

# Open Meetings

Guidance on the Iowa Open Meetings Law, *Code of Iowa* Chapter 21 | 2023



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The purpose of this publication is to provide general guidance on the Iowa Open Meetings Law, *Code of Iowa* Chapter 21. This law requires meetings of governmental bodies to be open to the public. Cities often have questions about the applicability of this law to day-to-day city business. The information contained here is designed to be general in nature and does not constitute legal advice. The city should contact its attorney if there are specific legal questions about open meeting requirements. The Iowa Open Meetings Law favors openness, so situations where the applicability of the law is unclear should be resolved on the side of openness.

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## Meetings Generally

The Iowa Open Meetings Law applies to governmental bodies, including city, county and state governments. Governmental body refers to a “board, council, commission or other governing body.” The law also applies to “an advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.” For cities, this law applies to the city council, as well as entities such as the planning and zoning commission, the board of adjustment, library board and the park and recreation commission. The law also applies to any entity organized under *Code of Iowa* Chapter 28E. [*Code of Iowa* 21.2]

A meeting is “a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties.” [*Code of Iowa* 21.2(2)]

A recent Iowa Supreme Court ruling (*Hutchison v. Warren County*) also expands the definition of a meeting to include in-person gatherings attended by a majority of its members by virtue of an agent or proxy. Under this ruling, even if a majority of a governmental body is not physically in the same room or directly discussing issues by phone or other electronic means, it could be considered a meeting if they use an individual (serving as an agent or proxy) to relay and deliberate issues between a majority of a governmental body.

Vacant positions must be included when calculating the number of council members that must be present for a quorum. [*Code of Iowa* 21.2 and *Code of Iowa* 380.4]

■ *Examples: If a five-member council has two vacancies, it needs a majority of the five (all three current members) in order to conduct a meeting. If a regular meeting is held and only two members of a five-member council attend, business cannot be conducted for lack of a quorum of the council.*

A gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the requirements of the open meetings law is not a meeting. [*Code of Iowa* 21.2]

■ *Example: Three council members of a five-member city council attend the same high school football game. They do not need to avoid each other, but should not get together during the game to discuss city business as this could constitute a meeting.*

## Are committee meetings that include the mayor and several council members required to be open meetings?

Ordinarily committees that are created by a city are covered by and subject to open meetings law requirements.

■ *Example: A city council operating under the Mayor-Council form (mayor and five council members) passes a motion to establish a budget committee, consisting of the mayor, two council members and the city finance officer. It is likely that this committee would be subject to open meetings requirements and an opinion should be sought from the city attorney on whether or not that is the case.*

### **Are work sessions or retreats where the council discusses, but does not take any action on items, subject to the open meetings law requirements?**

Yes, if a majority of the council is present and they are discussing or deliberating on city business. The fact that the council is deliberating on city policy is sufficient to make the gathering an open meeting. It is not necessary that the council take action or vote to make the gathering into a meeting under Iowa law.

### **Public Notice and Agendas**

Meetings of governmental bodies must be preceded by public notice. Public notice is given by delivering a copy of the public notice to those in the media who have requested it and by posting the public notice in a prominent place in the city office. Many cities post notice on a bulletin board in city hall or on the door. If the city does not have a city hall, they can post notice in the building where the meeting will be held. The notice must be visible to the public at all times.

Public notice must give:

- Time, date and place of the meeting
- The tentative agenda for the meeting

Public notice must be given at least 24 hours prior to the meeting. [*Code of Iowa 21.4*]

Meetings of a governmental body are required to be held at a place reasonably accessible to the public and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impracticable.

If a city realizes on less than 24 hours of notice that much higher attendance is anticipated at a meeting, the city can post an amended notice to change the location to a more appropriate venue. In such instances, notice of the change should be provided to the news media and those known to have an interest in the meeting. Notice of the change should also be posted at the previously announced location.

### **What needs to be listed when posting the agenda and how much detail?**

The agenda should list the items the council intends to discuss and intends to act upon. There is no clear definition on what is enough information, therefore, if in doubt, give more rather than less information.

■ *Example: An agenda item of “water” may not be enough information to tell the public that the council will be discussing an amendment to an ordinance increasing water rates. On the other hand, it is not necessary for the agenda to include the wording of the entire ordinance.*

### **Can cities hold meetings with less than 24 hours notice?**

Yes, if it is not possible or practicable to give 24 hours notice. If an emergency situation requires a meeting with less than 24 hours notice, give as much notice as can be given, but in any event, give at least some notice. The city must justify its reason for not giving 24 hours notice in the minutes of the meeting. The city must also justify its action if it holds a meeting at a place not reasonably accessible or at a time not reasonably convenient to the public. [*Code of Iowa 21.4*]

■ *Example: A levee breaks and the city is being flooded, the council may need to have an emergency meeting to hire a contractor to come in and repair the levee immediately. The minutes of the meeting need to explain the nature of the good cause which justified holding a meeting without providing 24 hours notice.*

### **Can the council amend the agenda once the council meeting has started?**

While the council can amend the agenda to delete items or rearrange the order for consideration, it is not advisable to amend the agenda to add new items after a council meeting has started or if the agenda has been posted and less than 24 hours remain before the start of the meeting. The council must provide 24 hours notice to the public on what will be discussed at the meeting. If an item is added to the agenda less than 24 hours prior to a meeting or at a meeting, the public may contend that proper notice was not given.

■ *Example: During the public forum, a citizen complains about dogs running at large and suggests the council pass an ordinance at that meeting to address the problem. The mayor or presiding officer should defer the discussion and action to the next council meeting or suggest a special meeting be called if there is an immediate need to address the issue. It is not appropriate to move forward with action on an item that was not on the agenda.*

### **Once a properly noticed meeting has started, can you take a break and reconvene the meeting at a later time?**

Yes, a meeting can be reconvened within four hours of the start of its recess, where an announcement of the time, date and place of the reconvened meeting is made at the original meeting in open session and recorded in the minutes of the meeting and there is no change in the agenda. [Code of Iowa 21.4]

## **Meeting Procedures and Minutes**

A meeting occurs when a majority of the council gathers to discuss city business. If a quorum of members of the governing body is not present, a meeting cannot be held.

### **Can a council member who will not be present at a meeting send in their vote with another council member or tell the clerk to record their vote a certain way?**

No, although state law does not explicitly prohibit proxy voting, it is not advisable for a council member to vote by proxy. Sending in a vote and not participating in the discussion at a meeting denies the public access to whatever information or discussion led a council member to vote in a certain way. Additionally, had a council member attended the meeting, they may have been presented with information that would have caused them to vote differently.

### **The minutes have to record the vote of each council member. Does this mean a roll call vote is required on each action of the council?**

The procedure to record the vote of each member is to either take a roll call vote or to determine each member's vote in some other manner. The method is not as critical as the fact that each council member's vote is recorded.

### **Do citizens have to be allowed to participate in a meeting or can cities have rules regulating the public attending a council meeting?**

The public can use cameras or recording equipment to take photos, movies, recordings, etc., of any open session. Although many cities provide time for public input, it is not a requirement of the open meetings law. Many cities provide a time for public comment in order to allow citizens to give feedback and have input in their city government. There are specific situations that require the city to hold a public hearing (prior to the adoption of the budget, for example). The purpose of a public hearing is to solicit public input on the specific proposed action, so receiving public comment is a requirement. Cities can make rules of conduct for their meetings to ensure the meetings are orderly. The rules can permit the council or presiding officer to establish time limits for public comments. The mayor or presiding officer is ordinarily responsible for enforcing these rules. Contact the League for sample rules of conduct for meetings.

■ *Example: A city might offer a “public comment” agenda item and limit each person to five minutes, requesting that they state their name and address, etc.*

## Electronic Meetings

A city can only hold a meeting by electronic means if conducting such meeting in person is either impossible or impractical, and then only if the city complies with all of the following requirements:

- Public access to the conversation of the meeting has been provided to the extent reasonably possible.
- Notice is given of the meeting time, date, place and tentative agenda as soon as reasonably possible, pursuant to *Code of Iowa* Section 21.4.
- Minutes are kept of the meeting and must include a statement explaining why a meeting in person was impossible or impractical.

Council members who are unable to attend a regular council meeting may participate electronically but must be connected by a means that allows them to hear and be heard.

### Can electronic or email communication between city council members be considered a meeting under Iowa Open Meetings Law?

A “meeting” under Iowa law means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. City officials should keep in mind that the Iowa Open Meetings Law is intended to require that the city’s business be conducted in open meetings.

## Closed Meetings Generally

A closed meeting is a meeting of a governmental body that is closed to public access, meaning that neither the general public nor the press can be present at that meeting. A city council or other body can close a meeting only for very specific reasons described in law. The law favors openness so before closing any meeting, the city should consult the city attorney.

*Code of Iowa* Section 21.5 provides specific reasons and procedures for closing access to a public meeting. The most common reason cities hold a closed meeting is to evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual’s reputation and that individual requests a closed session.

Other common reasons a city would close a session include the discussion of strategy with legal counsel in matters that are presently in litigation or where litigation is imminent. In addition, the purchase or sale of real estate is commonly discussed in a closed session where premature disclosure would adversely impact the price. The qualification with this exemption is that the minutes and the recording of a session closed under this paragraph need to be available for public examination when the transaction discussed is completed.

### **Are there any meetings of a governmental body that are exempt from the open meetings requirements?**

Yes. A meeting to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under *Code* Chapter 20. A city considering holding a meeting of this sort should seek the guidance of the city attorney. [*Code of Iowa* Section 21.9]

■ *Note: This exemption is only for the purpose of discussing strategy. Therefore, any action involving employment conditions must be taken at a meeting that complies with the open meetings requirements. For this purpose, “employment conditions” means areas included in the scope of negotiations listed in Code of Iowa Section 20.9.*

### **Does the city clerk have to be present during a closed session to take minutes?**

No. If the clerk is not present, the governing body must appoint someone to perform this function.

### **Can persons other than members of the governing body be present during a closed session?**

Yes, provided that governing body authorizes their presence. However, particularly when meeting with the city attorney, caution should be used to avoid potential problems in exercising the attorney-client privilege.

### **Can a council exclude one of its members from attending a closed session?**

Yes. The state code allows a council to exclude a member of the governing body from attending a closed session if it creates a conflict of interest for the member due to the specific reason announced as justification for holding the closed session. [*Code of Iowa* Section 21.5]

### **Do persons other than members of the governing body have a right to be present at a closed session?**

No.

## **Procedure for Closing a City Council Meeting**

The council meeting must begin in open session with a call to order and a roll call. In order to go into closed session for a specific reason authorized under *Code of Iowa* Section 21.5, there must be an affirmative vote by at least two-thirds of the members of the body or by all those present. The minutes must record the votes of individual council members on the question of holding a closed session. In addition, the motion and minutes must state the exemption that permits a closed session.

No business can be discussed during the closed session that does not directly relate to the specific reason for the closed session.

Upon completion of the closed session, a motion and vote must be taken to end the closed session and return to open session. Final action on any matter must be taken in open session unless another *Code* section specifically allows such action to be taken in closed session.

### **Does a closed session have to be listed on the governing body’s agenda?**

If a closed session is anticipated, the fact that there is to be such a session should be made known by setting forth the topic for the closed session and the fact that a closed session will be held on the agenda. However, if during an open meeting, a topic comes up which may be considered during a closed session and which could not reasonably have been anticipated at the time notice of the agenda was given, then it would be appropriate to proceed to closed session from the open meeting following the procedure outlined in *Code of Iowa* Section 21.5.

## Closed Meeting Procedures and Minutes

When holding a closed session, the governmental body must keep the following:

- Detailed minutes of all discussion, persons present and action occurring during the closed session.
- An audio recording of the entire closed session.

The minutes must be sealed and shall be kept by the governmental body for a period of at least one year from the date of the meeting.

### Is there any situation that could result in the sealed detailed minutes and the recording of a closed session becoming unsealed?

If a lawsuit is brought to enforce provisions of the Iowa Opening Meetings Law relating to a closed city council session, then by an order of the court, the detailed minutes and audio recording must be unsealed and examined by the court in chambers without the presence of parties to the lawsuit. The court then must determine what part, if any, of the minutes shall be disclosed to the party seeking to enforce the law. [*Code of Iowa* Section 21.5(4)]

### If a member of a governing body is absent and the governing body holds a closed session, can that member listen to the audio recording of the closed session?

Yes. The member who is absent still remains a member of the governing body. The member has a right to be informed of discussion and action that occurred during his or her absence. The fact that the detailed minutes and audio recording of a closed session are not open to public inspection does not preclude a person who would otherwise have been privy to such records, except for an absence, from later listening to the audio or reviewing the minutes.

## Closed Meeting on Personnel Issues

A frequently used reason for holding a closed meeting is to evaluate and discuss the appointment, hiring, performance or discharge of an individual, when needed to prevent irreparable injury to the individual's reputation. In order to hold a closed session for this reason, the person or persons being discussed must request a closed session.

### If a person who may request a closed session makes such a request, must the request be granted?

No. The law provides that a governing body may hold a closed session for certain specific purposes. It does not require that such a session be held. [*Code of Iowa* Section 21.5(5)]

### Can job interviews be conducted during a closed session?

Yes. However, the person being interviewed must request the closed session.

■ *Example: The city plans to hire a city administrator. The city has narrowed its list of candidates to three they plan to interview. The city may alert the candidates that they may request a closed session. If the candidate requests a closed session for the interview, the city could proceed to conduct the interview during a closed session.*

### When a closed session is held to discuss the competency of a specific employee whose appointment, hiring, performance or discharge is being considered, is the city required to allow the employee to attend the closed session?

No. The council determines who can attend a closed session.

### **Can a closed session be held to discuss salaries in general for the upcoming year?**

No. There is no authority in the Iowa Open Meetings Law to discuss salaries in a closed session.

### **Enforcement**

Resolving disputes and enforcing the Iowa Open Meetings Law is the responsibility of multiple entities. Alleged violations can be received by the Iowa Public Information Board (IPIB) and the Office of Ombudsman. In addition, any aggrieved person, the attorney general or the county attorney can bring a lawsuit to enforce the law in District Court. The burden is on the city to prove they complied with the law.

### **What happens if a violation of the Iowa Open Meetings Law is substantiated?**

The following judgments may be entered when IPIB or a court has found a violation of the open meetings law:

1. Assess each member of the governing body who simply participated in the violation an amount not less than \$100 and not more than \$500. For knowingly participating in the violation members must be assessed not less than \$1,000 and not more than \$2,500 (available to IPIB and courts).
2. All costs and reasonable attorney fees will also be awarded to the party who successfully established in court a violation of the law and will be assessed against the members found to have participated in the violation (available only to a court).
3. Void any action taken in violation of the law if the action for enforcement is brought within six months of the violation and that the public interest in enforcing the policy of the Iowa Open Meetings Law outweighs the public interest in sustaining the validity of the action taken in the closed session. This action is not available to void the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness (available to IPIB and courts).
4. Issue an order removing the member from office if that member has engaged in one prior violation of the open meetings requirements for which damages were assessed against such a member during the member's term (available to courts). IPIB can seek the removal of a person from office through initiation of a court action.
5. In addition, the court may also issue a mandatory injunction punishable by civil contempt ordering the member of the governing body to refrain for one year from any future violations of the open meetings law.
6. In addition, IPIB can impose appropriate remedies calculated to declare, terminate or remediate any open meetings law violation.

### **Can a person charged with a violation of the Iowa Open Meetings Law claim they did not know the provisions of the law?**

No, ignorance of the law is not a defense.



### **What are the defenses for a member of a governing body for violations of the Open Meetings Law?**

1. Voting against the closed session. This demonstrates the importance of recording the vote of each council member.
2. Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.
3. Reasonably relied on a court decision, formal attorney general's opinion, IPIB opinion, opinion of an attorney for the governmental body given in writing or memorialized in the meeting minutes, or a written advisory opinion by the attorney general or attorney for the governmental body.

### **Do members of governing bodies need to be provided with information about the Iowa Open Meetings Law?**

Yes. The appropriate commissioner of elections must provide this information to the elected members of governmental bodies. Also, the authority that appoints members of governing bodies must provide this information.

■ *Example: The county auditor must provide this information to mayors and city council members. When city councils make appointments to boards or commissions or to fill a vacancy on the council, they must provide this information to their appointees.*

## **About the Iowa League of Cities**

The Iowa League of Cities serves as the unified voice of cities, providing advocacy, training and guidance to strengthen Iowa's communities.

### **The League provides guidance.**

Through membership services, research, publications, trainings and other collaborations, the League provides guidance and serves as the resource for member cities.

### **The League leads a grassroots advocacy effort for local government.**

The League promotes excellent government, effective public policy and Home Rule among members as well as state and federal lawmakers.

### **The League keeps cities informed with a constantly updated slate of workshops and publications.**

The League provides education and training for elected and appointed city officials through workshops, publications, the web and personal interactions.

- Monthly *Cityscape* magazine
- *League Weekly* e-newsletter
- Weekly *Legislative Link* during the state's legislative session
- An annual listing of New Laws related to cities after each legislative session
- An annual series of workshops on several different topics
- Action Calls on immediate legislative concerns at the state or federal level
- Special Reports on topical issues, including Budget, Home Rule and Law Enforcement
- Biennial Directory of League member cities in Iowa

### **The League is a resource for insurance and investment needs.**

Programs created by or sponsored by the League provide cost-effective quality services to cities. The League's affiliated programs offer health, workers' compensation, liability and casualty coverage as well as a prosperous, liquid asset investment program. Other programs assist cities in developing services to better serve their citizens.