

**CHAPTER 20**

**OPEN  
MEETINGS  
ACT**

**MCL 15.261 *et seq.***

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## **20:1 INTRODUCTION**

### **20:1.1 Purpose**

The purpose of the Open Meetings Act (OMA) is to ensure that performance of governmental functions is open to the public in promotion of accountability and openness.

### **20:1.2 Applicability**

All meetings of a public body shall be open to the public, and all decisions and deliberations of the public body shall be made at a meeting open to the public. The Drain Code specifically states that its provisions are subject to the Open Meetings Act. Specifically, the following meetings under the Drain Code must follow the provisions of the Open Meetings Act:

- Intercounty Drain Board Meetings
- Chapter 20, 21 and 22 Board Meetings
- Boards of Determination
- Bid Lettings
- Day of Review
- Board of Review Appeals

The Act does not apply to chance meetings, social gatherings or meetings solely for informational purposes where a quorum of a Board may be present. For example, OMA does not apply when the members of an Intercounty Drain Board all attend a Drain Conference, and even sit together, as long as they are not making decisions relevant to the Intercounty Drain.

## **20:2 NOTICE OF MEETING**

### **20:2.1 Notice Must Be Given For Public Meetings**

OMA requires that notice be given for all meetings of public bodies. It is important to note that notice requirements under the Drain Code and notice requirements under OMA differ. Accordingly, if you comply with the notice requirements under the Drain Code, it doesn't necessarily mean that you have complied with the OMA notices requirements, or vice versa. The notice requirements discussed below are only for compliance with OMA. All notice requirements under the Drain Code must also be performed.

### **20:2.2 Notice Form**

A public notice must include:

- name, address and phone number of public body
- location, date and time of meeting

- state that minutes will be taken at the meeting and the location of the minutes for inspection
- nature of business to be considered

### **20:2.3 Notice Posted at Principal Office and All Other Appropriate Places**

A meeting of a public body shall not be held unless public notice is given. A public notice shall always be posted at its principal office and any other locations considered appropriate.

Upon written request of an individual, organization, corporation, newspaper, television or radio station, the public body shall send the requesting party a copy of the notice for the public meeting. Notices to the newspaper, television or radio station are free of charge, and notices to individuals, organizations or corporations are subject to a yearly fee at an amount equivalent to the estimate for printing and postage for the notices. For example, a citizen can request that he or she be sent all notices for meetings of a Drain for a certain year. The Drain Office would then have to send the citizen a notice for every public meeting involving the Drain before the meeting is held.

### **20:2.4 Time of Posting**

#### **(1) Regular Meetings**

For meetings that are regularly held (i.e. once a month), the notice of the meetings must be posted within ten days after the first meeting held each year. This notice must contain the dates, times and locations of all of the regularly held meetings for the public body during that calendar year.

#### **(2) Changes in Regular Meeting Schedule**

If there is a change in the schedule for regular meetings, a new public notice must be posted within three days after the meeting at which the change was made, stating the new schedule for meeting dates, times and locations.

#### **(3) Rescheduled Meeting**

If a regular meeting needs to be rescheduled, but there will not be a change for the rest of the meetings for the year, then a public notice must be posted at least 18 hours before the meeting, stating the date, time and place of the meeting.

#### **(4) Special Meetings**

Most meetings held under the Drain Code are special meetings. Public notice for a special meeting must be posted at least 18 hours before the meeting. This 18-hour time period can include time when the office is closed. However, the posting must be accessible to the public. It is acceptable to post the notice at the main entrance of the building where it can clearly be seen when the building is not open.

#### **20:2.5 Recessed Meetings**

If a public meeting is recessed for more than 36 hours, the meeting cannot be reconvened until public notice has been posted for at least 18 hours.

#### **20:2.6 Emergency Meetings**

A public body can meet in emergency session without complying with the notice provisions of OMA if there is a “severe and imminent threat to the health, safety or welfare of the public”. To hold an emergency meeting, 2/3 of the members must agree that delaying the meeting to allow for public notice would be detrimental to efforts to respond to the threat.

### **20:3 CONDUCT OF MEETINGS**

#### **20:3.1 Location of the Meeting**

The public body has a duty to accommodate the number of people who may be reasonably expected to attend the meeting. If more people attend a meeting than expected, and the location cannot accommodate everyone, the public body is not required to adjourn the meeting until larger accommodations are available (although the public body is free to adjourn if it wishes).

#### **20:3.2 Rules for Meeting Conduct**

The public body can establish rules for the conduct of the meeting. However, the rules must be reasonable, flexible, and designed to encourage public expression. The rules must be formalized by the public body prior to their implementation at a meeting. In other words, the public body must set the rules for conduct before testimony begins.

A public body can set rules relative to time limits for speaking, the time period during the meeting when public comment will be allowed, or for giving advance notification that a person wishes to speak (i.e. sign-up sheet) as long as every person is given an opportunity to address the public body.

The public body must allow a citizen or the news media to tape-record, videotape, or broadcast live on radio or television without prior approval. However, the public body can make reasonable rules to minimize disruption of the meeting.

No rule can place any condition on attendance of the meeting. No person can be excluded from attendance of a meeting except for a breach of the peace.

### **20:3.3 Deliberations and Decisions During the Meeting**

All decisions *and deliberations* must take place during the open meeting. The only exception is for deliberations during closed meetings. Accordingly, the members of a public body should not discuss with each other in advance decisions to be made at the public meeting.

## **20:4 CLOSED MEETINGS**

There are ten different purposes for which a public body can go into closed session and deliberate without public attendance or participation. Closed meetings are only for deliberation and no decisions can be made until the public body goes back into open session.

### **20:4.1 Purposes for Closed Meetings**

After a 2/3 roll call vote of the members, a public body can go into closed session for the following reasons:

- To consider the purchase or lease of real property until the time an option to purchase/lease is obtained
- To consult with attorneys regarding trial or settlement strategy in connection with pending litigation, but only if open meeting would have detrimental financial effect on the litigating or settlement position
- To review and consider contents of an application for employment or appointment to a public office, but only when the candidate requests that the application remain confidential. This does not apply to interviews
- To consider material exempt from discussion or disclosure by state or federal statute

Closed session may be held by a public body without the 2/3 roll call vote, but only for the following reasons:

- To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public office,

employee, staff member or individual agent, but only if the named person requests a closed hearing

- To consider the dismissal, suspension or disciplining of a student if the public body is part of the school district the student is attending, but only when the student or student's parent or guardian requests a closed hearing
- For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing
- Partisan caucuses of members of the state legislature
- For a compliance conference conducted by the Department of Commerce under certain sections of the public health code
- In the process of searching for and selecting a president of certain institutes of higher education to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president meets certain requirements

The scope of discussions in closed session must legitimately relate to one of the above exemptions, and no other issues may be discussed.

#### **20:4.2 Procedures for Entering into Closed Meetings**

To begin a closed meeting, if a roll call vote is required, a roll call vote must be taken during the open meeting and the purpose of calling the closed session must be disclosed during the open meeting.

Once the meeting is closed, a separate set of closed minutes is necessary. The minutes for the closed meeting should reflect the date, time, place, members present, members absent and the purpose of the closed session. Minutes of closed sessions should be filed separately. These minutes are exempt from the Freedom of Information Act. The minutes must be kept for one year and one day after the minutes are approved.

Once the closed meeting has ended, the public body goes back into open session and then can vote on decisions that were deliberated on in closed session. The decision does not have to specifically reflect the discussion, but can merely state to decide to take action as discussed in closed session.

**20:5 MINUTES OF MEETINGS**

The Open Meetings Act requires that minutes be taken for all public meetings. The minutes are public records open to public inspection and shall be available at the address(es) designated on the posted public notices.

**20:5.1 Minutes Requirements**

All minutes shall state the date, time, place, members present, members absent, any decisions made at the public meeting, and the purposes for which a closed session is held. The minutes shall also include all roll call votes taken at the meeting.

**20:5.2 Corrections to Minutes**

Corrections to minutes shall not be made later than the next meeting of the public body. When minutes are corrected, they must be made available at the meeting after the corrections took place, and the corrected minutes should show both the original entry and the correction.

**20:5.3 Public Inspection of Minutes**

Copies of the minutes must be available at the address designated on the posted notice. Copies of the minutes must be made available to the public at a reasonable cost.

Proposed minutes must be made available not more than eight business days after the meeting. Approved minutes must be made available no later than five business days after approval.

**20:6 VIOLATIONS OF OMA****20:6.1 Invalidation of Action**

If a violation of OMA is determined, the decision by the public body will be invalidated if noncompliance has impaired the rights of the public. However, if a decision is challenged due to an alleged violation, the public body may re-adopt the decision to make it in compliance with OMA.

**20:6.2 Injunction and Mandamus**

A person can file an action to compel compliance of OMA or to enjoin further noncompliance. If a person is successful in obtaining an injunction or mandamus, the court will provide for recovery of costs and actual attorney fees.

**20:6.3 Personal Civil Liability**

If a public official intentionally violates OMA, he or she could be liable in a civil action for damages of not more than \$500.00, plus court costs and actual attorney fees.

**20:6.4 Criminal Penalties**

A public official who is found to have intentionally violated OMA is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00. A public official who is found to intentionally violate OMA a second time in the same term will be guilty of a misdemeanor with a fine of up to \$2,000.00 and/or up to a year of imprisonment.

## **QUESTIONS AND ANSWERS**

**1. “Are tape recordings of a meeting used only to prepare official minutes considered public records and available to the public upon request?”**

**A:** Yes. The Open Meetings Act states that a public body shall keep minutes of each meeting and that the proposed and the approved minutes must be available for public inspection. However, neither FOIA nor OMA requires you to keep the tape recordings after you have used them to draft your minutes.

**2. “Can I limit those who speak at a Hearing of Necessity to the people in the Drainage District?”**

**A:** No. Because a Hearing of Necessity is covered under the Open Meetings Act, all members of the public are allowed to give testimony.

**3. “Can I count times when our office is closed (nights and weekends) toward the time needed in the posting requirements under OMA?”**

**A:** You should calculate posting time based on when the posting is visible to the public. Therefore, if the posting is only in your office, you cannot count nights and weekends. However, if the posting is put in public view on the outside of the building by the main entrance, then nights and weekends can be counted when calculating posting requirements.

**4. “May a Drainage Board have both open and closed meetings mixed in the same date or must a separate meeting be called for the closed session?”**

**A:** OMA does not prohibit a Drainage Board from holding the open session meeting and then go into the closed session meeting. However, it is important to follow the requirements for each of the meetings, including keeping a separate set of minutes for the open and closed meetings.

**5. “In our county, we have monthly Chapter 20 Drainage Board meetings for various drains. Are these considered regular meetings?”**

**A:** No. Each drain that the board meets about is a separate special meeting that should be posted individually. For example, if in January you are meeting regarding six drains, all six require separate postings. Please note, however, that the Act does not prevent “over-noticing”.