

Staying out of Trouble: Proper Board Practices and Procedures

Ancel, Glink, Diamond, Bush,
DiCianni & Krafthefer, PC
www.ancelglink.com

You've Got No Business Without a Quorum

- ◆ Must have a majority of elected officials
- ◆ What can you do without a quorum?



What Happens if We Start Out With a Quorum, But it is Lost During the Meeting?

- ◆ No Quorum, No Vote
- ◆ No Quorum, No Meeting
- ◆ No Quorum, No Business

Be Wary of Unofficial Board Meetings

◆ Any gathering may be subject to the Open Meetings Act

– Majority of a quorum

– Discussion of public business



All kinds of “meetings” are subject to the Open Meetings Act

“any gathering, whether in person or by video or electronic conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous communication, of a majority of a quorum of the members of the public body held for the purpose of discussing public business”

Email: Friend or Foe?



◆ May constitute an illegal gathering

◆ Avoid “reply to all”

◆ Consider message intermediary

Agendas, Minutes & Records



Your Agenda Serves as the Public's Notice of Meetings

- ◆ Annual notice of all regular Board meetings must be provided
- ◆ Agendas must be posted no later than 48 hours before meeting
- ◆ Agendas must be provided to media (if requested) and posted on web site (if applicable)

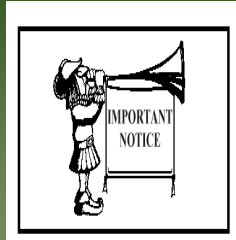
How Should You Provide Notice?

- ◆ Post copy at principal office of the public body
- ◆ Post on website (if applicable)
- ◆ Send copy to newspaper (if requested)
- ◆ Send copies of notice to Board members



Do we need to post a notice of all of our regular meetings?

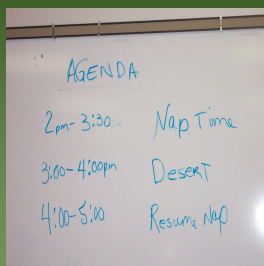
- ◆ Yes – post the date, time and place of meetings at the beginning of your calendar or fiscal year



We Need to Change the Meeting Time of Our Regular Meetings... Can We Do That?

- ◆ You'll need to provide 10 days notice before the change is permanent
- ◆ You must also publish notice of the change in at least one newspaper of general circulation in the jurisdiction

Pay Careful Attention to Your Agenda



- ◆ Agenda must be complete
- ◆ You can only act on agenda items
- ◆ Agenda must be posted in advance of meeting

We Forgot to Include a Critical Ordinance on Our Agenda...Can We Amend the Agenda at the Meeting?

- ◆ Yes, but...
- ◆ Discussion is allowed, but not action

A Quick Note About Special and Emergency Meetings

- ◆ Special meetings require specific notice of each and every topic to be discussed
- ◆ Less than 48 hours notice OK for bona fide emergency meeting

Remember to Keep Written Minutes of All Your Meetings

- ◆ Include date, time and location of meeting
- ◆ Identify officials present or absent
- ◆ Provide general description of matters discussed and decided



Who should take the minutes of the meeting?



- ◆ Clerk or Secretary
- ◆ What if sick?

Do the open portions of our meetings need to be audio or videotaped?

- ◆ Recording of open session not necessary
- ◆ It's OK for the public to record meetings
- ◆ Public body can adopt reasonable rules regarding recording by the public

Are We Required to Disclose Our Meeting Minutes to the Public?

- ◆ Open meeting minutes must be available for public inspection within 7 days after approval by the Board
- ◆ Closed meeting minutes do not have to be disclosed, as long as necessary to protect the public interest or individual privacy

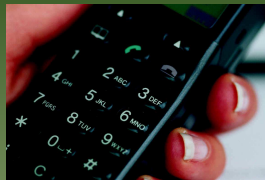


A Quick Note About Approving Minutes

- ◆ Minutes can be corrected upon approval by the Board
- ◆ Minutes shouldn't be amended to include additional matters not discussed at meeting

Can we let an official participate in a meeting electronically?

- ◆ Only if you have adopted a written procedure
- ◆ Absence of official can only relate to illness or business, not due to vacation



Key Elements of Remote Participation:

- ◆ Quorum must be physically present
- ◆ Vote on whether remote participation allowed
- ◆ Identify reason for remote participation
- ◆ If request legitimate, allow participation

Can we let a board member who will not be at the meeting vote by proxy?

NO



A Few Good Meeting Tips



- ◆ Observe timeliness
- ◆ Limit Board debate
- ◆ Prepare full agenda packets

Another Good Tip: Consider Using Committees

- ◆ Utility will depend on size of the public body
- ◆ Use for more detailed study of various issues
- ◆ Must be authorized by Board



One More Tip: There's No Right to Public Comment



- ◆ Yet...and School District exception
- ◆ Currently the Open Meetings Act only requires Board to allow public to attend and witness the proceedings
- ◆ Vergara, et al v. City of Waukegan

Closing a Meeting to the Public

- ◆ Only certain topics can be discussed
- ◆ Motion required to go into closed session
- ◆ Discussions must be recorded in writing and by audio or video



Do we need to identify ourselves in closed session?



- ◆ Roll call
- ◆ Identify yourself for the audio/video recording
- ◆ Closed session minutes should reflect who was present throughout session

Can we go into closed session on a voice vote?

- ◆ No, there must be a roll call vote

Joe	✓
Susan	✓
Carol	✓
Ben	✓

Can an Item Be Discussed in Closed Session Even If It Wasn't Mentioned in the Closed Session Motion?

- ◆ The specific exceptions must be cited in the motion for closed session but not the specific names of people or places involved
- ◆ But it's ok to disclose additional discussion topic upon returning to open session

What Topics Are We Required to Discuss During Closed Session?

- ◆ Open Meetings Act does not require closing any meeting or portion of meeting
- ◆ Exceptions authorize, but don't require closing meeting to discuss any of the enumerated subjects

Can We Vote on Matters During Closed Session?

- ◆ Approval of closed session minutes
- ◆ Authorization of direction on permissible closed session topic

What if our tape recorder breaks?

- ◆ Stop the meeting and fix the recorder

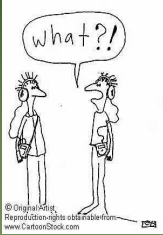


Who is in charge of safeguarding the tapes?

- ◆ No specific person responsible
- ◆ Generally, it's the clerk or secretary



Can we let a board member who was not present at the meeting listen to the closed session tapes?



- ◆ Probably, if they were entitled to attend the meeting in the first place

What can we do about a board member who leaks closed session materials to the press?



- ◆ Attempt to censure the board member
- ◆ Report the infraction to the State's Attorney
- ◆ Seek an injunction

Do we need to approve closed session minutes that we don't plan to release?



- ◆ Minutes should be reviewed for accuracy
- ◆ Must be reviewed every 6 months to determine if need for confidentiality still exists

Can we release parts of the closed session minutes?

- ◆ Not all minutes have to be released
- ◆ Parts of minutes may be kept confidential



Can we invite experts or other officials into our closed session?



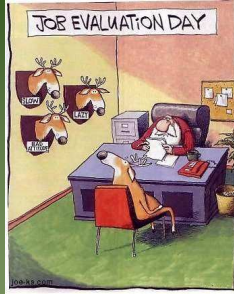
- ◆ Yes, but with some limitations

Can we talk about where a new public building should be located in closed session?

- ◆ Discussion must relate to purchase or lease of a particular parcel or parcels of real property
- ◆ Section 2(c)(5) of the Act

Can we criticize the performance of an employee in closed session?

- ◆ Yes, it is permissible to discuss the discipline, performance or dismissal of specific employees in closed session



Can we talk about whether we should hire an auditor as an independent contractor during closed session?

- ◆ Section 2(c)(1) allows closed session discussions only relating to the appointment or employment of employees
- ◆ An independent contractor is NOT an employee
- ◆ Attorneys are only independent contractor that can be discussed in closed session

How do we hire a new engineer, surveyor or architect?

- ◆ Comply with Local Government Professional Services Selection Act



Why Do We Need the Open Meetings Act?

- ◆ Public business should not be conducted privately
- ◆ Open Meetings Act ensures that the conduct and deliberations of the people's business is conducted openly

Questions

**Ancel, Glink, Diamond, Bush,
DiCianni & Krafthefer**

Stewart H. Diamond
Adam B. Simon
Jeffrey R. Jurgens
Nicholas A. Grojean

Bloomington: (309) 828-1990
Chicago: (312) 782-4141
Vernon Hills: (847) 247-7405
www.ancelglink.com