



WMCA Brochure

OPEN MEETINGS LAW - Are You in Violation?

(Converted to flyer format for website)

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Wisconsin's Open Meetings Law

Section 19.81-19.98, Wisconsin Statutes

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

WHAT IS A GOVERNMENTAL BODY?

A state or local agency, board, commission, committee, council, department or public body corporate, and politics created by constitution, statute, ordinance, rule or order, or a formally constituted subunit of the foregoing. Collective bargaining units, volunteer fire departments organized as nonprofit, and collective bargaining units are excluded from the definition of a governmental body.

WHAT IS A MEETING?

The gathering of members of a governmental body for the purpose of exercising responsibilities and authority vested in the body. If one-half or more of the members of a governmental body are present, the meeting is presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. That presumption may be rebutted by competent evidence to the contrary. The use of e-mail by a sufficient number of members of a governmental body, constitutes a meeting and triggers the various requirements of the open meetings law.

Purpose

The gathering must be for the purpose of engaging in government business (i.e., discussion, decision, or information gathering).

Number

The number of members present must be sufficient to determine the body's course of action regarding the subject matter discussed. A **negative quorum** is a meeting of a group, large enough to block passage of a particular action (ex., if a two-thirds vote of an eleven-member body is required to pass a proposal, four could block passage). A **walking quorum** is a series of meetings of groups less than a quorum including telephone conference calls and forwarded e-mails.

When a quorum of a governing body is present at a meeting of a second governmental body merely because all of the individual members of the quorum make up the membership of the second governmental body, separate notice is NOT required. When a regular attendance of a quorum is present such that the gatherings are not social of chance and one or more of the

members of the governmental body is not also a member of the second governmental body separate notice IS required.

WHAT DOES REASONABLY ACCESSIBLE AND OPEN TO ALL CITIZENS AT ALL TIMES MEAN?

"Open session" means a meeting which is held in a place "reasonably accessible to members of the public and open to all citizens at all times." The two phrases, read together, means that "a governmental body must meet in a facility which gives reasonable public access, not total access, and that it may not systematically exclude or arbitrarily refuse admittance to any individual."

- Americans with Disabilities Act (ADA) requires that meetings be in places accessible to the disabled.
- Telephone conference calls are "reasonably accessible" if the public and news media can effectively monitor it, i.e., speaker broadcasting.
- It is preferable to meet in a public building, but a meeting may be held at the home of a governing body member if proper notice is given and the home is reasonably accessible to the public.

HOW IS PUBLIC NOTICE GIVEN?

- As required by statutes (i.e., Class 2 notice is required for hearings on proposed zoning amendments), and
- By communication from the chief presiding officer of a governmental body or such person's designee to:
 - Public. Notice to the public by posting in several public places or through sufficient newspaper publication.
 - News Media. Notice to the news media who have filed a written request for such notice.
 - Official Newspaper. Notice to the designated official newspaper and, if none, to a news medium likely to give notice to the area.

Timing and contents. Notice must be given 24 hours in advance of a meeting unless such notice is impossible or impractical. If there is good cause, shorter notice may be given but in no case may notice be provided less than two hours in advance of a meeting, Section 19.84(3). The notice must include the TIME, DATE, PLACE, and SUBJECT MATTER of the meeting, including that intended for consideration at any contemplated closed session. Separate notice of each meeting must be given.

Exception to public notice requirement. A governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice if:

- During a lawful meeting of a parent governmental body, during a recess in such meeting or immediately after such meeting.
- For the purpose of discussing or acting upon a matter, which was the subject of that meeting of the parent governmental body.

The presiding officer of the parent governmental body must publicly announce the time, place, and subject of the meeting of the subunit in advance at the meeting of the parent body.

WHAT HAPPENS IF SUBJECT MATTER IS NOT NOTICED?

Governmental bodies can discuss matters not set forth in the meeting notice if the notice contains items such as “such other matters as are authorized by law.” **Such procedures should be used with restraint.** 66OAG 143 (1977).

Events that come up suddenly or unexpectedly may either be noticed by amended notice with at least 2 hours notice, for good cause, or put off until the next meeting. Matters of interest or importance that arise during the course of the meeting under “such other matters as are authorized by law” should be postponed so that notice can be given and the governmental body should refrain from engaging in any information gathering or discussion or from taking any action on the matter.

HOW TO CONVENE IN CLOSED SESSION

Notice. The notice must specify the subject matter of any contemplated closed session. A governmental body which has convened in open session can convene into an UNANTICIPATED closes session to discuss the subject matter for which the meeting was called if a proper public announcement is made by the presiding officer at the meeting and the closed session is truly not contemplated at the time notice for the open meeting was given. If a governmental body needs to convene into closed session and it was not noticed, it should be dealt with after all other items because the body would be unable to reconvene in open session for at least 12 hours.

Motion. The governmental body must convene in open session before going into closed session. A motion to convene in closed session, properly seconded, must be carried by a majority vote. The vote of each member must be recorded and preserved in the minutes.

Announcement. The presiding office must publicly announce the nature of the business to be considered and the statutory exception. The announcement must become part of the record of the meeting.

When are closed sessions permissible?

- Judicial or quasi-judicial matters
- Discipline and licensing

- Compensation and evaluation
- Crime prevention
- Competitive or bargaining reasons
- Personnel matters
- Conferring with legal counsel
- Ethics advice
- Olympic Ice Training Center support

Who can attend a closed session? Attendance is limited to the body, necessary staff, and other officers, such as the clerk and attorney, and other persons whose presence is necessary for the business at hand.

Proceedings of closed sessions. Discussions in closed session must be limited to only the matters that the presiding officer announced would be the subject of the closed session.

Can governmental bodies vote in closed session? Governmental bodies can take final action and vote in closed session, as long as the voting is an integral part of the deliberation process and is not final ratification or approval of a collective bargaining agreement.

Records of closed session proceedings. Motions and roll call votes of each closed session must be recorded and preserved. The official record must show all motions made, who initiated and seconded the motion, and how each member voted on all votes taken. Records of closed session are open to public inspection. As long as the reasons for convening in closed session continue, the custodian of the record can justify not disclosing information that requires confidentiality. However, the custodian must separate information which can be made public from that which cannot. Typically, the record of the roll call vote would not be confidential. Once the underlying purpose for the closed session ceases, the records of the meeting must be provided to any person requesting access.

Reconvening in open session. A governmental body may not reconvene in open session within 12 hours after completion of closed session unless the original notice of the meeting specified that the body would reconvene in open session.

PENALTIES AND ENFORCEMENT

Enforcement.

- Attorney General
- District Attorney, upon verified complaint of any person
- Individual who filed the complaint may bring an action if the District Attorney fails to commence an action within 20 days after receiving complaint.

Penalties. Members of a governmental body who knowingly attend a meeting in violation of the open meetings law or otherwise violate the open meetings law by some act or omission are subject to a forfeiture of between \$25 and \$300. This is a personal liability and is not reimbursable by the municipality.

However, members may seek reimbursement for costs incurred in prosecutions successfully defended.

“Knowingly” is not limited to positive knowledge but includes the state of mind of one who acts “with an awareness of the high probability” that a violation is occurring.

The open meetings law creates a presumption that meetings of governmental bodies must be held in open session. Although

there are some exemptions to the open session requirement, those exemptions are to be invoked sparingly and only when necessary to protect the public interest. The policy of the open meetings law dictates that governmental bodies convene in closed session only where holding an open session would be incompatible with the conduct of governmental affairs. Public officials must be ever mindful of the policy of openness to ensure compliance with both the letter and spirit of the law.

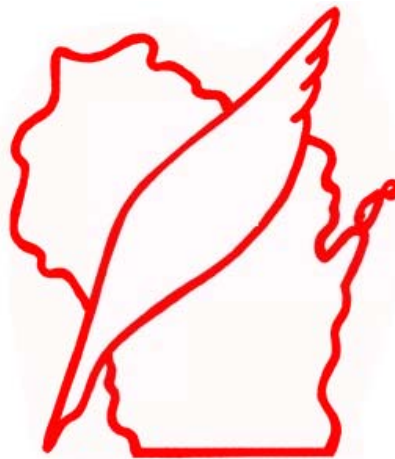
ADDITIONAL REFERENCES

Wisconsin Towns Association Handbook, 715/526-3157

Handbook for Wisconsin Municipal Officials, League of Wisconsin Municipalities, 608/267-2380 or 1-800-991-5502

Local Government Services, Inc., Dealing with Requests for Public Records, James Schneider, Editor, 608/835-3944, or www.uwex.edu/lgc/program/pubs

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities, 608/267-2380



Wisconsin Municipal Clerks Association