common provisions permitting closure used by townships, along with the additional requirements associated with using those provisions. Townships are strongly encouraged to read the underlying statute to ensure that they are carefully complying with its' specific special requirements.

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Exception & Statutory Citation	Description	Must or May Close	Audio Record	Additional Requirements
Attorney-Client privilege 13D.05, s 3(b)	Allows closure to consult with the township attorney on privileged matters, usually when the township is or is about to be involved in a lawsuit. Not available for routine attorney questions.	May Close. May be directed to exclude clerk and treasurer if they are not needed.	No	No. Members should not disclose any information about the closed session unless directed by the township attorney. Privilege is waived if information is disclosed.
Employee Review 13D.05, s 3(a)	Allows performance review of an employee or other person subject to the board's authority. Cannot be used to review the performance of elected officers. Must identify the person to be evaluated.	May Close, but the employee may demand the meeting be opened.	Yes, kept for at least 3 years. Not available to the public.	Board must provide a summary report of the board's conclusions related to the evaluation.
Preliminary allegations of wrongdoing 13D.05, s2(b)	Requires closure to hear preliminary allegations of wrongdoing. Board must re-open the meeting if discipline "may" be warranted. Cannot be used to keep wrongful acts secret from the public or deliberate about whether discipline is appropriate or what that discipline will be.	Must close, but must re-open if the subject of the inquiry demands it.	Yes, kept for at least 3 years. Not available to the public.	Once the discussion indicates discipline <i>may</i> be warranted, the meeting must re-open so much of the discussion is likely to be in an open meeting.
Labor negotiations 13D.03, s 1(b)	May close to consider strategy for labor negotiations, review proposals and developments. Must make available a written roll of the members and other persons present during the closed meeting.	May Close	Yes, kept for at least 2 years. Available to the public after negotiations.	The audio recording is available to the public after conclusion of the negotiations. A written roll of all members and other persons present shall be made available to the public after the meeting.
Real Estate Transactions 13D.05, s 3(c)	Allows closure to decide the asking or offering price of real estate, consider appraisal data, and consider offers in a real estate transaction. Other requirements apply to the use of this exception.	May Close	Yes, kept for at least 8 years and available to the public.	The particular property must be identified on the record before closure. Recording must be made available after the the sale or purchase or the abandonment of the sale or purchase. The property must be specifically identified on the tape. A written roll of all members and other persons present shall be

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				made available to the public after the meeting. The actual final approval of the sale or purchase must occur at an open meeting, after all notice periods.
Medical Records 13D.05, s. 2(a)(4)	Requires closure of a meeting in which medical records or information within them will be discussed.	Must Close	Yes. Not available to the public.	Do not disclose or report anything in these records unless directed by the township attorney.
Identification of victims or reporters of certain crimes 13D.05, s 2(a)(1)	Requires closure of meetings in which identities of victims or reporters of sexual conduct, domestic abuse, or maltreatment of minors will be discussed.	Must Close	Yes. Not available to the public.	No.
Security briefing 13D.05 s 3(d)	Permits closure for security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities	May close	Yes, kept for four years.	May only be used in cases where “disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses.” Specifically does not permit closure for financial information. The public body must also identify the “facilities, systems, procedures, services, or infrastructures to be considered during the closed meeting” before closure.
Site Visit Exception 366.01 subd. 11	If the township does not have employees qualified or able to perform site inspections and the board is acting “in a staff capacity” Does not protect decisions, only the actual site visit itself.	Open Meeting Law does not apply at all	No	The board must make “good faith efforts” to notify any media that has asked for notice of site visits.