

## I. INTRODUCTION

The Open Public Meetings Act, popularly known as the “Sunshine Law,” was approved on October 21, 1975, and became effective on January 19, 1976 (PL 1975, ch. 231). The Sunshine Law was enacted in response to growing public cynicism about politics and distrust of government in the wake of the Vietnam War and Watergate. The intent of the Sunshine Law was to have government meetings conducted in the open, to the greatest extent possible, consistent with the public interest and without invading individual privacy. In the discussion that follows first the actual statute is given (single spaced) and then a plain English narrative guide to that particular section of statute (double spaced). This guide is not intended to be a substitute for competent legal advice. If you have any questions concerning the application of the Sunshine Law, seek out the counsel of an experienced municipal attorney. This revised publication includes a note on the public participation amendment to the Open Public Meetings Act, which passed in 2002. We would like to acknowledge:

**The Late Michael A. Pane, Esq.**, who authored the League’s original publication in 1996. Mr. Pane’s original text is still the foundation of this publication.

**Mr. Albert Wolfe**, formerly of the League and now the State Department of Community Affairs, co-authored and edited the original publication.

We hope you find this publication of assistance

*Edward Purcell Esq.*

Edward Purcell, Esq.  
Associate Counsel- Staff Attorney



William G. Dressel, Jr.  
Executive Director

**OPEN PUBLIC MEETINGS ACT  
TABLE OF CONTENTS**

**Introduction** ..... i

**I. Definition of Public Body, Public Meeting**..... 3

**II. Adequate Notice**..... 6

**III. Closed Sessions** ..... 9

**IV. Minutes** ..... 14

**V. Violations, Penalties and Remedies** ..... 14

**VI. Schedule or Regular Meetings** ..... 16

**Taking the Menace Out of Meetings** ..... 18  
By Carole Glade  
NJLM Constituent Relations Consultant

**Civility at Council Meetings – Seven Rules for the Gatekeeper**..... 20  
By Jason Holt  
East Orange Corporation Counsel  
NJLM Associate Counsel

## I. DEFINITION OF PUBLIC BODY, PUBLIC MEETING

### N.J.S.A. 10:4-7: Legislative findings and declaration

The Legislature finds and declares that the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society, and hereby declares it to be the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

The Legislature further declares it to be the public policy of this State to insure that the aforesaid rights are implemented pursuant to the provisions of this act so that no confusion, misconstructions or misinterpretations may thwart the purposes hereof.

The Legislature, therefore, declares that it is the understanding and the intention of the Legislature that in order to be covered by the provisions of this act a public body must be organized by law and be collectively empowered as a multi-member voting body to spend public funds or affect persons' rights; that, therefore, informal or purely advisory bodies with no effective authority are not covered, nor are groupings composed of a public official with subordinates or advisors, who are not empowered to act by vote such as a mayor or the Governor meeting with department heads or cabinet members, that specific exemptions are provided for the Judiciary, parole bodies, the State Commission of Investigation, the Apportionment Commission and political party organization; that to be covered by the provisions of this act a meeting must be open to all the public

body's members, and the members present must intend to discuss or act on the public body's business; and therefore, typical partisan caucus meetings and chance encounters of members of public bodies are neither covered by the provisions of this act, nor are they intended to be so covered.

**N.J.S.A. 10:4-8: Definitions**

**As used in this act:**

**a. "Public body" means a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds including the Legislature, but does not mean or include the judicial branch of the government, any grand or petit jury, any parole board or any agency or body acting in a parole capacity, the State Commission of Investigation, the Apportionment Commission established under Article IV, Section III, of the Constitution, or any political party committee organized under Title 19 of the Revised Statutes.**

**b. "Meeting" means and includes any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.**

**c. "Public business" means and includes all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business.**

- A. The Open Public Meetings Act (OPMA) creates a strong presumption of access, and should be liberally construed. However, not all meetings are public meetings.
- B. In order to be covered by OPMA, the public body in question must:
- Consist of more than one person; AND
    - Be empowered by law to spend public funds; OR
    - Be empowered by law to affect a person's rights.
- C. The following groups or meetings of individuals are NOT considered "public bodies" and thus are not covered by OPMA:
- Informal or advisory bodies
  - Meetings between
    - a public official AND;
    - subordinates who are not empowered to act by vote
  - Political party organizations
  - Meetings not open to all members of the public body
  - Meetings where discussion or action on public business will NOT take place
  - Typical partisan caucus meetings
  - Chance encounters of members of a public body
- D. The following situations are NOT considered "meetings" under OPMA
- Meetings attended by less than an effective majority of the members of the public body; this is usually a quorum
  - An ad hoc group consisting of several members of various public bodies without any power to vote
  - Informal polling of council members by township attorney, so long as there is not discussion or action as a unit
- E. Meeting includes meetings taking place through "communications equipment.
- This includes telephones, cell phones, text messages, emails, and social media, among others. If a quorum of the public body uses any communications equipment to discuss or decide upon public business, a meeting has likely occurred in violation of OPMA
- F. A meeting between newly elected officials who have not yet taken office may be considered a meeting under OPMA, if they meet with the intent to discuss public business

## II. ADEQUATE NOTICE

### N.J.S.A. 10:4-8: Definitions (continued)

d. "Adequate notice" means written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be (1) prominently posted in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegraphed, or hand delivered to at least two newspapers which newspapers shall be designated by the public body to receive such notices because they have the greatest likelihood of informing the public within the area of jurisdiction of the public body of such meetings, one of which shall be the official newspaper, where any such has been designated by the public body or if the public body has failed to so designate, where any has been designated by the governing body of the political subdivision whose geographic boundaries are coextensive with that of the public body and (3) filed with the clerk of the municipality when the public body's geographic boundaries are coextensive with that of a single municipality, with the clerk of the county when the public body's geographic boundaries are coextensive with that of a single county, and with the Secretary of State if the public body has Statewide jurisdiction. For any other public body the filing shall be with the clerk or chief administrative officer of such other public body and each municipal or county clerk of each municipality or county encompassed within the jurisdiction of such public body. Where annual notice or revisions thereof in compliance with section 13 of this act set forth the location of any meeting, no further notice shall be required for such meeting.

N.J.S.A. 10:4-9. Meeting of public body; adequate notice to public; necessity; exceptions

**10:4-9. Meeting of public body; adequate notice to public; necessity; exceptions**

**a. Except as provided by subsection b. of this section, or for any meeting limited only to consideration of items listed in section 7. b. no public body shall hold a meeting unless adequate notice thereof has been provided to the public.**

**b. Upon the affirmative vote of three quarters of the members present a public body may hold a meeting notwithstanding the failure to provide adequate notice if:**

**(1) such meeting is required in order to deal with matters of such urgency and importance that a delay for the purpose of providing adequate notice would be likely to result in substantial harm to the public interest; and**

**(2) the meeting is limited to discussion of and acting with respect to such matters of urgency and importance; and**

**(3) notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice of the same in the public place described in section 3. d. above, and also by notifying the two newspapers described in section 3. d. by telephone, telegram, or by delivering a written notice of same to such newspapers; and**

**(4) either (a) the public body could not reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided; or (b) although the public body could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.**

**N.J.S.A. 10:4-9.1. Notice of public meetings through the Internet**

**In addition to the notice requirements of the “Open Public Meetings Act,” P.L.1975, c. 231 (C.10:4-6 et seq.), a public body may provide electronic notice of any meeting of the public body through the Internet.**

As used in this section, “electronic notice” means advance notice available to the public via electronic transmission of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken at such meeting.

As used in this section, “Internet” means the international computer network of both federal and non-federal interoperable packet switched data networks.

**N.J.S.A. 10:4-9.2. Electronic notice not a substitute for adequate notice requirements**

Nothing in this act shall be construed as affecting or superseding the adequate notice requirements that are imposed by the “Open Public Meetings Act,” P.L.1975, c. 231 (C.10:4-6 et seq.) and no electronic notice issued pursuant to this act shall be deemed to substitute for, or be considered in lieu of, such adequate notice.

**N.J.S.A. 10:4-10. Statement in minutes of meeting on adequate notice**

At the commencement of every meeting of a public body the person presiding shall announce publicly, and shall cause to be entered in the minutes of the meeting, an accurate statement to the effect:

a. that adequate notice of the meeting has been provided, specifying the time, place, and manner in which such notice was provided; or

b. that adequate notice was not provided, in which case such announcement shall state (1) the nature of the urgency and importance referred to in subsection 4. b. (1) and the nature of the substantial harm to the public interest likely to result from a delay in the holding of the meeting; (2) that the meeting will be limited to discussion of and acting with respect to such matters of urgency and importance; (3) the time, place, and manner in which notice of the meeting was provided; and



**(4) either (a) that the need for such meeting could not reasonably have been foreseen at a time when adequate notice could have been provided, in which event, such announcement shall specify the reason why such need could not reasonably have been foreseen; or (b) that such need could reasonably have been foreseen at a time when adequate notice could have been provided, but such notice was not provided, in which event the announcement shall specify the reason why adequate notice was not provided.**

- A. Decisions reached in public meetings where there has not been adequate notice may not be enforceable. However, notice is only required in situations where annual notice has not been given
- B. Timely delivery of notice to newspapers is sufficient; the public body need not ensure that the newspapers actually print the notice 48 hours prior to a meeting
- C. Notice only requires a list of items to be discussed or voted upon during a meeting; it need not include a list of supportive or explanatory materials or reports
- D. Once a public body gives notice and lists an agenda, no further notice is required if the agenda is changed in any way, so long as:
  - the original agenda included all business to be discussed or acted upon the extent known at the time, AND
  - so long as the public body did not act to mislead the public
- E. A meeting may not be “recessed” nor “adjourned” and then resumed without complying with all notice requirements for the new meeting
- F. The need for an emergency meeting is strictly construed; the need for a meeting to save over half a million dollars was not considered an emergency

### **III. CLOSED SESSIONS**

**N.J.S.A. 10:4-11. Failure to invite portion of members to circumvent provisions of act; prohibition**

**No person or public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this act.**

**N.J.S.A. 10:4-12. Meetings open to public; exclusion of public; subject matter of discussion**

**a. Except as provided by subsection b. of this section all meetings of public bodies shall be open to the public at all times. Nothing in this act shall be construed to limit the discretion of a public body to permit, prohibit or regulate the active participation of the public at any meeting, except that a municipal governing body and a board of education shall be required to set aside a portion of every meeting of the municipal governing body or board of education, the length of the portion to be determined by the municipal governing body or board of education, for public comment on any governmental or school district issue that a member of the public feels may be of concern to the residents of the municipality or school district.**

**b. A public body may exclude the public only from that portion of a meeting at which the public body discusses:**

**(1) Any matter which, by express provision of federal law or State statute or rule of court shall be rendered confidential or excluded from the provisions of subsection a. of this section.**

**(2) Any matter in which the release of information would impair a right to receive funds from the Government of the United States.**

**(3) Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or program, including but not limited to information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly.**

**(4) Any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body.**

**(5) Any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.**

**(6) Any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law.**

**(7) Any pending or anticipated litigation or contract negotiation other than in subsection b. (4) herein in which the public body is, or may become a party.**

**Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.**

**(8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.**

**(9) Any deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or**

**the suspension or loss of a license or permit belonging to the responding party as a result of an act or omission for which the responding party bears responsibility.**

**N.J.S.A. 10:4-13. Exclusion of public; resolution; adoption; contents**

**No public body shall exclude the public from any meeting to discuss any matter described in subsection 7. b. until the public body shall first adopt a resolution, at a meeting to which the public shall be admitted:**

**a. Stating the general nature of the subject to be discussed; and**

**b. Stating as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public.**

A. Exemptions permitting closed sessions are strictly construed

B. So long as a public body permits comment on any topic whatsoever during the meeting, they may limit the time set aside for comment as well as the time permitted to each speaker

- The chair of the meeting, whether the Council President, Mayor, or other official, is vested with the power to order the removal of an individual who is disrupting a meeting, either by not keeping within their allotted time or by attempting to speak outside the public comment period. Adequate notice should be given as to the consequences of continued disruption before the chair orders them to be removed

C. A public body is permitted to “discuss” public business in closed session; this means that a public body may deliberate and debate an issue, but may NOT act. Actions and votes must take place in public. However, the public body is NOT required to explain the reasons for their action after a lawful closed session, as this would circumvent the entire purpose of permitting a close session.

D. If an issue is does not fall within an exception and should be discussed in public, a public body may NOT discuss the issue in closed session or in private and then attempt to “cure” the OPMA violation by explaining the arguments that took place in public

E. If a public body meets in private or closed session to discuss a topic that should have been open, they may remedy the violation by holding a public meeting and discussing fully and/or acting on the subject. Again, they may NOT simply report what was said in private, but MUST begin the debate anew

- F. A public body may NOT structure its meetings so that the public is essentially uninformed as to when the public session of a meeting will begin. For example, a public body may not continually open a public meeting, then immediately go into a closed session of indeterminate length, and only after that once again open the meeting to the public
- G. Public safety includes those topics necessary to protect life or health. It does not include, for example, discussions on the organization of the First Aid Squad.
- H. Employment and personnel matters
- Discussions of employment and personnel matters include, but are not limited to, discussions on the hiring, firing, qualifications, performance, merit, and shortcomings of employees
  - Employees may request that the public body discuss their specific situation in public. This requires adequate notice to be given directly to the effected employee (commonly called a “Rice” notice.)
  - If a public body is filling a position normally filled by an elected official under the Municipal Vacancy Law or any other law, the discussions may NOT be held in private, but must be public.
  - This is not an evidentiary hearing allowing the affected employee to present evidence or cross examine
  - There is no case law on whether an affected employee may choose to have their situation discussed in closed session but to also attend that closed session. Presumably an affected employee would be permitted to “have their cake and eat it too” by attending a closed session
- G. Pending or anticipated litigation
- If the pending or anticipated litigation against the town was filed by a member of the public body, that member of the public body may be excluded from any executive session where that is discussed
  - The public body cannot go into closed session by relying on an assertion that any action taken is likely to result in litigation
- H. The resolution to enter closed session need not be in writing
- The resolution must include as much detail as possible. It may not state, for example, “...to discuss any matter exempted by OPMA” or “...to discuss matters falling within attorney-client privilege.”
  - The resolution must be passed at a public meeting for which notice has been given

## IV. MINUTES

### **N.J.S.A. 10:4-14. Minutes of meetings; availability to public**

**Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act.**

- A. Handwritten notes to be used later in preparation of the minutes are NOT public documents under OPRA nor are they the minutes under OPMA
- B. **Minutes must be taken at all times, even during closed sessions.** The minutes of closed sessions should be redacted as needed, but must be released if requested. Only extraordinary circumstances permit total suppression of the minutes
- C. No hard and fast definition of “promptly available” exists. In one case, a court determined that promptly available meant two weeks following any regular meeting
- D. “Reasonably comprehensible” means that the minutes must show what took place at a meeting and what final action was taken. It does NOT mean a verbatim record.
- E. Lack of minutes for a particular meeting will most likely NOT void the action taken, so long as there was no bad faith involved
- F. Minutes are the only required records of public meetings. OPMA does NOT require that any meeting be audio or video recorded

## V. VIOLATIONS, PENALTIES, AND REMEDIES

### **N.J.S.A. 10:4-15. Proceeding in lieu of prerogative writ to void action at nonconforming meeting; parties; limitation; corrective or remedial action**

**a. Any action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court, which proceeding may be brought by any person within 45 days after the action sought to be voided has been made public; provided, however, that a public body may take corrective or remedial action by acting de novo at a public meeting held in conformity with this act and other**

applicable law regarding any action which may otherwise be voidable pursuant to this section; and provided further that any action for which advance published notice of at least 48 hours is provided as required by law shall not be voidable solely for failure to conform with any notice required in this act.

b. Any party, including any member of the public, may institute a proceeding in lieu of prerogative writ in the Superior Court to challenge any action taken by a public body on the grounds that such action is void for the reasons stated in subsection a. of this section, and if the court shall find that the action was taken at a meeting which does not conform to the provisions of this act, the court shall declare such action void.

**N.J.S.A. 10:4-16. Injunctive orders or other remedies to insure compliance**

Any person, including a member of the public, may apply to the Superior Court for injunctive orders or other remedies to insure compliance with the provisions of this act, and the court shall issue such orders and provide such remedies as shall be necessary to insure compliance with the provisions of this act.

**N.J.S.A. 10:4-17. Violations; penalty; statement at meeting of nonconformance; inclusion in minutes**

Any person who knowingly violates any of the foregoing sections of this act shall be fined \$100.00 for the first offense and no less than \$100.00 nor more than \$500.00 for any subsequent offense, recoverable by the State by a summary proceeding under “the penalty enforcement law” (N.J.S. 2A:58-1 et seq.). The Superior Court shall have jurisdiction to enforce said penalty upon complaint of the Attorney General or the county prosecutor. Whenever a member of a public body believes that a meeting of such body is being held in violation of the provisions of this act, he shall immediately state this at the meeting together with specific reasons for his belief which shall be recorded in the minutes of that meeting. Whenever such a member's objections to the holding of such meeting are overruled by the majority of those present, such a member may continue to

**participate at such meeting without penalty provided he has complied with the duties imposed upon him by this section.**

- A. Any person whatsoever may sue to void action taken that does not comport with OPMA, unless remedial action is taken.
- B. Remedial action means beginning the process anew and following all provisions of OPMA
- C. The “last proviso clause,” found at N.J.S.A. 10:4-15(a), which states that action taken where 48 hours of notice was given shall not be voidable solely for not following the notice requires of OPMA, was created to prevent the voiding of actions at a public meeting where some other notice was given. In other words, if notice is given for some other reason than OPMA, OPMA is usually satisfied

## **VI. SCHEDULE OF REGULAR MEETINGS, SEVERABILITY, LIBERAL CONSTRUCTION**

### **N.J.S.A. 10:4-18. Schedule of regular meetings of public body; publicity; revision; procedure**

**At least once each year, within 7 days following the annual organization or reorganization meeting of a public body, or if there be no such organization or reorganization meeting in the year, then by not later than January 10 of such year, every public body shall post and maintain posted throughout the year in the place described in subsection 3. d. (1), mail to the newspapers described in subsection 3. d. (2), submit to the persons described in subsection 3. d. (3), for the purpose of public inspection a schedule of the regular meetings of the public body to be held during the succeeding year. Such schedule shall contain the location of each meeting to the extent it is known, and the time and date of each meeting. In the event that such schedule is thereafter revised, the public body, within 7 days following such revision, shall post, mail and submit such revision in the manner described above.**

### **N.J.S.A. 10:4-19. Requests for notices of meetings; annual renewal**

**Any person may request that a public body mail to him copies of any regular meeting schedule or revision described in section 13 of this act and any advance written notice described in subsection 3. d. of this act of any regular, special or rescheduled meeting of such body, and upon prepayment by such person of a**



reasonable sum, if any has been fixed by resolution of the public body to cover the costs of providing such notice, the public body shall mail to such person written advance notice of all of its meetings within the time prescribed by subsection 3. d. herein, subject only to the exceptions set forth in subsection 4. b. herein. Such resolution may provide that notice requested by the news media shall be mailed to such news media free of charge. All requests for notices made under this section shall terminate at midnight on December 31 of each year, but shall be subject to renewal upon a new request to the public body.

**N.J.S.A. 10:4-20. Severability**

If any section, subsection, clause, sentence, paragraph, or part of this act or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act.

**N.J.S.A. 10:4-21. Liberal construction**

This act shall be liberally construed in order to accomplish its purpose and the public policy of this State as set forth in section 2.

## Taking the Menace Out of Meetings

By Carole Glade  
NJLM Constituent Relations Consultant  
Consumer Dynamics International

Ever wonder what happened to civility? Meetings and public forums have a way of bringing out the best and also the worst in human behavior. Given the opportunity to address emergencies, human service needs and crises, elected officials and public participants can accomplish great things in a cooperative fashion. But more and more, public service professionals are confronted with rudeness, insolence, disrespect, and even violence from other officials and the public.

Municipal leaders face the challenge of maintaining order at government meeting while allowing and encouraging the freedom of discourse, debate and dissent. Struggling for civility, elected and appointed officials must find ways to complete missions and meet goals, while allowing strong opinions, public discourse, passionate messages, and meaningful debate to continue.

To do this, one must first explore the triggers to unruly behavior and then take action to reduce and stem this growing tide.

1. **TIMING**– The human body has a limit to the amount of stress it can take each day. Most people holding elected and appointed office are employed full time or have full time family responsibilities. After a grueling day at work, sitting through a 5 hour Council, Committee, or Board meeting is difficult. How long are your meetings and at what time are they held? Look at why meetings take so long and end in the middle of the night. Structure your meetings to deal first with priorities. Research and preparation for meetings take time, so be sure all members have information in advance. Start and end on time. This forces people to make decisions. Take regular breaks during meetings. This allows time to let a stressful situation settle and give people a change of pace. Stick to the agenda and don't divert into unrelated issues.
2. **INFORMATION LEVELS** – Both the public and elected or appointed officials come to meetings with preconceived ideas and correct or incorrect assumptions and information as to what will happen, how discussions will transpire, and how decisions will be made. Assumptions and misinformation are often the roots of contention. State the purpose of the meeting at the beginning and reinforce this message throughout. Clearly specify the role of the group and the purpose of the meeting (i.e. to review zoning applications, review and approve the recreation schedule, gather public opinions, etc) and if and when the public will be allowed to speak. Review required procedures such as signing a list to speak. Starting the discussion for each decision to be made with a review of the issue, prior decisions, information gathered, and cause of or reason for the discussion, will help provide accurate information.
3. **EXPECTATIONS** – What people expect from others is often determined by prior experience, what they read in the local paper and what they hear from neighbors or friends. When issues affect a person's home, family, or community, responses and reactions are at a personal level. Expectations of what elected and public members know, understand, comprehend or feel can be skewed from reality. By understanding that there is often an underlying (and usually undeserved) level of suspicion and mistrust, elected officials can counter these feelings with openness and forthrightness. Expectations of behavior must also be established, practiced, and reinforced by the leadership and participants.

4. **LEADERSHIP** – Leading the meeting takes skill and practice. The leader sets the tone for the communications and is responsible for getting things done in a timely and responsible manner. Leadership is not easy and must be learned. Keep in mind that when you give respect you'll get respect; when you listen, others will listen; when you are focused, others will be focused. Develop and practice meeting leadership strategies. Stick to the agenda. During discussions, seek input from all members, especially those who have been quiet or reticent to speak. Let the group know when a decision is required and bring the discussion to closure. Don't allow one person to dominate or monopolize the discussion. Hold your members accountable for doing their preparation and follow-up. If work is not done, move forward. Keep the group focused on the task and not the personalities. Talk with members ahead of time to get to know their communication styles and their expectations. Summarize assignments, future meeting days, and key decisions to be made at the next meeting. Starting and ending on time shows respect and professionalism. When the group knows 6 issues must be covered, they won't as easily get hung up at the third.
5. **LISTENING** – The human mind races ahead to what we want to say, rather than what we hear. Listening is the key to understanding. Too often, one feels pressured to cut discussion so that messages are not completed, leading to misinformation and misunderstandings. Elected officials can appear to shut out others' views, resulting in increased emotional flare-ups and challenges. Listening takes time and patience and requires that the listener ask questions for clarity. If issues cannot be adequately addressed during a meeting or session, ask the person to meet with you after the meeting or at a later date to review the problem or concern in detail. When you know the underlying issue, it can be addressed openly with mutual respect.

Democracy is built on discussions, disagreement, discourse, and compromise. Municipal officials can and must find ways to take the menace out of meetings to keep government working effectively. Don't let unruly behavior take its toll on the spirit, the body, of your community.

## **Civility at Council Meetings – Seven Rules for the Gatekeepers**

By: Jason Holt  
East Orange Corporation Counsel  
League Associate Counsel

Those of us who are charged with the job of making sure that the governing body has convened a meeting in compliance with the law and are further tasked with ensuring that public business is allowed to take place during the meeting are gatekeepers. Gatekeepers stand up under the stress of untoward circumstances, public criticism, unruly groups, protestors and even violence. They buffer your colleagues, elected officials or the town itself. Their title doesn't matter; it could be Municipal Clerk, Council President, Municipal Attorney, Municipal Administrator or support staff. But if you have experienced and survived any of those exasperating circumstances which have the potential to kick the municipal family into a frenzy, you understand the following maxim: It's not always what happens at a meeting, but what doesn't happen that makes a good meeting. Gatekeepers are truly frontline personnel in the mission to operate an effective and efficient government.

Each meeting of the governing body should be considered sacrosanct from the stand point of conducting the affairs of the municipality. However, often times the sanctity of the meeting is challenged. The challenge may come from a municipal council gadfly, a vendor seeking a contract, a disgruntled employee or even from within the governing body itself. The worst thing to happen is for your meeting to be disrupted to such an extent that the flow of council matters is interrupted. Gatekeepers are given the job of making sure that the meeting does not spin out of control. If you understand and follow the seven golden rules in this article, you will be in a much better position to ensure that the governing body conducts its affairs properly. Let's briefly examine each rule.

### The Seven Golden Rules of Keeping Order At A Meeting of the Municipal Governing Body

#### **Rule 1 : Understand Your Role As Gatekeeper**

Municipal clerks, attorneys, administrators and support staff are not politicians. You are technicians tasked with a professional job. Don't be confused. You do not have a vote even when you want one. This is true regardless of whether the elected officials from your standpoint are on the wrong side of an issue. Remember, the elected official who presides over a meeting is always at his or her best when focused on the business of the meeting. Give them every opportunity to do so.

#### **Rule 2: Be knowledgeable about the fundamentals of the law which include your municipal Charter and The Senator Byron N. Baer Open Public Meetings Act.1**

There is nothing more embarrassing than realizing after your governing body's legislative actions have been challenged that you haven't covered all the bases. An inadvertent mistake often comes to light when a meeting of the governing body is contested within the statutory time period by an "Action In Lieu of Prerogative Writ".<sup>2</sup> Perhaps you incorrectly advertised for a meeting. The meeting is set aside by the Court and now it has to be redone. Understand the fundamentals of the law and work as a team to avoid mistakes.

#### **Rule 3: Respect and Understand the Meeting Process**

Don't leave common sense behind. Keep your mindset simple. The purpose of the meeting is to

transact public business. Everything that helps that happen is good, everything else is a distraction.

**Rule 4: Embrace the Diversity of Personalities of Council Members and Municipal Officials Who Participate In the Meeting—Know Your Municipal Team**

If you understand who you are working with it makes the job easier. You don't have to agree but respecting a colleague's thought process or their idiosyncrasies adds to the plus column. One person alone can not run a meeting. The most productive municipal governments understand that it's the team not an individual that pulls the wagon the easiest.

**Rule 5: Familiarize Yourself With Hot Button Issues In Your Municipality and Keep Your Members and Municipal Attorney Informed**

Every town has its own unique issues. Knowing what they are and when those issues are coming up at meeting helps in the planning process. It could be as simple as printing extra meeting agendas for the larger than normal influx of citizens who come out to protest a revaluation of properties. The extra agendas may take away a discussion issue on the floor and shave time off a difficult meeting. Everyone likes to be prepared and for those issues that only you see coming, don't keep them to yourself. Inform your team.

**Rule 6: Follow the Law of Detachment—It's Not Personal, Just Business"**

It would be great if highly charged emotional issues would just go away. These issues usually don't and when they make it to the floor of the meeting of the municipal governing body it can be chaotic. Don't add to the chaos by being swept away with them. Stay emotionally detached and remember that the purpose of the meeting is to transact business and you are there to facilitate that purpose.

**Rule 7: Know When to Call For Help**

Once in a while fine distinctions have to be made in determining how to address disrespectful conduct of individuals at a public meeting. The official presiding over the meeting has the authority to expel from the chambers or compel the arrest of unruly individuals. Disrupting a meeting is a disorderly person's offense punishable by fine and incarceration of up to six months in jail.<sup>3</sup> The standard used for evaluating this type of conduct is typically considered a balancing test. It should be applied before taking any action which may abridge the constitutional rights of a citizen. This test balances the right of government to conduct orderly proceedings versus the right of individuals to free speech and assembly. You should discuss with your mayor, police department, chair of the governing body and municipal attorney as to when this authority should be exercised. However, don't be afraid to call for help when necessary.

In conclusion, gatekeepers are typically not feted for the professional acumen that helps keep municipalities on track and allows public business to be conducted. However, if you try conducting a meeting without them, most assuredly the train will run off the track.

<sup>1</sup> Each municipality has a charter upon which its municipal code is based. The charter sets the standard from which all acts of the municipality are authorized. The official title of the "Sunshine Law" or the "Open Public Meetings Act" is "The Senator Byron N. Baer Open Public Meetings Act" at N.J.S.A. 10:4-6.

<sup>2</sup> N.J.S.A. 10:4-15 provides that any action taken by a public body at a meeting is voidable in

Superior Court if Action In Lieu of Prerogative Writ is filed within forty five days. The governing body may take remedial action to correct deficiencies at another public meeting.

3 N.J.S.A. 2C:33-8 provides for a three prong test for conviction under the statute. The elements are: 1. Must be a lawful meeting; 2. Culpability-purpose of conduct was to disrupt or prevent meeting; 3. Actor must have obstructed or interfered with meeting physically.

## FAQS

Q. Are all political caucus meetings exempt from the law?

A. Most are. There are cases, such as when a newly elected governing body which has not been sworn in meets to discuss appointments and then proceeds to give notice to incumbents that they will not be reappointed, where the courts have held that even though the members were not yet sworn in, they were subject to the Act because they were actually seeking to do public business at the caucus. The best advice is to be sure if a caucus is being held, that political leaders who are not members of the governing body are in attendance, and that the focus of the meeting is on the political “spin” of whatever are being discussed.

Q. What is a chance social encounter?

A. Typically, if several members of a public body meet at a community function which is not being held by the governing body specifically, the fact that a majority of the body are at the meeting or event does not cause it to become an illegal meeting of the group. Even if they expect that some of their colleagues will be at a meeting, as long as they do not go there with the intent of holding a meeting with them to discuss public business, they are probably exempt from the act. On the other hand, if after every meeting a majority of the members of a board or governing body all go out for a cup of coffee together and during the course of their gathering continue to discuss the business of the public, sooner or later someone may seek to say that they are meeting illegally. Thus, while they cannot avoid some discussion of what has just occurred at a meeting, it should be as limited as possible, and general discussion as to future actions should be avoided.

Q. How strictly do the courts interpret the exceptions to the law?

A. The courts make every effort to uphold the spirit as well as the letter of the Open Public Meetings Act. For example, on one occasion when a county sought to have caucus meetings of each party on the board of freeholders and then have county officials meet with each “caucus” so that the two caucuses could make decisions in private, the court held that this was a clear attempt to get around the law and, therefore, illegal.

Q. What kind of meeting with advisory boards is exempt from the Act?

A. Over the years the courts have had the tendency to allow governing body’s significant flexibility in terms of being able to meet with advisors off the record. However, if there is a serious issue in question, it is far better to exclude the public under the specific provisions outlined below,

which allow a municipal governing body to go into closed session. Generally, the governing body is best off trying to restrict its closed meetings to those concerning a subject exempt from the Act. This is the safest course legally and makes the most sense in terms in spirit of the act and the maintenance of public confidence.

Q - How far does the definition of ‘public body’ go?

A. The Supreme Court of New Jersey has held that a charter study commission is a public body, because they have the power to put onto the ballot a referendum question to decide a municipality’s form of government. A private nonprofit corporation expending public funds to redevelop public land also has been held to fit the definition. The best rule is, when in doubt, assume the act applies. You can be reasonably sure a court will take a strict approach in any case of doubt.

Q. Must all participants be physically present in a room to hold a meeting?

A. Although this may be preferable, the language in the definition of “meeting” clearly includes meetings held by means of communication equipment, and, in fact, some state boards conduct such meetings because of the difficulty in assembling groups of busy people in Trenton. As long as all have heard the discussion, there is no reason why the participant who is out of town on business, but attached via the “umbilical cord” of a telephone line, cannot participate in and vote upon a matter during a meeting back home.

Although there has not yet been legal precedent on the subject in New Jersey, in other states courts and attorney general opinions have recognized that emails can also pose Open Public Meetings issues. If a quorum of the governing body, enough to make a decision or to act, is discussing a municipal matter via email, they may be found to be holding a public meeting without properly noticing or inviting the public. Even if no action is taken pursuant to the emails, and the matter is later acted upon at a properly noticed open public meeting, the formal action can be viewed as something that was improperly decided in private and “rubber-stamped” in public. It is important to remember that the Open Public Meetings Act can be violated even if its requirements are literally met, but its policy of ensuring that government acts openly is circumvented by such “secret” preparations.

Q. Must the municipality guarantee publication of a meeting notice?

A. No. The municipality’s only obligation in terms of newspapers is to make sure that the notices are delivered more than 48 hours before the meeting, and that the newspaper it uses has a publication schedule permitting timely publication of the notice if the newspaper chooses to publish it.

Q. What must be contained in the “adequate notice”?

A. Along with the “time, date, (and) location” of the meeting, the agenda must be set forth, and it must be indicated whether formal action may be taken. In other words, the members of the public must have sufficient notice of the subject matter of the meeting and whether any decisions will be made concerning that subject matter to make an informed decision as to whether they will attend. A recent case found that this requirement had not been met when the Township Committee published notice at the beginning of the year that “Township Committee Meetings” and “Township Committee

Conference Meetings” would be held on alternate Thursdays. The notice did not inform the public that formal action could be taken at either type of meeting.

The governing body then announced at a “Township Committee Meeting” that it would take action on a resolution to transfer a governmental function to the county at the next Committee Meeting. It then passed the resolution of transfer at the next Township Committee Conference Meeting without further notice. The court found that this procedure did not give adequate notice to the public of the action that might be taken at this conference meeting.

In another case, the court found a violation of the OPMA when the governing body’s annual notice announced that scheduled political caucuses might become special meetings by order of the mayor. Such a special meeting was then held without further notice. At this meeting, a planning board redevelopment resolution was accepted, and an ordinance rezoning plaintiffs’ property in line with this redevelopment was approved. Again, the court held that the public must have 48 hours specific notice of a meeting at which formal action may take place, absent an emergency situation.

In another case, the public and the Township Committee’s Democratic minority was not given notice by the Township and the Township Committee’s Republican majority that police promotions were to be voted upon at a rescheduling meeting. The court viewed this violation of OPMA as severe enough to invalidate the promotions.

Q. What constitutes an emergency?

A. Courts have held that even the need to take action which would save \$570,000.00 did not constitute an emergency. Thus, an emergency meeting should only be held in the most compelling of circumstances, as close to a matter of “life and death” as possible.

Q. Are subcommittees unlawful?

A. Many governing bodies set up subcommittees to look at particular issues and report back to the entire governing body. As long as such subcommittees are used for legitimate purposes, and not merely to make a decision or hear things in private, so as to avoid a full public discussion, the establishment of a subcommittee is not unlawful and does not violate this provision of the law.

Q. What kind of “public safety” discussions may be held in closed session?

A. This exclusion is meant to cover those situations in which the protection of life or property would be jeopardized by releasing the information. It is not to cover an item such as discussion of whether a new Police Chief should be appointed or the position of Director of Public Safety should be established in lieu of appointing a Police Chief.

Q. Can a governing body discuss litigation or contract negotiations with the opposite party in a closed session?

A. No. A comparison of the language in exemption 7 with that of exemption 4 shows that exemption 4 specifically provides that representatives of the bargaining unit may be included in the executive session. There is not similar language here as to any opposite party in litigation or contract



negotiations. Moreover, if the municipality were able to bring the other side in for a negotiation, it would create a situation where only the public did not know what was happening. The purpose of this section is only to allow the governing body and its staff to form a municipal position so that the attorney or other representative of the municipality may then seek to impart that information to the other side.

Q. How much notice do you have to give employees before discussing their situation in executive session?

A. Case law says that the municipality must give the employee sufficient time to make an informed decision as to whether they wish to have the matter heard in public or in private. It is at the option of the employees in question, not the governing body.

Q. If the matter is to be heard in executive session, can the employee be present?

A. There appears to be no reason why an employee cannot be present to present his or her side on a given issue to the governing body in a closed session. As to the discussion after the municipality has heard the employee's position on a given issue, the law is unclear. On the other hand, since it is entirely likely that in any proceeding involving the employee which emerges from the meeting, the employee will eventually get to see and hear whatever takes place outside the employee's presence, in the course of discovery in litigation, probably nothing is lost by allowing the employee to be present at the discussion.

Q. Can a public agency hold a closed session to conduct an internal investigation concerning a sexual harassment complaint, where the complainant has already filed suit?

A. In a recent case concerning such an investigation, the court found that neither the personnel decision exception nor privacy concerns allowed a closed session to hear the matter. The matter was already out in the open, both because suit had been filed and because the punishment of the harassers had already been announced. The court also mentioned that the agency involved dealt with transportation, not social services or health care, and thus the investigation was not likely to invade the privacy of people other than the parties involved.

Q. Will a violation of the OPMA usually result in the invalidation of the actions taken at the meeting involved?

A. Courts have appeared loathe to do so, unless it appears to them that 1) there is no other adequate remedy and 2) the violation was so extreme, that no other remedy would be just. Therefore, for example, a recent case held that a discussion of the termination of an assistant corporation counsel in closed session without notice to him, in violation of OPMA, was remedied by a public meeting with advance notice to the counsel on the subject.

Q. How specific should a resolution going into executive session be?

A. As specific as public interests will allow. If a particular tax appeal is to be discussed or existing litigation the caption of the case should be part of the resolution. On the other hand, if the municipality is going to make a "pre-emptive strike" by starting litigation against

someone and is seeking an element of surprise, then, obviously, the specific nature cannot reasonably be divulged at such a time.

Q. What about minutes of executive sessions?

A. They should be made and adopted as soon after an executive session as possible, in the same manner as regular minutes. They should be made available to members of the governing body to review on a restricted basis, and they can be approved in the same manner as regular meeting minutes, with the understanding that they are not for public release at this time. If there is any need to discuss the minutes before adoption, it can be done in executive session.

The benefits of adopting such minutes soon after the fact lie in the fact that it is important for members of the governing body to keep in mind what they did at these sessions, many of which occur at the end of a regular meeting when members may not be as awake as at the beginning of a meeting. Having the minutes will keep them apprised of their own activities.

In some cases, litigation may go on for months or years and it is important to be able to trace the course of this litigation, not just for long time members of the body, but also for upon which they now must make decisions.

Q. How may Council maintain order and focus at council meetings and not degenerate into political shouting matches?

A. The Council may only allow public comments for a specified period of time during the meeting, and may limit the amount of time each resident has to speak.

The Open Public Meetings Act gives residents attendance rights at Council Meetings, but it gives residents no greater rights to participation than they previously did. Indeed, in OPMA it states that the public body may regulate and restrict public participation.

Several cases have upheld the ability of a municipality to limit the time for public comment and for each speaker to comment. I would recommend setting aside 5 minutes per speaker. If many people wish to speak and the meeting runs long, I would recommend cutting off time for public comment at half an hour.

If things do degenerate and a person refuses to stop speaking or becomes disruptive, the chair of the meeting, normally either the mayor or the council president, may ask that the person be removed. The person should receive adequate warning that their behavior is disruptive. If they continue, the chair may order the police to remove the person from the meeting.

Q. Recently, a rather nasty person videotaped the township meeting. Not only was this an issue for the council, it was also rather annoying to residents who found out after the fact that they were taped. Can anything be done?

A In *Tarus v. Pine Hill*, the New Jersey Supreme Court found that the fact that being videotaped annoys residents is not enough to prevent such taping.

The Supreme Court stated “[s]o too, we are not persuaded by fears that the use of video cameras in non-judicial settings will generate intimidation and harassment. We agree with Belcher...where the court reasoned that ‘[i]f an individual is willing to stand up and talk in the sometimes volatile setting of a thronged public meeting, at which members of the press are customarily present, that person has little to fear (and much to gain) from the presence of a tape recorder’...Trepidation over the effect of video cameras in public meetings is overstated. The prevalence of video cameras in society and the open nature of public meetings militate against such hyperbolic concerns. Although some citizens may be fearful of video cameras, we find that consideration insufficient to deny the right to videotape.”

The right is, however, subject to restrictions.

In the same case, the Court stated, “[c]itizens are not permitted to disrupt meetings with their recording equipment. Accordingly, public bodies may impose reasonable guidelines to ensure that the recording of meetings does not disrupt the business of the body or other citizens’ right of access.” They went on to say that, “[r]easonable restrictions may also include those designed ‘to preserve the orderly conduct of a meeting by controlling noise levels [and] spatial requirements ... [,] to safeguard public facilities against damage ... to the meeting hall’s electrical system, or ... to require fair payment by the wielder of the device for electricity used.’”

This case allows a town to establish general guidelines for taping. This is a new area of law, and the “reasonable restrictions” are still developing. It remains unclear whether or not a town may require notification before allowing a person to tape a meeting. Both elected officials and residents, in the mean time, should be on notice that at any time at any public meeting, they may be videotaped and that such taping may be posted for anyone to see.