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Complying with the Illinois Open Meetings Act  
(OMA)

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## **Complying with the Illinois Open Meetings Act (OMA)**

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# HELPFUL TIPS

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## Helpful Tips for OMA

- OMA (general tips)
  - Utilize closed session sparingly
  - Have written rules regarding public comment (time for each topic, total time, allow leeway for important issues, but not rules on content)
  - Public comment is time for public comment, not time for a shouting match with a commenter
  - Text messages with the Board are not the arena for deciding public issues

# What is the OMA?



- The Open Meetings Act is a state law that requires meetings of public bodies to be open to the public except in certain, specific situations.
- The Open Meetings Act ensures that the actions of public bodies are conducted in the open, through public meetings, and that the public is able to observe the deliberations behind those actions.

# Common Exceptions to the OMA



A public body may hold closed meetings to consider the following subjects:



The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body



Collective negotiating matters between the public body and its employees or their representatives



The purchase or lease of real property for use of the public body



The setting of a price for sale or lease of property owned by the public body



Litigation, when an action against, affecting, or on behalf of the particular public body has been filed and is pending before a court, or when litigation is *probable or imminent*



(see 5 ILCS 120/2(c) for a complete list of exceptions to OMA)



## How to Enter Closed Session

- In order to hold a closed session meeting, a public body *must* be considered one of the listed exceptions provided in Section 2(c) of the OMA.
- Should a closed-session be desired, a member must publicly state the exception being relied upon to close the meeting while at a properly noticed open meeting.
- The members of the public body, upon a quorum being present, may then vote to close the meeting with a majority vote, either by voice vote or roll call vote.
- Two Scenarios:
  - (1) members can decide that a future meeting will be a closed-session meeting and render a vote based on that intention
  - (2) members can decide to go into closed-session meeting for a portion of the ongoing meeting.
- **Best Practice Recommendation:**
  - Hold a roll call vote for either scenario, with the members present and voting and the details of the vote recorded in the meeting minutes

# Proper Handling of Closed Session

- Within a closed session, only topics specified during the vote to close the meeting should be discussed.
  - However, if a related topic plays an **integral** part in discussing the original, main topic referenced in the vote, then it is permissible for discussion, along with the original topic
- Voting during a closed session meeting may occur if the item on the agenda is a “final action”.
  - If the item is not a final action, it cannot be considered or discussed without an open meeting where “public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted” can occur.
- **Best Practice Recommendation:**
  - Hold closed-session meetings sparingly and only when necessary. If necessary, limit any closed-session meeting discussions to only those primary topics expressly permitted by OMA that were specifically referenced during the motion to close the meeting

# Handling Meeting Minutes + Recording

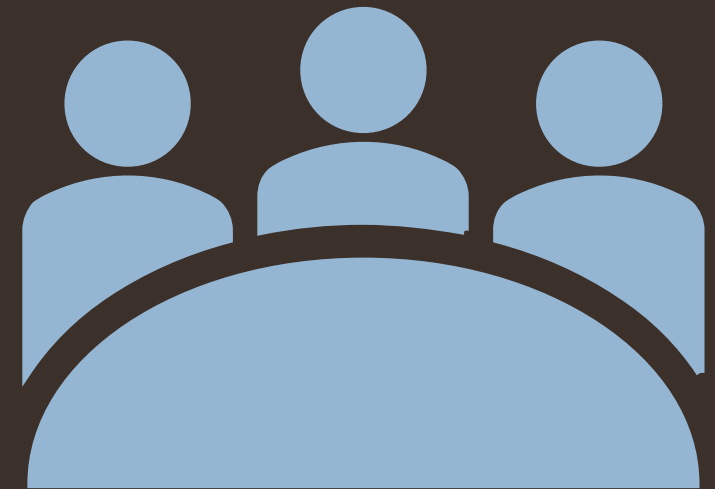
- All public bodies shall keep written minutes of their meetings, whether open or closed, and a verbatim record of all closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:
  - The date, time, and place of the meetings
  - The members of the public body recorded as either present or absent and whether the members were physical present or present by means of video or audio conference; and
  - A summary discussion on all matters proposed, deliberated, or decided, and a record of any votes taken
- Any person may record the proceedings at meetings required to be open by OMA by tape, film, or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.
  - Can approve in open session but cannot change





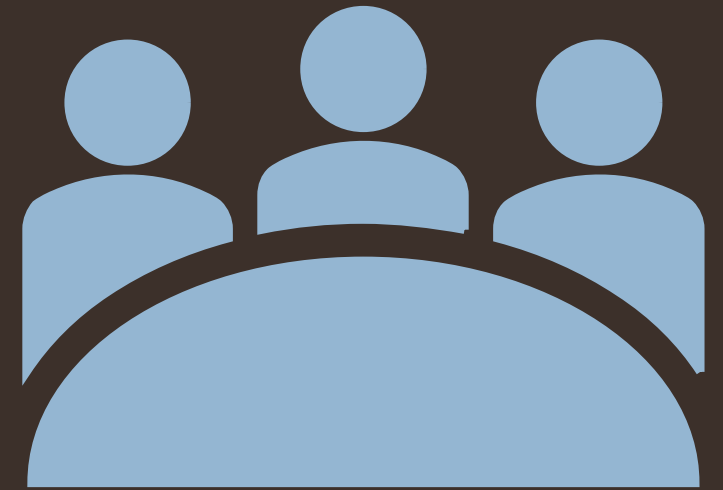
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  - Can approve in open session but cannot change



## Handling Meeting Minutes + Recording (cont.)

- A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later.
- The minutes of meetings open to the public shall be available for public inspection within 10 days after approval of such minutes by the public body.
- Public body may approve of minutes in open session, but cannot change



## Handling Meeting Minutes + Recording (cont.)

### Destruction of Tapes

- The verbatim record may be destroyed no less than 18 months after the completion of the meeting recorded, but only after:
  - (1) the public body approves the destruction of a particular recording; and
  - (2) the public body approves minutes of the closed meeting that meet the written minutes requirements



# 2021 OMA PAC Opinions

- Binding Opinion 21-003: Probable Litigation (OMA)
  - The probable litigation provision under Section 2(c)(11) of the Open Meetings Act (OMA) did not authorize closed session discussions on topics that could potentially give rise to litigation on some unknown future date.
  - The belief that litigation **may** occur at some point in the future is not justification for deliberating in closed session. There must be reasonable grounds to believe that litigation is more likely to occur than not, or that litigation is imminent.
  - Possible or threatened litigation  $\neq$  probable or imminent litigation.

# 2021 OMA PAC Opinions

- Binding Opinion 21-007 (OMA)
  - A public body may not mute their voices during an open meeting to have a side discussion, even if the conversation would have been appropriate during an in-person meeting.
    - This is especially important to recall for virtual meetings. At virtual meetings, there is no exception to the requirement that members be heard audibly when speaking. Do NOT mute for any side discussions.
  - The public must hear all discussion. The PAC strictly interprets this requirement.

# 2021 OMA PAC Opinions

- Binding Opinion 21-009 (OMA)
  - PAC found that a board of education failed to appropriately provide an opportunity for public comment when it only allowed members of the public to address the board in closed session.

# 2021 OMA Case Law

- *City of Bloomington v. Raoul*
  - Bloomington City Council held a closed session, citing litigation exception to OMA , to discuss termination of an agreement with Town of Normal.
  - AG, via binding opinion, determined City Council did not properly invoke exception for “probable or imminent” litigation. Further, AG opined that City Council violated OMA by engaging in discussion focused on matters other than the specifics of the litigation.
  - The trial court found for the City of Bloomington, and then the case was appealed.

# 2021 OMA Case Law

- *City of Bloomington v. Raoul* (**continued**)
  - Appellate Court held that AG properly determined that the City Council improperly invoked the litigation exception to enter a closed session, as litigation was not pending, nor was litigation probable or imminent pursuant to the OMA.
  - Even if City Council had lawfully closed the meeting, the City Council violated OMA by failing to abide by the conditions that confined their discussion to probable or imminent litigation
    - Absent from the closed session was any discussion of legal theories, claims, defenses, or possible approaches to litigation, and the commentary that did concern litigation related to concern about the uncertainty of the outcome, how best to avoid a lawsuit, and whether either city had or could use the threat of litigation in the course of negotiations.



# New OMA Laws

- P.A. 102-0348: Empowering Public Participation Act
  - A law enforcement agency or an officer employed by a law enforcement agency may not knowingly and intentionally conduct a background check of a person for the sole reason of that person speaking at an open meeting of a public body, including police disciplinary boards. 5 ILCS 850/10(a)
    - Does not apply in cases when agency or officer believes there is a reasonable suspicion of criminal conduct or a threat to security at the meeting or when the person speaking at an open meeting is under consideration for appointment to a government position by the public body.
      - Violation is a Class C Misdemeanor

# New OMA Laws

- P.A. 102-0653: Amendment to OMA Section 2.06
  - Now requires public bodies to review their closed session meeting minutes every six months, or as soon as practicable, taking into account the nature and meeting schedule of the public body.
  - Ad hoc committees must review closed session minutes at the later of (1) six months from the date of the meeting, or (2) at the next scheduled meeting of the ad hoc committee.
    - Prior to this amendment, the OMA required public bodies to conduct this review on a semi-annual basis.

# New OMA Laws

- P.A. 102-0653: Amendment to OMA Section 2.06 (**continued**)
  - Amendment also provides that when a public body is dissolved, disbanded, eliminated, or consolidated by executive action, legislative action, or referendum, the public body taking over the previous body's functions will be responsible for review and release the closed session minutes of that public body.
    - Changes go into effect January 1, 2022.

# Important OMA Reminder

- Section 2.06 of OMA provides in part, “All public bodies shall keep written minutes of their meetings, whether open or closed and a verbatim record of all their closed meetings in the form of an audio or video recording (and verbatim records if virtual).
  - A draft of closed session minutes will not suffice in the place of a verbatim record.
- In March, the Personnel Committee of the Board of Directors of the South Central Illinois Mass Transit District closed a portion of the meeting to the public.
  - After the meeting, the Board provided a draft of the closed session minutes, an affidavit, and a written answer, but was found to be in violation of OMA because they failed to record a verbatim reading.



**QUESTIONS**

**ANSWERS**

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