

## OPEN MEETINGS

Note from General Counsel, Alan Schmitz regarding the basic requirements for C4HCO with respect to open meetings:

The purpose of the open meetings law is to afford the public access to a broad range of meetings at which public business is conducted.

Notice of a meeting is broadly required when a quorum or three or more board members (whichever is fewer) have a meeting in which public business is discussed with respect to a proposed policy, position, resolution, rule or other formal action. There must be a link between the meeting and policy-making powers of C4HCO. The issue is whether C4HCO has conducted its work outside of the public eye, depriving the public of the motivations, discussions, policy arguments and factors which lead to a decision. Discussing procedural questions and over-arching matters of public importance probably do not constitute a violation of the open meetings law.

When in doubt, transparency and discussing matters of public importance in an open meeting should be our default position – especially given the level of scrutiny to which C4HCO has been subjected.

**Working Sessions:** Public entities routinely have working sessions. The inviolate rule for working sessions is that no proposed policy, position, resolution, rule or other formal action may take place in the working session. This includes no “straw polls” or secret ballots. Further, many of the cases that discuss the open meetings law revolve around whether a public entity engaged in all the discussions, policy arguments and airing of motivations outside of the public and then simply later “rubber-stamped” a policy-making decision in an actual public meeting. The courts have said that denying the public the ability to participate in the deliberative process by simply witnessing the final tally of votes is a violation of the law.

For this reason entities subject to the open meetings law uniformly provide public access to working sessions as they relate to public business even if no decision is made. I would encourage working sessions to provide education and data gathering, but I think it would be prudent to conduct these session in an open meeting.

**Agenda Setting Meetings:** I am comfortable with having the meetings to set agendas, define expectations, managing the information to be provided to the Board and when. Obviously, we would avoid any policy-making in such a meeting.

**Board member Contact:** Board members should feel free to call one another, exchange views and philosophies and ask questions between meetings. I would avoid group-wide e-mail exchanges and the like for obvious reasons.