Montana Association of Counties
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Open Meetings & Public Participation

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Purpose

To give county elected officials an outline of the laws and requirements surrounding open meetings and public participation.

Legislative Intent Regarding Open Meetings

The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of this state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of this part shall be liberally construed. (Section 2-3-201 MCA).

What is a Meeting?

Section 2-3-202 MCA defines a meeting as the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

What Does an Open Meeting Require?

- It requires that the public be admitted.
- It requires notice.
- It requires minutes.
- It requires an agenda.
- It requires an agenda item that permits any member of the public to comment on any public matter that is not on the agenda, and which is within the agency's jurisdiction.
- It requires the meeting to be recorded in either an audio or video format effective July 1, 2024 (see below).

What are the Recording Requirements?

- In counties with a population of less than 4,500 only an audio recording is required, otherwise, a video recording is required.

- The recordings must be made publicly available within five business days after the meeting with a link on the county's website. If your county does not maintain a website, the county must maintain a social media page and provide a link to the recording on your social media page.
- The recordings are not considered the official record of the meeting and may be destroyed after being retained online for one year.
- A county is not required to disrupt or reschedule a meeting if there is a technological failure of the recording but must post a notice explaining the reason the meeting was not recorded and the steps that will be taken to remedy the problem prior to the next meeting.
- All of these requirements also apply to local boards of health.

WHAT NOTICE IS REQUIRED?

Notice consists of two parts. First, notice that the Commissioners will be meeting at a specified time and place; and second, notice of the matters to be discussed and/or decided (the agenda).

- Establish a general framework for meeting as required by Section 7-5-2122 MCA which establishes the Commissioners' regular meeting day, and for full-time Commissioners, a general weekly schedule.
- The Agenda.
    - Establish who can place an item on the agenda and who approves the agenda (typically the Board Chair).
    - Establish a deadline for finalizing and the agenda.
    - Establish the noticing and posting of the agenda, which should be done at least two full days prior to the meeting.
- Special meetings should be noticed the same as above.
- For any items that have minimal public interest (contracts and administrative matters), consider the use of a consent agenda.

WHEN CAN A MEETING BE CLOSED?

- The most common basis for the closure of a meeting is to discuss a personnel issue. In that case, the Board Chair may make the determination that the individual's privacy outweighs the public's right to know and close the meeting. The right of privacy belongs to the employee who is being discussed, so that employee has a right to attend the meeting and may waive their right of privacy to open the meeting back up.
- The other grounds for the closure of a public meeting is to discuss litigation strategy. This exemption may only be used if there is actual pending litigation and does not apply to litigation between public entities.
- Once the closed meeting concludes, the closed minutes are sealed and unavailable for anyone to review absent a court order.
- As always, please consult with your County Attorney.

WHAT ABOUT AN ACCIDENTAL QUORUM?

Generally, the presence of a quorum of commissioners at an event or meeting of another organization will not constitute a meeting of the board.

However, if issues over which the commission has supervision, control, jurisdiction, or advisory power are discussed, the commissioners must present a report at their next regularly scheduled meeting. The report must include the name of the event, the individuals involved, the date and location, and a brief summary of the issues discussed or heard.

CONCLUSION

You serve the public. Giving notice and letting the public have its say before you act avoids controversy and problems in the long run. Open meetings and proper public notice are more than just good ideas – they are the law.