



The voice of Alabama's municipalities since 1935

Open Meetings Act



Presented by:

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Purpose of the Open Meetings Act



- Sections 36-25A-1 through 36-25A-11
- Replace the old “Sunshine Law”
- Section 36-25A-1
 - “It is the policy of this state that the *deliberative process of governmental bodies* shall be open to the public during meetings....”



Who IS Covered?



Municipal Governmental Bodies

- **Municipal Boards, Bodies and Commissions**
 - Power to Expend or Appropriate Municipal Funds
- **Multimember Governing Bodies, Departments, Agencies, Institutions, Instrumentalities, and Corporations**
 - Majority of Members Appointed or Elected by Municipality

Who is NOT Covered?



- **Voluntary Membership Associations**
 - Public Employees
 - Counties
 - Municipalities or their Instrumentalities
- **Without Legislative or Executive Functions**

What constitutes a “meeting”?



- **OMA only applies to meetings as defined by the act.**
- **“Meetings”**
 - Quorum
 - A majority of the voting members of a governmental body.
 - Must be physically present
 - Mayor is Included in Quorum Count when Population is LESS THAN 12,000. AGO 2004-054.
 - Deliberation
 - Exchange of ideas intended to influence vote on matters expected to come before the council.
- Does not have to be “pre-arranged”

What is NOT a Meeting?



- **Quorum at social gatherings, conventions, conferences, training programs, press conferences, media events, association meetings, on-site inspections, meetings with applicants for economic incentives or assistance.**
 - Cannot “deliberate”
- **Gathering of a quorum in person or by electronic communication with state or federal officials for the purpose of reporting or obtaining information or seeking support for issues of importance.**
- **Emails between a quorum in which no deliberation occurs.**

Meeting Notice



- **Post notice on public bulletin at City Hall**
- ***Regular Meeting—7 days***
- ***Special Called Meeting—24 hours minimum***
- ***Emergency Meeting—1 hour notice minimum***
 - (1) To avoid physical injury to persons or to prevent damage to property
 - (2) To accept resignation of public official or employee

Content of Notice



- **Notice MUST include:**

- Date
- Time
- Location
- Agenda...when available
- Means of electronic access if member is participating electronically

Conducting Meetings



- **Parliamentary Procedure**
- **Voice Votes**
- **No Secret Ballots**
- **No Voting in Executive Sessions**
- **Video and Audio Recordings Allowed***
- **<https://www.robertsrules.org/rror--00.htm>**

Minutes



- Minutes of all meetings subject to the OMA are required.
- Only evidence of council action.
- Do not have to be verbatim.

VERBATIM

Content of Minutes



- Date, Hour and Place of Meeting
- Regular, Adjourned or Special Meeting
- Proper Notice - Council
- Special Meeting – Proper Notice to Public
- Names of the PRESENT Councilmembers
- Names of ABSENT Councilmembers
- Time of Late Arrivals and Early Departures
- Any Action Taken
- Work Sessions
- Executive Sessions*

Serial Meetings



- Serial Meetings are now prohibited by the open meetings act.
- **What is it?**
 - Series of meetings
 - Less than a quorum at each meeting
 - At least one member attends one or more other meetings in the series
 - Total number of members attending two or more of the series of meetings, collectively, constitutes a quorum
 - No notice given to the public
 - Deliberation
 - Purpose is to avoid OMA
 - One of the meetings is within 7 calendar days of a vote on ANY of the matters deliberated

Executive Session



- **No record required**
- **NEVER** required to go into
- **Cannot vote or take action**
- **Procedure:**
 - At a properly noticed public meeting
 - Majority of the quorum vote in favor of going into
 - Must record votes
 - Reason stated on the record
 - Presiding officer states whether body will reconvene and, if so, the estimate of time to reconvene public meeting



Permissible Reasons for Executive Session



- 1) To discuss good name & character, physical condition, professional competence or mental health of individuals.
- 2) To consider discipline, dismissal or hear formal written complaints or charges against a public employee, a student at public school or college, or an individual, corporation, partnership or other legal entity.
- 3) To discuss with attorney regarding pending litigation, matters imminently likely to be litigated, and meeting mediator/arbitrator.

Permissible Reasons for Executive Session (Cont.)



- 4) To discuss security plans, procedures, assessments, measures, or security or safety of persons, structures, facilities, or other infrastructures where public disclosure could be detrimental.
- 5) To discuss info that would disclose the identity of an undercover agent or informer, criminal investigations of a person (not public officials), and whether to file a criminal complaint.
- 6) To discuss acceptable offers for purchase, sale, exchange, lease or market value of real property.

Permissible Reasons for Executive Session (Cont.)



- 7) To discuss preliminary negotiations involving matters of trade or commerce in which the city is in competition with private or public entities.
- 8) To discuss strategy for negotiations between the governmental body and a group of public employees.
- 9) To discuss evidence or testimony presented during a public contested case hearing.

Electronic Participation



- **Section 36-25A-5.2**

- Allows for electronic participation of councilmembers at meetings if:
 - (1) A quorum of the council is physically present;
 - (2) The member participating electronically is unable to be physically present because of illness;
 - (3) At least 45 days prior to utilizing the electronic participation the council has adopted an electronic meeting policy.
- Members participating electronically do not count towards the quorum required to conduct business.

Immunity from Suit



- **Section 36-25A-8**
 - Compliance with OMA = absolute immunity for ANY statement made during the meeting if it relates to an action pending before the governing body.



Penalties

- Personal Liability → Fine of up to \$1000 or half the monthly salary of the official, whichever is less.



Civil Actions: Violation of OMA



- **County – Primary Office**
 - Media Organization
 - Alabama Citizen Impacted Greater than the Public At
 - Large (Evidence)
 - Attorney General
 - District Attorney
- **No Local Public Official Vs. Public Official**
- **60 Days of Date Plaintiff Knew/ Should have Known**
- **2 Years of Alleged Violation**
- **Name and Capacity of Members in Attendance**

OMA Complaint



- **Disregarded Notice Requirements**
- **Disregarded Provisions of the OMA During a Meeting**
- **Other Matters Discussed During Executive Session**
- **Intentional Violations of OMA Provisions**

Questions



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