

## Boards & Commissions

### Open Public Meetings

Presented by Dianne Criswell, CML Legislative Counsel



The contents of this presentation reflect the view of the presenter, not of CML.

## Overview

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## Governing Law

- **Statutory Law**
  - Article 6 of Title 24 (Colorado Sunshine Act)
- **Local Charters and ordinances**
  - Always know these!



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## Part I: Who is covered?



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## To whom do these rules apply?

- Local public bodies, including any board, committee, commission or other policymaking, rulemaking, advisory or formally constituted body of a political subdivision of the state, such as municipalities.
- Any public or private entity that has been delegated a governmental decision-making function.

C.R.S. 24-6-402



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## Part II: What is a meeting?



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## Meetings are defined as:

- Any kind of:
- gathering, convened to discuss public business,
- Which is conducted:
- in person,
  - by telephone,
  - electronically, or
  - by other means of communication.
- C.R.S. 24-6-402(1)(b)

Whenever 3 or more members (or a quorum, if less than 3) where business is discussed or formal action may be taken, the gathering is considered a meeting subject to these laws  
C.R.S. 24-6-402(2)(b)



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## What is not a meeting?

- Chance meetings or social gatherings at which discussion of public business is not the central purpose. C.R.S. 24-6-402(2)(e)
- Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section. C.R.S. 24-6-402(2)(d)(III)



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## Part III: What notice is required?

### Full and Timely Notice:

OML "meetings" must have full and timely notice to the public.

- In addition to any other means, of full and timely is deemed when notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than 24 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.

C.R.S. 24-6-402(2)(c)



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### Any cure for notice failures?

- The OML does not expressly address whether subsequent action by a public body can "cure" past OML violations.
- The Court of Appeals has 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 and does not involve the mere "rubber stamping" of earlier decisions made in violation of the OML.

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



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### Direct Notice?

- 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.
- The person requesting direct notification can designate all meetings or can limit the request to meetings at which specified policies will be discussed.
- The clerk is required to provide these persons with "reasonable advance notice" of such meetings.
- The statutes specify neither what type of notice nor what time frame will be considered "reasonable;" however, it is provided that unintentional failure to give this direct notification will not invalidate actions taken at an otherwise properly noticed meeting.

C.R.S. 24-6-402(7)



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## Minutes of meetings

- The clerk, or other official in the clerk's absence, must take the minutes of any meeting of the local body "at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur."
- The possibility of some sort of formal action is necessary to trigger the minutes requirement.
- If an executive session is called, the minutes must reveal the topic of discussion in the executive session.
- After the meeting, the minutes must be recorded promptly and are considered a public record open to inspection.

C.R.S. 24-6-402(7)

*Note:* 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 the electronic recording practice must continue. C.R.S. 24-6-402(2)(d.5)(II)(A).

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## Part IV: When are "emergency meetings" permitted?

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## Are emergency meetings allowed?

The OML does not expressly address whether emergency meetings are allowable.

- However, 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.
- The court defined an emergency as "an unforeseen combination of circumstances or the resulting state that calls for immediate action," and acknowledged that the notice requirement may be affected by the type of meeting involved.

*Note:* this exception should be on the margin – very unusual. Lewis v. Town of Nederland, 934 P.2d 848 (Colo. App. 1996).

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## Part V: When are "executive sessions" permitted?

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Executive sessions are private meetings of the public body from which the general public is excluded, permitted to consider the following:

- Property transactions
- Attorney conferences
- Confidential matters under state or federal law
- Security arrangements or investigations
- Negotiations
- Personnel matters
- Documents protected under Open Records Act

C.R.S. 24-6-402(4)(a)-(g)

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## Calling an executive session

### When?:

- May only be called at a regular or special meeting.
- The OML is silent on any particular notice of intent to hold an executive session as part of a regular or special meeting. C.R.S. 24-6-402(4)

### How?: C.R.S. 24-6-402(4)

- Announce the topic of discussion, including the specific citation to the OML (C.R.S. 24-6-402(4)) which authorizes consideration of the announced topic in executive session
- Identify 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.

### Other requirements?:

The minutes of the regular or special meeting must reflect the topic of discussion at the executive session.

C.R.S. 24-6-402(2)(d.5)(II)

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Part VI:  
What are the penalties for violations?

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What are the consequences?

Unlike ethics violations, no potential personal sanctions for noncompliance.

- Any action taken at a noncompliant meeting is **void**. *C.R.S. 24-6-402(8)*
- Courts may compel executive sessions to be opened if the discussion does not stay within scope. *C.R.S. 24-72-204(5.5)*
- Prevailing challengers may be awarded legal costs and fees. *C.R.S. 24-72-204(5.5)*

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Questions?

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