

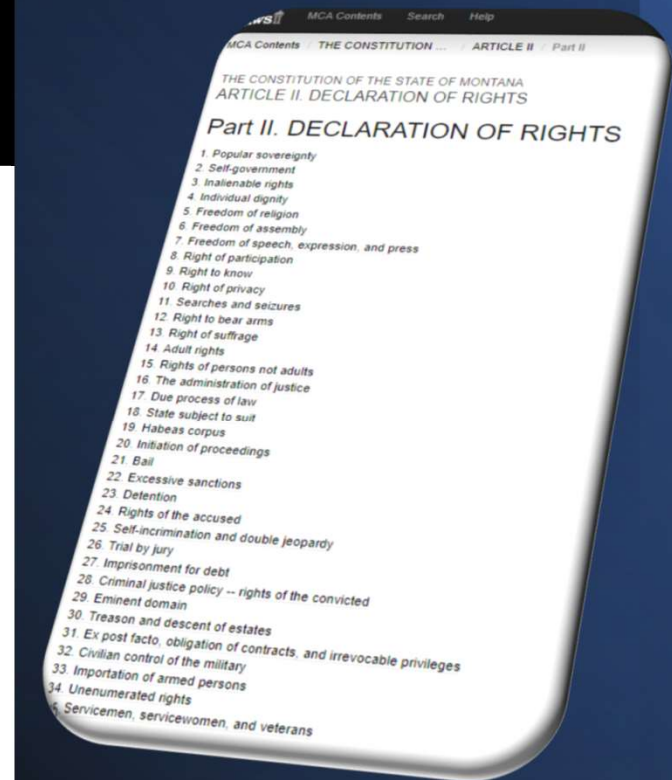
The People's Government: Montana Open Meeting and Citizen Participation Laws

Ashley Kent
Associate Director
MSU Local Government Center
February 16, 2024

Constitutional Rights

Article II, Part II: Declaration of Rights

- **Section 8. Right of participation.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.
- **Section 9. Right to know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.
- **Section 10. Right of privacy.** The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.



Public Participation

2-3-103. Public participation -- governor to ensure guidelines adopted -- procedures for publishing notice. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(b) The agency shall publish an agenda for a meeting, as defined in [2-3-202](#), as follows:

(i) if a newspaper of general circulation in the county where the agency is located publishes electronic notices and links to meeting agendas free of charge to the agency on the newspaper's website, the agency shall provide the notice and agenda to the newspaper to post on the newspaper's website;

(ii) if the agency does not have an option to post notices and links to meeting agendas free of charge, the agency shall provide adequate notice of a meeting by doing at least one of the following:

(A) posting a link to the meeting agenda on the agency's primary website; or

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(c) The agenda must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter.

(d) Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in [2-3-212](#).

(e) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

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7-1-4142. Public participation. Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

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**Adequate notice is at least 48 hours prior to meeting
Reference: 42 Op. Att'y Gen. No. 13 (1998).**

Sample Council Meeting Agenda

**City of Treasure
City Council Meeting
February 16, 2024
6:00 pm**

- Call meeting to Order
- Roll call
- Other opening ceremonies
- Public Comment for items on the agenda
- Consider approval of previous meeting minutes
- Review and approve claims
- Reports:
 - Mayor
 - Treasurer
 - Department Heads
- Correspondence updates

Unfinished Business:

- Consider approval of final bid for baseball field improvements

New Business:

- Request by high-school swim team to use city-owned pool for team practices every Tuesday and Thursday 3:45 – 5:00 pm during the academic year.
- Consider snowplow services
- Announcements and Next Meeting
- Public Comment for items not on the agenda but under the jurisdiction of the city council
- Adjourn

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- **Consider approving Request for Proposals for city park walkway snowplow services for FY 2024-2025**
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 - Consider approval of previous meeting minutes **Public Comment**
 - Review and approve claims **Public Comment**
 - Reports:
 - Mayor
 - Treasurer
 - Department Heads
 - Correspondence updates
- Unfinished Business: **Public Comment**
- Consider approval of final bid for baseball field improvements
- New Business: **Public Comment**
- Request by high-school swim team to use city-owned pool for team practices every Tuesday and Thursday 3:45 – 5:00 pm during the academic year. **Public Comment**
 - Consider approving Request for Proposals for city park walkway snowplow services for FY 2024-2025
- Announcements and Next Meeting **Public Comment**
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What is considered a meeting?

2-3-202. Meeting defined. As used in this part, "meeting" means 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.

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Elements of a meeting

IF THIS IS TRUE:

- Quorum
- Hear, Discuss, OR Act on a matter over which the body has authority

MUST ALSO HAVE:

- Agenda
- Proper Notice
- Public Comment prior to final action
- Minutes

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Examples of methods through which meetings can be created



IN-PERSON



VIDEO CALLS



EMAILS



PHONE CALLS



TEXT
MESSAGES

Types of Council Convenings



Regular Meeting

Typically held at a consistent date, time, & location each week, month, etc.



Work Session

Intended to explore one or more topics in-depth without reaching a final decision



Special Meeting

Specific purpose outside of the regularly scheduled meetings. Only the purposed identified on the meeting notice may be considered.



Hearing

Typically needed when considering budget, changing fees or assessment rates, land use, or limiting citizen privileges in some way

It's a time to listen, not a time to deliberate

Do all meetings have to be open to the public?

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

- (2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.
- (3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.
- (4)
 - (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.
 - (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).
- (5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.
- (6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

Exceptions

7-1-4141. (Effective July 1, 2024) Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality must be open to the public except as provided in 2-3-203.

(2) Subject to the requirements of 2-3-212, appropriate minutes must be kept of all public meetings and must be made available to the public for inspection and copying and meet the requirements of 2-3-214(2)(b).

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Meeting Minutes

2-3-212. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

- (2) Minutes must include without limitation:
 - (a) the date, time, and place of the meeting;
 - (b) a list of the individual members of the public body, agency, or organization who were in attendance;
 - (c) the substance of all matters proposed, discussed, or decided; and
 - (d) at the request of any member, a record of votes by individual members for any votes taken.
- (3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.
- (4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.

Recording Meetings

2-3-214. (Effective July 1, 2024) Recording of meetings for certain boards. (1) Except as provided in 2-3-203 and subsection (6) of this section, the following boards shall record their public meetings in an audio and video format:

(a) the board of investments provided for in 2-15-1808;

(b) the public employees' retirement board provided for in 2-15-1009;

(c) the teachers' retirement board provided for in 2-15-1010;

(d) the board of public education provided for in Article X, section 9, of the Montana constitution;

(e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution;

(f) except as provided in subsection (7)(a), the governing board of a county provided for in Title 7, chapter 1, part 21;

(g) except as provided in subsection (7)(b), the governing board of a first-class and second-class city provided for in Title 7, chapter 1, part 41;

(h) a first-class or second-class school district board of trustees provided for in Article X, section 8, of the Montana constitution, 20-6-201, and 20-6-301; and

(i) a local board of health provided for in Title 50, chapter 2, part 1.

(2) (a) The boards listed in subsections (1)(a) through (1)(e) shall make the audio and video recordings of meetings under subsection (1) publicly available within 1 business day after the meeting through broadcast on the state government broadcasting service as provided in 5-11-1111 or through publication of streaming audio and video content on the respective board's website.

(b) The boards listed in subsections (1)(f) through (1)(i) shall make the audio and video recordings publicly available within 5 business days after the meeting with a link to the recording on the respective board's website. If the board does not maintain a website, it shall maintain a social media page and provide a link to the recording on the social media page.

(c) The department of administration may develop a memorandum of understanding with the legislative services division for broadcasting executive branch content on the state government broadcasting service or live-streaming audio or video executive branch content over the internet.

(3) For the boards listed in subsections (1)(f) through (1)(i) that maintain minutes as required by 2-3-212, the audio and video recordings created pursuant to this section are not required to be the official record of the meeting. If a recording is not designated as the official record, the recording may be destroyed after being retained online for 1 year and is not subject to the requirements of Title 2, chapter 6, for public information requests.

(4) A board is not required to disrupt or reschedule a meeting if there is a technological failure of the meeting recording. If the recording is not able to be made available online, the board shall prominently post a notice in the same manner as a notice of a public meeting and shall post a notice at all locations where the meeting recording links are available. The notice must explain the reason the meeting was not recorded and describe the steps taken to remedy the failure prior to the next meeting.

(5) The requirements of this section apply only when a board is acting on a matter over which the board has supervision, control, jurisdiction, or advisory power at a public meeting as defined in 2-3-202 that has been publicly noticed as required by 2-3-103.

(6) The requirements of this section do not apply to a board listed in subsection (1)(f) when a quorum is incidentally established as described in 7-5-2122(4) and (5) solely on the basis of sharing a common office space.

(7) The following boards must meet the requirements of this section, except that meetings may be recorded, retained, and made available in audio format only:

(a) the governing board of a county with a population of less than 4,500; and

(b) the governing board of a third-class city.

(8) Expenditures by a school district on staff, consultants, equipment, software licenses, storage, or security made to fulfill the requirements of this section qualify as a school facility project under 20-9-525.



Questions?

THANK YOU!!

Ashley Kent

Associate Director

Local Government Center

Montana State University

(406) 994-6657

ashleykent@montana.edu

<http://msulocalgov.org>



Local Government Center