COMPLYING WITH MARYLAND’S OPEN MEETINGS ACT

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OBJECTIVES

- What is the Open Meetings Act?
  - why should a public body comply?
- What does it require of public bodies?
  - 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.

GP § 3-102
DO THESE 3 THINGS AND YOUR MEETINGS WILL COMPLY WITH THE OPEN MEETINGS ACT:

1. Before: provide advance public notice and an agenda
2. During: hold meeting open to public
3. After: prepare minutes

[4. Make sure your public body designates 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
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/then closed status (vote to close is public)
  - Agenda: Make agenda “available” in advance, with topics and items of business
- Method
- Consistency
ACTIONS DURING A MEETING (1): LOGISTICS - § 3-303

• Location

• Public participation – not required by Act

• 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 it
- Holding a public vote to close, after proper notice of the open session
- Staying within the exception on the statement
- Deciding on post-meeting disclosures
- 2 model closing statements on Attorney General’s website
- Complying with new training requirements; completing Compliance Checklist if member designated for training can’t attend.
- As of October 1, 2017, closed session impermissible if public body hasn’t designated a member for training. § 3-213.
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 (plus, a 15th after Oct. 1, 2018, for a risk to information resources or network management (cyber security)
- 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

• Post online if “practicable” (new requirement)

• 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)

• Use of live and streaming audio or video for open-session minutes

• Summary of closed session with 4 required items of information; Compliance Checklist, when required. § 3-213.
• Minutes of the next open meeting must include:
  • Purpose for the closed meeting
  • Citation authorizing closed meeting
  • Votes to close
  • The topics and subject matter actually discussed
  • Actions taken (if any)
  • Date, time, place
  • Persons present

• Only exception -- §3-104; closing after an open meeting for the administrative function. Must include (1) the subject matter discussed, (2) date/time/place and (3) persons present
ACTIONS AFTER A MEETING (3): 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 (5 years)
• Sealed minutes (1 year)
• Closing statements (likely 1 year)
• Archiving requirements - other laws might apply
• Access: open to inspection at the office on request. Minutes to be posted online to the extent “practicable”
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 (1) – § 3-213

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

• Designee must take training within 90 days of the designation (Training received before October 1, 2013 does not qualify)

• If the designee no longer serves on or works for the public body, the public body needs to designate a new one
Public body may not meet in closed session unless a member has been designated to take the training (effective October 1, 2017)

- Designated member must attend open session at which public body votes to hold closed session or

- If designated member cannot attend, public body must complete Compliance Checklist and attach it to open-session minutes

- 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, FAQs, Compliance Board opinions, and topical index: http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx

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

- Open Meetings Act Manual (9th ed. December 2016 with June 2017 Updates), also accessible through the “Open Meetings” page