

# Open Meetings

What Every Common Council Member  
Needs to Know (and Traps to be Avoided)

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It's a Way of Life

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# Policy Considerations

- “Sunshine Law”
- Decisions made in public
- Based on public information
- Public access and open decision-making, including information gathering



# Sec 19.81(1)

- “a representative government of the American type is dependent upon an informed electorate”
- “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”



# Quick Overview

- all meetings
- all state and local governmental bodies
- publicly held
- in places reasonably accessible to members of the public
- open to all citizens at all times
- unless otherwise expressly provided by law



# When does the Open Meetings Law apply?

- A meeting
- A governmental body



# What is required if the Open Meetings Law applies?

- A proper agenda
- Posted in public places
- Advance notice
- A publicly accessible meeting place
- Discussion and voting in the open
- Record of votes taken



# What is a “Meeting”?

A “meeting” is defined as:

[T]he **convening of members** of a governmental body for the purpose of **exercising the responsibilities**, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is **rebuttably presumed** to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any **social or chance gathering** or conference which is not intended to avoid this subchapter. . . .

Wis. Stat. § 19.82(2) (*emphasis added*).



# The Open Meetings law applies . . .

whenever a gathering of members of a governmental body satisfies two requirements:

1. there is a **purpose** to engage in governmental business
2. the **number** of members present is sufficient to determine the governmental body's course of action.



# When is a body “gathered to conduct governmental business”?

- any formal or informal discussion, decision or information gathering, on matters within the governmental body’s realm of authority
- members gather to simply hear information on a matter within the body’s realm of authority
- need not actually discuss the matter or otherwise interact with one another to be engaged in governmental business



# “Walking quorum”

- A series of gatherings among individuals or separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a decision
- Includes telephone calls and e-mail/message strings
- Use cautious with online discussions



# Negative Quorum

- Usually a concern on issues where the body operates under a super majority rule
- A group of sufficient size to block a proposal



# Digital Meetings

- E-mail and other electronic communications can be a public record
- Also includes text messaging, social media, other electronic communications
- Electronic discussions can be a “Meeting”
  - **Interactive discussions** are like a meeting and should only occur under the procedures for meetings (advance notice, agendas, open real-time public access and minutes)
  - Avoid the use of “Reply All”

# Whispering in Meetings

Milwaukee County Corporation Counsel:

- refrain from debate, deliberation or discussion away from the public view
- “communication through whispering, side discussion or note passing which would involve a quorum or negative quorum of the Board or any of its committees and would involve issues which are the business of the Board would potentially generate a complaint which would validly object to a violation of the tenets cited above”
- See *also* Madison Common Council proceedings 2012...



# Closed Meetings

Meeting may convene into closed session *only if*:

- Noted on agenda
- Specific motion made, must note
  - (1) business being considered, and
  - (2) specific subsection of statute
- Majority vote
- May only consider item(s) specified
- May only vote in closed session if voting in open session would frustrate the purpose of the closed session
- May only reconvene in open session if noted in motion closing meeting



# Closed Meetings

Common exemptions under sec. 19.85(1):

- (g) - Conferring with legal counsel regarding litigation strategy
- (b), (c) or (f) - Certain personnel matters
- (e) - Competitive or bargaining reasons
- Other specified reasons
- NOT for final ratification of a collective bargaining agreement



# Overlapping Meetings

- Members of Body “A” attend a meeting of Body “B” (remember the “numbers” test)
- The meeting involves a subject over which “A” has some authority
- The gathering is not a “meeting” of Body “A,” only if the membership of “A” did not pre-plan (or “know of”) their attendance or if all of the members of “A” present are also members of “B”



# What Are Penalties?

- “Any member ... who knowingly attends a meeting . . .
- shall forfeit *without reimbursement*
- not less than \$25 nor more than \$300
- for each such violation.”



# Who Enforces the Open Meetings Law?

- District Attorney  
(Milwaukee County Corporation Counsel)
- Wisconsin Department of Justice  
(Attorney General)



# Other issues (we just don't have time to discuss EVERYTHING):

- “Governmental Body”
- Agendas, timing and posting
- Meeting locations
- Minutes of meetings



# Key Takeaways

- Agenda created and posted in advance
- Discuss only items on the posted agenda
- Digital meetings/Online discussions
- Avoid use of "Reply All"



Questions?

