



Homer City Hall

491 E. Pioneer Avenue

Homer, Alaska 99603

www.cityofhomer-ak.gov

City of Homer Agenda

Planning Commission Worksession

Wednesday, August 17, 2022 at 5:30 PM

Cowles Council Chambers and via Zoom Webinar

<https://cityofhomer.zoom.us/j/93628153389?pwd=QlFhU3hzR1FmNlZpenFxSUk5czhrdz09>

Webinar ID: 93628153389 Password: 865591

Dial (669)900-6833 or (253)215-8782 or Toll Free (877) 853-5247 or (888) 788-009

CALL TO ORDER, 5:30 P.M.

AGENDA APPROVAL

DISCUSSION TOPIC(S)

- A. Memorandum from City Clerk re: Annual Commission Training for Efficient & Effective Meetings
- B. Staff Report 22-53, Review of Conditional Uses and Structures - **please refer to page 26 in the regular packet**

REGULAR MEETING AGENDA (if time allows)

COMMENTS OF THE AUDIENCE (3 minute time limit)

ADJOURNMENT, NO LATER THAN 6:20 P.M.

Next Regular Meeting is **WEDNESDAY, AUGUST 17, 2022 at 6:30 p.m.** All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar.



City of Homer

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Office of the City Clerk

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Memorandum

TO: CITY OF HOMER COMMISSIONS AND BOARD
FROM: MELISSA JACOBSEN, MMC, CITY CLERK
DATE: AUGUST 17, 2022
SUBJECT: COMMISSION AND BOARD TRAINING

A goal of the City Clerk's office staff is to ensure Commissioners and Board members have the information they need to conduct efficient and effective meetings. One way to achieve this goal is to provide timely packet materials and another is to conduct annual trainings on meeting conduct.

Annual Commission and Board Trainings will be held the meeting following commission/board appointment confirmation by City Council. This training is intended to be an open discussion format so will commonly be scheduled as a worksession before the regular meeting.

Included with this memo is the Annual Commission and Board Training information packet, a copy of Alaska Statutes 44.62.310 Government Meetings Public, and Homer City Code 2.58 Boards and Commission. Please take time to review this information and bring any questions or feedback to the training worksession.



ANNUAL COMMISSION AND BOARD TRAINING

HOW THE OMA APPLIES TO A COMMISSION/BOARD

The OMA applies to every "governmental body", which includes "an assembly, council, board, commission, committee, or other similar body of a public entity" that has the authority to establish policies or make decisions for a public entity or to advise or make recommendations to the public entity. Although both decision-making bodies and advisory bodies are included under the OMA, the repercussions for violations of the OMA differ depending on the nature of the body.

Legislative Capacity – When a City governing body is called upon to institute or remark upon policy and procedure, it is acting in its legislative capacity and is subject to the OMA. For example, a commission/board is acting legislatively when it conducts acts such as recommending changes to Homer City Code or plans/policies.

Advisory-Only “Meetings” – A body with only the power to advise or make recommendations, but has no authority to establish policies or make decisions for the public entity, has a "meeting" when:

- More than three members or a majority of the members, whichever is less, are present;
- There is a gathering of governmental body members; and
- This gathering is "prearranged for the purpose of considering a matter upon which the governmental body is empowered to act." AS 44.62.310(h)(2)(b).

Considerations To What Constitutes An Advisory-Only “Meeting”:

- Meeting must be prearranged for the purpose of considering matter upon which the body is empowered to act. Chance encounters will not constitute a meeting, even if the members discuss a matter on which they could advise or make a recommendation.
- A matter on which the body is permitted to act includes every step of the deliberative process, from brainstorm sessions to fine-tuning a proposal.
- At least four members or a majority of members, whichever is a smaller amount, must be present for a meeting to occur.
- A social gathering arranged for a given social purpose and not prearranged to discuss matters on which the body can act is not a meeting.

Teleconference Meetings – The OMA expressly permits meetings via teleconference. When voting in a teleconference meeting, all votes should be taken via roll call so the public can identify how each member voted. Although Homer City Code provisions regarding teleconference participation only applies to City Council members, the OMA grants the same convenience to other commission and board members (which are outlined in commission/board bylaws).

Serial Communications – If four of the members email each other (such as selecting “reply all”) about a matter that the body is authorized to collectively act on, a meeting could occur. Similarly, if a majority of the members of a subcommittee that consists of two or more members email each other (such as 2-3 commissioners/board members working on a project together) about the same kind of matter, a meeting could occur. See AS 44.62.310(h)(2)(A).

Open Meetings Act FAQ:

- Q: *Can two commissioners get together to work on something to bring back to the body to discuss?*
- A: No. Two or more members gathering for the purpose of advising or making recommendations is considered a subcommittee, which falls under the description of a governmental body, as noted in the second bullet point above.
- Q: *Can commissioners email each other with questions about Commission business?*
- A: No. A serial meeting is one in which a quorum of the body communicates with each other, directly or indirectly, through whatever medium, to develop collective concurrence. Serial meetings are in violation of the Open Meetings Act. Commissioners should be aware of the potential for serial meetings and never hit “reply all” when responding by email.

QUORUM (HCC 2.58.020 (d))

Four commission or board members shall constitute a quorum of seven members; and five commission or board members shall constitute a quorum of eight members.

VOTING (HCC 2.58.020 (e))

Each member, including the chairperson, shall vote, and shall not abstain from voting, unless such member claims a conflict of interest, in which event the member shall be excused from voting. The member shall then state for the record the basis for the abstention.

Four affirmative votes of seven members and five affirmative votes of eight members are required to pass a motion.

Voting will be by a roll call vote, the order to be rotated; or by unanimous consent if no objection is expressed.

Voting by proxy or absentee is prohibited.

PARLIAMENTARY PROCEDURES/ROBERTS RULES

Per Homer City Code 2.58.050(i) meetings shall be conducted under the current edition of Robert’s Rules of Order Newly Revised (RONR).

Basics of Robert’s Rules of Order

To ensure the meeting runs smoothly and effectively, it is important to familiarize yourself with basic motions and who is responsible for what. Below are the most common motions used:

Main Motion – A motion is a formal proposal by a member, in a meeting, that the body take a certain action. Typically the Chair will announce a business item, staff or a member will provide a report, and one or more motions to carry out the recommendations in the report may be introduced.

1. Member raises hand and waits for recognition from the presiding officer.
2. The member states the motion. Motions should be a clear, in-the-positive statement of action.
3. Another member must second the motion to continue.
4. The presiding officer states the motion. (This puts the motion on the floor.)
5. Presiding officer calls for discussion on this motion. The member who introduced the motion has the right to speak first. Members wishing to discuss the motion raise their hands and wait

for recognition from the presiding officer before speaking, enabling everyone to share their opinions.

6. Presiding officer calls for a vote on the motion.
7. Presiding officer states results of vote and resulting action.

Motion to Amend – During discussion, it may become apparent that an amendment (modification) to the original motion is necessary. Anyone may request to amend the original motion, but the proposed amendment must be related to the subject of the main motion.

1. Member raises hand and is recognized from the presiding officer.
2. Member states the amendment.
3. Amendment must be seconded.
4. Presiding officer states the amendment.
5. Presiding officer calls for discussion on the amendment.
6. Presiding officer calls for a vote on the amendment, and announces result. If the amendment passes, the motion on the floor is now the amended motion. If the amendment fails, the original motion remains on the floor.

Motion to Postpone to a Certain Time – A member may move to delay action (voting) on a motion to a certain time, commonly the next meeting. A postponed motion is considered unfinished business and automatically comes up for further consideration at the next meeting (or designated date) under Pending Business.

1. A member makes a motion to postpone the motion to another date specified (usually the next meeting).
2. Motion must be seconded.
3. Presiding officer states motion.
4. Presiding officer calls for discussion.
5. Motion is amendable and debatable.
6. Presiding officer calls for a vote, and states result of the vote and action taken.

Motion to Suspend the Rules – Used if the Commission/Board wishes to do something during a meeting that it cannot do without violating one or more of its regular rules. Commonly used to address agenda items out of order after the agenda has been approved or allowing an unscheduled visitor to address the body.

1. Can be made any time that no question is pending.
2. A member makes a motion; “I move to suspend the rules to hear New Business, Item C. before New Business, Item A.”
3. Is out of order when another has the floor.
4. Motion must be seconded.
5. Motion is not debatable or amendable.
6. Motion must have two-thirds majority approval.
7. Presiding officer calls for a vote, and states the result of the vote and the action taken.

Motion for Point of Order – Used when a member thinks the rules are being violated or more commonly when discussion does not pertain to the topic of the motion on the floor.

1. Does not have to be recognized by the presiding officer.
2. Does not need to be seconded.

3. Is not debatable. The presiding officer may allow explanation; “The current discussion is not germane to the matter at hand.”
4. Is not amendable.
5. Is ruled on by the presiding officer. The presiding officer may seek the advice of the Clerk or more senior members present.
6. Cannot be reconsidered.

Motion for Reconsideration – Used to bring a motion back before the Commission/Board for further consideration.

1. Can only be made by a member who voted with the prevailing side (aye if the motion was adopted/no if the motion was lost.)
2. Motion must be seconded.
3. Motion cannot be amended.
4. Only the merits of the reconsideration are debatable.
5. Requires a two-thirds vote to adopt a motion to reconsider.
6. Presiding officer states the result of the vote and the action taken.

Call for the Question – Used to immediately close discussion and the making of subsidiary motions except the motion to “Lay on the Table.” Commonly used to bring an immediate vote on one or more pending motions.

1. Takes precedence over all debatable or amendable motions to which it is applied.
2. Yields only to the subsidiary motion to lay on the Table, privileged motions and all applicable incidental motions.
3. Must be seconded.
4. Is out of order when another has the floor.
5. Is not debatable or amendable.
6. Requires a two-thirds vote to adopt a call for the question.
7. Cannot be reconsidered.

HYBRID MEETINGS

When participating in a meeting by Zoom:

- Keep your camera on whenever possible and be aware of what’s visible on your screen. This allows a semblance of normalcy as if we’re in the same room together, and makes it easier for the Chair to call on commissioners/boardmembers.
- Mute yourself if you aren’t speaking. Too much background noise disrupts the meeting and the person currently speaking.

CONDUCT OF COMMISSIONERS/BOARDMEMBERS

While the meeting is in session, members should not interrupt the proceedings or any member that has the floor. A member, once recognized, should not be interrupted when speaking unless it is to call them to order. If a member is called to order, they should cease speaking until the question of order can be determined. If determined to be in order by the Chair, the member should be permitted to proceed.

After being recognized by the Chair, members may briefly question individuals speaking during audience participation or testifying during a public hearing, but may not enter into a discussion with the individual.

COMMISSIONER/BOARDMEMBER RESPONSIBILITIES

Members represent the entire community and should use their knowledge of the community and their unique position to articulate local values. Public meetings provide an opportunity for direct interaction between the board and commissions and community residents. Meetings give the local residents an opportunity to see the commission/board in action and give members the chance to hear, first-hand, about the concerns of local residents.

In addition to understanding, educating, and guiding the community in its development, members need to understand their role as advisory to the City Council.

CHAIR RESPONSIBILITIES

The Chair's responsibilities include presiding at the meetings and maintaining order, working with the staff liaison to develop agendas, conducting the meetings in a fair manner, keeping the commission/board discussion on track and germane to the subject, and rules on recusals. When the Chair is absent, the Vice-Chair carries out the duties of the Chair.

STAFF RESPONSIBILITIES

Staff liaisons are staff professionals with significant work responsibilities in addition to their commission/board liaison activities. In general, the liaisons are individuals whose work responsibilities relate to that of the commission/board. Liaisons do not work for or at the direction of the commission or board; they are assigned by the City Manager and follow the direction of the City Manager. They are professionals who provide guidance, issue analysis, and recommendations, and ensure the intent of the commission or board is relayed to administration and the City Council in a timely manner.

The Recording Clerk is responsible for ensuring timely meeting notifications, taking meeting notes that can be developed into a meeting summary, providing parliamentary assistance, and guidance when needed.

COMMITTEES/SUBCOMMITTEES

Occasionally, subcommittees are created for fact finding/information gathering for the purpose of advising the full board/commission on issues that the commission or board will take into consideration when advising the City Council. Only those members of the commission/board appointed to the subcommittee are considered subcommittee members and it is their numbers that determine whether or not a quorum is present. Members of the public and staff may be invited to the subcommittee meetings to provide reports and information but are not considered members for the purposes of voting or determining a quorum.

Chapter 2.58

BOARDS AND COMMISSIONS

Sections:

- 2.58.010 Boards and commissions.
- 2.58.020 Creation of City boards and commissions.
- 2.58.030 Applicability.
- 2.58.035 Commission and board member terms.
- 2.58.040 Commission and board bylaws.
- 2.58.050 Required procedures.
- 2.58.060 Teleconferencing.

2.58.010 Boards and commissions.

City Council may create or abolish boards and commissions. Council shall create or abolish boards and commissions via ordinance. Council shall establish the number of members of each board or commission, their terms of office, and the purpose for which the board or commission is created via ordinance. [Ord. 18-38(S) § 2, 2018].

2.58.020 Creation of City boards and commissions.

The following commissions and boards have been created by City Council and are subject to this chapter unless otherwise provided in this title:

- a. Library Advisory Board;
- b. Parks, Art, Recreation, and Culture Advisory Commission;
- c. Port and Harbor Advisory Commission;
- d. Advisory Planning Commission;
- e. Economic Development Advisory Commission. [Ord. 18-38(S) § 2, 2018].

2.58.030 Applicability.

Except as otherwise provided within this title, this chapter applies to all boards and commissions created by City Council which exercise powers vested in the City or which serve as an advisory body of the City. This chapter does not apply to standing committees, special committees, work groups or task forces which are created jointly with other governing bodies, City staff or which do not exercise powers vested in the City. [Ord. 18-38(S) § 2, 2018].

2.58.035 Commission and board member terms.

Appointment and removal of the members of City boards and commissions shall be by recommendation of the Mayor and confirmation of such action by the Council, except as specifically provided otherwise in the Alaska Statutes and/or under other provisions of the code. In addition to the voting members of the board or commission, the Mayor may appoint honorary members of a board or commission, subject to confirmation by Council. The honorary members' terms are to be determined at the time of appointment. Honorary members of a board or commission may participate in the deliberations of the board or commission, but may not vote, nor shall they be counted in determining whether a quorum is present. [Ord. 18-38(S) § 2, 2018].

2.58.040 Commission and board bylaws.

a. Except as otherwise provided in this title, all boards and commissions created by Council shall draft and approve proposed bylaws governing the operations of their respective areas of authority, subject to review by the City Attorney. Once approved by the board or commission, the proposed bylaws shall be submitted to Council for approval via resolution.

b. Except as otherwise provided in this title, the City Clerk shall file the bylaws and the resolution approving them. The City Clerk shall make the bylaws available to the public upon request.

c. A commission or board may recommend an amendment to its bylaws to Council after considering any amendments at two separate meetings. Amendments to bylaws of any City commission or board shall be effective upon approval of the amendments by Council via resolution. [Ord. 18-38(S) § 2, 2018].

2.58.050 Required procedures.

Except as otherwise provided in this title, bylaws for boards and commissions shall contain:

a. Presiding Officer. The presiding officer of the board or commission shall be the chairperson. In the chairperson's absence, the vice-chairperson shall be the presiding officer. In all other circumstances, the most senior member shall preside. The presiding officer shall preserve order and decorum at all meetings of the board or commission, while promoting discussion by all members in deliberations unless otherwise prohibited by law.

b. Staff Liaison. The City Manager shall designate an employee to serve as a staff liaison to each board or commission. The staff liaison shall assist the chairperson in setting meetings, preparing agendas, and other documentary material, and coordinating the acquisition of needed materials and training.

c. Recording Clerk. The City Clerk shall designate a recording clerk to take minutes for each board and commission and that designee shall serve as the board's or commission's parliamentary advisory pursuant to AS 29.20.380(10) and HCC 2.12.010 and assist the chairperson with the conduct of the meeting.

d. Quorum. Four commission or board members shall constitute a quorum of seven members; and five commission or board members shall constitute a quorum of eight members.

e. Voting. Each member, including the chairperson, shall vote, and shall not abstain from voting, unless such member claims a conflict of interest, or has an excused absence, in which event the member shall be excused from voting. The member shall then state for the record the basis for the abstention.

1. Four affirmative votes of seven members and five affirmative votes of eight members are required to pass a motion.
2. Voting will be by a roll call vote, the order to be rotated; or by unanimous consent if no objection is expressed.
3. Voting by proxy or absentee is prohibited.

f. Staff Reports and Recommendations. The staff liaison shall submit reports and recommendations for those agenda items requiring decisions or recommendations by any board or commission. Other staff having experience, education, and professional training in the subject matter may provide input into the reports and recommendations, or may provide supplemental information. The information submitted may be oral, written or graphic, or some combination of all. Except as otherwise provided in this code, the reports and recommendations shall be accepted as evidence of record to the same extent as oral testimony and exhibits accepted from applicants, opponents, persons who are subjects of an inquiry, expert and lay witnesses, and members of the public who provide information for the record of the proceedings.

g. Attendance. Any member who is unable to attend a meeting, whether regular or special, shall contact the Clerk in advance no later than two hours prior to the scheduled meeting time for excusal.

h. Vacancies. With exception of the Planning Commission, a commission or board member's appointment is vacated under the following conditions:

1. A member fails to qualify to take office within 30 days after their appointment;
2. A member resigns;
3. A member is physically or mentally unable to perform the duties of the office;
4. A member is convicted of a felony or of an offense involving a violation of their oath of office; or

5. A member has three consecutive unexcused absences, or misses half of all meetings within an appointment year, whether excused or unexcused.

Planning Commission vacancy terms are addressed in HCC 2.72.040(c).

i. Rules of Order. Boards and commissions shall abide by the current edition of Robert's Rules of Order insofar as it is consistent with the board's or commission's bylaws, other provisions of the Homer City Code, or standing rules. In all other cases, bylaws, the code, or the standing rule shall prevail.

j. Training and Model Procedures.

1. Training sessions developed or arranged by the City Clerk and approved by the City Manager shall be mandatory unless a member's absence is excused by the chairperson.

2. The City Manager and/or City Clerk, in their discretion and in consultation with the City Attorney as needed, may develop model procedures to be used as a guide for boards and commissions.

k. Teleconferencing. Teleconference participation is allowed with notice to the Clerk no later than two hours prior to the scheduled meeting time. [Ord. 21-50(S)(A) § 1, 2021; Ord. 18-38(S) § 2, 2018].

2.58.060 Teleconferencing.

a. This section governs the teleconference participation of board and commission members at all regular meetings, special meetings, and worksessions.

b. "Teleconference" means remote participation by telephone or web-based format by a member for a meeting of the board or commission which must enable the remote member, for the duration of the meeting, to clearly hear and to be heard by the chairperson, all other members, the staff liaison, the Clerk, and any public in attendance.

c. "Appointment year" means the 12-month period commencing the first day of the first month after expiration of terms.

d. The preferred procedure for all meetings is that all members should make all reasonable effort to be physically present at the designated time, date, and location within the City for the meeting. Teleconference participation is intended for good cause which may include, but is not limited to, absences required for work-related events, family emergencies, medical-related issues, or other good cause. Teleconferencing is not to be used as a regular means of attendance at meetings except during events described in subsection (g) of this section. A board or commission member allowed by this section to participate by teleconference shall, while actually on the teleconference, be deemed present at the meeting for all purposes.

e. Members who cannot be physically present for a meeting shall notify the Clerk in advance no later than two hours prior to the scheduled meeting time of their intent to appear by teleconference.

f. All members teleconferencing will establish a connection by telephone or web-based format and shall make every effort to participate in the entire meeting. If teleconference participation is interrupted due to poor connectivity and hinders the active participation of a member in the meeting, the chairperson will request a brief recess to allow the member to attempt to reestablish a connection. If the member cannot reestablish a connection after a recess and a quorum remains, the chairperson shall proceed with the meeting and the Clerk shall note in the minutes of the meeting the member's inability to participate in the meeting due to technical difficulties. If quorum is lost, the chairperson shall adjourn the meeting and any remaining agenda items will carry over to the next regular or special meeting.

g. Subsection (d) of this section does not apply to meetings held while an emergency disaster declaration is in effect and the nature of the disaster significantly impacts a member's ability to attend a meeting other than by teleconference or other technological means. [Ord. 21-50(S)(A) § 2, 2021].

Sec. 44.62.310. Government meetings public.

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

(c) The following subjects may be considered in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential;

(4) matters involving consideration of government records that by law are not subject to public disclosure.

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges, or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents;

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings; or

(8) meetings of municipal service area boards established under [AS 29.35.450](#) - 29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and if, the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Subject to posting notice of a meeting on the Alaska Online Public Notice System as required by [AS 44.62.175](#) (a), the notice may be given using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

(1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided;

(2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;

(3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided;

(4) the extent to which the governing body, in meetings held in compliance with this section, has previously considered the subject;

(5) the amount of time that has passed since the action was taken;

(6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;

(7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;

(8) the degree to which violations of this section were wilful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under [AS 44.62.312](#) (a).

(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.