

Open Meetings Act and Procedures

Library Workshop
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Part 1 – Open Meetings Act

Who Must Comply

Public bodies, including all legislative, executive, administrative, or advisory bodies of the state, counties, townships, cities, villages, and other municipal corporations and subsidiary bodies of those entities (including library boards)

What Meetings are Covered?

“any gathering, whether in person or by video or electronic conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous communication, of a majority of a quorum of the members of the public body held for the purpose of discussing public business”

You've Got No Business Without a Quorum

- You must have a majority of the body present
- What can you do without a quorum?
 - Those present at the meeting may take action to compel attendance of absent board members or to adjourn the meeting to a future date

Discussion of Public Business

- OMA does not apply to:
 - Staff meetings
 - Political rallies
 - Social events

Electronic Participation

- Must have adopted a written procedure
- Absence may only relate to illness, business or emergency; not vacation
- Approval required to authorize remote attendance
- Quorum must be *physically* present



Notice and Agenda

- Annual notice of all regular board meetings must be provided and posted on website (if applicable)
- Agendas must be posted no later than 48 hours before a meeting and be continuously available for public review during the entire 48 hour period
- Agendas must be provided to news media (if requested) and posted on website (if applicable)

Content of Agenda

- Agenda must provide a reasonable description of the items to be considered
- Agenda must be posted in advance of meeting
- Agendas must set forth the general subject matter of any resolution or ordinance that will be the subject of final action

Special and Emergency Meetings

- Special meetings require specific notice of each and every topic to be discussed
- Less than 48 hours notice OK for bona fide emergency meeting
- Emergency example: Library just burned down; self-created emergencies do not count

Minutes

- Content
- Approved within 30 days or 2nd subsequent meeting
- Available to the public within 10 days after approved

Website Posting Requirements

1. Annual Meeting Schedule.
2. Meeting Notices.
3. Meeting Agendas.
4. Meeting Minutes.
5. Employee Compensation Package.
6. Information About the Public Body.
7. Email Addresses for Elected Officials

New Email Posting Requirement

- Units of local government must post on their websites a single, uniform email address that members of the public can use to electronically communicate with their elected officials, unless the officials have individual email addresses for that purpose. [P.A. 98-0930](#). The email address must be "hyperlinked" and easily accessed from the public body's home page.
- The posting requirement does not apply to a government's social media sites such as Facebook, just to the public body's website.
- Effective January 1, 2015, and local governments have 90 days after the effective date to comply with the new posting requirement.

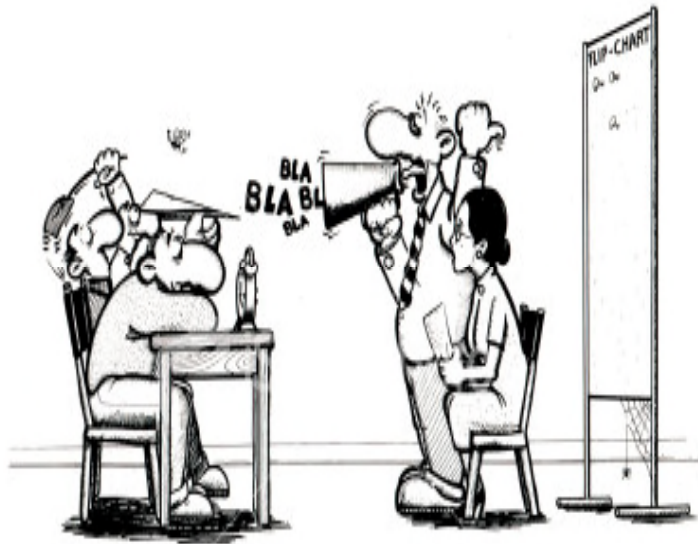
Recording of Meetings

- Recording of open meetings not required
- The public has a right to record open meetings
- Government may adopt reasonable rules regarding recording by the public
- But, see recent PAC opinion that found advanced registration requirements a violation of OMA
- All closed sessions *must* be recorded

Open and Convenient to the Public

- Holidays ok for regular meetings, but not special meetings
- Adequate space for public
- 26 miles away from main office too far?

Right to Public Comment



- “Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.” 5 ILCS 120/2.06(g).
- Public comment can be limited, but only by previously adopted written policies

The PAC Says...

1. Public comment must be provided at all meetings
2. The public comment requirement applies to subsidiary bodies
3. Each public body (subsidiary bodies) must establish rules
4. A public body can establish time limits for public comment
5. A public body can limit comments to topics germane to the agenda
6. A public body can establish and enforce rules on decorum
7. Public comment can be provided at any point in the meeting
8. Public officials are not obligated to respond to comments
9. Section 2.06(g) does not address members of a public body
10. There is no violation if there is no request to speak

The PAC Says...cont.

1. Public body cannot refuse to allow a person to speak during public comment for failure to disclose address.
2. Public body cannot require person to register 5 days in advance of meeting to speak during public comment

Closing a Meeting to the Public

- Only certain topics may be discussed
- Motion required to go into closed session
- Must describe applicable exemption
- Must take minutes and record the closed session

What Topics Are We Required to Discuss in Closed Sessions?

OMA exceptions *authorize*, but do not require, closing meeting to discuss any of the 25 permitted subjects

What Are the Rules About Recording Closed Sessions?

- Section 2.06 of the Open Meetings Act requires audio or video recording of all closed sessions.
- Closed session tapes are *usually* not disclosable under FOIA.

The Closed Session Tapes Can Only be Destroyed If:

- The board has approved the minutes of the closed sessions, regardless of whether the minutes have been released for public review;
- More than 18 months have elapsed since the date of the closed session;
- There is no court order requiring the preservation of such recording; and
- The board has not passed a motion requiring the preservation of the verbatim recording of that meeting.

What Can We Do About a Board Member Who Leaks Closed Session Materials to the Press?

- Attempt to censure the board member
- Seek an injunction

Do We Need to Approve Closed Session Minutes We Do Not Plan to Release?

- Yes, minutes should be reviewed for accuracy of content and then approved
- Must be reviewed every 6 months to determine if need for confidentiality still exists

Can We Talk About Where a New Public Building Should be Located in Closed Session?

Discussion must relate to purchase or lease of a particular parcel or parcels of real property

Can We Criticize the Performance of an Employee in Closed Session?

Yes, it is permissible to discuss the hiring, discipline, performance or dismissal of specific employees in closed session



Can We Discuss Litigation in Closed Session?

- Yes, a public body can go into closed session to discuss a lawsuit that is filed and pending against the public body.
- A public body can also go into closed session to discuss a lawsuit that is imminent or threatened – must make a finding in closed session.

OMA Training

All members of public bodies subject to the OMA must complete the online training

E-mail: Friend or Foe?



- If the e-mail exchanges are contemporaneous, they may constitute an improper meeting
- Avoid repeated use of “reply to all”

Social Media

Social media interactions and communications by your government officials may be considered “meetings” subject to OMA

Enforcement

- PAC Request for Review
- Appeal to Circuit Court

Part 2 – Meeting Procedures

Question 1

- Who sets the agenda for board meetings?

Answer 1

- In most libraries, the board president or the director establishes the agenda.
- The board can establish other fair methods.

Question 2

- What if the board president will not allow trustees to place items on the agenda for regular board meetings?

Answer 2

- The board could enact a policy requiring the president to place items on the agenda if board members follow the policy.
- Or, 4 trustees can call a special meeting, at which they would control the agenda.

Question 3

- Can a Board limit the period of time that a trustee or president can speak?

Answer 3

- Yes, as long as the period of time is reasonable and all parties get to participate.

Question 4

- How can we prevent a board member from repeatedly revisiting an issue after it has been decided?

Answer 4

- The board president can rule the member out of order and move to the next item on the agenda.
- Alternatively, board members can call “point of order” to remind the board president to take control of the meeting and move to the next business item.

Question 5

- What can we do about a board member who repeatedly interrupts other members?

Answer 5

- The board can adopt a rule that members can only speak when recognized by the president (the chair of the meeting).

Question 6

- What can we do if a board member has taken over debate on a particular agenda item and refuses to let other members speak or give the floor back to the president (the chair of the meeting)?

Answer 6

- A board member might move to “call the question,” which will bring the item to a vote. There must have been a motion and second on the floor to approve the item before this procedural tactic will work.
- If the board members are not ready to vote, one could call “point of order” to remind the president to take control of the meeting.

Question 7

- What can a board do if a member breaches the confidentiality of the closed session and passes data on to other parties including the “other side” on issues discussed in closed session?

Answer 7

- Not much, although the Board can censure that individual by a motion or resolution. It can file an injunction lawsuit and can report the action, if properly documented, to the local State's attorney.

Question 8

- Can a member of the public demand an answer to a question from a board member or staff member during public comment?

Answer 8

- No. Members of the public have the right to address members of the public body, but they have no right to interrogate them or library staff members, and the PAC agreed in recent non-binding opinions.

Question 9

- Are citizens allowed to speak about every issue at the time it comes before the board?

Answer 9

- No. The time for citizens' questions and comments can be limited as long as the rule is fairly implemented.

Question 10

- Can a public body's rules on public comment specify that most comments are fine, but any comments that are negative or critical of the public body should be submitted in writing to the president or a staff member during regular office hours?

Answer 10

- No. A recent case clarified that public comment rules are not reasonable when they attempt to regulate the content of the speech.

Question 11

- Can a public body remove a member of the public from a meeting for being disruptive?

Answer 11

- Yes. The Attorney General found no violation of the OMA where a public body removed a member of the public for disruptive behavior for a meeting. Similarly, the AG found no violation where a member of the public body interrupted a member of the public during public comment.

Question 12

- Does the Open Meetings Act require a public body to adopt rules for public comment?

Answer 12

- Maybe. The Attorney General has said yes, in a number of non-binding opinions. In fact, the PAC has stated that even subsidiary bodies must establish rules of their own.

Question 13

- Who is responsible for the minutes?

Answer 13

- The secretary is generally responsible for preparing the minutes; however, it is the board who approves the minutes.

Question 14

- What if the board will not approve a board member's requested changes to the minutes?

Answer 14

- The minutes are subject to approval by a majority of the board; therefore, there is nothing a trustee in the minority can do to force the majority to include his or her changes. The board member could submit a letter of disagreement and ask that it be made part of the record.

Q&A

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