

A DOZEN THINGS EVERY CITIZEN SHOULD KNOW ABOUT TOWN MEETINGS

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for N.H. Municipal Association

1. Every Voter Is a Legislator.

Those quaint sayings about town government being a “pure democracy” are true! State law refers to the town meeting as the “legislative body” (RSA 21:47). The town meeting is to the town what the Legislature is to the State, or the Congress is to the United States: the town meeting has all the basic power. There is no higher authority in town. But in order to have the right to participate, you must be a registered voter of the town, and you must attend. If you don’t go, how can you justify blaming anybody but yourself?

2. The Moderator Presides, and Can Do What It Takes to Maintain Order.

The town meeting’s business is regulated by the moderator, and your right to vote is subject to the moderator’s authority to keep order. Voters may not talk without being recognized. If someone keeps on being disruptive after being warned, the moderator can ask a police officer to escort him/her out of the meeting.

3. The Voters Can Always Overrule the Moderator by a Simple Majority.

The moderator isn’t a king. He is merely a facilitator to enable the voters to take orderly joint actions. It is illegal for the moderator to preside in such a way as to make it impossible to overrule his/her rulings.

Many voters mistakenly believe that state law contains all sorts of complicated parliamentary rules governing town meetings. It doesn’t. All state law says is that the moderator can prescribe rules, but the voters can alter those rules (RSA 40:4). Nobody can pull parliamentary tricks as long as the voters stay alert and remain aware that they can vote, by a simple majority, to change the rules to accomplish what the majority wishes to accomplish.

Some towns, at the beginning of the meeting, adopt some set of rules for convenience, such as Robert’s Rules of Order. In other towns, the moderator just makes rulings as the meeting goes along. Either way is fine. Either way, the *only* legally-binding rule is that the voters can overrule the moderator by a simple majority.

4. There’s No Such Thing as an “Illegal Vote.”

“What!? You mean the town’s lawyers are all wrong?” No, I don’t mean that. Pay close attention. It’s true that there are plenty of types of town votes which, if they pass, will not be legally binding (i.e. would not be enforceable in court). But that doesn’t mean the town can’t vote on those things anyway. No group of voters has ever been arrested for taking a vote, no matter how off-the-wall it might be.

Example: Suppose it is moved and seconded to create a “No Parking” zone in front of the town hall. Then the Town’s attorney says that vote would be of no legal effect because state law gives the selectmen, not the town meeting, complete control over parking regulations. Does that mean the vote can’t be taken? Of course not. If you let the lawyer intimidate you like that, you don’t have the stubborn, independent Yankee gumption I think you have. In my view, legal opinions are far too often used to effectively deprive voters of their rights to express their views and preferences to the officials they have elected to serve them.

5. It’s OK to Ask Questions.

The beauty of the traditional “deliberative” session of town meetings (as compared with questions on the “Official” or “Australian” ballot usually used for elections) is that through the process of discussion and debate, the voters can educate themselves about the question at hand, and about the procedure, and become able to vote more intelligently. Don’t shyly assume that everybody but you knows what’s going on. They probably don’t.

6. No Vote Can Be Legally Binding Unless Its Subject Matter was Stated in the Warrant.

The “warrant” is a sort of agenda for the town meeting, which is posted two weeks in advance by the selectmen. In most towns it’s also printed in the town report, published before the annual town meeting. The requirement that all subject matter must be stated in the warrant (RSA 39:2) keeps the meeting orderly, prevents surprise, and lets voters who might otherwise stay home know that some topic of interest to them is coming up for discussion and possible action.

The warrant law requires only the *general* subject matter to be stated. The actual votes don’t have to be word-for-word the same as the warrant articles. You don’t have to “take it or leave it.” Amendments will be legally valid, so long as they are within the same general subject matter. But amendments which add some brand new subject matter will not be legally effective.

7. Ordinary, Everyday Language is Perfectly Okay.

Are you hesitant to submit petitioned warrant articles, or to make motions at town meeting, because you think you’ll need to hire a lawyer to come up with the right wording? Don’t be! The N.H. Supreme Court has said time and again that technical rules will not be used to defeat the plain intent of the voters, using ordinary common language. As U.S. Supreme Court Justice Holmes once said:

“The machinery of government would not work if it were not allowed a little play in the joints.” (Quoted in *Lamb v. Danville School Board*, 102 N.H. 569).

8. You can Ask for a Secret Written Ballot on Any Question.

There are two ways for the voters to request a secret written ballot at town meeting: (a) Any 5 voters can make the request in *writing* to the moderator before a vote is taken, or (b) *After* a vote has been taken and declared by the moderator, any *seven* voters can *orally* request the vote to be taken again using a secret written ballot, but the request must be made immediately, before the meeting moves on to other business (RSA 40:4-a and 40:4-b).

9. Virtually any Town Vote can Later be Reconsidered and Rescinded.

So you think you finally finished the debate over the blanket blank town administrator’s salary. The rest of the meeting is routine. Now you can go home and pay the babysitter. Right? Well, no, you’d better not. Unless the meeting votes to restrict reconsideration, that salary vote can legally be reconsidered later, right up until the meeting is finally adjourned, even if it’s 2 a.m. and almost everyone’s gone home (*Byron v. Timberlane School District*, 113 N.H. 449).

However, the town meeting may vote to restrict reconsideration on one or more articles (RSA 40:10), and this is commonly done. This action doesn’t prohibit reconsideration. If the meeting votes to restrict reconsideration of an article, it may still subsequently vote to reconsider the article; but if it does, the reconsideration must take place at an adjourned session held at least seven days later. Notice of the time and place of the adjourned session must be announced before the close of the original session and published in a newspaper at least two days before the session.

10. A Vote to Go Into Debt (Issue Bonds or Notes) Must Pass by a 2/3 Ballot Vote.

In fact, if the amount of the proposed debt exceeds \$100,000, the moderator must keep the polls open for at least one hour after the end of the discussion on the issue (RSA 32:8-a).

Don’t be confused about this. A vote on bonds or notes does require a ballot vote, but it’s not something that can appear on the “official” ballot (the one used for electing officers). It’s simply a “Yes/No” paper ballot during the business session of the meeting, the same type of ballot used when a secret written ballot is requested.

11. You Can Act On, or Amend, Particular Line Items in a Budget.

The proposed budget must be posted with the warrant, and is considered part of the warrant, giving you notice of what you’re going to raise and appropriate money for. To “appropriate

money means to earmark a certain sum for a particular purpose, so that the governing board (selectmen or school board) is then authorized to spend that amount for that purpose over the course of the fiscal year.

Money can be “appropriated” either through a line item in the budget, or under a separate warrant article. The amount of any particular appropriation (line item) can be amended up or down, or an appropriation can be deleted entirely by the voters. However, it is not legally effective to *add* a new purpose (line item) to the budget. Why not? Because adding a new purpose violates Rule #6 (above) – the requirement that all business must be stated in the warrant. The voters can’t take any binding action on a subject matter which wasn’t stated in the warrant (or in this case in the budget).

Some people believe that voters can only act on, or amend, the bottom line of the budget, and not specific line items. That’s not quite right. What is right is that the voters cannot *limit* the governing board’s ability to *transfer* amounts from one line item to another during the year, as needs and priorities change. Therefore, even if you do vote to lower, say, the police budget by \$1,000, the selectmen, later in the year, can still replace that \$1,000 into the police budget, as long as they don’t exceed the bottom line of the entire budget.

Hint: Transfers cannot be made from appropriations made by separate warrant articles (RSA 31:10, IV). Therefore, the way to prevent an appropriation from being diverted to other purposes is to submit a petitioned warrant article for that appropriation. But just because only the bottom line is legally binding, doesn’t mean the voters can’t amend line items. The voters have a legal and political right to express their preferences. A vote on specific line items sends a strong message that may later be “enforceable” through the ballot box, even if it’s not enforceable in court.

12. Democracy – Use It or Lose It.

In a town meeting, more than any other form of government on earth, your community and the services it provides emanate not from some “they” in the sky, but from *you*, the voters. If you haven’t been to town meeting lately, this is a good year to inform yourself, attend, vote, and make it work.