

**OPEN RECORDS AND MEETINGS OPINION  
2018-O-04**

DATE ISSUED: February 16, 2018

ISSUED TO: Wildrose 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 Cecile Wehrman from The Tioga Tribune asking whether the Wildrose City Council violated N.D.C.C. § 44-04-20 by holding a special meeting not preceded by sufficient notice.

**FACTS PRESENTED**

On January 10, 2018, the Wildrose City Council held a special meeting.<sup>1</sup> Notice of the meeting date, time, and location was posted at the Wildrose Post Office and gas station.<sup>2</sup> The notice did not contain any agenda items.<sup>3</sup> During the special meeting, the Council voted unanimously to terminate its acting city auditor and hire a new auditor.<sup>4</sup>

Thereafter, the Council held another special meeting on January 24, 2018.<sup>5</sup> Notice of the meeting was posted at the post office, gas station, and City Hall/Wildrose Fire Department as well as emailed to the official newspaper of Wildrose, The Tioga Tribune.<sup>6</sup> The notice contained the date, time, and location of the meeting, along with the following agenda:

1. Confirmation of January 10th Special Meeting
2. Auditor Position
3. Approval of Checks<sup>7</sup>

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<sup>1</sup> Letter from Amber J. Fiesel, Att'y, City of Wildrose, to Sandra DePountis, Asst. Att'y Gen. (Feb. 6, 2018).

<sup>2</sup> *Id.*, see also Minutes, Wildrose City Council (Jan. 10, 2018) (on file with City of Wildrose).

<sup>3</sup> Letter from Amber J. Fiesel, Att'y, City of Wildrose, to Sandra DePountis, Asst. Att'y Gen. (Feb. 6, 2018).

<sup>4</sup> Minutes, Wildrose City Council (Jan. 10, 2018).

<sup>5</sup> Letter from Amber J. Fiesel, Att'y, City of Wildrose, to Sandra DePountis, Asst. Att'y Gen. (Feb. 6, 2018).

<sup>6</sup> *Id.* The city council's principal office and auditor's office are located at City Hall.

<sup>7</sup> Notice, Special Meeting, Wildrose City Council (Jan. 24, 2018) (on file with City of Wildrose).

During this follow-up meeting, the Council again voted to remove the acting city auditor and hire a new auditor.<sup>8</sup> The Council also approved and issued a "Notice of Hearing to Remove From Office Pursuant to NDCC § 44-08-23."<sup>9</sup> This hearing was held during the Council's next regularly scheduled meeting on February 5, 2018, where the Council confirmed termination of the auditor.<sup>10</sup>

### ISSUE

Whether the Wildrose City Council posted notice of its January 10, 2018, special meeting in compliance with N.D.C.C. § 44-04-20.

### ANALYSIS

Public notice must be provided in advance of all meetings of a public entity.<sup>11</sup> Section 44-04-20, N.D.C.C., requires notice of all regular meetings to be posted at the main office of the public entity, if one such exists, filed with the city auditor for city level entities or posted on the public entity's website, posted at the location of the meeting on the day of the meeting, and given to anyone requesting notice of upcoming meetings.<sup>12</sup> For emergency or special meetings, a public entity must also provide notice to its official newspaper.<sup>13</sup> The notice must include the date, time, and location of the meeting and must include an agenda of the topics to be considered or discussed, along with any executive sessions expected to be held during the meeting.<sup>14</sup> The topics that may be considered at an emergency or special meeting are limited to those included in the notice.<sup>15</sup>

As noted above, the Council's notice of the January 10, 2018, special meeting failed to include any agenda items. The notice also failed to be posted at the Council's main office, with the city auditor, or at the location of the meeting on the day of the meeting, and the notice was not given to the city's official newspaper. The Wildrose City Council failed to post notice in compliance with N.D.C.C. § 44-04-20.

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<sup>8</sup> Minutes, Wildrose City Council (Jan. 24, 2018).

<sup>9</sup> *Id.*, see also Notice of Hearing To Remove From Office Pursuant to NDCC § 44-08-23 (on file with City of Wildrose).

<sup>10</sup> Letter from Amber J. Fiesel, Att'y, City of Wildrose, to Sandra DePountis, Asst. Att'y Gen. (Feb. 6, 2018).

<sup>11</sup> N.D.C.C. § 44-04-20(1).

<sup>12</sup> N.D.C.C. § 44-04-20.

<sup>13</sup> N.D.C.C. § 44-04-20(6).

<sup>14</sup> N.D.C.C. § 44-04-20(2).

<sup>15</sup> N.D.C.C. § 44-04-20(6).

### CONCLUSION

The Wildrose City Council failed to post notice of its January 10, 2018, special meeting in compliance with N.D.C.C. § 44-04-20.

### STEPS NEEDED TO REMEDY VIOLATION

Although the Wildrose City Council failed to post notice of the January 10, 2018, meeting in compliance with the open meetings law, the Council thereafter followed up with a properly noticed meeting on January 24, 2018, where it discussed and confirmed its actions from the improper meeting. The Council also published the minutes of the improper meeting in the newspaper. A hearing was held during its next regularly scheduled meeting on February 5, 2018, to remove the auditor, where, again, the Council voted to terminate. I find the remedial steps taken by the City Council to be sufficient. Therefore, no further action is needed to remedy the violation.

Wayne Stenehjem  
Attorney General

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cc: Cecile Wehrman – The Tioga Tribune (via email only)