

To: Members of the City Council and City Manager

From: Andrew J. Adams

Date: December 13, 2024

Re: Recommended Rules for Proposed Informal Discussion Sessions

QUESTION PRESENTED

What are the necessary procedural requirements for the Council to maintain informal discussion sessions solely for public discussion of topics raised by the members of the public who attend said meetings?

SHORT ANSWER

The members should provide notice to the public as with any other meeting of a governmental body. The discussion should be limited to discussion of the topics raised by members of the public and no decisions on the same should be made. The agenda or notice of what will occur at the meeting should be simple as there will only be one item beyond calling to order and adjournment, and the minutes need only reflect that simplicity and the motion to adjourn.

FACTS

The City Council is considering whether to assign two (2) of its members to hold informal discussion sessions, open to the public. At such sessions, said members would be directed to only listen to the public comments and discuss the same among themselves and with the attendees at the sessions without taking any action or making any decisions.

LAW

A “meeting” for the purposes of the Open Meetings Law is the convening of the members of a governmental body to carry out the body’s purpose. Wis. Stat. § 19.82(2). A “governmental body” includes purely advisory bodies and subunits of pre-existing bodies, even if the only purpose of the governmental body is discussion. *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979). Where the subject matter of a meeting of public officials is indeterminate and the officials have no power to act on the subject matter, the meeting is not subject to the requirements of the Open Meetings Law. *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 681, 239 N.W.2d 313 (1976). The notice of a meeting must “set

forth the time, date, place and subject matter of the meeting [...] in such form as is reasonably likely to apprise members of the public and news media thereof”, if the Open Meetings Law applies. Wis. Stat. § 19.84(2). Any and all votes and motions of a meeting must be recorded if the Open Meetings Law applies. Wis. Stat. § 19.88(2).

ANALYSIS

If the Council decides to implement the proposed informal discussion sessions, they would not likely be categorized as open meetings under the Wisconsin Open Meetings Law. However, compliance with the Open Meetings Law would be quite easy to achieve for these meetings. As attorneys for the City, we recommend that the Council impose and abide by the following rules if such discussion sessions are implemented:

Quarterly Informal Discussion Sessions

1. Time, Place, and Purpose.
 - a. Informal Discussion Sessions (“Sessions”) shall be held by members of the City Council to allow discussion to be brought by members of the public in settings less formal than the regular meetings of the full City Council.
 - b. The purpose of the Sessions shall be solely to discuss the topics raised by the members of the public in a setting wherein members of the public may feel more comfortable than they might at regular meetings of the full City Council.
 - c. The Sessions are not intended to be meetings of a governmental body for the purposes of the Wisconsin Open Meetings Law due to, in part and without limitation, the Council members attending the Sessions not being granted any power to decide or take action on the topics discussed.
 - d. Sessions shall be held no more often than one (1) time per quarter, and no more than one (1) Session shall occur between any two (2) meetings of the City Council.
 - e. Public notice of the time and location of the Sessions shall be provided as required by Wis. Stat. § 19.84.
 - f. Sessions should remain open and last at least one (1) hour but any predetermined time for adjournment should be provided in the notice.
 - g. The topics of discussion for the Sessions shall only be those topics raised during the public comment period of any given Session.
 - h. The location should be an easily accessible public location, regularly visited by members of the public, other than the location of regular City Council meetings.
2. Council Members Involved
 - a. No more than two (2) council members shall attend any given session.

- b. Attending Council members shall not discuss any of the topics raised at a session with any other council member except to request that items discussed be placed on the next agenda for discussion, or decision if permissible, at the next regular City Council meeting.
 - c. Attending council members may be rotated among the then-serving members of the City Council at the City Council's discretion.
3. Agenda
- a. Each Session's agenda shall be published as part of the notice to the public.
 - b. Each Session's agenda shall contain no more than the following items:
 - i. Call to Order
 - ii. Public Comment
 - 1. Council members may discuss topics raised by members of the public but shall not make any decisions or take any actions regarding the same
 - iii. Adjournment [no later than [insert time]]
4. Minutes
- a. At least one (1) of the attending Council members shall keep minutes of the Session.
 - b. As the attending Council members are only going to discuss what the public raises and have no authority to decide or act, the only information which shall be recorded is who raises the motion, who seconds, and who votes to adjourn the Session.
 - c. The minutes should include the times at which the Session is called to order and adjourns.
 - d. This is not a City Council meeting, so the City Clerk is not required to attend or record minutes.

CONCLUSION

If the City Council decides to hold the proposed informal discussion sessions, we recommend that the Council take the procedural steps necessary to fulfil the requirements of Wisconsin's Open Meetings Law, despite our belief that such discussion sessions would not be considered meetings of a governmental body which would require said compliance.