


GEORGIA MUNICIPAL ASSOCIATION

Carl Vinson Institute of Government
UNIVERSITY OF GEORGIA

GOVERNMENT IN THE SUNSHINE



- A Guide to the Georgia Open Meetings Act


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The LAW



- Open Meetings
O.C.G.A. § 50-14-1

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Who is Covered?

- "Agency" includes:
 - Cities, counties, school districts and other political subdivisions of the state
 - Departments, agencies, boards, commissions, authorities and similar bodies of state or local government
 - Regional authorities
 - BUT NOT the General Assembly

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An Open Meeting is . . .

Where a **quorum** of the members of a governing body or agency, or any **committee** of an agency or created by an agency gathers and **public business** is discussed, presented or voted upon.

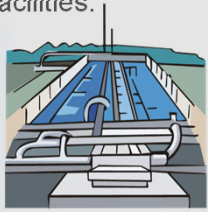
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What Types of "Gatherings" are Not "Meetings"?

- **Inspection** of physical facilities.
 - Meeting with state or federal legislative or executive branch officials **at state or federal offices** where no official action is taken.



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What Types of "Gatherings" are Not "Meetings"?

- Attending regional or statewide training courses or seminars related to the purpose of the agency.
- Attending social, civic, religious or ceremonial events so long as no public matter is discussed, presented or decided upon.
- Traveling together to any of these "gatherings" that are not "meetings" so long as no official business or public matter is discussed.

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But

- Consider the public's perception of what is happening.
- What can you do to mitigate this?
- What does it mean that it is not a "meeting"?

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60 Second Poll

Which of these would be considered a meeting subject to open meetings laws:

A) City Manager is having a baby. The City council decide to throw a baby shower and all council members attend.

B) City Council have lunch together and discuss a current zoning issue.

C) City Council all attend the opening of a new park.

D) All of the Above

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Public Access

- **Public must be allowed**; if necessary, the largest room within a facility must be used.*
- **Visual and sound recording** equipment must be permitted in open portions of a meeting.



*See *Maxwell v. Carney*, 548 S.E.2d 293 (2001).

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Public Votes

“Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.”

O.C.G.A. § 50-14-1(b)(1).


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Regular Meeting Notices

- Time
- Place
- Date
- Agenda
- Posted at conspicuous place at location where meeting is held & on website
- Available to general public



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Regular Meeting Notice Example

AGENDA
CITY OF MEETINGVILLE
CITY COUNCIL WORKSHOP
CITY HALL – JUNE 26, 2017
6:00 PM

1. Call to Order
2. City Manager's Report
3. Discussion of Shaw Park pedestrian bridge
4. Discussion on proposed budget for Police/Municipal Court Facility
5. Recommendation of Norton Striping, Inc. in amount of \$9,082.50 for 10 miles of city roads for striping
6. Mayor and Council 2017 Appointments for Zoning Board
7. Executive Session Regarding Land Acquisition
8. Community Development Report
9. Public Comments
10. Adjournment


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Agendas

- Must be posted at **meeting site**, as far in advance of the meeting "as reasonably possible."
 - (some time during two week period prior to meeting)
- Must be made **available to public** prior to meeting.
- Should include **all items** expected to come before the agency.



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Agendas

"Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item."

O.C.G.A. § 50-14-1(e)(1).


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Other "Non-Regular" Meetings

Permitted provided there is "**24hrs notice**" to the public through the county's legal organ or paper with greater general circulation.



If the legal organ is printed less than 4 times weekly then notice must be posted at the place where the meeting is held 24hrs in advance.



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Other "Non-Regular" Meetings Legal Organ Published 4/Week

- **Written or oral** notice at least 24 hours in advance to the legal organ,
- OR
- Notice to newspaper having **general circulation** equal to or greater than legal organ.

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Other "Non-Regular" Meetings Legal Organ Published -4/Week

- Must **post** written notice of meeting **at least 24 hours in advance** in regular meeting location.
- **Upon request**, in writing, by e-mail, fax or telephone to broadcast or print media **if their business and physical facilities are in the county.**



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Emergency Meetings?

- There is a **valid reason** for holding a meeting with less than 24 hours' notice, and
- **Notice is given** to the legal organ or a newspaper with a circulation equal to that of the legal organ and any other requesting broadcast or print media outlet within the county.





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Emergency Meetings?

The reason for holding the meeting within 24 hours and the nature of the notice must be recorded in the minutes.

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Meetings during Covid-19

- O.C.G.A. § 38-3-54 allows local governments to meet at any place within or outside the territorial limits of the political subdivision during an emergency or disaster situation.
- O.C.G.A. § 50-14-1(g) allows meetings to take place remotely provided the notice requirements are met and the public is given simultaneous access to the virtual meeting when there is a federal, state, or locally declared disaster

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Public Meetings During COVID-19

- Effective April 16, 2022, Xavier Becerra, the Secretary of Health and Human Services renewed the federal determination that a public health emergency exists.
- The extension was for a 90-day period but can be extended again

Renewal of Determination That A Public Health Emergency Exists

As a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic, on this date and after consultation with public health officials as necessary, I, Xavier Becerra, Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby renew, effective April 16, 2022, the January 31, 2020, determination by former Secretary Alex M. Azar II, that he previously renewed on April 21, 2020, July 23, 2020, October 2, 2020, and January 7, 2021, and that I renewed on April 16, 2021, July 19, 2021, October 15, 2021, and January 14, 2022, that a public health emergency exists and has existed since January 27, 2020, nationwide.


April 12, 2022 /s/ _____
Date Xavier Becerra

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Public Hearings During COVID-19

- Local governments can hold virtual public hearings whenever emergency conditions are present. Such hearings can be held purely remotely as long as the public is afforded the means to participate fully in the same manner as if such members of the public were physically present.




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Teleconference Meetings?

Teleconference meeting or hearing allowed under emergency conditions including declarations of federal, state, or local states of emergency involving public safety or the preservation of property or public services. Notice must be provided and the public must have access to the teleconference.



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Teleconference Meetings?

If a quorum is present in person, a member may participate in a meeting by teleconference up to 2 times in a calendar year.

If the member has a written opinion from a doctor or other health professional that health reasons prevent physical presence, or if there are emergency conditions, the 2 meeting limit does not apply.

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Teleconference Meetings?

If one or more of an agency's members are on **active military duty** at the time of the meeting, that member can participate by telecommunications.



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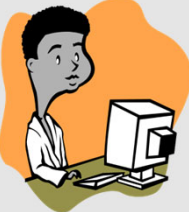
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What About E-mail?

Don't use e-mail to avoid holding an open meeting.

Emails are subject to open records requests.



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Other Technology Concerns?

- Blogs
- Twitter
- Text messaging
- Being on-line during a meeting





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60 Second Poll


If a meeting is held with less than 24 hours notice, the reason for holding the meeting within 24 hours and the nature of the notice given must be recorded in the minutes.

A) True
B) False

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Meeting Summaries




Must be written within **2 business days** covering the actions taken and the members present and must be written and made **available to the public.**

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Minutes



Must be **promptly recorded** and open to public inspection once approved as official, but **no later than after the next regular meeting.**

The minutes may be issued earlier, however.

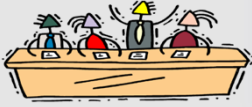
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Minutes Must Include

- **Names** of members present.
- Description of **each proposal and motion**.
- The identity of the persons **making & seconding** the motions.
- The name of each person voting for or against a proposal.
- Record of all **votes**.





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Recording Votes

It is presumed that the action was **approved** by each person in attendance unless the minutes reflect the name of the person voting against the proposal or abstaining.

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60 Second Poll

When holding a meeting completely via teleconference open meetings laws requirements are satisfied by making a recording of the meeting and posting the meeting online later.

A) True
B) False

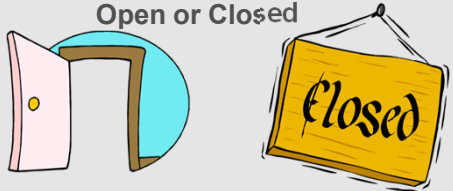
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What is a "Work Session" or an "Executive Session"?

There are only two kinds of meetings:
Open or Closed



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What is an "Executive Session"?

A portion of a meeting lawfully closed to the public. O.C.G.A. § 50-14-1(a)(2).

How to go into Executive Session

- Majority vote of a quorum present in an open meeting
- Specific reasons for closure must be in minutes
- When Executive Session ends, return to open meeting

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Why go into Executive Session?



To discuss or vote to:

- Authorize negotiations or to enter into contract to purchase, dispose of or lease property (*subject to approval in subsequent public vote*)
- Authorize appraisal or enter into option to purchase, dispose of or lease real estate (*subject to approval in subsequent public vote*)

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Why go into Executive Session?

Consult with attorney or authorize the settlement of pending or potential litigation, claims, administrative proceedings or other judicial actions under the attorney-client privilege in a meeting with the attorney.

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However ...

Any vote taken in executive session under these circumstances is not binding on an agency until a *subsequent vote* in an open meeting.


Before the vote, the identity of the property and terms of the contract must be disclosed or the parties to the litigation and principal settlement terms must be disclosed.

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Why go into Executive Session?



To discuss the hiring, dismissal, or evaluation of public officer or employee

Receiving evidence or hearing arguments and the vote on such matters **must be public**; it is the **discussion** that is allowed behind closed doors.

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Why go into Executive Session?

Interviewing applicants for the position of executive head of an agency.

Meeting with a neutral third party to mediate a dispute between the agency and any other party. Settlement agreement must be approved in an open meeting.

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Why go into Executive Session?

When discussing any **record exempt from public disclosure** under the Open Records Act if there is no reasonable means to consider the record without disclosing the exempt portion.

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Executive session during emergency conditions

- All the same rules that apply to executive session during an in-person meeting also apply when the meeting is being conducted remotely.
- Make sure that the software you are using for the virtual meeting is capable of providing a private "executive session" function and that all city council members and city staff members know how to use the software.

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What are not considered open meetings?

- Incidental conversation unrelated to the business of the agency.
- E-mail communications.

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RULE OF THUMB

If in doubt, open the meeting.

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Executive Session Minutes

Must be taken and must specify each issue discussed in executive session.

The fact that an attorney-client privileged discussion occurred and its subject must be identified but the substance of the discussion need not be recorded and shall not be identified in the minutes.

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After the Executive Session

- Vote to return to open; adjourn from open meeting
- Affidavit
- Minutes

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Executive Session Minutes

Subject to inspection by court if there is a dispute as to the propriety of an executive session.

Who takes executive session minutes?


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The Affidavit

The presiding officer must **sign an affidavit** stating that the matters discussed in a closed meeting were within the exceptions to the act, and **specify the relevant exception.**



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Actions Taken in Executive Sessions

- Are **invalid** if not taken in an open session when so required.
- Can be **challenged** within 90 days of when the complainant should have known about the decision provided that time span goes no further than 6 months after the decision was made.
- Although **zoning decisions** may be appealed as provided for specifically under zoning law.

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60 Second Poll

Which of these is not a valid reason for going into executive session?


- City Attorney needs to advise the council on a pre-litigation settlement offer.
- To discuss ongoing price negotiations for the purchase of a new building.
- To talk about the pros and cons of the submitted responses to an RFP.
- None of these are valid reasons for going into an executive session.

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Closing a Meeting



- The **specific reasons** for closure must be entered upon the minutes.
- Must be done by a **majority vote** of a quorum present.
- The open minutes must reflect the **names of the members present** and those voting for closure.

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What if Someone Goes Off-topic in Executive Session?

The presiding officer must rule the discussion out of order and the questioned conversation must cease.

If someone attempts to continue the challenged conversation after being ruled out of order, the presiding officer must immediately adjourn the executive session.

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Enforcement of Act

- **Attorney General** may bring civil and criminal actions to enforce.
- **Any person, firm, corporation**, or other entity may bring an action.
- **Superior Courts** are authorized to issue injunctions.
- *Attorney's fees available to those bringing complaints.*



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Consequences for Violation?


- Knowingly and willfully participating in a meeting in violation of the Open Meetings Act is a **misdemeanor**, punishable by a fine up to \$1000.
- Falsifying the affidavit concerning a closed meeting is a **felony**, punishable by five years in prison.



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Additional Consequences

- Additional civil or criminal violations within a 12 month period can result in penalties up to \$2,500.


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What Have You Learned?



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