



OPEN MEETINGS LAW



The Fundamentals

- **OPEN MEETINGS LAWS**
 - Wis. Stats. sections 19.81-98
 - Madison General Ordinance section 3.71
 - APM 3-2

The Foundation of Open Government

Open Meetings Policy

...a **representative government** of the American type is dependent upon an **informed electorate**, it is ...the policy of this state that **the public** is entitled to the **fullest and most complete information** regarding the affairs of government as is compatible with the conduct of governmental business. Wis. Stats. §19.81(1)

Open Meetings Law

- Open Meetings Laws Set Minimum Requirements For Convening A Public Meeting
 - Failure to abide by these rules can result in personal liability and reversal of actions taken
 - Requirements can be enforced by an aggrieved citizen, Dane County DA, Wisconsin AG

Legal Requirements - Agenda

- Must Have a Notice and Agenda (APM 3-2)
 - Explicit Agenda Items – No General Items, i.e. announcements, new items, past business
- Must be posted 24 hours in advance of meeting
 - Must be delivered to Clerk's Office no less than 48 hours in advance
 - Official Posting on Clerk's Office Bulletin Board
 - NO EXCEPTIONS (2 hour notice for true emergencies)

Legal Requirements - Access

- Must Be Open To Public – facility large enough to accommodate expected turnout
- Must Be Accessible – including language assistance
- Must Be Convened in Open Session (Closed Sessions Only If Statutes Allow & OCA Approves)
- Teleconferences – Staff will coordinate per APM 3-2, Agenda Must Identify Person Participating by Phone/Video
- Notices for virtual meetings must include Zoom link and instructions for public comments

What Is A “Meeting”?

- A gathering (in-person or virtual) where the business of the public body is conducted or discussed. A sufficient number of members must be present such that they can determine the course of the public body’s business.
 - Sufficient Number of Members
 - Subject Matter of Meeting

Sufficient Number of Members – Negative Quorum

- Quorum (Usually one more than half of the authorized membership). But, quorum of the Common Council is 14 members. A meeting cannot be held without a quorum.
- Negative Quorum – Enough members that if they vote together they could block passage of an item (difficult to determine the number until the item is actually voted upon).
- See OCA Formal Opinion 2020-001: “In consultation with the Common Council office, we have established a rule that if five or more Council members plan to meet on City business, the meeting should be noticed. As detailed above, this may not always avoid a negative quorum, but it is a good start. “
- Negative quorum calculations apply to BCC memberships and meetings. Thus, on a committee of 7 members, if a bare quorum of 4 attends a meeting, only 2 members would constitute a negative quorum.

Sufficient Number of Members – Walking Quorum

- Walking Quorum – series of discussions (in-person, by phone, text or email) such that they create a quorum or a negative quorum.
- See Department of Justice correspondence dated June 13, 2018. Communications that resemble a discussion and exchange of ideas or opinions regarding business before the body among a negative quorum are not permissible. One-way communications which do not invite a conversation among a negative quorum may resemble a letter or memo rather than a meeting. But even one-way communications may result in a negative quorum depending on the actions of recipients.
- Use one-way communication disclaimer in emails if communicating with a negative quorum.

Sufficient Number of Members – Joint Statements

- A negative quorum of member collaborating to draft and edit a joint statement regarding business to come before the body and committing to vote in a particular manner is an impermissible walking quorum. See DOJ correspondence of June 13, 2018 and City Attorney memo of September 17, 2020.
- Merely requesting co-sponsors or responding to such a request does not necessarily imply a decision to vote in a particular manner and is permissible.

Conducting Public Body's Business

- Includes simple discussions or information gathering
- Includes all subcommittees, task forces, work groups, etc.
- Applies when attending another public body's meeting
- Does not include social gatherings, chance meetings where the body's business is not discussed

PRESENCE OF A QUORUM TRIGGERS A LEGAL PRESUMPTION OF A MEETING

Closed Sessions

- Must Be Convened In An Open Meeting/ Must State Closed Session on Agenda
- Requires Explicit Motion (include statutory citation) And Recorded Vote
- Chair Must Make Announcement & Clear Room
- Must Be For A Reason Permitted Under Wisconsin Statutes
 - □ Judicial/quasi-judicial deliberations (PFC, EOC) □ Discipline & licensing (personnel comm., ALRC) □ Compensation & evaluation □ Crime prevention (PSRB, crime stoppers board) □ Competitive or bargaining purposes (deliberations re: negotiations & actual negotiations) Personnel matters – only if considering financial, medical, social or personal histories or disciplinary data of specific persons or the preliminary consideration of personnel problems or the investigation of charges against specific persons □ Conferring with legal counsel (for advice on strategy re: current or likely litigation)

Closed Sessions

- Staff Must Consult With OCA PRIOR to placing on agenda
 - OCA will assist in identifying correct exception
 - Relying on OCA Advice Prevents Imposition of Forfeitures

Penalties

- May be enforced by the City Attorney, District Attorney, Attorney General or an Aggrieved Citizen
- Forfeitures \$25 -200 Plus Court Costs (City Cannot Reimburse You)
- A Court May Void Any Actions Taken During An Illegal Meeting
- Public Embarassment

SUMMARY

- You Are Conducting The PUBLIC'S Business, The Public Has The Right To Observe The Process As Well As The End Product
- Staff Is Assigned To Assist You And Ensure Compliance With The Law
- Avoid Discussing Public Body Business With Other Members Outside Of a Properly Noticed Public Meeting
- When In Doubt – Consult OCA/Common Council Office staff



RESOURCES

Office of the City Attorney

<http://www.cityofmadison.com/attorney/index.cfm>

Attorney General Compliance Guide

<https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/2018%20OML%20Compliance%20Guide.pdf>

Thank You

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