

New York Coalition



For Open Government, Inc.

Silence Is Not Golden

***NY State Should Recognize
The Public's Right To Speak
At Government Meetings!***

September 14, 2023

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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Coalition member Annmarie Reeb headed up this project, which involved many hours of coordinating volunteers, as well as inputting and reviewing information.

The following Coalition members assisted with this project: Ken Guarino, Ed McKee, Gary Rhodes, Janet Vito, Ron Fraser, Steve Lyle, Susan Laurilliard, Deborah North, Robyn Gray.

The History of Town Meetings

Town meetings have been a long and important part of our democratic history. Early references to town meetings date back to the 1600's in New York. The town of Hempstead held their first meeting in 1654, and Mamaroneck held their first meeting in 1697.

Angered by the Boston Tea Party, the British Parliament in 1773, passed several punitive measures commonly referred to as the Intolerable Acts. As part of the Intolerable Acts, the British banned town meetings except by permission. In 1774, British soldiers tried to stop a Salem Massachusetts town meeting that was in progress but the residents barricaded the door and continued to meet. The banning of town meetings increased tensions and contributed towards the start of the American Revolution.

Thomas Jefferson wrote in 1816 that townships in New England “have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation.”

The famous French historian Alexis de Tocqueville was fascinated by town meetings. In his published 1835 report *Democracy in America* Tocqueville stated “...local assemblies of citizens constitute the strength of free nations. Town-meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty.” For Tocqueville, participating in town meetings plays an important role in teaching Americans how to be citizens of a democracy.

In 1854, novelist Henry David Thoreau wrote

“When, in some obscure country town, the farmers come together to a special town-meeting, to express their opinion on some subject which is vexing the land, that, I think, is the true Congress, and the most respectable one that is ever assembled in the United States”.

Beginning in 1933, President Franklin D. Roosevelt and Congress enacted several statutes that created new federal agencies as part of the New Deal legislative plan, established to address the Great Depression. However, Congress became concerned about the expanding powers that these autonomous federal agencies possessed, resulting in the enactment of the Administrative Procedure Act to regulate and oversee these federal agencies. Roosevelt and Congress were concerned about these new federal agencies having unchecked authority. The federal 1946 Administrative Procedure Act addressed these concerns by requiring:

1. agencies to keep the public informed of their organization, procedures and rules;
2. agencies to provide for public participation in the rulemaking process through public commenting

There is a 30 to 60 day public comment period for federal agency regulations, which agencies are required to address and respond to when drafting their final rules. For 77 years the public has had the right to see proposed rules by federal agencies and to comment on them.

It was not until the NY State Open Meetings Law was amended in 2010, that the public had the right to see meeting agenda documents prior to a meeting. 77 years after the passage of the federal 1946 Administrative Procedures Act, the public in NY does not have the right to comment and be heard at government meetings in NY.

Public comments are an important part of the government decision making process. They offer the opportunity for the public, not just government officials, to participate. In a democracy, people should be able to participate in government decisions, beyond voting. Prior to being sentenced in a criminal case a defendant has the right to speak and be heard, a right the public in NY does not have at their own town board meeting!

New York politicians like to think of the state as being a leader to look up to but New York is often behind the times and on the wrong side of history. On July 4, 1776, when the Declaration of Independence was approved by the then thirteen colonies only one state did not vote in favor. Twelve colonies voted in favor of Independence and New York abstained.

In the spring of 1787, New York's Legislature chose Alexander Hamilton, John Lansing, Jr. and Robert Yates as its delegates to the Constitutional Convention in Philadelphia. In mid-July, Yates and Lansing walked out of the convention, leaving Hamilton as New York's only delegate. Without a quorum of delegates present, Hamilton as New York's lone delegate was not able to vote during any of the Convention proceedings.

The first state to pass an open meetings law in the United States was Alabama in 1915. New York was the last state in the country to pass an open meetings law in 1976.

New York is an outlier when it comes to having open government laws with any teeth, as it is one of just three states that do not impose any penalties for violations of the Open Meetings Law or the Freedom of Information Law. In other states fines and or criminal charges can occur.

The New York State Open Meetings Law begins with the following:

“It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.

The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.”

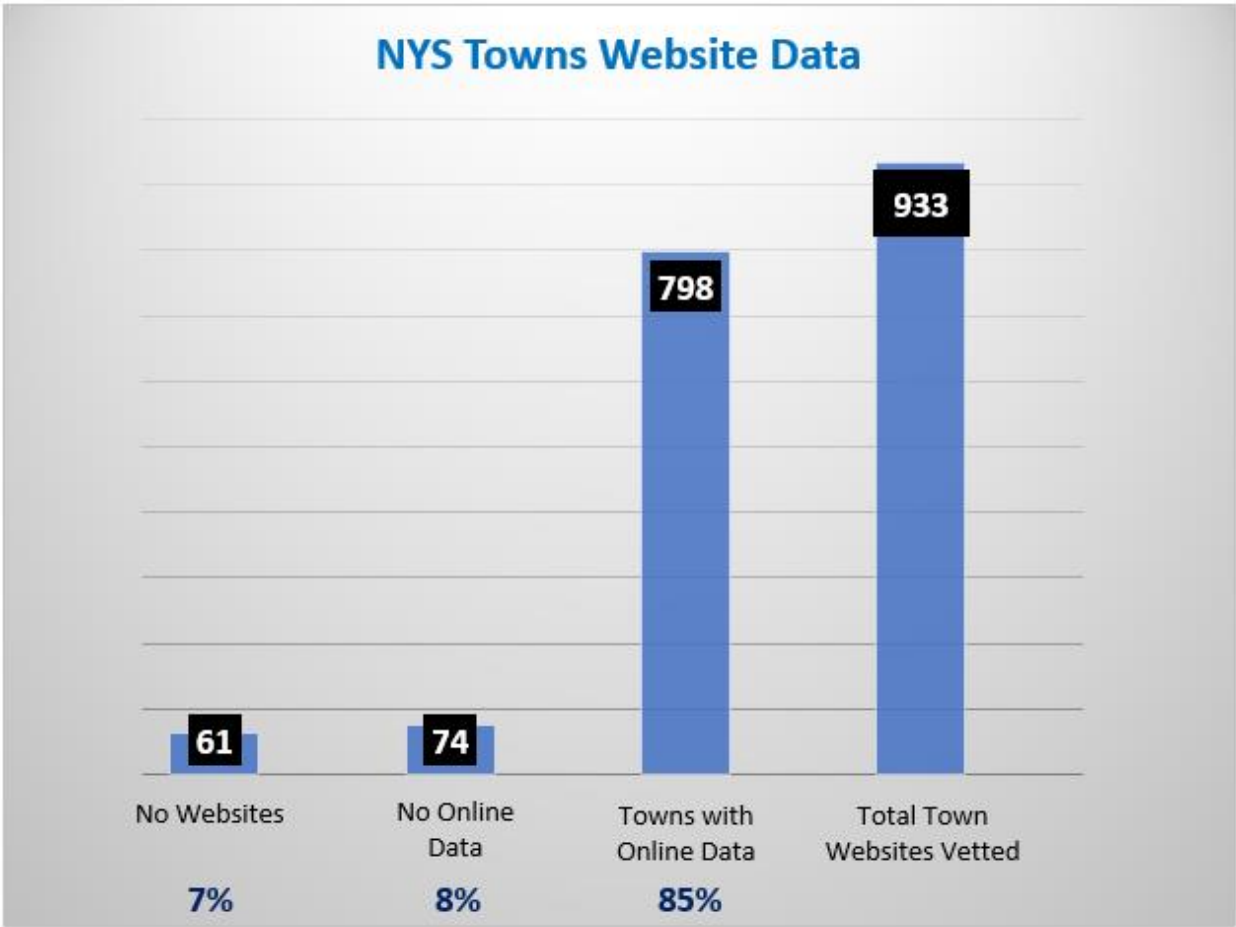
What is notable about the above language is that it provides the public the right to attend, to observe and to listen to government officials. There is nothing stated in the law regarding the ability of the public to participate in the governmental process by having the opportunity to speak and to be heard. A fundamental right of American government is the ability to be heard and it does not exist under New York’s Open Meetings Law.

The phrase “speech is silver, silence is golden” is an old Egyptian proverb, which makes the point that not saying anything is often better than speaking too much or saying something inappropriate. While this is great life advice, it is not good advice for citizens interested in participating in democracy. The New York State Legislature through the Open Meetings Law has wrongfully silenced the public by not recognizing the public’s right to speak and be heard.

Our Report

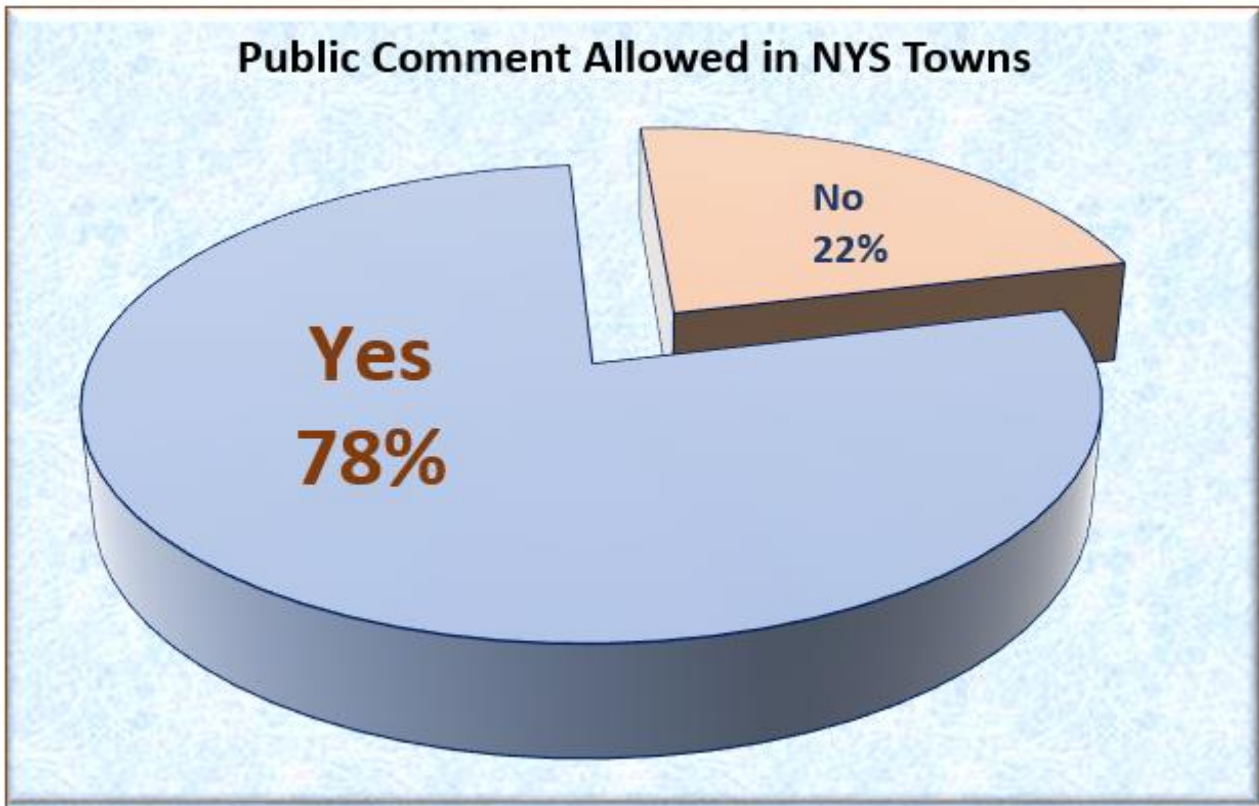
To determine the state of public comments at town board meetings, the New York Coalition for Open Government reviewed the websites and meeting minutes of every town (933) in NY State. Data was collected from March through April 2023. All of our data was specific to regular town board meetings.

This data provides the most comprehensive overview of public participation in town meetings ever done. We now know how many NY State towns have a website (93%) as indicated in the chart below.



A list of the 61 towns that do not have a website are attached to this report as **Exhibit A**.

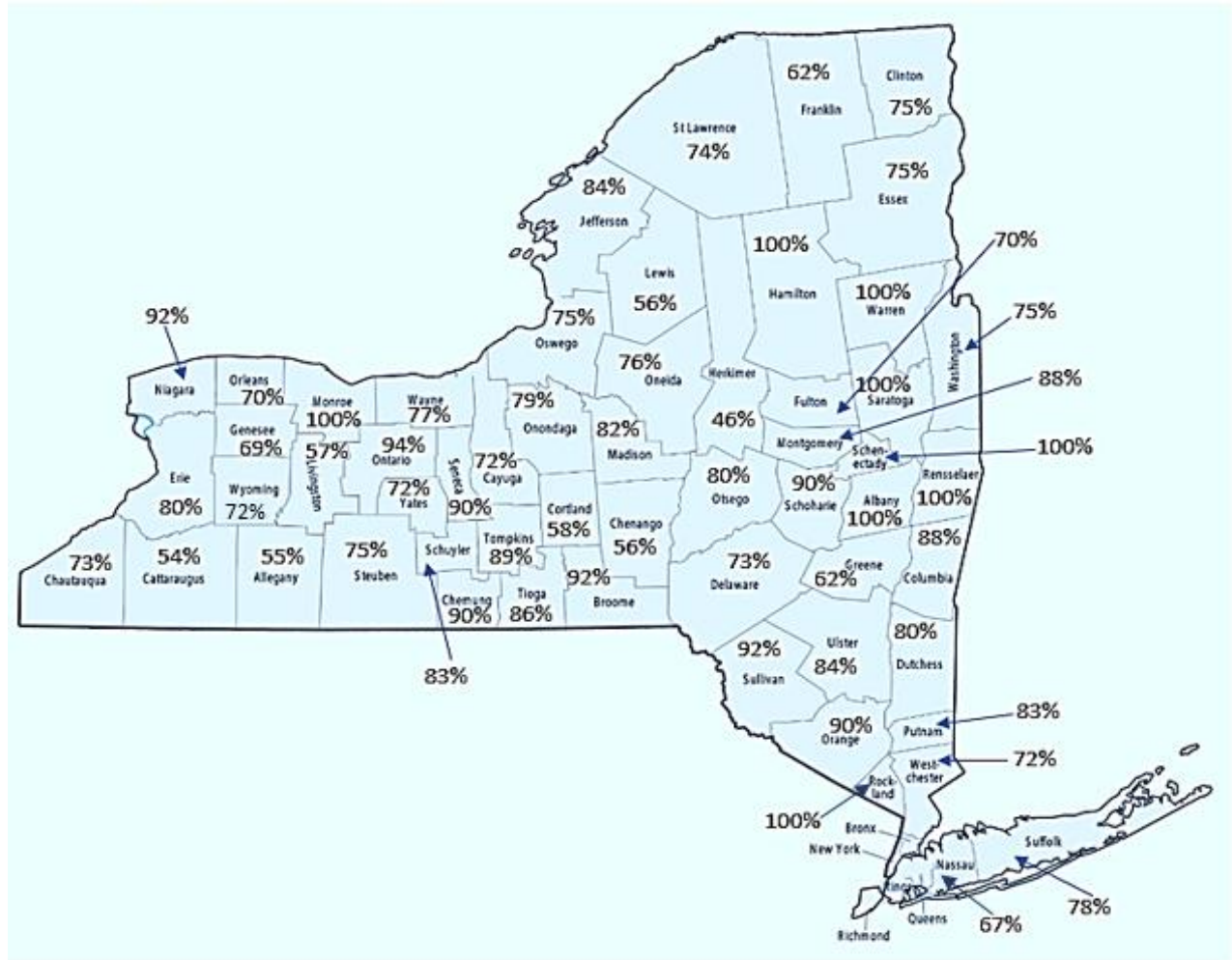
A list of the 74 towns that had a website but did not have Online Data, such as meeting agendas or minutes posted, which we could review are attached as **Exhibit B**.



From our review of town websites, which included reviewing meeting agendas and minutes, we have determined that 621 towns allow the public to speak during their meetings (78%), and 177 towns did not allow the public to speak (22%). The list of 177 towns that do not allow public comments are attached as **Exhibit C**.

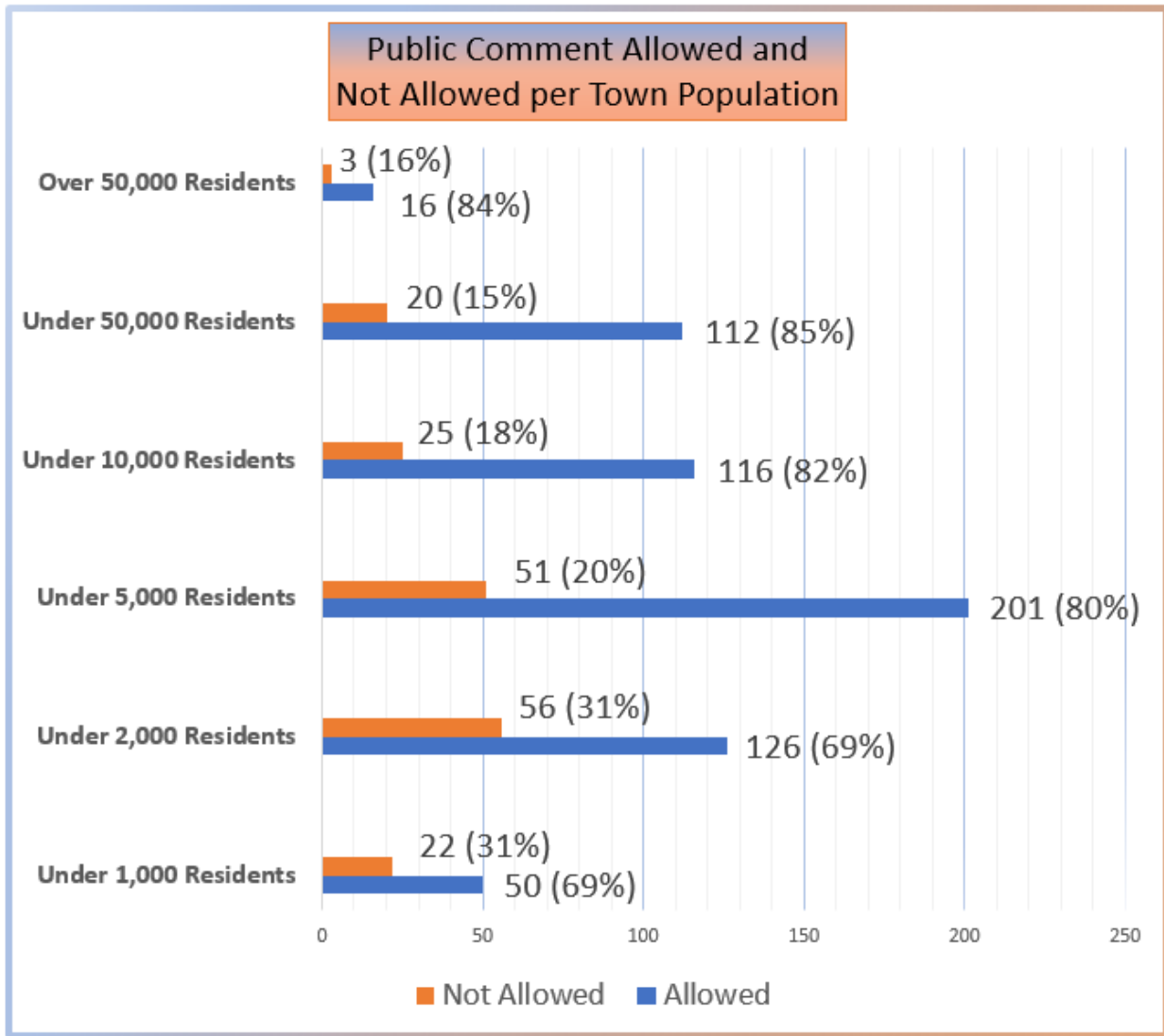
In the chart on the next page, we show the percentage of towns in each county that allow the public to speak.

**PUBLIC COMMENT ALLOWED IN TOWNS - PERCENTAGE
BY COUNTY**



In eight counties, 100% of their towns allow the public to comment: Albany, Hamilton, Monroe, Rensselaer, Rockland, Saratoga, Schenectady and Warren.

The counties with the lowest public comment rates were: Herkimer (46%), Cattaraugus (54%), Allegany (55%), Lewis (56%), Livingston (57%).

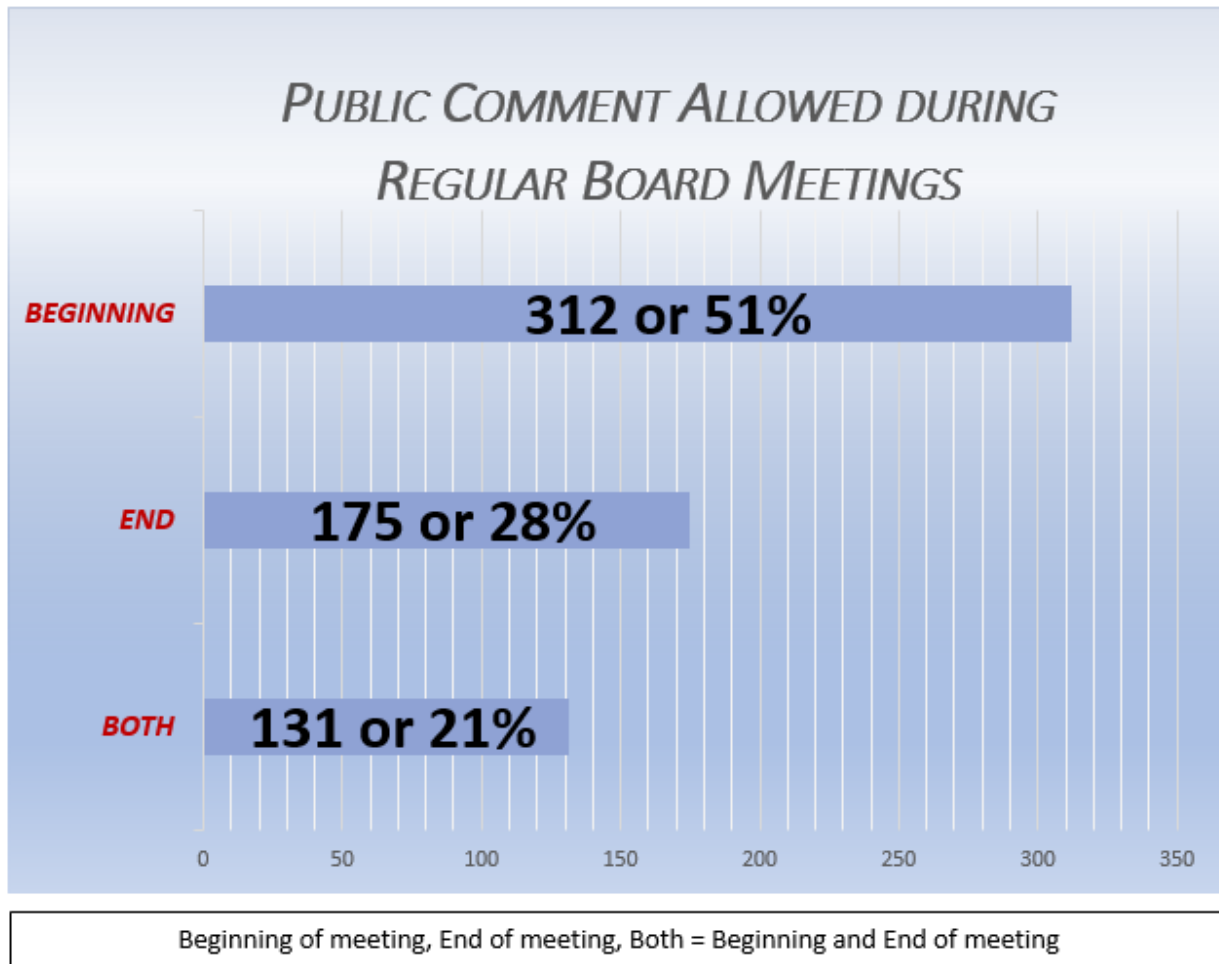


As shown in the chart above towns with a population under 5,000, allow the public to speak at a lower rate than towns with a higher population.

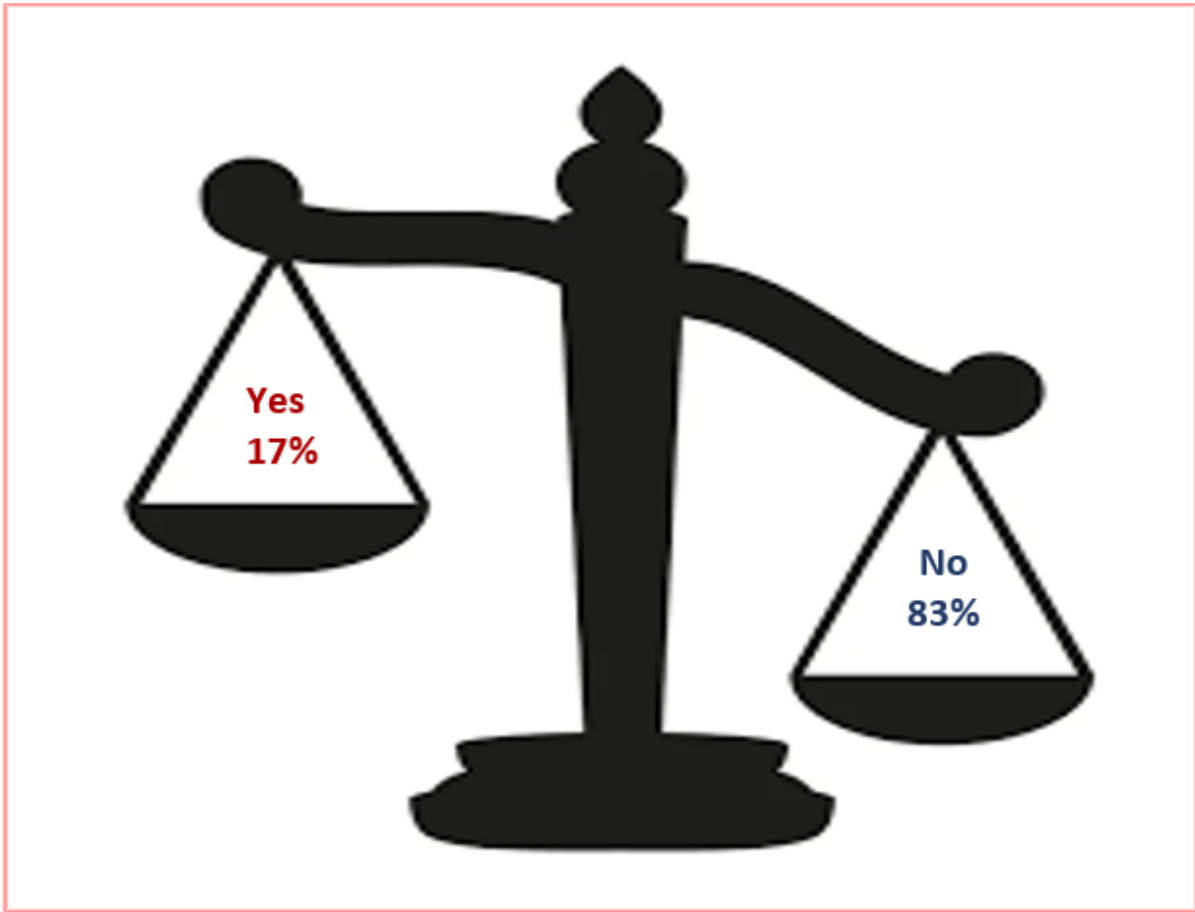
When the public is allowed to speak at a town board meeting is important. The whole point of public comments should be for elected representatives to hear what the public thinks before they vote on agenda items.

The fact that 28% of towns only allow the public to speak at the end of their meetings is significant and disappointing. Hearing from the public after voting has occurred defeats the purpose of hearing from the public. Even worse, it sends the clear message that board members don't really care what the public has to say prior to voting on items. The list of the 175 towns that have public comments at the end of their meeting are attached as **Exhibit D**.

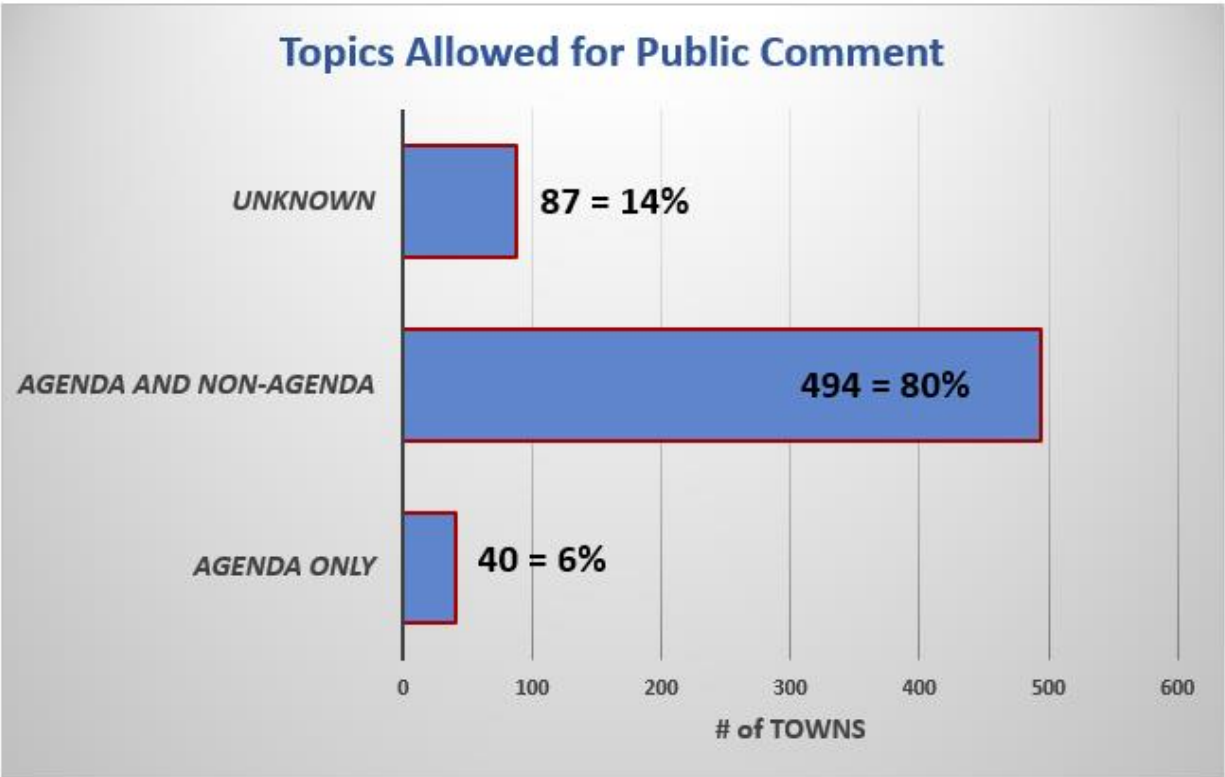
Kudos to those towns that hear from the public twice, at the beginning of their meetings and at the end of their meetings.



**Public Comment – Limited Time to
Speak at Regular Meetings**



We were surprised to learn doing this report that 83% of towns do not impose a time limit on speakers during their public comment period. 17% of towns do impose a time limit with the range being 2 to 5 minutes, with the average time limit being 3 minutes.



We support the public being able to address town board members regarding specific meeting agenda items and having the ability to bring forward town concerns that are not on the meeting agenda. As such, we were pleased to see that at least 80% of towns do not restrict speaking to agenda items only. The 14% unknown is due to meeting agendas and minutes not being posted or that there were not any public speakers noted.

Interestingly, on meeting agendas or minutes the public comment section can be stated as:

- Public Comment
- Privilege of the Floor
- Hearing of the Public
- Voice of the Public
- Public be Heard
- Public Statements
- Recognition of Citizens Present
- Public Participation
- Open Forum
- Guests and Public to be Heard
- Visitors who Wish to Speak
- Walk in Comments
- Citizen Comments

Eight towns posted just three months of meeting minutes. Ten towns only post the current month's meeting agenda and minutes, with all prior months removed.

In seven towns public comments are allowed only at the pleasure of the town supervisor. There is also an unfortunate practice of fifteen towns not reflecting public comments in their meeting minutes. If a member of the public takes the time to attend a meeting and speak, there should at least be mention of the concerns that were raised.

Speaking At A Meeting Should Not Require Advance Registration

In NY State public bodies are required to post meeting agendas and meeting documents online at least 24 hours prior to a meeting occurring. The 24 hour requirement which is woefully inadequate was added after the NY Coalition For Open Government lobbied to have the law changed. In California the requirement is 72 hours prior to a meeting.

As the public literally has hours in most instances to review a meeting agenda and documents, there should not be a requirement to register in advance in order to speak. The town supervisor should simply announce at the meeting that anyone who is interested in speaking should step forward to do so.

Other than a sign up sheet at the meeting, there should be no requirement to register in advance. In gathering the information for this report we came across several towns that require advance registration: Fayette, Lima, Marion, Perinton, Pittsford and Tioga.

We encourage towns to eliminate any rules which require advance registration in order to speak at a town board meeting. The public should not be required to state what topic they plan to address, nor should they be required to provide their full name and address.

Recommendations

- Public comments should occur at the beginning of a meeting before any voting on agenda items occurs;
- The public should be allowed to speak regarding agenda items and non-agenda items;
- At a minimum the public should be allowed to speak for at least three minutes;
- There should be no requirement to register to speak several days or hours before a meeting occurs;
- People should not be required to provide their name, address or topic they plan to discuss prior to speaking;
- Any established rules for speaking should be in writing, made available to the

- public and applied equally to all;
- Meeting minutes should reflect what public comments occurred at a meeting;
 - The New York State Legislature should amend the Open Meetings Law to mandate that public bodies must provide an opportunity for the public to speak at their meetings. Thirteen states mandate hearing from the public at meetings (Alaska, Arkansas, California, Hawaii, Louisiana, Montana, Nebraska, Nevada, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont).
 - Assemblymember Carrie Woerner, has expressed interest in sponsoring such a bill.

Conclusion

The phrase “speech is silver, silence is golden” is an old Egyptian proverb, which makes the point that not saying anything is often better than speaking too much or saying something inappropriate. While this is great life advice, the New York State Legislature has silenced the public by not mandating the public’s right to be heard in New York’s Open Meetings Law.

The federal government recognized the importance of informing the public of governmental regulations and the right to comment on them in 1946.

It took New York until 1976, to be the last state in the nation to adopt an Open Meetings Law. Thirty years after the federal government provided the public the right to be informed of proposed government regulations, New York adopted an Open Meetings Law that did not mandate the public receive meeting agendas and documents prior to a meeting.

Seventy-seven years after the federal government gave the public the right to comment on proposed regulations, New York State has not provided the public with the legal right to be heard at government meetings.

In New York State the public is allowed to speak at a town board meeting only if government officials in their good graces allow it and in 175 towns across the state it is not allowed. In 175 towns in New York State, the public is gagged and not allowed to speak to their town board. There are also villages, cities and counties, where the public is not allowed to speak.

Thirteen states mandate that the public has a right to speak at government meetings. There is no legitimate excuse for not allowing the public to speak at a town board meeting. The time has come for New York State to recognize the importance of the public being able to speak to their government representatives when public business is being discussed. In a democracy, the public should be more than just a silent gagged observer. In a democracy, silence is not golden.