

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 19

DATE: April 15, 2003

FROM: Steve Roy

SUBJECT:

Resolution 2003-054 Amending the City Council Guidelines for Executive Sessions.

RECOMMENDATION:

Staff recommends adoption of the Resolution.

EXECUTIVE SUMMARY:

This Resolution would amend the City Council's policies and procedures for the holding of executive sessions so as to clarify that the keeping of minutes is not an acceptable alternative to the tape recording of executive sessions.

BACKGROUND:

On August 20, 2002, the City Council adopted certain guidelines for executive sessions. These included policies and procedures governing the holding of executive sessions, as well as forms to be used by Councilmembers in framing motions for executive sessions and in commencing and concluding such sessions.

The forms were adapted from models used in other cities that are subject to the state open meetings law. The City of Fort Collins has adopted its own Code provisions pertaining to the conduct of open meetings. These Code provisions are similar to the state law but different in certain respects. One of these differences is that the state law permits executive sessions to either be tape recorded or documented by the taking of minutes, while the City Code requires that all executive sessions be tape recorded except for those executive session discussions that entail privileged attorney-client communications (which need not be recorded).

Section 3 of the adopted policies and procedures governing the holding of executive sessions states that if a tape recorder is unavailable or is not operating, minutes shall be taken of the executive session. Since minutes are not an acceptable substitute the tape recording of executive sessions under the City Code, this statement is inapplicable to executive sessions held by the City Council and should be deleted from the policies and procedures. Adoption of Resolution would accomplish that change.

RESOLUTION 2003-054
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE CITY COUNCIL GUIDELINES FOR EXECUTIVE SESSIONS

WHEREAS, on August 20, 2002, City Council adopted certain guidelines for executive sessions, including policies and procedures governing the holding of executive sessions; and

WHEREAS, those policies and procedures include, in Section 3 thereof, the statement that if a tape recorder is unavailable or not operating at the time an executive session is held, minutes shall be taken and kept by the City Clerk, if present, or by the presiding officer if the City Clerk is not present; and

WHEREAS, Section 2-33(b) of the City Code states that an audio recording shall be made of all discussions that occur in executive sessions of the City Council or City Council committees, except those executive session discussions that entail privileged attorney-client communications, which need not be recorded; and

WHEREAS, for the foregoing reason, the policies and procedures should be amended so as to delete the statement that minutes may be kept of an executive session in lieu of tape recording.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the policies and procedures governing the holding of executive sessions, as adopted by Resolution 2002-082 are hereby amended so as to appear in their entirety as shown on Exhibit "A" attached hereto and incorporated herein by this reference.

Passed and adopted at a regular meeting of the City Council held this 15th day of April, A.D. 2003.

Mayor

ATTEST:

City Clerk

**CITY OF FORT COLLINS, COLORADO
POLICIES AND PROCEDURES
GOVERNING THE HOLDING OF EXECUTIVE SESSIONS**

The following policy and procedures are based upon the provisions of Sections 2-31 and 2-33 of the Fort Collins City Code and C.R.S. §24-6-402(4).

1. An executive session may not be held unless affirmatively approved by two thirds (2/3) of the quorum present.
2. The motion to go into executive session must include specific reference to the particular section of the City Code that authorizes the session and must identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the session is authorized.
3. Each executive session shall be recorded by portable tape recorder except as set forth herein. ~~If the tape recorder is unavailable or is not operating, minutes shall be taken and kept by the City Clerk, if present, or by the presiding officer if the City Clerk is not present.~~ The tape recorder shall be tested before going into executive session to make sure it is operating and the tape shall be labeled with the name of the City Council and the date of the recording.
4. The tape shall stand as the minutes of the executive session without the need for further approval. If written minutes are taken, due to the tape recorder not operating, the written minutes shall be approved at a future executive session. Upon completion of the executive session, the label on the tape recording shall be initialed or signed by the presiding officer.
5. The City Clerk shall maintain possession of the recorded tape of the executive session for ninety (90) days after the date of the executive session. The tape, or the contents thereof, shall not be disclosed to any person except as permitted or required by law.
6. The recorded tape must reflect the specific legal citation authorizing the executive session and the actual contents of the discussion during the session. If written minutes are taken, the minutes must include a signed statement from the presiding officer attesting that the minutes substantially reflect the substance of the discussion during the session.
7. If the executive session (or a portion of it) constitutes a privileged attorney-client communication in the City Attorney's opinion, and the City Attorney so states on the record, no further record shall be maintained of that communication. If written minutes are kept, those minutes must include: (a) a signed statement from the attorney attesting that the unrecorded session (or portion) constituted a privileged attorney-client communication in the attorney's opinion, and (b) a signed statement from the presiding officer attesting that the unrecorded session (or portion) was confined to the topic authorized for discussion in an executive session.