COMPLYING WITH MARYLAND’S OPEN MEETINGS ACT

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Maryland Municipal League Fall Meeting
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OBJECTIVES

• What is the Open Meetings Act?
  ➢ why should a public body comply?

• What does it require of my public body?
  ➢ what activities does it govern? (or not)
  ➢ what actions does it require before a meeting?
  ➢ what actions does it require during a meeting?
  ➢ what actions does it require after a meeting?

• How is the Act enforced?
OPEN MEETINGS ACT

General Provisions Article

Title 3

Annotated Code of Maryland
THE LEGISLATURE’S POLICY STATEMENT:

It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

(1) public business be performed in an open and public manner; and

(2) citizens be allowed to observe:

(i) the performance of public officials; and

(ii) the deliberations and decisions that the making of public policy involves.

CP § 3-102
DO THESE 4 THINGS, AND YOU WILL COMPLY WITH THE OPEN MEETINGS ACT:

1. provide advance public notice
2. hold meeting open to public
3. prepare minutes
4. designate a trainee
ACTIVITIES GOVERNED (1): THOSE OF A “PUBLIC BODY” - §3-101(H)

• Multi-member

• Formal creation (usually)

• Committees and some subcommittees

• Informally created public bodies

• Nominally private corporations
ACTIVITIES GOVERNED (2): THE PUBLIC BODY’S “MEETINGS” - §§3-101(G), (K), 3-103

- Consideration or transaction of public business
- Quorum convened – or cycled through a room to evade the Act
- Conference calls or other methods of simultaneous interaction
- Social gatherings and retreats when public business is discussed,
- But not social gatherings when no public business is discussed
ACTIVITIES GOVERNED (3): TOPICS OF DISCUSSION (“FUNCTIONS”) DEFINED BY THE ACT - §§ 3-101 DEFINITIONS; 3-103 SCOPE.

- **Covered:** Advisory, legislative, quasi-legislative functions, all as specially defined by the Act.

- **Excluded:** Administrative (formerly executive), judicial, quasi-judicial functions

- **Expressly included:** discussions concerning
  - Granting a license or permit
  - Many types of land-use matters
ACTIVITIES GOVERNED (4) :
THE ADMINISTRATIVE (FORMERLY EXECUTIVE) FUNCTION EXCLUSION – §§ 3-101(B), 3-104

- Topic must not fall within any other defined function
- Public body must be applying existing law or policy - **not** creating law or policy
- Meeting might be subject to reporting requirement
- Exclusion is not related to confidentiality issues
ACTIONS BEFORE A MEETING: PUBLIC NOTICE OF MEETINGS- § 3-302

- Timing
- Reasonably in advance
- Last-minute meetings – special efforts
- Content
- Date, time, place, open/closed status
- Agenda?
- Method
- Consistency
ACTIONS DURING A MEETING (1):
LOGISTICS - § 3-303

- Location
- Public participation
- Cameras/tape recorders – model rules
- Documents and communications referred to during meeting- access?
- Audible discussion
ACTIONS DURING A MEETING (2) : CLOSING A MEETING – §§ 3-305, -306(C), -104

- Identifying a specific exception
- Completing a meaningful written “closing statement” – citation, topic, reasons for excluding
- Chair’s duty to prepare/sign the closing statement
- Holding a public vote
- Staying within the exception on the statement
- Deciding on post-meeting disclosures
- 2 model closing statements on Attorney General’s website
ACTIONS DURING A MEETING (3) : THE 14 EXCEPTIONS (ALL TO BE CONSTRUED NARROWLY) - GP § 3-305(B)

• Specific personnel matters
• Legal advice
• Litigation
• Real property acquisition (not sale)
• Collective bargaining
• Certain business development proposals
• Certain public security matters
• Other law requiring confidentiality ... and 6 others
ACTIONS AFTER A MEETING (1): MEANINGFUL MINUTES – § 3-306

- Required timeliness; content
- Open-session minutes: Available on request, without redaction
- Tape recording ≠ minutes
- Closed-session minutes: Sealed, with publicly available summary in minutes of next open session (requirement extends to certain administrative function sessions not open to public)
- 2011 amendment: use of live and streaming audio or video for open-session minutes
ACTIONS AFTER A MEETING (2) : RECORD RETENTION – §§ 3-302, 3-306

- Notice (screenshot of online notice should be printed out with date of posting) (1 year)
- Minutes and tape recordings (1 year)
- Sealed minutes (1 year)
- Closing statements (likely 1 year)
- Archiving requirements - other laws might apply
- Access: open to inspection at the office on request
REMEDIES- 2 ROUTES

• (1) Open Meetings Compliance Board: Advisory opinions – §§ 3-204 through 3-212
  When OMCB finds violation, public body must summarize the opinion at the next public meeting, sign it, and return it to the Compliance Board

• (2) Circuit Court: Orders – §§ 3-401 and 3-402
  Court may overturn public body’s action in some cases, assess penalty, and award attorney’s fees
TRAINING REQUIREMENT - § 3-213

• Designation by “each public body” of a member, officer, or employee to “receive training”

• For instructions on how to comply, see http://www.oag.state.md.us/Opengov/Openmeetings/training.htm

• Public bodies should send the designee’s name to the Compliance Board per the instructions

• Public bodies should retain their own proof that the training was received and not send it to the Compliance Board
ISSUES, EXAMPLES, AND QUESTIONS

• Common causes of violations (unplanned meetings, lack of staff, staff turnover, member turnover, member desire to control information, lack of knowledge about the Act’s requirements, lack of agenda planning)

• Steps to avoid complaints (follow the 3 steps; identify the person responsible for various compliance tasks; include tasks in job descriptions; adopt schedule for training; plan meeting topics; orient new members and staff)

• Responding to complaints (see the procedures posted online)

• Questions, examples
MORE INFORMATION

- Compliance checklist, model closing forms, Compliance Board opinions and topical index: go to www.oag.state.md.us and click on “Open Government,” then “Open Meetings”

- Online class: Institute for Governmental Service and Research website: www.igsr.umd.edu/VLC/OMA/