

Open Government: Open Meetings & Public Records for City of Madison Boards, Commissions & Committees

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Part 1: Open Meetings

- The Wisconsin Open Meetings Law is found in Wis. Stats. Sections 19.81-19.98.
- The purpose of the law is to protect the public's right to observe the actions taken by a public body, who is trying to influence the body, and the information the body is relying on.



What is a “Meeting”

- A gathering (in-person or virtual) where the business of the public body is conducted or discussed.
- To constitute a meeting, a sufficient number of members must be present to determine the course of the public body's business.
- Both the number of members present and the nature of the gathering must be considered.



Legal Requirements - Agenda

- Must have a Notice and Agenda (City of Madison Administrative Procedure Memorandum 3-2).
- Agenda item headings must be specific and general headings are not allowed (i.e. announcements, new items, past business).
- Must be posted at least 24 hours in advance of the meeting. The only exception is a 2-hour notice for true emergencies.
- Staff serving City bodies must deliver meeting agendas to the Clerk's Office to ensure compliance with notice requirements and inclusion in the City's weekly calendar.



Legal Requirements – Meeting Access

- Must be open to the Public with a facility large enough to accommodate expected turnout.
- Must be Accessible - including language assistance.
- Notices for virtual meetings must include Zoom link and instructions for public comments.
- Must be conducted in Open Session (Closed Session allowed only if permitted by specific Statutes).



Legal Requirements – Quorum

- **Quorum Is Required**
- A meeting cannot be held without a quorum.
- Quorum (Usually one more than half of the authorized membership unless otherwise specified in the Ordinances.)
- Quorum of the Equal Opportunities Commission is 7 Commissioners.



Quorum Issues to Be Aware Of – Negative Quorum

- Exists when enough members gather that if they voted together, they could block passage of an item.
- Negative quorum calculations apply to BCC memberships and meetings. Thus, on a committee of 7 members, if a bare quorum of 4 attends a meeting, only 2 members would constitute a negative quorum.
- The actual number constituting a negative quorum may not be known until the body meets so caution is advised regarding conversations among members outside of public meetings.
- Gathering in a negative quorum for the purpose of discussing public business can violate open meetings law



Quorum Issues to Be Aware Of – Walking Quorum

- A series of discussions (in-person, by phone, text, or email) such that they create a quorum or a negative quorum. This constitutes an Open Meetings violation.
- Use a one-way communication disclaimer in emails if communicating with a negative quorum to avoid initiating a discussion.
- Communications that resemble a discussion and exchange of ideas or opinions regarding business before the body among a negative quorum are not permissible. One-way communication which does not invite a conversation among a negative quorum could be handled in a letter or memo rather than a meeting. But even one-way communications may result in a negative quorum depending on the actions of the recipients.



Closed Session

- Closed Sessions must be convened in an Open Meeting and must be noted on the Agenda.
- Must be for a reason permitted under Wisconsin Statutes.
- Requires a specific motion that includes a description of the topic and correct statutory citation.
- Any votes in closed session must be recorded in the minutes.
- The Chair must make announcement of a closed session and whether the body will reconvene in open session and must clear the room of non-members or others who are not necessary to consider the item.
- Staff should consult with the City Attorney's Office prior to placing a closed session on an agenda.



Part 2: Public Records

The State of Wisconsin has a tradition of Open Government that has been codified into law. It has tasked each municipality with providing access to Public Records.

The policy underlying the public records statute is that an informed electorate is essential to the proper functioning of a free and democratic society.

Access to City of Madison Public Records is governed by:

- Wis. Stats. §§ 19.31-19.39
- Madison General Ordinance (MGO) 3.70
- Administrative Procedure Memorandum (APM) 3-6



What is a Record?

Defined by State Statute:

- “Record” means any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an authority.
- It does not matter where the records are stored, it only matters that governmental business is being discussed. If you use your personal device to conduct governmental business, it leaves that open for inspection should a request for records be received.



When a Public Records Request is Received

- DCR Staff will assist with gathering of responsive records.
- DO NOT delete/destroy records.
- Be Prepared to search your personal devices/email addresses if used for City business.



Questions?

- Contact City Atty Michael Haas or Deputy City Atty Patricia Lauten with questions related to Robert's Rules.
- City Attorney's Office
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