



Chapter 21 of the Iowa Code details Iowa's open meetings law, and ensures that Iowa public agencies conduct their business in public. This legal mandate requires public agencies to discuss, deliberate, and vote in public, with very limited exceptions. It is also just good common sense—the public has a right to observe and comment on how its elected officials direct and manage public affairs and spend public money. The law's purpose is that "the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people." Additionally, and ambiguity in applying the law is resolved in favor of openness. (Iowa Code § 21.1).

## Public Notice and the Agenda (Iowa Code § 21.4)

- A governmental body meeting agenda gives the public advance notice of the business to be addressed.
- Notice of the time, date, and place of each meeting, as well as the tentative agenda of each meeting, must be provided "in a manner reasonably calculated to apprise the public of that information." (§ 21.4(a)).
- Notice and a tentative agenda must be given at least 24 hours in advance of any meeting. If, for good cause, such notice is impossible or impractical, as much notice as is "reasonably possible" must be given.
- The governmental body sets policy for how the agenda is determined. Typically, the chair and chief executive, e.g. superintendent or chancellor, work together to outline the agenda details.
- A governmental body may consider only those items that are on the agenda; unless there is an emergency item that can't be deferred for 24 hours..

## Open Session/Closed Session (Iowa Code § 21.5)

- All business must be conducted in open public session, unless specific exception authorizes closed session consideration. Closed session is not mandated.
- A governmental body may hold a closed session only by affirmative public vote of either two thirds of the members of the body or all of the members present at the meeting. (§ 21.5(1)).
- Documents provided or received in open session are public documents that must be produced upon demand.
- Very limited exceptions in Chapter 21 allow certain items to be considered in closed session.
- Closed sessions are permitted for:
  - Most personnel matters affecting agency employees.
  - Existing or threatened litigation.
  - Real property negotiations—to direct the agency's negotiator.
  - Confidential student matters.
  - Superintendent's evaluations and his/her specific goals.
  - Avoiding disclosure of specific law enforcement matters such as investigations.
  - Other limited exceptions.
- The governmental body must publicly cite which exception allows closure of the session. The vote or abstention of each member present must be publicly reported.
- A governmental body may not discuss business during a closed session which does not directly relate to the specific reason announced as justification for a closed session. (§ 21.5(1)).
- The permissible subjects for closed sessions are very narrow. There is no "catch-all" closed session allowed for attorney-client conferences or for any other reason.
- Discussions in closed sessions are strictly confidential; the minutes and recording are sealed only to be opened under a court order.
- Final action by a governmental body on any matter must be taken in open session (with limited exceptions). (§ 21.5(3)).
- Consequences for revealing closed session information include damages, costs, and reasonable attorney's fees, as well as the court's ability to void any action taken.
- It is wise to work with staff and/or legal counsel to prepare the appropriate language to be used in the report.

## Board Committees (*Mason v. Vision Iowa Board*, 700 N.W.2d 349 (Iowa 2005))

- Committees created by the legislative body are governed by Chapter 21 of the Iowa Code if:
  - The committee includes a majority of the board, and is a "governmental body" covered by Chapter 21 that complies with all the requirements
  - The committee is directly created by the governmental body and exercises some policy-making authority
    - "Policy-making duties" are not defined in Chapter 21, but "[policy-making] is more than recommending what should be done. Policy-making is deciding with authority a course of action" (*Mason* at 354)

## Taking Public Comments

- Meetings of governmental bodies are business meetings that must be conducted in public.
- Governmental bodies are not required to allow public comment at open meetings.
- However, many governmental bodies do allow public comment, and set aside time for a "public forum."
- If a public forum is granted, governmental bodies are allowed to enforce reasonable rules to keep order.
- An agency's policy may indicate the amount of time that each speaker has to address the Board. Further, the agenda may indicate the total amount of time allocated for public comment, e.g. 30 minutes.
- Even if a controversial item is on the agenda, the governmental body does not have to provide time for each individual at the meeting to speak.
- Consider requesting that large groups of speakers pool their comments or select a spokesperson.

## Meetings May Occur When You Least Expect It (Iowa Code § 21.2(2))

- A majority of a legislative body must not discuss the agency's business with each other at any time or place other than during properly and publicly noticed and agendized open or closed session meetings.
- A meeting can occur in person or by electronic means, formal or informal, as long as there is a majority of the members of the governmental body where there is deliberation or action taken upon any matter within the scope of policy-making duties.
- A meeting can also occur "by a majority of the members by virtue of the agent or proxy." (*Hutchinson v. Shull*, 878 N.W.2d 211 (Iowa 2016)).
- Meetings do not include a gathering of members of a governmental body for purely social or ministerial purposes, unless there is a discussion of policy, or intent to circumvent open meetings law.
- Beware of serial meetings:
  - Once a majority of a public body discusses any matter within the jurisdiction of the agency, a "meeting" governed by Chapter 21 may have occurred
  - One-way email from agency staff to members of a public body is acceptable, but it is important to remember that, unintentionally or intentionally, email can be forwarded, moving beyond the intended recipient. Members of the governmental body should generally refrain from responding to one-way email from staff. These messages and any responses may be deemed public records and are disclosable.
  - Never "reply all" to an email addressed to members of a governmental body; do not "bcc" any members of a governmental body.
- Best advice: Governmental body members' discussions among themselves about the agency's business should only take place at a properly agendized open or closed meeting.

## Emails and Social Media

**Tips:** Discuss and establish protocols for email communication among members of the governmental body. Carefully consider Chapter 21 implications. Limit acceptance of electronic messages, (including text messages) during meetings, as the goal is transparency, (and such data can be subject to Public Records requests).

**Strictly avoid:** Online communication with fellow members on matters that will be discussed and voted on at a public meeting, or offering opinions on social media sites regarding matters within the governmental body's jurisdiction.

**Remember:** All communication can be subject to Public Records requests so a good rule of thumb is: If you do not want to read it in a newspaper tomorrow, do not post, Tweet, text, blog, or email the message today.

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