



DEPARTMENT OF LOCAL AFFAIRS

COMMUNITY DEVELOPMENT OFFICE

Open Meetings Requirements

I. STATUTORY AUTHORITY

A. **History.** In 1991, the Colorado legislature adopted SB 91-33 which purports to apply to local governments.

B. **Current.** The provisions of the Colorado Sunshine Law applicable to open meetings of local governments are in Section 24-6-401, et. seq., of the Colorado Revised Statutes.

II. APPLICATION

A. **Local Public Bodies.** The law applies to Planning Commissions and Boards of Adjustment as well as County Commissioners, Boards of Trustees and City Councils. A local public body includes:

any board, committee, commission, authority, or another advisory; policy-making, rule-making, or formally constituted body of any political subdivision of the state ... but does not include administrative staff. 24-6-402(1)(a).

Political subdivision is defined to include:

any county, city, city and county, town, home rule city, home rule county, home rule city and county, school district, special district, local improvement district, special improvement district, or service district. 24-6-402(1)(c).

B. **Home Rule Municipalities.** The Sunshine Act has a declaration of statewide interest and specifies that it applies to home rule municipalities. However, the court, not the legislature, is the final arbiter of whether a statute is a matter of statewide or local concern.

While there are not yet any cases on point, there is very good reason to believe that the Colorado Supreme Court will find that the meetings of a local governmental body are a local matter, and home rule municipalities are not subject to the Sunshine Law. See, Glenwood Post v. City of Glenwood Springs, 731 P.2d 761 (Colo. App. 1986) and City and County of Denver v. State, 788 P.2d 764 (Colo. 1990).

Consequently, most home rule municipalities tend to set forth, either by Charter or ordinance or both, the circumstances giving rise to valid executive sessions as well as the rules of notice and publication of meetings which are applicable within the home rule city's boundaries.

C. Meetings Open to Public. All meetings of a quorum or three or more members of a body, which ever is fewer, at which any public business is discussed or at which any formal action may be taken must be open to the public unless an exception applies. § 24-6-402(2)(b).

1. Does not apply to chance meetings or social gatherings at which discussion of public business is not the central purpose. § 24-6-402(2).
2. Does not apply to executive sessions held in compliance with the statute. § 24-6-402(4).

D. Meetings for Which Notice is Required. Not all meetings which are required to be open to the public require public notice. Public notice is only required for meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance. § 24-6-402(2)(c).¹

Not all meetings which are required to be open to the public require public notice.

1. "Full and timely" is the type of notice required. The statute does not define the term, but gives one example which can be used, but is not required to meet the notice requirement. That is a notice of the meeting posted in a designated public place within the boundaries of the local government at least 24 hours before the meeting. The posting place must be designated at the first regular meeting of the calendar year, and if possible, the notice should include agenda information. § 24-6-402(2)(c)

2. See Lewis v. Town of Nederland 20 B.T.R. 1205 (Colo. App.1996), wherein the Court of Appeals held that an "emergency meeting" of a Town Board did not require advance notice, since "an emergency necessarily presents a situation in which public notice, and likewise a public forum, would be either impractical or impossible."

E. Meetings for Which Minutes are Required. Minutes are not required for all public meetings and are not required for all public meetings for which notice is required. Minutes are required for all meetings at which a policy, position, resolution, rule, regulations or formal action occurs or could occur. § 24-6-402(2)(d)(II). For instance, most cities have policies that formal action cannot be taken at workshops, so minutes would not be required, but the meeting must be open to the public.

Minutes are not required for all public meetings and are not required for all public meetings for which notice is required. For instance, most cities have policies that formal action cannot be taken at workshops, so minutes would not be required, but the meeting must be open to the public.

¹ This point is further addressed in the recent court case, Board of County Commissioners of Costilla County, Colorado vs. Costilla County Conservancy District and McGowan, which found that the Open Meetings Law requires a local public body to provide public notice of any meeting held or attended by a quorum of the public body when that meeting concerns matters that are related to the policy-making function of that body.

requirements of the Act. Any citizen can enforce the Act and the court shall award attorneys fees to a prevailing citizen. If the public body prevails, it only receives attorneys fees if the court determines the citizen's action was frivolous, vexatious, or groundless.

§ 24-6-402(8). The statute does not exclude any inadvertent violations of the Act or describe if an open meeting violation voids an action only if it occurs by the final decision-making body or anywhere in the process.

III. EXECUTIVE SESSIONS

This section has been updated since HB 01-1359 (executive session procedures).

A. **Procedure.** Executive sessions can only be called during a regular or special meeting. Before going into executive session, the topic for discussion must be announced in the open meeting. In the open meeting, before going into executive session, the topic for discussion during the executive session must be announced, but should be general enough so as not to nullify the confidential purpose of an executive session. This announcement should include the specific statutory citation regarding the reason for the executive session.

Executive sessions may be held upon the affirmative vote of two-thirds of the quorum present at a regular or special meeting for any of the matters listed in the statute, except no formal action can occur at an executive session (except for approving previous executive session minutes). § 24-6-402(4).

A record of the actual contents of the discussion in the executive session must be made, in the same way minutes are recorded in open meetings (i.e., written minutes or an electronic record are acceptable). The executive session record must also contain a citation to the specific provision in the statute that authorizes the session. If written minutes are kept, they must include a signed statement by the chair that the record "substantially reflects the substance" of the discussions during the executive session; this does not mean a verbatim transcript must be kept.

B. **Subjects.** When making the announcement in the open meeting before going into executive session, and when confirming the citation in the executive session, these are the subjects allowed for executive sessions:

1. Transfers of property interests, except the executive session cannot be for the purpose of concealing a member's personal interest in the transfer, 24-6-402(4)(a);
2. Conference with an attorney for legal advice, except the presence of the attorney alone does not meet this requirement, 24-6-402(4)(b);
3. Matters required to be kept confidential by federal or state law, 24-6-402(4)(c)- and cite the law, rule, or regulation;
4. Details of security arrangements or investigations, 24-6-402(4)(d);
5. Determining positions and development strategy for negotiations and instructing negotiators, 24-6-402(4)(e);
6. Personnel matters, but in certain situations the subject employee can request an open meeting, and the discussion of other members of the body or of elected officials are not allowed in executive session, nor is the appointment of any person to fill an office of the body or elected official allowed, 24-6-402(4)(f);

7. Consideration of documents protected by the mandatory non-disclosure provisions of the Open Records Act, 24-6-402(4)(g).

C. **Procedures Following the Executive Session.** The record must be kept for at least 90 days following the executive session. 24-6-402(2)(d.5)(II)(E). If legally challenged, a judge may privately review the executive session record to see whether the body's discussion strayed substantially off topic or whether the body took prohibited formal actions in its executive session. 24-72-204(5.5). However, the executive session record is not available directly to the public for review and is not subject to discovery in any administrative or judicial proceeding. 24-6-402(2)(d.5)(II)(D).

*This document is meant to provide general guidance in these matters;
it is NOT to be construed as legal advice.
It is merely a summary of law, not comprehensive.
Please seek legal counsel from your municipal, county, or district attorney.*

*This material has been used in DOLA land use planning workshops and was provided by **John Hayes** of Hayes, Phillips & Maloney, P.C., Attorneys at Law, 1350 Seventeenth St., Ste. 450, Denver, Colorado 80202-1517, (303) 825-6444. Updated information regarding executive sessions was taken from handouts from the Colorado Municipal League, 303-831-6411 (memo from **Geoff Wilson**) and from Griffiths, Tanoue, Light, Harrington & Dawes, P.C., 303-298-1601 (prepared by **Tami Tanoue**). OSG updated information concerning the Costilla County case.*

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