



**Meeting Agenda
City of Ypsilanti
Human Relations Commission
Regular Meeting
City Council Chambers - One South Huron St.
Ypsilanti, MI 48197
Wednesday, June 12, 2019, 7:00 P.M.**

I. CALL TO ORDER

II. ROLL CALL

Commissioner Browning
Commissioner Choudhuri
Commissioner Fellows
Commissioner Gaines
Commissioner Hagenhauer
Commissioner Hicks
Commissioner Hunter

III. AGENDA APPROVAL

IV. APPROVAL OF MINUTES

A. May 8, 2019

V. AUDIENCE PARTICIPATION/COMMISSION RESPONSE

VI. SUB-COMMITTEE REPORTS

VII. DISCUSSION ITEMS

- Election of Commission Chair
- New Commissioner Welcome Packet.
- The upcoming census.
- Discussion regarding the Color Run.
- Review of responsibilities of the code of ethics.

VIII. AUDIENCE PARTICIPATION/COMMISSION RESPONSE

IX. PROPOSED BUSINESS

X. NEXT MEETING DATE:

July 10, 2019

XI. ADJOURNMENT

**City of Ypsilanti
Human Relations Commission
Regular Meeting
City Council Chambers - One South Huron St.
Ypsilanti, MI 48197
Wednesday, March 13, 2019, 7:00 P.M.**

I. CALL TO ORDER

The meeting was called to order at 7:12 pm

II. ROLL CALL

Commissioner Browning	Absent
Commissioner Choudhuri	Absent
Commissioner Fellows	Present
Commissioner Gaines	Present
Commissioner Hagenhauer	Present
Commissioner Hicks	Present
Commissioner Hunter	Present
Commissioner Jones-Darling	Present

III. AGENDA APPROVAL

The Chair asks that the Budget Request and Historic Trauma Archive be postponed.

Offered By: Commissioner ; Seconded By: Commissioner

Approved: Yes – 5 ; No – 0; Absent – 2 (Choudhuri, Gaines)

IV. APPROVAL OF MINUTES

1. April 10, 2019

Offered By: Commissioner Fellows ; Seconded By: Commissioner Hicks

Approved: Yes – 5 ; No – 0; Absent – 2 (Choudhuri, Gaines)

V. AUDIENCE PARTICIPATION/COMMISSION RESPONSE -

VI. SUBCOMMITTEE REPORTS

Commissioner Fellows updated everyone about the Housing Affordability/ Accessibility Committee's housing forum and results of the housing survey.

VII. DISCUSSION ITEMS

➤ **New Commissioner Welcome Packet**

Commissioner Fellows presented the welcome packet. It includes the meeting calendar, the annual report with goals, a guide to Robert's Rules, a guide to the open meetings act handbook, and a summary/expectations document.

The Commission all received copies of the welcome packet and discussed elements of the packet.

Commissioner Fellows pointed out that the updates and amendments of the non-discrimination act have not been updated on the city website. Commissioner Jones-Darling replied that all changes are updated on the website once a year. The Commission would like to know when to expect the website updates.

Commissioner Hunter pointed out the phrase “mutual understanding and fostering equality and respect among all people” in the summary and expectations document.

Commissioner Fellows stated that it was language from the 2014 brochure.

Commissioner Jones-Darling recommended that the word equality is changed to equity in that sentence.

Motion to discuss the language in the questionnaire for ten minutes.

Offered By: Commissioner Hunter ; Seconded By: Commissioner Fellows

Commissioner Jones-Darling rules the motion out of order and dilatory.

Discussion ensued about the word equity, and the phrase “all people”.

Commissioner Jones-Darling pointed out that these documents that are being discussed are internal documents and not the bylaws. He recommends that the commission discuss and amend the bylaws on a future date.

Motion to approve summary and expectations document as amended.

Offered By: Commissioner Fellows ; Seconded By: Commissioner Hunter

Approved: Yes – 6 ; No – 0; Absent – 1 (Choudhuri)

Motion to insert bylaws into the welcome packet

Offered By: Commissioner Fellows ; Seconded By: Commissioner Hunter

Approved: Yes – 6 ; No – 0; Absent – 1 (Choudhuri)

Commissioner Hagenhaur asked that city staff put the welcome packet on the city website.

Motion to approve the full welcome packet as amended.

Offered By: Commissioner Hunter; Seconded By: Commissioner Hagenhauer

Approved: Yes – 6 ; No – 0; Absent – 1 (Choudhuri)

➤ **Evaluation of Immigration- Solicitation Ordinance**

Commissioner Jones-Darling explained that he put this item on the agenda because the federal government has empowered ICE to circumvent the ability of local governments and law enforcement to comply with their rules. Amendments to the ordinance would further protections for members of our community. This would say to our officers, you seriously do not solicit immigration status. This would also cover city programs, and city laws. Ypsilanti will be a sanctuary city, and the Trump administration can kiss our ass. Commissioner Jones-Darling questioned the violation section of the ordinance. As it stands, if someone breaks the rules, it would be reported to the department head. This is an easy way for someone to get slapped on the wrist for violating someone's civil rights.

The commission discussed possible policies of reprimand, and possible issues and legalities with a zero tolerance policy.

Commissioner Hagenhauer recommended for the commission to review how penalties are handled under the current rule structure of unions.

Commissioner Jones-Darling explained that what is on the table takes a step to say that our police and city officials are not going to cooperate specifically with the federal government. Amendments bar city officials from soliciting immigration status at public safety events or upon arrest, and not conviction.

The letter reads as follows:

It is the belief of the Human Relations Commission that immigration enforcement is not the job nor the function of a local government entity in the United States. These amendments will ensure our residents are safe while complying with the requirements of federal immigration laws. Ypsilanti Police should not be using their time to assist the federal government with this legal mandate as according to the US Constitution's supremacy clause which the United States Supreme Court has stated immigration enforcement is the jurisdiction and responsibility of the Federal government.

Discussion ensued about the terms arrested vs convicted.

Motion to approve, and send a recommendation to City Council to include amendments to the Solicitation Ordinance, with an explanation of the recommendation attached.

**Offered By: Commissioner Jones-Darling; Seconded By: Commissioner Hicks
Approved: Yes – 6 ; No – 0; Absent – 1 (Choudhuri)**

➤ **HRC Terms, Term Limits and Responsibilities**

Commissioner Jones-Darling included this agenda item because he wanted to present something to the the council that makes this commission more responsible and robust. Term limits to increase by five years, because three years is not long enough to be effective. Also the commissioner would like to see two consecutive term limits with option of return after three years. This would ensure that the commission would not become complacent or stagnated, and fear of political retribution would be eased. This would also preserve institutional knowledge.

Commissioner Fellows shared appreciation the concern and offering of this type of change from the Chair as he's leaving.

Commissioner Jones-Darling pointed out that this would not affect current term limits of seated commissioners.

Motion to cut the sentence "The first members shall be appointed in groups of three for terms of one, two and three years, and thereafter the terms of three two members shall expire each year."

Offered By: Commissioner Fellows ; Seconded By: Commissioner Hunter

Conversation about the founding documents of the commission ensued.

At this point, Commissioner Gaines left the meeting.

Motion rescinded by Commissioner Fellows

Motion to send the amendment with the recommendation that council adopt it, with the rational that we recommend this change to ensure continuity, consistency, and independence of the Human Relations Commission as it tackles contemporary and ongoing social issues in-line with its mission as described in charter and ordinance.

Offered By: Commissioner Fellows; Seconded By: Commissioner Hagenhauer

Approved: Yes – 5 ; No – 0; Absent – 1 (Gaines, Choudhuri)

VIII. AUDIENCE PARTICIPATION/COMMISSION RESPONSE

Chair and Commission Jones-Darling - "We have made it safer, easier, and frankly better to live in this community through protections for our students, seniors, and the most vulnerable in this community for housing and accommodation. We changed the City of Ypsilanti's Non-Discrimination ordinance to ensure that we cover people based on their gender identity. We expanded protections for section 8 vouchers which is something our neighbor needs to get in line with. We have instituted measures that make sure that our tenants are protected and that they know how to report things to the city, they now have voter registration forms. We've done so many things that even my hometown says they've used example of in their ordinance rewrites. There are still things the city needs to do. Voters in this city are oppressed in primary partisan elections. That is outright political discrimination. I hope the city will take form of that issue and recommend to council that the charter be changed. I hope members of this commission work closely with city council, especially those we don't agree with because that is how we get a lot of things done. I don't always agree with the mayor, nor with the previous mayor, but i am incredibly grateful to former Mayor Amanda Edmonds to give a 22 year old from outside the city the chance to make such a large impact on the city. That's what our job is here, to make an impact that outlasts us. We might never see the impact, but somebody one day will, and thats what public service and being on this commission is about. I am grateful for everything each of you brought to the table and continue to do so. I hope you fight like hell and it would be my incredible recommendation that the mayor re-appoint Amber Fellows as she is the only social worker on this commission and she is a housing expert. If this commission ever gets a housing discrimination complaint, Amber will be necessary for the commission. Our youth members should have the right to vote, its bullshit that they cant, and that the city attorney prohibits them from doing so. With that said, I'm out, this is your meeting now Amber, have fun, and with three years, this was a wonderful gig."

IX. PROPOSED BUSINESS

Commissioner Hagenhaur would like to speak about the upcoming census.

Commissioner Hunter wants more conversation about the color run.

Commissioner Jones-Darling recommends that commissioners review responsibilities and the code of ethics.

Commissioner Fellows formally thanks Commissioner Jones-Darling. Elections for chair or vice chair. Bring a statement of service. Resolution recognizing Jones- Darling service.

X. NEXT MEETING DATE: June 12, 2019

XI. ADJOURNMENT: The meeting adjourned at 9:05 p.m.

CITY OF YPSILANTI HUMAN RELATIONS COMMISSION

About the HRC and expectations of the role of Commissioner:

The City Charter that was adopted by the electors on November 8, 1994 and took effect on December 1, 1994 calls for the creation of a Human Relations Commission, consisting of nine members that shall be representative of the diversity of the entire community. The Mayor and City Council appoint the Human Relations Commission. The City of Ypsilanti has a Non-Discrimination Ordinance. The intent is to protect people from discrimination because of

race, color, religion, national origin, immigration status,
sex, sexual orientation, gender identity, gender expression, age, marital status, disability status, familial status, educational association, source of income, height, or weight.

Visit our website:

For current HRC schedule, bylaws, agendas, and minutes:
www.cityofypsilanti.com/280/Human-Relations-Commission

MEETINGS

The Commission is subject to the Open Meetings Act. The Commission meets monthly and more often when necessary. Regularly scheduled and special meetings are mandatory, and Commissioners are expected to inform the Chair of anticipated absence ahead of meeting times.

The purpose and function of the Commission follows:

-The Commission shall serve as an advisory body to the city council, and shall study problems in the city relating to prejudice and discrimination and make policy recommendations to the City Council to identify and remove discriminatory structures and practices, and act to remediate the legacy of historical oppression.

-The Commission will pursue the mission and objectives in accordance with all established policies of city council and charter.

-The Commission as a whole shall be expressive of the diversity of the entire community and will act as a bridge (or coordinating agency) between protected classes in the community and the city, for the development of policies and educational programs which promote empowerment and a socially just community.

-The Commission shall communicate with federal and state agencies regarding human rights and affirmative action programs for the purpose of making recommendations to City Council.

-The Commission shall promote mutual understanding and foster equality and respect among all persons, which shall include receiving and reviewing complaints from individuals alleging violations of Ypsilanti's Non-Discrimination Ordinance, and take appropriate action, including but not limited to referral of complaints to appropriate agencies and/or to the City Attorney, mediation of complaints, or dismissal of complaints in accordance with section 58-36 and 58-67 of the City Code.

-The Commission shall from time-to-time conduct public forums, town hall meetings, educational and other programs to promote the equal rights and opportunities of all persons. This shall include advocating for accountability of City Council for broadbase changes that impacts structural equity.

-The Commission shall from time-to-time issue public reports and recommendations to the City Council on ways to improve city government programs and ordinances designed to eliminate structural discrimination and/or to address the effects of past discrimination.

Questionnaire:

What are your pronouns?

As a HRC Commissioner, what are your primary concerns and/or goals?

Are there any reasonable accommodations you might need in order to fulfill your duties such as transportation to meetings, text/call reminders of meetings, seating accommodation, auditory and/or visual accommodation, etc.?

City of Ypsilanti Human Relations Commission

Annual report to the Mayor and City Council

The members of the Human Relations Commission (HRC) respectfully submit the following report to inform the Mayor and City Council of Ypsilanti, Michigan what the Commission accomplished in 2017 and has set as priorities for 2018.

Commissioners:

The Commission finished 2017 with the following individuals are commissioners: Amber Fellows, Ka'ron Gaines, Kyle Hunter, Sam Jones-Darling, Willow Krupin-Carter, Tanasia Morton, Theresa Saunders and John Shuler. Throughout 2017 we saw D'Real Graham, Krista Nordberg, and Jennifer Symanns depart the Commission.

We were delighted to have Dr. Devika Choudhuri join us in early 2018. Our current number as of June 4, 2018 is 7 commissioners and 1 youth Commissioner, this leaves two regular commissioner vacancies and one youth vacancy.

Accomplishments of the 2017 year:

- **Goals:**

The HRC conducts our goal setting session as our first meeting in January. In 2017, we set forth three major goals for the 2017 years and I am happy to report that each of them have found resounding success within our community.

1. Immigration Enforcement Forum

- This forum hosted in September brought together members of law enforcement, policy makers and the community to discuss the rising presence of the Immigration and Customs Enforcement Agency in the Ypsilanti area. In addition, members of the community were briefed on city ordinances preventing the disclosure of information related to immigration status and city non-discrimination ordinance protections for immigration status. The forum was attended by over 50 individuals at Ypsilanti Community High School.

2. Strategies to Combat Gentrification and Housing Discrimination

- The Commission agreed that Housing is considered a basic human right and that the right to be secure and safe within one's housing is as important as being physically and psychologically safe in the workplace. The Commission is uniquely aware that implicit racism and classism exists within all economic development due to systemic issues within our country. The Commission has acknowledged that the City of Ypsilanti cannot be insulated from the effects of housing discrimination and the forces of gentrification being conducted in other portions of the county. As part of this discussion, we agreed also that source of income discrimination includes the refusal of acceptance for federal housing vouchers (Section 8) and student loans.
- The Commission met in joint session with the Planning Commission and Sustainability Commission to discuss how each commission could act within their

jurisdictions to combat gentrification. This meeting has resulted in a master plan update process.

3. Amendment to the City's Non-Discrimination Ordinance

- The HRC provided City Council with an amendment to the City's Non-discrimination ordinance in mid-2017. The updated NDO included language from the Michigan Department of Civil Rights' model ordinance with the addition of Immigration Status as a protected class.
- The HRC believes to date that the Ypsilanti NDO is the most progressive ordinance to protect minority and historically disadvantaged persons anywhere within the State of Michigan.
- In addition to adding several more protected classes, the ordinance cleaned up language and specified some ambiguity which will allow the HRC and the City to enforce the ordinance to the best of our ability.

Goals for 2018:

For 2018, the Commission has determined the following goals:

1. Implementation of Commission Bylaws

- The Commission has drafted and is preparing to adopt a set of bylaws. The bylaws will set out standards for compliance with policies, how the Commission approaches discrimination cases, and how the Commission handles the behavior of its members.
- The Bylaws are expected to be adopted at the regular meeting to take place at the end of June 2018.

2. Housing Discrimination and Gentrification

- The Commission has determined that housing discrimination and gentrification are two of the most important issues to the City of Ypsilanti's long-term future as a diverse community. Housing, which in our belief is the ability to have a solid roof over one's head that is hazard free and enables the person to develop naturally is a basic human right.
- The Commission has determined that as a body there is little we can do in the way of development aside from ensure our community is educated on historical patterns of discrimination which includes gentrification.
- The Commission has directed the Chair and Vice-Chair to work closely with the Planning Commission to ensure a coordinated citywide effort on affordability.
- The Commission has directed the Chair and Vice-Chair to work with the City of Ann Arbor's Human Rights Commission to establish a future time and day for a joint-session of the two bodies to discuss Housing Affordability and Source of Income discrimination within our two communities.

3. Cultural Competency

- The Commission has determined that the need for cultural competency training is an ongoing concern for the city. We are currently evaluating options for potential policy and training opportunities which the Commission may wish to engage in.

Statement on Community Input:

As a Commission, we believe that the right of the community to provide valuable input into the workings of their government is beneficial to the City of Ypsilanti. We wish to see continuing opportunities for dialog between neighbors both within the city and within our surrounding communities. The Commission believes this type of input is the best possible method to ensure that tensions between the citizenry and the City are minimal and to expand the base of understanding that is required within our diverse and growing community. As part of the bylaw discussions we have determined that our public comment procedures were arcane, we have reformed them and sought to grant a person a minimal of three minutes and granted the Chairperson the ability to extend that time based on the amount of people wishing to participate in public comment.

On Gendered Language:

It is the intent of the Commission to eliminate all gendered references within city ordinances as is legally possible to do. This is to ensure that we may seek to be inclusive of the diversity within our community and acknowledge that gendered language seeking to establish a binary which does not exist except within a social construct.

Finally, on behalf of the Human Relations Commission I would like to thank the community for being supportive of our initiatives. We as a Commission know that some of the issues we discuss are not always easy conversations to have, politically correct, and many topics are loaded with a vile history of intolerance. We must continue to look forward as a community to develop the best possible outcomes for every person that resides within our community whether it be for a day or for decades. It is upon each of us to think about these decisions we make now and look to the future.

Respectfully,
Sam Jones-Darling
Chairperson, Human Relations Commission

**CITY OF YPSILANTI
HUMAN RELATIONS COMMISSION
ONE SOUTH HURON STREET
YPSILANTI, MICHIGAN 48197**

2019 CALENDAR OF MEETINGS

The regular meetings of the City of Ypsilanti **Human Relations Commission** for the year of 2019 will be held on the **SECOND WEDNESDAY of each month**, unless a holiday falls on that date. Unless otherwise indicated, meetings will start at 7:00 p.m. in the City Hall Council Chambers (first floor) at One South Huron Street, Ypsilanti, Michigan.

Dates for 2019 meetings are as follows:

- January 9th
- February 13th
- March 13th
- April 10th
- May 8th
- June 12th
- July 10th
- August 14th
- September 11th
- October 9th
- November 13th

The City of Ypsilanti encourages persons with disabilities to participate and will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired, Limited English Proficiency (LEP) services, and audios of printed materials being considered at the meeting. Individuals requiring auxiliary aids or services should provide two (2) days' notice to the City, and contact the City by writing or calling the following:

City Clerk's Office
One South Huron Street
Ypsilanti, Michigan 48197-5420
(734) 483-1100

MISSION

The Ypsilanti Human Relations Commission was created in 1994 by the City Charter and codified by City Council in 1995, to ensure full access to human and civil rights of the people for Ypsilanti. Its nine voting members and two youth members are Ypsilanti residents appointed for three-year and one-year terms respectively, by the Mayor and City Council.

Ypsilanti's Non-Discrimination Ordinance prohibits discrimination in employment, housing, and public accommodations. No person may be denied their civil or political rights or be discriminated against because of actual or perceived race, color, religion, national origin, immigration status, sex, sexual orientation, gender identity, gender expression, age, marital status, disability status, familial status, educational association, source of income, height or weight. (Ypsilanti Code of Ordinances, Chapter 58, Article III, Division 1, Sec. 58-61)

ARTICLE I – Name

The name of the Commission shall be the Human Relations Commission of The City of Ypsilanti, hereinafter referred to as "Commission."

ARTICLE II – Objectives

The objectives, purposes, powers, and duties of the Commission are those set forth by Article IX, Section II of the City Charter and chapter 58-32 through 58-39 of the City Code of Ordinances.

Section 1. The Commission shall serve as an advisory body to the city council, and shall study problems in the city relating to prejudice and discrimination and make policy recommendations to the City Council to identify and remove discriminatory structures and practices, and act to remediate the legacy of historical oppression.

Section 2. The Commission will pursue the mission and objectives in accordance with all established policies of city council and charter.

Section 3. The Commission as a whole shall be expressive of the diversity of the entire community and will act as a bridge (or coordinating agency) between protected classes in the community and the city, for the development of policies and educational programs which promote empowerment and a socially just community.

Section 4. The Commission shall communicate with federal and state agencies regarding human rights and affirmative action programs for the purpose of making recommendations to City Council.

Section 5. The Commission shall promote mutual understanding and foster equality and respect among all persons, which shall include receiving and reviewing complaints from individuals alleging violations of Ypsilanti's Non-Discrimination Ordinance, and take appropriate action, including but not limited to referral of complaints to appropriate agencies and/or to the City Attorney, mediation of complaints, or dismissal of complaints in accordance with section 58-36 and 58-67 of the City Code.

Section 6. The Commission shall from time-to-time conduct public forums, town hall meetings, educational and other programs to promote the equal rights and opportunities of all persons. This shall include advocating for accountability of City Council for broadbase changes that impacts structural equity.

Section 7. The Commission shall from time-to-time issue public reports and recommendations to the City Council on ways to improve city government programs and ordinances designed to eliminate structural discrimination and/or to address the effects of past discrimination.

ARTICLE III – Membership

Section 1. Membership of the Human Relations Commission shall consist of nine voting members, and two non-voting youth members. Members of the Commission shall be appointed as provided for in Section 9.03 of the City Charter of the City of Ypsilanti.

Section 2. The first priority of each member of the Commission shall be to represent and advocate for equality and social justice in the City of Ypsilanti, putting aside personal or special interests.

Section 3. Membership of the Commission shall be representative of the entire geography and diversity of the City of Ypsilanti.

Section 4. Each member of the Commission shall avoid conflicts of interest, including, but not limited to, deliberating on, voting on, or reviewing a case concerning the member; the immediate family or household of the member; property owned by or adjacent to property owned by the member; or a corporation or partnership in which the member has an ownership, employment, or other financial interest. Each member of the commission shall be bound by Chapter 46, Article III of the Ypsilanti City Code otherwise known as the Ethical Standards of Conduct.

Potential conflicts of interest should be identified by the member prior to deliberation of the case; if the Commission determines that a conflict exists, the member shall remove themselves from the meeting room during deliberation of the case.

Section 5. Members shall avoid *ex parte* contact about cases before the Commission whenever possible. If such contact occurs, the member shall make a report of the discussion to the Commission before the deliberation of the case, as possible.

Once a vote is taken and an issue is decided by vote, the duty of each member of the Commission is to accurately represent the position reflected by the outcome of the vote.

From time-to-time, or on a specific issue, the Commission may appoint a spokesperson for the Commission for all matters which occur outside of the meetings of the Commission. Otherwise, this shall fall to the Chairperson.

Section 6. If any discussion occurs regarding a member or officer performance leading to recommendation for dismissal, such discussion and identification of persons shall occur in closed session to protect privacy. The member or officer must request the closed session.

Section 6.1 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 officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions. (MCL.261)

ARTICLE IV – Officers, and Their Duties

Section 1. The officers of the Commission shall be a Chairperson and a Vice-Chairperson which on the date of their election must have served at least one calendar year on the Commission. Such other officers, sub-committees, etc. as are deemed necessary and advisable for the conduct of business shall be appointed as required and provided for by the Commission.

Section 2. The Chairperson shall preside at all meetings and hearings of the Commission and shall have the duties normally conferred by parliamentary usage on such officers. The Chairperson and City

Clerk (or their designee) shall sign approved minutes of meetings and receive communications and petitions sent to the Human Relations Commission.

Section 3. The Vice-Chairperson shall preside and exercise all of the duties of the Chairperson in their absence. Should neither the Chairperson nor the Vice-Chairperson be present at a meeting, a temporary Chairperson shall be elected by the majority vote of the members present, upon a tie vote, the longest continuously serving member shall act as temporary Chairperson.

Section 4. The Commission may designate a person who is not a member of the Commission to serve as Recording Secretary. The Recording Secretary shall prepare draft minutes for review by the Commission and shall perform such other duties as may be ordered by the Commission.

Section 5. Nomination of officers shall be made from the floor at the annual organizational meeting which shall be the regular meeting in January each year, and the election shall be immediately thereafter. Members may self-nominate or be nominated prior to the meeting where elections will occur, and will be asked to provide a statement of service before a vote shall be taken.

Section 6. A candidate receiving a majority vote of the Commission shall be declared elected and shall serve a term of one year or until their successor shall take the office.

Section 7. Vacancies in office shall be filled immediately by the next scheduled meeting.

Section 8. The officers shall be members of the Commission.

Section 9. The Commission may vacate an officer from their seat by an affirmative two thirds vote of the entire voting membership of the Commission, but only for cause and after notice and the opportunity for a due process hearing on the merits.

ARTICLE V – Meetings

Section 1. All regular and special meetings, hearings, and records shall be open to the public. Meetings shall be conducted under the Open Meetings Act of the State of Michigan.

Section 2. The Commission shall hold a minimum of one meeting each quarter.

Section 3. A special meeting of the Commission may be called by the Chairperson, or the Vice-Chairperson in the event the Chairperson is unavailable, or any three (3) members of the Commission. Each member of the Commission must receive at least two days notice as to the time, place and purpose of the meeting.

Section 4. The normal order of business at meetings shall be as follows:

1. Call to order
2. Roll call
3. Approval of minutes
4. Public Comment
5. Old business
6. New business
7. Public Comment
8. Proposed business for next meeting
9. Commissioner comments
10. Adjournment

Section 5. Audience participation shall be limited to 3 minutes per person, per participation period. The Chairperson may extend the time limit at their discretion.

Section 6. A quorum shall consist of a majority of the current voting Human Relations Commissioners. When all 9 voting Commission seats are not filled, a quorum will be no less than four (4) voting Commissioners.

Section 7. All proceedings, decisions and resolutions of the Commission shall be initiated by motion.

Section 8. An affirmative vote of a majority of those present shall be necessary to pass any motion involving the adoption or amending of policy statements or recommendations to the Council.

Section 9. Voting shall be by voice vote and shall not be recorded as individual ayes or nays unless requested by a member of the Commission, in which case the Chairperson shall order the vote to be so recorded except that any member may abstain by so declaring prior to vote. An abstention may only be made in the case of a conflict of interest; it is otherwise the duty of all Commissioners present to participate in the vote.

Section 10. Parliamentary procedure in Commission meetings shall be governed by Roberts Rules of Order, as amended. The Commission shall establish procedures as it deems necessary.. A copy of Roberts Rules of Order will be available at Human Relations Commission meetings.

Section 11. The City Clerk, City Attorney, and other officials of the City may participate in the Commission's discussion, but shall not vote, introduce motions, be counted towards quorum, or initiate any other parliamentary action.

ARTICLE VI – Disposition and Record

Section 1. The decision of the Commission shall take effect five (5) days from the date of determination. However, the Commission may find the immediate effect of such decision is necessary for the preservation of property or personal rights and shall certify with five (5) concurring votes or a majority vote of the voting members present. The applicant shall be advised of the decision in writing within five (5) days of the final hearing and decision.

Section 2. The Commission shall keep, or cause to be kept, a permanent record of Commission meetings and decisions, which shall, at a minimum, include:

- a. A copy of the meeting posting pursuant to P.A. 267 of 1976, as amended, (being the Michigan Open Meetings Act, M.C.L. 15.261 et seq.)
- b. A copy of the minutes, and all its attachments which shall include a summary of the meeting, in chronological sequence of occurrence
- c. Records of any action, support documents, investigation reports, photographs, and correspondence received, attached as an appendix to the minutes

Section 3. The City Clerk, their designee, or the Chairperson shall communicate the actions and recommendations of the Commission to the City Council and general public.

ARTICLE VII – Committees

Section 1. The Commission or Chair may establish and appoint ad hoc committees for special purposes or issues, as deemed necessary. Less than a quorum may serve on an ad hoc committee at any given time.

Section 2. All committees are subservient to the Commission and report their recommendations to the Commission for review and action. The Commission can overrule any action of any committee.

Section 3. The same principals of these Bylaws for the Commission also apply to all committees of the Commission, including, but not limited to, making all meetings open to the public and keeping a record of all proceedings.

ARTICLE VIII – Commission Absences

Section 1. In order to maintain maximum participation of all appointed Human Relations Commission members at all regularly scheduled meetings of the Ypsilanti Human Relations Commission, the following attendance guide and Commissioner replacement policy for “excused” or “unexcused” absences should be implemented:

a. When appointed, each Commissioner should be aware of the expectation to attend each scheduled monthly meeting of the Human Relations Commission.

b. In the event of unplanned personal matters, business trips, family vacation trips, changed job requirements, sickness, religious practice, weather, or other physical disabilities that prohibit the Commissioner from attending the scheduled monthly meeting; the Commissioner shall notify the Clerk’s Office at City Hall or the Human Relations Commission Chairperson as early as possible, or at least an hour prior of their inability to attend the scheduled meeting. The Human Relations Commission member upon this notification will receive an “excused absence” for the involved scheduled meeting.[SJ2] During meeting roll call, professional staff at City Hall or the Human Relations Commission Chairperson shall make note of the excused absence.

c. There will be a limit of three (3) consecutive “excused absences” or two (2) consecutive “unexcused absences” for any member of the Human Relations Commission. If any member meets the above criteria for consecutive yearly scheduled regular meetings, the Commissioner will be asked to provide cause and recommended for dismissal unless extenuating circumstances exist.

d. The “recommended for dismissal” action will be initiated by City Clerk’s office staff and forwarded on to the City Council for official action. The Commissioner should be replaced as soon as possible by the Mayor and City Council in order to maintain the prescribed number of Human Relations Commission members. The Chairperson of the Commission shall work with the Mayor and City Council to locate appropriate individuals to fill any vacancies.

ARTICLE IX – Miscellaneous

Section 1. These Rules and Regulations may be amended or altered during a regular meeting by the affirmative vote of at least two thirds of the current voting roster of the Commission, provided notice of the proposed bylaw change is given to all members by announcement at a preceding meeting, and the notice be included in the minutes of the meeting, said meeting to occur not less than 15 days prior.

Section 2. The provisions of these Rules and Regulations shall be discussed and/or adopted or readopted by the Commission annually at their regular January meeting.

Section 3. The Commission shall during the November regular meeting construct proposed Commission priorities for the next calendar year and provide City Council with an annual report. This report shall include discussion of the Commission’s activities, the status of any on-going investigations, the status of any concluded investigations, the proposed Commission priorities and any recommendations to Council for the coming year, along with any fiscal needs anticipated. This report shall be prepared and submitted to City Council on or before December 31st.

Robert's Rules Cheat Sheet

To:	Say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Decided by:
Adjourn	"I move to adjourn."	No	Yes	No	No	Majority vote
Recess	"I move to recess for/until..."	No	Yes	No	Yes	Majority vote
Complain about hearing, comfort, etc.	"Point of privilege..."	Yes	No	No	No	Chair
End debate and vote on question	"I move the previous question."	No	Yes	No	No	Majority vote
Suspend further consideration of something	"I move to table this matter."	No	Yes	No	No	2/3 vote
Postpone deciding the question	"I move to postpone this matter until..."	No	Yes	Yes	Yes	Majority vote
Amend a motion	"I move to amend this motion by..."	No	Yes	Yes	Yes	Majority vote
Introduce business (a main motion)	"I move that..."	No	Yes	Yes	Yes	Majority vote

The motions and points listed above are in order of preference. When a motion or point of inquiry is pending, only those listed *above* the pending point may be raised.

To:	Say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Decided by:
Redress any violation of the body's Rules	"Point of order..."	Yes	No	No	No	Chair
Request information	"Point of inquiry..."	Yes	No	No	No	N/A
Verify a recent voice vote by actual count (before next motion only)	"I call for division."	Yes	No	No	No	Majority vote
Prevent body from considering a matter	"I object to considering this question."	Yes	No	No	No	2/3
Consider a suspended matter	"I move to take from the table..."	Yes	Yes	No	No	Majority
Reconsider a previous motion	"I move to reconsider..."	Yes	Yes	No	No	2/3
Consider something out of schedule	"I move to suspend the rules to consider..."	No	Yes	No	No	2/3
Vote on the Chair's decision	"I appeal the Chair's decision."	Yes	Yes	Yes	No	Majority

The motions and points above have no precedence. Any of them may be raised in response to any motion or question, with the exception of the **three items in gray** (motion to adjourn, motion to recess, and point of privilege)

MAIN MOTIONS

To Introduce New Business

Obtaining and assigning the floor

- A member raises their hand (or rises, depending on your rules) and waits to be acknowledged
- The chair recognizes the member by name

Note. It is never proper to raise your hand or rise to be acknowledged while another is speaking. If your point or motion is one of the kind that can interrupt the speaker, make your point or motion without waiting for recognition.

How the Motion is Brought Before the Assembly

- The member makes the motion: *I move that (or "to")* ... and resumes his seat.
- Another member seconds the motion: *I second the motion* or *I second it* or *second*.
- The chair states the motion: *It is moved and seconded that ... Are you ready for the question?*

Consideration of the Motion

- Members can debate main motions before the question is voted on or otherwise decided.
- Before speaking in debate, members must obtain the floor.
- The maker of the motion has first right to the floor.
- Debate must be confined to the merits of the motion.
- Debate can be closed only by order of the assembly (2/3 vote) or by the chair if no one seeks the floor for further debate.

The chair puts the motion to a vote

- The chair asks: *Are you ready for the question?*
- If no one rises to claim the floor, the chair proceeds to take the vote.
- The chair says: *The question is on the adoption of the motion that ... As many as are in favor, say 'Aye'.* (Pause for response.) *Those opposed, say 'Nay'.* (Pause for response.) *Those abstained please say 'Aye'.*
- Depending on your rules, some kinds of business may call for a vote by show of hands.

The chair announces the result of the vote.

- *The ayes have it, the motion carries, and ...* (indicating the effect of the vote) or
- *The nays have it and the motion fails*

If the count may be incorrect, a member calls for division

- If any member feels that the tally of voice votes is incorrect, they may call for division.
- Any call for division, unless the result of the previous vote was obvious (e.g. a unanimous or nearly-unanimous vote) must be honored.
- The chair will instruct the body on how to vote (e.g. by show of hands or by standing), and the body will vote accordingly.

WHEN DEBATING YOUR MOTIONS

- Listen to the other side
- Be polite
- Focus on issues, not personalities
- Avoid questioning motives

MOTIONS, GENERALLY

MAIN MOTION

You want to propose a new idea or action for the group.

- After recognition, make a main motion.
- Member: "Madame Chairman, I move that _____."

AMENDING A MOTION

You want to change some of the wording that is being discussed.

- After recognition, "Mister Chairman, I move that the motion be amended by adding the following words _____."
- After recognition, "Mister Chairman, I move that the motion be amended by striking out the following words _____."
- After recognition, "Mister Chairman, I move that the motion be amended by striking out the following words, _____, and adding in their place the following words _____."

REFER TO A COMMITTEE

You feel that an idea or proposal being discussed needs more study and investigation.

- After recognition, "Madame Chairman, I move that the question be referred to a committee made up of members Smith, Jones and Brown."

POSTPONE DEFINITELY

You want the membership to have more time to consider the question under discussion and you want to postpone it to a definite time or day, and have it come up for further consideration.

- After recognition, "Mister Chairman, I move to postpone the question until _____."

PREVIOUS QUESTION

You think discussion has gone on for too long and you want to stop discussion and vote.

- After recognition, "Madam Chairman, I move the previous question."

LIMIT DEBATE

You think discussion is getting long, but you want to give a reasonable length of time for consideration of the question. After recognition, "Mister President, I move to limit discussion to two minutes per speaker."

POSTPONE INDEFINITELY

You want to kill a motion that is being discussed.

- After recognition, "Mister Chairman, I move to postpone the question indefinitely."

RECESS

You want to take a break for a while.

- After recognition, "Mister Chairman, I move to recess for ten minutes."

ADJOURNMENT

You want the meeting to end.

MOTIONS, GENERALLY

- After recognition, "Madame Chairman, I move to adjourn."

PERMISSION TO WITHDRAW A MOTION

You have made a motion and after discussion, are sorry you made it.

- After recognition, "Mister Chairman, I ask permission to withdraw my motion."

CALL FOR ORDERS OF THE DAY

At the beginning of the meeting, the agenda was adopted. The chairman is not following the order of the approved agenda.

- Without recognition, "Call for orders of the day."

SUSPENDING THE RULES

The agenda has been approved and as the meeting progressed, it became obvious that an item you are interested in will not come up before adjournment.

- After recognition, "Madam Chairman, I move to suspend the rules and move item 5 to position 2."

POINT OF PERSONAL PRIVILEGE

The noise outside the meeting has become so great that you are having trouble hearing, or the temperature in the room is uncomfortable, or some other concern.

- Without recognition, "Point of personal privilege."
- Chairman: "State your point."
- Member: "There is too much noise, I can't hear."

COMMITTEE OF THE WHOLE

You are going to propose a question that is likely to be controversial and you feel that some of the members will try to kill it by various maneuvers. Also you want to keep out visitors and the press.

- After recognition, "Mister Chairman, I move that we go into a committee of the whole."

POINT OF ORDER

It is obvious that the meeting is not following proper rules. E.g. a motion is passed without the right kind of vote, or a member is breaking the rules of debate.

- Without recognition, "I rise to a point of order," or "Point of order."

POINT OF INQUIRY

You are wondering about some of the facts under discussion, such as the balance in the treasury when expenditures are being discussed.

- Without recognition, "point of inquiry."

POINT OF PARLIAMENTARY INQUIRY

You are confused about some of the parliamentary rules.

- Without recognition, "Point of parliamentary inquiry."

MOTIONS, GENERALLY

APPEAL FROM THE DECISION OF THE CHAIR

The Chair has made a decision that you wish the body to vote on.

- Without recognition, "I appeal from the decision of the Chair."

OPEN MEETINGS ACT HANDBOOK



Attorney General Dana Nessel

Additional copies available at mi.gov/foia-oma

The Handbook is intended to be a quick reference guide. It is not intended to be encyclopedic on every subject or resolve every situation that may be encountered.

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OPEN MEETINGS ACT

THE BASICS

The Act – the Open Meetings Act (OMA) is 1976 PA 267, MCL 15.261 through 15.275. The OMA took effect January 1, 1977. In enacting the OMA, the Legislature promoted a new era in governmental accountability and fostered openness in government to enhance responsible decision making.¹

Nothing in the OMA prohibits a public body from adopting an ordinance, resolution, rule, or charter provision that requires a greater degree of openness relative to public body meetings than the standards provided for in the OMA.²

What bodies are covered? – the OMA applies to all meetings of a public body.³ A "public body" is broadly defined as:

[A]ny state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to *exercise governmental or proprietary authority or perform a governmental or proprietary function*; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement.⁴ [Emphasis added.]

As used in the OMA, the term "public body" connotes a collective entity and does not include an individual government official.⁵ The OMA does not apply to private, nonprofit corporations.⁶

Public notice requirements – a meeting of a public body cannot be held unless public notice is given consistent with the OMA.⁷ A public notice must contain the public body's name, telephone number, and address, and must be posted at its principal office and any other locations

¹ *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993).

² MCL 15.261.

³ MCL 15.263. When the Handbook refers to a "board," the term encompasses all boards, commissions, councils, authorities, committees, subcommittees, panels, and any other public body.

⁴ MCL 15.262(a). The provision in the OMA that includes a lessee of a public body performing an essential public purpose is unconstitutional because the title of the act does not refer to organizations other than "public bodies." OAG, 1977-1978, No 5207, p 157 (June 24, 1977). Certain boards are excluded "when deliberating the merits of a case." MCL 15.263(7). See also MCL 15.263(8) and (10).

⁵ *Herald Co v Bay City*, 463 Mich 111, 129-133; 614 NW2d 873 (2000) – a city manager is not subject to the OMA. *Craig v Detroit Public Schools Chief Executive Officer*, 265 Mich App 572, 579; 697 NW2d 529 (2005). OAG, 1977-1978, No 5183A, p 97 (April 18, 1977).

⁶ OAG, 1985-1986, No 6352, p 252 (April 8, 1986) – the Michigan High School Athletic Association is not subject to the OMA. See also *Perlongo v Iron River Cooperative TV Antenna Corp*, 122 Mich App 433; 332 NW2d 502 (1983).

⁷ MCL 15.265(1). *Nicholas v Meridian Charter Twp*, 239 Mich App 525, 531; 609 NW2d 574 (2000).

the public body considers appropriate.⁸ If a public body is a part of a state department, a public notice must also be posted in the principal office of the state department.⁹

Public notice requirements are specific to the type of meeting:

- (1) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.
- (2) For a change in schedule of regular meetings of a public body, there shall be posted within three days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.
- (3) For a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting.
- (4) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice has been posted at least 18 hours before the reconvened meeting.¹⁰

At their first meeting of the calendar or fiscal year, each board must set the dates, times, and places of the board's regular meetings for the coming year. The OMA does not require any particular number of meetings. The board's schedule of regular meetings is not, of course, set in stone. The board is free to cancel or reschedule its meetings.

The minimum 18-hour notice requirement is not fulfilled if the public is denied access to the notice of the meeting for any part of the 18 hours.¹¹ The requirement may be met by posting at least 18 hours in advance of the meeting using a method designed to assure access to the notice. For example, the public body can post the notice at the main entrance visible on the outside of the building that houses the principal office of the public body.¹²

A public body must send copies of the public notices by first class mail to a requesting party, upon the party's payment of a yearly fee of not more than the reasonable estimated cost of printing and postage. Upon written request, a public body, at the same time a public notice of a meeting is posted, must provide a copy of the public notice to any newspaper published in the state or any radio or television station located in the state, free of charge.¹³

⁸ MCL 15.264(a)-(c).

⁹ MCL 15.264(c).

¹⁰ MCL 15.265(2)-(5).

¹¹ OAG. 1979-1980, No 5724, p 840 (June 20, 1980).

¹² OAG No 5724.

¹³ MCL 15.266.

Agendas and the OMA – while the OMA requires a public body to give public notice when it meets, it has no requirement that the public notice include an agenda or a specific statement as to the purpose of a meeting.¹⁴ No agenda format is required by the OMA.¹⁵

Penalties for OMA violations – a public official who "intentionally violates" the OMA may be found guilty of a misdemeanor¹⁶ and may be personally liable for actual and exemplary damages of not more than \$500 for a single meeting.¹⁷ The exemptions in the OMA must be strictly construed. The "rule of lenity" (i.e., courts should mitigate punishment when the punishment in the criminal statute is unclear) does not apply to construction of the OMA's exemptions.¹⁸

A decision made by a public body may be invalidated by a court, if the public body has not complied with the requirements of MCL 15.263(1), (2), and (3) [i.e., making decisions at a public meeting] or if failure to give notice in accordance with section 5 has interfered with substantial compliance with MCL 15.263(1), (2), and (3) and the court finds that the noncompliance has impaired the rights of the public under the OMA.

Lawsuits to compel compliance – actions must be brought within 60 days after the public body's approved minutes involving the challenged decision are made publicly available.¹⁹ If the decision involves the approval of contracts, the receipt or acceptance of bids, or the procedures pertaining to the issuance of bonds or other evidences of indebtedness, the action must be brought within 30 days after the approved minutes are made publicly available.²⁰ If the decision of a state public body is challenged, venue is in Ingham County.²¹

Correcting non-conforming decisions – in any case where a lawsuit has been initiated to invalidate a public body's decision on the ground that it was not made in conformity with the OMA, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with the OMA. A decision reenacted in this manner shall be effective from the date of reenactment and is not rendered invalid by any deficiency in its initial enactment.²² If the board acts quickly, the reenactment may defeat a claim for attorney's fees, since plaintiffs would not be successful in "obtaining relief in the action" within the meaning of the OMA.²³

¹⁴ OAG, 1993-1994, No 6821, p 199 (October 18, 1994). But, as discussed in OAG No 6821, other statutes may require a public body to state in its notice the business to be transacted at the meeting.

¹⁵ *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003).

¹⁶ MCL 15.272.

¹⁷ MCL 15.273.

¹⁸ *People v Whitney*, 228 Mich App 230, 244; 578 NW2d 329 (1998).

¹⁹ MCL 15.270(3)(a).

²⁰ MCL 15.270(3)(b).

²¹ MCL 15.270(4).

²² MCL 15.270(5).

²³ *Leemreis v Sherman Twp*, 273 Mich App 691, 700; 731 NW2d 787 (2007). *Felice v Cheboygan County Zoning Comm*, 103 Mich App 742, 746; 304 NW2d 1 (1981).

DECISIONS MUST BE MADE IN PUBLIC MEETINGS

All decisions must be made at a meeting open to the public – the OMA defines "decision" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."²⁴ The OMA provides that "[a]ll decisions of a public body shall be made at a meeting open to the public," and that, with limited exceptions, "[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public."²⁵

The OMA does not contain a "voting requirement" or any form of "formal voting requirement." A "consensus building process" that equates to decision-making would fall under the act.²⁶ For example, where board members use telephone calls or sub-quorum meetings to achieve the same intercommunication that could have been achieved in a full board or commission meeting, the members' conduct is susceptible to "round-the-horn" decision-making, which achieves the same effect as if the entire board had met publicly and formally cast its votes. A "round-the-horn" process violates the OMA.²⁷

Meeting "informally" to discuss matters – while the OMA "does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act,"²⁸ a meeting of a public body must be open to the public. The OMA does not define the terms "social or chance gathering" or "conference," and provides little direct guidance as to the precise scope of this exemption.²⁹ To promote openness in government, however, the OMA is entitled to a broad interpretation and exceptions to conduct closed sessions must be construed strictly.³⁰ Thus, the closed session exception does not apply to a quorum of a public body that meets to discuss matters of public policy, even if there is no intention that the deliberations will lead to a decision on that occasion.³¹

Canvassing board members on how they might vote – an informal canvas by one member of a public body to find out where the votes would be on a particular issue does not violate the OMA,

²⁴ MCL 15.262(d).

²⁵ MCL 15.263(2) and (3).

²⁶ *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich at 229.

²⁷ *Booth Newspapers, Inc*, 444 Mich at 229 – "any alleged distinction between the [public body's] consensus building and a determination or action, as advanced in the OMA's definition of 'decision,' is a distinction without a difference."

²⁸ MCL 15.263(10).

²⁹ OAG, 1981-1982, No 6074, p 662, 663 (June 11, 1982).

³⁰ *Wexford County Prosecutor v Pranger*, 83 Mich App 197, 201, 204; 268 NW2d 344 (1978).

³¹ OAG, 1977-1978, No 5298, p 434, 435 (May 2, 1978). See also OAG, 1979-1980, No 5444, p 55, 56 (February 21, 1979) – anytime a quorum of a public body meets and considers a matter of public policy, the meeting must comply with the OMA's requirements. Compare OAG, 1979-1980, No 5437, p 36, 37 (February 2, 1979), where members of a public body constituting a quorum come together by chance, the gathering is exempt from the OMA; however, even at a chance meeting, matters of public policy may not be discussed by the members with each other.

so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to avoid the OMA.³²

May a quorum of a board gather outside an open meeting without violating the OMA? – yes, in some instances. In addition to a purely social gathering or chance gathering³³ that does not involve discussions of public policy among the members of the board, a quorum may accept an invitation to address a civic organization,³⁴ listen to the concerns of a neighborhood organization, or observe demonstrations, if the board doesn't deliberate toward, or make, a decision.³⁵

A board quorum also may meet for a workshop, seminar, informational gathering, or professional conference designed to convey, to the conference participants, information about areas of professional interest common to all conference participants.³⁶ These kinds of meetings involve a conference designed primarily to provide training or background information and involve a relatively broad focus upon issues of general concern, rather than a more limited focus on matters or issues of particular interest to a single public body.³⁷ However, when gatherings are designed to receive input from officers or employees of the public body, the OMA requires that the gathering be held at a public meeting.³⁸

The OMA was not violated when several members of the board of county commissioners attended a public meeting of the county planning committee (which had more than fifty members, two who were county commissioners), which resulted in a quorum of the board being present at the meeting (without the meeting also being noticed as a county commission meeting), so long as the nonmember commissioners did not engage in deliberations or render decisions.³⁹

Advisory committees and the OMA – the OMA does not apply to committees and subcommittees composed of less than a quorum of the full public body if they "are merely advisory or only capable of making 'recommendations concerning the exercise of governmental authority'."⁴⁰

Where, on the other hand, a committee or subcommittee is empowered to act on matters in such a fashion as to deprive the full public body of the opportunity to consider a matter, a decision of the committee or subcommittee "is an exercise of governmental authority which effectuates

³² *St Aubin v Ishpeming City Council*, 197 Mich App 100, 103; 494 NW2d 803 (1992).

³³ OAG, 1979-1980, No 5437, p 36 (February 2, 1979).

³⁴ OAG, 1977-1978, No 5183, p 21, 35 (March 8, 1977).

³⁵ OAG, 1977-1978, No 5364, p 606, 607 (September 7, 1978).

³⁶ OAG, 1979-1980, No 5433, p 29, 31 (January 31, 1979).

³⁷ OAG, 1981-1982, No 6074, at p 664.

³⁸ OAG No 5433 at p 31.

³⁹ OAG, 1989-1990, No 6636, p 253 (October 23, 1989), cited with approval in *Ryant v Cleveland Twp*, 239 Mich App 430, 434-435; 608 NW2d 101 (2000) and *Nicholas v Meridian Charter Twp*, 239 Mich App at 531-532. If, however, the noncommittee board members participate in committee deliberations, the OMA would be violated. *Nicholas*, 239 Mich App at 532.

⁴⁰ OAG, 1997-1998, No 6935, p 18 (April 2, 1997); OAG No 5183 at p 40.

public policy" and the committee or subcommittee proceedings are, therefore, subject to the OMA.⁴¹

If a joint meeting of two committees of a board (each with less than a quorum of the board) results in the presence of a quorum of the board, the board must comply in all respects with the OMA and notice of the joint meeting must include the fact that a quorum of the board will be present.⁴²

Use of e-mail or other electronic communications among board members during an open meeting – e-mail, texting, or other forms of electronic communications among members of a board or commission during the course of an open meeting that constitutes deliberations toward decision-making or actual decisions violates the OMA, since it is in effect a "closed" session. While the OMA does not require that all votes by a public body must be by roll call, voting requirements under the act are met when a vote is taken by roll call, show of hands, or other method that informs the public of the public official's decision rendered by his or her vote. Thus, the OMA bars the use of e-mail or other electronic communications to conduct a secret ballot at a public meeting, since it would prevent citizens from knowing how members of the public body have voted.⁴³

Moreover, the use of electronic communications for discussions or deliberations, which are not, at a minimum, able to be heard by the public in attendance at an open meeting are contrary to the OMA's core purpose – the promotion of openness in government.⁴⁴

Using e-mail to distribute handouts, agenda items, statistical information, or other such material during an open meeting should be permissible under the OMA, particularly when copies of that information are also made available to the public before or during the meeting.

⁴¹ *Schmiedicke v Clare School Bd.*, 228 Mich App 259, 261, 263-264; 577 NW2d 706 (1998); *Morrison v East Lansing*, 255 Mich App 505; 660 NW2d 395 (2003); and OAG, 1997-1998, No 7000, p 197 (December 1, 1998) – a committee composed of less than a quorum of a full board is subject to the OMA, if the committee is effectively authorized to determine whether items will or will not be referred for action by the full board, citing OAG, 1977-1978, No 5222, p 216 (September 1, 1977).

⁴² OAG, 1989-1990, No 6636, at p 254.

⁴³ See *Esperance v Chesterfield Twp.*, 89 Mich App 456, 464; 280 NW2d 559 (1979) and OAG, 1977-1978, No 5262, p 338 (January 31, 1978).

⁴⁴ See *Booth Newspapers, Inc.*, 444 Mich at 229; *Schmiedicke*, 228 Mich App at 263, 264; and *Wexford County Prosecutor*, 83 Mich App at 204.

CLOSED SESSIONS

Meeting in closed session – a public body may meet in a closed session *only* for one or more of the permitted purposes specified in section 8 of the OMA.⁴⁵ The limited purposes for which closed sessions are permitted include, among others⁴⁶:

- (1) 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 officer, employee, staff member, or individual agent, *if the named person requests a closed hearing*.⁴⁷
- (2) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement *if either negotiating party requests a closed hearing*.⁴⁸
- (3) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.⁴⁹
- (4) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, *but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body*.⁵⁰
- (5) To review and consider the contents of an application for employment or appointment to a public office *if the candidate requests that the application remain confidential*. However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.⁵¹
- (6) To consider material exempt from discussion or disclosure by state or federal statute.⁵² But note – a board is not permitted to go into closed session to discuss an attorney's oral opinion, as opposed to a written legal memorandum.⁵³

A closed session must be conducted during the course of an open meeting – section 2(c) of the OMA defines "closed session" as "a meeting or part of a meeting of a public body that is

⁴⁵ MCL 15.268. OAG, 1977-1978, No 5183, at p 37.

⁴⁶ The other permissible purposes deal with public primary, secondary, and post-secondary student disciplinary hearings – section 8(b); state legislature party caucuses – section 8(g); compliance conferences conducted by the Michigan Department of Community Health – section 8(i); and public university presidential search committee discussions – section 8(j).

⁴⁷ MCL 15.268(a) (Emphasis added.)

⁴⁸ MCL 15.268(c) (Emphasis added.)

⁴⁹ MCL 15.268(d).

⁵⁰ MCL 15.268(e) (Emphasis added.)

⁵¹ MCL 15.268(f) (Emphasis added.)

⁵² MCL 15.268(h).

⁵³ *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459, 467, 469-470; 425 NW2d 695 (1988).

closed to the public."⁵⁴ Section 9(1) of the OMA provides that the minutes of an open meeting must include "the purpose or purposes for which a closed session is held."⁵⁵

Going into closed session – section 7(1) of the OMA⁵⁶ sets out the procedure for calling a closed session:

A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

Thus, a public body may go into closed session only upon a motion duly made, seconded, and adopted by a 2/3 roll call vote of the members appointed and serving⁵⁷ during an open meeting for the purpose of (1) considering the purchase or lease of real property, (2) consulting with their attorney, (3) considering an employment application, or (4) considering material exempt from disclosure under state or federal law. A majority vote is sufficient for going into closed session for the other OMA permitted purposes.

We suggest that every motion to go into closed session should cite one or more of the permissible purposes listed in section 8 of the OMA.⁵⁸ An example of a motion to go into closed session is:

I move that the Board meet in closed session under section 8(e) of the Open Meetings Act, to consult with our attorney regarding trial or settlement strategy in connection with [the name of the specific lawsuit].

Another example is the need to privately discuss with the public body's attorney a memorandum of advice as permitted under section 8(h) of the OMA – "to consider material exempt from discussion or disclosure by state or federal statute."⁵⁹ The motion should cite section 8(h) of the OMA and the statutory basis for the closed session, such as section 13(1)(g) of the Freedom of Information Act, which exempts from public disclosure "[i]nformation or records subject to the attorney-client privilege."⁶⁰

Leaving a closed session – the OMA is silent as to how to leave a closed session. We suggest that you recommend a motion be made to end the closed session with a majority vote needed for

⁵⁴ MCL 15.262(c).

⁵⁵ MCL 15.269(1).

⁵⁶ MCL 15.267(1).

⁵⁷ And not just those attending the meeting. OAG No 5183 at p 37.

⁵⁸ MCL 15.268.

⁵⁹ MCL 15.268(h). Proper discussion of a written legal opinion at a closed meeting is, with regard to the attorney-client privilege exemption to the OMA, limited to the meaning of any strictly legal advice presented in the written opinion. *People v Whitney*, 228 Mich App at 245-248.

⁶⁰ MCL 15.243(1)(g).

approval. Admittedly, this is a decision made in a closed session, but it certainly isn't a decision that "effectuates or formulates public policy."

When the public body has concluded its closed session, the open meeting minutes should state the time the public body reconvened in open session and, of course, any votes on matters discussed in the closed session must occur in an open meeting.

Decisions must be made during an open meeting, not the closed session – section 3(2) of the OMA requires that "[a]ll decisions of a public body shall be made at a meeting open to the public."⁶¹ Section 2(d) of the OMA defines "decision" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."⁶²

Avoid using the terms "closed session" and "executive session" interchangeably – we suggest that a public body not use the term "executive session" to refer to a "closed session." The term "executive session" does not appear in the OMA, but "closed session" does. "Executive session" is more of a private sector term and is often used to describe a private session of a board of directors, which is not limited as to purpose, where actions can be taken, and no minutes are recorded.

Staff and others may join the board in a closed session – a public body may rely upon its officers and employees for assistance when considering matters in a closed session. A public body may also request private citizens to assist, as appropriate, in its considerations.⁶³

Forcibly excluding persons from a closed session – a public body may, if necessary, exclude an unauthorized individual who intrudes upon a closed session by either (1) having the individual forcibly removed by a law enforcement officer, or (2) by recessing and removing the closed session to a new location.⁶⁴

⁶¹ MCL 15.263(2). *St Aubin v Ishpeming City Council*, 197 Mich App at 103. See also, OAG, 1977-1978, No 5262, at p 338-339 – the OMA prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of the public body have voted and OAG, 1979-1980, No 5445, p 57 (February 22, 1979) – a public body may not take final action on any matter during a closed meeting.

⁶² MCL 15.262(d).

⁶³ OAG, 1979-1980, No 5532, p 324 (August 7, 1979).

⁶⁴ OAG, 1985-1986, No 6358, p 268 (April 29, 1986), citing *Regents of the Univ of Michigan v Washtenaw County Coalition Against Apartheid*, 97 Mich App 532; 296 NW2d 94 (1980).

PUBLIC ATTENDING OPEN MEETINGS

Excluding individuals – no one may be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.⁶⁵

Identifying public attendees – no one may be required to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attend a public meeting.⁶⁶

Building security at the meeting site may cause issues. Members of the public might object, based on the OMA, to signing in to gain access to the building where a public meeting is being held.⁶⁷ We, therefore, recommend that public bodies meet in facilities or areas not subject to public access restrictions.

If the public body wishes the members of the public to identify themselves at the meeting, we suggest the board chair announce something like this:

The Board would appreciate having the members of the public attending the meeting today identify themselves and mention if they would like the opportunity to speak during the public comment period. However, you do not need to give your name to attend this meeting. When the time comes to introduce yourself and you do not want to do so, just say pass.

Since speaking at the meeting is a step beyond "attending" the public meeting and the OMA provides that a person may address the public body "under rules established and recorded by the public body," the board may establish a rule requiring individuals to identify themselves if they wish to speak at a meeting.⁶⁸

Limiting public comment – a public body may adopt a rule imposing individual time limits for members of the public addressing the public body.⁶⁹ In order to carry out its responsibilities, the board can also consider establishing rules allowing the chairperson to encourage groups to designate one or more individuals to speak on their behalf to avoid cumulative comments. But a rule limiting the period of public comment may not be applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.⁷⁰

⁶⁵ MCL 15.263(6).

⁶⁶ MCL 15.263(4).

⁶⁷ In addition, "[a]ll meetings of a public body . . . shall be held in a place available to the general public." MCL 15.263(1).

⁶⁸ MCL 15.263(5). OAG, 1977-1978, No 5183, at p 34.

⁶⁹ OAG, 1977-1978, No 5332, p 536 (July 13, 1978). The rule must be duly adopted and recorded. OAG, 1977-1978, No 5183, at p 34.

⁷⁰ OAG No 5332 at p 538.

Meeting location – the OMA only requires that a meeting be held "in a place available to the general public;" it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction.⁷¹ However, if a meeting is held so far from the public which it serves that it would be difficult or inconvenient for its citizens to attend, the meeting may not be considered as being held at a place available to the general public. Whenever possible, the meeting should be held within the public body's geographical boundaries.

Timing of public comment – a public body has discretion under the OMA when to schedule public comment during the meeting.⁷² Thus, scheduling public comment at the beginning⁷³ or the end⁷⁴ of the meeting agenda does not violate the OMA. The public has no right to address the commission during its deliberations on a particular matter.⁷⁵

Taping and broadcasting – the right to attend a public meeting includes the right to tape-record, videotape, broadcast live on radio, and telecast live on television the proceedings of a public body at the public meeting.⁷⁶ A board may establish reasonable regulations governing the televising or filming by the electronic media of a hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage.⁷⁷ And the exercise of the right to tape-record, videotape, and broadcast public meetings may not be dependent upon the prior approval of the public body.⁷⁸

⁷¹ OAG, 1979-1980, No 5560, p 386 (September 13, 1979). Of course, local charter provisions or ordinances may impose geographical limits on public body meetings.

⁷² MCL 15.263(5).

⁷³ *Lysogorski v. Bridgeport Charter Twp*, 256 Mich App at 302.

⁷⁴ OAG, 1979-1980, No 5716, p 812 (June 4, 1980).

⁷⁵ OAG, 1977-1978, No 5310, p 465, 468 (June 7, 1978).

⁷⁶ MCL 15.263(1).

⁷⁷ OAG, 1987-1988, No 6499, p 280 (February 24, 1988).

⁷⁸ MCL 15.263(1).

MINUTES

What must be in the minutes – at a minimum, the minutes must show the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes must include all roll call votes taken at the meeting.⁷⁹ The OMA does not prohibit a public body from preparing a more detailed set of minutes of its public meetings if it chooses to do so.⁸⁰

When must the minutes be available – proposed minutes must be made available for public inspection within eight days after the applicable meeting. Approved minutes must be made available for public inspection within five days after the public body's approval.⁸¹

When must the minutes be approved – at the board's next meeting.⁸² Corrected minutes must show both the original entry and the correction (for example, using a "striketrough" word processing feature).

Closed session minutes – a separate set of minutes must be taken for closed sessions. While closed session minutes must be approved in an open meeting (with contents of the minutes kept confidential), the board may meet in closed session to consider approving the minutes.⁸³

Closed session minutes shall only be disclosed if required by a civil action filed under sections 10, 11, or 13 of the OMA.⁸⁴ The board secretary may furnish the minutes of a closed session of the body to a board member. A member's dissemination of closed session minutes to the public, however, is a violation of the OMA, and the member risks criminal prosecution and civil penalties.⁸⁵ An audiotape of a closed session meeting of a public body is part of the minutes of the session meeting and, thus, must be filed with the clerk of the public body for retention under the OMA.⁸⁶

Closed session minutes may be destroyed one year and one day *after approval of the minutes of the regular meeting at which the closed session occurred*.⁸⁷

⁷⁹ MCL 15.269(1).

⁸⁰ Informational letter to Representative Jack Brandenburg from Chief Deputy Attorney General Carol Isaacs dated May 8, 2003.

⁸¹ MCL 15.269(3).

⁸² MCL 15.269(1).

⁸³ OAG, 1985-1986, No 6365, p 288 (June 2, 1986). This, of course, triggers the need for more closed session minutes.

⁸⁴ MCL 15.270, 15.271, and 15.273; *Local Area Watch v Grand Rapids*, 262 Mich App 136, 143; 683 NW2d 745 (2004); OAG, 1985-1986 No 6353, p 255 (April 11, 1986).

⁸⁵ OAG, 1999-2000, No 7061, p 144 (August 31, 2000).

⁸⁶ *Kitchen v Ferndale City Council*, 253 Mich App 115; 654 NW2d 918 (2002).

⁸⁷ MCL 15.267(2).

Inadvertent omissions from the minutes – the OMA does not invalidate a decision due to a simple error in the minutes, such as inadvertently omitting the vote to go into closed session from a meeting's minutes.⁸⁸

⁸⁸ *Willis v Deerfield Twp*, 257 Mich App 541, 554; 669 NW2d 279 (2003).

PARLIAMENTARY PROCEDURES

Core principle – for the actions of a public body to be valid, they must be approved by a majority vote of a quorum, absent a controlling provision to the contrary, at a lawfully convened meeting.⁸⁹

QUORUM

Quorum – is the minimum number of members who must be present for a board to act. Any substantive action taken in the absence of a quorum is invalid. If a public body properly notices the meeting under OMA, but lacks a quorum when it actually convenes, the board members in attendance may receive reports and comments from the public or staff, ask questions, and comment on matters of interest.⁹⁰

What is the quorum? – look to the statute, charter provision, or ordinance creating the board. On the state level, the Legislature in recent years has taken care to set the board quorum in the statute itself. The statute will often provide that "a majority of the board appointed and serving shall constitute a quorum." For a 15-member board, that means eight would be the quorum, assuming you have 15 members appointed and serving. Without more in the statute, as few as five board members could then decide an issue, since they would be a majority of a quorum.⁹¹ But, be careful, recent statutes often provide that "voting upon action taken by the board shall be conducted by majority vote of the members appointed and serving." In that instance, the board needs at least eight favorable votes to act.⁹² The Legislature has a backstop statute, which provides that any provision that gives "joint authority to 3 or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."⁹³

Disqualified members – a member of a public body who is disqualified due to a conflict of interest may not be counted to establish a quorum to consider that matter.⁹⁴

⁸⁹ OAG, 1979-1980, No 5808, p 1060 (October 30, 1980). Robert's Rules of Order Newly Revised (RRONR) (10th ed.), p 4. We cite to Robert's Rules in this Handbook as a leading guide on parliamentary procedures. This is not to imply that public bodies are, as a general rule, bound by Robert's Rules.

⁹⁰ OAG, 2009-2010, No 7235, p (October 9, 2009).

⁹¹ See OAG, 1977-1978, No 5238, p 261 (November 2, 1977).

⁹² See OAG, 1979-1980, No 5808, at p 1061.

⁹³ MCL 8.3c. *Wood v Bd of Trustees of the Policemen and Firemen Retirement System of Detroit*. 108 Mich App 38, 43; 310 NW2d 39 (1981).

⁹⁴ OAG, 1981-1982, No 5916, p 218 (June 8, 1981). But see MCL 15.342a, which provides a procedure for disqualified public officials to vote in some limited circumstances where a quorum is otherwise lacking for a public body to conduct business.

Losing a quorum – even if a meeting begins with a quorum present, the board loses its right to conduct substantive action whenever the attendance of its members falls below the necessary quorum.⁹⁵

Resigned members – the common law rule in Michigan is that a public officer's resignation is not effective until it has been accepted by the appointing authority (who, at the state level, is usually the governor). Acceptance of the resignation may be manifested by formal acceptance or by the appointment of a successor.⁹⁶ Thus, until a resignation is formally accepted or a successor appointed, the resigning member must be considered "appointed and serving," be counted for quorum purposes, and be permitted to vote.

⁹⁵ RRONR (10th ed.), p 337-338.

⁹⁶ OAG, 1985-1986, No 6405, p 429, 430 (December 9, 1986), citing *Clark v Detroit Bd of Education*, 112 Mich 656; 71 NW 177 (1897).

VOTING

Abstain – means to refuse to vote. Thus, a board member does not "vote" to abstain. If a vote requires a majority or a certain percentage of the members present for approval, an abstention has the same effect as a "no" vote.⁹⁷

Adjourning the meeting - a presiding officer cannot arbitrarily adjourn a meeting without first calling for a vote of the members present.⁹⁸

Chairperson voting – perhaps as a spillover from the well-known constitutional rule that the vice president can only vote to break a tie in the United States Senate⁹⁹ or that a legislative presiding officer usually refrains from voting unless his or her vote affects the result,¹⁰⁰ some believe that a board's presiding officer (usually, the chairperson) can only vote to break a tie. However, absent a contrary controlling provision, all board members may vote on any matter coming before a board.¹⁰¹ A board's presiding officer can't vote on a motion and then, if the vote is tied, vote to break the tie unless explicitly authorized by law.¹⁰²

Expired-term members – look first to the statute, charter provision, or ordinance creating the public body. Many statutes provide that "a member shall serve until a successor is appointed." Absent a contrary controlling provision, the general rule is that a public officer holding over after his or her term expires may continue to act until a successor is appointed and qualified.¹⁰³

Imposing a greater voting requirement – where the Legislature has required only a majority vote to act, public bodies can't impose a greater voting requirement, such as requiring a two-thirds vote of its members to alter certain policies or bylaws.¹⁰⁴

Majority – means simply "more than half."¹⁰⁵ Thus, on a 15-member board, eight members constitute a majority.

⁹⁷ RRONR (10th ed.), p 390-395.

⁹⁸ *Dingwall v Detroit Common Council*, 82 Mich 568, 571; 46 NW 938 (1890).

⁹⁹ US Const. art I, §3.

¹⁰⁰ RRONR (10th ed.), p 392-393 – an assembly's presiding officer can break or create a tie vote.

¹⁰¹ See OAG, 1981-1982, No 6054, p 617 (April 14, 1982).

¹⁰² *Price v Oakfield Twp Bd*, 182 Mich 216; 148 NW 438 (1914).

¹⁰³ OAG, 1979-1980, No 5606, p 493 (December 13, 1979), citing *Greyhound Corp v Public Service Comm*, 360 Mich 578, 589-590; 104 NW2d 395 (1960). See also, *Cantwell v City of Southfield*, 95 Mich App 375; 290 NW2d 151 (1980).

¹⁰⁴ OAG, 1979-1980, No 5738, p 870 (July 14, 1980). OAG, 2001-2002, No 7081, p 27 (April 17, 2001), citing *Wagner v Ypsilanti Village Clerk*, 302 Mich 636; 5 NW2d 513 (1942).

¹⁰⁵ RRONR (10th ed.), p 387.

Proxy voting – the OMA requires that the deliberation and formulation of decisions effectuating public policy be conducted at open meetings.¹⁰⁶ Voting by proxy effectively forecloses any involvement by the absent board member in the board's public discussion and deliberations before the board votes on a matter effectuating public policy.¹⁰⁷ Without explicit statutory authority, this practice is not allowed.¹⁰⁸

Roll call vote – there is no bright line rule for conducting a roll call vote.¹⁰⁹ We suggest some rules of thumb. One, when a voice vote reveals a divided vote on the board (i.e., more than one no vote), a roll call vote should be conducted to remove doubt about the vote's count. Two, if you have board members participating by teleconference, a roll call will permit the secretary to accurately record the entire vote. Three, when the board is acting on matters of significance, such as, contracts of substantial size or decisions that will have multi-year impacts, a roll call vote is the best choice.

Round-robin voting – means approval for an action outside of a public meeting by passing around a sign-off sheet. This practice has its roots in the legislative committee practice of passing around a tally sheet to gain approval for discharging a bill without a committee meeting. "Round-robinning" defeats the public's right to be present and observe the manner in which the body's decisions are made and violates the letter and the spirit of the OMA.¹¹⁰

Rule of necessity – if a state agency's involvement in prior administrative or judicial proceedings involving a party could require recusal of all of its board members or enough of them to prevent a quorum from assembling, the common law rule of necessity precludes recusing all members, if the disqualification would leave the agency unable to adjudicate a question.¹¹¹ But the rule of necessity may not be applied to allow members of a public body to vote on matters that could benefit their private employer.¹¹²

¹⁰⁶ *Esperance v Chesterfield Twp*, 89 Mich App at 464, quoting *Wexford County Prosecutor v Pranger*, 83 Mich App 197; 268 NW2d 344 (1978).

¹⁰⁷ Robert's Rules concur: "Ordinarily it [proxy voting] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable." RRONR (10th ed.), p 414. The Michigan House and Senate do not allow proxy voting for their members.

¹⁰⁸ OAG, 2009-2010, No 7227, p (March 19, 2009). OAG, 1993-1994, No 6828, p 212 (December 22, 1994), citing *Dingwall*, 82 Mich at 571, where the city council counted and recorded the vote of absent members in appointing election inspectors. The Michigan Supreme Court rejected these appointments, ruling that "the counting of absent members and recording them as voting in the affirmative on all questions, was also an inexcusable outrage."

¹⁰⁹ "The fact that the Open Meetings Act prohibits secret balloting does not mean that all votes must be roll call votes." *Esperance v Chesterfield Twp*, 89 Mich App at 464 n 9. The OMA does provide that votes to go into closed session must be by roll call. MCL 15.267.

¹¹⁰ OAG, 1977-1978, No 5222, at p 218. See also, *Booth Newspapers*, 444 Mich at 229, which concluded that "round-the-horn" deliberations can constitute decisions under the OMA.

¹¹¹ *Champion's Auto Ferry, Inc v Michigan Public Service Comm*, 231 Mich App 699; 588 NW2d 153 (1998). The Court noted that the PSC members did not have any personal financial interest in the matter. *Id.* at 708-709.

¹¹² OAG, 1981-1982, No 6005, p 439, 446 (November 2, 1981). After OAG No 6005 was issued, the Legislature amended section 2a of 1973 PA 196, MCL 15.342a, to provide a procedure for voting by public officials in some limited circumstances where a quorum is otherwise lacking for a public entity to conduct business.

Secret ballot – the OMA requires that all decisions and deliberations of a public body must be made at an open meeting and the term "decision" is defined to include voting.¹¹³ The OMA prohibits a "voting procedure" at a public meeting that prevents citizens from knowing how members of a public body have voted."¹¹⁴ Obviously, the use of a secret ballot process would prevent this transparency. All board decisions subject to the OMA must be made by a public vote at an open meeting.¹¹⁵

Tie vote – a tie vote on a motion means that the motion did not gain a majority. Thus, the motion fails.¹¹⁶

¹¹³ See MCL 15.262(d) and 15.263(2) and (3).

¹¹⁴ OAG, 1977-1978, No 5262, at p 338-339.

¹¹⁵ *Esperance*, 89 Mich App at 464.

¹¹⁶ *Rouse v Rogers*, 267 Mich 338; 255 NW 203 (1934). RRONR (10th ed.), p 392.