

WISCONSIN OPEN MEETINGS LAW

Assistant City Attorney Roger A. Allen
rallen@cityofmadison.com
(608) 266-4511

THE OPEN MEETINGS LAW

- **Secs. 19.81 - 19.98 of the Wisconsin Statutes**
- **Sec.3.71 Madison General Ordinances**
- **Supplemented by Administrative Procedure Memorandum (APM) 3-13.**



PURPOSE OF THE LAW

“...a representative government of the American type is dependent upon an informed electorate... [therefore] the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” Sec. 19.81(1), Wis. Stats.



GENERAL REQUIREMENTS

- **Meetings must be held in a publicly accessible location (including disabled public)**
- **Meetings must be preceded by notice (even for closed meetings)**
- **Meetings must be open to the public (except for statutorily authorized closed sessions)**

WHAT CONSTITUTES A “MEETING”?

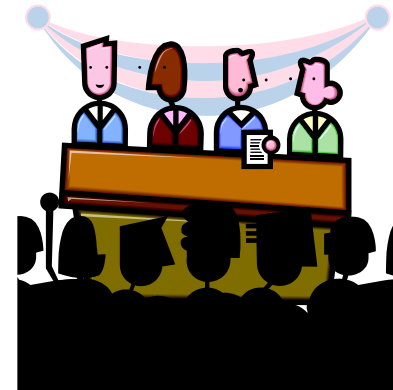
**Must conduct governmental business.
Discussion/debate, information gathering,
public hearings, or for decision making**

AND

**Sufficient number of members of a public
body present that can *determine the body's
course of action* on the subject under
discussion**

DO THESE LAWS APPLY TO SUB COMMITTEES OR WORK GROUPS?

- Applies to all governmental bodies, including boards, commissions, committees, councils, etc.
- All designated subunits of the above





WHAT ABOUT PURELY INFORMATION GATHERING?

Applies even where the body is not taking any formal action.

Applies even when simply gathering information, providing advice or making recommendations

CAUTION

The Open Meetings law applies in at least two situations where a quorum may not be present:

- ▣ **Negative Quorum**
- ▣ **Walking Quorum**

NEGATIVE QUORUM

A gathering of less than a quorum but sufficient to determine the public body's course of action, such as when enough members are present to block passage of an action



WALKING QUORUMS / MEETINGS

A series of gatherings or contacts (phone calls, conference calls, emails, IM/TM, chat rooms) among members



SOCIAL GATHERINGS & CHANCE MEETINGS

Permissible under following conditions—

- **not an attempt to circumvent public meetings law**
- **Business of the public body does not get discussed nor acted upon**
- **If a quorum or more present – will be presumed to have held a meeting and burden of proof shifts to body to prove that a meeting did not occur**

TELEPHONE CONFERENCE CALLS

- **2 Conditions Set by APM:**
 - **Meeting notice must state who will be appearing by phone/video**
 - **Provide a device that works well enough for public to hear participation of those appearing by phone**





TOURS & SITE VISITS

- 1. Must be properly noticed**
- 2. Consider transporting less than quorum numbers to avoid presumption of a meeting while traveling**
- 3. Provide transportation for public?
Media?**

ATTENDANCE AT ANOTHER BODY'S MEETING & JOINT MEETINGS

- **May need to provide notice if attending another body's meeting:**
 - **“a quorum of the XYZ committee may be present in attendance at the ABC Board meeting for the purpose of ...”**
 - **NOTICES SHOULD BE PUBLISHED BY EACH BODY INVOLVED IN A JOINT MEETING**

NOTICE REQUIREMENTS

- **Each Comm./Board has a staff person appointed to ensure compliance**
- **Notice must provide:**
 - **Time, Date, Place**
 - **Subject Matter (stated sufficient enough to identify topic to average person)**
- **Special Requirements for certain bodies (staff will advise)**

POSTING NOTICE

- **Official Notices/Agendas are physically posted in outside City Clerk's Office**
- **Unofficial Notices are posted on other boards, City web page & City Channel**



WHO MUST BE NOTIFIED

- **Public (through posting)**
- **City's Official Newspaper**
- **News Media Outlets (those which have previously filed written request for notice)**

Practice tip – meeting minutes or records should reflect that proper notice was given

TIMING

- 24 Hours notice
(unless impossible or impractical)
- **ABSOLUTELY NO LESS THAN TWO (2) HOURS NOTICE**



CLOSED SESSIONS

- **Allowable for limited purposes set forth in statutes. Examples:**
 - **Judicial/quasi-judicial deliberations (PFC, EOC)**
 - **Discipline & licensing (personnel comm., ALRC)**
 - **Compensation & evaluation**
 - **Crime prevention (PSRB, crime stoppers board)**
 - **Competitive or bargaining purposes (deliberations re: negotiations & actual negotiations)**



CLOSED SESSIONS: PURPOSES

- **Personnel matters – only if considering financial, medical, social or personal histories or disciplinary data of specific persons or the preliminary consideration of personnel problems or the investigation of charges against specific persons**
- **Conferring with legal counsel (for advice on strategy re: current or likely litigation)**

MECHANICS OF CLOSED SESSIONS

- **Convening**
 - Motion & second
 - Recorded vote
 - Announcement
(nature of business &
explicit statutory
authority)



MECHANICS OF CLOSED SESSIONS

- **Attendance in Closed Session**
 - **Members of the Body**
 - **Necessary Staff**
 - **Other City Officers**
 - **Those persons whose presence is necessary to conduct the business**



MECHANICS OF CLOSED SESSIONS

- **Records of closed session**
 - Not required to keep minutes (some stat. exceptions exist)
 - Motions & roll call votes must be recorded (open to public inspection)
 - Once the underlying purpose of the closed session is past, the public may have access to all of those records



RECORDING MEETINGS

- **Must reasonably accommodate any person desiring to record meeting**
- **Many are recorded and broadcast on Ch. 12 & city website**
- **Minutes – staff responsibility**



ENFORCEMENT

- **Prosecution**
 - Attorney general, district attorney or an individual citizen may initiate prosecution
- **Penalty**
 - Forfeiture of \$25.00 to \$300 plus statutory costs (nearly double the total)
 - Liability is personal, city cannot reimburse individual
- **Actions taken during illegal meeting may be voided**