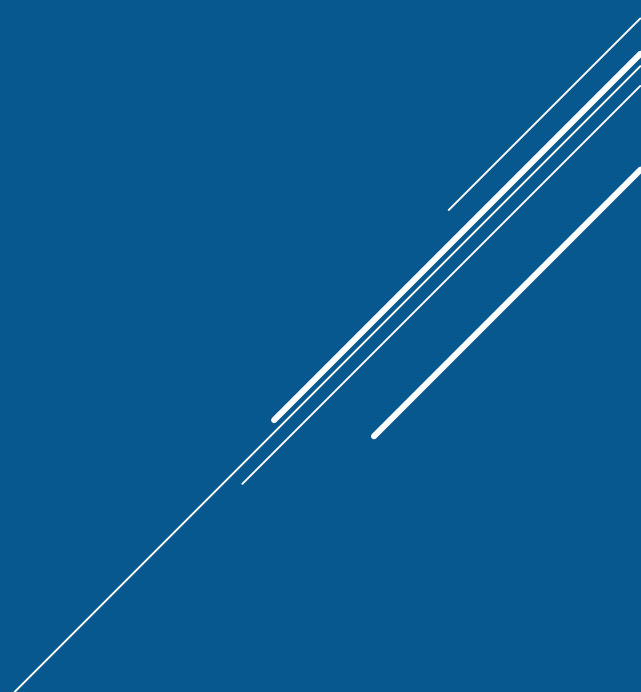


THE MICHIGAN OPEN MEETINGS ACT

Basics and Best Practices

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BASIC PURPOSE OF OMA

- ▶ The Open Meetings Act (OMA) took effect in 1977.
 - ▶ The purpose was to create a legal structure for transparency and accountability for governmental decision making.
 - ▶ Citation: 1976 Public Act 267, MCL 15.261 et seq.
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SHOW ME THE LIGHT!

- ▶ Michigan's Open Meetings Act and Freedom of Information Act, are two examples of "Sunshine" laws.
- ▶ Sunshine laws are intended to create transparency and disclosure in government.
- ▶ Open Meetings Act (OMA):
 - ▶ Makes public meetings, records, votes, deliberations, and other official actions available for public observation, participation, and/or inspection.
 - ▶ OMA also requires advanced notice of the time and place of a government meetings that are convenient and accessible to the public.

WHO IS SUBJECT TO OMA?


The Act applies to:

- ▶ State or local legislative or governing bodies.
- ▶ Can include:
 - ▶ a board, commission, committee, subcommittee, authority or council, which is empowered by state constitution, statute, charter, ordinance, resolution or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function.
 - ▶ Planning Commissions, Zoning Boards, etc.
 - ▶ Does not automatically apply to “Advisory Boards” to governing bodies.

WHAT'S A MEETING?

A "Meeting" is defined as:

The convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on public policy.

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“DELIBERATING”

▶ Curiously, the word “Deliberating” is not defined under OMA.

▶ It has, however, been interpreted to mean:


The act of carefully considering issues and options before making a decision or taking some “action,” or “discussing,” which is defined as “the act of exchanging views on something”.

“DECISION”


- ▶ Decision

- ▶ 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.” MCL 15.262(d).


DOES OMA APPLY TO ALL MEETINGS?

- ▶ The Act does not apply to a meeting which is a social or chance gathering or conference.
 - ▶ A public body may not meet informally prior to a public meeting to determine what will be decided formally at the public meeting.
 - ▶ A public body may meet for Training, conferences, information gathering, and seminars so long as there are no deliberations being made towards or decisions on public policy.
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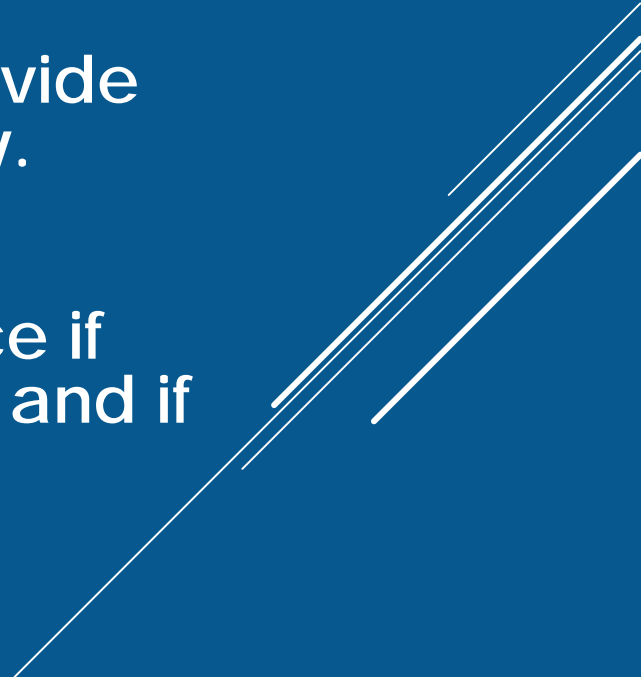
OPEN TO THE PUBLIC

- ▶ All meetings of a public body are required to be open to the public unless a closed meeting is held for a permitted reason under OMA.
 - ▶ Meetings are required to be held in a place convenient and available to the general public.
 - ▶ All persons shall be permitted to attend any meeting (except closed sessions).
 - ▶ A person cannot be required, as a condition of attendance at a meeting, to register or otherwise provide his/her name or other information.
 - ▶ The right of a person to attend a meeting of a public body includes the right to tape-record, videotape, broadcast live on radio and telecast live on television the proceedings of a public body at a public meeting.
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LOL...TEXT ME LATER!

- ▶ The use of e-mail, texting or other electronic communications during a meeting among members of a public body may constitute deliberations or decisions in violation of the OMA.
 - ▶ The use of electronic communications among the members of a public body outside of a meeting that constitutes “deliberations” or an “actual decision” among a quorum of the body could violate the OMA.
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NO NOTICE / NO MEETING...USUALLY

- ▶ The OMA states that a meeting of a public body shall not be held unless public notice is given as provided by the act.
 - ▶ Public bodies must formally designate a person to provide notice. Usually the Clerk, in the case of a municipality.
 - ▶ Emergency sessions may be held without written notice if public health, safety or welfare is severely threatened and if 2/3 of the public body votes to hold the meeting.
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PUBLIC NOTICE - WHERE WE GOING, AND WHEN DO WE GET THERE?

- ▶ Public notice MUST:
 - ▶ Contain the name of the public body, its telephone number and its address.
 - ▶ Be posted in a prominent and conspicuous place at both the public body's principal office.
 - ▶ If applicable, on a website, together with any other locations considered appropriate by the public body.
- ▶ If a public body is part of a political subdivision (a county), a public notice shall also be posted in the principal office of the political subdivision (courthouse).


NOTICE REQUIREMENTS, CONT.

The notice must include the following:

“This meeting is open to all members of the public under Michigan's Open Meetings Act.”

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POSTING REQUIREMENTS, CONT.

- ▶ Public bodies which have a regular meeting schedule must post their meeting schedule for the following calendar or fiscal year within 10 days after the first meeting of the public body in that calendar year or fiscal year.
 - ▶ The notice is required to state the dates, times, and places of the regular meetings (in addition to address, phone number, and name).
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SPECIAL MEETINGS


- ▶ When a regular meeting is rescheduled, outside of a regular meeting, or if a special meeting is called, a public notice stating the time, date and place of the meeting is required to be posted at least 18 hours before the meeting.
- ▶ County boards of commissioners must adhere to MCL 46.10 when calling for a special board meeting.
- ▶ The notice must be posted in an area that is available to the public for the full 18 hours.

WHAT'S ON TONIGHT'S MENU?


- ▶ Agendas are not required as part of a public notice or otherwise required in a certain format under the OMA.
 - ▶ Most public bodies use an agenda and have conditions specifying its format, creation, and often list their rules.
 - ▶ An Agenda should indicate when public comment is allowed.
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SPEAK NOW OR FOREVER....

A person shall be permitted to address a meeting of a public body.

- ▶ The public body may establish rules which regulate the conditions under which the public may address the meeting.
 - ▶ These rules should include provide for the length of time a person may speak, time set aside in the agenda for public address, and a requirement that persons desiring to speak to the public body identify themselves.
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PUBLIC COMMENT BEST PRACTICES

- ▶ Must allow all speakers opportunity (time) to speak.
 - ▶ Three (3) minutes for public comment has been held to be appropriate.
 - ▶ Public comment required 1 time during every meeting
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PARDON THE INTERRUPTION!

- ▶ A person may be excluded from a public meeting only for a breach of peace actually committed at the meeting. MCL 15.263(6).
- ▶ The OMA is not violated by removing unruly and disruptive audience members. *Youkhanna v City of Sterling Heights*, 332 F Supp 3d 1058 (ED Mich, 2018).

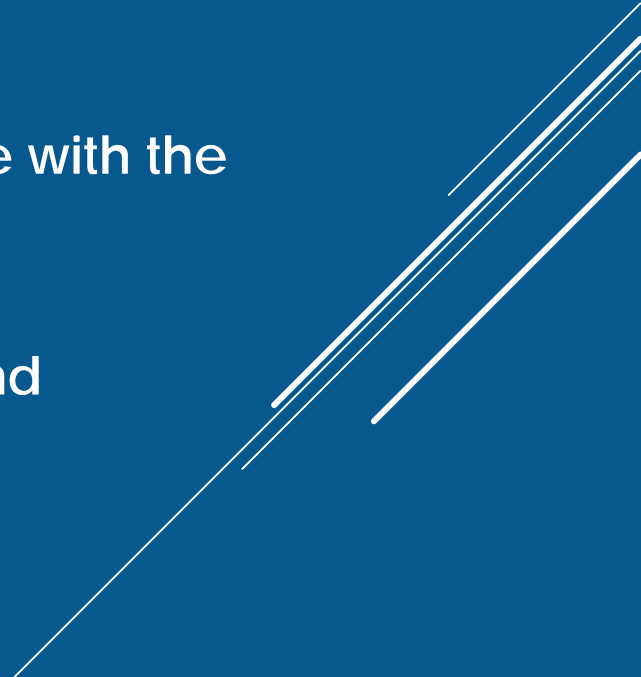
MINUTES – A LABOR OF LOVE

- ▶ Minutes must be kept of all meetings. Minutes are public records and must be available for review and copying (except minutes of closed sessions).
 - ▶ Draft minutes must be available for public inspection within 8 business days of the meeting.
 - ▶ Approved minutes must be available within 5 business days after the meeting at which they were approved.
 - ▶ Corrections must be made no later than the next meeting after the meeting to which they refer.
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What Must be in the Minutes?

- ▶ The minutes must show, at a minimum:
 - ▶ The date, time, place of Meeting
 - ▶ List of Members present and Members absent
 - ▶ All decisions made at the meeting open to the public
 - ▶ Purpose or purposes for which a closed session is held.
 - ▶ The minutes must include all roll call votes taken at the meeting (i.e. closed session).
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THEY WILL BE WATCHING YOU!

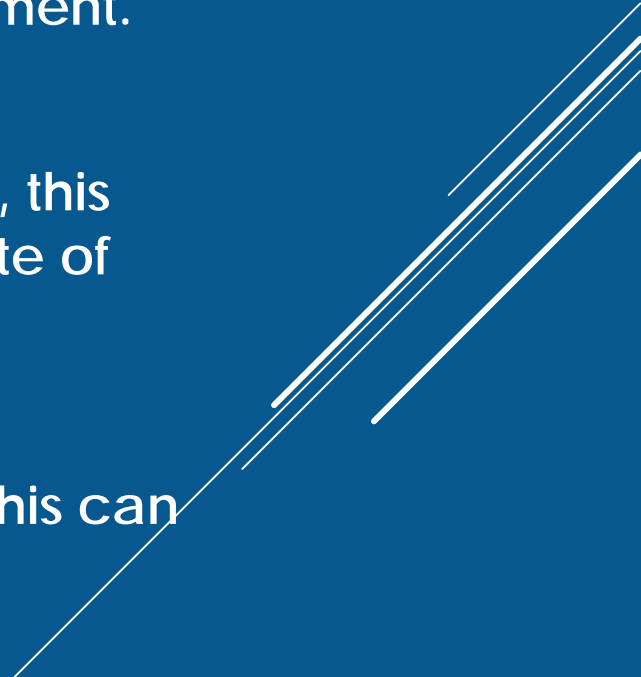
- ▶ The public may challenge the validity of a decision of a public body made in violation of the Act.
 - ▶ Any person may commence a civil action against a public body to invalidate a decision, or seek injunctive relief to compel compliance with the OMA or to prevent further OMA violations.
 - ▶ A person seeking injunctive relief is entitled to recover court costs and attorney fees for the action if they prevail.
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NOT MY BEST IDEA...

- ▶ A public official who intentionally violates the Act is guilty of a misdemeanor.
 - ▶ In addition, a public official who intentionally violates the Act can be held personally liable in a civil action for actual and exemplary damages (not more than \$500 per meeting), as well as court costs and actual attorney fees.
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IS THERE A DOCTOR IN THE HOUSE?

CURING THE PROBLEM

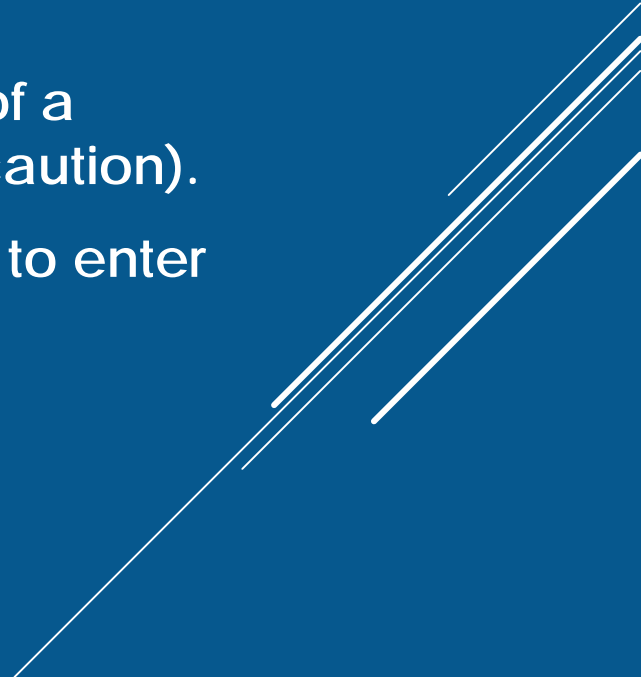
- ▶ Public bodies can correct non-conforming decisions without being considered an admission of a violation of the OMA via reenactment.
 - ▶ A decision that is reenacted to resolve a disputed decision that, this time, is in conformity with the OMA will be effective from the date of reenactment.
 - ▶ The reenactment is a reset on the issue. If acted upon quickly, this can avoid litigation.
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CLOSE THE DOOR, MY ATTORNEY IS TALKING...


CLOSED SESSION

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CLOSED SESSION – WHY AND HOW

- ▶ Only for those specific purposes identified in the OMA.
 - ▶ State the specific statutory reason when making a motion to enter closed session.
 - ▶ 4 of 9 allowable reasons require 2/3 roll call vote of the members of a public body elected or appointed and serving (err on the side of caution).
 - ▶ Even if there is a statutory basis, it is up to the public body whether to enter closed session.
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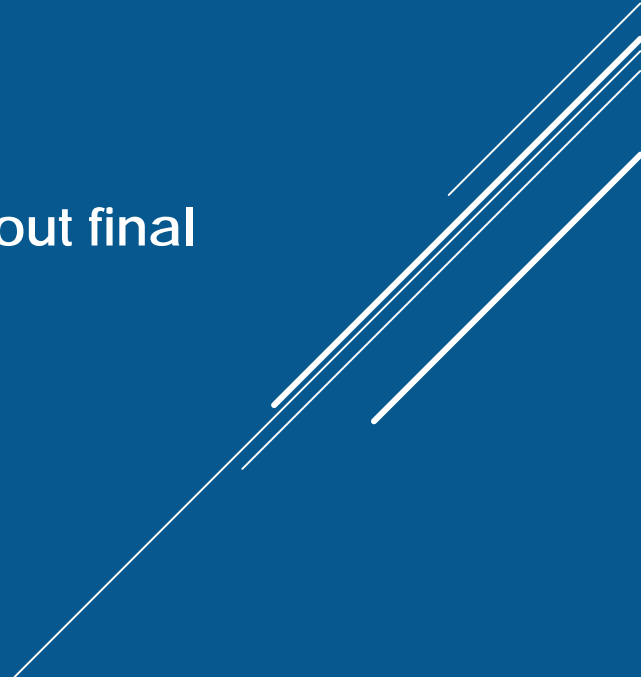
CLOSED SESSION – 2/3 ROLL CALL REQUIRED

- ▶ 1. To consider the purchase or lease of real property.
 - ▶ 2. To consult with its attorneys regarding trial or settlement strategy in pending litigation.
 - ▶ 3. 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.
 - ▶ 4. To consider material exempt from discussion or disclosure by State or Federal statute.
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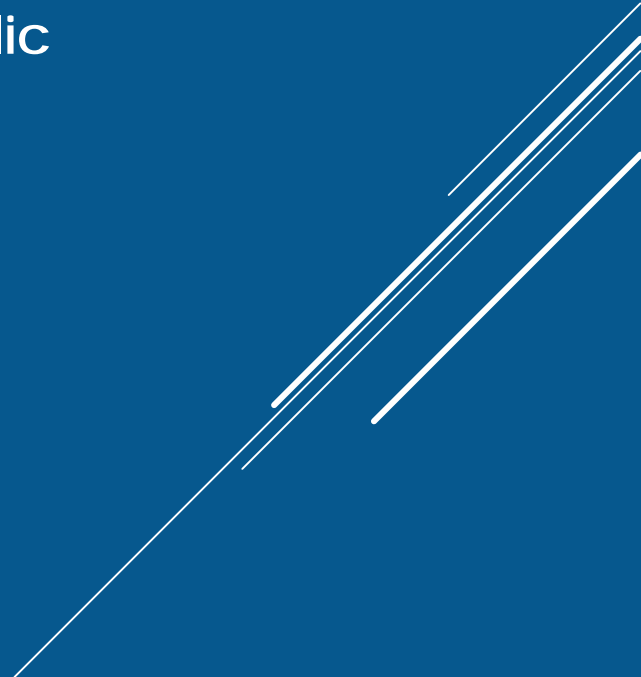
NO 2/3 ROLL CALL REQUIRED

- ▶ 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.*
 - ▶ For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement when either negotiating party requests a closed hearing.
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WHAT DID WE ACCOMPLISH?

- ▶ Leaving closed session – To move or not to move...
 - ▶ Following a discussion in closed session any final action or decision must be made in open sessions.
 - ▶ Other discussions may involve direction during closed session without final decision.
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CLOSED SESSION MINUTES

- ▶ During the closed session, a separate set of minutes is required to be taken.
 - ▶ The minutes are required to be retained by the clerk of the public body.
 - ▶ However, they are not to be made available to the public and shall only be disclosed as required by a civil action.
 - ▶ The minutes are permitted to be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.
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QUESTIONS...AND MAYBE SOME ANSWERS

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