



Rev. 3/02

## GOVERNING BODY MEETINGS

A governing body meeting is any meeting where at least a quorum of governing body members are present and at which municipal policy or business is discussed or any official action is taken. All such meetings of the governing body (and of any policy-making committee, board or commission) are subject to the Open Meetings Act (§§ 10-15-1 through 10-15-4). The Mayor and Governing Body members should make themselves familiar with the Act so that they will avoid possible violation of the Act.

There are basically three types of governing body meetings:

1. Regular meeting;
2. Special meeting; and
3. Emergency meeting.

Some municipalities use a fourth kind, a workshop where municipal matters are discussed but no action is taken. This is still a governing body meeting and must be held with adequate notice for the type of meeting (regular or special).

All governing body meetings must be open to the public, **unless the subject matter allows them to be closed under one or more of the ten exceptions** listed in § 10-15-1H.

Each year the governing body must adopt an Open Meeting Resolution stating what is considered adequate notice for each type of meeting, depending upon the means that municipality has of giving notice to the public (television, radio, newspaper or posting). A sample Open Meetings Resolution is shown as Figure 1. Section 3-12-3 leaves the scheduling of time and place of meetings to the governing body, but some municipalities list the schedule of their regular meetings in the Open Meeting Resolution (as shown in Section 2 of Figure 1).

The usual place for holding governing body meetings is at the municipal hall in a room designated for that purpose, but that is not a legal requirement. The place chosen should be one where the governing body is able to conduct its business efficiently and with dignity and where the public has reasonable access, including physical access for persons with disabilities. It may be desirable to designate an alternate place for holding regular meetings in appropriate circumstances.

## **REGULAR MEETING**

A regular meeting of the governing body is a meeting which is held at the time and place designated for the usual transaction of the business of the governing body. The statutes do not prescribe any particular time or place for governing body meetings or any particular frequency. These matters should be established in the Open Meetings resolution or by adopting and publishing a schedule of regular meetings.

There is no "normal" time or frequency of governing body meetings among New Mexico municipalities, but meetings should be held at a time convenient for the governing body members and which also allows interested citizens an opportunity to attend. The frequency of meetings depends upon the amount of normal business the municipality has to conduct, but even the smallest municipality should hold governing body meetings at least once a month. Because the composition of the governing body usually changes at each regular municipal election, the newly constituted governing body may wish to review the schedule of regular meetings and amend it for the convenience of the new governing body.

If a regular meeting date falls on a legal holiday, the date is not automatically postponed unless the resolution establishing regular meeting dates so provides; if the resolution does not, adequate notice of the alternate meeting date is required. If a regular meeting is to be held on a different date or at a different time or location, adequate notice is required but the meeting is still a regular, not a special, meeting.

## **SPECIAL MEETING**

A special meeting of the governing body is a meeting held at a time other than the time designated for a regular meeting. It is usually held at the same time and place as the regular governing body meeting, unless there is some special reason for holding it elsewhere or at a different time.

A special meeting of the governing body may be called either by the mayor or by a majority of the members of the governing body. Besides giving required notice to the public, notice of such a meeting must either be personally served on each member of the governing body or left at the member's usual place of residence (§ 3-12-3). Sample forms for this notice appear at Figures 2a and 2b. Figures 3 and 4 show an order for service and a return of service.

Unlike a regular meeting, at which any matter may be considered (subject to any special notice requirements which may exist for certain types of matters), only those matters included in the notice of the meeting may be considered at a special meeting. There is no statute that specifically states this, but it is a well-recognized rule of law throughout the United States; **considering items not listed on the special meeting notice may violate the adequate notice provision of the Open Meetings Act.**

## **EMERGENCY MEETING**

An emergency meeting is one which is called because of a real emergency, which is defined by the Open Meetings Act (§ 10-15-1F) as "unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body." Such meetings should have the most public notice possible under the circumstances and your Open Meeting Resolution should so provide. Emergency meeting business must be confined to dealing with the emergency at hand.

## **RECESSED (CONTINUED) MEETING**

A recessed meeting is a continuation of a meeting that did not complete its business. The recess must be moved, seconded and passed at the original meeting so that those present, including news media and public, will know when and where the meeting will be continued. The general rule is that only subject matter which could be considered at the original meeting may be discussed at the continued meeting. The meeting should be recessed to the closest available date, time and place possible, usually the following day or two.

## **ATTENDANCE AT MEETINGS REQUIRED FOR PARTICIPATION**

As a general rule, a member of the policymaking body must be in attendance at the meeting in order to participate in the meeting. The Open Meetings Act has provided an exception to this general rule, however. If otherwise provided for by ordinance or policy of the policy-making body, a member of the public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend. Each member participating by conference telephone must be able to be identified when speaking and all participants must be able to hear each other at the same time. In addition, members of the public attending the meeting must be able to hear any member of the public body who speaks during the meeting.

## **OPEN MEETINGS ACT VIOLATION**

Although there is a statutory presumption that all actions of any policy-making body have been taken at a meeting held in compliance with the Open Meetings Act, if it can be established that this was not the case, all actions taken at an unlawful meeting will be invalid (§ 10-15-3). In addition, violation of the Act is a misdemeanor and is punishable by a fine of up to \$500 (§ 10-15-4), and the district court may issue injunctions to enforce the Act (§ 10-15-3). Because of these serious consequences, we strongly recommend that meetings be closed only for valid reasons and, if possible, upon the advice of the municipal attorney.

Make sure that you understand the exceptions for which a meeting may be closed (§ 10-15-1H) and **inform the presiding officer and other members if you feel the subject matter does not meet the requirements for closing the meeting.**

NOTE: Under the 1993 amendments to the Open Meetings Act, when a closed portion of an open meeting has been completed or when a closed meeting has been scheduled and held, the minutes of the re-opened meeting or the next open meeting must contain a statement, approved by the public body, that "the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting."

## **CONDUCT OF MEETINGS**

§ 3-12-3A(5) requires the governing body to "determine the rules of its own proceedings." Whatever rules of procedure are adopted by the governing body should, of course, be carefully followed. If, for instance, your governing body says that it will follow Robert's Rules of Order Revised, as many municipalities do, be sure that you have a copy of whatever edition (there are dozens) of Robert's they have voted to follow and that you follow it.

Regardless of the rules of procedure adopted by the governing body, there must be a quorum (at least one more than half of the existing members of the governing body) present in order to conduct business. If you lose the quorum, no business may be conducted after the meeting drops below a quorum.

In addition, to pass an ordinance or resolution you must have enough members voting in the affirmative to constitute a majority of all members of the governing body. In a mayor-council municipality, since the mayor may vote only in case of a tie, if you had to count the mayor to achieve a bare quorum you will not be able to pass an ordinance or resolution at that meeting.

As a separate handout, the League publishes "A Practical Way to Conduct a Formal Meeting" by Gary A. Beimer. This may be of help to you in dealing with conduct of a meeting according to acceptable rules of parliamentary procedure.

## **ORDER OF BUSINESS**

Every governing body should have an order of business to follow in its meetings, and governing body members should be prepared to prompt the presiding officer, if necessary, to insure that the correct order is followed. This does not mean that a governing body may never deviate from the order of business for good reason. A definite and well-understood order of business is important, since it helps the presiding officer to conduct the meeting with a minimum of wasted time, and it helps the Municipal Clerk in assembling documents for the meeting, preparing the agenda, and writing the minutes.

## **AGENDA**

An agenda is an outline or list of matters to be brought up at a particular meeting; it is, in a sense, an order of business for that meeting. The agenda lists the various items to be considered under each order of business. The revised Open Meetings Act requires that the agenda for regular or special meetings **be available 24 hours before the meeting.** Items not on the agenda may **be discussed but no action (vote) may be taken if the item is not on the preliminary agenda.** A copy should be provided for the presiding officer and all members of the governing body. If time, money, and reproduction facilities permit, copies may also be provided to department heads, the press, and citizens attending the meeting.

In most municipalities, the Municipal Clerk prepares the agenda in consultation with the presiding officer, although it may be prepared by the City Manager, if there is one. Unless there is a standing rule that officers or department heads notify the clerk of matters they would like on the agenda, he or she may have to ask them what they expect to report or bring before the governing body.

The agenda may be altered by majority vote of the members present. The omission of an item from the preliminary agenda does not prevent that matter from being discussed by the governing body, provided it is a matter which may otherwise be considered at the meeting (See Special Meeting and Recessed Meeting above), **but no action (vote) may be taken on the item unless it was listed on the preliminary agenda.** A sample agenda appears at Figure 5.

### **Consent Agenda**

A "consent agenda," sometimes called the "consent calendar" or "general order of business," is a portion of the full agenda which contains routine, non-controversial matters with which the governing body members are already familiar, and which should not normally need discussion. We recommend that matters on the consent agenda be physically grouped together as a separate item on the meeting agenda, although they may be placed throughout the meeting agenda, under the items to which they relate, and indicated by an asterisk or other special symbol.

The consent agenda can be a useful tool for expediting governing body meetings, if it has been established with the consensus of all concerned, and if it is properly used. It may be desirable to try it on an experimental basis before making it a permanent agenda item.

If copies of the meeting agenda are provided to the public, the consent agenda portion should be preceded by an explanatory note such as the following:

All matters listed under item 3, Consent Agenda, are considered to be routine by the city council and will be enacted by one motion in the form listed below. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

Since matters on the consent agenda should be routine and non-controversial, the matters actually selected will depend upon the municipality. What is non-controversial in one municipality may be very controversial in another. Once the type of business to be considered routine and non-controversial has been decided upon, the selection of actual matters to be placed on the consent agenda of a particular meeting should be relatively easy. Selection may be made by the clerk, manager, mayor, department heads, a committee of the governing body, or whoever is designated by the governing body when it decides to adopt the use of a consent agenda.

**1. Approval of the Consent Agenda**

Whether matters on the consent agenda are physically grouped together on the meeting agenda, or are placed throughout the meeting agenda and indicated by a symbol, the consent agenda is considered as one item of business, early in the governing body meeting, with one motion. Since the Open Meetings Act requires that how each member voted on each action must be recorded, the method of voting on approval of the consent agenda should be adequate for making such a notation in the minutes. In the minutes of the meeting, consent agenda items are recorded individually and in full, as if considered separately and voted upon separately, including the "yeas" and "nays" on the vote.

**2. Removal of an Item from the Consent Agenda**

Consent agenda items are not discussed separately, but an item may be removed from the consent agenda for discussion, if desired. Items removed from the consent agenda are discussed and voted on separately, either immediately after approval of the consent agenda, or in their normal sequence on the regular agenda.

There is no absolute rule on who may cause an item to be removed from the consent agenda. It is usually at the request of a member of the governing body, but the governing body may adopt its own rule in this regard. In order to maintain good public relations and citizen confidence, as well as to promote ready acceptance of the consent agenda, it may be wise to strongly protect the right to discuss any item. This can be done by providing that any item may be removed from the consent agenda at the request of any governing body member.

Figure 1

**SAMPLE OPEN MEETINGS RESOLUTION**

Resolution No. \_\_\_\_\_

**A RESOLUTION CONCERNING \_\_\_\_\_ MEETINGS AND PUBLIC NOTICE REQUIRED**

WHEREAS, Section 10-15-1B, NMSA 1978 provides that "All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such board, commission or other policymaking body, are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act"; and,

WHEREAS, Section 10-15-3A, NMSA 1978 provides that "No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978"; and,

WHEREAS, Section 10-15-4, NMSA 1978 provides that "Any person violating any of the provisions of Section 10-15-1 or 10-15-2 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense"; and

WHEREAS, Section 10-15-1D requires that "Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs, and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting shall be reasonable when applied to such body."

NOW, THEREFORE BE IT RESOLVED by the \_\_\_\_\_ of the municipality of \_\_\_\_\_, New Mexico that:

1. Notice shall be given at least ten (10)\* days in advance of any regular meeting of a quorum of the members of the governing body or any board, commission, committee, agency, authority or other policy-making body held for the purpose of discussing public business or taking any formal action within the authority of such body.

2. The regularly scheduled meetings of \_\_\_\_\_ will be held at \_\_\_\_ P.M on the \_\_\_\_\_ of each month in the \_\_\_\_\_ meeting room of the municipal building, located at \_\_\_\_\_ in \_\_\_\_\_. In the event that the regular meeting date falls on a legal holiday, the \_\_\_\_\_ shall designate an alternate meeting date and/or time at the regular meeting prior to the holiday and shall cause advance notice of the changed meeting date and/or time to be published as provided in this Resolution. In the event that a regular meeting of the \_\_\_\_\_ is changed to a different location, advance notice of the meeting location shall be published as provided in this Resolution. The agenda for the meeting will be available at least twenty-four hours prior to the meeting from \_\_\_\_\_, whose office is located in \_\_\_\_\_

\_\_\_\_\_, New Mexico. The notice shall indicate how a copy of the agenda may be obtained.

3. Special meetings may be called by the mayor or a majority of the members of the \_\_\_\_\_ upon three (3)\* days notice. The notice shall include a copy of the agenda for the meeting or information on how a copy of the agenda may be obtained. The agenda for the meeting will be available at least twenty-four hours prior to the meeting.

4. Emergency meetings will be called only under circumstances which demand immediate action to protect the health, safety and property of citizens. The \_\_\_\_\_ will avoid emergency meetings whenever possible. Emergency meetings may be called by the mayor or a majority of the members of the \_\_\_\_\_ upon twenty-four (24) hours'\* notice, unless threat of personal injury or property damage require less notice.

5. The notice requirements of Section 1, 2 and 3 of this Resolution are complied with if notice of the date, time, place and subject matter of any regular or special meeting are published. "Publish" means printing in a newspaper which maintains an office in the municipality and is of general circulation within the municipality. If such newspaper is a non-daily paper which will not be circulated to the public in time to meet publication requirements, or, if no such newspaper exists, "publish" shall mean posting in six public places within the municipality, and one of the public places where posting shall be made is the office of the municipal clerk, who shall maintain the posting for public inspection within the time limits specified. The six public places notice shall be posted are:

The office of the clerk;

\_\_\_\_\_;

\_\_\_\_\_;

\_\_\_\_\_;

\_\_\_\_\_; and

\_\_\_\_\_.

The clerk may, in addition to posting, publish one or more times in a newspaper of general circulation within the municipality, even though it does not maintain an office within the municipality. In addition, written notice of such meetings shall be mailed or hand delivered to federally licensed broadcast stations and newspapers of general circulation in the municipality which have provided a written request for such notice. The municipal clerk shall also mail copies of the written notice of regular meetings to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation which have made a written request for notice of public meetings. For purposes of special meetings and emergency meetings, the municipal clerk shall provide telephone notice to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation which have made a written request for notice of public meetings.

6. Notwithstanding any other provisions of sections 1 through 4 of this Resolution, the governing authority may establish such additional notice requirements as may be deemed proper and advisable to comply with the provisions of the Open Meetings Act.

7. All notices shall contain the following language:

*If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the municipal clerk at \_\_\_\_\_ at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the municipal clerk at \_\_\_\_\_ if a summary or other type of accessible format is needed.*

8. The \_\_\_\_\_ may close a meeting only of the subject matter of such discussion or action is exempted from the open meeting requirement under section 10-15-1(H) of the Open Meetings Act.

- (a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the \_\_\_\_\_ taken by roll call during the open meeting. The authority for such closure and the subjects to be discussed shall be stated with reasonable specificity in the motion for closure. The vote of each member on the motion shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting.
- (b) If the decision to hold a closed meeting is made at a time when the \_\_\_\_\_ is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed [with reasonable specificity] is given to the members of the \_\_\_\_\_ and to the general public.
- (c) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting, if the closed meeting was separately scheduled, shall contain an announcement that only those matters specified in the motion or notice of closed meeting were discussed during the closed meeting.
- (d) Except as provided in Section 10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by a vote of the \_\_\_\_\_ in an open meeting.

*\*All notice requirements in this model ordinance have been suggested by the Attorney General's office.*

PASSED, ADOPTED, AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

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\_\_\_\_\_  
Mayor

ATTEST:

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\_\_\_\_\_  
Municipal Clerk

Figure 2a

**Notice of Special Governing Body Meeting  
Called by Mayor**

To: (name and address of governing body member)

I, Mayor of the City of, do hereby call a special  
meeting of the governing body to be held at \_\_\_\_\_ o'clock (a.m./p.m.) \_\_\_\_\_, 20\_\_\_\_\_, in the  
council chamber of the city hall, for the purpose of \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Figure 2b

**Notice of Special Governing Body Meeting  
Called by Majority of Governing Body**

To: (name and address of mayor or governing body member)

We, the undersigned members of the governing body of the city of \_\_\_\_\_, being a majority of the members of the governing body, do hereby call a special meeting of the governing body to be held at \_\_\_\_\_ o'clock (a.m./p.m.), \_\_\_\_\_, 20\_\_\_\_, in the council chamber of the city hall, for the purpose of \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Councilor

\_\_\_\_\_  
Councilor

\_\_\_\_\_  
Councilor

Figure 3

**Order for Service**

(To be included in same form with Figure 1a and Figure 1b)

State of New Mexico )

County of \_\_\_\_\_ ss.                      Date

City of \_\_\_\_\_)

To: (name or title, or both, of person directed to serve notice)

You are hereby directed to serve the foregoing notice personally upon \_\_\_\_\_, or  
to leave it at his usual place of residence, before \_\_\_\_\_ o'clock (a.m./p.m.),  
\_\_\_\_\_, 20\_\_, and to make a return of service in writing, showing the manner of service.

(SEAL)

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\_\_\_\_\_

City Clerk

Figure 4

**Return of Service**  
(For use with Figure 3)

I certify that I served the notice of special meeting of the governing body, of which the

foregoing is a copy, upon \_\_\_\_\_ (personally leaving the original at

\_\_\_\_\_, his usual place of residence at \_\_\_\_\_ o'clock (a.m./p.m.),

\_\_\_\_\_, 20\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature and title of person serving notice

Figure 5

**Sample Agenda**

\_\_\_\_\_ CITY COMMISSION MEETING

December 16, 20\_\_

1. Roll call.
2. Approval of Minutes of Meeting of December 9, 20\_\_.
3. Recognition of Visitors, Receipt of Petitions & Communications.
4. Introduction or Adoption of Ordinances & Resolutions.
  - a. Adoption of Resolution No. 1071-76, Condemnation 1420 West 7th.
  - b. Introduction of Ordinance No. 1069-76, Zone Change, Rodes Addition from "B" to "E".
5. Report of Officers, Boards & Committees.
  - a. Variance -- 1720 N. Prince, Paint Contractors Office.
6. Old Business.
  - a. Right of Way Easement, Airport for ENMR Telephone Cooperative.
7. New Business.

- a. Approval of Lease Agreement, Boy Scouts.
- 8. Miscellaneous.
  - a. Appointment to Parks & Recreation Board.
  - b. Proclamation, Community Involvement Team of Levi Strauss.
- 9. Announcement of Date, Time & Place of Next Regular Meeting of City Commission.
- 10. Adjournment.