



Mark W Harris
City Attorney

February 21, 2025

REPORT AND FINDINGS REGARDING
AUGUST 20, 2024 OPEN MEETINGS LAW VIOLATION

On August 20, 2024, during the Council Comments portion of the regular city council meeting, city councilors Tim Lynch, Jesse Lind, Mike Sellers and Jen Hegeman either read in to the council comments or joined in a statement read by councilor Lind alleging the mayor, Kent Williams, improperly adjourned the city council meeting of August 6th, 2024. The four councilors asserted the mayor's conduct was in direct breach of and violated the Declaration of Independence and the Wyoming and United States Constitutions. The four councilors asserted that the August 6, 2024 meeting should be held null and void, and all proceedings of the meeting should be stricken. The four members also stated they had a duty to protect the citizens "from any act of dishonesty or cowardice" that violates their civil liberties. The statement then concluded:

Due to the Mayor's actions and violations of procedure, and his blatant disregard to uphold the basic rights granted to the citizens of Evanston by the Constitution of the United States and the Constitution of the State of Wyoming, documented by public record, during the City Council Meeting of August 6, 2024 we motion for a vote of no confidence against the Mayor.

Councilors Lynch, Sellers and Hegeman did not read the statement, but all stated substantially the following:

Representing the people in District/Ward ____ in the City of Evanston, Wyoming, let the record show that my comments are reflected in the statement being read this date, August 20, 2024, by fellow council member Lind.

Factual Findings

On August 20, 2024 Councilor Hegeman sent Councilors Sellers, Lynch and Lind a document identified as either "Statement draft 1", "Draft statement" or "Corrected statement" via email. See, JH 1, JH 2 and JH 3. With the exception of some spelling or grammatical changes, the documents reflect the statement ultimately read by Councilor Lind in the meeting.

Although the organic version of the statement was not produced, it is reasonable to conclude that the document was drafted by Councilor Hegeman. This is not an unwarranted assumption. See, p. A8, *Uinta County Herald*, Wednesday, August 28, 2024 where Councilor Hegeman stated she "was given advice on what to include in the letter".

Councilor Hegeman sequentially emailed the statement to Sellers, Lynch and Lind on August 20, 2024

as follows:

Sellers – 1:40:40 pm (JH 1)

Lynch – 3:23:50 pm (JH 2)

Lind – 3:34:15 pm (JH 3)

The emails were either preceded or followed by phone calls between Councilor Hegeman and the other three councilors. See, TL 2, JH 4 and interview of Jesse Lind November 20, 2024. It is clear that the four councilors did not meet in person or virtually at the same time to review the statement or discuss what would happen with the statement. It is also just as clear that Councilor Hegeman acted as the “hub” of the wheel of communication with the other three councilors by drafting, sending and discussing the action that would be taken with regard to the statement. Each of the three councilors were aware that Councilor Hegeman would be sending the statement to and calling the other two councilors about the statement.

It is also clear that the four councilors were in agreement as to (1) what the statement would contain, (2) by whom the statement would be read and (3) when it would be read. All this is clear from the language of the statement, the sequencing of the emails and phone calls and the admission of Councilor Hegeman:

Instead of meeting, Hegeman said she called Lind, Lynch and Sellers individually, and emailed each of them one at a time. She said they did not ever hold a group meeting, so they did not violate open meeting laws. See, p. A8, *Uinta County Herald*, Wednesday, August 28, 2024.

Regarding agreement with the content of the statement, Councilor Lynch stated “Until then, I stand behind **our** statement of no confidence.” See, p. A8, *Uinta County Herald*, Wednesday, August 28, 2024. Councilor Lind stated:

“**We** wanted to say **we** are not on board with what Kent is doing, nor with his behavior at the meeting,” Lind said. “He should have handled the situation like an adult. **We** aren’t asking for Williams’ resignation; **we** just want him to work with **us** and follow protocol.” See, p. A8, *Uinta County Herald*, Wednesday, August 28, 2024.

Councilor Sellers, in a communication with one of his constituents sent after the meeting stated:

In researching it, it was clear that having one statement read was more appropriate. That was why there was only one statement and not four separate ones. See email from M Sellers dated August 20, 2024, 21:45 pm.

Additionally, the statement itself refers often to the fact that it was a statement of all four in referencing the collective “we” several times and concluding with a note that “we motion for a vote of no confidence against the mayor”. See, JH 1.

Finally, all of the four councilors knew before the meeting started that Councilor Lind would be reading the agreed to statement as can be seen from the predicate statements of Councilors Lynch, Sellers and Hegeman referred to above on page one of these findings. See August 20, 2024 video of proceedings of the council, specifically Council Comments. This was apparent to everyone, including the *Herald*, where the following was reported,

During council comments at the beginning of the city council meeting on Tuesday,

Aug. 20, Councilmember Jesse Lind *read a letter from the majority of the council expressing “no confidence” in Mayor Kent Williams*. The council members supporting the letter are Lind, Tim Lynch, Mike Sellers and Jen Hegeman. See, p. A8, *Uinta County Herald*, Wednesday, August 28, 2024.

Neither the mayor nor remaining members of the council were apprised of the contents of or agreement with the statement prior to the August 20, 2024 meeting.

The Open Meeting Act

The purpose of the Wyoming Open Meetings Act (OMA) is stated in statute:

The agencies of Wyoming exist to conduct public business. Certain deliberations and actions shall be taken openly as provided in this act. Wyo. Stat. § 16-4-401.

Wyo. Stat. § 16-4-403 provides in part:

Communications outside a meeting, including, but not limited to, sequential communications among members of an agency, shall not be used to circumvent the purpose of this act.

Wyoming’s law is almost verbatim the law adopted by the State Legislature of the State of New Hampshire. See RSA 91-A: 2-a II (“Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A: 1.”).

Action taken at a meeting not in conformity with the act is “null and void and not merely voidable.” See, Wyo. Stat. § 16-4-403. This means that the action taken is legally considered to never have occurred.

California has adopted what is referred to as the “Brown Act”, which is an open meetings law. The California statute does not contain specific language regarding sequential communications like the Wyoming statute does. California courts have stated that:

"[T]he intent of the Brown Act cannot be avoided by subterfuge; a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement". *Roberts v. City of Palmdale*, 5 Cal.4th 363, 376, 20 Cal.Rptr.2d 330, 853 P.2d 496 (1993).

In an opinion rendered by a city attorney regarding interpretation of the Brown Act, the writer addressed questions under the Act and addressed its application as follows:

What are examples of communications that trigger a concern under the Brown Act?

The Brown Act applies broadly to any type of discussion or communication. Communications may include oral or written discussions, the use of personal intermediaries, agents, family members or messengers to convey information, or the use of technological devices, such as email or website conferencing to disseminate information. Communication includes sharing or distributing information, hearing a proposal, or communicating information that allows members of the body to gather information or formulate a point of view on an issue that is within the subject matter jurisdiction of the legislative body.

What is a "serial communication?"

The Brown Act prohibits serial communications that lead to a concurrence among the majority of the members of the legislative body. Any type of communication is prohibited if that communication allows the majority of the members of the body to engage in a communication that should instead occur at a public meeting. The term "serial communication" is often used because it describes a communication that, for practical purposes, results in a meeting of the members although the members are not present at a publicly posted and conducted Brown Act meeting. The serial communication may involve a series of communications, each communication involving less than a quorum of the board, but when taken as a whole, involve a majority of the board.

A serial communication may arise under a number of circumstances. For example, a serial communication occurs when one board member contacts all or a majority of the other board members. A serial communication occurs if one board member contacts another board member, then that board member contacts another board member, then that board member contacts another... etc. A serial communication also occurs if a board member's representative, agent, or intermediary directly or indirectly contacts the other board members, e.g., a spouse, a messenger, or an alternate board member communicates with the majority of the other board members.

The concern under the Brown Act is not how the discussion was communicated among the board. Instead, the concern is whether an inappropriate number of persons received the serial communication and whether that serial communication led to a concurrence among the majority of the members on an issue that is likely to be considered by the legislative body.

What does the term "developing a concurrence" mean?

It means any discussion or information that assists you in voting. It means any information that assists or clarifies your understanding of an issue. It means any information that leads to an agreement or compromise among the members. It means any discussion or information that advances the resolution of an item that is on the agenda or within the board's subject matter jurisdiction. (*California Attorney General, The Brown Act: Open Meetings for Local Legislative Bodies, 2004, p. 11.*)

Oregon adopted an open meetings law based on the Brown Act. Oregon courts and legal writers have said:

In short, the text, structure, context, purpose, and history of the Public Meetings Law indicate that the prohibition in ORS 192.630(2) contemplates something more than just a contemporaneous gathering of a quorum. A series of discussions may rise to the level of prohibited "deliberation" or "decision"; the determinative factors are whether a sufficient number of officials are involved, what they discuss, and the purpose for which they discuss it—not the time, place, or manner of their communications. See *Handy v. Lane County*, 274 Or.App. 644, 362 P.3d 867 (Ct. App. 2015).

The Oregon Court in this case stated that in order for a violation to occur, one must show "some evidence of coordination, orchestration, or other indicia of a "purpose" by a quorum to deliberate or

decide out of the public eye”.

Washington state likewise has reviewed the sequential communications issue. In *Wood v. Battle Ground School District*, 27 P.3d 1208 (Ct. of App. 2nd Div. 2001), the court recognized that:

Consequently, courts have generally adopted a broad definition of "meeting" to effectuate open meetings laws that state legislatures enacted for the public benefit [FN Deleted]. See, e.g., *Stockton Newspapers*, 214 Cal.Rptr. at 565-66 (series of telephone calls between individual members and attorney to develop collective commitment or promise on public business violated Brown Act); *Blackford v. Sch. Bd. Of Orange County*, 375 So.2d 578, 580 (Fla.Dist.Ct.App.1979) (successive meetings between school superintendent and individual school board members violated Sunshine Law); *Del Papa v. Bd. of Regents of the Univ. & Cmty. Coll. Sys.*, 114 Nev. 388, 956 P.2d 770, 778 (1998) (use of serial electronic communication by quorum of public body to deliberate toward or to make a decision violates state open meeting law). But see *State ex rel. Stephan v. Bd. of County Comm'rs*, 254 Kan. 446, 866 P.2d 1024, 1027 (1994) (state open meetings act did not apply to telephone calls where "meeting" was statutorily defined as a "prearranged gathering or assembly"; thus a "meeting" required a physical gathering of the members of a public body).

The Washington court then stated:

Applying these standards here, Wood has established a prima facie case of "meeting" by e-mails. The post-oath e-mail discussions involved a quorum of the five-member Board. For instance, on November 30, Sharp sent an e-mail to all Board members and another e-mail to three of the members; on December 1, Sharp again e-mailed all the Board members, attaching a response he had received from Striker about a matter they had discussed; next, on December 3, Kim e-mailed Sharp and copied three other Board members in response to Sharp's earlier e-mail; and on December 5, Sharp again e-mailed all Board members. response to Sharp's earlier e-mail; and on December 5, Sharp again e-mailed all Board members.

Further, these discussions related to Board business, including the possibility of instituting a declaratory judgment in regard to Beck's contract with the District and otherwise evaluating Beck's performance, and the structuring of the Board's liaison duties. And the active exchange of information and opinions in these e-mails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or to discuss Board business. Thus, there are genuine issues of material fact as to whether the members held a meeting, as the OPMA defines that word, by e-mail. *Wood*, at 1217-1218.

Washington does not have a specific sequential communications statute such as Wyoming.

The Rhode Island Attorney General, in 2015, rendered an opinion regarding a rolling or walking quorum, stating that:

Although the definitions under R.I. Gen. Laws § 42-46-2 are seemingly straightforward, a quorum may be created, and a meeting "convened," by unconventional means. In particular, this Department has previously recognized the "rolling" or "walking" quorum, where a majority of the members of a public body attain

a quorum by a series of one-on-one conversations or interactions, including communications via email. See *In Re: Pawtucket City Council*, ADV OM 05-01 (warning against the "walking quorum," where public business is conducted in a series of individual encounters that may not constitute a quorum, but which collectively do so); *In Re: South Kingstown School Committee Electronic Mail Policy*, ADV OM 04-01 (series of email communications among a quorum of a Committee would satisfy the quorum requirement and implicate the OMA). Reference to a "walking" or "rolling" quorum typically involves the situation where public business is conducted in a series of encounters that may not individually constitute a quorum, but that collectively do so. For instance, using a five member public body as an example where three members are a quorum, A may speak to B about a particular public matter and then B may speak to C about the same matter. Neither encounter, by itself, constitutes a quorum, but collectively a majority of the public body was able to discuss public business using B as a conduit.

.... The reason for this conclusion is that the "rolling" quorum requirement is not triggered until one individual discusses full day Kindergarten separately with each Subcommittee member, or otherwise circumvents the OMA by having a collective discussion (or taking action) by and through another person. *Rhode Island Attorney General Opinions*, 2015 AGO OM 15-14 (July 27, 2015).

Conclusion

Four council members, a majority of the council, used "sequential communications" to agree on a joint statement to be read during the comment period of the August 20, 2024 council meeting. The communications constituted a deliberation and were made in contravention of the OMA. Councilor Hegeman sequentially contacted the other three council members telephonically and via electronic mail to obtain a consensus about what "action" would be taken and by whom. Agreement was obtained on the content and manner of delivery.

The statement alleged the Mayor, Kent Williams, improperly adjourned an August 6, 2024 council meeting and that such action was in violation of the Declaration of Independence, and the United States and Wyoming Constitutions. It asserted the Mayor infringed "freedom of speech", was an exercise of "absolute, arbitrary power", and was a denial of equal rights. The statement also pledged that the councilors "will revere and obey the city's laws" and the [C]onstitutions and to protect the citizenry "from any act of dishonesty or cowardice that violates their civil liberties."

The statement was brought before the body in Council Comments. The councilors made no attempt to place the "motion" on the agenda so the public and the mayor or other councilors could respond. The city attorney was not consulted in any manner regarding the content, procedure or effect of the action. The matter was also moved for action (the motion) in the portion of the agenda where no votes are taken. If action in the form of a vote had been taken, it would have been null and void. The actions represent a violation of the OMA but also reflect the perils associated with conducting sequential deliberations not taken openly. The deliberation and action can also be viewed as violating the Code of the West as set forth in Wyoming Statutes.

Memorandum and Findings
February 21, 2025
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No one, except four councilors, had any input into the formulation, content of and procedure to be followed.

Mark W Harris
Evanston City and Prosecuting Attorney

From: Jennie Hegeman <equineguru@gmail.com>
Subject: Statement draft 1
Date: August 20, 2024 at 1:40:40 PM MDT
To: rmsellers63@gmail.com

Let the record reflect The improper adjournment by the mayor, Kunt Williams, of the city council meeting of August 6th, 2024, was in direct breach of procedure and in violation of the Declaration of Independence of the United States of America, Amendment 1 of the Bill of Rights and of Article 1, Sections 1, 3 and 7 of the Constitution of the State of Wyoming.

Official meetings allow redress of comments and grievances and must be adjourned by a vote of attending council members.



Failure to do so infringes freedom of speech, the power inherent in the people that all free governments are founded on their authority, and instituted for their peace, safety and happiness and the use of Absolute, arbitrary power over the lives, liberty and property of freemen denys voter representation by the officials they elected.

The meeting held August 6th, should be held null and void and all proceedings voted on that date should be stricken. Failure to do so violates the very cornerstone of our government and our democracy.

Amendment 1 in the Bill of Right guarantees every citizen of these United States the right to “petition the

Government for a redress of grievances and prohibits the exercise of abridging the freedom of speech or the press, the laws

of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever and actions of Absolute, arbitrary power trespass the lives and liberty of freemen.

Article 1 Sec 1 of the Declaration of Rights of the Constitution of the State of Wyoming declares “All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of these ends they have at all times an

inalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper.”

Section 3 declares “Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.”

Section 7 declares “No absolute, arbitrary power. Absolute, arbitrary power over the lives, liberty and property of

freemen exists nowhere in a republic,
not even in the largest majority.”

As elected officials we are bound by
the oath each of us swore, upon
entering office, to uphold the
Constitution of the State of Wyoming
and the Constitution of the United
States of America.

We are public servants that represent
the collective voices of the people we
were elected to represent. Denying the
citizenry, or us our inalienable right to
free speech denies voter representation,
the enjoyment of
natural and civil rights and the action of
absolute, arbitrary power strips the
power inherent in the people, and all
free governments that are founded on
their authority.

Furthermore, we are humbled to serve and speak on behalf of the people we represent. We will revere and obey the city's laws and the Constitution of both Wyoming and of the Land. We will fight for the ideals of these sacred things, both alone and with many and we will strive unceasingly to uphold the rights of our citizens in all ways and protect them from any act of dishonesty or cowardice that violates their civil liberties.

Due to the Mayor's actions and violations of procedure, and his blatant disregard to uphold the basic rights granted to the citizens of Evanston by the Constitution of the United States and the Constitution of the State of Wyoming, documented by public record, during the City Council Meeting of August 6, 2024 we motion

for a vote of no confidence against the
Mayor.

From: Jennie Hegeman <equineguru@gmail.com>

Subject: Draft statement

Date: August 20, 2024 at 3:23:50 PM MDT

To: timlynch.uintarealty@gmail.com

Let the record reflect The improper adjournment by the mayor, Kent Williams, of the city council meeting of August 6th, 2024, was in direct breach of procedure and in violation of the Declaration of Independence of the United States of America, Amendment 1 of the Bill of Rights and of Article 1, Sections 1, 3 and 7 of the Constitution of the State of Wyoming.

Official meetings allow redress of comments and grievances and must be adjourned by a vote of attending council members.



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Section 7 declares “No Absolute, Arbitrary Power. Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.”

As elected officials we are bound by the oath each of us swore, upon entering office, to uphold the Constitution of the State of Wyoming

and the Constitution of the United States of America.

We are public servants that represent the collective voices of the people we were elected to represent. Denying the citizenry, or us, our inalienable right to free speech denies voter representation, the enjoyment of natural and civil rights and the action of absolute, arbitrary power strips the power inherent in the people and all free governments that are founded on their authority.

Furthermore, we are humbled to serve and speak on behalf of the people we represent. We will revere and obey the city's laws and the Constitution of both Wyoming and of the Land. We will fight for the ideals of these sacred things, both alone and with many and

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Begin forwarded message:

From: Jennie Hegeman <equineguru@gmail.com>

Subject: Corrected statement

Date: August 20, 2024 at 3:34:15 PM MDT

To: jkl0206@msn.com

Let the record reflect The improper adjournment by the mayor, Kent Williams, of the city council meeting of August 6th, 2024, was in direct breach of procedure and in violation of the Declaration of Independence of the United States of America, Amendment 1 of the Bill of Rights and of Article 1, Sections 1, 3 and 7 of the Constitution of the State of Wyoming.

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Failure to do so infringes freedom of speech, the power inherent in the people that all free governments are founded on their authority, and instituted for their peace, safety and happiness and the use of Absolute, arbitrary power over the lives, liberty and property of freemen denies voter representation by the officials they elected.

The meeting held August 6th, should be held null and void and all proceedings voted on that date should be stricken. Failure to do so violates the very cornerstone of our government and our democracy.

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Furthermore, we are humbled to serve and speak on behalf of the people we represent. We will revere and obey the city's laws and the Constitution of both Wyoming and of the Land. We will fight for the ideals of these sacred things, both alone and with many and

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THIS IS
ALL I
HAVE

NO TEXT
OR TEXTING
JUST 2 CALLS

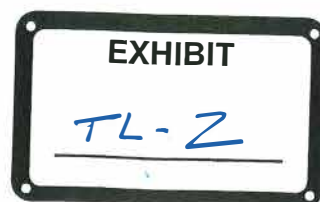
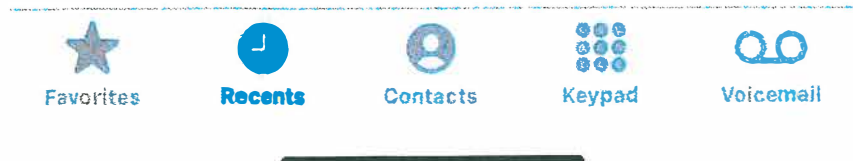
[Handwritten signature]

August 14, 2024

5:55 PM **Incoming Call**

11 minutes

Calls with a checkmark have been verified
by the carrier.





August 20, 2024

3:19 PM **Incoming Call** 

15 minutes

Calls with a checkmark have been verified by the carrier.



Favorites



Recents



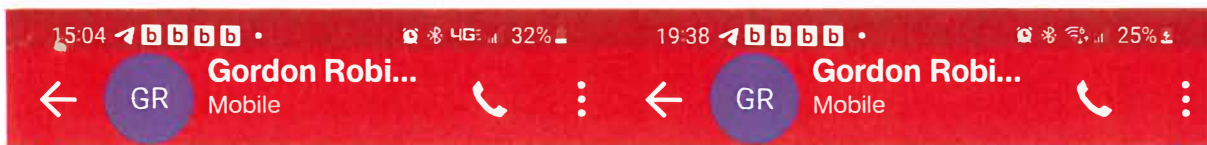
Contacts



Keypad



Voicemail



And as a city employee, this whole thing is beginning to strain the relationship between employees and the council, and it is already dragging down employee morale. I hope things get better.

8/20/24 21:45

First, thanks for the vote. It means a lot to me. It also means a lot that you would reach out. It would be easier for me to explain things in person, but I hope it helps to clarify a few things. Hopefully, by November, I will have the opportunity to show you my concern for the citizens and the employees of the City of Evanston.

I have had multiple citizens contact me about the mayor's outburst and ask what could be done. The majority expressed concerns about bringing issues to the city, especially to the mayor. I had my own statement formulated. In

Yes

Okay



Trying to help, sometimes, means having to say no. It is okay to say no if you are able to explain why. This can be done in a positive way. This situation was not handled even that way. In my opinion, it was handled in a way to just quiet the complaint. I appreciate how well you interact with the public. You sometimes have a thankless job in having to deal with the public. I see how you go out of your way to keep things positive and build great relationships. I wish this whole situation was handled in a like manner. If it had been, we would not be in this situation. I hope these clarifies a few things and address a few of your concerns. I would be glad to discuss with you anytime and hear any other concerns you may have. I am a believer in open communication and assuring everyone is heard..

Thanks again for reaching out

Mike

Yes

Okay



Type a message



Type a message.



own statement formulated. In researching it, it was clear that having one statement read was more appropriate. That was why there was only one statement and not four separate ones. I have a hard time with citizens being treated poorly.

My personal experience with being shut down by the mayor was the year the water was raised 40 percent. I voiced my concerns to the mayor, and he told me to raise my rent. This shortly after just lowering them because of the tight economy at the time. When I stated this, I was told, "You're a businessman suck it up." That is why I decided to run the first time. I feel it is important that citizens are heard and their needs and concerns are acted on in the best way possible. This is why I serve and not for any political gain.

Trying to help, sometimes, means having to say no. It is okay to say no if you are able to explain why.

Yes

Okay


🙄

💬

Delivered


8/22/24 09:48

Uinta County Herald's posts

 Uinta County Herald

15h · 🌐

The Evanston City Council voted last night to publicly reprimand Mayor Kent Williams over his behavior during the previous ... See more



uintacountyherald.com

Council votes "no confidence" in mayor - Uinta County Herald

👍👎🗨️ You and 64 others

28 comments

12 shares

🙄 Angry

🔗 Copy

🔗 Share

The council "votes"?? There was no vote. No official motion. No 2nd. No vote. A statement was read, and 3 of you concurred. Are you going to contact the paper and make a correction or a

Yes

Okay

🙄

💬