

COUNCIL DECISION REQUEST

SUBJECT: Open Meeting Law Compliance for Non Town Sponsored Events and Town Sponsored Social Events

MEETING DATE: September 16, 2010

PAYSON GOAL: NEW:

EXISTING:

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: Legal Department

AMOUNT BUDGETED:

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED:

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED:



EXHIBITS (If Applicable, To Be Attached): Proposed Policy

POSSIBLE MOTION I move to approve the attached Policy relating to Open Meeting Law Compliance for Non Town Sponsored Events and Town Sponsored Social Events.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION: Many times entities other than the Town host events and invite the members of the Town Council to attend. The Town itself also sponsors social events where a majority of the Council is present. Going back 10 plus years, the Town has posted a notice (when staff was made aware of such meetings) indicating that a quorum of the Council may be present but that no Town business would be discussed or conducted. (Members of the Attorney General's Office have indicated that "courtesy agendas" or notices are not required by law, but that it is sometimes better to be safe than sorry. February 2, 2010 training, comments by Lisa Maxie-Mullins.) Although such a 'notice' provides information to the public, such 'notice' does not provide any protection under the Open Meeting Law.

More recently, the Town has been posting a Council Agenda if one or more of the Council Members would be speaking to the group. This has been an exceedingly conservative approach in part motivated by a 2005 Attorney General's Opinion and the 'probation' the Town has been on for past transgressions and the associated reporting requirements. Such Agendas have created an additional burden for staff (preparation of an agenda, attending the meeting, and preparation of minutes). An additional downside to the notices and agendas is that at times, the citizens of the Town are inundated with notices and agendas where nothing of substance occurs.

Although Town staff prepares agendas and notices, ultimately it is only an individual who can violate the Open Meeting Law and not the Town as an entity. Therefore it is, and will always be up to individual Council Members to insure their own compliance with the Open Meeting Law, including whether they attend any given event or gathering and if they discuss Town issues with any other Council Members at such event or gathering.

The proposed administrative policy would give Staff specific direction as to the procedures to be followed. Although administrative policies are generally not brought to the Council for approval, because the proposed administrative policy directly affects the Council, Council approval is being sought.

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COUNCIL DECISION REQUEST

PROS: _____

CONS:

PUBLIC INPUT (if any):

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):

FUNDING:

Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

3A: _____ Date: _____

Administrative Policy

OPEN MEETING LAW COMPLIANCE FOR NON TOWN SPONSORED EVENTS AND TOWN SPONSORED SOCIAL EVENTS

Summary

The purpose of this policy is to insure compliance with Arizona's Open Meeting Law (A.R.S. §38-431 et. seq.) in situations where Town Council Members are invited to either (1) non Town sponsored events or (2) Town sponsored social events.

Process

The Town Clerk's office, in consultation with the Town Manager and Town Attorney, shall be responsible for implementing the provisions of this policy.

The Clerk will not prepare a notice or agenda in the following situations:

- 1) Four or more Council Members will be present at a non Town sponsored event or a Town sponsored social event and (1) none of the Council Members publicly address the gathering and (2) the attending Council Members do not discuss Town business with each other.
- 2) Four or more Council Members will be present at a non Town sponsored event or a Town sponsored social event and (1) one or more Council Members make Brief introductory or perfunctory remarks and (2) the attending Council Members do not discuss Town business with each other.

The Clerk will prepare a Council Agenda in the following situations:

- 1) Four or more Council Members will be present at a non Town sponsored event or a Town sponsored social event and one or more of the Council Members will be making substantive remarks to the group on an issue that may come before the Council.
- 2) Four or more Council Members will be present at a non Town sponsored event or a Town sponsored social event and the Council Members will be participating in substantive discussions related to any issue(s) that may come before the Council.

Background

Many times entities other than the Town host events and invite the members of the Town Council to attend such events. The Town itself also sponsors social events where a majority of the Council is present. Going back 10 plus years, the Town has posted a notice (when staff was made aware of such meetings) indicating that a quorum of the Council may be present but that no

Town business would be discussed or conducted.¹ Although such a 'notice' provides information to the public, such 'notice' does not provide any protection under the Open Meeting Law.

More recently, the Town has been posting a Council Agenda if one or more of the Council Members would be speaking to the group. This has been an exceedingly conservative approach in part motivated by a 2005 Attorney General's Opinion and the 'probation' the Town has been on for past transgressions and the associated reporting requirements. Such Agendas have created an additional burden for staff (preparation of an agenda, attending the meeting, and preparation of minutes). An additional downside to the notices and agendas is that at times, the citizens of the Town are inundated with notices and agendas where nothing of substance occurs.

Although Town staff prepares agendas and notices, ultimately it is only an individual who can violate the Open Meeting Law and not the Town as an entity.² Therefore it is, and will always be up to individual Council Members to insure their own compliance with the Open Meeting Law, including whether they attend any given event or gathering and if they discuss Town issues with any other Council Members at such event or gathering.

Definitions

Agenda - a notice to the public made at least 24 hours before a Council Meeting indicating when and where the meeting will be held, and what will be discussed at the Council Meeting.

Council Meeting - a gathering, in person or through technological devices, of four or more Council Members at which they discuss, propose or take legal action, including deliberations by a quorum with respect to such action.

Non Town Sponsored Event - events sponsored by third parties such as the Chamber of Commerce, Tonto Community Concert Association, Gila County Community College, etc., that may or may not be open to the public.

Quorum - four or more Council Members.

Town Sponsored Social Events - events such as the Town holiday party and Parks and Recreation sponsored events.

¹ Members of the Attorney General's Office have indicated that "courtesy agendas" or notices are not required by law, but that it is sometime better to be safe than sorry. February 2, 2010 training, comments by Lisa Maxie-Mullins.

² Note that all of the sanctions for Open Meeting Law violations are personal - removal from office, civil fees, and payment of attorney's fees. The only thing related to the entity is that any action taken in violation of the Open Meeting Law is void.

References

The provisions of Arizona's Open Meeting Law are set forth in A.R.S. 38-431, et. seq.

A.G. Opinion I05-004, July 25, 2005. This Arizona Attorney General Opinion primarily addresses the use of email, but as a side note indicates that in the Attorney General's Opinion, if one Council Member 'proposes' an action to a quorum of the Council, such a proposal is a violation of the Open Meeting Law.