

## Ten Things

Every Municipality Should Know About the

# Open Meetings Act

–By Anne Seuryck

While municipal officials in Michigan are taught that they must comply with the Open Meetings Act (OMA), the OMA's language is not always clear and its application is not always straightforward. Consequently, misperceptions exist about OMA requirements. Because of this, it is important to go back to the basics and address ten issues that every municipality should know to ensure that it does not run afoul of the OMA.



## 1. Why Have Open Meetings?

The OMA was expressly enacted by the Michigan Legislature to promote transparency. Its purpose is to provide access to governments so that the public understands decisions the public body is making and can participate in the process.

## 2. What Are Some of the General Rules of Meetings?

All meetings subject to the OMA must be open to the public, be held in a place available to the general public, and, pursuant to the Americans with Disabilities Act, provide necessary accommodations that allow disabled individuals the opportunity to participate. In addition, a municipality may not place conditions on *attendance* at a public meeting, such as requiring visitors to sign in or otherwise identify themselves by name.

## 3. Are Members of the Public Allowed to Comment at Meetings?

Everyone in attendance at a public meeting has the right to address the public body. Thus, every regular or special meeting must have at least one public comment period. While the public body cannot place conditions on the right to attend the meeting itself, the OMA does allow the public body to place reasonable limitations on individuals who desire to speak, such as imposing time limits for individual speakers and requiring that speakers provide their names and addresses. However, a municipality must not limit the total time for public comment—a public body is not permitted to cut off public comment after a set period of time.

## 4. Can Meetings be Recorded by the Public?

The right to attend a meeting of a public body includes the right to tape record, videotape, and broadcast the public proceedings, including recording the meeting on a person's phone. Even if a municipality prohibits videotaping or audiotaping, generally, in a building, videotaping, or recording must be allowed during an open meeting.

*“The best way to stay on the right side of the law is to be proactive, educate your public officials and administrative staff, and work with experienced legal counsel to plan and conduct your meetings.”*

## 5. What is a Public Body?

The OMA applies to meetings held by a “public body.” A “public body” is specifically defined under the OMA and includes boards, commissions, and other entities that exercise governmental or proprietary authority or perform a governmental or proprietary function. Most municipal officials understand that “public bodies” include village and city councils, zoning boards of appeal, and planning commissions. However, certain committees and subcommittees may also have decision-making authority that would qualify the committee as a public body. In contrast, committees with only advisory authority may not meet the definition of “public body.” Because it may be difficult to evaluate whether a particular committee is purely advisory, a public body may consider consulting with legal counsel when forming a new committee.

## 6. What is a Meeting?

Discerning what is a “meeting” for purposes of the OMA is not always easy. The OMA statute defines a “meeting” as the convening of a public body (1) at which a quorum is present, (2) for the purpose of deliberating toward or rendering a decision (3) on a public policy. Both decisions and deliberations on public policy must be made at an open meeting; therefore, the municipality should also be concerned about having improper meetings behind closed doors. For example, email correspondence among a quorum of the members of a body on a municipal issue could be considered an improper “meeting.” Because the public has no opportunity to attend and comment, that email “meeting” may run afoul of the OMA.

## 7. What Type of Meeting Notice is Required?

Public bodies must provide notice of meetings, and the rules related to notices are specific. For example, for regular meetings, the public body must post a notice at its principal office stating the dates, times, and places of its regular meetings, and contain the name of the public body, its telephone number, and its address. That regular meeting notice must be posted within ten (10) days after a public body's first regular meeting of the calendar or fiscal year. If a public body changes its regular meeting schedule, it must post a new notice stating the changes within three days after the meeting at which the change was made.

For special meetings, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting (1) at the public body's principal office and, (2) on the municipal website (only if the public body directly or indirectly maintains an official Internet presence that includes monthly or more frequent updates of public meeting agendas or minutes). The public notice on the website must be on the homepage or on a separate webpage dedicated to public notices and accessible via a prominent and conspicuous link on the homepage. It is a common mistake to either fail to put the notice on the website or to put the notice in an improper place, such as buried in the municipal calendar.

**8. Are Closed Sessions Permitted?**

There are exceptions that allow public bodies to hold closed sessions, such as to consider material exempt from discussion or disclosure by a state or federal statute. Municipalities should keep in mind that the exemptions are very specific and may not be improperly expanded. For example, a public body may go into closed session to consider a complaint against the city manager (if the city manager requests the closed session) because it is permitted under Section 8 of the OMA, but may not go into closed session to discuss the city manager’s contract renewal because Section 8 of the OMA does not include that purpose. The purpose of the closed session must be included in the motion. Common mistakes include moving into closed session without a proper purpose or failing to state or sufficiently describe the purpose of the closed session in the notice.

**9. Are Meeting Minutes Required?**

Minutes of each meeting must be kept showing the time, date, and place of the meeting. The minutes must also state the names of all members present and absent, any decisions made, all roll call votes taken at the meeting, and the reason for any closed sessions held. Minutes for open meetings

must be made available to the public. For closed sessions, a separate set of minutes must be taken by the clerk or designated secretary of the public body. The closed session minutes must be retained by the clerk and are not available to the public.

**10. What Happens if the OMA is Violated?**


A decision made by a public body may be invalidated if the public body has not complied with certain provisions of the OMA. If a public body violates the OMA, a person may also commence a civil action to compel compliance or to enjoin further non-compliance with the OMA. Public officials who are found to have intentionally violated the OMA are subject to monetary fines and misdemeanor penalties.

In many ways, this summary merely scratches the surface of what a municipality must know about complying with the OMA. The best way to stay on the right side of the law is to be proactive, educate your public officials and administrative staff, and work with experienced legal counsel to plan and conduct your meetings.

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