Ridgway Sustainability Advisory Board
Meeting Agenda

Wednesday, August 31, 2022

Pursuant to the Town's Electronic Participation Policy, the meeting will be conducted both in person and via a virtual meeting portal. Members of the public may attend in person at the Community Center, located at 201 N. Railroad Street, Ridgway, Colorado 81432, or virtually using the meeting information below.

Join Zoom Meeting
https://us02web.zoom.us/j/88681555920?pwd=MGcvT2xzZnJJVXdrOXNiOTBEOFpDdz09
Meeting ID: 886 8155 5920
Passcode: 407898
Dial by your location
+1 346 248 7799 US
+1 253 215 8782 US
+1 312 626 6799 US

5:00 p.m.

CALL TO ORDER & ROLL CALL Angela Hawse, Vicki Hawse, Joyce Huang, Dana Ivers, Dave Jones, Ken Mihelich, JT Thomas

NEW BUSINESS

Item 1 – Welcome and Introductions

Item 2 – Review of Authority and Procedures

Item 3 – Review of Colorado Open Meetings Law

Item 4 – Selection of Officers (Chairperson and Vice-Chairperson)

Item 5 – Discussion re Mission, Goals, and One-Year Work Plan

Item 6 – Discussion re Recurring Meeting Date and Time

PUBLIC COMMENTS

ADJOURNMENT

AGENDA ITEM #2

RESOLUTION NO. 22-06

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF RIDGWAY, COLORADO, ESTABLISHING THE TOWN OF RIDGWAY SUSTAINABILITY ADVISORY BOARD

WHEREAS, the Town of Ridgway, Colorado ("Town") is a home rule municipality and political subdivision of the State of Colorado ("State") organized and existing under a home rule charter ("Charter") pursuant to Article XX of the Constitution of the State; and

WHEREAS, the Town Council has determined that it is appropriate to formally establish the Town of Ridgway Sustainability Advisory Board and set forth its duties, which shall include consideration of environmental issues and making recommendations with respect to such issues to the Town Council; and

WHEREAS, the establishment of a Sustainability Advisory Board would help the Town meet GOAL ENV-4 of the Town of Ridgway Master Plan that states, "Advocate for the efficient use of resources and sustainable practices that work to eliminate harmful impacts to the health of the community and natural environment."

WHEREAS, the Town Council recognizes that establishing a Sustainability Advisory Board to serve as an advisory body to the Town Council, will help to effectuate improvements to the Ridgway Municipal Code, Town operations and Town facilities on matters regarding sustainable practices, resource conservation, renewable energy and waste reduction, and will help advance and encourage environmentally sustainable practices and ideas within the Town.

WHEREAS, Section 5-3 of the Ridgway Charter states that the Town Council may create any commissions and boards as it deems appropriate and specify their duties, terms and responsibilities; and

WHEREAS, the Town Council finds that the establishment of a Sustainability Advisory Board will promote the health, safety and general welfare of the Ridgway community.

NOW THEREFORE, the Ridgway Town Council hereby **RESOLVES** to establish the Town of Ridgway Sustainability Advisory Board as set forth in **Exhibit A: Town of Ridgway Sustainability Advisory Board Authority and Procedures,** attached hereto.

ADOPTED AND APPROVED this _____ day of May 2022.

_____
John Clark, Mayor

ATTEST:

_____
Pam Kraft, Town Clerk

EXHIBIT A

TOWN OF RIDGWAY SUSTAINABILITY ADVISORY BOARD
AUTHORITY AND PROCEDURES

1. **Establishment, Purpose and Duties.** There is hereby established the Town of Ridgway Sustainability Advisory Board (Sustainability Advisory Board). The purposes and duties of the Sustainability Advisory Board are as follows:

    a. To advance and encourage environmentally sustainable practices and ideas within the Town;

    b. To advise the Town Council in an effort to effectuate improvements to the Ridgway Municipal Code, Town operations and Town facilities on matters regarding sustainable practices, resource conservation, renewable energy and waste reduction;

    c. To collaborate with Town staff to continue implementing the goals and objectives in the *Ouray County & San Miguel County Regional Climate Action Plan*;

    d. To make recommendations to the Town Council concerning the establishment of Town-wide greenhouse gas emissions reduction targets and other goals;

    e. To work in cooperation with other Town boards and committees to promote sustainability policies and programs;

    f. To promote sustainability awareness and practices at Town events and assist interested individuals or groups in promoting their own sustainability practices;

    g. Makes recommendations to provide opportunities for young people to broaden their understanding of sustainability practices and the effects they have.

    h. Performs other tasks related to environmental sustainability as the Town Council may direct.

2. **Membership and Term.** The Sustainability Advisory Board shall be composed of not less than three (3) members, not more than seven (7) members. One (1) member shall be an Ex-Officio Town Council member appointed by the Town Council. The Ridgway Town Council shall appoint members after candidates complete an application and interview with the Town Council.

All Sustainability Advisory Board appointees shall be appointed to terms of three (3) years. In the event a vacancy should occur during the term of any member, their successor shall be appointed in the same manner for the unexpired portion of the vacated term.

3. **Qualification of Members.** Ouray County residents shall be eligible for appointment to the Sustainability Advisory Board.

4. **Removal from Office.** Any member of the Sustainability Advisory Board may be removed for just cause at the pleasure of the Ridgway Town Council by a majority vote of the entire Council in office at the time the vote is taken. Just cause shall include misconduct, conduct unbecoming of a Town official, or more than two (2) unexcused absences within a twelve-month period. Prior to removal, the Ridgway Town Council shall conduct a hearing and shall provide written notice to the Sustainability Advisory Board member stating the grounds for removal at least three (3) days prior to the hearing.

5. **Officers.** The Sustainability Advisory Board shall select its own Chairperson and Vice-Chairperson. The Chair, or, in the absence of the Chair, the Vice-Chair, shall be the presiding officer of its meetings. In the absence of both the Chair and the Vice-Chair from a meeting, the members present shall appoint a member to serve as Acting Chair at the meeting.

6. **Meetings.** Sustainability Advisory Board members shall attend regular meetings held once a month at Ridgway Town Hall, or as designated by the Sustainability Advisory Board. Sustainability Advisory Board members may be required to attend other meetings during their terms, including Ridgway Town Council meetings or presentations to local groups or organizations. Meetings of the Sustainability Advisory Board shall be duly noticed and open to the public.

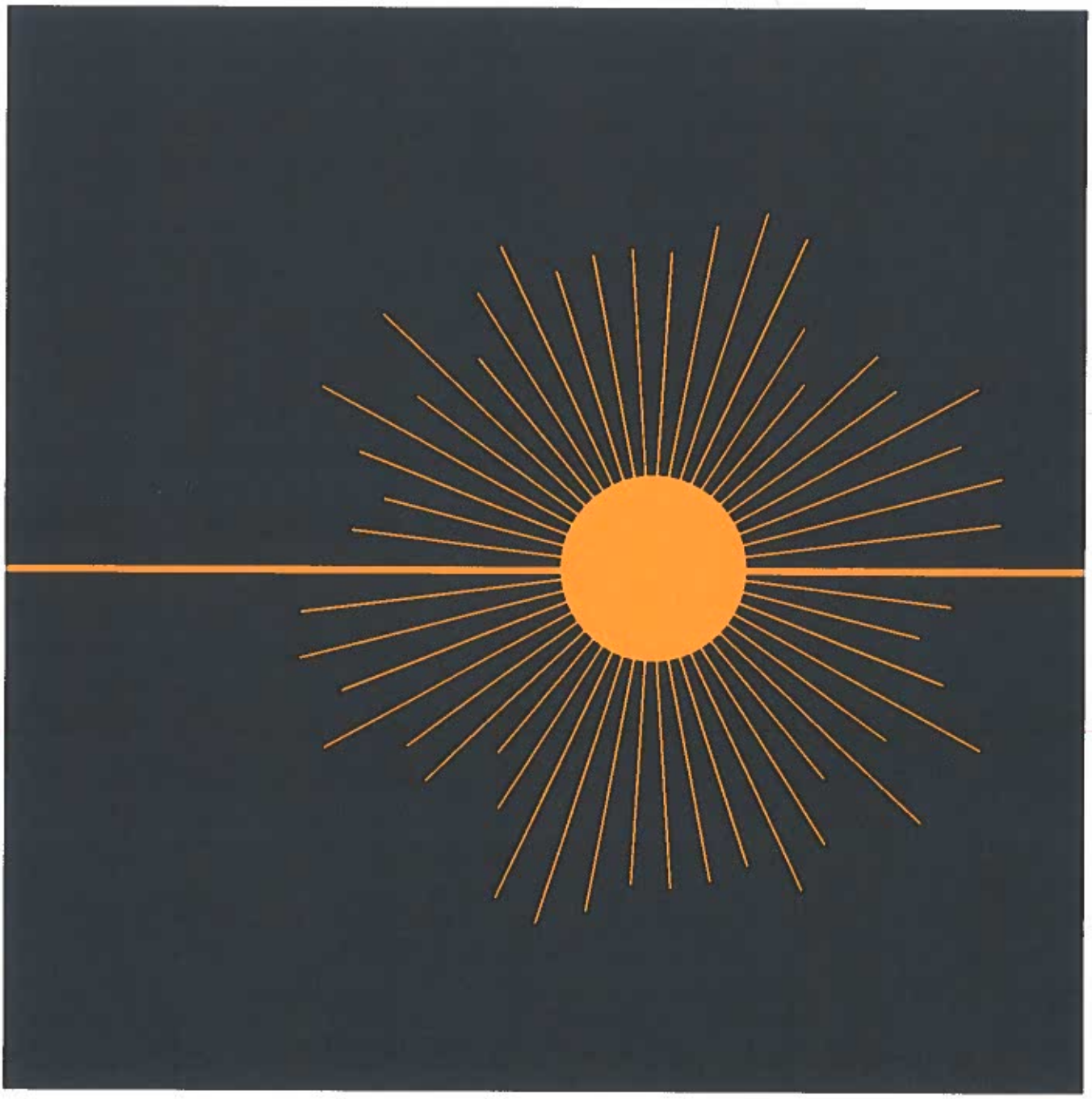
7. **Appropriation Authority.** The Sustainability Advisory Board shall not have authority to appropriate or spend Town of Ridgway funds. The Sustainability Advisory Board may provide recommendations to the Town Manager and/or Ridgway Town Council with regard to any annual budget.

8. **Council Amendments.** The Ridgway Town Council reserves the right to amend, increase, reduce or change any or all of the powers, duties and procedures of the Sustainability Advisory Board.

AGENDA ITEM #3

Open Meetings, Open Records

Colorado's Sunshine Laws and Municipal Government



COLORADO MUNICIPAL LEAGUE

FOREWORD

Public access to government meetings and records in Colorado is governed by the Colorado Open Meetings Law (OML) and the Colorado Open Records Act (CORA). These laws reflect a balance between a policy of openness and accessibility and unwarranted invasions of privacy or unreasonable interference with government operations.

This publication outlines the basic provisions of the OML and CORA, with particular attention to their application in the municipal context. It is intended to acquaint municipal officials with the requirements of these important statutes.

This publication is not intended to serve as a substitute for legal advice. Because factual circumstances may determine whether, for example, a particular record is "public" or whether a gathering must be preceded by proper notice, municipal officials should always consult with their attorney regarding any specific legal questions concerning application of OML or CORA requirements.

The original edition of *Open Meetings and Open Records* released in 1998 and was authored by Geoff Wilson, CML general counsel at the time. This fifth edition of *Open Meetings, Open Records — Colorado's Sunshine Laws and Municipal Government* has been revised by David Broadwell, CML general counsel; Paul Wisor, Garfield & Hecht, PC; and Dianne Criswell, CML legislative counsel. Editorial and production assistance was provided by Sarah Werner, CML engagement and communications manager; Christine Taniguchi, CML design and communications specialist; Melissa Mata, CML municipal research analyst; Laurel Witt, CML associate counsel; Amanda Blasingame and Ellie LeBuhn, CML law clerks; and Karen Goldman. The League would like to sincerely thank all who were involved in the publication of this edition.

As with all League publications, any comments, suggestions or questions are welcome.

Kevin Bommer
CML Executive Director
May 2020

Additional copies of this publication may be purchased at www.cml.org.

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CHAPTER 1

OPEN MEETINGS

SUNSHINE LAWS GENERALLY — AN OVERVIEW

All 50 states, as well as the federal government, have enacted a variation of the initial "Sunshine Laws" passed by Florida and California in the 1960s. Colorado's Sunshine Law was an initiated statute approved by the voters in 1972.[1] The Colorado law exercises authority over public official disclosure,[2] lobbyists,[3] and meetings.[4] This publication is limited to discussion of that portion of the Colorado Sunshine Law governing meetings, commonly known as the Open Meetings Law (OML), and particularly those provisions affecting municipalities.

THE COLORADO OPEN MEETINGS LAW

As originally enacted, the Open Meetings Law applied only to state government bodies, and contained no exceptions or executive session provisions. Until 1991, meetings of municipal bodies were governed by a different statute, the Public Meetings Law.[5] The Public Meetings Law served many of the same purposes as the Open Meetings Law, but was far more general in nature. The lack of specificity and guidance provided by the Public Meetings Law prompted the General Assembly to repeal it and bring local governments under the purview of the Open Meetings Law.[6] Due to the similar goals of the Public Meetings Law and the Open Meetings Law, much of the case law developed under the now-repealed Public Meetings Law should carry forward and assist in applying the Open Meetings Law. Cases decided under both laws are thus cited throughout this publication.

This publication will answer the most common questions concerning the requirements of the Open Meetings Law:

- Who is covered?
- What is a "meeting"?
- When are executive sessions permitted?
- What advance notice of a meeting is required?
- What exemptions are there?
- What happens when the law is violated?

The Colorado Supreme Court has described the Open Meetings Law as "reflect[ing] the considered judgment of the Colorado electorate that democratic government best serves the commonwealth if its decisional processes are open to public scrutiny."[7] On the few occasions that appellate courts in Colorado have reviewed government actions for compliance with the OML, courts have balanced this ideal with the practical obstacles that often face officials when conducting the business of the people.

Because Colorado courts have not been called upon to examine many aspects of the Open Meetings Law, guidance in many areas is somewhat limited. This publication is intended to serve as a guide to some of the more fundamental aspects of the law and should not be used as a substitute for reasoned legal advice. The reader is urged to consult their municipal attorney concerning any specific questions.

LOCALLY ADOPTED OPEN MEETINGS PROCEDURES

In 1996, the Colorado Court of Appeals issued a ruling that may pave the way for municipalities to legislate in areas not addressed in the state statutory scheme. In upholding

1 Colorado Sunshine Law, Ch. 456, 1973 Colo. Sess. Laws 1660.
2 C.R.S. §§ 24-6-201-203.
3 C.R.S. §§ 24-6-301-309.
4 C.R.S. §§ 24-6-401-402.
5 C.R.S. § 29-9-101 (repealed 1991).
6 1991 Colo. Sess. Laws 142.
7 *Benson v. McCormick*, 578 P.2d 651, 653 (Colo. 1978).

a statutory town's local ordinance establishing a procedure for emergency meetings, the court relied heavily on the presumption that local ordinances and state statutes should be reconciled, if possible, and effect given to both.[8] Only when the statute and the ordinance contain express or implied conditions that are "inconsistent and irreconcilable with one another" does a true conflict exist.[9]

Home rule municipal charters or ordinances may contain additional, or perhaps different, open meeting procedures. Although the Open Meetings Law contains a declaration of "statewide concern,"[10] the power of the General Assembly to bind home rule municipalities in this area has not been tested.[11]

SCOPE OF THE OPEN MEETINGS LAW: "LOCAL PUBLIC BODIES" AND "MEETINGS"

The OML imposes open meeting, notice, and minutes requirements on "meetings" of "local public bodies." The definitions of these two critical terms determine the reach of many OML requirements.

What is a "local public body"?

The OML defines a "local public body" to include any board, committee, commission or other policy-making, rule-making, advisory or formally constituted body of a political subdivision of the state, such as municipalities.[12] Additionally, any public or private entity that has been delegated any "governmental decision-making function," is a "local public body" and must conduct its meetings consistent with the Open Meetings Law.[13] However, "persons on the administrative staff" of a local public body are specifically excluded.[14]

What constitutes a "meeting"?

The Open Meetings Law defines a "meeting" as "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication."[15] For local public bodies, the requirement of the law are triggered when three or more members of the local public body gather to discuss public business.

In a decision affecting the scope of the OML as a whole, the Colorado Supreme Court has provided important direction concerning what sort of meetings are covered by the Open Meetings Law. The Court clarified that for a "gathering" to be subject to OML requirements "there must be a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting."[16] The Court went on to explain that such a link exists when the meeting is "convened to discuss or undertake ... a rule, regulation, ordinance, or formal action"[17] On the other hand, "merely discussing matters of public importance" does not trigger the requirements of the Open Meetings Law.[18]

Meetings conducted by "telephone, electronically, or by other means of communication"

Technological advancements have provided various methods for public officials to confer; conference calls and other once nontraditional forums for discussion are now commonplace with many local public bodies. In response, the General Assembly has included electronic and "other means" of communication under the statutory definition

8 *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996).

9 *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996).

10 C.R.S. § 24-6-401.

11 The Colorado Court of Appeals has recognized the authority of home rule municipalities to enact their own rules and regulations governing open meetings; however this decision did not involve a conflict between a local provision and state law, so the court did not rule directly on whether home rule provisions supersede conflicting requirements of the Open Meetings Law. *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761, 762 (Colo. App. 1986).

12 C.R.S. § 24-6-402(1)(a)(i).

13 C.R.S. § 24-6-402(1)(a)(i).

14 C.R.S. § 24-6-402(1)(d)(i). As this publication went to press, there was a case pending in the Colorado Supreme Court that would decide whether an entire administrative department or agency of state government could itself be considered a "public body." Does # 1-9 *v. Colorado Department of Public Health and Environment*, 2018 WL 3580688 (Colo. App., July 26, 2018), *cert.* granted (2019).

15 C.R.S. § 24-6-402(1)(b).

16 *Bd. of Cty. Comm'rs of Costilla Cty. v. Costilla Cty. Conservancy Dist.*, 88 P.3d 1188, 1194 (Colo. 2004). *See also Intermountain Rural Elec. Ass'n v. Colorado Pub. Utilities Comm'n*, 298 P.3d 1027 (Colo. App. 2012) (discussing legislation outside scope of public utilities commission's public business, so gathering was not a "meeting"); *Arkansas Valley Publishing Company v. Lake County Board of County Commissioners*, 369 P.3d 725 (Colo. App. 2015), *cert.* denied (2016) (discussing a special statutory exception for county commissioners allowing them to collectively discuss "day-to-day oversight of property or supervision of employees" without the need to comply with the OML at all.)

17 *Bd. of Cty. Comm'rs of Costilla Cty. v. Costilla Cty. Conservancy Dist.*, 88 P.3d 1188, 1194 (Colo. 2004). Additionally, the Court of Appeals has held that Open Meetings Law requirements apply to the quasi-judicial meetings of local public bodies. *Lanes v. State Auditor's Office*, 797 P.2d 764 (Colo. App. 1990).

18 *Bd. of Cty. Comm'rs of Costilla Cty. v. Costilla Cty. Conservancy Dist.*, 88 P.3d 1188, 1191 (Colo. 2004).

of "meeting."[19] In adding electronic communications to the statute, the General Assembly noted the unique circumstances that the use of email and the like create, and the need to balance the privacy interests of public officials with the public's interest in open governance.[20]
The Open Meetings Law now explicitly subjects the email communication of elected officials that discuss pending legislation or other public business to the statutory requirements.[21] During the COVID-19 public health emergency of 2020, many municipalities throughout the state began to experiment for the first time with public meetings that were conducted entirely in an electronic format, so-called "virtual meetings."

Chance meetings and social gatherings

The Open Meetings Law expressly provides that chance meetings or social gatherings of public officials "at which discussion of public business is not the central purpose," are not subject to the provisions of the Open Meetings Law.[22]

Retreats

Under the OML's expansive definition of "meeting," any kind of "gathering" to discuss public business can qualify, regardless of how it may be labeled. Thus, if the retreat is attended by three or more members of the local public body, or by a quorum of the body (if fewer than three), the retreat qualifies as an open meeting, to which requirements for notice also may apply.[23] However, an unlimited number of administrative staff members may attend a retreat without triggering OML requirements, due to the specific exclusion of administrative staff from the "local public body" definition.[24]

See Appendix A for sample meeting procedures.

THE "OPENNESS" REQUIREMENT

Whenever three or more members of the "local public body" get together and public business is discussed, or formal action may be taken, the gathering is a meeting under the OML and must be open to the public.[25] Note that while the participation of only three members is what triggers the requirement that the gathering be treated as an open meeting, an anticipated majority or quorum of the body is what triggers the requirement to give advance public notice of the meeting as explained below.

Providing notice of the meeting

The public cannot exercise its right to attend open meetings unless given sufficient notice. Therefore, the Open Meetings Law requires that the public receive "full and timely notice" of any meeting held.[26] The statute prescribes the notice requirement as follows:

> *Any 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, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible*[27]

19 C.R.S. § 24-6-402(1)(b). Of course, a meeting is also described as a "gathering" which, in the context of email communications, is presumed by many municipal attorneys to imply that such email communications must occur in a "chat-room" format or otherwise be very contemporaneous, in order to constitute a "meeting." At this writing however, no Colorado court decision had adopted this presumption.

20 *See* 1996 Colo. Sess. Laws 1479 (legislative declaration). For a judicial perspective on this balance, see *Denver Publ'g Co. v. Bd. of Cty Comm'rs of Arapahoe Cty.*, 121 P.3d 190 (Colo. 2005).

21 C.R.S. § 24-6-402(2)(d)(III). This requirement presents numerous potential practical problems for local government officials seeking to comply with the openness, notice and other requirements of the Open Meetings Law in the email context. Close consultation with the municipal attorney is advised. For an example of a case in which the exchange of emails between and among the members of a public body were treated as a "meeting," see *Bjornsen v. Board of County Commissioners of Boulder County*, 2019 WL 1830203 (Colo. App. April 25, 2019). However, not every exchange of emails will be considered a "meeting," for example when the emails are not a part of the body's "policy making process." *Intermountain Rural Electric Assn. v. Colorado Public Utilities Commission*, 298 P.3d 1027 (Colo. App. 2012).

22 C.R.S. § 24-6-402(2)(e).

23 C.R.S. § 24-6-402(2)(c).

24 C.R.S. § 24-6-402(1)(a).

25 C.R.S. § 24-6-402(2)(b).

26 C.R.S. § 24-6-402(2)(c).

27 C.R.S. § 24-6-402(2)(c).

"Full and timely" notice

CORA was traditionally structured to allow municipalities to select from a range of options for providing advance notice of meetings. The statute provided that, in addition to other means of full and timely notice, posting notice of a meeting in a designated public place or on a public website 24 hours before the meeting, qualifies as full and timely notice.[28]

As the world of state and local government moved increasingly away from published or posted paper notices into the digital age, CORA was amended to give more detailed direction on how to do a website posting:

> *On and after July 1, 2019, a local public body shall be deemed to have given full and timely notice of a public meeting if the local public body posts the notice, with specific agenda information if available, no less than twenty-four hours prior to the holding of the meeting on a public website of the local public body. The notice must be accessible at no charge to the public. The local public body shall, to the extent feasible, make the notices searchable by type of meeting, date of meeting, time of meeting, agenda contents, and any other category deemed appropriate by the local public body and shall consider linking the notices to any appropriate social media accounts of the local public body. A local public body that provides notice on a website pursuant to this subsection (2)(c)(III) shall provide the address of the website to the department of local affairs for inclusion in the inventory maintained pursuant to section 24-32-116. A local public body that posts a notice of a public meeting on a public website pursuant to this subsection (2)(c)(III) may in its discretion also post a notice by any other means including in a designated public place pursuant to subsection (2)(c)(I) of this section; except that nothing in this section shall be construed to require such other posting. A local public body that posts notices of public meetings on a public website pursuant to this subsection (2)(c)(III) shall designate a public place within the boundaries of the local public body at which it may post a notice no less than twenty-four hours prior to a meeting if it is unable to post a notice online in exigent or emergency circumstances such as a power outage or an interruption in internet service that prevents the public from accessing the notice online.*

Indeed, the courts have found that the notice provisions of the Open Meetings Law establish a "flexible standard," the requirements of which may vary depending on the particular type of meeting involved.[29]

The Supreme Court has noted that in determining whether a given notice is "full" for purposes of the OML, courts will apply "an objective standard," meaning that a notice should be "interpreted in light of the knowledge of an ordinary member of the community to whom it is directed."[30]

See Appendix B for examples of meeting notices.

"CURING" OML VIOLATIONS

The OML does not expressly address whether subsequent action by a public body can "cure" past OML violations. Nonetheless, the Court of Appeals, in a case involving various "openness" and notice violations, held that a state or local public body can cure a prior OML violation by holding a subsequent meeting that fully complies with the OML, so long as it is not a mere "rubber stamping" of earlier decisions made in violation of the OML.[31]

EMERGENCY MEETINGS

Unlike similar statutes from other states, the Colorado Open Meetings Law contains no reference to emergency meetings, which by their very nature present a challenge in terms of public notice. The Colorado Court of Appeals has recognized the need for municipalities to hold emergency meetings on occasion, and has upheld an ordinance providing for such meetings without prior public notice, where action taken would be ratified at a subsequent public meeting for which full and timely notice is provided.[32] The court defined an emergency as "an unforeseen combination of circumstances or the resulting state that calls for immediate action,"[33] and acknowledged that the notice requirement may be affected by the type of meeting involved.[34] While this decision found no conflict between a local emergency meeting ordinance and the Open Meetings

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28 The Supreme Court has clarified the OML requirement that posted notices include "specific agenda information where possible." It is "possible" to include in such notice only whatever specific agenda information was "available at the time of posting" the notice.

Town of Marble v. Darien, 181 P.3d 1148, 1155 (Colo. 2008). Furthermore, the Court in *Darien* found that general agenda topics permitted action thereon, as "the possibility of formal action is inherent in consideration of topics at public meetings." The fact that the agenda did not specifically forecast action on the topic did not render the notice less than "full." 181 P.3d 1148 (Colo. 2008).

29 *Town of Marble v. Darien*, 181 P.3d 1148, 1152 (Colo. 2008); *Benson v. McCormick*, 578 P.2d 651, 653 (Colo. 1978); *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996); *VanAlstyne v. Hous. Auth. of the City of Pueblo*, 985 P.2d 97, 100 (Colo. App. 1999)

30 *Town of Marble v. Darien*, 181 P.3d 1148,1152 (Colo. 2008)

31 *Colorado Off-Highway Vehicle Coal. v. Colorado Bd. of Parks & Outdoor Recreation*, 292 P.3d 1132 (Colo. App. 2012).

32 *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996). But see *VanAlstyne v. Housing Auth. of City of Pueblo*, 985 P.2d 97, 100 (Colo. App. 1999), as to the limits of subsequent ratification of action taken in prior non-emergency meeting held without proper notice.

33 *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996) (quoting Webster's Third New International Dictionary (2005)).

34 *Lewis v. Town of Nederland*, 934 P.2d 848 (Colo. App. 1996)

Law, officials should remain mindful of the law's intent and give as much notice as possible under the circumstances.

Later, another division of the Colorado Court of Appeals held that the power to rapidly convene emergency meetings does not include the ability to conduct executive sessions outside the context of a normally posted meeting.

DIRECT NOTIFICATION REQUIREMENT

The Open Meetings Law contains a provision requiring the clerk to maintain a list of persons who have requested, within the previous two years, direct notification of meetings.[35] The person requesting direct notification can designate all meetings or can limit the request to meetings at which specified policies will be discussed.[36]

The clerk is required to provide these persons with "reasonable advance notice" of such meetings. The statute does not specify what type of notice or what time frame will be considered "reasonable;"[37] however, it is provided that unintentional failure to give this direct notification will not invalidate actions taken at an otherwise properly noticed meeting.[38]

MINUTES

The clerk, or other official in the clerk's absence, must take the minutes of any meeting of the local public body "at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur."[39] Thus, while the Open Meetings Law requires that most meetings at which public business may be discussed are open, the possibility of some sort of formal action is necessary to trigger the minutes requirement. If an executive session is called at any point during the meeting, the minutes must reveal the topic of discussion in the executive session.[40]

After the meeting, the minutes must be recorded promptly and are considered a public record open to inspection.[41] Many clerks utilize recording devices from which the actual "minutes" are transcribed at a later date. If an electronic recording serves as the actual minutes of the jurisdiction, the OML requires that, if electronic recording was the practice as of Aug. 8, 2001, the jurisdiction must continue to electronically record its open meeting minutes.[42]

PUBLIC VOTING

Following a decision by the Court of Appeals that a home rule charter provision requiring use of confidential ballots for council appointments did not violate the OML,[43] the General Assembly amended the statute to expressly prohibit adoption of any "policy position, resolution, rule, regulation, or formal action by secret ballot;" that is, a ballot "cast in such a way that the identity of the person voting or the position taken in such vote is withheld from the public."[44]

ACTION TAKEN WITHOUT A MEETING

If a public body attempts to delegate its decision-making authority to someone else, or perhaps to a few of its own members, it runs the risk of a legal challenge for a violation of the OML on the theory that the action should have been taken by the body as a whole at a public meeting as required by the law.

EXECUTIVE SESSIONS

Because the underlying principle of the Open Meetings Law is that the formation of public policy is the public's business and therefore, should not (generally) be conducted in secret, the exceptions to "openness" provided in the OML, are limited to topics where the General Assembly has determined that private discussion may better serve the public interest.

Topics of executive sessions

Executive sessions are private meetings of the public body from which the general public is excluded. Executive sessions are permitted under the OML for consideration of the following topics:

35 C.R.S. § 24-6-402(7).
36 C.R.S. § 24-6-402(7).
37 C.R.S. § 24-6-402(7).
38 C.R.S. § 24-6-402(7).
39 C.R.S. § 24-6-402(2)(d)(II).
40 C.R.S. § 24-6-402(2)(d)(II).
41 C.R.S. § 24-6-402(2)(d)(II).
42 C.R.S. § 24-6-402(2)(d.5)(II)(a).
43 *Henderson v. City of Fort Morgan*, 277 P.3d 853 (Colo. App. 2011).
44 C.R.S. § 24-6-402(2)(d)(IV).

- ***Property transactions***
  An executive session may be held to discuss the purchase, acquisition, lease, transfer or sale of real, personal, or other property interests so long as the executive session is not held to conceal an official's personal interest in the property.[45]
- ***Attorney conferences***
  Although the mere presence of an attorney does not justify an executive session, the governing body may call an executive session "for the purposes of receiving legal advice on specific legal questions."[46]
- ***Confidential matters under state or federal law***
  If any state or federal law requires confidentiality of a particular matter to be discussed, an executive session may be called. When announcing that it will go into executive session for this purpose, the governing body must announce the specific statutory citation or rule that requires the confidentiality of the matter to be discussed.[47]
- ***Security arrangements or investigations***
  The specialized details of security arrangements or investigations "where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law" may be discussed in executive session.[48]
- ***Negotiations***
  A governing body may call an executive session to "determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and instruct the negotiators."[49]
- ***Personnel matters***
  Personnel matters may be discussed in executive session; however, if the discussion involves a specific employee, that employee may request an open meeting. If the discussion involves more than one employee, an executive session may be held unless all of the employees request that the meeting be open to the public.[50] While "personnel matters" is not defined, it is provided that this term does not include discussions of any member of a local public body, any elected official, the appointment of any person to fill a vacancy in a local public body or elected office, or discussion of personnel policies that do not require discussion of particular employees.[51] Sometimes questions arise about whether a public body can conduct interviews of prospective employees of the body in executive session, for example interviewing candidates for city manager or city attorney. While the OML is ambiguous on this question, at least one district court has ruled that such interviews are permissible in an executive session. The OML also contains special provisions requiring a public body to reveal the "finalists" for executive positions as discussed at the end of this chapter.
- ***Documents protected under Open Records Act***
  Discussion that involves consideration of documents protected by the mandatory nondisclosure provision of the Open Records Act may be held in an executive session. However, discussion of documents protected under the "work product" or "deliberative process" privileges in the Open Records Act must occur in an open meeting unless an independent basis for an executive session concerning such documents exists.[52]

The sections of the Open Meetings Law specifying the permitted topics for discussion in executive session have not been interpreted by the courts, and many are open to varied interpretations. Councils or boards often consider other factors beyond the legal question of whether an executive session may lawfully be held when determining whether to close a meeting to the public. Executive sessions are often controversial. While the statute may permit an executive session for discussion of a particular topic, sometimes the most politically productive way to confront an issue is during an open meeting.

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45 C.R.S. § 24-6-402(4)(a).

46 C.R.S. § 24-6-402(4)(b).

47 C.R.S. § 24-6-402(4)(c). *See, e.g., Gillies v. Schmidt*, 556 P.2d 82, 86 (Colo. App. 1976).

48 C.R.S. § 24-6-402(4)(d).

49 C.R.S. § 24-6-402(4)(e). This is an apparent exception to the general prohibition on adoption of a formal position in executive session. *See* C.R.S. § 24-6-402(4).

50 C.R.S. § 24-6-402(4)(f)(I). *See also Gumina v. City of Sterling*, 119 P.3d 527, 532 (Colo. App. 2004) (finding by extension, that prior notification of employee to be discussed is a condition precedent to a lawful executive session, if the session is announced to discuss personnel matters).

51 C.R.S. § 24-6-402(f)(II).

52 C.R.S. § 24-6-402(4)(g); *see also infra* pages 11 to 14 (discussing items falling under the mandatory nondisclosure provisions of the Open Records Act).

Procedure for calling an executive session

The governing body may only call an executive session at a regular or special meeting.[53] While the Open Meetings Law requires "full and timely notice" of the regular or special meeting, nothing in the statute requires any particular notice of the governing body's intention to hold an executive session as part of that meeting. Thus, there is apparently no notice requirement that would impair the governing body from spontaneously calling an executive session during one of its meetings.

The governing body must first announce the topic of discussion, including the specific citation to the OML that authorizes consideration of the announced topic in executive session, as well as "identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized." The body must then vote on whether to hold the session for discussion of the topic(s) announced. Two-thirds of the quorum present must vote affirmatively before the governing body can close the meeting to the public.[54] The minutes of the regular or special meeting must reflect the topic of discussion at the executive session.[55]

The Colorado Court of Appeals has concluded that failure to comply with the procedural prerequisites of an executive session can result in an executive session not being convened. The session is simply part of the open meeting, and the record of such session is thus open to full public inspection under the Colorado Open Records Act.[56]

Sample executive session procedures are provided in Appendix A.

Deliberation is the purpose

The purpose of calling an executive session is merely to deliberate on sensitive matters that could be compromised by premature public disclosure and no "adoption of any proposed policy, position, resolution, rule, regulation, or final action" may be taken in executive session.[57] The discussion on the record at the open meeting must indicate what policy considerations and motivations led to the final decision.[58]

Further, the governing body cannot utilize a subsequent open meeting to simply "rubber stamp" the position adopted by it while in executive session.[59] The public cannot "participate in a public meeting if [it] witnesses only the final recorded vote."[60]

The executive session record

The Open Meetings Law requires that executive sessions be electronically recorded.[61] The executive session record must be retained for at least 90 days following the date of the executive session.[62] The record may then be disposed of, as are other government records, consistent with the local government's records retention policy.[63]

When the requirement for electronic recording of executive sessions was added to the statute, an important exception to the recording requirement was provided for all or any portion of an executive session that falls under the category of attorney-client privilege. The attorney for the public body must opine or attest that the exception applies.

The requirement that a record be made of the executive session is to permit policing of the requirements that discussion in an executive session focus solely on the matter(s) for which the session is called and that the session be used for deliberation only, rather than for decision making. Thus, the Open Meetings Law provides

53 C.R.S. § 24-6-402(4).

54 C.R.S. § 24-6-402(4).

55 C.R.S. § 24-6-402(2)(d)(II). Prior to a 1996 amendment this statute required the minutes to reflect the "general topic" of the executive decision. The effect of this amendment is unclear. Presumably, the minutes should indicate the topic of discussion at the executive session with at least the same specificity as the public announcement of the topic prior to the session pursuant to C.R.S. § 24-6-402(4).

56 *Gumina v. City of Sterling*, 119 P.3d 527 (Colo. App. 2004).

57 C.R.S. § 24-6-402(4), *Hudspeth v. Bd. of Cty. Comm'rs of Routt Cty.*, 667 P.2d 775, 778 (Colo. App. 1983); *Einarsen v. City of Wheat Ridge*, 604 P.2d 691, 693 (Colo. App. 1979); *Hanover School Dist. No. 28 v. Barbour*, 171 P.3d 223 (Colo. 2007). *But see* note 49 regarding negotiating positions.

58 *Hudspeth v. Bd. of Cty. Comm'rs of Routt Cty.*, 667 P.2d 775, 778 (Colo. App. 1983).

59 *Littleton Educ. Assoc. v. Arapahoe Cty. Sch. Dist. No. 6*, 553 P.2d 793, 798 (Colo. 1976); *Bagby v. Sch. Dist. No. 1*, 528 P.2d 1299, 1302 (Colo. 1974); *Hudspeth v. Bd. of Cty. Comm'rs of Routt Cty.*, 667 P.2d 775 (Colo. App. 1983). *But see*, comment on page 4 regarding right to cure OML violations recognized by the Court of Appeals.

60 *Bagby v. Sch. Dist. No. 1*, 528 P.2d 1299 (Colo. 1974).

61 C.R.S. § 24-6-402(2)(d.5)(I)(a).

62 C.R.S. § 24-6-402(2)(d.5)(II)(E).

63 Required pursuant to C.R.S. §§ 24-80-105.

that the executive session record is not a public record[64] and may only be reviewed by a judge in an administrative or judicial proceeding, following certain preliminary showings, to determine if the body stayed substantially "on topic" and did not engage in unlawful decision making.[65]

PENALTIES FOR VIOLATION OF OPEN MEETINGS LAW

The underlying goal of Sunshine Laws is to create an atmosphere of openness in public matters, not to "punish" those who violate the provisions. In keeping with this philosophy, Colorado law contains no criminal sanctions for non-compliance. Persons seeking redress for alleged violations of the Open Meetings Law must satisfy conventional "standing" requirements, that is, they must show an "injury in fact to a legally protected interest."[66] However, any person denied or threatened with denial of any of the rights under the OML is deemed to have suffered an injury in fact, and therefore, has standing to challenge the violation of the OML,[67] and no additional showing of injury beyond a violation of the OML is required.[68]

Although members of governing bodies do not risk criminal punishment for transgressions, any action taken at a meeting that does not comply with the Open Meetings Law requirements is void.[69] Courts may also enforce the requirements of the Open Meetings Law through injunction.[70] Of course, there is also the potential for a serious loss of confidence in the government when official actions are invalidated because laws aimed at assuring open government are violated.

Furthermore, after in camera review of an executive session record, the court may make public any portions of the record that reveal the body getting substantially "off topic" or engaging in unlawful decision-making while in executive session.[71]

Finally, if the court finds that a public body has violated the Open Meetings Law, it must award the prevailing citizen(s) costs and reasonable attorney fees.[72] A prevailing public body, on the other hand, may only be awarded costs and attorney fees if the court finds the action frivolous, vexatious or groundless.[73]

SPECIAL PROVISION REGARDING CHIEF EXECUTIVE OFFICER SEARCH COMMITTEE PROCEDURES

A "search committee" of a local public body is required to take certain steps in connection with a search for a "chief executive officer of an agency, authority, institution, or other entity. Specifically, the committee must discuss any of the following only in an open meeting: "job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing" the chief executive officer.[74] A list of finalists must be made public no less than 14 days prior to the date on which one of the finalists is appointed or employed.[75]

64 C.R.S. § 24-6-402(2)(d.5)(ii)(d).

65 *See generally* C.R.S. § 24-72-204(5.5). The Open Records Act requirements concerning how executive session records are reviewed are discussed on page 17.

66 *Pueblo Sch. Dist. v. Colorado High Sch. Activities Ass'n*, 30 P.3d 752, 753 (Colo. App. 2000) (plaintiff with actual notice of meeting lacks standing to complain of district's alleged failure to provide "full and timely notice").

67 C.R.S. §24-6-402(9)(a).

68 *Weisfield v. City of Arvada*, 361 P.3d 1069 (Colo. App. 2015).

69 C.R.S. § 24-6-402 (8); *Van Alstyne v. Housing Authority of the City of Pueblo*, 985 P.2d 97 (Colo. App. 1999).

70 C.R.S. § 24-6-402 (9)(b).

71 C.R.S. § 24-72-204(5.5) and page 30 *infra*.

72 C.R.S. § 24-6-402(9)(b). Furthermore, this award does not require that the violation be "knowing or intentional." *Zubeck v. El Paso Cty. Retirement plan*, 961 P.2d 597, 601-602 (Colo. App. 1998).

73 C.R.S. § 24-6-402(9).

74 C.R.S. § 24-6-402(3.5). The most obvious example of when this provision may come into play for municipalities would be when the governing body designates a committee to recruit a city manager or a town administrator. Nothing about the statute requires the governing body to utilize a "search committee" model, however. If the governing body itself manages the recruitment and hiring, then discussion of the hiring process by the body as a whole will generally be subject to open meeting requirements, unless one of the exceptions for executive sessions applies.

75 C.R.S § 24-6-402(3.5). The statute does not specify how this list is to be made public. For the definition of "finalist," as used in this statute, *see* C.R.S. § 24-72-204(3)(a)(xi).

AGENDA ITEM #4

TOWN HALL PO Box 10 | 201 N. Railroad Street | Ridgway, Colorado 81432 | 970.626.5308 | www.town.ridgway.co.us

To: Members of the Sustainability Advisory Board
From: Preston Neill, Town Manager
Date: August 31, 2022
Agenda Topic: **Selection of Officers (Chair and Vice-Chair)**

SUMMARY:
According to Section 5: Officers of the *Sustainability Advisory Board Authority and Procedures*, "The Sustainability Advisory Board shall select its own Chairperson and Vice Chairperson. The Chair or, in the absence of the Chair, the Vice-Chair, shall be the presiding officer of its meetings."

The numbered list below details the recommended approach to fill the roles of Chair and Vice-Chair:

1. Start with the Chair role, and then follow the same process for the Vice-Chair role.
2. Open it up to nominations. Any member can nominate another member, or a member can nominate herself/himself.
3. Once all nominations are received, the nominees can take a minute to explain their interest in the role.
4. Members can discuss the merits of each candidate and/or a motion can be made.
5. Once a motion is made, normal meeting conduct would apply, requiring a second and a vote.

PROPOSED MOTIONS:

1. "I move to appoint ___(Name)_____ to serve as Chairperson of the Ridgway Sustainability Advisory Board."

2. "I move to appoint ___(Name)_____ to serve as Vice-Chair of the Ridgway Sustainability Advisory Board."