

**OPEN RECORDS AND MEETINGS OPINION
2019-O-16**

DATE ISSUED: July 19, 2019

ISSUED TO: City of Surrey

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Jenny Johns asking whether the City of Surrey violated N.D.C.C. § 44-04-20 by failing to post notice of committee meetings.

FACTS PRESENTED

The Surrey City Council is comprised of seven members and holds regular meetings on the first Monday of each month.¹ At a meeting on February 4, 2019, the Surrey City Council appointed three of its members to a Staffing Committee to “interview City employees regarding tasks required for each position, review job descriptions, review chain of command, and make recommendations to the City Council regarding needed changes to staffing and positions within the City.”² The Staffing Committee met on March 1, March 7, March 14, March 21, and March 25, 2019, and provided its recommendations to the full City Council at its meeting on April 1, 2019.³

During its next regular meeting on May 6, 2019, the City Council appointed a new Staffing Committee that was tasked with implementing the recommendations of the former Staffing Committee.⁴ The new Staffing Committee consisted of three city council members and met on May 8 and May 22, 2019.⁵

The meetings of the above committees were not set by a yearly schedule but agendas were prepared and posted with the City Auditor's office, which is also the city's main office, and at the location of the meeting, with the exception of the May 8, 2019, Staffing

¹ Letter from Debra Hoffarth, Att'y, City of Surrey, to Att'y Gen.'s Office (June 25, 2019); see also Surrey, North Dakota, www.surreynd.org.

² Letter from Debra Hoffarth, Att'y, City of Surrey, to Att'y Gen.'s Office (June 25, 2019); see also Minutes, Surrey City Council (Feb. 4, 2019). The City Council authorized the Mayor to appoint the committee members, which was done on February 18, 2019.

³ Letter from Debra Hoffarth, Att'y, City of Surrey, to Att'y Gen.'s Office (June 25, 2019).

⁴ *Id.* see also Minutes, Surrey City Council (May 6, 2019).

⁵ Letter from Debra Hoffarth, Att'y, City of Surrey, to Att'y Gen.'s Office (June 25, 2019).

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Committee meeting for which no agenda was prepared and no notice provided.⁶ At its regular meeting on June 3, 2019, the City Council acknowledged the error of failing to post notice of this committee meeting and attempted to remedy the situation by drafting minutes and discussing the topics covered by the committee meeting.⁷

ISSUES

1. Whether the Surrey City Council posted notice of its committee meetings in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Staffing Implementation Committee of the Surrey City Council violated N.D.C.C. § 44-04-19 by conducting a meeting which could not be heard by the members of the public who attended the meeting.

ANALYSIS

Issue One

“Meetings”⁸ of a “governing body”⁹ of a “public entity”¹⁰ must be open to the public with notice provided in substantial compliance with N.D.C.C. § 44-04-20.¹¹ Committees delegated any part of public business by governing bodies are subject to the same open meetings law, including the notice requirements of N.D.C.C. § 44-04-20.¹²

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity, which includes meetings of the full governing body and meetings of any committee thereof.¹³ For regularly scheduled meetings, the notice must be posted at the principal office of the governing body or committee, if one exists, at the location of the meeting on the day of the meeting, given to anyone requesting to receive notice of upcoming meetings,¹⁴ and, for city councils and its committees, either filed with the city auditor or posted on the city’s website.¹⁵ For emergency or special

⁶ Letter from Debra Hoffarth, Att’y, City of Surrey, to Att’y Gen.’s Office (June 25, 2019).

⁷ Letter from Debra Hoffarth, Att’y, City of Surrey, to Att’y Gen.’s Office (June 25, 2019), *see also* Minutes, Surrey City Council (June 3, 2019).

⁸ N.D.C.C. § 44-04-17.1(9) (definition of “meeting”).

⁹ N.D.C.C. § 44-04-17.1(6) (definition of “governing body”).

¹⁰ N.D.C.C. § 44-04-17.1(13) (definition of “public entity”).

¹¹ N.D.C.C. §§ 44-04-19, 44-04-20.

¹² N.D.A.G. 2019-O-03.

¹³ N.D.C.C. § 44-04-20.

¹⁴ No one had requested to receive personal notice for the meeting dates at issue in this opinion. Letter from Debra Hoffarth, Att’y, City of Surrey, to Att’y Gen.’s Office (June 25, 2019).

¹⁵ N.D.C.C. § 44-04-20(4), (5).

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meetings, notice must also be given to the public entity's official newspaper and to any representatives of the news media requesting to be notified of the special meeting.¹⁶

Regular meetings are those meetings for which the public entity has filed a yearly schedule with, in the case of a city council or its committee, the city auditor or on the city's website.¹⁷ The Staffing Committees did not file annual schedules of upcoming meetings¹⁸ so all meetings of the committees were considered "special" meetings that must comply with laws governing special meetings.¹⁹ Although the committees posted notice at the principal office, with the city auditor, and at the meeting location, the committees did not provide an agenda or notice to the city's official newspaper. Furthermore, the Staffing Committee did not provide any notice or agenda for the May 8, 2019, meeting.

It is therefore my opinion that the Surrey City Council violated open meetings law when it failed to provide notice to the official newspaper for committee meetings and by failing to notice a May 8, 2019, committee meeting.

Issue Two

The requestor of this opinion alleges that during the May 22, 2019, Staffing Committee meeting, members of the committee "spoke as quietly as possible, and pointed at paperwork at times instead of speaking or asking questions to the attorney out loud."²⁰ This office previously opined that "[i]t is reasonable to conclude that a meeting which cannot be heard by the public is the equivalent of a closed or secret meeting and would be a violation of N.D.C.C. § 44-04-19."²¹ The Committee provides that "members spoke in a conversational tone and were discussing a diagram of the City's chain of command" and so there was some gesturing to the chart while it was being discussed.²² However, there "was no attempt to speak too quietly or exclude the public in any manner."²³ Before the start of the meeting, the ventilation system was turned off so it would not interfere with the ability to hear during the meeting and there were no requests to speak louder.²⁴

¹⁶ N.D.C.C. § 44-04-20(6).

¹⁷ N.D.C.C. § 44-04-20(3).

¹⁸ Letter from Debra Hoffarth, Att'y, City of Surrey, to Att'y Gen.'s Office (June 25, 2019).

¹⁹ N.D.A.G. 2018-O-19.

²⁰ Email from Jenny Johns to Att'y Gen.'s Office (May 30, 2019, 4:20 PM).

²¹ N.D.A.G. 2001-O-13.

²² Letter from Debra Hoffarth, Att'y, City of Surrey, to Att'y Gen.'s Office (June 25, 2019).

²³ *Id.*

²⁴ *Id.*

Opinions issued by this office under N.D.C.C. § 44-04-21.1 must be based on the facts of the public entity. Under the facts presented, it is my opinion the committee did not violate N.D.C.C. § 44-04-19.

CONCLUSIONS

1. The Surrey City Council failed to posted notice of its committee meetings in substantial compliance with N.D.C.C. § 44-04-20.
2. The Staffing Committee of the Surrey City Council did not violate N.D.C.C. § 44-04-19 in conducting its May 22, 2019, meeting.

STEPS NEEDED TO REMEDY VIOLATION

I recognize the remedial efforts taken by the Surrey City Council by discussing the topics of the May 8, 2019, unnoticed committee meeting at its next scheduled meeting, and creating minutes of the unnoticed meeting. However, the May 8, 2019, meeting minutes, and in fact all of the committees' meeting minutes, are scant at best, with only brief references to general discussions. The members of the committee present for the meetings should therefore review the meeting minutes and add details about the specific discussions that took place. The City Council must provide the updated meeting minutes of all committee meetings to Jenny Johns and any other member of the public who requests the minutes, free of charge.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.²⁵ It may also result in personal liability for the person or persons responsible for the noncompliance.²⁶

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cc: Jenny Johns (via email only)

²⁵ N.D.C.C. § 44-04-21.1(2).

²⁶ *Id.*