



City of Ypsilanti Board and Commission  
Orientation Booklet

On behalf of the City Council I would like to congratulate you on your appointment to a board or commission of the City of Ypsilanti. We encourage and promote community involvement by residents and your willingness to give your time to help our community is sincerely appreciated.

These advisory bodies play a valuable role in the governance process and in assisting City Council in providing the best quality of life for our residents.

This handbook is designed to provide information regarding the functions of board and commissions as allowed by city ordinance and state law.

Again, thank you for your dedication to this community, and offering your time and talents for the betterment of Ypsilanti for those that live, work, and play in this amazing city.

## City Boards and Commissions

**All city boards and commission operate as advisory bodies to City Council except when otherwise provided by State Statute. Board and commissioners are to be considered experts on the topics outlined in the ordinance establishing each body.**

### Arts Commission

The purpose of the Art Commission (YAC) is to act as an advisory body to the mayor, city council, and city manager for all things art in the City of Ypsilanti.

### Board of Ethics

The Board of Ethics administers and enforces the ordinances governing the standards of conduct. The term limit for board members is five years.

### Fire and Police Retirement Board

The Fire and Police Retirement Board administers the Police and Fire Pension Fund and approves pensions for police and fire personnel.

### Fire Civil Service Commission

Pursuant to Civil Service Act 78, the Fire Civil Service Commission runs a civil service system based upon examination and investigation to determine merit, efficiency, and fitness for appointment, employment, and promotion of all full-time paid members appointed in the fire and police department. The Commission regulates the transfer, reinstatement, suspension, and discharge of officers, fire fighters, and police officers while prescribing penalties and providing remedies. The term length for Commissioners is 6 years.

### Historic District Commission

The Historic District Commission (HDC) guides development and renovation in the Historic District in order to safeguard Ypsilanti's built resources. Any proposed work done on the exterior of a structure within the District must be reviewed by the HDC. This includes new construction, reconstruction, renovation, restoration, or painting of any property or historic landmark within the Historic District, as well as work on site features such as driveways, retaining walls, and fences.

### Human Relations Commission

The Human Relations Commission supports efforts to enhance mutual understanding among the City's culturally diverse residents. The term length for Regular Commissioners is 3 years and 1 year for Youth Members.

### Huron River Watershed Council

The Huron River Watershed Council is a council of the local governmental units that have jurisdiction over property in the watershed. HRWC provides water resource information and research services to member governments. Term length for members of HRWC is 2 years.

### Parks and Recreation Commission

The Parks and Recreation Commission is appointed by City Council to ensure recreational programs and opportunities are afforded all citizens, by encouraging public-private partnerships between the City, local businesses, organizations, neighborhoods, Washtenaw County, and neighboring townships and by encouraging volunteerism. The goal of the Recreation Commission is to seek sustainable alternatives and methods for making recreational programming available to the citizens of the City of Ypsilanti.

### Planning Commission

The Ypsilanti Planning Commission administers compliance with the City Zoning Ordinance and reviews requests for rezoning, special use permits, street or alley vacations, capital improvements, planned unit developments, and site plans. The Planning Commission is also responsible for amendments to the Master Plan and Zoning Ordinance.

#### Police Advisory Commission

The Police Advisory Commission works to strengthen the relationship between the community of the City of Ypsilanti and the Ypsilanti Police Department and to serve as a liaison to enhance community and police relations and serve as an advocate for programs, ideas, and methods to improve the relations between the police and the community.

#### Review & Tax Assessment Board

The Board of Review is tasked with hearing and deciding property assessment appeals and hardship requests. The term length for Board Members is 2 years.

#### SmartZone Local Development Finance Authority

The LDFA provides local financing for the Ann Arbor/Ypsilanti SmartZone through a tax capture mechanism within a specific district. The geographic boundaries for the Ann Arbor/Ypsilanti SmartZone LDFA was defined as the combined DDAs of the two respective cities, and under the tax capture formula, tax levies eligible for capture include only those for which a prior claim had not been established by either DDA.

#### Sustainability Commission

The Sustainability Commission will seek to create a model of sustainability through efforts to advocate, educate and promote the social, economic and environmental health of the community now and into the future.

#### Ypsilanti Community Utilities Authority

The Ypsilanti Community Utilities Authority (YCUA) Board oversees the activities of YCUA in providing top quality, cost effective, and environmentally safe water and wastewater to customers. Term length for Board Members is 3 years.

#### Ypsilanti Downtown Development Authority

The mission of the Ypsilanti Downtown Development Authority (YDDA) is to undertake district-wide improvements that have the greatest impact in strengthening the downtown areas and attracting new business. The primary goal of the YDDA is to implement positive economic, physical, aesthetic, and community changes in each of our four districts. The term length for Board Members is 4 years.

#### Ypsilanti Housing Commission

The Ypsilanti Housing Commission provides affordable housing opportunities to moderate and low-income families and individuals in the City of Ypsilanti. The YHC owns 342 units of affordable housing within the City. It is the project sponsor of Hamilton Crossing, a nationally recognized, award-winning 144-unit affordable housing development.

#### Zoning Board of Appeals

The Zoning Board of Appeals interprets the City Zoning Ordinance and the official zoning map; decides upon requests for nonuse variances from the zoning code; hears appeals regarding determinations made by an administrative official; and other activities as authorized under the zoning ordinance and the Michigan Zoning Enabling Act. The term length for Board Members is 3 years.

## Purpose

This handbook is designed to serve as a guide to assist a new board and commissioner acclimate to their new role, general policies, and procedures that apply to all city advisory bodies. As a new member it is recommended that you schedule time to meet with the staff liaison of your specific board or commission. Also, refer to past meeting agendas and minutes to bring yourself up to speed on what is currently under consideration.

## Boards and Commissions – 9.03 City Charter

- Council may create or discontinue, by ordinance, boards and commissions as the Council deems necessary or of benefit to the City of Ypsilanti. Council will provide for the duties and functions of boards and commissions, subject to law. **The boards and commissions shall not administer any activity, or agency of the City government unless specifically required to do so by State statute, but shall serve solely in an advisory capacity of in the capacity of a quasi-judicial appeal board.**
- All members of the City boards and commissions established under this Charter, by statute or otherwise, shall be appointed by the Mayor, subject to the approval and confirmation by a majority vote of the City Council. Council Members may be appointed by the Council to serve on a board or commission only when the service is required by State law. Whenever any statute or law requires that the appointment of members of a board or a commission established under this Charter, by statute or otherwise, be by the chief executive or administrative officer of the City, such chief executive or administrative officer, for the purposes of such appointment, shall be deemed to be the Mayor, and an appointment in such cases shall be subject to the approval and confirmation by a majority vote of the City Council.
- In addition to those reasons and limitations set forth in the ordinances creating the board or commission, members of City boards and commissions appointed under this Section may be removed from office upon a 2/3 affirmative vote of City Council for misfeasance, malfeasance, or nonfeasance in office, or as otherwise authorized by statute.

## Attendance Requirement

Boards and commission benefit through the participation of all of its seated members. A quorum (majority) is required by the Michigan Open Meetings Act for a board to take any action. Members are expected to attend all meetings as attendance is necessary for a board and commission to function and be effective. If a member must miss a meeting, either as a result of illness, vacation, or long term leave the member should make the chair and staff liaison aware prior to the meeting. If a member is unable to meet this requirement a resignation is recommended. If the member has several unexcused absences they can be removed by Council through five affirmative votes.

## Ethical Standards of Conduct

All City Council Members, City Officers, and City Staff are subject to Article III of the City Code. That section of the Code is included below and any questions regarding this section should be directed to the City Attorney, or staff liaison.

All Board and Commission members are required to complete and sign a conflict of interest form upon appointment. That form is included in this packet and should be submitted to the City Clerk prior to the first meeting as a member.

## **ARTICLE III – ETHICAL STANDARDS OF CONDUCT**

### **Division 1**

#### **Section 46-72 – Penalty**

- Any person who shall be convicted, by a court of competent jurisdiction, of violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punished as provided in section 1-15.
- In addition, any person so convicted by a court of competent jurisdiction shall forfeit any city employment or office held. The office shall be vacant upon conviction.
- Any person convicted by a court of competent jurisdiction of a misdemeanor involving election fraud, or any felony, or a misdemeanor involving moral turpitude committed in the course of employment with the city, shall forfeit any city employment or office held. The office shall be vacant upon conviction.

#### **Section 46-73 – Financial/Conflict Disclosure**

- All city councilmembers, the city manager, city treasurer, city finance officer, and all city department heads, shall file an annual disclosure statement with the city clerk on or before April 15 of each year. The statement shall disclose and detail any interest of the filer in any company, business, trust or entity of any kind doing business with the city for the past year and state the type of interest, cost, income and benefits received and present value. The statement shall also include any interest of the filer's immediate family in any such company, business, trust or entity. The disclosure statement shall be a public document.
- Disclosure need not be made of benefits received from any entity when an ownership interest is the only connection, and:
  - The company has stock traded on a national exchange and the filer owns \$25,000.00 or less of stock of the entity; or
  - The stockholder owns one percent or less of the total stock by value; whichever is greater.
- Disclosure need not be made of wages or salary received from a public community college, junior college or state college or university.

#### **Section 46-74 – Legal Process**

- No city councilmember, city officer or employee of the city shall interfere with the ordinary course of law enforcement within the city, and no special favors, consideration or disposition shall be suggested to or requested of any law enforcement person of the city including city manager, police chief, police officers, ordinance officers, city attorney and/or administrative staff concerning any city law enforcement matter, including, but not limited to, parking tickets, traffic tickets, ordinance tickets or enforcement of city codes.
- This section shall not prohibit the city manager, city attorney, and all law enforcement officials from exercising the usual power, control and discretion which are part of their duties. This section shall not prohibit the mayor and city council from making policy decisions, enacting legislation, and directing the affairs of the city in accordance with their legal powers and responsibility.

#### **Section 46-75 – Offering gifts, loans, contributions, etc., for influence**

- No person shall offer or give to any of the following persons a gift, loan, contribution, forbearance, reward or promise of future employment based on an agreement, promise, or expectation that the vote or official action or decision of an officer, employee or candidate for elected office in the city would be influenced thereby:
  - A city officer, an employee of the city or a candidate for elected office in the city;

- A member of the immediate family of an individual referred to in subsection (1) of this section; or
- A business or other entity with which an individual referred to in subsection (1) or (2) of this section is associated.

**Section 46-76 – Accepting gifts, loans, contributions, etc., for influence.**

- No person referred to in section 46-75 shall accept a gift, loan, contribution, reward or promise of future employment based on an agreement that the vote or the official action or decision of an officer, employee or candidate for elected office in the city would be influenced thereby.
- Section 46-75 and subsection (a) of this section shall not prohibit a city officer, employee or candidate for elected office in the city from accepting minor gifts such as meals, awards, pens, pencils, and other token items valued at \$25.00 or less when the gift is extended during the course of city business and no return promise is made by the recipient.

**Section 46-77 – Exceptions**

- This article does not prohibit the expression of views and opinions or communications of plans for future action, nor does it prohibit contributions to political parties or candidates as permitted by law.

**Section 46-78 – Disclosure of confidential information**

- No city officer, employee, contractor or agent shall divulge to any unauthorized person confidential information acquired in the course of holding city office, employment or position (including but not limited to information provided, obtained or discussed in closed or executive sessions of the city council) in advance of the time authorized by the appropriate governmental body, department head, city manager or law, except as otherwise provided by law.

**Section 46-79 – Prohibited use of position or confidential information**

- No city officer or employee shall make use of his public position, or any confidential information received through holding such public position, to obtain financial gain for themselves, a member of his immediate family or an associated business or organization or entity.
- This section shall not prevent any officer or employee from accepting their regular compensation.

**Section 46-80 – Prohibited use of city personnel, resources, property, etc.**

- No officer or employee shall make use of city personnel, resources, property or funds to obtain financial gain for themselves, a member of his immediate family or an associated business.
- This section shall not prevent any city officer or employee from benefiting a nonprofit charitable organization when authorized by proper city council, manager or other legal authority action.

**Section 46-81 – Authority to make contracts**

- No officer or employee shall act on behalf of the city in the making of contracts when such officer or employee has, in fact, no authority to so do.

**Parliamentary Procedures**

The City Council of the City of Ypsilanti currently employs the use of Robert’s Rules of Order 10<sup>th</sup> Edition. While it is not required that all boards and commissions follow this format most city boards and commissions do. There is a Robert’s Rules of Order cheat sheet included in this packet. Please contact your chair or staff liaison regarding current practices of your specific board or commission.

## **Michigan Open Meetings Act (OMA)**

The Open Meetings Act took effect on January 1, 1977 to promote a new era of government accountability and foster openness in government to enhance responsible decision making. As a governmental body all city boards and commissions are subject to this act. Included in this packet is an overview of the act, please direct all questions to the City Attorney, or staff liaison.

### **Roles and Responsibilities**

#### **Chairperson**

Each board and commission should elect a chairperson at their first meeting of the calendar year. Please ensure the person elected is aware of the responsibilities that are associated with the position.

The Chairperson will preside at all official meetings and generally ensures that the group reviews and acts upon the items on the agenda. The Chairperson shall ensure that decisions are made in a timely manner while being careful not to limit discussion.

#### Responsibilities of the Chair

- Preside at all official meetings of the board or commission.
- Consult with the staff liaison in drafting the meeting agenda.
- Attend City Council meetings as needed to represent the board or commission.
- Serve as a model of leadership and inspire public confidence in Ypsilanti's Government.
- Should speak last when the board or commission is deliberating.

The Chair is also the person vested with authority to:

- Call a meeting to order and propose adjournment.
- Recognize and call upon speakers.
- Call for debate and vote on motions.
- Clarify or request clarifications of motions made by members.
- Rule motions out of order.
- Interpret and enforce any meeting management bylaws or rules of procedure.
- Call members to order if they disregard rules of procedure or decorum for the meeting.

An effective Chair also:

- Solicits discussion and opinions from all members.
- Does not allow personal attacks.
- Keeps the discussion focused on the issue.

#### **Role of Board/Commission Members**

Serving on a board/commission is a privilege that implies a responsibility to act in the best interest of the City of Ypsilanti. Members serve as ambassadors of the city, and represent the interests of Ypsilanti at official meetings as well as outside City Hall. As an ambassador of the city, it is important to understand that your words and actions reflect that role at all times.

A member shall:

- Attend scheduled meetings or let the staff liaison and chair know if you are absent.
- Prepare in advance of meetings. Read the agenda packet prior to the meeting and be familiar with issues on the agenda.
- Fully participate in meetings and carry out assignments.

- Contact staff liaisons if there are questions or if additional information on an agenda item is required prior to the meeting.
- Use community members to obtain feedback on topics under consideration.
- Be considerate of fellow members and staff.
- Demonstrate respect, kindness, consideration, and courtesy to others.
- Be respectful of other people's time. Stay focused and act efficiently during meetings.
- Act and speak with honesty and integrity.
- Do not speak for the board/commission unless authorized by the action of the board/commission.

### **Relationship with City Council**

Members serve an important role in extending the reach of the democratic process into the community. However, members should be aware of, and sensitive to, Council's need to balance priorities and goals for the entire city.

Board and Commissioners should:

- Think of themselves as advisors to the City Council and ambassadors of the city.
- Make their decisions based on the collective judgment and not try to predict what action the City Council may take.

### **Relationship with other Boards and Commissions**

It is reasonable for boards and commission to work together on topics of overlap between said bodies. However, this should be done through formal action of the body. Boards and Commissions speak through resolution, and no member may approach another board or commission as representative of the body, or which they are a member, without formal direction.

### **Form of Government**

The City of Ypsilanti is a Council-Manager form of government. All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter, and Council shall provide for the exercise and for the performance of duties and obligations imposed by law (City Charter 2.01). The City Manager is the chief administrative officer of the city, responsible to Council for the administration of all City affairs placed in the Manager's charge by or under this Charter (City Charter 4.03(a)).

ANNUAL FINANCIAL/CONFLICT OF INTEREST  
BOARD AND COMMISSIONER DISCLOSURE REPORT

I, \_\_\_\_\_, commissioner, City of Ypsilanti, make the following annual report:

\_\_\_ I have no interest in any company, business, trust or entity of any kind which has done business with the city of Ypsilanti during the past calendar year.

\_\_\_ No member of my immediate family has any interest in any company, business, trust or entity of any kind which has done business with the city of Ypsilanti during the past calendar year.

\_\_\_ I have an interest in the following company, business, trust or entity, which has done business with the City of Ypsilanti during the past calendar year:

Name: \_\_\_\_\_

The nature of my interest is as follows:

Type of Interest: \_\_\_\_\_

Cost of such interest: \_\_\_\_\_

Income and benefits received from such interest in the past year: \$\_\_\_\_\_

Present value of such interest: \$\_\_\_\_\_

\_\_\_ A member of my immediate family (my \_\_\_\_\_, whose name is \_\_\_\_\_) has an interest in the following company, business, trust or entity, which has done business with the City of Ypsilanti during the past calendar year:

Name: \_\_\_\_\_

The nature of this interest is as follows:

Type of Interest: \_\_\_\_\_

Cost of such interest: \_\_\_\_\_

Income and benefits received from such interest in the past year: \$\_\_\_\_\_

Present value of such interest: \$\_\_\_\_\_

\_\_\_\_\_  
Signature

Dated: \_\_\_\_\_, 20\_\_\_\_

# Robert's Rules Cheat Sheet

To:	Say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Decided by:
Adjourn	"I move to adjourn."	No	Yes	No	No	Majority vote
Recess	"I move to recess for/until..."	No	Yes	No	Yes	Majority vote
Complain about hearing, comfort, etc.	"Point of privilege..."	Yes	No	No	No	Chair
End debate and vote on question	"I move the previous question."	No	Yes	No	No	Majority vote
Suspend further consideration of something	"I move to table this matter."	No	Yes	No	No	2/3 vote
Postpone deciding the question	"I move to postpone this matter until..."	No	Yes	Yes	Yes	Majority vote
Amend a motion	"I move to amend this motion by..."	No	Yes	Yes	Yes	Majority vote
Introduce business (a <b>main motion</b> )	"I move that..."	No	Yes	Yes	Yes	Majority vote

The motions and points listed above are in order of preference. When a motion or point of inquiry is pending, only those listed *above* the pending point may be raised.

To:	Say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Decided by:
Redress any violation of the body's Rules	"Point of order..."	Yes	No	No	No	Chair
Request information	"Point of inquiry..."	Yes	No	No	No	N/A
Verify a recent voice vote by actual count (before next motion only)	"I call for division."	Yes	No	No	No	Majority vote
Prevent body from considering a matter	"I object to considering this question."	Yes	No	No	No	2/3
Consider a suspended matter	"I move to take from the table..."	Yes	Yes	No	No	Majority
Reconsider a previous motion	"I move to reconsider..."	Yes	Yes	No	No	2/3
Consider something out of schedule	"I move to suspend the rules to consider..."	No	Yes	No	No	2/3
Vote on the Chair's decision	"I appeal the Chair's decision."	Yes	Yes	Yes	No	Majority

The motions and points above have no precedence. Any of them may be raised in response to any motion or question, with the exception of the **three items in gray** (motion to adjourn, motion to recess, and point of privilege)

# MAIN MOTIONS

## To Introduce New Business

### Obtaining and assigning the floor

- A member raises their hand (or rises, depending on your rules) and waits to be acknowledged
- The chair recognizes the member by name

**Note.** It is never proper to raise your hand or rise to be acknowledged while another is speaking. If your point or motion is one of the kind that can interrupt the speaker, make your point or motion without waiting for recognition.

### How the Motion is Brought Before the Assembly

- The member makes the motion: *I move that (or "to") ...* and resumes his seat.
- Another member seconds the motion: *I second the motion or I second it or second.*
- The chair states the motion: *It is moved and seconded that ... Are you ready for the question?*

### Consideration of the Motion

- Members can debate main motions before the question is voted on or otherwise decided.
- Before speaking in debate, members must obtain the floor.
- The maker of the motion has first right to the floor.
- Debate must be confined to the merits of the motion.
- Debate can be closed only by order of the assembly (2/3 vote) or by the chair if no one seeks the floor for further debate.

### The chair puts the motion to a vote

- The chair asks: *Are you ready for the question?*
- If no one rises to claim the floor, the chair proceeds to take the vote.
- The chair says: *The question is on the adoption of the motion that ... As many as are in favor, say 'Aye'. (Pause for response.) Those opposed, say 'Nay'. (Pause for response.) Those abstained please say 'Aye'.*
- Depending on your rules, some kinds of business may call for a vote by show of hands.

### The chair announces the result of the vote.

- *The ayes have it, the motion carries, and ...* (indicating the effect of the vote) or
- *The nays have it and the motion fails*

### If the count may be incorrect, a member calls for division

- If any member feels that the tally of voice votes is incorrect, they may call for division.
- Any call for division, unless the result of the previous vote was obvious (e.g. a unanimous or nearly-unanimous vote) must be honored.
- The chair will instruct the body on how to vote (e.g. by show of hands or by standing), and the body will vote accordingly.

### WHEN DEBATING YOUR MOTIONS

- Listen to the other side
- Be polite
- Focus on issues, not personalities
- Avoid questioning motives

# MOTIONS, GENERALLY

## MAIN MOTION

You want to propose a new idea or action for the group.

- After recognition, make a main motion.
- Member: "Madame Chairman, I move that \_\_\_\_\_."

## AMENDING A MOTION

You want to change some of the wording that is being discussed.

- After recognition, "Mister Chairman, I move that the motion be amended by adding the following words \_\_\_\_\_."
- After recognition, "Mister Chairman, I move that the motion be amended by striking out the following words \_\_\_\_\_."
- After recognition, "Mister Chairman, I move that the motion be amended by striking out the following words, \_\_\_\_\_, and adding in their place the following words \_\_\_\_\_."

## REFER TO A COMMITTEE

You feel that an idea or proposal being discussed needs more study and investigation.

- After recognition, "Madame Chairman, I move that the question be referred to a committee made up of members Smith, Jones and Brown."

## POSTPONE DEFINITELY

You want the membership to have more time to consider the question under discussion and you want to postpone it to a definite time or day, and have it come up for further consideration.

- After recognition, "Mister Chairman, I move to postpone the question until \_\_\_\_\_."

## PREVIOUS QUESTION

You think discussion has gone on for too long and you want to stop discussion and vote.

- After recognition, "Madam Chairman, I move the previous question."

## LIMIT DEBATE

You think discussion is getting long, but you want to give a reasonable length of time for consideration of the question. After recognition, "Mister President, I move to limit discussion to two minutes per speaker."

## POSTPONE INDEFINITELY

You want to kill a motion that is being discussed.

- After recognition, "Mister Chairman, I move to postpone the question indefinitely."

## RECESS

You want to take a break for a while.

- After recognition, "Mister Chairman, I move to recess for ten minutes."

## ADJOURNMENT

You want the meeting to end.

## **MOTIONS, GENERALLY**

- After recognition, "Madame Chairman, I move to adjourn."

### **PERMISSION TO WITHDRAW A MOTION**

You have made a motion and after discussion, are sorry you made it.

- After recognition, "Mister Chairman, I ask permission to withdraw my motion."

### **CALL FOR ORDERS OF THE DAY**

At the beginning of the meeting, the agenda was adopted. The chairman is not following the order of the approved agenda.

- Without recognition, "Call for orders of the day."

### **SUSPENDING THE RULES**

The agenda has been approved and as the meeting progressed, it became obvious that an item you are interested in will not come up before adjournment.

- After recognition, "Madam Chairman, I move to suspend the rules and move item 5 to position 2."

### **POINT OF PERSONAL PRIVILEGE**

The noise outside the meeting has become so great that you are having trouble hearing, or the temperature in the room is uncomfortable, or some other concern.

- Without recognition, "Point of personal privilege."
- Chairman: "State your point."
- Member: "There is too much noise, I can't hear."

### **COMMITTEE OF THE WHOLE**

You are going to propose a question that is likely to be controversial and you feel that some of the members will try to kill it by various maneuvers. Also you want to keep out visitors and the press.

- After recognition, "Mister Chairman, I move that we go into a committee of the whole."

### **POINT OF ORDER**

It is obvious that the meeting is not following proper rules. E.g. a motion is passed without the right kind of vote, or a member is breaking the rules of debate.

- Without recognition, "I rise to a point of order," or "Point of order."

### **POINT OF INQUIRY**

You are wondering about some of the facts under discussion, such as the balance in the treasury when expenditures are being discussed.

- Without recognition, "point of inquiry."

### **POINT OF PARLIAMENTARY INQUIRY**

You are confused about some of the parliamentary rules.

- Without recognition, "Point of parliamentary inquiry."

## **MOTIONS, GENERALLY**

### **APPEAL FROM THE DECISION OF THE CHAIR**

The Chair has made a decision that you wish the body to vote on.

- Without recognition, "I appeal from the decision of the Chair."

# OPEN MEETINGS ACT HANDBOOK



**Attorney General Dana Nessel**

Additional copies available at [mi.gov/foia-oma](http://mi.gov/foia-oma)

The Handbook is intended to be a quick reference guide. It is not intended to be encyclopedic on every subject or resolve every situation that may be encountered.

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## OPEN MEETINGS ACT

### THE BASICS

**The Act** – the [Open Meetings Act \(OMA\) is 1976 PA 267, MCL 15.261 through 15.275](#). The OMA took effect January 1, 1977. In enacting the OMA, the Legislature promoted a new era in governmental accountability and fostered openness in government to enhance responsible decision making.<sup>1</sup>

Nothing in the OMA prohibits a public body from adopting an ordinance, resolution, rule, or charter provision that requires a greater degree of openness relative to public body meetings than the standards provided for in the [OMA](#).<sup>2</sup>

**What bodies are covered?** – the OMA applies to all meetings of a [public body](#).<sup>3</sup> A "public body" is broadly defined as:

[A]ny 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*; a lessee of such a body performing an essential public purpose and function pursuant to the [lease agreement](#).<sup>4</sup> [Emphasis added.]

As used in the OMA, the term "[public body](#)" connotes a collective entity and does not include an individual government official.<sup>5</sup> The OMA does not apply to [private, nonprofit corporations](#).<sup>6</sup>

**Public notice requirements** – a meeting of a public body cannot be held unless public notice is given consistent with the [OMA](#).<sup>7</sup> A [public notice](#) must contain the public body's name, telephone number, and address, and must be posted at its principal office and any other locations

<sup>1</sup> *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993).

<sup>2</sup> MCL 15.261.

<sup>3</sup> MCL 15.263. When the Handbook refers to a "board," the term encompasses all boards, commissions, councils, authorities, committees, subcommittees, panels, and any other public body.

<sup>4</sup> MCL 15.262(a). The provision in the OMA that includes a lessee of a public body performing an essential public purpose is unconstitutional because the title of the act does not refer to organizations other than "public bodies." OAG, 1977-1978, No 5207, p 157 (June 24, 1977). Certain boards are excluded "when deliberating the merits of a case." MCL 15.263(7). See also MCL 15.263(8) and (10).

<sup>5</sup> *Herald Co v Bay City*, 463 Mich 111, 129-133; 614 NW2d 873 (2000) – a city manager is not subject to the OMA. *Craig v Detroit Public Schools Chief Executive Officer*, 265 Mich App 572, 579; 697 NW2d 529 (2005). OAG, 1977-1978, No 5183A, p 97 (April 18, 1977).

<sup>6</sup> OAG, 1985-1986, No 6352, p 252 (April 8, 1986) – the Michigan High School Athletic Association is not subject to the OMA. See also *Perlongo v Iron River Cooperative TV Antenna Corp*, 122 Mich App 433; 332 NW2d 502 (1983).

<sup>7</sup> MCL 15.265(1). *Nicholas v Meridian Charter Twp*, 239 Mich App 525, 531; 609 NW2d 574 (2000).

the public body considers appropriate.<sup>8</sup> If a public body is a part of a state department, a [public notice](#) must also be posted in the principal office of the state department.<sup>9</sup>

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.<sup>10</sup>

At their first meeting of the calendar or fiscal year, each board must set the dates, times, and places of the board's regular meetings for the coming year. The OMA does not require any particular number of meetings. The board's schedule of regular meetings is not, of course, set in stone. The board is free to cancel or reschedule its meetings.

The minimum 18-hour notice requirement is not fulfilled if the public is denied access to the notice of the meeting for any part of the [18 hours](#).<sup>11</sup> The requirement may be met by posting at least 18 hours in advance of the meeting using a method designed to assure access to the notice. For example, the public body can post the [notice](#) at the main entrance visible on the outside of the building that houses the principal office of the public body.<sup>12</sup>

A public body must send copies of the public notices by first class mail to a requesting party, upon the party's payment of a yearly fee of not more than the reasonable estimated cost of printing and postage. Upon written request, a public body, at the same time a public notice of a meeting is posted, must provide a copy of the public notice to any newspaper published in the state or any radio or television station located in the state, [free of charge](#).<sup>13</sup>

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<sup>8</sup> MCL 15.264(a)-(c).

<sup>9</sup> MCL 15.264(c).

<sup>10</sup> MCL 15.265(2)-(5).

<sup>11</sup> OAG, 1979-1980, No 5724, p 840 (June 20, 1980).

<sup>12</sup> OAG No 5724.

<sup>13</sup> MCL 15.266.

**Agendas and the OMA** – while the OMA requires a public body to give public notice when it meets, it has no requirement that the [public notice](#) include an agenda or a specific statement as to the purpose of a meeting.<sup>14</sup> No agenda format is required by the OMA.<sup>15</sup>

**Penalties for OMA violations** – a public official who "intentionally violates" the OMA may be found guilty of a [misdemeanor](#)<sup>16</sup> and may be [personally liable](#) for actual and exemplary damages of not more than \$500 for a single meeting.<sup>17</sup> The exemptions in the OMA must be strictly construed. The "rule of lenity" (i.e., courts should mitigate punishment when the punishment in the criminal statute is unclear) does not apply to construction of the OMA's exemptions.<sup>18</sup>

A decision made by a public body may be invalidated by a court, if the public body has not complied with the requirements of [MCL 15.263\(1\), \(2\), and \(3\)](#) [i.e., making decisions at a public meeting] or if failure to give notice in accordance with section 5 has interfered with substantial compliance with [MCL 15.263\(1\), \(2\), and \(3\)](#) and the court finds that the noncompliance has impaired the rights of the public under the OMA.

**Lawsuits to compel compliance** – actions must be brought within [60 days](#) after the public body's approved minutes involving the challenged decision are made publicly available.<sup>19</sup> 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 evidences of indebtedness, the action must be brought within [30 days](#) after the approved minutes are made publicly available.<sup>20</sup> If the decision of a state public body is challenged, venue is in [Ingham County](#).<sup>21</sup>

**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. A decision reenacted in this manner shall be effective from the [date of reenactment](#) and is not rendered invalid by any deficiency in its initial enactment.<sup>22</sup> If the board acts quickly, the reenactment may defeat a claim for attorney's fees, since plaintiffs would not be successful in "obtaining relief in the action" within the meaning of the OMA.<sup>23</sup>

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<sup>14</sup> OAG, 1993-1994, No 6821, p 199 (October 18, 1994). But, as discussed in OAG No 6821, other statutes may require a public body to state in its notice the business to be transacted at the meeting.

<sup>15</sup> *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003).

<sup>16</sup> MCL 15.272.

<sup>17</sup> MCL 15.273.

<sup>18</sup> *People v Whitney*, 228 Mich App 230, 244; 578 NW2d 329 (1998).

<sup>19</sup> MCL 15.270(3)(a).

<sup>20</sup> MCL 15.270(3)(b).

<sup>21</sup> MCL 15.270(4).

<sup>22</sup> MCL 15.270(5).

<sup>23</sup> *Leemreis v Sherman Twp*, 273 Mich App 691, 700; 731 NW2d 787 (2007). *Felice v Cheboygan County Zoning Comm*, 103 Mich App 742, 746; 304 NW2d 1 (1981).

## DECISIONS MUST BE MADE IN PUBLIC MEETINGS

**All decisions must be made at a meeting open to the public** – the OMA defines "decision" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a [public body](#) effectuates or formulates public policy."<sup>24</sup> The OMA provides that "[a]ll decisions of a public body shall be made at a meeting open to the public," and that, with limited exceptions, "[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting [open to the public](#)."<sup>25</sup>

The OMA does not contain a "voting requirement" or any form of "formal voting requirement." A "consensus building process" that equates to decision-making would fall under the act.<sup>26</sup> For example, where board members use telephone calls or sub-quorum meetings to achieve the same intercommunication that could have been achieved in a full board or commission meeting, the members' conduct is susceptible to "round-the-horn" decision-making, which achieves the same effect as if the entire board had met publicly and formally cast its votes. A "round-the-horn" process violates the OMA.<sup>27</sup>

**Meeting "informally" to discuss matters** – while the OMA "does not apply to a meeting which is a [social or chance gathering or conference](#) not designed to avoid this act,"<sup>28</sup> a meeting of a public body must be open to the public. The OMA does not define the terms "social or chance gathering" or "conference," and provides little direct guidance as to the precise scope of this [exemption](#).<sup>29</sup> To promote openness in government, however, the OMA is entitled to a broad interpretation and exceptions to conduct closed sessions must be construed strictly.<sup>30</sup> Thus, the [closed session exception](#) does not apply to a quorum of a public body that meets to discuss matters of public policy, even if there is no intention that the deliberations will lead to a decision on that occasion.<sup>31</sup>

**Canvassing board members on how they might vote** – an informal canvas by one member of a public body to find out where the votes would be on a particular issue does not violate the OMA,

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<sup>24</sup> MCL 15.262(d).

<sup>25</sup> MCL 15.263(2) and (3).

<sup>26</sup> *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich at 229.

<sup>27</sup> *Booth Newspapers, Inc*, 444 Mich at 229 – "any alleged distinction between the [public body's] consensus building and a determination or action, as advanced in the OMA's definition of 'decision,' is a distinction without a difference."

<sup>28</sup> MCL 15.263(10).

<sup>29</sup> OAG, 1981-1982, No 6074, p 662, 663 (June 11, 1982).

<sup>30</sup> *Wexford County Prosecutor v Pranger*, 83 Mich App 197, 201, 204; 268 NW2d 344 (1978).

<sup>31</sup> OAG, 1977-1978, No 5298, p 434, 435 (May 2, 1978). See also OAG, 1979-1980, No 5444, p 55, 56 (February 21, 1979) – anytime a quorum of a public body meets and considers a matter of public policy, the meeting must comply with the OMA's requirements. Compare OAG, 1979-1980, No 5437, p 36, 37 (February 2, 1979), where members of a public body constituting a quorum come together by chance, the gathering is exempt from the OMA; however, even at a chance meeting, matters of public policy may not be discussed by the members with each other.

so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to avoid the OMA.<sup>32</sup>

**May a quorum of a board gather outside an open meeting without violating the OMA?** – yes, in some instances. In addition to a purely [social gathering or chance gathering](#)<sup>33</sup> that does not involve discussions of public policy among the members of the board, a quorum may accept an invitation to address a [civic organization](#),<sup>34</sup> listen to the concerns of a neighborhood organization, or observe demonstrations, if the board doesn't deliberate toward, or make, a [decision](#).<sup>35</sup>

A board quorum also may meet for a workshop, seminar, informational gathering, or professional conference designed to convey, to the conference participants, information about areas of [professional interest](#) common to all conference participants.<sup>36</sup> These kinds of meetings involve a conference designed primarily to provide training or background information and involve a relatively broad focus upon issues of general concern, rather than a more limited focus on matters or issues of [particular interest](#) to a single public body.<sup>37</sup> However, when gatherings are designed to receive input from officers or employees of the public body, the OMA requires that the gathering be held at a [public meeting](#).<sup>38</sup>

The OMA was not violated when several members of the board of county commissioners attended a public meeting of the county planning committee (which had more than fifty members, two who were county commissioners), which resulted in a quorum of the board being present at the meeting (without the meeting also being noticed as a county commission meeting), so long as the nonmember commissioners did not engage in deliberations or render [decisions](#).<sup>39</sup>

**Advisory committees and the OMA** – the OMA does not apply to committees and subcommittees composed of less than a quorum of the full public body if they "are merely [advisory](#) or only capable of making recommendations concerning the exercise of governmental authority."<sup>40</sup>

Where, on the other hand, a committee or subcommittee is empowered to act on matters in such a fashion as to deprive the full public body of the opportunity to consider a matter, a decision of the committee or subcommittee "is an exercise of governmental authority which effectuates

<sup>32</sup> *St Aubin v Ishpeming City Council*, 197 Mich App 100, 103; 494 NW2d 803 (1992).

<sup>33</sup> OAG, 1979-1980, No 5437, p 36 (February 2, 1979).

<sup>34</sup> OAG, 1977-1978, No 5183, p 21, 35 (March 8, 1977).

<sup>35</sup> OAG, 1977-1978, No 5364, p 606, 607 (September 7, 1978).

<sup>36</sup> OAG, 1979-1980, No 5433, p 29, 31 (January 31, 1979).

<sup>37</sup> OAG, 1981-1982, No 6074, at p 664.

<sup>38</sup> OAG No 5433 at p 31.

<sup>39</sup> OAG, 1989-1990, No 6636, p 253 (October 23, 1989), cited with approval in *Ryant v Cleveland Twp*, 239 Mich App 430, 434-435; 608 NW2d 101 (2000) and *Nicholas v Meridian Charter Twp*, 239 Mich App at 531-532. If, however, the noncommittee board members participate in committee deliberations, the OMA would be violated. *Nicholas*, 239 Mich App at 532.

<sup>40</sup> OAG, 1997-1998, No 6935, p 18 (April 2, 1997); OAG No 5183 at p 40.

public policy" and the committee or subcommittee proceedings are, therefore, subject to the [OMA](#).<sup>41</sup>

If a joint meeting of two committees of a board (each with less than a quorum of the board) results in the presence of a quorum of the board, the board must comply in all respects with the OMA and notice of the joint meeting must include the fact that a [quorum](#) of the board will be present.<sup>42</sup>

**Use of e-mail or other electronic communications among board members during an open meeting** – e-mail, texting, or other forms of electronic communications among members of a board or commission during the course of an open meeting that constitutes deliberations toward decision-making or actual decisions violates the OMA, since it is in effect a "closed" session. While the OMA does not require that all votes by a public body must be by roll call, voting requirements under the act are met when a vote is taken by roll call, show of hands, or other method that informs the public of the public official's decision rendered by his or her vote. Thus, the OMA bars the use of e-mail or other electronic communications to conduct a secret ballot at a public meeting, since it would prevent citizens from knowing how members of the public body have [voted](#).<sup>43</sup>

Moreover, the 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.<sup>44</sup>

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.

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<sup>41</sup> *Schmiedicke v Clare School Bd*, 228 Mich App 259, 261, 263-264; 577 NW2d 706 (1998); *Morrison v East Lansing*, 255 Mich App 505; 660 NW2d 395 (2003); and OAG, 1997-1998, No 7000, p 197 (December 1, 1998) – a committee composed of less than a quorum of a full board is subject to the OMA, if the committee is effectively authorized to determine whether items will or will not be referred for action by the full board, citing OAG, 1977-1978, No 5222, p 216 (September 1, 1977).

<sup>42</sup> OAG, 1989-1990, No 6636, at p 254.

<sup>43</sup> See *Esperance v Chesterfield Twp*, 89 Mich App 456, 464; 280 NW2d 559 (1979) and OAG, 1977-1978, No 5262, p 338 (January 31, 1978).

<sup>44</sup> See *Booth Newspapers, Inc*, 444 Mich at 229; *Schmiedicke*, 228 Mich App at 263, 264; and *Wexford County Prosecutor*, 83 Mich App at 204.

## CLOSED SESSIONS

**Meeting in closed session** – a public body may meet in a [closed session](#) *only* for one or more of the permitted purposes specified in section 8 of the OMA.<sup>45</sup> The [limited purposes](#) for which closed sessions are permitted include, among others<sup>46</sup>:

- (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](#)*.<sup>47</sup>
- (2) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement *if either negotiating party requests a [closed hearing](#)*.<sup>48</sup>
- (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.<sup>49</sup>
- (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*.<sup>50</sup>
- (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.<sup>51</sup>
- (6) To consider material [exempt](#) from discussion or disclosure by state or federal statute.<sup>52</sup> 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.<sup>53</sup>

**A closed session must be conducted during the course of an open meeting** – section 2(c) of the OMA defines "[closed session](#)" as "a meeting or part of a meeting of a public body that is

<sup>45</sup> MCL 15.268. OAG, 1977-1978, No 5183, at p 37.

<sup>46</sup> The other permissible purposes deal with public primary, secondary, and post-secondary student disciplinary hearings – section 8(b); state legislature party caucuses – section 8(g); compliance conferences conducted by the Michigan Department of Community Health – section 8(i); and public university presidential search committee discussions – section 8(j).

<sup>47</sup> MCL 15.268(a) (Emphasis added.)

<sup>48</sup> MCL 15.268(c) (Emphasis added.)

<sup>49</sup> MCL 15.268(d).

<sup>50</sup> MCL 15.268(e) (Emphasis added.)

<sup>51</sup> MCL 15.268(f) (Emphasis added.)

<sup>52</sup> MCL 15.268(h).

<sup>53</sup> *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459, 467, 469-470; 425 NW2d 695 (1988).

closed to the public."<sup>54</sup> Section 9(1) of the OMA provides that the [minutes](#) of an open meeting must include "the purpose or purposes for which a closed session is held."<sup>55</sup>

**Going into closed session** – section 7(1) of the [OMA](#)<sup>56</sup> sets out the procedure for calling a closed session:

A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

Thus, a public body may go into closed session only upon a motion duly made, seconded, and adopted by a [2/3 roll call vote](#) of the members appointed and serving<sup>57</sup> during an open meeting for the purpose of (1) considering the purchase or lease of real property, (2) consulting with their attorney, (3) considering an employment application, or (4) considering material exempt from disclosure under state or federal law. A majority vote is sufficient for going into closed session for the other OMA permitted purposes.

We suggest that every motion to go into closed session should cite one or more of the permissible purposes listed in section 8 of the [OMA](#).<sup>58</sup> An example of a motion to go into closed session is:

I move that the Board meet in closed session under section 8(e) of the Open Meetings Act, to consult with our attorney regarding trial or settlement strategy in connection with [the name of the specific lawsuit].

Another example is the need to privately discuss with the public body's attorney a memorandum of advice as permitted under section 8(h) of the OMA – "to consider material [exempt](#) from discussion or disclosure by state or federal statute."<sup>59</sup> The motion should cite section 8(h) of the OMA and the statutory basis for the closed session, such as section 13(1)(g) of the [Freedom of Information Act](#), which exempts from public disclosure "[i]nformation or records subject to the attorney-client privilege."<sup>60</sup>

**Leaving a closed session** – the OMA is silent as to how to leave a closed session. We suggest that you recommend a motion be made to end the closed session with a majority vote needed for

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<sup>54</sup> MCL 15.262(c).

<sup>55</sup> MCL 15.269(1).

<sup>56</sup> MCL 15.267(1).

<sup>57</sup> And not just those attending the meeting. OAG No 5183 at p 37.

<sup>58</sup> MCL 15.268.

<sup>59</sup> MCL 15.268(h). Proper discussion of a written legal opinion at a closed meeting is, with regard to the attorney-client privilege exemption to the OMA, limited to the meaning of any strictly legal advice presented in the written opinion. *People v Whitney*, 228 Mich App at 245-248.

<sup>60</sup> MCL 15.243(1)(g).

approval. Admittedly, this is a decision made in a closed session, but it certainly isn't a decision that "effectuates or formulates public policy."

When the public body has concluded its closed session, the open meeting minutes should state the time the public body reconvened in open session and, of course, any votes on matters discussed in the closed session must occur in an open meeting.

**Decisions must be made during an open meeting, not the closed session** – section 3(2) of the OMA requires that "[a]ll decisions of a public body shall be made at a meeting [open to the public](#)."<sup>61</sup> Section 2(d) of the OMA defines "[decision](#)" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."<sup>62</sup>

**Avoid using the terms "closed session" and "executive session" interchangeably** – we suggest that a public body not use the term "executive session" to refer to a "closed session." The term "executive session" does not appear in the OMA, but "closed session" does. "Executive session" is more of a private sector term and is often used to describe a private session of a board of directors, which is not limited as to purpose, where actions can be taken, and no minutes are recorded.

**Staff and others may join the board in a closed session** – a public body may rely upon its officers and employees for [assistance](#) when considering matters in a closed session. A public body may also request private citizens to assist, as appropriate, in its considerations.<sup>63</sup>

**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.<sup>64</sup>

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<sup>61</sup> MCL 15.263(2). *St Aubin v Ishpeming City Council*, 197 Mich App at 103. See also, OAG, 1977-1978, No 5262, at p 338-339 – the OMA prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of the public body have voted and OAG, 1979-1980, No 5445, p 57 (February 22, 1979) – a public body may not take final action on any matter during a closed meeting.

<sup>62</sup> MCL 15.262(d).

<sup>63</sup> OAG, 1979-1980, No 5532, p 324 (August 7, 1979).

<sup>64</sup> OAG, 1985-1986, No 6358, p 268 (April 29, 1986), citing *Regents of the Univ of Michigan v Washtenaw County Coalition Against Apartheid*, 97 Mich App 532; 296 NW2d 94 (1980).

## PUBLIC ATTENDING OPEN MEETINGS

**Excluding individuals** – no one may be excluded from a meeting otherwise open to the public except for a [breach of the peace](#) actually committed at the meeting.<sup>65</sup>

**Identifying public attendees** – no one may be required to register or otherwise provide his or her name or other information or otherwise to fulfill a [condition](#) precedent to attend a public meeting.<sup>66</sup>

Building security at the meeting site may cause issues. Members of the public might object, based on the [OMA](#), to signing in to gain access to the building where a public meeting is being held.<sup>67</sup> We, therefore, recommend that public bodies meet in facilities or areas not subject to public access restrictions.

If the public body wishes the members of the public to identify themselves at the meeting, we suggest the board chair announce something like this:

The Board would appreciate having the members of the public attending the meeting today identify themselves and mention if they would like the opportunity to speak during the public comment period. However, you do not need to give your name to attend this meeting. When the time comes to introduce yourself and you do not want to do so, just say pass.

Since speaking at the meeting is a step beyond "attending" the public meeting and the OMA provides that a person may address the public body "under rules established and recorded by the public body," the board may establish a [rule](#) requiring individuals to identify themselves if they wish to speak at a meeting.<sup>68</sup>

**Limiting public comment** – a public body may adopt a [rule](#) imposing individual time limits for members of the public addressing the public body.<sup>69</sup> In order to carry out its responsibilities, the board can also consider establishing rules allowing the chairperson to encourage groups to designate one or more individuals to speak on their behalf to avoid cumulative comments. But a [rule](#) limiting the period of public comment may not be applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.<sup>70</sup>

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<sup>65</sup> MCL 15.263(6).

<sup>66</sup> MCL 15.263(4).

<sup>67</sup> In addition, "[a]ll meetings of a public body . . . shall be held in a place available to the general public." MCL 15.263(1).

<sup>68</sup> MCL 15.263(5). OAG, 1977-1978, No 5183, at p 34.

<sup>69</sup> OAG, 1977-1978, No 5332, p 536 (July 13, 1978). The rule must be duly adopted and recorded. OAG, 1977-1978, No 5183, at p 34.

<sup>70</sup> OAG No 5332 at p 538.

**Meeting location** – the [OMA](#) only requires that a meeting be held "in a place available to the general public;" it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction.<sup>71</sup> However, if a meeting is held so far from the public which it serves that it would be difficult or inconvenient for its citizens to attend, the meeting may not be considered as being held at a place available to the general public. Whenever possible, the meeting should be held within the public body's geographical boundaries.

**Timing of public comment** – a public body has discretion under the OMA when to schedule [public comment](#) during the meeting.<sup>72</sup> Thus, scheduling public comment at the beginning<sup>73</sup> or the [end](#)<sup>74</sup> of the meeting agenda does not violate the OMA. The public has no right to address the [commission](#) during its deliberations on a particular matter.<sup>75</sup>

**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.<sup>76</sup> 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.<sup>77</sup> And the exercise of the [right](#) to tape-record, videotape, and broadcast public meetings may not be dependent upon the prior approval of the public body.<sup>78</sup>

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<sup>71</sup> OAG, 1979-1980, No 5560, p 386 (September 13, 1979). Of course, local charter provisions or ordinances may impose geographical limits on public body meetings.

<sup>72</sup> MCL 15.263(5).

<sup>73</sup> *Lysogorski v. Bridgeport Charter Twp*, 256 Mich App at 302.

<sup>74</sup> OAG, 1979-1980, No 5716, p 812 (June 4, 1980).

<sup>75</sup> OAG, 1977-1978, No 5310, p 465, 468 (June 7, 1978).

<sup>76</sup> MCL 15.263(1).

<sup>77</sup> OAG, 1987-1988, No 6499, p 280 (February 24, 1988).

<sup>78</sup> MCL 15.263(1).

## 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.<sup>79</sup> The OMA does not prohibit a public body from preparing a more detailed set of minutes of its public meetings if it chooses to do so.<sup>80</sup>

**When must the 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.<sup>81</sup>

**When must the minutes be approved** – at the board's [next meeting](#).<sup>82</sup> Corrected minutes must show both the original entry and the correction (for example, using a "strikethrough" word processing feature).

**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.<sup>83</sup>

Closed session minutes shall only be disclosed if required by a civil action filed under sections 10, 11, or 13 of the [OMA](#).<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup>

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*.<sup>87</sup>

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<sup>79</sup> MCL 15.269(1).

<sup>80</sup> Informational letter to Representative Jack Brandenburg from Chief Deputy Attorney General Carol Isaacs dated May 8, 2003.

<sup>81</sup> MCL 15.269(3).

<sup>82</sup> MCL 15.269(1)

<sup>83</sup> OAG, 1985-1986, No 6365, p 288 (June 2, 1986). This, of course, triggers the need for more closed session minutes.

<sup>84</sup> MCL 15.270, 15.271, and 15.273; *Local Area Watch v Grand Rapids*, 262 Mich App 136, 143; 683 NW2d 745 (2004); OAG, 1985-1986 No 6353, p 255 (April 11, 1986).

<sup>85</sup> OAG, 1999-2000, No 7061, p 144 (August 31, 2000).

<sup>86</sup> *Kitchen v Ferndale City Council*, 253 Mich App 115; 654 NW2d 918 (2002).

<sup>87</sup> MCL 15.267(2).

**Inadvertent omissions from the 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.<sup>88</sup>

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<sup>88</sup> *Willis v Deerfield Twp*, 257 Mich App 541, 554; 669 NW2d 279 (2003).

## 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.<sup>89</sup>

### QUORUM

**Quorum** – is 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.<sup>90</sup>

**What is the 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. Without more in the statute, as few as five board members could then decide an issue, since they would be a majority of a [quorum](#).<sup>91</sup> But, be careful, recent statutes often provide that "voting upon action taken by the board shall be conducted by [majority vote](#) of the members appointed and serving." In that instance, the board needs at least eight favorable votes to act.<sup>92</sup> The Legislature has a backstop statute, which provides that any provision that gives "joint authority to 3 or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."<sup>93</sup>

**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.<sup>94</sup>

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<sup>89</sup> OAG, 1979-1980, No 5808, p 1060 (October 30, 1980). Robert's Rules of Order Newly Revised (RRONR) (10<sup>th</sup> ed.), p 4. We cite to Robert's Rules in this Handbook as a leading guide on parliamentary procedures. This is not to imply that public bodies are, as a general rule, bound by Robert's Rules.

<sup>90</sup> OAG, 2009-2010, No 7235, p (October 9, 2009).

<sup>91</sup> See OAG, 1977-1978, No 5238, p 261 (November 2, 1977).

<sup>92</sup> See OAG, 1979-1980, No 5808, at p 1061.

<sup>93</sup> MCL 8.3c. *Wood v Bd of Trustees of the Policemen and Firemen Retirement System of Detroit*, 108 Mich App 38, 43; 310 NW2d 39 (1981).

<sup>94</sup> OAG, 1981-1982, No 5916, p 218 (June 8, 1981). But see MCL 15.342a, which provides a procedure for disqualified public officials to vote in some limited circumstances where a quorum is otherwise lacking for a public body to conduct business.

**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.<sup>95</sup>

**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.<sup>96</sup> 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.

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<sup>95</sup> RRONR (10<sup>th</sup> ed.), p 337-338.

<sup>96</sup> OAG, 1985-1986, No 6405, p 429, 430 (December 9, 1986), citing *Clark v Detroit Bd of Education*, 112 Mich 656; 71 NW 177 (1897).

## 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.<sup>97</sup>

**Adjourning the meeting** - a presiding officer cannot arbitrarily adjourn a meeting without first calling for a vote of the members present.<sup>98</sup>

**Chairperson voting** – perhaps as a spillover from the well-known constitutional rule that the vice president can only vote to break a tie in the United States Senate<sup>99</sup> or that a legislative presiding officer usually refrains from voting unless his or her vote affects the result,<sup>100</sup> some believe that a board's presiding officer (usually, the chairperson) can only vote to break a tie. However, absent a contrary controlling provision, all board members may [vote](#) on any matter coming before a board.<sup>101</sup> A board's presiding officer can't vote on a motion and then, if the vote is tied, vote to break the tie unless explicitly authorized by law.<sup>102</sup>

**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.<sup>103</sup>

**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.<sup>104</sup>

**Majority** – means simply "more than half."<sup>105</sup> Thus, on a 15-member board, eight members constitute a majority.

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<sup>97</sup> RRONR (10<sup>th</sup> ed.), p 390-395.

<sup>98</sup> *Dingwall v Detroit Common Council*, 82 Mich 568, 571; 46 NW 938 (1890),

<sup>99</sup> US Const, art I, §3.

<sup>100</sup> RRONR (10<sup>th</sup> ed.), p 392-393 – an assembly's presiding officer can break or create a tie vote.

<sup>101</sup> See OAG, 1981-1982, No 6054, p 617 (April 14, 1982).

<sup>102</sup> *Price v Oakfield Twp Bd*, 182 Mich 216; 148 NW 438 (1914).

<sup>103</sup> OAG, 1979-1980, No 5606, p 493 (December 13, 1979), citing *Greyhound Corp v Public Service Comm*, 360 Mich 578, 589-590; 104 NW2d 395 (1960). See also, *Cantwell v City of Southfield*, 95 Mich App 375; 290 NW2d 151 (1980).

<sup>104</sup> OAG, 1979-1980, No 5738, p 870 (July 14, 1980). OAG, 2001-2002, No 7081, p 27 (April 17, 2001), citing *Wagner v Ypsilanti Village Clerk*, 302 Mich 636; 5 NW2d 513 (1942).

<sup>105</sup> RRONR (10<sup>th</sup> ed.), p 387.

**Proxy voting** – the OMA requires that the deliberation and formulation of decisions effectuating public policy be conducted at open meetings.<sup>106</sup> Voting by proxy effectively forecloses any involvement by the absent board member in the board's public discussion and deliberations before the board votes on a matter effectuating public policy.<sup>107</sup> Without explicit statutory authority, this [practice](#) is not allowed.<sup>108</sup>

**Roll call vote** – there is no bright line rule for conducting a [roll call vote](#).<sup>109</sup> We suggest some rules of thumb. One, 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. Two, if you have board members participating by teleconference, a roll call will permit the secretary to accurately record the entire vote. Three, 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** – means approval for an action outside of a public meeting by passing around a sign-off sheet. This practice has its roots in the legislative committee practice of passing around a tally sheet to gain approval for discharging a bill without a committee meeting. "[Round-robinning](#)" 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.<sup>110</sup>

**Rule of necessity** – if a state agency's involvement in prior administrative or judicial proceedings involving a party could require recusal of all of its board members or enough of them to prevent a quorum from assembling, the common law rule of necessity precludes recusing all members, if the disqualification would leave the agency unable to adjudicate a question.<sup>111</sup> But the rule of necessity may not be applied to allow members of a public body to vote on matters that could benefit their [private employer](#).<sup>112</sup>

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<sup>106</sup> *Esperance v Chesterfield Twp*, 89 Mich App at 464, quoting *Wexford County Prosecutor v Pranger*, 83 Mich App 197; 268 NW2d 344 (1978).

<sup>107</sup> Robert's Rules concur: "Ordinarily it [proxy voting] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable." RRONR (10<sup>th</sup> ed.), p 414. The Michigan House and Senate do not allow proxy voting for their members.

<sup>108</sup> OAG, 2009-2010, No 7227, p (March 19, 2009). OAG, 1993-1994, No 6828, p 212 (December 22, 1994), citing *Dingwall*, 82 Mich at 571, where the city council counted and recorded the vote of absent members in appointing election inspectors. The Michigan Supreme Court rejected these appointments, ruling that "the counting of absent members and recording them as voting in the affirmative on all questions, was also an inexcusable outrage."

<sup>109</sup> "The fact that the Open Meetings Act prohibits secret balloting does not mean that all votes must be roll call votes." *Esperance v Chesterfield Twp*, 89 Mich App at 464 n 9. The OMA does provide that votes to go into closed session must be by roll call. MCL 15.267.

<sup>110</sup> OAG, 1977-1978, No 5222, at p 218. See also, *Booth Newspapers*, 444 Mich at 229, which concluded that "round-the-horn" deliberations can constitute decisions under the OMA.

<sup>111</sup> *Champion's Auto Ferry, Inc v Michigan Public Service Comm*, 231 Mich App 699; 588 NW2d 153 (1998). The Court noted that the PSC members did not have any personal financial interest in the matter. *Id.* at 708-709.

<sup>112</sup> OAG, 1981-1982, No 6005, p 439, 446 (November 2, 1981). After OAG No 6005 was issued, the Legislature amended section 2a of 1973 PA 196, MCL 15.342a, to provide a procedure for voting by public officials in some limited circumstances where a quorum is otherwise lacking for a public entity to conduct business.

**Secret ballot** – the OMA requires that all decisions and deliberations of a public body must be made at an open meeting and the term "[decision](#)" is defined to include voting.<sup>113</sup> The OMA prohibits a "[voting procedure](#)" at a public meeting that prevents citizens from knowing how members of a public body have voted."<sup>114</sup> Obviously, the use of a secret ballot process would prevent this transparency. All board decisions subject to the OMA must be made by a public vote at an open meeting.<sup>115</sup>

**Tie vote** – a tie vote on a motion means that the motion did not gain a majority. Thus, the motion fails.<sup>116</sup>

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<sup>113</sup> See MCL 15.262(d) and 15.263(2) and (3).

<sup>114</sup> OAG, 1977-1978, No 5262, at p 338-339.

<sup>115</sup> *Esperance*, 89 Mich App at 464.

<sup>116</sup> *Rouse v Rogers*, 267 Mich 338; 255 NW 203 (1934). RRONR (10<sup>th</sup> ed.), p 392.