

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2022-005

**TO:** Mayor John Engen, City Council, Dept City Clerk, Dept Mayor's Office

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** March 11, 2022

**RE:** Public agency agendas required to include item allowing public comment on public matters not on the agenda that are within jurisdiction of the public agency.

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### **FACTS:**

Recently there has been some citizen discord as to allowable citizen public comment at city council meetings.

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

Does Montana State law pertaining to public participation in governmental operations provide any guidance with respect to public comment on topics not specifically identified on the public agency agenda?

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

Pursuant to 2-3-103 MCA pertaining to public participation at public agency meetings a public agency agenda must include an item allowing public comment on any public matter that is within the jurisdiction of the public agency; but is not on the meeting agenda.

### **LEGAL DISCUSSION:**

Section 2-3-103 MCA pertaining to public participation at public agency meetings states:

**2-3-103. Public participation -- governor to ensure guidelines adopted.** (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as

defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

In the middle portion of subsection 2-3-103(1) MCA pertaining to public participation it is stated: in pertinent part that:

"The agenda for a meeting, as defined in 2-3-202 must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of the matter is included on an agenda and public comment has been allowed on that matter."

Section 2-3-202 MCA defining meeting provides:

"2-3-202 MEETING DEFINED. As used in this part, 'meeting' means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power."

**CONCLUSION(S):**

Pursuant to 2-3-103 MCA pertaining to public participation at public agency meetings a public agency agenda must include an item allowing public comment on any public matter that is within the jurisdiction of the public agency; but is not on the meeting agenda.

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/s/ Jim Nugent

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Jim Nugent, City Attorney

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