

COMPLYING WITH MARYLAND'S OPEN MEETINGS ACT

SEPTEMBER 2016

OBJECTIVES

- ❑ What is the Open Meetings Act?
 - **Annotated Code of MD - General Provisions Article –Title 3**
 - why should a public body comply?

- ❑ What does it require of my public body?
 - 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?

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

OPEN MEETINGS ACT

DO THESE 4 THINGS AND YOU WILL COMPLY WITH THE OPEN MEETINGS ACT:

1. Provide advance public notice
2. Hold meetings open to the public
3. Prepare minutes
4. Designate a trainee(s)

ACTIVITIES GOVERNED (1): THOSE OF A “PUBLIC BODY” -§3-101(H) & THE PUBLIC BODY’S “MEETINGS” -§§ 3-101(G), (K), 3-103

□ Public Body

- Multi-member Body (Board, Commission or Committee)
- Formal creation (usually) (State Statute, MD Constitution, County Charter, ordinance, Resolution)

□ Meetings

- Conducting public business (considers/transacts public business)
- Considered a meeting if **simultaneous** interaction (conference calls etc.)
- Social gatherings, retreats that discuss public business is a meeting under OMA
- Not a meeting under OMA if it is merely a social gathering where NO public business is discussed

ACTIVITIES GOVERNED (2):
TOPICS OF DISCUSSION (“FUNCTIONS”) DEFINED BY THE
ACT-§§ 3-101 DEFINITIONS; 3-103 SCOPE & ADMINISTRATIVE
(FORMERLY EXECUTIVE) FUNCTION EXCLUSION §§ 3-101 (B), 3-104

□ **Scope**

- Covered: Advisory, legislative, quasi-legislative functions, all as specifically 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

□ **Administrative Function Exclusion**

- Topic cannot 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

ACTIONS BEFORE A MEETING: PUBLIC NOTICE OF MEETINGS - § 3-302

- ❑ Timing
- ❑ Reasonably in advance
- ❑ Last-minute meetings- special efforts
- ❑ Content
- ❑ Date, time, place, open/closed status
- ❑ Agenda
- ❑ Method- how is notice provided
- ❑ Consistency

ACTIONS DURING A MEETING (1)

LOGISTICS - § 3-303

8

- ❑ Location
- ❑ Public participation (entitled to attend)
- ❑ 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, 3-306 (C), 3-104

- ❑ Identifying a specific exception
- ❑ Exceptions are strictly construed
- ❑ Completing a meaningful written “closing statement” – the Chair’s duty to prepare or sign
- ❑ Holding a public vote
- ❑ Staying within an exception
- ❑ Model closing statement on Attorney General’s website

ACTIONS AFTER MEETING (1): MEANINGFUL MINUTES - §3-306

- ❑ Required timeliness; content
- ❑ Open-session minutes: Available on request, without redaction
- ❑ Tape recording ≠ minutes (must be written unless 2011 amendment)
- ❑ 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)
- ❑ 2011 amendment: use of live and streaming audio or video for open-session minutes

ACTIONS AFTER A MEETING (2): RECORD RETENTION-§§3-302, 3-306

- ❑ Notice (a screenshot of the online notice should be printed out with the date of posting) (1 year)
- ❑ Minutes and tape recording (1 year)
- ❑ Sealed minutes (1 year)
- ❑ Closing statements (likely 1 year)
- ❑ Archiving requirements –other laws might apply
- ❑ Access: open to inspection but must be requested

TRAINING REQUIREMENT - § 3-213

- ❑ Designation by “each public body” of a member, officer, or employee to “receive training” (can be more than one member)
- ❑ For instructions on how to comply, see <http://www.oag.state.md.us/Opengov/Openmeetings/training.htm>
- ❑ Public bodies should send the designee’s name to the Compliance Board pursuant to the instructions
- ❑ Public bodies should retain their own proof that the training was received and should only send a copy of proof to the Compliance Board

ISSUES, EXAMPLES, & QUESTIONS

- ❑ Common causes of violations (unplanned meetings, 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)
- ❑ Responding to complaints (see procedures posted online)