

CITIZEN ADVOCACY CENTER'S

Guide to the Open Meetings Act

This publication is meant to be a guide to the basic requirements that public bodies must adhere to under the Illinois Open Meetings Act.

The Illinois Open Meetings Act is a law that mandates that government decisions must be made in the open, subject to a few exceptions. When members of the public show up, speak out, and organize community campaigns, it can sometimes create a contentious environment and it is important for members of the public, public officials, and journalists to know how and when public bodies are required to keep meetings open.

I. The Illinois Open Meetings Act

The Illinois Open Meetings Act (OMA) states that, “[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people’s business and that the people have a right to be informed as to the conduct of their business. . . . [I]t is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.” 5 ILCS 120/1.

The OMA requires public bodies to hold open meetings, provide the public with adequate notice of meeting times, and keep records of public meetings. The Act also allows the public body, under limited circumstances, to close meetings to discuss specific issues.

5 ILCS 120/1.05 mandates that every public official complete an electronic training certification program through the Illinois Attorney General’s Public Access Counselor’s website.

A. What Is a Meeting?

In order to have a meeting that falls under the OMA, the following must be present:

- There must be a *gathering* of public officials, which can be in person or electronically;
- There must be a *majority of a quorum* of a public body present; and
- They come together for the *purpose of discussing public business*.

Examples of “majority of a quorum”:

- 14 member board: 8 is a quorum, 5 is a majority of a quorum;
- 10 member board: 6 is a quorum, 4 is a majority of a quorum; and
- 7 member board: 4 is a quorum, 3 is a majority of a quorum

5 member board: 3 is a quorum! The General Assembly amended the statute to allow 2 members of a 5 person board to discuss issues without having to notice the discussion as a public meeting.

Attendance by means other than physical presence:

- The OMA allows public officials to participate in an off-site manner prescribed by the rules of the public body, subject to the following:
 - A quorum of public officials must be physically present
 - A public official may only participate virtually when the following do not allow for in-person attendance:
 - Health
 - Work
 - Family / Emergency
- It is a violation of the OMA for a majority of a quorum of public officials to communicate via text message or email in a contemporaneous manner.

B. What Is a Public Body?

Public bodies include **all “legislative, executive, administrative, or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts”** along with agencies, boards, committees, and commissions, including any subsidiary body or subcommittee supported by or expending tax revenue.

- Non profit organizations who receive government funding are subject to the OMA only if there is a public body that exerts day to day control over how the non profit operates. The fact that a public body may partially or fully fund the non-profit is not enough.
- An “advisory body” is only subject to the OMA if the entity that established it is a public body, and the advisory body is responsive to the public body. If the committee was set up by an administrator and is responsive to that individual only, the committee is exempt from the OMA.

C. What Does It Mean To Be Open?

Public Notice

Public bodies must give notice of regularly scheduled meetings by posting a schedule of their regular dates, times, and places of meetings. Notice must be given:

- At the beginning of each calendar or fiscal year; the calendar has to be posted at the principal office holding the meeting and at the meeting location;
- To the public as well as any news medium that files an annual request; and
- On the website of the public body; however, failure to post notice online will NOT invalidate any action taken at the meeting.

Location of Meetings: Reasonable Accessibility

All public meetings must be held at specified times and places which are convenient and open to the public. The definition of convenience is one of *reasonable* accessibility.

A public body holding a meeting at 7 a.m. during the weekday is considered reasonable. Reasonable in this context means that the meeting is available to the public generally.

Permanent Changes

If there are any permanent changes to regularly scheduled meetings, the public body must give notice at least 10 days before the meeting by publication in a newspaper of general circulation. The public body shall post notice of any changes at the principal office of the body holding the meeting or, if no such office exists, at the building where the meeting will be held.

Special Meetings

For special meetings, public bodies must give at least 48 hours notice. Notice must be posted at the place where the meeting usually takes place and delivered to any news medium that files an annual request. Special meetings include a rescheduled regular meeting or a reconvened regular meeting. The notice provision for special meetings does not apply to an open meeting that is reconvened within 24 hours.

Emergency Meetings

Notice of an emergency meeting shall be given as soon as practicable prior to the holding of the meeting.

Agendas

- Agendas must be posted at least 48 hours prior to the meeting.
- Agendas must state the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting.
- If the public body maintains a website, they must post agendas online and the agendas must remain online until the meeting has concluded.
- The public body must make at least one copy of any requested notice and agenda continuously available for review during the entire 48-hour period leading up to the meeting.
- Posting the notice and agenda on a website that the public body maintains satisfies the continuous posting requirement.

Accommodating Large Crowds

If the public body is aware that a meeting has significant public interest and suspects that the usual space is too small to accommodate the public who attend, the public body must find an alternative location. If an alternative venue is available and the public body refuses to change location, a violation of the Act has occurred based on the public's inability to attend the meeting. *Gerwin v. Livingston County Board*, 802 N.E.2d 410 (Ill. App. Ct. 4th Dist., 2003).

D. Recording Public Meetings

Public's Right to Record

Any person may record the proceedings at an open meeting by film, tape, or other means. However, the public body holding the meeting may prescribe reasonable rules to govern the recording and a person giving testimony at a public hearing may request that their testimony NOT be recorded.

Example: Park District holds an open meeting on a controversial issue. Local paper sends photographer and Park District refuses to allow photographer to take picture during meeting, and asks photographer to wait until the meeting is over.

Violation? Yes! The OMA is explicit in stating that the public has a right to record the meeting. Asking the photographer to wait until the meeting is over is a violation of the right to record government proceedings.

E. Public Comment

The OMA mandates that any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body

What Speech Is Protected?

While most speech is protected under the First Amendment, there are certain well-defined and narrow categories of speech that the First Amendment does not protect. These restrictions include obscene language, fighting words, and defamatory statements.

Obscenity

All of the following factors must be present to label something as obscene language:

- Language that the average person, using the standards of the community in which the expression is made, would find that it appeals to a morbid or shameful interest in sex;
- Language that depicts or describes sexual conduct in a patently offensive manner; and
- Language that lacks serious literary, artistic, political, or scientific value.

Example: Obscenity: An individual makes a public comment describing a sexual act in graphic detail during a city council meeting.

Not Obscenity: Using an expletive during a public comment would almost certainly be protected by the First Amendment.

Fighting Words

Fighting words are words whose very utterance inflict injury or tend to incite an immediate breach of the peace. Words only constitute fighting words if spoken *face to face* and are directed at an individual or a small group. They are words that, legally defined, have such little social value that any value the words might have is overshadowed by the government's interest in prohibiting them.

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). For practical purposes, the fighting words doctrine has been very narrowly defined by the courts.

Example: After a city council meeting, an angry member of the public confronts the mayor over a public issue and uses a litany of profanity. The mayor tries to remain calm but the string of profanity goes on for a good 20 – 30 seconds. The individual is then arrested and charged with disorderly conduct. Justified charge of disorderly conduct?

Answer: First Amendment cases interpreting cursing have regularly found that such language usually does not constitute fighting words; however, government entities try to argue that the individual was not arrested for speech, but rather for conduct surrounding speech (here, pointing and waving arms in aggressive manner).

Defamation

Defamation is any factually inaccurate statement that injures another person's reputation or good name.

When the subject of a defamatory statement is a private person or entity, that person or entity may prevail in a defamation suit by proving that the communication was made carelessly or negligently.

Defaming a public official:

When the comments are about public officials, the bar is set considerably higher for determining defamation. *A speaker who has made comments against a public official will be liable for defamation only if it is shown that the statement was made with malice.*

Malice is present if the speaker knew a statement was false, or if the speaker made the statement with reckless disregard for whether the statement was true or not. If a speaker has valid reasons to believe that a statement regarding a public official is true, that statement is not defamation.

In all cases, truth is an absolute defense to a charge of defamation.

Example: Can a school board institute a policy stating that comments made during public comment cannot be "defamatory" in nature?

Answer: No! Even though defamation is not protected speech, federal courts have held that public bodies *may not* implement policies that prohibit defamatory statements. A federal court held "the board could not censor speech even if speech was, or might be, defamatory." *Baca v. Moreno Valley School District*, 936 F.Supp. 719, (E.D. Ca. 1996).

Public Officials Defaming Citizens during Public Meetings:

The Illinois Appellate Court has held that all comments made by a public official at legislative or judicial proceedings are absolutely privileged. This means that anything said by a government official during the course of a legislative meeting (*i.e.*, local government meeting) or judicial proceeding cannot be considered defamatory. However, comments made before or after the meeting may not be privileged.

F. What Regulations May Be Placed on Speech?

Time, Place, and Manner Restrictions

A public body may implement time, place, and manner regulations that are legally valid as long as it: 1) furthers an important governmental interest that is unrelated to the suppression of free speech, and 2) does not burden speech more than is necessary to further the governmental interest. Most time, place, manner restrictions are put in place to ensure that public meetings run smoothly and efficiently.

Example: Can a school board limit public comments to three minutes per individual at the beginning of the board meeting? Yes, a time limit for public comment is a legitimate restriction.

Example: Can a school board allow for public comment only at the end of a meeting rather than at the beginning of the meeting? Yes, this is a place restriction that is legitimate.

Example: Can a school board only allow one minute to one person and three minutes to another because they do not like some of the speakers? No! This would be restricting speech based on what the person is going to say and is impermissible.

G. Monitoring Public Comment Policies

Monitoring public comment policies, especially when vocal and organized citizen groups are involved in a community issue, is an important aspect of reporting on community events. It is important to identify:

- 1) The existence of any time, place, manner regulation prior to community activity; and
- 2) The specifics of the policy as they relate to chilling speech.

Public Bodies Recording Closed Sessions

All public bodies must record closed meetings in the form of an audio or video recording. Closed session recordings are not available for public inspection or a court proceeding unless the public body finds there is no need for confidentiality.

If a member of the public believes that an inappropriate topic has been discussed in closed session, a request for review from the Public Counselor's Office and *in camera review* may be brought. This means that the PAC will listen to the recording in private and determine if the recording is accessible to the public. Recordings of closed sessions must be retained for a minimum of 18 months and may be destroyed after that time if the public body votes to destroy the recordings and creates minutes of the closed meeting.

Minutes

All public bodies must keep written minutes of their meetings, whether open or closed. The written minutes must include the date, time, and place of the meeting; whether the members of the public body were present or absent; whether members were physically or electronically present; and a "summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken." 5 ILCS 120/ 2.06(a)(3).

- A public body has to approve the minutes of open meetings within 30 days or at the public body's second subsequent regular meeting.
- The approved minutes of the meeting have to be disclosed within 10 days.
- If the public body maintains a website, minutes must be posted online and remain online for at least 60 days.

- Public bodies DO NOT have to provide draft minutes of meetings.

- Public bodies must review minutes or recordings from closed meetings at least every six months to make a determination in open session of whether those minutes or recordings still require confidentiality.

H. Closed Sessions

Public bodies may hold closed meetings provided that they state a legally sufficient reason in an open session for holding a closed session. A majority of a quorum present during an open session must also vote to close the meeting. While the Act allows public bodies to convene in closed session, public bodies are not required to go into closed session.

A public body may only *discuss* issues in closed session. The vote on issues discussed in closed session has to happen in a public forum.

Employment Matters

- The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee or legal counsel to determine its validity.
- Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.
- The selection of a person to fill a public office, including a vacancy in a public office.

Land / Investment Deals

- The purchase or lease of real property for the use of the public body.
- The setting of a price for sale or lease of property owned by the public body.
- The sale or purchase of securities, investments, or investment contracts.

Security Matters

- Security procedures and the use of personnel and equipment to respond to actual, threatened, or reasonably potential danger to the safety of employees, students, staff, the public, or public property.
- Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.

Student Records

- Student disciplinary cases.
- The placement of individual students in special education programs and other matters relating to individual students.

Litigation/ Legal Claims

- Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.
- The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member.
- Evidence or testimony in an open hearing, or in a closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

While a public body may discuss litigation or imminent litigation in closed session, court documents filed during the course of litigation against a public body are a matter of public record and can be obtained at the court house where the documents are filed.

OTHER EXCEPTIONS

- Consideration of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement.

- Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.
- Self-evaluation, practices, and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member.
- The recruitment, credentialing, discipline, or formal peer review of physicians or other health care professionals for a hospital, or other institution providing medical care, that is operated by the public body.
- Deliberations for decisions of the Prisoner Review Board.
- Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.
- The classification and discussion of matters classified as confidential or continued confidential by the State Employees Suggestion Award Board.
- Discussion of minutes of meetings lawfully closed under this Act whether for purposes of approval of the minutes or semi-annual review of the minutes.
- Deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board.
- The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to the purchase, sale, or delivery of electricity or natural gas, or (ii) the results or conclusions of load forecast studies.
- The records and meetings of death review teams and their executive council as specified in the Abuse Prevention Review Team Act.

I. Enforcement

The Attorney General Public Access Counselor

The Illinois Attorney General has created the office of the Public Access Counselor.

The PAC has the statutory authority to intervene, settle, and if necessary litigate open records cases on behalf of the public seeking access to public records.

- **File a written, signed request for review including a summary of facts supporting the allegation within 60 days of the alleged OMA violation.**
- If the PAC believes a valid issue of concern is present, within seven working days of receiving the complaint, the PAC will forward an inquiry to the public body with a request for an explanation.
- Within seven working days of receiving the request from the PAC, a public body may provide the PAC with its explanation and provide any relevant documentation. The PAC may issue subpoenas for records as well.
- The PAC will forward the public body's answer to the requestor. The requestor will then have seven working days to respond and shall provide a copy of the response to the PAC and public body.
- The PAC shall issue a ruling within 60 days of receiving a request for review, unless an extension of time is requested, up to more than 21 business days.

The PAC may respond by:

- **Issuing a binding ruling mandating action by a public body.** If the public body is compliant, no penalty provisions apply. A public body may appeal the PAC's ruling to the circuit court. If the public body refuses to disclose the information, the PAC may seek judicial enforcement from the circuit court.

- **Issuing a non-binding opinion:** The PAC may choose to mediate the dispute or resolve the matter by means other than the issuance of a binding opinion. The decision not to issue a binding opinion shall not be reviewable.
- **Issuing an advisory opinion to the public body.** A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.

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State's Attorney

The State's Attorney in the county in which the violation has occurred also has the capacity to file charges against the public body. The State's Attorney may bring an action within 60 days of discovery of the violation.

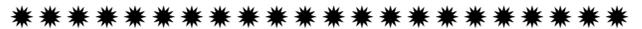
Individuals

Any individual may bring an action in the local circuit court to enforce the terms of the OMA within 60 days after the meeting during which the violation has occurred. The court may assess attorneys' fees against the losing party.

J. Remedies

Upon finding a violation of the OMA a court may prescribe various remedies. For example, the court may, as fairness and justice require:

- Open the closed meeting to the public;
- Issue an injunction to prevent future violations;
- Make public any matter held confidential during a wrongfully closed session;
- Void any final action taken during a wrongfully closed session; or
- Impose fines.



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The **Citizen Advocacy Center** is an award winning, non-partisan, 501(c)(3) non-profit, free community legal organization, founded in 1994, dedicated to building democracy for the 21st Century by strengthening the public's capacities, resources, and institutions for self-governance.

The Center is open for the public to obtain free civic resource materials, ask questions of our community lawyers on matters of public concern, engage in civic discussion, learn about local issues, attend training workshops, and develop skills for participating in civic affairs.

If you are interested in more information, becoming a volunteer, or making a tax-deductible contribution to the Center, please feel free to contact us.



Open Meetings Act Flow Chart

