



PROPOSED AGENDA
WORKSHOP OF THE CHARLOTTE CITY COUNCIL
111 E. Lawrence Ave, Charlotte, MI 48813 (517) 543-2750
7:00 P.M. Tuesday, December 14, 2021

Interested Parties may participate in-person or via Zoom

Connect to Zoom from your computer, tablet, or smartphone

Website: <https://us02web.zoom.us/j/81012068335>

Or One tap mobile : US: +16465588656,,81012068335# or +13017158592,,81012068335#

Call in by telephone: (312) 626-6799 Webinar ID: 810 1206 8335

1. **Call to Order**
2. **Roll Call**
3. **Approve Agenda**
4. **Absence of Council Members**
5. **Public Comment** - Limit presentation to five (5) minutes
6. **Discussion Items**
 - a. Presentation by Attorney Hitch on Open Meetings Act
 - b. Review of Robert's Rules of Order and parliamentary procedures
 - c. Discussion on Council Policies 2021-01 and 2021-04
7. **Public Comment** - Limit presentation to five (5) minutes
8. **Mayor and Council Comments**
9. **Adjourn**

ADDRESSING THE CITY COUNCIL

Comments shall be made only during times set aside for that purpose.

Each citizen may speak for up to 5 minutes during each public hearing and comments period. Comments made during public hearings shall be relevant to the subject of the public hearing. Comments shall be made from the podium unless otherwise directed by the Mayor.

Comments shall be directed to the Mayor and Council members.

Speakers shall begin by stating their name and indicate if they are a resident or non-resident of the City. Speakers shall refrain from using vulgarity, hate speech or "fighting words."

~Mary LaRocque, City Clerk



Memo

Date: December 9, 2021
To: Honorable Mayor Armitage; City Council
From: Erin LaPere, City Manager
Re: Open Meetings Act Presentation

City Attorney Hitch has provided a copy of the Open Meetings Act Handbook prepared by the Attorney General for Council's review. He will be presenting on this topic to Council and answering any questions at the workshop meeting Tuesday evening.

eel

attachment

Open Meetings Act Handbook

Prepared by:
Michigan Department
of Attorney General
Dana Nessel

Additional copies available
at: mi.gov/foia-ag



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.

Table of Contents

The Basics	4
The Act	4
What bodies are covered?	4
Public notice requirements	4
Agendas and the OMA	5
Penalties for OMA violations	5
Lawsuits to compel compliance	6
Correcting non-conforming decisions	6
Decisions must be made in public meetings	7
All decisions must be made at a meeting open to the public	7
Meeting "informally" to discuss matters	7
Canvassing board members on how they might vote	7
May a quorum of a board gather outside an open meeting without violating the OMA?	8
Advisory committees and the OMA	8
Use of e-mail or other electronic communications among board members during an open meeting ..	9
Closed Sessions	10
Meeting in closed session	10
A closed session must be conducted during the course of an open meeting	10
Going into closed session	11
Leaving a closed session	11
Decisions must be made during an open meeting, not the closed session	12
Avoid using the terms "closed session" and "executive session" interchangeably	12
Staff and others may join the board in a closed session	12
Forcibly excluding persons from a closed session	12
Public attending open meetings	13
Excluding individuals	13
Identifying public attendees	13
Limiting public comment	13
Meeting location	14
Timing of public comment	14
Taping and broadcasting	14
Minutes	15
What must be in the minutes	15
When must the minutes be available	15
When must the minutes be approved	15
Closed session minutes	15
Inadvertent omissions from the minutes	15
Parliamentary procedures	16
Core principle	16
Quorum	17

What is A quorum?	17
Disqualified members	17
Losing a quorum	17
Resigned members	17
Voting	18
Abstain	18
Adjourning the meeting	18
Chairperson voting	18
Expired-term members	18
Imposing a greater voting requirement	18
Majority	18
Proxy voting	19
Roll call vote	19
Round-robin voting	19
Rule of necessity	19
Secret ballot	20
Tie vote	20

THE BASICS

OPEN MEETINGS ACT

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](#). [Emphasis added.]⁴

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 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 *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 *Perlono 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).

8 MCL 15.264(a)-(c).

9 MCL 15.264(c).

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

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

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.

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).

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

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 exemption](#) 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, so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to the avoid the OMA.³²

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.

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

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 gathering](#)³³ 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 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

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.

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.

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.

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 others](#)⁴⁶:

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 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

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).

54 MCL 15.262(c).

55 MCL 15.269(1).

GOING INTO CLOSED SESSION

[Section 7\(1\) of the OMA](#)⁵⁶ 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 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.

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).

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 "strikethrough" 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

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

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).

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

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.

QUORUM

A 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 A 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 as 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

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.

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.

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

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 to determine when a member’s term expires. 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

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. 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. 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

Round-robin 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.



Additional copies available at: mi.gov/foia-ag

ROBERT'S RULES OF ORDER CHEAT SHEET

Robert's Rules of Order is a manual of parliamentary procedures that governs most organizations with boards, including governmental bodies. City Council and the other city boards/commissions follow Robert's Rules of Order as a guideline, along with any applicable bylaws or similar, for meeting procedures to ensure meetings are conducted in an orderly and efficient manner.

TYPES OF MOTIONS

- **Main Motion:** Introduce a new item
- **Subsidiary Motion:** Change or affect how to handle a main motion (vote on this before main motion)
- **Privileged Motion:** Urgent or important matter unrelated to pending business
- **Incidental Motion:** Questions procedure of other motions (must consider before the other motion)
- **Motion to Table:** Stops a motion and deliberation
- **Motion to Postpone:** Delays a vote (can reopen debate on the main motion)

EVERY MOTION HAS 6 STEPS

1. **Motion:** A member rises or raises a hand to signal the chairperson.
2. **Second:** Another member seconds the motion.
3. **Restate motion:** The chairperson restates the motion.
4. **Deliberate:** The members deliberate the matter.
5. **Vote:** The chairperson restates the motion, and then first asks for affirmative votes, and then negative votes.
6. **Announce the vote:** The chairperson announces the result of the vote and any instructions.

TIP! If the board is in obvious agreement, the chairperson may save time by stating, "If there is no objection, we will adopt the motion to..." Then wait for any objections. Then say, "Hearing no objections, (state the motion) is adopted." And then state any instructions. If a member objects, first ask for debate, then vote and then announce the vote.

REQUESTING POINTS OF SOMETHING

Certain situations need attention during the meeting, but they don't require a motion, second, debate or voting. It's permissible to state a point during a meeting where the chairperson needs to handle a situation right away. Council members can declare a Point of Order, Point of Information, Point of Inquiry, or Point of Personal Privilege.

- **Point of Order:** Draws attention to a breach of rules, improper procedure, breaching of established practices, etc.
- **Point of Information:** A member may need to bring up an additional point or additional information (in the form of a statement) so that the other members can make fully informed votes.

- **Point of Inquiry:** A member may use point of inquiry to ask for clarification in a report to make better voting decisions.
- **Point of Personal Privilege:** A member may use point of personal privilege to address the physical comfort of the setting such as temperature or noise.

TIPS AND REMINDERS FOR CHAIRPERSONS

Robert's Rules of Order, which is also widely known as parliamentary procedure, was developed to ensure that meetings are fair, efficient, democratic and orderly. A skilled chairperson allows all members to voice their opinions in an orderly manner so that everyone in the meeting can hear and be heard. The following tips and reminders will help chairpersons to run a successful and productive meeting without being run over or running over others.

- Follow the agenda to keep the group moving toward its goals.
- Let the group do its own work; don't overcommand.
- Control the flow of the meeting by recognizing members who ask to speak.
- Let all members speak once before allowing anyone to speak a second time.
- When discussions get off-track, gently guide the group back to the agenda.
- Model courtesy and respect, and insist that others do the same.
- Help to develop the Council's skills in parliamentary procedure by properly using motions and points of order.
- Give each speaker your undivided attention.
- Keep an emotional pulse on the discussions.
- Allow a consensus to have the final authority of the group.

Charter Specific Rules

The City Charter specifies that a quorum of four members is required to meet. The vote of four Council members is required for any action, except where a larger majority is required by law. At regular Council meetings, only business on the agenda may be considered unless there is a vote of five members of Council. At a special meeting of Council, only matters on the agenda may be considered.

Action	What to say	Can speaker be interrupted?	Need a second?	Can this be deliberated?	Can this be amended?	Votes needed
Introduce main motion	"I move to..."	No	Yes	Yes	Yes	Majority
Amend a motion	"I move to amend the motion by..."	No	Yes	Yes	Yes	Majority
Move item to committee	"I move that we refer the matter to committee."	No	Yes	Yes	No	Majority
Postpone item	"I move to postpone the matter until..."	No	Yes	Yes	No	Majority
End debate	"I move the previous question."	No	Yes	Yes	No	Majority
Object to procedure	"Point of order."	Yes	No	No	No	Chair's decision
Recess the meeting	"I move that we recess until..."	No	Yes	No	No	Majority
Adjourn the meeting	"I move to adjourn the meeting."	No	Yes	No	No	Majority
Request information	"Point of information."	No	Yes	No	No	No vote
Overrule the chair's ruling	"I move to overrule the chair's ruling."	Yes	Yes	Yes	No	Majority
Extend the allotted time	"I move to extend the time by _____ minutes."	No	Yes	No	Yes	2/3
Enforce the rules or point out incorrect procedure	"Point of order."	Yes	No	No	No	No vote
Table a motion	"I move to table..."	No	Yes	No	No	Majority
Verify voice vote with count	"I call for a division."	No	No	No	No	No vote
Object to considering some undiplomatic matter	"I object to consideration of this matter..."	Yes	No	No	No	2/3
Take up a previously tabled item	"I move to take from the table..."	No	Yes	No	No	Majority
* Reconsider something already disposed of	"I move to reconsider our action to..."	Yes	Yes	Yes	Yes	Majority
Consider something out of it scheduled order	"I move to suspend the rules and consider..."	No	Yes	No	No	2/3
Move the meeting into closed session	"I move to go into closed session."	No	Yes	No	No	Majority

*A member may make a motion to reconsider something that was already disposed; however, the reconsidered motion may not be subsequently reconsidered. A motion to reconsider must be made during the same meeting and can extend to a meeting that lasts for more than one day.



Memo

Date: December 10, 2021
To: Honorable Mayor Armitage; City Council
From: Erin LaPere, City Manager
Re: Discussion on Council Policies 2021-01 and 2021-04

City Council has adopted policies related to how it conducts business at meetings. These policies function together with applicable statutory rules of conduct, including the City Charter and state laws. Copies of both policies are attached for Council's review. These policies were first enacted in 2016, and are on the agenda for discussion by Council as to whether any changes are warranted.

Policy 2021-01 - Resolutions

This policy requires all actions by Council which are not an ordinance to take place in the form of a resolution. There is no legal or procedural requirement that every action be in the form of a resolution, although there are specific circumstances that dictate when a resolution is required. Typically, a resolution is only taken up by Council for matters of significance. At the time this policy was originally enacted, the stated goal was to encourage more citizen participation. It is unclear that the use of resolutions has achieved the goal of encouraging citizen participation. Furthermore, by requiring every action to take place in the form of a resolution a burden is placed upon staff to draft these resolutions, and the Clerk's office must maintain a certified record of each resolution that is passed. We also are required to include the entire text of the resolution in the meeting minutes which can be time-consuming due to issues like formatting inconsistencies as well as due to the policy to consider most matters at two meetings. This creates inefficiencies and requires staff time to be spent on these processes which then takes away from the time available for other tasks.

Administration would recommend that this policy be rescinded and we resume the long-standing and common practice of taking action by way of motion in accordance with Roberts Rules of Order except where a resolution is required. We are committed to providing Council with the information it needs to be informed on the decisions placed before it, and will continue to provide thorough staff reports on every matter. Such staff reports typically include general and/or historical information, financial impacts if any, and a suggested motion to help ensure both the Council and the public are properly informed. Of course, we also stand ready to continue to provide additional information or answer questions as

needed during the deliberations at the Council meetings. We believe that this will provide the Council with a thorough understanding of the matter at hand and help achieve the goal of encouraging citizen participation and transparency by eliminating an inefficient and unnecessary process.

Policy 2021-04 – Order of Business

This policy outlines the order of business at the Council meetings, including the parameters for items to be placed on the agenda for expedited (one meeting decision) or introductory/action (two meeting decision). In response to the COVID-19 pandemic, Council put into effect the unanimous consent procedures to facilitate efficient use of the public's time and encourage participation in those matters which required deliberation. Generally speaking, routine matters are placed on the expedited agenda for approval at a single meeting; this is in-line with typical municipal procedure in which a matter is placed before the approval body and a decision is made at that same meeting. The use of introduction and then approval at a subsequent meeting is not a common practice for most business in municipal government, and doing so results in delays in decision making and reduces the efficiency of governmental operations. This can also mean interested members of the public have to attend multiple meetings to be engaged in the discussion and be informed on the final outcome of a matter.

Administration is recommending a modification to the Council policy as follows:

1. Eliminate the agenda items: Expedited Resolutions and Ordinances; Action Items—Resolutions and Ordinances; Introduction of Resolutions and Ordinances
2. Add agenda items: Consent Agenda; Business Agenda

The Consent Agenda will contain routine matters, such as approval of claims, mayoral appointments, and ceremonial proclamations that do not require deliberation. All of which may be approved in one motion. Members who would like to have discussion on any item on the Consent Agenda may make a motion to move the item to the Business Agenda. The Business Agenda will contain new and/or prior business matters which will be discussed and voted upon individually. Additionally, any item can be postponed for decision until a subsequent meeting date by Council so matters that require further discussion or information can be given that additional consideration. We are recommending this as a way to improve efficiency in government proceedings and reduce administrative workloads as well as to achieve positive public engagement and participation.

eel

attachments

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
RESOLUTIONS	2021-01	02/01/2021	1 of 3

1. PURPOSE

The purpose of this policy is to describe the requirements for drafting resolutions.

2. AUTHORITY

This policy is adopted pursuant to Section 4.7(I) of the Charter of the City of Charlotte.

3. BACKGROUND

Robert’s Rules of Order states that “a main motion—particularly an original main motion—is frequently offered as a *resolution*, either because of its importance or because of its complexity.” The Charlotte City Council considers resolutions from time to time but the majority of its actions have historically taken the form of oral motions. These motions do not necessarily convey all the information that an observer of a meeting would need to understand the purpose the contemplated action is intended to serve. In an effort encourage greater citizen participation in the affairs of the city government, it was proposed that Council’s actions take the form of either resolutions or ordinances.

4. FORMAT

Resolutions shall be in writing, generally conform to the format described in Robert’s Rules of Order and contain the following elements:

4.1 Preamble. Resolutions for routine matters such as approval of claims or appointment of board and commission members require no preamble. Other resolutions shall include a preamble of one or more paragraphs that contain background information describing the reason the resolution is proposed.

4.2 Resolving Clauses. In addition to stating the specific action that Council is authorizing, one or more resolving clauses shall be used, when practical, to provide information about the outcomes intended to be achieved through its implementation including objective measures for assessing its success.

5. NUMBERING

Resolutions shall be numbered in the order in which they are introduced each year using the form YYYY:NN (2016-01, for example).

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
RESOLUTIONS	2021-01	02/01/2021	2 of 3

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
RESOLUTIONS	2021-01	02/01/2021	3 of 3

6. POLICY SUPERSEDED

This policy shall supersede Council Policy 2016-05.

7. EFFECTIVE DATE

This policy shall become effective upon its approval by the City Council.

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
ORDER OF BUSINESS AT CITY COUNCIL MEETINGS	2021-04	02/16/2021	1 of 6

1. PURPOSE

The purpose of this policy is to describe the order of business at City Council meetings to be used in preparing meeting agendas, the procedures for managing the listing of items on the agenda and the approval of the agenda.

2. AUTHORITY

This policy is adopted pursuant to Section 4.7(I) of the Charter of the City of Charlotte.

3. ORDER OF BUSINESS

3.1 Agenda Format

- 3.1.1** The City Clerk shall prepare an agenda for each City Council meeting in the following format:

Call to Order
Roll Call
Invocation
Pledge of Allegiance
Approval of Minutes
Absence of Council Members
Public Hearings
Public Comment
Approval of the Agenda
Special Presentations
Expedited Resolutions and Ordinances
Action Items—Resolutions and Ordinances
Introduction of Resolutions and Ordinances
Communications and Committee Reports
Public Comment
Mayor and Council Comments
Recess to Closed Session
Reconvene Open Session
Adjourn

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
ORDER OF BUSINESS AT CITY COUNCIL MEETINGS	2021-04	02/16/2021	2 of 6

3.1.1.1 If no agenda items are received for a particular agenda category, the City Clerk may omit that category from the printed agenda.

3.2 Special Presentations

3.2.1 **Purpose.** This portion of the agenda is intended for longer presentations by staff members, council members and guests for which no resolution or ordinance has been introduced. This portion of the agenda may also be used for ceremonial presentations.

3.3 Expedited Resolutions and Ordinances

3.3.1 **Purpose.** This portion of the agenda is for the consideration of resolutions and ordinances that are requested to be approved after a single reading. It is generally reserved for resolutions that are routine, such as the approval of claims and accounts, mayoral appointments and ceremonial resolutions and proclamations and for resolutions that are of an urgent nature and for emergency ordinances.

3.3.2 **Removal of Expedited Resolutions and Ordinances.** A majority of Council may vote to remove an expedited resolution or ordinance to “Introduction of Resolutions and Ordinances.”

3.4 Action Items—Resolutions and Ordinances

3.4.1 **Purpose.** This portion of the agenda is intended for consideration of resolutions and ordinances that have had a first reading pursuant to the section 3.5 below.

3.4.2 **Order.** As a courtesy to citizens who might be in attendance, those matters that are expected to be of greater interest should be listed earlier on the agenda.

3.4.3 **Actions Permitted; Removal from the Agenda.** Resolutions and ordinances considered under this portion of the agenda may be discussed, amended, tabled or removed from the agenda. If no action is taken, the resolution or ordinance will be placed on the agenda under Action Items

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
ORDER OF BUSINESS AT CITY COUNCIL MEETINGS	2021-04	02/16/2021	3 of 6

for the following meeting. If no action has been taken after having been placed on the Action Items agenda for two consecutive regular meetings, it will be removed from the agenda but may be reintroduced at a subsequent meeting.

3.5 Introduction of Resolutions and Ordinances

- 3.5.1 Purpose.** This portion of the agenda is intended for the introduction, first reading, discussion and amendment of resolutions and ordinances other than those introduced under “Expedited Resolutions and Ordinances.”
- 3.5.2 Form.** Resolutions shall be presented in the form prescribed in Council Policy 2015-06 Resolutions. Ordinances shall be presented in the form prescribed in Council Policy 2015-04 Procedure for Considering and Adopting Ordinances.
- 3.5.3 Actions Permitted; Removal from the Agenda.** Resolutions and ordinances considered under this portion of the agenda may be discussed, amended, tabled or removed from the agenda. Unless another date is specified, a motion to accept the first reading of a resolution advances the resolution to “Action Items—Resolutions and Ordinances” on the agenda for the subsequent regular Council meeting. A motion to accept the first reading of an ordinance shall advance the ordinance in accordance with the provisions of Council Policy 2015-04 Procedure for Considering and Adopting Ordinances. If no action is taken, the resolution or ordinance may be reintroduced at a subsequent meeting.

3.6 Communications and Committee Reports

- 3.6.1 Purpose.** This portion of the agenda is for oral and written reports to be provided to the Council by staff members, communications received that are addressed to or might be of interest to Council members, and reports by Council members of meetings of boards and commissions attended by them. Matters included under communications and committee reports generally require no action.

4. APPROVAL OF THE AGENDA

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
ORDER OF BUSINESS AT CITY COUNCIL MEETINGS	2021-04	02/16/2021	4 of 6

4.1 Meaning. In approving the agenda, City Council is indicating its willingness to consider the items on the agenda in the order in which they are presented. The approval of the agenda does not preclude the consideration of or action on matters brought to the Council’s attention through public comments, special presentations, staff reports or Mayor and Council comments but such action shall be made in a manner consistent with this policy.

4.2 Additions to the Agenda. The Mayor, Council members, or City Manager may request during consideration of the approval of the agenda that additional items be included that were not listed on the printed agenda. Section 4.7(M) of the Charter requires the affirmative vote of five or more members of the Council to consider the addition to the agenda of any item not received by the City Clerk by noon on the Friday preceding the Council meeting.

4.3. Form of Motion. A motion to approve the agenda should follow an opportunity for Council members to request additions to the agenda, to request a change in the order in which items are considered, or to make corrections. The motion should take the general form “I move the agenda be approved as printed with the following changes: [list changes].”

4.4 Changes Following Agenda Approval. When the Mayor or presiding officer determines that public interest in a particular agenda item warrants changing the order in which it is brought forth for consideration, he/she may move an item forward on the agenda.

5. PLACING ITEMS ON THE AGENDA

5.1 Principle. As a general rule, items that are appropriate for placing on the agenda for Council consideration and action are those that, as a matter of law, ordinance, rule or policy, require Council approval, those that involve the consideration of policy matters, and those related to Council’s responsibility for overseeing the administration in its execution of policy. Other matters should generally take the form of a report or communication to the Council, be the subject of public comment, or be addressed as a part of Mayor and Council comments.

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
ORDER OF BUSINESS AT CITY COUNCIL MEETINGS	2021-04	02/16/2021	5 of 6

5.2 Responsibility of the City Manager. The City Manager shall be responsible for determining whether items of business brought forward by administrative staff members are appropriate for inclusion on the agenda. He/she shall have the responsibility for insuring that matters of importance are placed on the agenda so that they can receive timely consideration by the Council.

5.3 Requests from the Mayor and Council Members. The Mayor and Council members shall be permitted to present matters to the City Clerk that they wish to have listed on the agenda.

5.4 Requests from Citizens. On occasion, members of the general public request that an item of concern to them be given a place on the Council's agenda. Such requests shall be made in writing to the Council or in person during public comment. Unless Council determines that there is some urgency in taking up such a matter immediately, such requests should be included on a subsequent agenda, subject to Council approval.

6. AGENDA DISTRIBUTION

Except as provided below, a copy of the agenda and related documents will be distributed to Council members in electronic form on the last work day of the week preceding the Council meeting. Council members may request the city clerk to print all or any portion of the agenda packet and related documents.

6.1 Claims. To provide additional time for Council members to seek and receive information regarding claims submitted for payment, a list of claims will be distributed to Council members via electronic mail not later than 5:00 p.m. on the Wednesday preceding the City Council meeting at which approval is to be sought.

6.1.1. Questions regarding claims should be submitted to the Finance Director. Questions may be submitted via electronic mail or telephone.

6.1.2. Responses to questions regarding claims received prior to noon on the Friday before the Council meeting will be distributed to the entire City Council in a memorandum published as part of the agenda packet for the meeting at which approval is sought. The Finance Director may also respond directly to the Council member submitting a question.

CITY OF CHARLOTTE

COUNCIL POLICY

SUBJECT	POLICY NO.	APP. DATE	PAGE
ORDER OF BUSINESS AT CITY COUNCIL MEETINGS	2021-04	02/16/2021	6 of 6

7. POLICY REPLACED

This policy replaces Council Policy 2016-05.

8. EFFECTIVE DATE

This policy shall be effective with the Council meeting following its approval.