

FAQ: Closed Sessions

Contents

- What's the statutory reference?
- What does it mean?
- What's a closed session?
- Are closed sessions limited to just board members or can we include others?
- Is there anyone we cannot exclude from a closed session?
- What about members of our municipal board?
- For what reasons can we hold a closed session?
- Do we always have to have to include notice of the closed session in the meeting notice?
- Do we have to post a meeting notice for a closed session?
- How should the meeting notice be worded?
- May we have two closed sessions in the same meeting?
- Can we vote in closed session?
- If we want to reconvene in open session to take action how should the meeting notice be worded?
- Do we have to take minutes?
- If someone asks to see the minutes do we have to release them?
- What can we discuss in closed session?
- Is a closed session ever required?
- What is the procedure for convening a closed session?
- What are the penalties for violating the Open Meetings Law?
- Anything else I should know?
- Where can I find more information?

This "FAQ" discusses closed sessions. A different "FAQ" discusses the Wisconsin Open Meetings Law generally.

What's the statutory reference?

The Wisconsin Open Meetings Law specifies legal reasons for closed sessions. These reasons are found in Section 19.85 of Wisconsin Statutes.

What does it mean?

Although the state's official policy is that citizens' knowledge of their government is vital and that the public needs to know what their governmental bodies are doing, the law recognizes that in certain limited cases discussion is best done in private, without news media or the public present.

What's a closed session?

A closed session of a governmental body is one in which only members of the body and other essential may be present. The public, news media, and others are excluded.

Are closed sessions limited to just board members or can we include others?

Anyone whose presence is needed may be present. In fact, it may be essential to include staff or others in order to effectively discuss the issue at hand.

Is there anyone we must allow to attend a closed session?

Yes. Members of the body holding the closed session (the library board) may not be excluded. And a subunit of the board, such as a board committee, may not exclude members of its parent body.

What about members of our municipal board?

According to the League of Wisconsin Municipalities the library board is considered an “independent statutory board” rather than a subunit of the municipal board and for this reason members of the municipal board may be excluded from a closed session of the library board.

For what reasons can we hold a closed session?

The most common reason for a closed session is to consider personnel-related issues. You may hold a closed session to consider employment, promotion, compensation, discipline, or performance evaluation of employees. If the closed session is for considering the dismissal, demotion, or discipline of an employee you must give that employee notice of any evidentiary hearing to be held prior to final action and to any meeting at which final action might be taken. This notice must include a statement that the employee can demand that the hearing or meeting be held in open session.

In addition to the personnel-related exemptions discussed above, closed sessions can be held for certain other reasons, including the following:

- Deliberating or negotiating the purchase of properties or the investment of funds
- Whenever competitive or bargaining reasons require a closed session.
- Conferring with legal counsel who is rendering oral or written advice concerning strategy to be adopted regarding litigation in which the library board is or is likely to become involved.
- Consideration of requests for confidential written advice from an ethics board.

A complete list of the permissible reasons for closed sessions is in Section 19.85.

A closed session is not allowed for purposes of considering general personnel policies or general staff compensation decisions, such as the general library staff salary scale. Closed sessions may be held only when they concern a particular employee. A closed session is allowed to formulate collective bargaining strategy, but board deliberations leading to approval of a tentative collective bargaining agreement, as well as the final ratification vote, must be held in open session.

Do we always have to have to include notice of the closed session in the meeting notice?

It’s recommended that you always notice the closed session, however you may go into an unanticipated closed session, if the need arises, on an item specified in the public notice. In such case, the closed session item should be placed at the end of the agenda because you cannot reconvene in open session without having given prior public notice. This provision on unanticipated closed sessions is very narrow. Whenever time allows, the 24-hour notice provision must be followed, or, at a minimum, when there is good cause, the 2-hour notice can be used to give an amended notice of the meeting indicating a closed session on an item that was not previously anticipated.

Do we have to post a meeting notice for a closed session?

Yes, the notice requirements are the same as for any other meeting. In addition, if you intend to resume open session after finishing the closed session the notice must include that information.

How should the meeting notice be worded?

The meeting notice must state the subject matter and the statutory reference for the closed session. Some examples of wording for commonly-used reasons for a closed session are:

- Convene in Closed Session to review and discuss applicants for the position of Library Director pursuant to Section 19.85(1)(c) of the Wisconsin State Statutes.
- Convene in closed session pursuant to Wisconsin Statutes Section 19.85(1)(e) in order to discuss matters pertaining to the library's collective bargaining agreement which for competitive or bargaining reasons requires a closed session
- Convene in closed session pursuant to Wisconsin Statutes Section 19.85(1)(c) in order to conduct a performance evaluation of the Director.
- Convene in closed session pursuant to Wisconsin Statutes Section 19.85(1)(c) in order discuss staff compensation.

May we have two closed sessions in the same meeting or discuss more than one subject in a closed session?

Yes. It's probably easiest to have one closed session with more than one subject. In that case the wording of the meeting notice might be:

- Convene in Closed Session for two purposes:
 - 1) pursuant to Wisconsin Statutes Section 19.85(1)(e) in order to discuss matters pertaining to the library's collective bargaining agreement which for competitive or bargaining reasons requires a closed session; and
 - 2) pursuant to Wisconsin Statutes Section 19.85(1)(c) in order to conduct a performance evaluation of the Director.

Can we vote in closed session?

The law is uncertain on this; certain votes may possibly be legally taken in closed session. But it is a better practice and safer legally to take votes after reconvening into open session. An exception to this, of course, is the vote to conclude the closed session and either adjourn or reconvene the open session.

If we want to reconvene in open session to take action how should the meeting notice be worded?

The notice should read something like:

- Reconvene in open session to take action on staff compensation
- Reconvene in open session to take action on the search committee's recommendation for hiring a library director

Do we have to take minutes?

Yes, minutes must be kept for closed sessions. All board actions, whether taken in open or closed session, must be recorded in the minutes.

If someone asks to see the minutes do we have to release them?

Generally yes. Because the records law contains no general exemption for records created during a closed session, minutes of those meetings must be released upon request unless the minutes contain information specifically exempted from release as a public record (for example certain personal information). Even then, you must separate information that can be made public from that which cannot and must disclose the former, even if the latter can be withheld.

Also note that as long as the reasons for convening in closed session continue to exist you may withhold any information that requires confidentiality. Once the underlying purpose for the closed session ceases to exist, however, all records of the session, except information specifically exempted from release as a public record, must be provided to any person requesting them.

What can we discuss in closed session?

Closed session discussions must be limited to the subject announced in the meeting notice and the presiding officer's announcement. Common reasons for a closed session are listed on p. 2 of this document. A full list of the permissible reasons for closed sessions is in Section 19.85.

Is a closed session ever required?

No. The authorizations for closed sessions set forth in Section 19.85 permit, but do not require, closed sessions in the specified circumstances. There are certain issues, however, that may be difficult to discuss effectively in open session.

What is the procedure for convening a closed session?

The following steps are all required for a library board (or any other government body) to conduct a closed session legally:

1. If a closed session is planned at the time the meeting notice is prepared, the notice must indicate that closed session, the subject matter of the closed session discussion, and the specific statutory provision allowing a closed session. If a closed session was not planned, a board may still go into closed session on any subject contained in the meeting notice, whether the notice provides for a closed session or not. In either case, the board should follow the procedures below.
2. The board must first convene in open session.
3. The presiding officer must announce to all present at the meeting the intention of going into closed session and the purpose of the closed session.
4. The presiding officer must state the specific section of the law, by statute number (e.g., Section 19.85(1)(c) for a director evaluation session), which allows for the closed meeting. This announcement should be recorded in the minutes. It is good practice for library staff to prepare in advance the exact wording of the announcement to be used.
5. A motion, second, and roll call vote is required to convene in closed session. A majority vote is required to convene a closed session. If the vote is unanimous you only need to record that

there was a unanimous vote. If the vote is not unanimous each board member's vote must be recorded in the minutes.

6. When the closed session business is concluded, there must be a motion, second, and roll call vote to either adjourn or reconvene in open session. The board may reconvene in open session as long as that intent was noted in the public notice of the meeting. If there was no advance public notice given that the board intended to reconvene in open session the board is required to adjourn and wait at least 12 hours after the completion of the closed session before reconvening in open session.

What are the penalties for violating the Open Meetings Law?

Any trustee who knowingly attends a meeting in violation of the open meetings law may be fined not less than \$25 and as much as \$300 per violation. In addition, a court may void board actions taken in an illegal closed session.

Anything else I should know?

If you're contemplating holding a closed session you may want to consult with your municipal attorney or personnel officer to make sure that your reason for holding a closed session is legal and that you are following proper procedure.

Where can I find more information?

- Your municipal attorney
- Information on the Open Meetings Law and Library Board Closed Sessions from the Wisconsin Division for Libraries, Technology, & Community Learning: <http://dpi.wi.gov/pld/boards-directors/public-records/open-meetings-law>
- Open Meetings Compliance Guide from the Wisconsin Department of Justice, found at: <https://www.doj.state.wi.us/sites/default/files/dls/2015-OML-Guide.pdf>
- Legal FAQ on open meetings from the League of Wisconsin Municipalities: <http://lwm-info.org/957/Open-Meetings-Law>
- The Library Board and the Open Meetings Law (Trustee Essential # 14): <http://dpi.wi.gov/sites/default/files/imce/pld/pdf/TE14.pdf>

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