THE OPEN MEETINGS ACT
A PRIMER

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This presentation sets forth general guidelines for the Open Meetings Act (OMA) and are not applicable in every situation where an alleged violation is to have occurred. Therefore, a public body is strongly encouraged to discuss the application of a particular guideline with your unit of local government’s legal counsel.
What is a Public Body under OMA?
What is a Public Body?

Factors considered:

- Who appoints the members?
- What are the entity’s assigned duties?
- Is it accountable to any larger public body?
- Does the entity have a budget?
What is a Public body?

- The State
- School Districts
- Counties
- Municipalities
- All subcommittees
What is not covered
What is not covered

- Condominium Associations.
- Individual Officers.
- Not-for-profit organizations.
- Private companies and their Boards.
The Meeting
The Meeting

- OMA defines a meeting as “[a]ny gathering of a majority of a quorum for the purpose of discussing public business.” 5 ILCS 120/1.02.
**The Meeting**

- **Majority of a quorum**

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<tr>
<th>Board Number</th>
<th>Quorum</th>
<th>Majority of Quorum</th>
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* A quorum cannot include half-a-person
If a public body has adopted rules allowing for electronic attendance, a member may attend a meeting electronically if the absence is due to a:

- Family emergency;
- Employment related matter; or
- Sickness. 5 ILCS 120/7(a).
Before allowing a member to attend electronically, a public body must adopt a rule or regulation permitting electronic attendance. 5 ILCS 120/7(c).

A quorum must be *physically present* at the meeting in order for the member to attend electronically. 5 ILCS 120/7(a).
OMA was recently amended to include public comment at meetings. 5 ILCS 120/2.06(g).

- Citizens have a right to address public officials at a meeting.
The Meeting

- Public body should establish rules governing that right. These would include:
  
  - The amount of time a citizen may speak.
  
  - Other matters relating to decorum and procedure.
The Meeting

- Accommodation
The Meeting

- The accommodation must not be merely convenient to the members of the public who show up, but the public as a whole. 5 ILCS 120/2.01.
The Meeting

- Social gatherings are permitted provided public business *is not* discussed.

- A social gathering, however, may turn into a meeting if a majority of the quorum discusses public business at the gathering.

- Proceed with caution!
The Meeting

- Beware of the appearance of impropriety.

- Strive to go beyond the minimum requirements of OMA.

- If it doesn’t seem right, don’t do it!!!
Notice
Notice

- Regular meetings = 48 hours notice.
- Special meetings = 48 hours.
- Emergency meetings = as soon as possible.

5 ILCS 120/2.02 (a).
Public notice of the meeting must be posted at the principal office of the body holding the meeting.

If no such office exists, notice must be posted where the meeting is held.

Notice must be placed on the website if the public body has a full-time staff that maintains the website.

5 ILCS 120/2.02(b).
The Agenda
The Agenda

- Notice as to the issues.

- Must be specific as to any final action.

Meeting Minutes
Public bodies must keep minutes of both open and closed sessions. 5 ILCS 120/2.06(a).
Meeting Minutes

- Session minutes must include:
  - Date, time and place;
  - Summary of discussion of all matters proposed, deliberated or decided;
  - Names of all members present and absent; and
  - A record of any votes taken.
Closed Session
Closed Session

- Section 2(c) of OMA authorizes 25 exceptions for a public body to close an open session. 5 ILCS 120/2(c).
The exceptions relate to, among other things, employment, litigation, land acquisition, collective bargaining and student disciplinary cases.

These exceptions are to be *narrowly construed*.
Closed Session

- Start in open session.
- Vote to close.
- Cite to the specific statutory exception.
- Exclude the public and enter the closed meeting.
Closed Session

- Employment
  - Must focus on the performance, compensation or dismissal of specific employee or employees. 5 ILCS 120/2(c)(1)

- Litigation
  - Must be either filed or “probable or imminent.” 5 ILCS 120/2(c)(11)
Closed Session

- Verbatim recording (must tape it).
- Must generate session minutes.
- NO FINAL ACTION!!!
Closed Session

- When returning to open session a public body must:
  - Vote to adjourn closed session and return to open session.
  - Call back to order and vote on any matters discussed.
Closed Session

- Minutes are available for public inspection *only if* the public body chooses or is ordered by the court.

- Must be reviewed at least twice a year to see if it is no longer necessary to keep the minutes confidential.
Enforcement of OMA
Enforcement of OMA

- **Criminal Penalties**
  - Class C misdemeanor. 5 ILCS 120/4.
  - If the State’s Attorney is to enforce OMA, the State’s Attorney must bring action within 60 days of the State’s Attorney discovery of the alleged violation. 5 ILCS 120/3(a) (West 2010).
Enforcement of OMA

- Civil Penalties
  - Injunction, mandamus, ordering closed minutes released, or voiding final action.
  - Attorney fees and costs for the party that prevails.
The Attorney General’s Role
Section 3.5(b) of OMA (5 ILCS 120/3.5) (West 2010)) provides that "upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted."
The Attorney General’s Role

- A citizen must submit a Request for Review to the Public Access Counselor (PAC) within 60 days of the date of the alleged violation.

- Upon receipt of the Request for Review, the PAC will decide if further inquiry is warranted.
The Attorney General’s Role

- Upon the PAC’s review of the alleged violation and any subsequent correspondence from the public body, the PAC may decide no violation occurred and that no further inquiry is warranted.
The Attorney General’s Role

If the PAC finds that a violation has occurred, it may, depending on the violation, direct the public body to:

- Release closed session recording and minutes.
- Invalidate any final action and instruct the public body to revote on a matter.
- Instruct the public body on how to avoid future violations.
Three Simple Things to Keep in Mind

- The requirements of OMA constitute the bare minimum.

- Always err on the side of caution.

- If you have to ask if the action is a violation, don’t do it!!!
Additional Resources

- Please contact the Public Access Counselor’s hotline at 1-877-299-3642 for additional information.