COMPLYING WITH MARYLAND’S OPEN MEETINGS ACT

SEPTEMBER 2016
OBJECTIVES

- What is the Open Meetings Act?
  - Annotated Code of MD - General Provisions Article –Title 3
  - why should a public body comply?

- What does it require of my public body?
  - what activities does it govern? (or not)
  - what actions does it require before a meeting?
  - what actions does it require during a meeting?
  - what actions does it require after a meeting?
THE LEGISLATURE’S POLICY STATEMENT:

It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

(1) public business be performed in an open and public manner; and

(2) citizens be allowed to observe:

(i) the performance of public officials; and

(ii) the deliberations and decisions that the making of public policy involves.

GP § 3-102
DO THESE 4 THINGS AND YOU WILL COMPLY WITH THE OPEN MEETINGS ACT:

1. Provide advance public notice
2. Hold meetings open to the public
3. Prepare minutes
4. Designate a trainee(s)
ACTIVITIES GOVERNED (1): THOSE OF A “PUBLIC BODY” -§3-101(H) & THE PUBLIC BODY’S “MEETINGS” -§§ 3-101(G), (K), 3-103

- Public Body
  - Multi-member Body (Board, Commission or Committee)
  - Formal creation (usually) (State Statute, MD Constitution, County Charter, ordinance, Resolution)

- Meetings
  - Conducting public business (considers/transacts public business)
  - Considered a meeting if simultaneous interaction (conference calls etc.)
  - Social gatherings, retreats that discuss public business is a meeting under OMA
  - Not a meeting under OMA if it is merely a social gathering where NO public business is discussed
ACTIVITIES GOVERNED (2):
TOPICS OF DISCUSSION ("FUNCTIONS") DEFINED BY THE
ACT-§§ 3-101 DEFINITIONS; 3-103 SCOPE & ADMINISTRATIVE
(FORMERLY EXECUTIVE) FUNCTION EXCLUSION §§ 3-101 (B), 3-104

- **Scope**
  - **Covered:** Advisory, legislative, quasi-legislative functions, all as specifically defined by the Act.
  - **Excluded:** Administrative (formerly executive), judicial, quasi-judicial functions
  - **Expressly included:** discussions concerning
    » Granting a license or permit
    » Many types of land-use matters

- **Administrative Function Exclusion**
  - Topic cannot fall within any other defined function
  - Public body must be applying existing law or policy NOT creating law or policy
  - Meeting might be subject to reporting requirement
ACTIONS BEFORE A MEETING:
PUBLIC NOTICE OF MEETINGS - § 3-302

- **Timing**
- Reasonably in advance
- Last-minute meetings- special efforts

- **Content**
- Date, time, place, open/closed status

- **Agenda**

- **Method**- how is notice provided

- **Consistency**
Location

Public participation (entitled to attend)

Cameras/tape recorders – model rules

Documents and communications referred to during meeting – access

Audible discussion
ACTIONS DURING A MEETING (2) 
CLOSING A MEETING - §§ 3-305, 3-306 (C), 3-104

- Identifying a specific exception
- Exceptions are strictly construed
- Completing a meaningful written “closing statement” – the Chair’s duty to prepare or sign
- Holding a public vote
- Staying within an exception
- Model closing statement on Attorney General's website
ACTIONS AFTER MEETING (1):
MEANINGFUL MINUTES -§3-306

- Required timeliness; content
- Open-session minutes: Available on request, without redaction
- Tape recording ≠ minutes (must be written unless 2011 amendment)
- Closed-session minutes: Sealed, with publicly available summary in minutes of next open session (requirement extends to certain administrative function sessions not open to public)
- 2011 amendment: use of live and streaming audio or video for open-session minutes
ACTIONS AFTER A MEETING (2): RECORD RETENTION-§§3-302, 3-306

- Notice (a screenshot of the online notice should be printed out with the date of posting) (1 year)
- Minutes and tape recording (1 year)
- Sealed minutes (1 year)
- Closing statements (likely 1 year)
- Archiving requirements –other laws might apply
- Access: open to inspection but must be requested
Designation by “each public body” of a member, officer, or employee to “receive training” (can be more than one member)

For instructions on how to comply, see http://www.oag.state.md.us/Opengov/Openmeetings/training.htm

Public bodies should send the designee’s name to the Compliance Board pursuant to the instructions

Public bodies should retain their own proof that the training was received and should only send a copy of proof to the Compliance Board
Common causes of violations (unplanned meetings, member turnover, member desire to control information, lack of knowledge about the Act’s requirements, lack of agenda planning)

Steps to avoid complaints (follow the 4 steps; identify the person responsible for various compliance tasks; include tasks in job descriptions; adopt schedule for training; plan meeting topics; orient new members)

Responding to complaints (see procedures posted online)