



THE OPEN MEETINGS ACT

This information sheet is intended as a tool to assist in clarification and decision making for Public Library Directors and Boards. It is not intended as legal advice. Library Boards and Directors should consult with their library attorneys when determining a plan or policy for their libraries.

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Like most states, Michigan has a law that requires public entities to provide public notice of, access to, and an option for participation in meetings of a public body where discussion of, and decisions in matters affecting public policy are accomplished. The intent behind these laws is to ensure governmental transparency, or the ability of citizens to witness, view, and participate in the actions of their government. These Open Meetings Acts (or “Government in the Sunshine Acts” in some states), along with the corresponding Freedom of Information Acts (FOIA) form a foundation and expectation of government openness and transparency for Federal, State, and local public bodies and officials.

(Public bodies are generally described as bodies which are established by law, funded by public funds and have authority and decision making or legislative powers affecting public policy).

Michigan’s Open Meetings Act (OMA), 1976 PA 267, [MCL 15.261 et seq.](#) requires public bodies to hold public meetings if a quorum of the board is present. In addition, any decisions or discussions on matters that could pertain to a decision must also be conducted in a public meeting.

The basic requirements of the [Open Meetings Act](#) are:

- Public Library Boards must meet in **public meeting** when:
 - There is a quorum of the board together.

AND/OR

- The board is discussing library business that could lead to a decision.

A QUORUM = A majority of the members of the board (generally one more than half of the board). For example, a six-member board has a quorum of four members. Board BYLAWS may determine whether a quorum is based on “members serving,” or “members present and serving.” The difference is that the first term = a quorum calculated on the total number of all current board members (like the example above for a six-member board). The second term = a quorum calculated on only the number of members in attendance at the meeting (for a six-member board, if five are present at the meeting, a quorum would be three). If no determination is made in the bylaws, the default quorum = majority of all board members serving (i.e., for a six-member board, a quorum would be four).

TOGETHER = A quorum of board members are communicating or present:

- Via e-mail or text, conversing as a group. (That is, a quorum of the board is receiving the same message and answering back to the group as a whole. In effect, having a group conversation.)

- Via Facebook Live, Zoom, Facetime, or similar, a quorum of the board is present and conversing.
- In person in a location in or outside of the library and/or regular formal meeting space (such as a parking lot, home, restaurant, etc.).
- In short, ANY INSTANCE where a quorum of the board is present and able to exchange information

DECISION = Any determination requiring a vote of the board which also affects public policy. Michigan public libraries are governed by boards. Library boards may only operate and govern the library as a unit (not by acting individually). This means that ALL decisions made by a board, which affect library monies, policy, staffing, etc. must be made in public meeting.

NOTE: A decision made by a group or committee of less than a quorum – even if approved or directed by the board as a whole- cannot be accomplished in a non-public meeting. Even committees comprised of less than a quorum **MUST** meet in public meeting **if** their business includes decision making that would typically be the purview of the board as a whole– such as financial or personnel matters.

A QUORUM of a board of trustees **MAY** assemble together without a public meeting under the following circumstances:

- 1) **Social Event:** A quorum or more of members may attend the same social or community event, or library program **UNRELATED** to their business as trustees. **NO** discussion of library business may occur, and no decisions made.
 - A. For example: a quorum of trustees bump into each other at a community festival, or a library program. This would be an event that the trustees are attending as library patrons or for their own interests- they are not “wearing their library trustee hat.”
2. **Educational Session or Conference:** A quorum or more of trustees may together attend an instructional session or professional conference where other people are also attending to learn about or obtain information about a topic. **NO** discussion of business or issues specific to their library can be discussed and no decisions made.
 - A. For example: a quorum or more of trustees may attend a professional conference presented by the Michigan Library Association (MLA), the American Library Association (ALA), United for Libraries (UFL), the Library of Michigan (LM), or any other organization presenting training or informational sessions of use to library trustees. **HOWEVER**, training provided to a specific library’s board of trustees must be presented in a public session.
3. **Attending a meeting or presentation of a civic organization** (such as the Rotary), as long as no library or board business is discussed.
4. **Attending the public meeting of another public body**, such as a city council meeting, as long as no library or board business is discussed.

The OMA **does not** permit:

- Private (non-public meeting) Board “Retreats.”
- Private (non- public meeting) Board “Work Sessions.”

- A private (non-public meeting), informal meeting of board members to “discuss” issues.
- E-mail, social media, or text conversations between board members about library business or decisions. (Note that board members may share pertinent information with each other, such as e-mailing documents or links to the group. However, subsequent e-mail, text, etc. discussions about that information would not be appropriate. In short, board members should never “reply all” in a board e-mail exchange.)
- The OMA does not permit board members initiating individual or small group private discussions among themselves to “pre-determine” the outcome of a public vote or decision. The purpose of the OMA is transparent government decision-making, not simply voting. Trustees should expect to discuss decisions and debate issues relating to library business in public meeting.

NOTE – The fact that public bodies associated with the municipality in which the library sits, or is affiliated with, conducts “retreats,” “work sessions,” or other not-in-public meeting gatherings of quorums of public officials, does not remove the responsibility of the library board from OMA compliance. In other words – just because the municipality is not compliant with the OMA does not make it ok for the library board.

A public body must **provide notice of a public meeting to the public**. The timing, contents, and methods of notice are specified within sections 4, 5 & 6 of the act ([MCL 15.264](#), [MCL 15.265](#), and [MCL 15.266](#), respectively). If a meeting permits the public to attend remotely, the notice must be placed on the website of the library (see [MCL 15.263a\(4\)](#)). In general, even with in-person meetings, public libraries are **strongly encouraged** to post public meeting notices on their website and/or social media accounts, if those resources are typically used for public notices about the library.

A public body must adhere to an open-door policy, permitting all members of the public to attend. A public body may not exclude attendance by a member of the public due to room size, remote access platform attendance limits, etc. If a body cannot accommodate all members of the public wishing to attend, the meeting must be adjourned and rescheduled in a forum that can accommodate a larger group.

In addition, under Michigan’s OMA, **public bodies must provide time during the public meeting to permit the members of the public in attendance an opportunity to address the public body**. Section 3 ([MCL 15.263\(5\)](#)) of the act enables the public body to implement rules for how the public comment portion of the public meeting will proceed. Such rules often stipulate:

- When during the meeting public comment will occur.
- Whether and how members of the public wishing to speak register or reserve a time to speak.
- A limitation on how much time each member of the public has to speak.

If a large group of people want to communicate the same message, the board can request that the group appoint a spokesperson to represent the group and make remarks on behalf of the group.

Closed Sessions

There are times when the business before the board contains elements that are for various reasons (such as laws protecting privacy) not appropriate for public discussion. Sections 7 and 8 of the act ([MCL 15.267](#), [MCL 15.268](#), respectively) address the appropriate procedure and circumstances under which a public body may or

should enter into closed session (sometimes also known as executive session). Of the law's approximately 13 approved circumstances for a closed session, six of them apply to public library boards:

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 individual requests a closed hearing**. An individual requesting a closed hearing may rescind the request at any time, in which case the matter at issue must be considered after the rescission only in open sessions.
 - a. **NOTE:** *A closed session for this reason can ONLY be convened IF the person the complaint is against REQUESTS a closed session. Unless the complaint or accusation is against the board, the board CANNOT unilaterally determine this situation merits a closed session.*
2. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing. (NOTE: *This applies only if the board is involved in collective bargaining.*)
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. (NOTE: *This option is so that a competing potential buyer cannot unfairly under/over bid the government entity.*)
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.
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, except as otherwise provided in this subdivision, **all interviews by a public body for employment or appointment to a public office must be held in an open meeting pursuant to this act**.
 - a. **NOTE:** *In other words, all discussions and meetings to review or consider job applicants must be held in open meeting (even if done in a non-quorum committee) UNLESS an applicant requests confidentiality. **BUT ALL interviews** for the position **MUST be conducted in public meeting**— even if confidentiality is requested. Once a position gets to the interview stage, there is no confidentiality.*
6. To consider material exempt from discussion or disclosure by state or federal statute. (NOTE: *For example, information protected by the Library Privacy Act, FERPA, personal medical information, personal identifying information such as staff addresses and phone numbers, attorney-client privilege laws, information protected under the ADA, EEOC and other employment related laws, etc.*)

It is easy for a board to confuse information they personally feel is private, versus what the OMA and other laws label as private (for example, salary information and personnel evaluations are open record for government employers). Boards are encouraged to consult their library attorneys if unsure about convening a possible closed session.

Section 7 ([MCL15.267](#)) of the act also prescribes specific procedures for entering and exiting closed sessions. Closed sessions may only be entered from a convened public meeting and exited into a convened public meeting. Minutes from closed meetings are confidential and not part of the public meeting minutes.

Minutes

Section 9 of the act ([MCL15.269](#)) requires that meeting minutes be taken and lists specific items that must be included within the minutes. These items are the minimum required types of information to be included in the minutes of each meeting:

- Date
- Time
- Place
- Members present.
- Members absent.
- Any decisions made at a meeting open to the public.
- The purpose or purposes for which a closed session is held.
- Description and votes of all roll call votes taken at the meeting.

If desired, a designated person other than the board secretary may take minutes in order to permit the secretary to participate in the meeting fully as a board member. This determination is up to the board.

Proposed, or unapproved minutes should be made publicly available within eight business days after the meeting they describe. Permanent, corrected minutes should be made available to the public within five business days after the minutes are approved.

Minutes must be made available for public inspection at the official address of the public body. Copies of the minutes must be made available to the public at a reasonable cost. Given the current heavy and common use of social media and websites by libraries to provide information to the public, **it is strongly recommended that libraries post meeting minutes to the library's website.**

The Open Meetings Act and Remote Attendance

After 12/31/2021, public library boards and other public bodies not specifically exempted within the act cannot meet or attend meetings remotely UNLESS:

- A member of the public body is a member of the military and is on military duty.
- Remote attendance is a "reasonable accommodation" under the ADA for a qualified disability under the ADA.

HOWEVER

- There remains a loophole in the law when it comes to members of the public attending remotely. From 2020 to 2021, while the ability to hold and attend public meetings was still in effect, it became common for members of the public wishing to attend a public meeting to attend via technological means such as Zoom or telephone. While the 2020 amendments specifically limit the ability of members of a public body to attend or hold a public meeting, the law is silent on means by which the members of the public can attend. A new loophole was created.

- It is not uncommon for public libraries and other public bodies to hold in-person public meetings but permit the public to attend either in-person or via technological means. **Members of the public body (such as library board members) cannot attend remotely as a member of the public and still participate in the meeting as a member of the public body (engage in discussion, raise motions, vote, etc.).**

What Changed? Background and Explanation of the Michigan OMA and Remote Attendance

For many years, Michigan's OMA was not clear on the question of whether public bodies could attend public meetings in a remote manner utilizing technology such as conference calling, or more recently, Facebook Live, or Zoom. The statute was silent on the matter of whether a meeting had to be held physically, or whether a member of the public body could attend a meeting via technological means.

A 1985 court opinion involving the Department of Social Services using a conference call for holding a public hearing and inviting the public to attend via various sites set up with conference calling capability, indicated that such a set up was acceptable under the OMA as long as there could be public comment (Goode v. Department of Social Services, 143 Mich. App 743, Mich.Ct.App, (1985) <https://casetext.com/case/goode-v-dss>).

This opinion has historically formed the rationale for the ability of a member of a public board to attend a public meeting remotely. The prevailing legal take on this was since the legislature didn't include language for or against remote attendance, it was ok. For lack of a better description, the ability to attend meetings remotely was a "loophole" in the OMA. See 2018 MSU Extension article "Does the Open Meetings Act Allow Remote Participation in Public Meetings?"

https://www.canr.msu.edu/news/does_the_open_meetings_act_allow_remote_participation_in_public_meetings

In the past several years, bills have appeared in the Michigan legislature attempting to restrict remote attendance or restrict the ability of a member attending remotely to vote or be counted for purposes of achieving a quorum. None of these bills made it out of the legislature and none were ever passed. (For ex., see 2011-2012 session HB 5335 <http://legislature.mi.gov/doc.aspx?2012-HB-5335>.)

Until 2020, it has also been common for library boards to develop policies that permitted board members to attend remotely with various restrictions such as:

- Prohibition from voting.
- Prohibition from being counted for purposes of achieving a quorum.
- Limiting the number of times in a year a member could attend remotely.
- Limiting the number of board members who could attend a session remotely.

In 2020, as a consequence of the pandemic and state-issued restrictions that prevented public gatherings, public bodies were required to hold (and therefore attend) meetings remotely. As the pandemic wore on, the legislature passed an amendment to the Open Meetings Act in October 2020

(<http://legislature.mi.gov/doc.aspx?2020-SB-1108>) that would, for the first time, regulate whether and how

public bodies could hold remote or virtual meetings, and whether and how individual members could attend an in-person meeting remotely. The loophole was now made official.

However, the amendment only codified the loophole temporarily. The legislature, balancing necessity of public safety and government operations with the adamant opposition of some legislators to remote or virtual attendance or convening of public meetings, places a time limit on the ability to hold public meetings via remote or virtual means, and on the ability of members of public bodies to attend any public meetings via remote or virtual means.

The amendment permitted, until December 31, 2021, a public body to hold meetings remotely in the event the state, or the municipality where the public body usually met issued a declaration of disaster, or a state of emergency where public safety was at risk if an in-person meeting was held.

In addition, members of the public body were permitted to attend remotely if:

- The municipality where the member lived issued a declaration of disaster or statement of emergency
- The member had a medical condition (defined by the amendment as a "medical condition" means an illness, injury, disability, or other health-related condition. MCL 15.263 (12)(b) <http://legislature.mi.gov/doc.aspx?mcl-15-263>)*
- The member was a member of the military on duty

The ability to attend a meeting remotely under these conditions was also limited to the time period ending December 31, 2021.

**A member of the public body with a disability as defined under the ADA would be eligible for remote attendance under the ADA if such attendance constituted "reasonable accommodation" on the part of the public body under the ADA. However, the ADA criteria for a "disability" is more precise and stringent than the "medical condition" requirement of the amendment. Public bodies contemplating accommodations of members via remote attendance should consult their attorneys for advice on the application of the ADA. See MI Atty Gen Op 7318, 2/4/2022 [Opinion 7318 - ADA \(michigan.gov\)](#). A member of the public is also entitled to public meeting accommodations under the ADA Title II, including potential accommodations within remote meeting technology to allow visually and hearing-impaired members of the public to attend remotely.*

Several bills proposing more permanent options for remote attendance were introduced into the legislature during 2021. The legislature acted only on some bills that permitted certain government bodies to continue to attend remotely. The desire among many public bodies to continue remote meetings or remote attendance was and remains high. (See <http://www.crawfordcountyavalanche.com/news/board-requests-meeting-flexibility-state-pandemic-continues>; <https://www.mlive.com/news/saginaw-bay-city/2022/01/bay-city-urging-state-leaders-to-allow-for-remote-meetings-again-as-covid-19-cases-rise.html>)

With the beginning of 2022, all public meetings (other than meetings of those public bodies explicitly permitted by the act) must be held in-person. In addition, the **ONLY remaining exceptions for remote attendance by a member of a public body are:**

- Members of public bodies who are members of the military on duty,
- Qualification under the ADA Title I or II for remote attendance as a reasonable accommodation for a qualifying disability see MI Atty Gen Op 7318, 2/4/2022 [Opinion 7318 - ADA \(michigan.gov\)](#) (In order

to obtain accommodations due to a disability, a board member or member of the public would have to request an accommodation. The library and the board should each have policies and procedures in place to receive and provide applicable accommodations under [Titles I](#) and [Title II](#) of the ADA.

As of the second half of 2022, there are several bills pending in the Michigan legislature that would amend the OMA to again permit remote attendance at public meetings by members of public bodies. The proposed bills run the gamut from a complete reversal of the 2020 prohibitions to amendments that would provide limited ability for some public bodies to meet remotely. One bill, [HB 5689](#) would specifically permit library boards to meet remotely.

Due to political differences on this issue between several legislators, it is unlikely that very broad (such as a complete reversal of the prohibition) or targeted (like the library bill) amendments will pass. MLA and other library and municipal advocates are working with legislators to come up with a compromise that would loosen the restriction on remote attendance.

For now, however, the OMA is clear – no remote attendance for board members unless they fit within the two exemptions explained above.

Additional Resources

Michigan Attorney General, [Michigan Open Meetings Act Handbook](#)

Michigan Municipal League, [OMA/FOIA](#) (Note: not all of the materials on this page are post-COVID materials.)

ADA.Gov, [Technical Assistance Materials for Title II](#) (State and Local Government Services) Compliance

To track ongoing legislative progress, see the Michigan Library Association advocacy pages, especially their [bill tracking chart](#).

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