

**OPEN RECORDS AND MEETINGS OPINION
2010-O-12**

DATE ISSUED: September 24, 2010

ISSUED TO: Nome City Council

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Randy Peterson asking whether the Nome City Council (Council) violated N.D.C.C. § 44-04-20 by failing to provide proper notice of its June and July 2010 monthly meetings.

FACTS PRESENTED

The Council meets monthly on the first Tuesday of the month. A meeting was held June 1, 2010. The notice for the meeting stated:

City Council Meeting
June 1, 2009¹ Nome City Hall
7PM Bring the meeting to order
Old Business
New Business

The Council met again on July 6, 2010. The notice was identical to the notice for June except the date was changed. Notices are posted a week before the meetings.

At the June 1 meeting, the Council discussed a resident with unlicensed vehicles, miscellaneous correspondence, a padlock for the basement of City Hall, equipment left on city property, dog licenses, a building project, and preparation for the Fourth of July.

On July 6 the Council discussed unlicensed vehicles, the Fourth of July, a park board ordinance, water testing and rates, unplanned trees, and swore in a new council member.

¹ The meeting was held in 2010 but the notice for that meeting said 2009. The Mayor explained that the city uses the same template each month and a clerical error was made when the Auditor forgot to change the year on the template.

ISSUE

Whether the Council violated N.D.C.C. § 44-04-20 by failing to properly notice its June 1 and July 6, 2010, meetings.

ANALYSIS

A meeting notice must include the “date, time, and location of the meeting and, if practicable, the topics to be considered.”² This list of topics is also referred to as the agenda. At a regular meeting, “a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken” at the meeting.³ The meeting agenda for a regular meeting can be amended on the day of the meeting or during the meeting.⁴

In 2006 an opinion was issued regarding the Council’s failure to post notices, including an agenda, prior to meetings.⁵ Prior to that opinion, the Council did not provide advance notice of its meetings and when asked by a resident to do so, only posted an annual schedule of meetings.

Since that time, the Mayor explains that the Council’s policy is for Council members to inform the city auditor of any issue they want to bring before the Council a week before the meeting so that it can go on the agenda. Also, if anything is tabled at a meeting, the topic is automatically put on the agenda for the next meeting as “Old Business.” Notice is now posted one week prior to the regular meetings. The Mayor provided several months worth of notices from the past year that all include agenda items to demonstrate that it is now the practice of the Council to include agenda items on its regular meeting notices.

According to the Mayor, no specific agenda items were included on the June and July notices because the council members were too busy preparing the town for its annual Fourth of July celebration to contact the auditor about the meetings. Thus, at the time the notice was posted, the auditor had no specific topics to put on the agenda.⁶

² N.D.C.C. § 44-04-20(2).

³ N.D.C.C. § 44-04-20(2). N.D.A.G. 2003-O-07.

⁴ N.D.A.G. 2003-O-07; N.D.A.G. 2001-O-15; N.D.A.G. 98-O-21.

⁵ See N.D.A.G. 2006-O-07.

⁶ See N.D.C.C. § 44-04-21.1(1) (“the attorney general shall base [an open records] opinion on the facts given by the public entity”).

Both the June 1 and July 6 meetings were regular meetings. The notice requirements in N.D.C.C. § 44-04-20(2) do not restrict the items that may be discussed at a regular meeting.⁷ Therefore, new agenda items not anticipated at the time the agenda was prepared may be added to the agenda during a regular meeting.⁸ From the time a regular meeting is convened until the meeting is adjourned, a governing body is free to discuss any item of public business regarding the entity.⁹

At the time the agenda and notice was drafted and posted, the auditor was unaware of any specific topics the Council anticipated discussing at the meetings. Although sparse, an agenda was included with the notice and because these were regular meetings rather than special meetings, the phrases “new business” and “old business” were acceptable.¹⁰

CONCLUSION

It is my opinion that the Council provided notice of its June and July 2010 regular meetings in substantial compliance with N.D.C.C. § 44-04-20.

Wayne Stenehjem
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mkk/vkk

⁷ N.D.A.G. 2003-O-12; N.D.A.G. 99-O-08; N.D.A.G. 98-O-21.

⁸ N.D.A.G. 2003-O-12.

⁹ Id. See also N.D.A.G. 99-O-08. Cf. N.D.C.C. § 44-04-20(6) (topics for consideration at an emergency or special meeting are limited to those included in the notice).

¹⁰ See N.D.A.G. 2009-O-03; N.D.A.G. 2005-O-17; N.D.A.G. 2002-O-11. Only topics specifically listed on the notice may be discussed during a special meeting so general catch-all phrases are not appropriate for notices of special meetings.