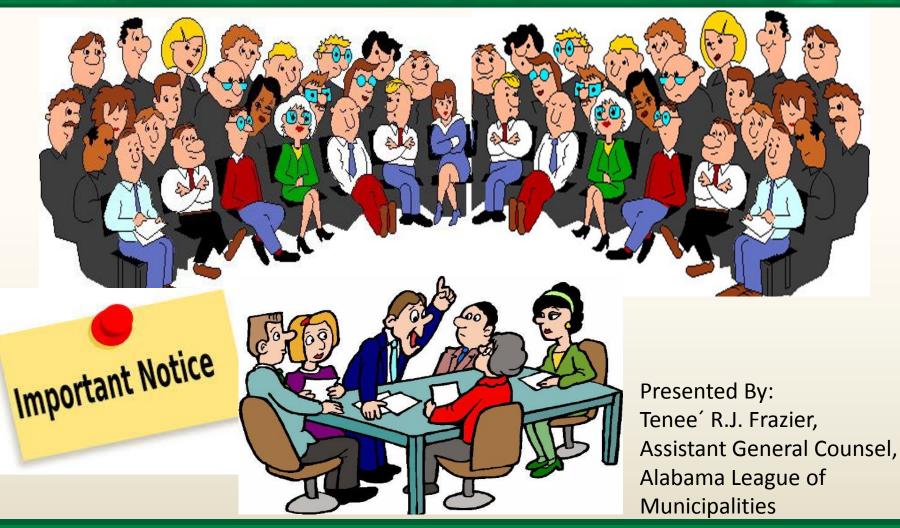
Alabama Open Meetings Act







Open Meetings Act

Sections 36-25A-1 - 36-25A-11 Code of Alabama, 1975 Act 2015-340

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Open Meetings Act



Presumption:

- Any Discussions
- Quorum
- Council / Council Committee
 - All together at one time
 - Series of meetings -
- City Business

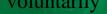
Must be Conducted Pursuant to the Open Meetings Act OMA

Who is Covered?



Governmental Bodies

- Municipal Boards, Bodies and Commissions
 - Power to Expend or Appropriate Municipal Funds
- Multimember Governing Bodies, Departments, Agencies, Institutions, Instrumentalities, and Corporations
 - Majority of Members Appointed or Elected by Municipality
- Quasi-Judicial Bodies of the Executive and Legislative Departments of the State
- Standing, Special, or Advisory Committees or Subcommittees of, or Appointed by, the Body.



Who Else is Covered?



- Volunteer Fire Departments certified by the Alabama Forestry Commission
- Community Action Agencies established by:
 - County
 - Municipality
 - Private, Nonprofit Agency Newly Established By Local Ordinance

Who is NOT Covered?



- Voluntary Membership Associations
 - Public Employees
 - Counties
 - Municipalities or their Instrumentalities
- Without Legislative or Executive Functions



Open Meetings Act

What is a Meeting?

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Meeting #1



- Prearranged Gathering
- Quorum
 - Governmental Body
 - Committee
 - Subcommittee of a Governmental Body
- Time and Place Set by Law/ Operation of Law





- Majority
- Voting Members
- Governmental Body

Four Members Constitute a Quorum when Council consists of Five Councilmembers and a Mayor. Mayor is Included in Quorum Count when Population is LESS THAN 12,000. AGO 2004-054.

Establishing a Quorum



- Physically Present
- No Telephone Conference
- No Voting or Participating via Electronic Means

Meeting #2



- Prearranged Gathering
- Quorum (Majority)
 - Governmental Body
 - Committee
 - Subcommittee of a Governmental Body
- Authorized to Exercise Powers
- Approve Expenditure of Public Funds

Meeting #3



- Gathering (Prearranged or Not)
- Quorum (Majority)

– Governmental Body

- Deliberate specific matters
- At the time of the exchange
- Participating members EXPECT to come before the full governmental body at a later date





- Exchange
- Information / Ideas
- Quorum
- Reach / Influence a Decision
- Vote
- Matters Expected to Come Before Body
- Immediately / Later Time





- Gathering (Prearranged or Not)
- Quorum
 - Committee
 - Subcommittee of a Governmental Body
- Deliberate Specific Matters
- Relating to their Purpose
- At the time of the exchange
- Participating members EXPECT to come before them at a later date



Open Meetings Act

What is NOT a Meeting?





It's NOT a Meeting if...

Quorum

- Social Gatherings
- Conventions
- Conferences
- Training Programs
- Press Conference
- Media Events
- Association Meetings
- On-site Inspections
- Meetings with Applicants for Economic Incentives or Assistance
- NO Deliberation
- EXPECTED to Come Before the Body at a Later Date

It's NOT a Meeting if...

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- Quorum
 - In Person
 - Electronic Communication
- With State or Federal Officials
- Reporting or Obtaining Information
- Seeking Support for Important Issues

It's NOT a Meeting Even if...



- Quorum
 - including two members of a three member body
- Discussing Economic, Industrial, or Commercial Prospect or Incentive
- Does NOT include Conclusions:
 - Recommendations
 - Policy
 - Decisions
 - Final Action on Request
 - Offer of Public Financial Resources

Two Member Meetings



• Two members of a governmental body MAY TALK together WITHOUT DELIBERATION.

 A Mayor, who is NOT a voting member of the council, (Cities with population over 12,000) can TALK or DELIBERATE with a member of the municipal council.





Emails DO NOT Constitute a Meeting *unless*, There is DELIBERATION.

A Unilateral Declaration is NOT a DELIBERATION





Quorum

+ <u>Meeting</u>

Must Comply with the Open Meetings Act





Slagle v. Ross, 125 So.3d 117 (Ala. 2012)

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What is a Serial Meeting?



- Less than a Quorum at Each Meeting
- At Least One Member Attends One or More Other Meetings in the Series
- Total Number of Members Attending Two or More of the Series of Meetings, Collectively, Constitutes a Quorum
- Public Not Given Notice
- Deliberate Specific Matters EXPECTED to Come Before the Body at a Later Date
- Purposefully Avoiding the Open Meetings Act
- One of the Meetings is within 7 Calendar Days of a Vote on ANY of the Matters Deliberated

What is NOT a Serial Meeting:



2 Members of a 3 Member Body

- 1. No Deliberations
- 2. Only Exchange Background and Educational Information With Members

What is NOT a Serial Meeting:



A Series of Gatherings to Fill a Position

- 1. Required to File a Statement of Economic Interests
- 2. More than 3 People under Consideration





A Gathering or Series of Gatherings Involving only 1 Member of a Governmental Body

Council Members at Committee Meetings



A Quorum of a Governing Body May Attend a Committee Meeting When:

- Notice of the Committee Meeting
- Governing Body DOES NOT Deliberate Matters
- EXPECTED to Come Before Them at a Later Date

Council Members at Committee Meetings



But if...

- Quorum
- Prearranged Meeting
- Occurs in Conjunction with the Committee Meeting
- MUST Give Notice of this Meeting

*Impromptu Meetings are NOT ALLOWED!



Open Meetings Act

Notice Requirements

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Notice Requirements



- Council Meetings (Regular Meetings)
 - 7 Days Notice
 - Public Bulletin Board at City Hall
- Separate Corporation
 - Public Bulletin Board at City Hall/ Principal Office of the Corporation
- All Other Governmental Bodies
 - Location that is Reasonably Accessible or Convenient to the Public

Notice Requirements



- Time
- Date
- Place
- General Description of Nature and Purpose*

*Organizational Ordinance or Resolution is Sufficient

Preliminary Agendas



Preliminary Agendas MUST BE Posted as soon as Practicable in the Same Location or Manner as the Meeting Notice. AGO 2006-027.

Posting Notices Changes to Location or Method



- 1. Must Be Approved by the Governmental Body
- 2. Announced to the Public
- 3. Open Meeting

Regularly Scheduled Meetings



- Meetings Established by Organizational Ordinance or Resolution
 - 7 Days Notice
- Meetings Not Set by Ordinance or Resolution
 - No less than 24 Hours Before the Meeting is Scheduled to Begin



Special Called Meetings

Post Notice:

- 24 Hours
- Mayor / 2 Councilmembers
- 1 Hour:
 - Emergency
 - Requiring Immediate Action
 - Physical Injury to Persons
 - Damage to Property
 - Solely to Accept the Resignation of a Public Official or Employee.

Direct Notification



- REGISTERED Members of the Public
- News Media
- Fee
- Time, Date, and Place
- Same Time of General Notice
- Method of Delivery
 - Electronic Mail, Telephone, Facsimile, the United States Postal Service, or Any Other Reasonable Method

Conducting Meetings



- Parliamentary Procedure
- Voice Votes
- No Secret Ballots
- No Voting in Executive Sessions
- Video and Audio Recordings Allowed*

http://www.robertsrules.org/rror--00.htm

Form and Content of Minutes



- Date, Hour and Place of Meeting
- Regular, Adjourned or Special Meeting
- Proper Notice Council
 - Special Meeting Proper Notice to Public
- Names of the PRESENT Councilmembers
- Names of ABSENT Councilmembers
- Time of Late Arrivals and Early Departures
- Any Action Taken
- Work Sessions
- Executive Sessions*







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Procedure to Enter into Executive Session



- 1. Quorum Convenes a Meeting
- Majority of the Members Present Adopt, by Recorded Vote, the Motion Calling for the Executive Session
 - State Reason for Executive Session
- 3. Record Each Member's Vote in the Minutes
- 4. PRIOR to Calling the Executive Session to Order, the Presiding Officer MUST State if They Will Reconvene After the Executive Session and the Approximate Time



Open Meetings Act

Executive Session

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- General Reputation and Character, Physical Condition, Professional Competence or Mental Health of Individuals, or Job Performance of Certain Public Employees.
 - Interview Current Public Employees for Promotions
 - No Statement of Economic Interests



CANNOT Discuss Job Performance of:

- Elected / Appointed Officials
- Appointed State/ Local Board Members
- Appointed State / Local Commission Members
- Public Employees who file Statement of Economic Interests Forms
- CANNOT Discuss Salary, Compensation, and Job Benefits of:
 - Specific Public Officials or Specific Public Employees



- 2. Consider Discipline, Dismissal or Hear Formal Written Complaints or Charges Against:
 - Public Employee
 - Student at Public School or College
 - Individual, Corporation, or Partnership
 - Other Legal Entity



- 3. Discuss Legal Ramifications and Options with Attorney:
 - Pending Litigation
 - Controversies Imminently Likely to be Litigated
 - Meet or Confer with Mediator or Arbitrator



 Security Plans, Procedures, Assessments, Measures,...or Security or Safety of Persons, Structures, Facilities, or Other Infrastructures, where Public Disclosure Could be Detrimental



- 5. Identity of Undercover Law Enforcement Agents or Informers
 - Criminal Investigation of Persons* (except Public Officials)
 - File Criminal Complaint



- Acceptable Offers for Purchase, Sale, Exchange, Lease or Market Value of Real Property.
 - Material Terms of the Contract MUST be Disclosed
 - Only Persons Representing the Interests of the Governmental Body



- 7. Preliminary Negotiations
 - Involving Trade or Commerce
 - In Competition with Private or Public Entities
- Alabama Trade Secrets Act



 Strategy for Negotiations Between the Governmental Body and a Group of Public Employees

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 Deliberate and Discuss Evidence Or Testimony Presented During a Public or Contested Case Hearing

Absolute Privilege and Immunity



- Members of the Council
- Employees
- Participating in an OMA Compliant Meeting
- ANY Statements Made During the Meeting
- Relates to a Pending Action

Civil Actions Violation of Open Meetings Act



- County Primary Office
 - Media Organization
 - Alabama Citizen Impacted Greater than the Public At Large (Evidence)
 - Attorney General
 - District Attorney
- No Local Public Official Vs. Public Official
- 60 Days of Date Plaintiff Knew/ Should have Known
- 2 Years of Alleged Violation
- Name and Capacity of Members in Attendance

Open Meetings Act Complaint



- Disregarded Notice Requirements
- Disregarded Provisions of the OMA During a Meeting
- Other Matters Discussed During Executive Session
- Intentional Violations of OMA Provisions

Questions?



Contact the Legal Department

- Ken Smith, Executive Director: <u>kens@alalm.org</u>
- Lori Lein, General Counsel: loril@alalm.org
- Rob Johnston, Assistant General Counsel: <u>robj@alalm.org</u>
- Tenee' R. J. Frazier, Assistant General Counsel: teneej@alalm.org
- Sharon Carr, Legal Services Administrator: <u>Sharonc@alalm.org</u>

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