

**City of Peachtree City
Minutes of Meeting
June 22, 1999
6:00 p.m.**

**Special Called Training Meeting
“Open Meeting & Records”**

The City Attorney, Rick Lindsey, presented a special training session on the new Open Meetings/Records law to City staff and all Commission and Authority members of Peachtree City. It was conducted in the City Hall Council Chambers at 6:00 p.m. on June 22, 1999.

Those present were: Brenda Rogers, Carolyn Stanton, Stan Pye, Chief Murray, Marcie Blind, Jim Basinger, Jill Kuhns, Maxine Barbour, Stony Lohr, Jim Fulton, Tom Hughey, Nick Harris, Theresa Vannier, Tonya Curry, Becky Kimble, Bobby Thompson, Colin Halterman, Jim Williams, Carol Fritz, Larry Turner, Linda Gravely, Marie Washburn, Donna Romeo, Michael Matute, Edwin Eiswerth, Jennis Rice, Troy Besseche, Robert Ames, Annie McMenamin, Gerri Holt, Luther Holt, Randy L. Gaddo, Joe Morton, Jan Shannon-Zink, John Dailey, Gerald Reed, David Rast, Wes Saunders, Julian Campbell, Jim Savage, Susan Cates, H.E. Buffington, Douglas Warner, Cathy Nelms, Scott Bradshaw, Betsy Tyler, Peter Cunningham, Thomas Farr, Bob Truitt, Julie Oldenburg, Mark Oldenburg, Steven Ott, and Nancy Faulkner.

A Power Point presentation was given as well as written handouts. Those present were given the opportunity to ask questions. No official action was taken; however, for the ease of preparing these minutes, the Power Point Presentation has been downloaded and incorporated into these minutes, followed by the written information that was provided:

POWER POINT PRESENTATION:

Open Records Act Changes - Effective Date July 1, 1999

Expanded Records Coverage

Change - includes “... records received or maintained by a private person, firm, corporation or other private entity in the performance of a service or function for or on behalf of an agency”.

Effect - Such records must be disclosed to the same extent that such records would be subject to disclosure if received or maintained by said agency, public agency, or public office.

Time Restrictions to Comply

Change – “...individual in control of...records must not only determine whether or

— not the records requested are subject to access...within three business days of the request, but also that such person permit inspection and copying within three days".

– "...if responsive records exist but are not available within three business days of the request, a written description of such records together with a time table for their inspection and copying, shall be provided within the three-day period."

Exceptions to Disclosure

–Records not subject to inspection under the law.

–No records need be made available for inspection or copying if the public office or agency in control of such records obtains, within three business days, an order based on an exception in the law from a superior court staying or refusing the requested access to such records.

Additional Exceptions (O.C.G.A. § 50-18-72)

-
- the release of the records that would reveal an individual's social security number and insurance or medical information in personnel records
 - the protected information may be redacted from the records requested,
 - accident reports released only upon written statement of need.

Computerized Records

Change "... shall be made available where practicable by electronic means, including Internet access"

Exception – subject to reasonable security restrictions preventing access to non-requested or non-available records.

Estimating Costs (O.C.G.A. § 50-18-71.2)

– "...no new fees other than those directly attributable to providing access shall be assessed where records are made available by electronic means".

Denial of Access

— **In Writing (O.C.G.A. § 50-18-72)** "... Specify in writing the specific authority exempting such record or records from disclosure, by code section, subsection,

— and paragraph”.

One Time - Such designation may be amended or supplemented one time within five days of discovery of an error in such designation or within five days of the institution of an action to enforce this chapter, whichever is sooner.

Penalty for Non-Compliance

–“A person who knowingly and willfully violates the Act... is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100.00.”

–The Court may also award attorney’s fees incurred in enforcing the open records laws

Recommended Action

–Establish a policy for the internal handling of Open Records Requests.

–Questions to City Clerk.

–More than 24-hour delay - notify City Clerk.

–Any refusal to provide records shall be made by City Attorney.

–If the number of records requests increases, personnel records including all medical, social security number, address, dependent, insurance information should be kept in a separate file.

–Place a notice on all forms created and maintained by the City that the forms are public record and, thus, subject to public disclosure.

Open Meetings Act Changes - Effective Date July 1, 1999

Definitions

Agency

–changed to include “**any public corporation**”.

Meeting expanded to include where

–“...**any public matter**, official business, or policy of the agency is to be discussed, or presented, or at which official action is to be taken.”

In the case of a committee where

– “...any recommendations on **any public matter**, official business or policy to the governing body are to be formulated, presented or discussed.

Agenda of Meetings

—
—
–Agenda Must be Available to Public Prior to Meeting

–Shall be available upon request.

–Posted at the meeting site, as far in advance of the meeting as reasonably possible.

–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.

–Must include all matters expected to come before the agency.

– The failure to include an item on the agenda shall not preclude considering and acting upon such item.

–Item must “become necessary to address during the course of the meeting”.

Record Keeping Requirements

- A summary, rather than merely an agenda, of the subjects acted on and those members present at the meeting of any agency shall be written and made available within two business days of the adjournment of a meeting of any agency.

–Minutes available no later than immediately following the next regular meeting of the agency

Exceptions to Act

–All exceptions “provided by law” rather than simply the exceptions set forth in the statutory open meetings law.

–Will allow for such exceptions as attorney-client privilege.

Closed Meetings

–Affidavit Required

–The chairperson, or other person presiding over any meeting, of an agency;

–Closed to the public;

–Shall execute and file with the official minutes of the meeting;

–A notarized affidavit stating under oath;

–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.

Recommended Action

—
–Revise printed agendas for ease of preparing summaries.

- Grant the Mayor, Chairman, City Manager and Assistant City Manager authority to amend the agenda at any time up to 24 hours prior to the meeting.*
- Examine City Ordinance Section 2.1(3) for possible revision.*
- Develop rules for when Council Members, Authority Members, and Commission Members can meet with constituents or other people.*
- Develop rules for when and how many council, authority, or commission members can discuss City matters.*
- Develop rules for committee and sub-committee meetings.*
- Each committee, sub-committee or other agency shall have a person designated to record the minutes of the meeting.*
- No meeting or portion of a meeting should be closed without the advice of legal counsel.*
- No agency shall go into executive session without the advice of legal counsel.*
- Prior to any meeting being closed to the public, the specific reason for closing the meeting shall be entered on the minutes.*
- A majority vote is required to close any portion of a meeting.*

THINK OPEN

- The changes require more openness than ever.*

WRITTEN INFORMATION THAT WAS PROVIDED AT MEETING:

CHANGES TO OPEN AND PUBLIC MEETINGS STATUTES

Georgia's open meetings laws are found at O.C.G.A '50-14-1 et seq. The open meetings laws were changed in the 1999 Georgia General Assembly session. The changes take affect July 1, 1999. Those changes are as follows:

1.

O.C.G.A. '50-14-1(a)(1)(A) was amended to include the term "public corporation". The current statute defines which agencies are subject to the statute and includes every state department agency, board, bureau, commission and authority. This change simply adds public corporations to the list included with the state agencies which am bound by this statute.

2.

O.C.G.A. '50-14-1(a)(2), referencing the definition of a "meeting" was changed to include the words "any public matter" to describe when a gathering qualifies as a meeting. Under current law, a meeting means:

The gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body whether standing or special, pursuant to schedule, call or notice of or from such governing body or committee or an authorized member at a designated time and place at which official business or policy of the agency is to be discussed or at which official action is to be taken.

This change is an expansion of the scope of when a meeting is required to be open. Under the current statute, you were safe in not conducting a meeting as open if there was no official business or policy of the agency to be discussed, or at which no official action was to be taken. In other words, if three council members met, they were safe in not conducting an open meeting as long as they were not discussing or acting upon official business. Now, the addition of "any public matter" changed what can be discussed in a closed setting. While this code section does not define "any public matter," one would have to assume it means any public matter related to that agency.

3.

O.C.G.A. '50-14-1(a)(2)'s definition of meeting was further changed to include the word "presented" Currently, the statutory definition of a meeting includes only when there is official business discussed or official action taken. The inclusion of the words "or presented" once again expands the definition of a meeting. Thus, if a meeting were held for the purpose of simply receiving information from an architect, an engineer, an accountant or other professional, at which no official action were to be taken and at which there were to be no discussion by the members, under the old definition, this would not have been defined as a meeting. Now, if there is a quorum and a meeting is held, if any public matter is to be either discussed or presented, even if no official action is to be taken, the meeting is required to be open to the public.

4.

O.C.G.A. '50-14-1(e) was substantially rewritten to include new requirements which must be followed prior to a meeting as defined in the code section. The new requirement is as follows:

Prior to any meeting, the agency holding such meeting shall make available an agenda of all matters expected to come before the agency 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.

— This code section completely rewrites the current provision for agendas. Under current law, an agenda of the subjects acted upon and those members present at the meeting is required to be made available two business days after the adjournment of the meeting. Now, agencies are required to formulate an agenda with the following requirements:

- (a) Agenda shall be available "prior to any meeting";
- (b) It shall include "all matters expected to come before the agency";
- (c) It shall be made "available upon request";
- (d) It shall be posted at the meeting site:
 - (1) "As far in advance as reasonably possible;"
 - (2) Not more than two weeks prior to the meeting; and
 - (3) At some point in time during the two-week period immediately prior to the meeting.

Although the statute does not make any requirements as to the time limit for the posting of an agenda, it is anticipated that a "reasonableness test" would be applied. Accordingly, if a work session is held in advance of a meeting, for the purposes of establishing an agenda, then clearly the agenda would be formulated at the close of the work session and this would trigger the new requirement. In addition, some agencies have cut-off dates for items, which are requested to be on an agenda. Once that cut-off date has been reached, the proposed agenda would need to be made available as set forth above.

— ‘This new section does provide some relief from its requirements. If any item “becomes necessary to address during the course of a meeting” there is no preclusion from considering and acting upon such item. While there is no direction in the statute as to the definition of “becomes necessary to address” it makes sense that this will be judged by the same reasonableness test discussed above. Almost certainly, this will have to be litigated on a case by case basis.

5.

O.C.G.A. '50-14-1(e) was further amended with reference to the minutes requirement for meetings. Under the current statute as referenced above, an agenda was required to be prepared within two days following the adjournment of a meeting. The new statute deletes the words "an agenda" and inserts "a summary" in its place. Now, the new requirement provides:

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 of any agency.

— Once again, the statute is unclear as to the difference between the previous requirement of making an agenda available and the new language which is described as "a summary". This change could be handled together with the agenda process. In order for the person taking the minutes to have a summary of the matters acted upon within two business days after the meeting, have them prepare the agenda so the action taken can be penciled in at the meeting. For example, the following could be added beside each agenda item:

— Motion made by _____, seconded by _____, item approved/disapproved with Members _____, _____, _____ and _____, voting for and Members _____, _____ voting against.

While it may take some work with your clerks, if the agenda is properly formatted, the clerk can, simply fill in the results of the vote on the agenda. This should satisfy the requirement of having the "summary" available within two business days.

6.

The next change to the Open Meetings Statute involved the changes to O.C.G.A. '50- 14-4. This section deals with when meetings may be closed. Under current law, an "agency" may close meetings and the provisions of the Open and Public Meetings Statute are not applicable to the following:

-
- (A) Meetings in which there is an attorney client privilege 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 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;
 - (B) To discuss tax matters which are made confidential by state law,
 - (C) When discussing the future acquisition of real estate; and
 - (D) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissed, or periodic evaluation or rating of a public officer or employee - but not when receiving evidence or hearing argument on charges filed to determine disciplinary action.
 - (E) Under the current statute, if the meeting is to be closed to discuss one of the above items, there must be:
 - (1) A specific reason for such closure shown on the minutes;
 - (2) A majority vote of a quorum present for the meeting to seek the closure;
 - (3) Minutes which reflect the members present and those voting for closure of the meeting.

Under the revised statute, there is a new requirement for a sworn affidavit to be signed by the chairperson of the meeting that the meeting was held in compliance with the code section and for the stated purposes. The new requirement set forth as O.C.G.A. '50-14-4 (b) states:

— *When any meeting of an agency is closed to the public pursuant to subsection (a) of this code section, the chairperson or other person presiding over such meeting shall execute and file with the*

official minutes, 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 provide by law and identifying the specific relevant exception.

The significance of this code section cannot be under emphasized. While the current statute provides for punishment of a violation of the code section as a misdemeanor, the change effectively make the punishment as for a felony. By requiring a sworn affidavit, if there is a violation of the statute, whether the same is out of ignorance or inadvertence, the false swearing statute makes the crime punishable as a felony.

Prior to any meeting being closed to the public, the specific reason for closing the meeting shall be entered on the minutes. A majority vote is required to close any portion of a meeting. The minutes shall reflect the names of the members present and the names of the members voting for closure. Immediately following any closed meeting or closed portion of a meeting, the chairperson or other person chairing the meeting shall execute an affidavit stating under oath that the subject matter discussed during the closed portion of the meeting was devoted to matters within the exceptions provided by law and shall identify the specific exception. Each member present shall be asked to review the affidavit and, if each member shall agree with the contents of the affidavit, shall sign below the affidavit indicating said agreement.

CHANGES IN PROCEDURES

- (1) Agendas can no longer be amended by adding items for discussion and consideration at the meeting unless such item becomes necessary at the meeting. Council will consider an ordinance change at its July 1, 1999, meeting.
- (2) Agenda forms are to be modified for ease in completing meeting summaries. The agendas will include the names of all members and fill-in-the-blanks information following each agenda item which requires member action. Summaries are to be forwarded to the City Clerk on the first business day following the meeting.
- (3) Known committee meetings are to be scheduled a week in advance. The date, time, place and purpose of the meeting are to be given to the City Clerk each Friday by noon. The schedule of the following week's committee meetings will be publicly posted at 5:00 on Friday.
- (4) The City Clerk is to be notified immediately of special called committee meetings which were set with insufficient lead time to meet the requirements of number (3) above.
- (5) Committees which include two (2) or more members of Council, Authorities and/or Commissions are subject to the Open Meetings law.
- (6) Minutes of all committee meetings are to be kept by the assigned staff member responsible for the Commission or Council.
- (7) Minutes of all meetings of Council, Authorities and Commissions are to be forwarded to the City Clerk the first business day following the adoption of the minutes. Minutes must be adopted at the next meeting of the governing body.

- (8) Any two (2) members of Council, Authorities or Commissions may discuss public matters at any time other than when serving together on a committee without being subject to the Open Meetings law. Three (3) or more members should avoid such discussions without first complying with the Open Meetings law.
- (9) Never go into a closed meeting without advice from legal counsel.
- (10) When in doubt, keep meeting open.
- (11) If you have questions, ask the City Clerk.


Nancy Faulkner, City Clerk