**MICHIGAN OPEN MEETINGS ACT - *At A Glance*** (prepared by N. Smith)

Find full OMA Handbook at: <https://www.michigan.gov/-/media/Project/Websites/AG/open-meetings/OMA_handbook.pdf?rev=3ed448eb004a4bf080197543172bd07f>

1. **THE BASICS**

* **The Act** – A State Law. The OMA took effect 1/1/77. Meant to usher in an age of government accountability, openness, and responsible decision-making.
* **What is Covered?** All meetings of a “public body” are covered. What’s a “public body”? Answer: Any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function. (examples: city council, county commission, township board, school board…)
* **Public Notice Requirements** – Notice MUST be given, consistent with OMA:
* must contain the public body's name, telephone number, and address, and must be posted at its principal office and any other locations the body deems appropriate.
* Public notice requirements are specific to the type of meeting:

(1) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(2) For a change in schedule of regular meetings of a public body, there shall be posted within three days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(3) For a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting.

(4) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice has been posted at least 18 hours before the reconvened meeting.

* **Agendas** – Agenda or Purpose of Meeting – Not required by OMA!
* **Penalties, etc.** –
* a public official who "intentionally violates" the OMA may be found guilty of a misdemeanor and may be personally liable for damages of not more than $500 for a single meeting.
* A decision made by a public body may be invalidated by a court, if the public body has not complied with the requirements of OMA.
* Lawsuits to compel compliance must be brought within 60 days after the public body's approved minutes involving the challenged decision are made publicly available. If the decision involves the approval of contracts, the receipt or acceptance of bids, or the procedures pertaining to the issuance of bonds or other evidence of indebtedness, the action must be brought within 30 days after the approved minutes are made publicly available.
* Correcting non-conforming decisions – in any case where a lawsuit has been initiated to invalidate a public body's decision on the ground that it was not made in conformity with the OMA, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with the OMA.

1. **DECISIONS MUST BE MADE IN PUBLIC**

* **All Decisions Must be Made at Meetings Open to the Public** – No phone call meetings, no informal gatherings to make decisions.
* **Informal Canvassing** by one member of other members, to see where they stand on an issue, does not violate the OMA (so long as a vote isn’t taken in the process)
* **When may a Quorum Meet Outside of a Public Meeting?** A quorum may gather at a public presentation, community meeting, seminar, training, workshop, conference, etc. so long as the members are not deliberating on issues or making decisions.
* **Advisory Committees and Subcommittees** – A committee or subcommittee (less than a quorum) does not have to follow OMA if it is only advisory in nature, and not making policy decisions. However, if small committees have a combined meeting that results in a quorum, then OMA must be followed.
* **Email or texting among Board Meetings during an Open Meeting** – NOT Permissible. Email, texting, or other electronic communications among members during a meeting that constitutes deliberations or decision-making violates the OMA.

“ ... use of electronic communications for discussions or deliberations, which are not, at a minimum, able to be heard by the public in attendance at an open meeting are contrary to the OMA's core purpose – the promotion of openness in government.”

“ Using e-mail to distribute handouts, agenda items, statistical information, or other such material during an open meeting should be permissible under the OMA, particularly when copies of that information are also made available to the public before or during the meeting.”

1. **CLOSED SESSIONS**

* **Only allowed for one or more of the following limited purposes**:

(1) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing.

(2) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(3) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(4) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(5) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.

(6) To consider material exempt from discussion or disclosure by state or federal statute. But note – a board is not permitted to go into closed session to discuss an attorney's oral opinion, as opposed to a written legal memorandum.

* **Must be conducted during the course of an open meeting** – AND, minutes of that meeting must include the purpose of the closed meeting.
* **Going into Closed Session** – A 2/3 roll call vote of members is required for some purposes, otherwise a majority vote. Motion would be made and seconded for closed session, purpose stated, vote taken. Minutes must reflect roll call vote and purpose of closed session.
* **Leaving a Closed Session** - OMA is silent on how to end/leave a closed session. Minutes should reflect the time of ending a closed session and reconvening Open Meeting.
* **Decisions or Votes resulting from Closed Session Must be Done in Open Meeting.**
* **Staff, employee(s), or private citizens (when appropriate) may be asked to accompany the members into Closed Session.**
* **Forcibly excluding persons from a closed session –** “a public body may, if necessary, exclude an unauthorized individual who intrudes upon a closed session by either (1) having the individual forcibly removed by a law enforcement officer, or (2) by recessing and removing the closed session to a new location.”

1. **PUBLIC ATTENDING OPEN MEETINGS**

* **Excluding individuals** – No person may be excluded from attending a public meeting, except incident to “breach of peace”.
* **Identifying public attendees** – No person will be required to register, or otherwise provide name or other personal information as a condition of attendance.
* **Limiting public comment** – A board may require individuals to identify themselves in order to speak during a meeting. A board may also set time limits on individual public comments. However, there may be no rule that limits the period of public comment. In other words, all who wish to speak must be allowed to speak.
* **Meeting location** – the OMA only requires that a meeting be held "in a place available to the general public”.
* **Timing of Public Comments** – a board has discretion about when to schedule public comment during a meeting.
* **Taping and Broadcasting** – the right to attend a public meeting includes the right to tape-record, videotape, broadcast live on radio, and telecast live on television the proceedings of a public body at the public meeting (without prior approval). A board may establish reasonable regulations governing the televising or filming by the electronic media of a hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage.

**5. MINUTES**

* **What must be in the minutes** – at a minimum, the minutes must show the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes must include all roll call votes taken at the meeting.
* **When must minutes be available** – proposed minutes must be made available for public inspection within eight days after the applicable meeting. Approved minutes must be made available for public inspection within five days after the public body's approval.
* **When must minutes be approved** – at the board’s next meeting
* **Closed session minutes** – “ … a separate set of minutes must be taken for closed sessions. While closed session minutes must be approved in an open meeting (with contents of the minutes kept confidential), the board may meet in closed session to consider approving the minutes. Closed session minutes shall only be disclosed if required by a civil action filed under (certain conditions). The board secretary may furnish the minutes of a closed session of the body to a board member. A member's dissemination of closed session minutes to the public, however, is a violation of the OMA, and the member risks criminal prosecution and civil penalties. An audiotape of a closed session meeting of a public body is part of the minutes of the session meeting and, thus, must be filed with the clerk of the public body for retention under the OMA. Closed session minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session occurred.”
* **Inadvertent omissions from minutes** – “ … the OMA does not invalidate a decision due to a simple error in the minutes, such as inadvertently omitting the vote to go into closed session from a meeting's minutes.”

**6. PARLIAMENTARY PROCEDURES**

* **Core Principle** – for the actions of a public body to be valid, they must be approved by a majority vote of a quorum, absent a controlling provision to the contrary, at a lawfully convened meeting.
* **Quorum**  - defined as the minimum number of members who must be present for a board to act. Any substantive action taken in the absence of a quorum is invalid. If a public body properly notices the meeting under OMA, but lacks a quorum when it actually convenes, the board members in attendance may receive reports and comments from the public or staff, ask questions, and comment on matters of interest.
* **What constitutes a Quorum?** Look to the statute, charter provision, or ordinance creating the board. On the state level, the Legislature in recent years has taken care to set the board quorum in the statute itself. The statute will often provide that "a majority of the board appointed and serving shall constitute a quorum." For a 15-member board, that means eight would be the quorum, assuming you have 15 members appointed and serving.
* **Disqualified members** – a member of a public body who is disqualified due to a conflict of interest may not be counted to establish a quorum to consider that matter.
* **Losing a quorum** – – even if a meeting begins with a quorum present, the board loses its right to conduct substantive action whenever the attendance of its members falls below the necessary quorum.
* **Resigned members** – “ … the common law rule in Michigan is that a public officer's resignation is not effective until it has been accepted by the appointing authority (who, at the state level, is usually the governor). Acceptance of the resignation may be manifested by formal acceptance or by the appointment of a successor. Thus, until a resignation is formally accepted or a successor appointed, the resigning member must be considered "appointed and serving," be counted for quorum purposes, and be permitted to vote.”

**7. VOTING**

* **Abstain** – means to refuse to vote. Thus, a board member does not "vote" to abstain. If a vote requires a majority or a certain percentage of the members present for approval, an abstention has the same effect as a "no" vote.
* **Adjourning the Meeting** – A presiding officer cannot arbitrarily adjourn a meeting without first calling for a vote of the members present.
* **Chairperson Voting** – Absent a contrary controlling provision, all board members may vote on any matter coming before a board.
* **Expired-Term Members** – Look first to the statute, charter provision, or ordinance creating the public body. Many statutes provide that "a member shall serve until a successor is appointed." Absent a contrary controlling provision, the general rule is that a public officer holding over after his or her term expires may continue to act until a successor is appointed and qualified.
* **Imposing a Greater Voting Requirement** – Where the Legislature has required only a majority vote to act, public bodies can't impose a greater voting requirement, such as requiring a two thirds vote of its members to alter certain policies or bylaws.
* **Majority** – means simply "more than half." Thus, on a 15-member board, eight members constitute a majority.
* **Proxy Voting** – Without explicit statutory authority, this practice is not allowed.
* **Roll Call Vote** – “ …there is no bright line rule for conducting a roll call vote. (Attorney General gives some rules of thumb.) When a voice vote reveals a divided vote on the board (i.e., more than one no vote), a roll call vote should be conducted to remove doubt about the vote's count. When the board is acting on matters of significance, such as, contracts of substantial size or decisions that will have multi-year impacts, a roll call vote is the best choice.”
* **Round-robin Voting** – “ … "Round Robining" defeats the public's right to be present and observe the manner in which the body's decisions are made and violates the letter and the spirit of the OMA.” Not allowed.
* **Rule of necessity** – see handbook
* **Secret ballot** – Not allowed. All votes must be taken by public vote at an open meeting.
* **Tie vote** – A tie vote on a motion means that the motion did not gain a majority. Thus, the motion fails.