



Open
Meetings

Open
Records

Records
Retention

Government in the Sunshine

A Guide to Georgia's Open Meetings and Open Records Laws for Municipal Officials

August 2014
Eleventh Edition



A Georgia Municipal Association Publication

Government in the Sunshine

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FOREWORD

GMA is pleased to provide for municipal officials a review of the key features of the Georgia open meetings and open records laws. These laws were significantly revised in the 2012 session of the Georgia General Assembly. Many of the revisions made in HB 397 attempt to address “gray areas” under the previous laws or have incorporated or overturned court rulings interpreting the laws. Due to these changes in the laws, GMA has changed the design and content of this publication. Those who are familiar with previous editions of GMA’s “Government in the Sunshine” publication will notice that this edition has a completely different format and includes some new features such as frequently asked questions and additional information on records management. The intent is to make this edition more readable and accessible.

We express our thanks to Rusi Patel, GMA Associate General Counsel, for his work on this handbook and to Lois Kono for her invaluable assistance in formatting. We also thank the cities of Duluth, Griffin and Roswell for allowing us to include adapted versions of their ordinances, forms, policies and other materials.

The materials in this publication reflect the law in place as of August 2014 but this publication cannot and should not be used to substitute for timely advice from the city attorney. Municipal officials should rely on their city attorney to apply the law and judicial interpretations to the specific fact situations they face. We present this publication in the hopes that a working knowledge of the open meetings and open records statutes will allow city officials to recognize potential problem situations when they arise and to seek legal counsel to insure compliance with the law.



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GOVERNMENT IN THE SUNSHINE

Introduction

“All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them.¹ ...The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it.”² These words in the Georgia Constitution are the starting point for any consideration of Georgia’s laws on open meetings and open records. They are a reminder that government is created by and for the people to promote the common good and that public officials and employees are the servants, not the masters. These public servants are expected to execute their duties in an honest and trustworthy manner that can be reviewed, judged and critiqued by the people. The only way the people can regulate their government is if they know what it is doing. Thus, openness in government must be the rule and not the exception. Openness in government is also a key to building public trust.

This publication is divided into three parts. The first part addresses the Georgia Open Meetings Act, the second part addresses the Georgia Open Records Act and the third part addresses records retention and basic records management. The first two parts of the publication are set up the same way. First there is a narrative on the requirements and exemptions in the law focusing on those areas most relevant to local government operations. Second, there are summaries or checklists for easy reference. Third, there are frequently asked questions, followed by the text of the entire statute and then by sample forms and policies. All of these are intended to assist city officials and employees in complying with the Open Meetings Act and the Open Records Act but they cannot take the place of consultation with the city attorney. The city’s attorney is in the best position to apply the law to the facts of a particular situation and be able to provide accurate, timely advice.

¹ Ga. Const. Art. I, Sec. II, Par. I.

² Ga. Const. Art. I, Sec. II, Par. II.

Part I - Open Meetings

Overview of the Open Meetings Act

Who Must Comply with the Open Meetings Act?

Georgia's open meetings law applies to meetings of the governing authority of every "agency" as that word is defined in the statute. The definition includes every county, municipal corporation, school district, or other political subdivision of the state and every municipal, county, regional or other authority.¹ Thus meetings of the city council and meetings of the city's downtown development authority are covered meetings. The term "agency" also applies to the governing body of every city department, agency, board, bureau, office, commission, authority, or similar body. This definition is somewhat redundant in that the governing body of most city departments will be the city council itself or some subset of its members. However, this definition does make clear that meetings of the planning and zoning board, the zoning board of appeals, the personnel review board, the merit system board, the water and sewer authority, the development authority, the housing authority, the recreation authority, and similar bodies must also follow the requirements of the open meetings law. Finally, the definition of "agency" includes every state department, agency, board, bureau, office, commission, public corporation, and authority. The definition of "agency", and thus coverage by the Open Meetings Act, does not apply to the General Assembly.

What is and is not a "Meeting"?

The first requirement for a "meeting" is the gathering of a quorum of the members of the governing body of an agency, any committee of the members of the governing body of an agency, or any committee created by such governing body.² The second requirement is that the gathering must be one at which any official business, policy, or public matter of the agency or committee is formulated, presented, discussed or voted upon. Both of these requirements must be met to come within the statute's definition of "meeting."

A "quorum" may be defined in a city's charter but, if it is not, the accepted definition of a "quorum" is fifty percent plus one. Thus, a city council comprised of five members

¹O.C.G.A. §50-14-1(a)(1).

²O.C.G.A. §50-14-1(a)(3).

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would usually have a quorum of three. Whether the mayor is or is not counted for purposes of determining a quorum again depends on the language of the charter.

The definition of “meeting” does not include certain gatherings of a quorum of a governing body or committee so long as the primary purpose of the gathering is not to evade or avoid the requirements of the Open Meetings Act and so long as no official action is taken by the members during that gathering.³ For example, it is not considered a “meeting” when a quorum of a governing body or committee gathers to inspect physical facilities or property under the jurisdiction of the agency or gathers to meet with officials of the legislative or executive branches of the state or federal government at state or federal offices. Similarly, it is not considered a “meeting” when a quorum of a governing body or committee of an agency gathers to attend state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency. It also is not considered a “meeting” when a quorum of the members of a governing body of an agency gets together for the purpose of traveling to a meeting or gathering as otherwise authorized by the law. Again, no official business, policy, or public matter can be formulated, presented, discussed, or voted upon by the quorum while attending the training or traveling.

The law also recognizes that city officials are often present at the same social, ceremonial, civic or religious events but are there to participate in that event and not to conduct official business. Thus, the law states that when a quorum of the body or committee are at such an event it is not a “meeting” so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum. Even though these types of gatherings are not considered “meetings” and thus are not subject to the requirements for notice, agenda and minutes, city officials should always be mindful of the public’s perception that official decisions are being made informally in these types of settings.

Additionally, city officials should be aware that exclusion from the definition of “meeting” of the exemptions noted above will not apply “...if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.”⁴ Thus, city officials utilizing most of the exemptions noted above from the definition of “meeting”

³O.C.G.A. §50-14-1(a)(3)(B).

⁴O.C.G.A. §50-14-1(a)(3)(B).

need to scrupulously avoid discussing any policy, public matter or official business of or related to the city. Note that the exception for meeting with state or federal legislative or executive branch officials at a state or federal office only prohibits taking official action by the members. It makes sense that discussion or formulation of official business, policy or a public matter would be allowed in such circumstances but a vote would not. However, when a quorum is traveling to such a meeting, attending a funeral, or participating in training on city functions, such officials are advised to limit discussion with one another to matters that do not implicate city business.

There are also gatherings which are not subject to the Open Meetings Act. The Open Meetings Act does not apply to gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party.⁵ Any decision or resolution agreed to by an agency through such mediation shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement or similar document formally resolving a claim or dispute is subject to the Open Records Act. Also not subject to the Open Meetings Act are incidental conversations unrelated to the business of an agency.⁶ An example of this would be something like “How about them Braves?” Finally, the law states that e-mail communications among members of an agency are not subject to the Open Meetings Act.⁷ Note, however, that such communications are subject to disclosure pursuant to the Open Records Act. The intent of this provision is to recognize and treat e-mail communications like hard copy memoranda shared with members of an agency. City officials are cautioned not to use technology in an attempt to avoid the requirements of the Open Meetings Act.

Notice of Meetings

The city must provide the public with advance notice of meetings. Notice of the time, place, and dates of regular meetings (e.g., the city council’s monthly meeting) must be made available to the general public and be posted in a conspicuous place at the regular meeting place of the agency and must be posted on the agency’s website, if it has one.⁸ For any meetings that are not conducted at the regular meeting place or time, the agency must post the time, place, and date of the meeting for at least 24

⁵O.C.G.A. §50-14-3(a)(5).

⁶O.C.G.A. §50-14-3(a)(7).

⁷O.C.G.A. §50-14-3(a)(8).

⁸O.C.G.A. §50-14-1(d)(1).

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hours at the regular meeting location and give written or oral notice at least 24 hours in advance of the meeting to the legal organ of the county or a newspaper with equal circulation.⁹ In counties in which a legal organ is published less than four times per week, the time, place, and date of the meeting must be posted for at least 24 hours at the regular meeting location and, upon written request from broadcast or print media in the county, notice must be provided to the requesting media outlet 24 hours in advance of the meeting. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda must be provided by fax, by e-mail, or by mail through a self-addressed, stamped envelope provided by the requester.

For emergency meetings (i.e., meetings with less than 24 hours notice), the meeting notice must include the date, time and location of the meeting, the subjects expected to be covered at the meeting and the reason for meeting with less than 24 hours notice.¹⁰ Notice must be provided to the county legal organ or a newspaper with greater circulation in the county than the legal organ. Notice must also be provided by telephone, fax or e-mail to any broadcast or print media outlet whose place of business and physical facilities are located in the county when such media outlet has made written request for such notice within the previous calendar year. Many cities have made it a practice to simply notify all of the newspapers, radio stations and television stations serving the area when there are special called meetings or there is an emergency meeting.

Regularly scheduled meetings can be cancelled or postponed. This often happens when the customary meeting date falls on a holiday.

Agenda, Summary and Minutes

An agenda of all matters expected to come before the council or other governing body must be made available upon request and must be posted at the meeting site as far in advance as is practicable during the two weeks prior to the meeting.¹¹ If a particular issue is not included on the posted agenda it may still be considered by the council if it is deemed necessary to address it. The courts have not yet defined what is meant by "necessary to address" and individuals, often with competing political agendas, may have different definitions. However the clear intent of this provision is to ensure that the public is informed of the matters that will come before the body.

⁹O.C.G.A. §50-14-1(d)(2).

¹⁰O.C.G.A. §50-14-1(d)(3).

¹¹O.C.G.A. §50-14-1(e).

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Thus elected officials should avoid amending the agenda at the meeting to add a matter, particularly one that is known to be controversial, unless there is a clear and unambiguous necessity to do so.

Many cities post agendas for their meetings on the city website and note on the face of the agenda the date and time when each agenda was last updated. This allows members of the public to have up to date information.

Members of the public must be allowed access to the meeting and must be allowed to make visual and sound recordings of the open portions of any meeting.¹² Some city councils designate an area or areas where equipment for visual and sound recordings can be placed so that the equipment does not obstruct the view of meeting attendees and use of the equipment is not disruptive to the meeting. If a city or any other “agency” subject to the Open Meetings Act is going to do this, they should formulate and adopt a clear policy addressing the issue at a time when there is nothing controversial going on to avoid the perception that the policy on recording equipment is aimed at a particular person or constituency.

If attendance at a meeting is larger than the meeting room can accommodate, then the council should move the meeting to a larger meeting room, if available.¹³

A written summary of the subjects acted on and a list of the officials attending the meeting must be prepared and made available within two business days of the meeting.¹⁴ Minutes of the meeting must be prepared and made publicly available after having been approved as official; such approval is to occur at the next regular meeting of the agency. The minutes must, at a minimum, contain the names of the governing body members present at the meeting, a description of each motion or other proposal made, a record of who made and seconded each motion, and a record of all votes including who voted for and who voted against each motion. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining. For meetings with less than 24 hours notice, the minutes must also describe the notice given and the reason for the emergency meeting.

Minutes of executive sessions must be taken but are not open to the public. Such minutes must specify each issue discussed but the substance of attorney-client

¹²O.C.G.A. §50-14-1(c).

¹³Maxwell v. Carney, 273 Ga. 864, 548 S.E.2d 293 (2001)

¹⁴O.C.G.A. §50-14-1(e)(2).

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discussions need not be recorded and are not to be identified in the minutes. Executive session minutes are subject to *in camera* inspection by an appropriate court should a dispute arise as to the propriety of any executive session. An *in camera* inspection is a review of the records by a judge in the judge's chamber. This preserves the confidentiality of the executive session minutes unless and until the judge rules that the meeting should have been open.

If the governor or other authorized state official declares an emergency or disaster that renders it impossible or imprudent to hold a meeting at the regular time and place, a meeting may be held at the call of the presiding officer or any two members of the governing body.¹⁵ To the extent made necessary by the emergency, the council members are not required to comply with time consuming procedures and formalities prescribed by law, according to the Georgia Emergency Management Act of 1981.¹⁶ Additionally, in situations necessitated by emergency conditions involving public safety or the preservation of property or public services cities may conduct meetings via teleconference so long as the proper notice requirements are met and the public is given access to the teleconference meeting. A city council or other agency can also meet by teleconference if necessary due to the health of a member or the absence of a member from the jurisdiction so long as a quorum is present in person and the other requirements for an open meeting are met.¹⁷ Under this exception a member of an agency can only participate by teleconference twice in one calendar year unless there are emergency conditions or the member has a written opinion of a physician or other health professional stating that reasons of health prevent that member's physical presence, however, a quorum of the members must still be present in person.¹⁸ Finally, teleconference meetings are allowed to be held when one or more of the city's members are on ordered military duty at the time of the meeting, so long as the meeting is otherwise held in compliance with state law.¹⁹

When Can a Meeting be Closed?

Although there are numerous exceptions to the requirements of the open meetings law, there are six primary reasons why a city council would lawfully hold a closed

¹⁵ O.C.G.A. §§ 38-3-54 and 38-3-55.

¹⁶ Ibid.

¹⁷ O.C.G.A. §50-14-1(g).

¹⁸ Ibid.

¹⁹ O.C.G.A. § 38-2-279(g).

meeting or executive session. These reasons are: (1) to discuss pending or potential litigation with legal counsel and to discuss or vote on settlement;²⁰ (2) to discuss or vote on authorizing negotiations to purchase, dispose of, or lease property; (3) to discuss or vote on the acquisition, disposition or lease of real estate by the city;²¹ (4) to discuss hiring, compensation, evaluation or disciplinary action for a specific public officer or employee;²² (5) to interview an applicant to be executive head of a department; or (6) to discuss records that are exempt from disclosure.²³

The attorney-client privilege allows the council to meet in a closed meeting with its attorney to discuss a pending or potential lawsuit, settlement, claim, administrative proceeding or other judicial action brought against or by the city, or any officer or employee of the city, or in which the city or any officer or employee may be directly involved. Two things must be considered before closing a meeting pursuant to the attorney-client privilege. First, an attorney representing the city must be present and discussing with the counsel the pending or potential lawsuit, settlement or claim. Second, a lawsuit by or against the city must already be filed, or there must be a potential lawsuit. A mere threat to take legal action against the city is not enough to close a meeting to discuss a potential lawsuit.²⁴ In order to determine whether a threat to sue the city is a potential lawsuit that may be discussed in an executive session, council members should ask the following questions:

1. Is there a formal demand letter or something else in writing that presents a claim against the city and indicates a sincere intent to sue?
2. Is there previous or preexisting litigation between the city and the other party or proof of ongoing litigation on similar claims?
3. Is there proof that the other party has hired an attorney and expressed an intent to sue?

Additionally, the meeting may not be closed to receive legal advice on whether a topic may be discussed in a closed meeting.²⁵ No vote in executive session to

²⁰O.C.G.A. § 50-14-2(1).

²¹O.C.G.A. § 50-14-3(b)(1).

²²O.C.G.A. § 50-14-3(b)(2).

²³O.C.G.A. § 50-14-3(b)(4).

²⁴The Claxton Enterprise v. Evans County Board of Commissioners, 249 Ga.App. 870, 549 S.E.2d 830 (2001).

²⁵O.C.G.A. § 50-14-2(1).

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settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the parties and principal settlement terms are disclosed before the vote. Remember, a meeting may not be closed for advice or consultation on whether to close a meeting.

An agency may close a meeting to discuss or vote to authorize negotiations to purchase, dispose of or lease property, or to enter into a contract to purchase, dispose of or lease property subject to approval in a subsequent public vote. Note that these exceptions apply to property generally and are not limited to real estate. Thus they should apply to authorize negotiations or the entering into contracts for city purchases of personal property, such as vehicles, equipment, or supplies. The additional exceptions authorizing a closed meeting to discuss or vote upon ordering an appraisal related to the acquisition or disposal of real estate, or to enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote are limited to real estate only. No vote in executive session to acquire, dispose of, or lease real estate, is binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote.

The governing body of an agency may close the portion of the meeting during which the members are deliberating on hiring, appointing, compensating, disciplining, or dismissing a public officer or employee. However, any portion of a meeting during which the body receives evidence or hears arguments on personnel matters must be open. A city council may also go into executive session to discuss or deliberate on the periodic evaluation or rating of a public officer or employee, or to interview applicants for the position of executive head of an agency. What positions qualify as “executive head of an agency”? To determine that, reference must be made to the definition of agency provided in the Open Meetings Act. “Agency” includes the city itself and “[e]very department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state.”²⁶ Thus, if the governing body of an agency is empowered to hire the “executive head of an agency”, then a quorum of the body should be permitted by the statute to interview applicants for that position in a properly closed meeting. Note that the exceptions allow certain discussions and interviews to take place in an executive session but that all votes on personnel matters must be taken in public.

²⁶O.C.G.A. §50-14-1(a)(1)(C).

The final reason that the governing body of a local government agency, such as a city council, would go into executive session is to discuss records that are exempt from disclosure but only if there are no reasonable means by which the agency could consider the record without disclosing the exempt portions of the record if the meeting were open.

Because closed meetings are the exception and not the rule, if there is any doubt whether a topic may be discussed in a closed meeting, the city attorney should be consulted. If doubt remains, the meeting should be open. And it does not matter what a closed meeting is called. A closed meeting may be called an executive session, a work session or something else.²⁷ For purposes of the open meetings law, there are only two types of meetings – open or closed. Whatever a meeting is called, it should be clear to the public whether the meeting is open or closed.

How a Meeting is Closed?

A majority vote of the quorum present for the meeting is required to close a meeting. The specific reason for closing the meeting must be stated in the minutes, the minutes must reflect the names of the members of the governing authority present and those voting to close the meeting, and these portions of the minutes must be made available to the public.²⁸ When a meeting is properly closed but the discussion begins to stray into an area of discussion required to be open, the presiding officer must rule the discussion out of order and the discussion must cease.²⁹ If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer must immediately adjourn the executive session.³⁰

When a meeting is closed under the Open Meetings Act, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, must execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the

²⁷ The law actually defines "executive session" as "a portion of a meeting lawfully closed to the public." O.C.G.A. §50-14-1(a)(2).

²⁸ O.C.G.A. §50-14-4(a).

²⁹ O.C.G.A. § 50-14-4(b)(2).

³⁰ Ibid.

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exceptions provided by law and identifying the specific relevant exception.³¹ False swearing is a felony under Georgia law.³²

Enforcement and Penalties

Any action taken at a meeting that was not open and should have been is not binding.³³ Parties who wish to contest that an action was invalidly taken in a closed meeting must do so within 90 days after the date the action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken. Any action under the Open Meetings Act contesting a zoning decision must be commenced within 30 days.

Any person knowingly and willfully conducting or participating in a meeting in violation of the Open Meetings Act may be convicted of a misdemeanor and fined not more than \$1,000.00.³⁴ Alternatively, a civil penalty not to exceed \$1,000.00 for the first violation may be imposed by the court in any civil action brought under the Open Meetings Act against any person who negligently violates the Act. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation committed within a 12-month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action that a person has acted in good faith. An agency or person who provides access to information in good faith pursuant to the Open Meetings Act will not be held liable for having provided such access.³⁵ If anyone signs an executive session affidavit containing false information, he or she may be convicted of a felony and fined \$1,000.00 and/or imprisoned for up to five years.³⁶ Further, participation in a meeting that is held in violation of the Open Meetings Act may be grounds for a recall action.³⁷

Someone who sues for a violation of the Open Meetings Act is to be paid their attorney's fees and other litigation costs, unless special circumstances exist. The

³¹ O.C.G.A. § 50-14-4(b)(1).

³² O.C.G.A. § 16-10-71.

³³ O.C.G.A. § 50-14-1(b)(2).

³⁴ O.C.G.A. § 50-14-6.

³⁵ Ibid.

³⁶ O.C.G.A. § 16-10-71.

³⁷ See O.C.G.A. § 21-4-3(7); Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650 (1994).

test for whether fees and other expenses will be assessed against the governing body is whether the position of the complaining party was substantially justified. The Attorney General is authorized to bring enforcement actions, either civil or criminal, as appropriate to enforce the law.³⁸

³⁸O.C.G.A. § 50-14-5(b).

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Selective Summary of Exceptions

What is NOT a Meeting

- Inspecting facilities or property where no other official action is discussed or taken [§ 50-14-1 (a)(3)(B)(i)].
- Attending statewide or regional meetings or training on matters related to the purpose of the agency and where no official action is taken [§ 50-14-1 (a)(3)(B)(ii)].
- Meetings, where no official action is taken, with state or federal legislative or executive officials at state or federal offices [§ 50-14-1 (a)(3)(B)(iii)].
- Traveling together where no official business, policy, or public matter is formulated, presented, discussed or voted on [§ 50-14-1 (a)(3)(B)(iv)].
- Attending social, civic, ceremonial or religious events where no official business, policy, or public matter is formulated, presented, discussed or voted on [§ 50-14-1(a)(3)(B)(v)].

However, regarding exceptions (i) through (v) above, if it can be shown that the primary purpose of the gathering was to avoid the requirements of the open meetings law while discussing or conducting official business, then the gathering would be deemed a meeting where all notice, access, agenda, summary and minutes requirements must be met [§ 50-14-1 (a)(3)(B)].

Which Meetings May be Closed

- Acquisition, disposal or lease of property may be discussed in executive session [§ 50-14-3 (b)(1)].
- In contrast to the general rule, votes may be taken in executive session regarding the following [§ 50-14-3 (b)(1)]:
 - To authorize settlement of any matter relative to the attorney-client privilege per OCGA § 50-14-2 (1).
 - To authorize negotiations to acquire, dispose of or lease property.
 - To authorize an appraisal relative to the acquisition or disposal of real estate.

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- o To contract to purchase, dispose of or lease property.
- o To enter into an option to purchase, dispose or lease real estate.

However, no vote to acquire, dispose of or lease real estate or to settle a claim is binding until subsequently voted on in open meeting.

- Applicants for the position of executive head of an agency may be interviewed in executive session [§ 50-14-3 (b)(2)].
- Discussion in executive session of records that are otherwise protected from disclosure under the Open Records Act is authorized [§ 50-14-3 (b)(4)].

Open Meetings - FAQs

- Q:** What if a member of a committee or council shows up to a duly noticed meeting of another committee or board of the city of which he or she is not a member? For instance, is it a covered “meeting” if a quorum of the city council attend a meeting of the planning and zoning board or of the development authority?
- A:** In our opinion, the operative questions in this instance are: (1) why the members of the city council are at the meeting; and (2) whether the quorum is discussing city business or policy amongst themselves at the meeting. It is important to remember that persons serving on city council, a city committee or city board are also citizens of the community and may legitimately have a need to or interest in attending committee and board meetings just as any other citizen. If each member of the quorum has a matter of interest before the zoning board that evening, they should take care to avoid discussing any public business and should sit separated from each other to emphasize that they are attending as individuals and not in an official capacity. This would seem to fall within the exception for attending a civic event where the quorum is not discussing or voting upon official business, policy or public matter. O.C.G.A. §50-14-1(a)(3)(B)(v). Note that the council can certainly provide more notice to the public than required by the Open Meetings Act.
- Q:** We have a council member who travels frequently for work and another who has an ongoing seriously illness making it impossible for him to physically attend meetings for the next six months. Can our city hold a meeting via teleconference or video conference?
- A:** Yes, however you need to be aware of and comply with the limitations on teleconference meetings. If one or more of the members of city council, committee, or board is on ordered military duty at the time of the meeting then that member may participate in the meeting by teleconference as long as the meeting is otherwise conducted in accordance with state law. Cities can also conduct meetings via teleconference when necessitated by emergency conditions involving public safety, or the preservation of property or public services. However, if a city holds a teleconference meeting for emergency purposes the public must be afforded access to the teleconference meeting

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and proper notice of the meeting must be given. Finally, members of the city council, a city committee, or board may take part in a meeting via teleconference if necessary due to health reasons or when they are absent from the city but a quorum of the council, committee or board must be present at the meeting in person and the other requirements of the law (notice, agenda, minutes, etc.) must be met. Under this authorization for teleconferencing a member can only participate by teleconference twice in one calendar year unless there are emergency conditions or the member has a written opinion from a physician or other medical professional that health reasons prevent him or her from attending in person.

Q: The city is preparing for local option sales tax (LOST) negotiations and the committee which will undertake the negotiations with the county wants to be able to prepare a strategy in private. Is there an exception to the open meetings law for such preparations?

A: No, under the open meetings law the gathering of a quorum of any committee of the members of a city or a quorum of any committee created by the governing body is a meeting subject to the open meetings requirements under the law. If, however, the initial negotiations do not result in agreement and the matters moves to mediation, the exception applicable to mediations may apply. If disagreement over the LOST distributions end up in court, then the attorney-client privilege may apply.

Q: When can our city vote in executive session?

A: The city council is allowed to vote in executive session on the acquisition, disposal of, or lease of real estate, or to settle litigation, claims, or administrative proceedings but that vote will not be binding until the city council takes a vote in a public meeting where the property and terms are identified before the vote or the parties and settlement terms are disclosed before the vote. Although interviewing applicants to be the executive head of an agency can be done in executive session and certain personnel matters can be discussed in executive session, all votes must be taken in public.

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Q: Is there any requirement that issues discussed in executive session be kept secret?

A: The provisions in the law allowing certain discussions to occur in executive sessions (closed meetings) are there to ensure that the agency can function efficiently and is not placed at a financial or legal disadvantage. The members of the agency's governing body owe a fiduciary duty to the agency and those served by it to act in the best interests of the agency as a whole and not any particular individual, business or other interest. The confidentiality of the executive session is a privilege that belongs to all members of the city council in the executive session and not to any one member individually. This is especially true in instances where matters subject to the attorney-client privilege are discussed. It is important for city council members to understand that although the city attorney may represent them in their capacity as city officials, the city attorney is not their attorney individually; the city attorney is the attorney for the city. Therefore, when the executive session involves matters subject to the attorney-client privilege it is not an option of any one individual to waive the attorney-client privilege for the entire city.

Additionally, depending upon the circumstances, divulging matters appropriately discussed in a closed session could be perceived as malfeasance in office, misconduct in office or a violation of the oath of office and could result in someone seeking to recall or remove the official from office. A city's charter or ethics ordinance may also impose a penalty for violating the confidentiality of a properly closed meeting. Finally, if it is a litigation matter covered by insurance, the insurer may regard the failure to keep attorney-client confidences as a failure to cooperate that could impact the coverage provided to the city or the individual.

Q: Are hearings or appeals regarding employee disciplinary procedures subject to open meetings?

A: Meetings that are held to discuss or deliberate upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a city employee or officer may be held in a closed meeting. However, if any of the above involves the receipt of evidence or hearing argument on personnel matters, including whether to impose

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disciplinary action or dismiss a city employee or officer, then it must be held in an open meeting. It doesn't matter if the employee requests that the hearing be private. The open meetings law determines what can and cannot be the subject of a closed meeting.

The Georgia Open Meetings Act

§ 50-14-1.

(a) As used in this chapter, the term:

(1) "Agency" means:

- (A) Every state department, agency, board, bureau, office, commission, public corporation, and authority;
- (B) Every county, municipal corporation, school district, or other political subdivision of this state;
- (C) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;
- (D) Every city, county, regional, or other authority established pursuant to the laws of this state; and
- (E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Executive session" means a portion of a meeting lawfully closed to the public.

(3) (A) "Meeting" means:

- (i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

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- (ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.
- (B) “Meeting” shall not include:
- (i) The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;
 - (ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;
 - (iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;
 - (iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or
 - (v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term 'meeting' shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

- (b) (1) 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.
 - (2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.
 - (3) Notwithstanding the provisions of paragraph (2) of this subsection, any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.
- (c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual and sound recording during open meetings shall be permitted.
- (d) (1) Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be held in accordance with

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a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.

- (2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in such county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requester.
- (3) When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to the county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Such reasonable notice shall also include, upon written request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

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- (e) (1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. 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.
- (2) (A) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting.
- (B) The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting; provided, however, that nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. The name of each person voting for or against a proposal shall be recorded. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.
- (C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but

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the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

- (f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by teleconference, provided that any such meeting is conducted in compliance with this chapter.
- (g) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year.

§ 50-14-2.

This chapter shall not be construed so as to repeal in any way:

- (1) The attorney-client privilege recognized by state law to the extent that a meeting otherwise required to be open to the public under this chapter may be closed in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved; provided, however, the meeting may not be closed for advice or consultation on whether to close a meeting; and
- (2) Those tax matters which are otherwise made confidential by state law.

§ 50-14-3.

(a) This chapter shall not apply to the following:

- (1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;
- (2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition such board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;
- (3) Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial agency in the state, including grand jury meetings;
- (4) Adoptions and proceedings related thereto;
- (5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;
- (6) Meetings:
 - (A) Of any medical staff committee of a public hospital;
 - (B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter

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7 of Title 31, or under any other applicable federal or state statute or regulation; and

- (C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;
 - (7) Incidental conversation unrelated to the business of the agency; or
 - (8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title.
- (b) Subject to compliance with the other provisions of this chapter, executive sessions shall be permitted for:
- (1) Meetings when any agency is discussing or voting to:
 - (A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;
 - (B) Authorize negotiations to purchase, dispose of, or lease property;
 - (C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
 - (D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or
 - (E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

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- (2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;
- (3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and
- (4) Portions of meetings during which that portion of a records made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.

§ 50-14-4.

- (a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be

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taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.

- (b) (1) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.
- (2) In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session.

§ 50-14-5.

- (a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.
- (b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

- (c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information.

§ 50-14-6.

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this chapter against any person who negligently violates the terms of this chapter in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions.

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SAMPLE PROCEDURE AND FORMS FOR AN EXECUTIVE SESSION:

SAMPLE MOTION, RESOLUTION AND AFFIDAVIT

To properly close a city council meeting to the public, certain information must be included in the council minutes and, following the executive session, the presiding officer, or all members of the governing body participating in the executive session, must complete an affidavit (1) stating that the subject matter of the meeting was within an exception to the Open Meetings Act, and (2) identifying the specific relevant exception(s) relied upon. See O.C.G.A. Chapter 50-14-4(b). The following sample city council motion, council resolution, and affidavit are provided to assist city attorneys in assuring that the requirements of the law for closing meetings to the public are met.

To close an agency meeting to the public, a majority of a quorum present must vote for such closure. The specific reasons for the closure must be included in the official minutes. What if only one topic on the agenda represents a matter allowing for closure? The law mandates that when only a portion of a meeting involves a matter that permits closure to the public, the remainder of the meeting must be open to the public.

All proper closed meetings start in an open meeting. A motion is then made to go into executive session or close the meeting and, after a proper second and approval of the motion, the meeting is closed. When the closed meeting ends there should be a motion, second and vote to return to an open meeting. The body should then conduct the remainder of its business, even if it is simply to adjourn, in the open meeting.

Although motions usually are not written in advance the sample motion form is intended to ensure that the minutes reflect the specific reason(s) for closing the meeting, who moved to close the meeting, who provided a second and how each member in attendance voted.

Unlike the sample motion, the sample resolution is not required by law. However, it gives the council's support to the presiding officer who must execute an affidavit confirming compliance with the law. As an added precaution, the council may, as suggested in the sample resolution, ratify any action taken during the closed meeting.

A key requirement of the law is that the presiding officer or all members of the governing body participating in the executive session must execute an affidavit under oath. This affidavit must state that the subject matter of the closed meeting or closed portion of a meeting was devoted to matters falling within the exceptions to the open meeting requirement and must identify the specific exception(s) applicable to the closed meeting covered by the affidavit. A sample affidavit is also presented.