

# OFFICE OF THE CITY ATTORNEY

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435 Ryman • Missoula MT 59802  
(406) 552-6020 • Fax: (406) 327-2105  
[attorney@ci.missoula.mt.us](mailto:attorney@ci.missoula.mt.us)

## Legal Opinion 2021-013

**TO:** Mayor John Engen, City Counsel, Dale Bickell, Ginny Merriam, Marty Rehbein

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** July 23, 2021

**RE:** Minutes of public meetings of all government, agency or organizations supported by or expending public funds must be open to the public inspection and must include the substance of all matters proposed, discussed, or decided at the public meeting.

### **FACTS:**

In conjunction with the recent inquiry to our office pertaining to public meetings being required for any government body, board, bureau, commission agency or organization or agency supported in whole or in part with public funds or expending public funds, was an inquiry about keeping public meeting minutes and public access to inspecting those public meeting minutes.

### **ISSUE(S):**

Are minutes of public meetings generally required to be maintained and be available for public inspection?

### **CONCLUSION(S):**

Yes. Pursuant to section 2-3-212 MCA as well as 37 Montana Attorney General Opinion 107(1978); minutes must be kept of public meetings, and generally those minutes must be open for public inspection; except in circumstances where Montana state law allows a body to close a public meeting for an authorized closed meeting purpose

### **LEGAL DISCUSSION:**

Both section 2-3-212 MCA as well as 37 Montana Attorney General Opinion 107 (1978) provide that public meeting minutes must be open to public inspection; except in the limited instances where Montana law specifically allows closure of the meeting for some specific reason, such as privacy.

In addition it should be noted and emphasized that pursuant to section 2-3-212 MCA one of the required elements of public meeting minutes is that the minutes must include the substance of all matters proposed, discussed, or decided during the public meeting.

Section 2-3-212 MCA provides in its entirety as follows:

2-3-212. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

- (a) the date, time, and place of the meeting;
- (b) a list of the individual members of the public body, agency, or organization who were in attendance;
- (c) the substance of all matters proposed, discussed, or decided; and
- (d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

(4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.

### **CONCLUSION(S):**

Yes. Pursuant to section 2-3-212 MCA as well as 37 Montana Attorney General Opinion 107(1978); minutes must be kept of public meetings and generally those minutes must be open for public inspection; except in circumstances where Montana state law allows a body to close a public meeting for an authorized closed meeting purpose. (Emphasis added)

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/s/

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Jim Nugent, City Attorney

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