

A group of five diverse professionals (three men and two women) are gathered around a table in a modern office setting, looking at documents and a tablet. The image is dark and serves as a background for the title text. The title text is in large, white, bold, sans-serif capital letters. The subtitle text is in a smaller, white, sans-serif font.

PRINCIPLES OF OPEN GOVERNMENT

A Compliance Guide for Public Bodies

Public Records for Public Body Members

- Record – anything upon which information is recorded and/or kept by a public employee or official regardless of format or place where it is retained
 - Documents, emails, photographs
 - Whether on a government computer or personal laptop/tablet/cellphone
- Presumption of Openness – every public record is open to public inspection unless declared CONFIDENTIAL by a statute, court decision or balancing of public interests (City Attorney consultation required)

Administering Meetings vs. Open Meetings Laws

- Open Meetings Laws Set Minimum Requirements For Convening A Public Meeting
 - Failure to abide by these rules can result in personal liability and reversal of actions taken
 - Requirements can be enforced by an aggrieved citizen, Dane County DA, Wisconsin AG
- City Has Adopted Robert's Rules Of Order For Conducting Meetings
 - Additional rules: Chapter 33 Madison General Ordinances (Some rules are specific to certain bodies) i.e, how to determine quorum, 15 minute rule
 - Bodies may create their own written rules but must file them with the Clerk
 - City offers additional training about conducting a meeting

Legal Requirements - Agenda

- Must Have a Notice and Agenda (APM 3-2)
 - Explicit Agenda Items – No General Items, i.e. announcements, new items, past business
 - Must be posted 24 hours in advance of meeting
 - Must be delivered to Clerk's Office no less than 48 hours in advance
 - Official Posting on Clerk's Office Bulletin Board
 - NO EXCEPTIONS (2 hour notice for true emergencies)

Legal Requirements - Access

- Must Be Open To Public – facility large enough to accommodate expected turnout
- Must Be Accessible – including language assistance
- Must Be Convened in Open Session (Closed Sessions Only If Statutes Allow & OCA Approves)
- Teleconferences – Staff will coordinate per APM 3-2, Agenda Must Identify Person Participating by Phone/Video
- Governed By Robert's Rules Of Order – unless the body adopts & files written rules w/ Clerk

What Is A “Meeting”?

- A gathering (actual or virtual) where the business of the public body is conducted or discussed. A sufficient number of members must be present such that they can determine the course of the public body's business.
 - Sufficient Number of Members
 - Quorum (One more than half of the authorized membership)
 - Negative Quorum – Enough members that if they vote together they could block passage of an item (difficult to determine the number until the item is actually voted upn)
 - Walking Quorum – series of discussions (in-person, by phone, text or even email) such that they create a quorum or a negative quorum

SUMMARY

- You Are Conducting The PUBLIC'S Business, The Public Has The Right To Observe The Process As Well As The End Product
- Staff Is Assigned To Assist You And Ensure Compliance With These Laws
- Forward Anything That Could Constitute A Record To Staff
- Forward All Records Requests (even verbal requests) To Staff
- Avoid Discussing Public Body Business With Other Members Outside Of a Properly Noticed Public Meeting
- Discuss Potential Closed Sessions With OCA Staff
- When In Doubt – Consult Staff/OCA

Soliciting Funds

- Ruling by Ethics Board that generally not to solicit funds from those you deal with.
- Under limited circumstances, may solicit funds if approved by the Common Council. Sec. 3.35(5)(a)2., MGO

Disclosure & Recusal

- If a conflict of interest, must disclose “nature and extent”, unless recuse. 3.35(5)(f)
- If conflict rises to the level of a disqualification (“reasonably be expected to impair ... independence of judgment”), must recuse self and take no part in consideration or action. Consider leaving the room.
- Err on the side of disclosure.

Disclosure & Recusal (cont.)

- Sec. 33.01 (9) (f), MGO, requires an agenda item on disclosures and recusals.
- Financial, family or personal interest requires recusal.
- More tangential relationship requires disclosure.

Ethics Board: 3.35(10)-(13)

- Citizens appointed by the Mayor and confirmed by the Council.
- May issue advisory opinions.
- May receive and hear complaints.
- May recommend sanctions, including removal from office or position.
- City may prosecute and seek fines.

RESOURCES

Office of the City Attorney

<http://www.cityofmadison.com/attorney/index.cfm>

Attorney General Compliance Guides

<https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/2018%20PRL%20Compliance%20Guide.pdf>

<https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/2018%20OML%20Compliance%20Guide.pdf>

Thank You

Michael Haas, City Attorney and Adriana Peguero

266-4511 or attorney@cityofmadison.com