

Contents

What is the open meetings law?	2
What does “open meeting” mean?	2
Quorum of board members present	3
Best practice	3
SCENARIO	3
How do we notify the public?	3
When can a public meeting be closed to the public?	4
Action items and executive session	4
Best practice	4
Executive session minutes	5
Public comment	6
Best practice	6
Reacting (or not reacting) to public comment	6
Acknowledging Public Comment	7
Documenting public comment in meeting minutes	7
Minutes	7
Board emails	8
Best practice	8
Scenario	8
Board subcommittees	9
Appendix	10
Sample public comment policy	10
Sample agenda with action items and executive session	11

What is the open meetings law?

Montana has strict laws stating that governmental bodies, including library boards, hold open meetings that protect the public's right to know and right to participate.

The public has a right to know what a governing body is discussing.

The public has a right to participate in discussions before the governing body makes a final decision.

Text of the laws can be found at [Montana Code Annotated Title 2, Chapter 3](#).

What does "open meeting" mean?

An open meeting is one in which citizens can observe a governmental body's operations, deliberations, and decisions.

There are 6 things a board needs to have a legal, open meeting.

- Quorum is present
- It is properly noticed
- There is an agenda
- Allow public comment
- Take minutes
- A meeting is happening if a quorum is hearing, discussing, or acting on anything that is within the jurisdiction of the board

Information Guide: Open Meeting Law and Public Comment



Quorum of board members present

Sometimes a quorum of board members is present at an event outside of a normal meeting time. It is natural to discuss the library, but it is important to avoid unintentionally denying the public's right to know.

Best practice

If a quorum of board members is present outside of a board meeting, avoid discussing library business and/or post a notice that there will be a quorum but no business will be discussed.

SCENARIO

Three members of the board have kids on the high school basketball teams. It is very likely that they will often be at the gym at the same time.

The library posts a brief notice in the place where it usually posts board meeting agendas and materials that says:

Notice of Quorum

The X Public Library Board hereby provides notice that on [date] a quorum of the members of the Board is expected to be present from 6:00 pm – 8:00 pm at the high school gymnasium for the basketball games. No library discussions or business will take place during this time.

Especially in a small town it may seem like a foregone conclusion that a quorum of board members may be present at the same events, but posting a simple notice like this is an easy way to demonstrate that the board is doing due diligence to comply with the law.

How do we notify the public?

Post meeting notices online, in the library, and anywhere else members of the public might look for that kind of information. Follow local practices for announcing city council or county commission meetings.

The notice should include the following:

- Agenda with action items
- Location, date, and time of the meeting

Announce your meetings **at least 48 hours before the meeting**. If the board is discussing a controversial or important topic announce the meeting at least 7 days before it occurs.

Place public comment time on the agenda and remember to ask for public comment during the meeting.

[See the appendix](#) for sample agenda with action items.

When can a public meeting be closed to the public?

For library boards there are two main situations in which a meeting may be closed to the public (otherwise known as going into executive session).

First, a public meeting may be closed when a person's right to privacy exceeds the public's right to know. The person involved can waive their right to privacy and request that the meeting be open. The meeting must remain open in this situation. Ask the person involved in the issue if they want the meeting open or closed. If they do want it closed list the discussion as an executive session on the agenda, and remember, you must come out of the executive session before voting on an issue.

Second, a public meeting may be closed when the board needs to discuss a litigation strategy. However, if the litigation involves only public entities that meet the definitions in MCA 2-3-203 the meeting must remain open.

The board chair is the only authority who has the right to decide whether something is public or private (excepting individuals involved who may waive their right to privacy, as previously mentioned).

[The sample agenda in the appendix](#) provides an example of how an executive session may be noticed.

Action items and executive session

The board may **NOT** take action during an executive session.

Best practice

Chair states that the board is going into executive session with a brief statement of the reason. Members of the public will be asked to leave and given an estimate of how much time the discussion will take. Board will discuss. Chair then states that the Board is moving into a public session. The time of both entering and leaving an executive session should be noted in the minutes. A board member can then make a motion based on the executive session. Board members vote on the issue in a public meeting.

Scenario The director's annual evaluation is coming up. How should this be handled, so the board stays in compliance with the open meeting law? What are the steps for closing a meeting and managing the performance evaluation work?

A safe way to notice such an item is to use language such as "Director's Performance Overview – Potential Closed Session" which notifies the public of the topic being discussed and that they might not have the opportunity to observe the deliberation. However, it does not preclude the individual from waiving their right to privacy at the meeting.

Do NOT vote during an executive session. You will need to come out of executive session and then take action. Use the minutes to record when you went into executive session, when you came out of executive session, and what action was taken.

Information Guide: Open Meeting Law and Public Comment



Executive session minutes

Take minutes during the executive session and share those only with the members who were present.

Executive session minutes are a summary and handled in the session. Place minutes in a sealed envelope. Retain any other documents created during the executive session.

To approve executive session minutes, hand them out at the next board meeting to those who were present for the closed session and ask them to review the draft. If any changes that might reveal the nature of the session are proposed to the minutes, the board must go into executive session to amend them. Include on the agenda: "potential executive session" when reviewing executive session minutes. If the board does need to amend the minutes in a closed session, then the board must come out of session before voting on the amended minutes.

Minutes should basically capture who was in attendance in the closed session, what the time frame was for the closed session, and what was discussed, in minimal detail. For example: "The board discussed the director's evaluation."

The director should place one hard copy of the approved minutes in a locked drawer or file cabinet. All other copies must be destroyed.

Example: here is what the publicly posted minutes will look like following an executive session:

The chair closed the meeting for an executive session in which the library director's performance evaluation was discussed. No action was taken.

Public comment

The open meeting law gives the public the right to comment on an issue being discussed.

Best practice

Be sure to put time for public comment on the agenda, *before* you take action, and don't forget to ask for public comment during that time. If there is a large number of people in the room, it is good practice to ask for opponents first, proponents second, and informational witnesses (not offering an opinion for or against but simply offering information to aid in the decision making) last. The chair should let the room know that this will be the order so that people know they will have the opportunity to speak.

The public may discuss matters in the jurisdiction of the board. If someone begins to comment on an item that is already on the agenda, politely ask them if they can save their comments for when the board is ready to address the agenda item. If the person cannot stay at the meeting until then, allow them to share their comment.

Don't take action on items that come up in public comment or on anything else that is not on the agenda.

Members of the public may NOT address matters of employee privacy in an open session.

Include a comment period on committee meeting agendas, as well. The public does not participate in discussion but can share their thoughts.

Consider having a dedicated email account for public comment. There is no requirement to read comments at the meeting, but they should be shared with the full board.

It's a good idea for the board to adopt a written public comment policy, and to post a copy of the policy in your meeting room and wherever else you post board meeting materials. A sample policy is included in the appendix.

Reacting (or not reacting) to public comment

The public has a Constitutional and legal right to provide public comment on the board's action *before* the board takes action. The public also has the right to provide public comment on topics that are not on the agenda but that are within the purview of the board.

It is reasonable to expect that the public will honor rules of decorum while offering public comment. Consider stating this expectation in your public comment policy. People may wish to complain or to offer constructive criticism, but it is never okay to direct abusive or threatening language at others during public comment. Members of the public should also understand that the public comment period is not an opportunity to have a back-and-forth conversation with the board.

Be mindful of how you respond to a person's comments. Avoid discussion and minimize engagement during public comment. If you act in a way that seems to carry out an individual's actions and that causes harm, you may jeopardize your personal immunity. Do not take action on any public comment that addresses something not on the agenda.

Information Guide: Open Meeting Law and Public Comment



Acknowledging Public Comment

The chair should thank each person who offers public comment regardless of whether they agree with the comments being shared. A simple “thank you for your comment” will suffice.

Documenting public comment in meeting minutes

The purpose of public comment is for the board to hear the views of the public before taking action on something of public interest. When documenting public comment in the meeting minutes it is recommended to provide only a brief summary, to simply convey the nature of the comment that was shared with the board. For example:

Public comment was given as follows:

A member of the public expressed concern about the cost of the new building.

A member of the public asked the board to consider extending the library’s hours on Saturdays.

If your board records its meetings and has designated the recording as official, follow the provisions outlined in 2-3-212 (2), MCA. Provide access to the recordings online and note the time stamp in the recording when public comment begins. For example:

(01:22:20) Public comment on any matter not contained in this agenda and that is within the jurisdiction of the library board.

Minutes

It might be worth noting what should be included in the minutes, and that they need to be officially adopted. This is in MCA 2-3-212. There are boards who have refused to adopt the minutes.

Board emails

The open meeting law protects the public's right to hear the discussion and reasoning behind a board's decision.

Do not use email to discuss a library issue.

Remember, all written communication sent to and from board members is considered public information, and access to any board correspondence may legally be requested by a member of the public.

Best practice

Use email only to send or discuss meeting logistics (time and place of the meeting, lunch orders, etc).

Scenario

The director sends an email with a draft policy for the board to review before the board meeting. The board starts discussing the policy via email. Is this a violation of the open meeting law? If no, why not? If yes, what should the board and director do?

Example of email discussion that is **okay** for board:

Attached you will find your meeting materials for next week, including the draft policy. I look forward to discussing this with you at the meeting next week.

We need to reschedule our work session. Please let me know what days you are available the week of the 15th.

Example of email discussion that is **not** okay for board:

What do you all think about this draft policy?

What did you think about the public comments at today's meeting?

Board subcommittees

Any subcommittees of the board must also comply with the open meeting law, as they are acting on behalf of the board. Even if only two board members are discussing something that would be of interest to the public, if the discussion influences or predetermines the outcome of an upcoming vote, this discussion should take place in an open meeting.

Appendix

Sample public comment policy

The X Public Library Board of Trustees welcomes public comment at its meetings, ensuring proper decorum so that the Board can accomplish its work efficiently, in full view of the public, regarding Library deliberations and decisions.

During meetings, public participation may be addressed to the Board orally or in writing. Each member of the public shall provide their name for the record and limit the address to three (3) minutes in length if spoken or read, unless further time is granted by the Chair with the concurrence of the Board. The Chair reserves the right to limit public comments if they are not relevant to the proceedings or if they are deemed disruptive, vulgar, or violent. Any written statements in lieu of oral comments (via email, mail, or in person) must be received by the Library Director at least twenty-four (24) hours prior to the meeting.

In an effort to assure adequate notice and assist in public participation, upcoming Board meetings will be posted publicly on the Library bulletin board and website.

Approved by the X Public Library Board of Trustees: month day, year

Information Guide: Open Meeting Law and Public Comment



Sample agenda with action items and executive session

X Public Library Board
Tuesday, April 12, 2022
9:30 am
Library Meeting Room

AGENDA

Call meeting to order

Public comments on non-agenda items falling within the purview of the Board

Note: the board chair will also ask for public comment during any/all action items.

Approval of minutes

Public comment

ACTION

Approval of claims

Public comment

ACTION

Meeting room policy revisions

Public comment

ACTION

Director's report

Friends of the Library report

Board correspondence *[time for the board to discuss feedback received from the public between meetings]*

Tentative closed session for library director's annual performance evaluation (no action will be taken)

Upcoming meeting(s)

Adjourn

**

The X Public Library Board of Trustees is committed to holding its proceedings in accordance with Montana Code Annotated Title 2, Chapter 3, Part 2 – Open Meetings and welcomes public participation (please see the public participation policy posted in the library meeting room and online). All public comments received become part of the official meeting minutes.