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?
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 (law, charter, bylaw, rule, resolution)
- Or by executive appointment, if including 2 or more members of the public
- Committees and subcommittees, depending on creation
- Informally created public bodies, sometimes
- Nominally private corporations, sometimes
ACTIVITIES GOVERNED (2): THE PUBLIC BODY’S “MEETINGS” - §§3-101(G), (K), 3-103

- Any deliberation, consideration or transaction of public business among a quorum

- **Quorum** convened – or cycled through a room to evade the Act

- Conference calls or other methods of **simultaneous** interaction

- **Electronic communications** allowing continued and interactive group deliberation on public business

- Social gatherings and retreats when public business is discussed,

- But **not** social gatherings when no public business is discussed
ELECTRONIC DELIBERATIONS ON PUBLIC BUSINESS

• Transmitting information by email, text, etc., without discussion, is generally acceptable.

• But the public has the right to observe when communications become deliberations on public business covered by the Act.

• Thus, emails (or texts) used by a quorum to deliberate and decide matters of public business may violate the Act. Avoid:
  • “Reply-all” and group/circulated emails
  • Continuous deliberation on a matter leading to a decision
  • Effectively constant messages even if not simultaneous

• Options for urgent matters may include: conference call after public notice; individual emails without interactive deliberation; potential online public meeting allowing public to observe; delegation to staff. Note: The Act prohibits “evasive devices.”
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.
- Closed session impermissible if public body hasn’t designated a member for training. § 3-213.
ACTIONS DURING A MEETING (3): 15 EXCEPTIONS (ALL TO BE CONSTRUED NARROWLY) - GP § 3-305(B)

- Personnel matters regarding individual employees
- Receipt of legal advice
- Litigation
- Real property acquisition (not sale)
- Collective bargaining
- Certain business development proposals
- Certain public security matters
- Cyber security: If identified risk to information resources or network management
- 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.
ACTIONS AFTER A MEETING (2): MEANINGFUL MINUTES – § 3-104 AND § 306

• 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

• For a template, go to open meetings page on Attorney General’s website

• Only exception -- §3-104; closing an open meeting for the administrative function. Minutes 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
TRAINING REQUIREMENT (2) – § 3-213

• Public body may not meet in closed session unless a member has been designated to take the training

• 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 4 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)

• Avoidance of electronic or other non-public communications which include deliberation and/or decision on public matters by a quorum

• Responses to complaints (see the procedures posted online); addressing constituents’ concerns early

• Questions, examples
MORE INFORMATION

• Compliance checklist, model closing forms and summary, 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