



# ADMINISTRATIVE GUIDE FOR STAFF & COMMISSIONERS

## Contents

CHAPTER I. INTRODUCTION .....	4
HOC's Mission.....	4
History .....	4
Programs .....	4
Structure.....	5
CHAPTER II. SERVING ON HOC'S BOARD OF COMMISSIONERS.....	6
Appointment.....	6
Officers .....	6
Attendance .....	7
Commissioner Role .....	8
Ethics .....	8
Confidential Information .....	9
Gifts .....	9
Fiduciary Duties .....	10
Financial Disclosures.....	10
Training.....	11
Liability.....	12
Compensation.....	12
Removal.....	12
CHAPTER III. COMMISSION ADMINISTRATIVE PROCEDURES.....	13
Agenda Development .....	13
Briefbook Preparation.....	13
Commission Meetings .....	13
Voting .....	14
Meeting Procedures .....	14
CHAPTER IV. COMMITTEES .....	15
Budget, Finance and Audit Committee .....	15
Development and Finance Committee.....	16
Legislative and Regulatory Committee .....	16
CHAPTER V. OWNERSHIP ENTITIES .....	17
Ownership Entities .....	17
CHAPTER VI. OPEN MEETINGS ACT AND BYLAWS .....	18
In General .....	18
Meetings .....	18

Quorum.....	18
Notice.....	20
Agendas .....	21
Location .....	21
Public Rights.....	21
Closed Meetings.....	21
Exceptions to the Act – when a meeting may be closed.....	22
Procedures to close a meeting .....	25
Minutes .....	25
APPENDIX A – County Ethics Law	
APPENDIX B – Open Meetings Act	
APPENDIX C – HOC Bylaws	

## CHAPTER I. INTRODUCTION

The purpose of this Administrative Guide for Staff & Commissioners (“**Guide**”) is to provide a concise document that explains the general policies, administrative procedures, and guidelines that govern the operation of the Commission. It is designed for use by Commissioners and staff as a quick reference.

### **HOC’s Mission:**

The Housing Opportunities Commission of Montgomery County (“**HOC**” or “**Commission**”) is a quasi-governmental entity authorized by State and County law to build, own, manage, and finance affordable housing for people of low and moderate income in Montgomery County (“**County**”).

HOC envisions a County where families of all income levels live in decent, safe, and sanitary housing, and where both families and communities are strengthened through supportive services. The agency works with like-minded partners to effectively accomplish its goals.

### **History<sup>1</sup>:**

HOC was established in 1939 as the Housing Authority of Montgomery County. The agency derived its power from state legislation after the County government found a public need for affordable housing.<sup>2</sup> HOC’s current structure dates back to 1974 when state and local laws were amended to expand the housing mission for the County and to provide HOC with the authority to issue tax-exempt mortgage revenue bonds.<sup>3</sup> Additionally, the County adopted its own Opportunity Housing Act, giving itself broad housing powers. This mechanism allows HOC to create its own housing programs without the assistance of federal subsidy by purchasing units, predominantly through the Moderately Priced Dwelling Unit (“**MPDU**”) program.

### **Programs:**

HOC manages a multitude of different housing programs, including Opportunity Housing, Tax Credit Partnerships, the Housing Choice Voucher Program, Multifamily and Single Family Loans, Homeownership, Family Self-Sufficiency, and McKinney Supportive Housing.

---

<sup>1</sup> See MD. Code Ann., Hous. & Cmty. Dev. §§ 12-101 *et seq.*; 16-101, *et seq.*

<sup>2</sup> MD. Code Ann., Hous. & Cmty. Dev. §16-104 (2017).

<sup>3</sup> MD. Code Ann., Hous. & Cmty. Dev. §12-701 (2017); *see also* MD. Code Ann., Hous. & Cmt. Dev. §16-201 (2017).

## Structure:

The Commission is composed of a board of seven (7) Commissioners, the Executive Director, the Special Assistant to the Commission (the “**Special Assistant**”), and the following administrative divisions that support the Commission:

- Executive (includes Human Resources, Information Technology & Facilities, Legislative and Public Affairs, Legal, Compliance, and Risk Management)
- Finance
- Mortgage Finance
- Real Estate Development
- Property Management
- Property Maintenance
- Inspections
- Housing Resources
- Resident Services

## CHAPTER II. SERVING ON HOC'S BOARD OF COMMISSIONERS

### Appointment<sup>4</sup>

Applications for the Commission are solicited through press releases, advertisements on Montgomery County Cable Channel 6, and mailings to umbrella civic associations and community groups.

The County Executive appoints Commissioners to HOC, and the County Council confirms the appointments via majority vote. The Council will not confirm appointments unless the County Executive publishes the vacancy and solicits applications. The Council may waive advertisement and solicitation requirements on a case-by-case basis.

The County Executive considers diversity of background and professions, relevant experience and expertise, and geographic, gender, and ethnic balance. The selection process includes an interview by the County Executive (or his designee) and an interview by the County Council. Commissioners must be sworn in by the Clerk of the Circuit Court before their first meeting. Federal regulation requires appointment of at least one resident Commissioner who is directly assisted by HOC.<sup>5</sup>

When a vacancy exists, the County Executive must appoint a successor and the County Council should confirm the appointment within sixty (60) days via majority vote.

Generally, Commissioners are appointed for five-year terms. County Council policy is that no individual should serve for more than two (2) consecutive terms.

### Officers<sup>6</sup>

The officers of the Commission consist of a Chair, Vice-Chair, Chair Pro Tem, and a Secretary-Treasurer. The Chair, Vice-Chair, and Chair Pro Tem are elected at the annual meeting and hold office for one (1) year or until their successors are elected and qualified. In case of a vacancy, the Commission shall elect a successor from the remaining Commissioners at the next regular meeting and such election shall be for the remaining unexpired term.

The Chair presides at all meetings and sets the order of business. At each meeting, the Chair shall submit recommendations and information as the Chair may consider proper concerning the business affairs and policies of the Commission.

The Vice-Chair performs the duties of the Chair in the Chair's absence or incapacity. In the case of the resignation or death of the Chair, the Vice-Chair shall perform the Chair's duties until the Commission selects a new Chair.

---

<sup>4</sup> See Montgomery County Code § 2-75; 42 U.S.C. § 1437; 24 C.F.R. § 964; and <https://www.montgomerycountymd.gov/boards/council.html>

<sup>5</sup> See C.F.R. 964.110.

<sup>6</sup> See HOC Bylaws.

The Chair Pro Tem performs the duties of the Chair in the absence or incapacity of the Chair and Vice-Chair.

The Commission appoints the Secretary-Treasurer, which is generally the Executive Director. The Secretary-Treasurer's compensation and term shall be determined by the Commission.

The Special Assistant serves as an administrative liaison between the Commissioners and HOC staff. The Special Assistant drafts the agenda for Commission meetings in collaboration with the Executive Staff. The Special Assistant attends all Commission meetings, including closed sessions, and transcribes the minutes from those proceedings. Commission documents such as Resolutions are kept in the office of the Special Assistant.

### Attendance<sup>7</sup>

A Commissioner is automatically removed from the Commission if they have more than the number of allowed absences or they miss three (3) consecutive meetings. The number of allowed absences is dependent upon the number of meetings held in a year:

<b>Number of Meetings Held in A Year</b>	<b>Allowed Absences</b>
1-4	1
5-8	2
9-12	3
13-16	4
17+	5

When a Commissioner is automatically removed, the Chair must promptly notify the County Executive and all members of the Commission. The County Executive may waive the removal for illness, emergency, or other good cause.

In addition to attending regular monthly meetings and Committee participation, Commissioners are expected to attend other meetings such as special or emergency Commission meetings or meetings with the County Executive. Other meetings that Commissioners may be expected to attend are meetings with the County Council, Planning Board, Human Relations Commission, and the Fair Housing Sub-Committee. These meetings are held to provide an exchange of information.

---

<sup>7</sup> <https://www.montgomerycountymd.gov/boards/policy.html>

## Commissioner Role

Commissioners are responsible for reviewing and approving the overall policies and business decisions for HOC. The day-to-day management of HOC is the responsibility of the Executive Director. HOC staff report to the Executive Director.

Commissioners should direct inquiries and requests to the Executive Director; Commissioners should refrain from giving directives directly to HOC staff. Commissioners may contact Executive Staff with questions or for clarifications.

## Ethics - Generally<sup>8</sup>

**This is a general overview of the Montgomery County Public Ethics Law (the “Ethics Law”). In specific cases, the Ethics Law should be reviewed and, if necessary, HOC’s General Counsel should be consulted and/or an advisory opinion or waiver should be requested from the Montgomery County Ethics Commission (the “Ethics Commission”). A complete copy of the Ethics Law is attached hereto as Appendix A.**

Commissioners are responsible for reviewing the Ethics Law periodically. Each Commissioner has a responsibility to adhere to the County’s sexual harassment and non-discrimination policies.

Generally, the Ethics Law prohibits Commissioners from participating in matters that affect a Commissioner (whether directly or through an entity as its director, trustee, etc.) in an economic or financial manner differently than the general public. Commissioners are also prohibited from participating in a matter that involves an economic or financial interest of a relative. Relatives include siblings, parents, grandparents, children, grandchildren, a spouse (or domestic partner that receives County benefits), a spouse’s/domestic partner’s relatives (siblings, parents, grandparents, children, and grandchildren), and the spouses of these relatives. Additionally, a Commissioner is prohibited from participating in a matter that affects a party for whom, in the prior year, the Commissioner was required to register to engage in lobbying activity.

Commissioners must comply with the employment provision of the Ethics Law. A Commissioner must not engage in any other employment unless the employment is approved by the Ethics Commission.<sup>9</sup> A Commissioner must not seek a contract with the County/HOC or take as a client an entity that contracts with or is regulated by HOC without first referring the matter to the Ethics Commission. For one (1) year after the end of a Commissioner’s term, the Commissioner must not enter into any employment arrangement (express, implicit, or tacit) with any person/business if the

---

<sup>8</sup> Montgomery County Public Ethics Law - Montgomery County Code, Chapter 19A; § 11B-51, and §11B-52. See also COMCOR Code of Montgomery County Regulations, Chapter 19, and Montgomery County Personnel Regulations, Section 3.

<sup>9</sup> Montgomery County Code § 19A-12(c) includes an exception for a member of a board, commission, or similar body for employment held when the member was appointed if the employment was publicly disclosed before the appointment.



Commissioner significantly participated<sup>10</sup> during the previous three (3) years in regulating the person/business or in any procurement or other contractual activity concerning a contract with the person/business.

A Commissioner must not intentionally use the prestige of office for private gain or the gain of another. A Commissioner must not use an official County or HOC title or insignia in connection with any private enterprise or use a County or HOC facility or property for personal use or the use of another unless it is generally available to the public. Commissioners must not advocate the advancement of a relative to a position that is under the jurisdiction of HOC. A Commissioner should not represent or provide expert advice to a person if the person's interest is adverse to that of the County or HOC.

### **Confidential Information**

Commissioners must not disclose confidential information (whether written or oral) relating to or maintained by HOC that is not available to the public. Confidential information includes:

- Any personal information that is generally protected to prevent identity fraud or unauthorized contact (including information that is generally identified as “personally identifiable information” (PII));
- Personnel records;
- Any information regarding HOC or another organization involved in an HOC activity that is not generally made available to the public; and
- Any other information that is protected by law.

Examples of confidential information include: (1) information that is discussed in meetings closed per the Open Meetings Act; (2) information concerning HOC's business and/or finances that would be eligible for a closed meeting per the Open Meetings Act; and (3) an HOC customer's or employee's personally identifiable information.

It is expected that Commissioners will keep all confidential information in strict confidence and will not discuss, disseminate, or disclose such information to any person other than other Commissioners, HOC's Executive Director (or their designee), and Executive Staff (as appropriate). Commissioners must not use confidential information for personal gain or the gain of another. If in doubt, a Commissioner should consult with HOC's Office of General Counsel prior to disclosing information.

### **Gifts**

Per the Ethics Law, Commissioners are prohibited from accepting or soliciting gifts from lobbyists and persons doing business with or regulated by HOC. Gifts are anything that is given for the personal use or benefit of the recipient and that conveys value to the recipient including, but not

---

<sup>10</sup> Significant participation means making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or similar action. Significant participation ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

limited to, a present, tip, or gratuity; additional compensation; and food, beverage, travel, entertainment, lodging, or admission to an event. A gift may be in the form of a tangible item, money, information, access, opportunity, or any other form that conveys economic advantage or other benefit to the recipient.

Examples of improper gifts include: (1) accepting a gift and/or kickback from a contractor that has responded to an HOC procurement solicitation; (2) soliciting a gift from an individual who has an interest in securing a Commissioner's vote on a matter; and (3) accepting a gift from a development partner who is actively negotiating a deal with HOC. If in doubt, a Commissioner should consult with HOC's Office of General Counsel or the Ethics Commission prior to accepting or soliciting a gift.

### **Fiduciary Duties**

Each Commissioner has the following fiduciary duties to the Commission:

- Duty of Care – Each Commissioner must be diligent and attentive to their responsibilities. This includes (i) attending meetings and actively participating in the work of the Commission; (ii) evaluating the work of HOC Committees, (iii) actively participating in Commission actions, (iv) knowing and understanding the financial books and records of the Commission; and (v) protecting the assets of HOC.
- Duty of Loyalty – Each Commissioner should avoid conflicts of interest and ensure HOC's interest is put first. This includes (i) following the rules and regulations on conflicts of interest, (ii) not diverting a corporate business opportunity for personal gain, (iii) not engaging in self-dealing, and (iv) refusing to accept gifts from individuals or entities subject to HOC's jurisdiction.
- Duty of Obedience – Each Commissioner must be loyal to the Commission. This includes (i) not committing any illegal actions, and (ii) acting in good faith.

### **Financial Disclosure**

The Ethics Law requires each Commissioner to file a financial disclosure statement annually. Newly appointed Commissioners must file within fifteen (15) days of confirmation and Commissioners are required to file at the end of their term. Commissioners will be contacted by the Ethics Commission when it is time to file.

## **Training**

### **Open Meetings Act Training:<sup>11</sup>**

Each new Commissioner must take and submit a certificate evidencing his/her successful completion of the Maryland Open Meetings Act and basic parliamentary procedure within ninety (90) days of his/her appointment. The County Executive may remove a Commissioner if that Commissioner fails to complete and evidence the training.

### **Parliamentary Training:<sup>12</sup>**

Each new Commissioner must take and submit a certificate evidencing his/her successful completion of parliamentary training within ninety (90) days of his/her appointment. The County Executive may remove a Commissioner if that Commissioner fails to complete and evidence the training.

### **Ethics Training:**

Commissioners – Within six (6) months of joining the Commission, a Commissioner must (1) take the NAHRO Ethics for Commissioners training class, and (2) attend a County ethics training class provided by the Ethics Commission. To refresh their training and keep up to date on new requirements, Commissioners are required to attend a County ethics training class every three (3) years. If Commissioners have HOC-related ethical concerns, they can reach out to the Executive Director, the Office of General Counsel, Human Resources, Compliance, or the Ethics Commission.

Staff – HOC staff are notified about the Ethics Law during their initial employment orientation. Within six (6) months of employment, all HOC staff are required to attend a County ethics training class provided by the Ethics Commission and must take a refresher class every three (3) years. The Human Resources division periodically sends out an agency-wide email reminding employees about the Ethics Law and available resources. If staff have HOC-related ethical concerns, they can reach out to their supervisor, the Executive Director, the Office of General Counsel, Human Resources, or Compliance. Staff may also reach out to the Ethics Commission.

---

<sup>11</sup> See Montgomery County Code § 2-148.

<sup>12</sup> See Montgomery County Code § 2-148.

### **Liability<sup>13</sup>**

Commissioners have liability protection under the Local Government Tort Claims Act (“**LGTC**A”) for actions arising out of their scope of employment. Accordingly, the County government will provide a legal defense and be liable for any judgment against an HOC Commissioner resulting from the tortious acts or omissions committed by a Commissioner in the scope of their employment with HOC. For instance, the LGTCA would protect a Commissioner if they were involved in a car accident after negligently driving an HOC-owned vehicle to an HOC meeting.

### **Compensation<sup>14</sup>**

Commissioners are not compensated; however, Commissioners will be reimbursed for mileage and dependent care at rates established by the County. The Special Assistant prepares the appropriate travel and dependent care forms for the Commissioner’s signature and submits the forms to the County for reimbursement. Reimbursements are submitted quarterly and the checks are mailed directly to Commissioners.

### **Removal<sup>15</sup>**

The County Executive may remove a Commissioner from the Commission for the following causes: (1) neglect of duty; (2) misconduct in office; (3) inability to perform the duties of the office; (4) conduct that impairs a member from performing the duties of the office; (5) violation of law; (6) absenteeism; and (7) failure to timely complete the Maryland Open Meetings Act and parliamentary training courses.

Before a Commissioner is removed, the County Executive must notify the Commissioner in writing of the reasons for removal and give the Commissioner an opportunity to submit reasons why he/she should not be removed.

---

<sup>13</sup> <https://www.montgomerycountymd.gov/boards/policy.html>

<sup>14</sup> <https://www.montgomerycountymd.gov/boards/policy.html>

<sup>15</sup> See Montgomery County Code § 2-148.

## CHAPTER III. COMMISSION ADMINISTRATIVE PROCEDURES

### Agenda Development

The Special Assistant compiles the agenda based on items received from Executive Staff. Generally, a week before the scheduled monthly Commission meeting, the Executive Staff reviews the proposed agenda and makes any additions, corrections, or revisions. The revised agenda is sent to the Chair. Once the agenda is finalized, it is distributed to staff and posted on the HOC website.

### Briefbook Preparation

HOC staff prepares the meeting materials and submits them to the Executive Director for review and approval no later than the Thursday prior to the Commission meeting. On the Friday before the meeting, approved materials are submitted to the Special Assistant for inclusion in the briefbook. The briefbook is distributed to staff and the public (via the HOC website) no later than the Monday before the meeting.

### Commission Meetings

The Commission is a public body and all meetings must comply with the Maryland Open Meetings Act, which is summarized in Chapter VII (the Open Meetings Act Manual is attached hereto as Appendix B).

Commission meetings are generally held on the first Wednesday of each month and are open to the public. The annual meeting is held on the first regular meeting in February. One regular meeting is held each month; provided, however, the Chair and Executive Director may agree not to convene a meeting in a specific month so long as the Commission provides the public with reasonable advance notice. If a meeting is cancelled after the public has been given notice of the meeting, the Commission posts a cancellation notice on its website.

The duration of the meetings varies from approximately one to four hours, depending on the agenda. Often public hearings are held prior to the beginning of the Commission meeting.

Generally, the Commission agenda includes the following categories:

- Community Forum: A portion of the meeting is set aside to hear concerns, comments, or complaints from the community.
- Information Exchange: Any updates from the Executive Director, Commissioners, and Resident Advisory Board are discussed.
- Consent: Items that do not require in-depth discussion are reviewed and approved.
- Approval of Minutes: Minutes from any meetings held in the past month are approved.
- Ratifications: Any resolutions that are required to be ratified are reviewed and approved.
- Committee Reports and Recommendations for Action: Presentations that have been previously reviewed by one of HOC's Committees are presented to the whole Commission for review and approval.

- Items Requiring Deliberation: Items that have not been previously presented to one of HOC's Committees are presented for review and approval.
- Future Action: From time to time, items may be presented to the Commissioners and the public as a preview of items coming up at future meetings.

The Chair (at their discretion, upon written request of the Executive Director or their designee, or upon the written request of three (3) Commissioners) may call a special meeting to transact any business. The call for a special meeting must be delivered to each Commissioner in person, mailed to their business or home address, or communicated by electronic medium at least one (1) day prior to the date of the meeting.<sup>16</sup>

In the event of an emergency requiring immediate action when there is insufficient time to provide notice and it is not feasible to delay action (or it is not physically possible to convene the Commission), an emergency special meeting by teleconference or other electronic medium may be convened by the Chair.<sup>17</sup>

### **Voting**

Voting shall be by voice vote. At the order of the Chair, a roll call vote may be taken with the Chair voting last.

### **Meeting Procedures<sup>18</sup>**

The parliamentary procedures of Robert's Rules of Order govern the procedure and conduct of all Commission meetings.

---

<sup>16</sup> See Chapter VI for additional requirements.

<sup>17</sup> See Chapter VI for additional requirements.

<sup>18</sup> See Montgomery County Code § 2-149 and HOC Bylaws (Article III, Section 8).

## CHAPTER IV. COMMITTEES

The Budget Finance and Audit Committee, the Development and Finance Committee, and the Legislative and Regulatory Committee are public bodies and must comply with the Open Meetings Act, which is summarized in Chapter VII (the Open Meetings Act Manual is attached hereto as Appendix B).

Committee appointments are made by the Chair in consultation with other Commissioners. The appointments are reviewed annually.

### **Budget, Finance and Audit Committee (BF&A)**

The Budget, Finance and Audit Committee (“**BF&A**”)<sup>19</sup> was established on July 10, 1996 via resolution 96-79.<sup>20</sup> The BF&A consists of three (3) Commissioners. The Committee establishes procedures for the conduct of its meetings. The staff liaison is the head of the Finance department.

The Committee performs the following tasks:

- Conducts a detailed review of the Executive Director’s recommended budget (for HOC, HOC’s properties, development corporations, tax credit partnerships, and any other HOC-related budgets), and any amendments, and presents a budget recommendation to the full Commission;
- Approves the process for the selection (and approves or recommends the actual selection) of an auditor to perform the audit of HOC’s combined financial statements in accordance with HOC’s procurement policy;
- Reviews all audits of HOC or properties in which HOC has an interest and are not reviewed by other boards (the annual audit of the combined financial statements is reviewed by the Committee and presented to the full Commission prior to its issuance);
- Approves the annual work program and receives the reports of the Internal Auditor, in accordance with the policy on internal audits;
- Reviews reports related to procurement and may approve the second renewal of contracts with banks (primary);
- Quarterly evaluates the current financial performance of HOC and assures that HOC’s financial affairs are being conducted in an appropriate manner;
- Addresses other budgetary and financial issues as needed; and
- Takes any other appropriate actions authorized by the Commission.

---

<sup>19</sup> The BF&A was originally named the Budget and Finance Committee. It was renamed the Budget, Finance & Audit Committee on March 6, 2002 via resolution 2002-21.

<sup>20</sup> The BF&A superseded the Audit Committee, which was created on November 4, 1981 via Resolution 81-125.

### **Development and Finance Committee (DevFin)**

The Development and Finance Committee (“**DevFin**”) was established on March 6, 2002 via resolution 2002-21.<sup>21</sup> DevFin consists of three (3) Commissioners. The Committee establishes procedures for the conduct of its meetings. The staff liaison is the Deputy Executive Director.

The Committee performs the following tasks:

- Reviews and approves the process and procedures for investing, acquiring, and developing real estate;
- Reviews and approves real estate investment, acquisition, and development decisions, as appropriate;
- Monitors and reports on real estate programs;
- Discusses capital projects, planning, design and construction, real estate development, leasing, budget, maintenance, regulatory and political issues, and other factors likely to influence HOC’s financial and real estate activities;
- Reviews development budgets, and any amendments, and makes recommendations to the Commission for approval;
- Assists the Commission in making decisions by providing advice as to the impact of HOC’s planning and real estate activities on HOC’s ability to achieve its financial and public benefit goals;
- From time to time, may develop and recommend principles, guidelines, goals, criteria, parameters, and objectives related to overall planning and land use, building rehabilitation and reuse, infrastructure and landscape enhancement; and
- Takes any other appropriate actions authorized by the Commission.

### **Legislative and Regulatory Committee (LRC)**

The Legislative and Regulatory Committee (“**LRC**”)<sup>22</sup> was established on February 27, 1985 via resolution 85-38. The LRC consists of three (3) Commissioners. The Committee establishes procedures for the conduct of its meetings. The staff liaison is the head of the Legislative and Public Affairs department.

The Committee performs the following tasks:

- Reviews proposed legislation and regulations that may impact housing and/or HOC at national, state, and county levels of government;
- Represents the Commission as directed on matters of legislative interest; and
- Takes any other appropriate actions authorized by the Commission.

---

<sup>21</sup> DevFin was not explicitly created via resolution. The Commission appointed Commissioners to serve on the DevFin on March 6, 2002, which is the first time the Commission names the committee in a resolution.

<sup>22</sup> The LRC was originally named the Legislative Committee. It was renamed the Legislative and Regulatory Committee on March 6, 2002 via resolution 2002-21.



## CHAPTER V. OWNERSHIP ENTITIES

### **Ownership Entities**

HOC owns properties in its own name and through subsidiaries (limited liabilities companies, limited partnerships, and non-stock development corporations). The ownership structure and type of entity is dependent upon the property's financing (including low-income housing tax credits), inclusion of outside development partners, and Department of Housing and Urban Development requirements (including the FHA/HFA Risk-Sharing Program).

For each development corporation, the HOC Commissioners serve as the members of the board and the officers are the same as the officers of HOC.

## CHAPTER VI. OPEN MEETINGS ACT AND BYLAWS

**This is an outline of the open meeting requirements of the Maryland Open Meetings Act (the “Act”) and HOC’s Bylaws (the “Bylaws”). This outline is not intended to be a complete summary of the Act or the Bylaws. In specific cases, the Act and Bylaws should be reviewed and questions should be directed to HOC’s Office of General Counsel. Complete copies of the Act and Bylaws are attached hereto as Appendix B and Appendix C, respectively.**

### **In General:**

Three elements must be satisfied in order for an entity to be subject to the Act:

1. The entity must be a “public body;”
2. The members of the public body must be “meeting;” and
3. The members must be meeting to perform one of the “functions” subject to the Act.

### **Meetings:**

To “meet” is to convene a quorum of HOC Commissioners to consider or transact business. This does not include chance encounters or social gatherings.

A chance encounter or social gathering will be considered a “meeting” if a quorum is present and the occasion is used to discuss/consider/decide public business.

### **Quorum:**

A “quorum” is a majority of the HOC Commissioners (i.e., four (4) Commissioners), irrespective of vacancies. A quorum is present when a majority of the Commissioners are physically present.

A Commissioner who participates in a meeting by telephone will be deemed present (as long as the call is broadcast so it can be heard by the public). A discussion conducted entirely by teleconference is also acceptable if a quorum is on the call.

HOC’s Bylaws contain additional restrictions (see Article III):

1. At regular meetings, one or more Commissioners may participate and vote on matters at a regular open meeting by teleconference or electronic medium as long as (i) a quorum of the Commissioners participates; and (ii) all Commissioners, staff, and members of the public can communicate and interact with each other clearly and view all materials.
2. At special meetings, some or all of the Commissioners may participate and vote by teleconference or other electronic medium as long as (i) a quorum of the Commissioners participates; (ii) all Commissioners, staff, and members of the public can communicate and interact with each other clearly and view all materials; (iii) the public is provided sufficient

and reasonable advance notice of the telephone number and/or method to participate; and (iv) any resolution passed or other action taken at any special meeting at which there is less than a quorum physically present will be presented for ratification at the next regular open meeting.

- a. Action at such a special meeting shall be taken only by majority vote of the participating Commissioners and shall be recorded in the minutes to be adopted at the next regular open meeting.
3. An emergency meeting (where there is insufficient time for notice) may be convened by teleconference or other electronic medium provided that (i) a quorum of the Commissioners participates; (ii) all Commissioners, staff, and members of the public can communicate and interact with each other clearly and view all materials; and (iii) any resolution passed or other action taken at the emergency meeting will be presented for ratification at the next regular open meeting with suitable provision for notice of the agenda.
    - a. Action at an emergency special meeting may be taken only when at least four (4) Commissioners cast affirmative votes.
    - b. Any materials provided to the Commissioners for consideration at the emergency meeting (to the extent not protected from disclosure under the Act), shall be included in the minutes to be adopted at the next regular meeting.
  4. At the Annual Meeting (held on the first regular meeting day in February), a quorum must consist of four (4) Commissioners physically present.
  5. When a quorum is obtained, action may be taken upon a majority vote provided that no less than three (3) votes are cast on the matter. A vote shall be any vote other than an abstention.

### ***Notes of caution***

The Commission should avoid walking quorums. A walking quorum can occur in a multitude of ways, including:

1. Different Commissioners enter and leave a meeting so that an actual quorum is never physically present in a room, but during the course of the meeting, a quorum ends up participating in the discussion.
2. A series of back-to-back meetings are scheduled where a quorum is not present at any one meeting, but when taken together, the meetings are attended by a quorum.
3. Where a recess is called during a meeting and public matters are discussed/decided during the recess, even if a quorum is not present during any individual conversation.

The Commission should also attempt to avoid sequential one-on-one communications (either in person, by email, or by phone) where a quorum is actively avoided by having separate conversations, but the matter is essentially being discussed by a majority of the Commissioners.

An online discussion (e.g. a chat room) in which a majority of the public body participates on a near-simultaneous basis could also meet quorum requirements. The factors that courts would likely consider in determining whether an email exchange was a meeting include (1) the number of participants involved in the communication, (2) the number of communications regarding the subject, (3) a time frame within which the electronic communications occurred, and (4) the extent of the conversation-like interactions in the communications.

### **Notice:**

Reasonable advance notice of a meeting must be given to the public. Notice is required even if HOC anticipates that the meeting will be closed.

- For an emergency session, a last minute posting is probably insufficient (see Chapter 2 of the Act for guidance on last minute notice).
- In an emergency, HOC must give the best notice feasible under those circumstances. For example, notice might be given by email or telephone calls to those who usually attend or cover its meetings.
- If a meeting is cancelled after the public has been given notice of the meeting, the Commission must post a cancellation notice on its website.

Notice must include:

- The date, time, and location of the meeting; and
- If appropriate, the fact that all or part of the meeting is expected to be closed.

Notice guidelines:

- Whenever reasonable, notice must be in writing.
- When considering “reasonable advance notice,” HOC should consider the reasonableness of the method in light of the methods accessible to its interested public.
- The notice should specify the date that it is actually being posted so that the public can establish that the amount of notice is reasonable.
- Meeting notices are required to be retained for one year.

### **Agendas:**

- HOC must prepare an agenda before a meeting and make it available to the public no later than 24 hours before the meeting.
  - If HOC cannot meet the deadline because it scheduled the meeting in response to an emergency, then it must make the agenda available within a reasonable amount of time after the meeting occurs.
- In general, the agenda must:
  - Include known items of business or topics to be discussed during the portion of the meeting that is open, and
  - Indicate whether HOC expects to close any portion of the meeting.
    - HOC is not required to make available any information in the agenda regarding the subject matter of the closed portion of the meeting.
- HOC is not prevented from altering the agenda after the agenda has been posted.
- HOC can use any method authorized for giving notice to post the agenda.

### **Location:**

- Meetings must be held in a place reasonably accessible to individuals who want to attend.
- The location must be reasonable in light of the expected number of people likely to be interested in attending.

### **Public Rights:**

- The Act grants the public the right to attend a meeting. It does not grant the public a right to participate in a meeting.
- HOC is to adopt and enforce reasonable rules regarding the conduct of people attending its meetings and the videotaping, televising, photographing, broadcasting, and recording of meetings.
- HOC may have an individual removed if the presiding officer determines that the individual is disrupting the meeting.
- HOC may enforce rules to ensure that recording a meeting is not disruptive, but it may not bar recording outright.

### **Closed Meetings:**

In order to close a meeting, the topic of discussion must fall into one of fifteen (15) exceptions. During the closed session, attendees may only discuss matters within the scope of the exception.

## Exceptions to the Act – when a meeting may be closed:

1. “Personnel Matters” Exception:
  - a. A meeting may be closed to discuss various personnel actions with regard to, or the evaluation of, an appointee, employee, or official over whom HOC has jurisdiction, or any other personnel matter that affects one or more specific individuals.
    - i. The discussion must be about individual employees – discussions about entire classes of employees do not fall within the exception.
2. “Privacy or Reputation” Exception:
  - a. A meeting may be closed to protect the privacy or reputation of an individual with respect to a matter that is not related to public business.
3. “Real Property Acquisition” Exception:
  - a. A meeting may be closed to consider the acquisition of real property for a public purpose and matters directly related to the acquisition.
    - i. The exception includes discussions about acquiring interests in real property whether by purchase, lease, or easement.
  - b. The exception does not include discussions about selling or renting out the public body’s own property, or acquisitions of personal property.
4. “Business Location” Exception:
  - a. A meeting may be closed to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State.
5. “Investment of Public Funds” Exception:
  - a. This exception pertains to the use of public funds for investment purposes and not the expenditure of public funds. The discussion must be sufficiently related to a concrete investment possibility.
    - i. The exception does not extend to a discussion about whether to donate funds to a charity.
    - ii. After the funds have been invested, the public body must unseal the minutes of the closed meeting.
6. “Marketing of Public Securities” Exception:
  - a. This exception shields a public body’s discussions about the terms on which to issue bonds. After the bonds have been issued, the public body must unseal the minutes of the closed meeting.
7. “Legal Advice” Exception:
  - a. This exception applies when the public body wishes to consult with counsel to obtain legal advice.

- i. The exception is to be narrowly construed to cover only the interchange between the client body and its lawyer in which the client seeks advice and the lawyer provides it. It does not allow for closed discussion among members of the public body merely because an issue has legal ramifications.
    - ii. Once the advice has been received, the public body must return to open session if it wishes to discuss any potential policy implications.
- 8. “Pending or Potential Litigation” Exception:
  - a. The exception authorizes a public body to consult with staff, consultants, or other individuals about pending or potential litigation. Counsel need not be present.
    - i. Potential litigation means more than a theoretical possibility – the suit must be actually threatened or is an obviously realistic possibility.
    - ii. The exception does not apply to discussion of options for settling a claim before suit is filed.
    - iii. The exception does not apply after the litigation has been settled or otherwise concluded.
- 9. “Collective Bargaining” Exception:
  - a. A meeting may be closed to conduct collective bargaining negotiations or consider matters that relate to the negotiations.
- 10. “Public Security” Exception:
  - a. A meeting may be closed to discuss public security, including (i) the deployment of fire and police services and staff, and (ii) the development and implementation of emergency plans.
    - i. To use this exception, the Commission must determine that public discussion would constitute a risk to the public or to public security.
- 11. “Scholastic, licensing, and qualifying examination” Exception:
  - a. Boards that prepare, administer, or grade a scholastic, licensing, or qualifying examination may do so in a closed session.
- 12. “Investigative proceeding regarding criminal conduct” Exception:
  - a. A meeting may be closed to conduct or discuss an investigative proceeding on actual or possible criminal conduct.
- 13. “Other Law” Exception:
  - a. A meeting may be closed to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosure about a particular proceeding or matter.
    - i. Examples of laws that may prevent public disclosure are: State procurement laws (governing the disclosure of offers and offerors’ names before bids or proposals are opened), federal laws that prevent the disclosure of various

types of personal information (e.g., HIPAA), and provisions of the PIA that require a governmental unit to deny requests for certain records or information.

- b. A meeting may also be closed to discuss closed-session minutes before they are unsealed.

14. “Procurement” Exception:

- a. A meeting may be closed to discuss (before a contract is awarded or bids are opened) a matter directly related to a negotiating strategy or the contents of a bid or proposals, but only if public discussion would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- b. There are several criteria to close a meeting per this exception:
  - i. The discussion must involve a pending procurement or an impending procurement that is actually in the works.
    - 1. The exception does not include discussions about the possibility that a public body might decide to initiate a procurement process in the future or a general discussion about procurement procedures.
  - ii. Discussions about sole source contracts and modifications of a contract that has already been awarded generally do not fall within the exception.
  - iii. The Commission must find that public discussion of the matter would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

15. “Cyber Security” Exception:

- a. A meeting may be closed to discuss cybersecurity, if the public body determines that public discussion would constitute a risk to:
  - i. Security assessments or deployments relating to information resources technology;
  - ii. Network security information, including information that is:
    - 1. Related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;
    - 2. Collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
    - 3. Related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity; or
  - iii. Deployments or implementation of security personnel, critical infrastructure, or security devices.

*Note* – the exceptions listed above should be construed strictly in favor of open meetings. The exceptions should be applied in the light of the Act’s policy that public bodies’ meetings are to be open except in special and appropriate circumstances.



### Procedures to close a meeting:

Once an exception to close a meeting has been identified, the following procedures must be followed:

1. The presiding officer must make a written statement of the reason for closing the meeting (the “**Closing Statement**”).
  - a. The Closing Statement must be prepared before closing the meeting.
  - b. The Closing Statement must disclose (1) the topics to be discussed, (2) the exception(s) relied upon as authority for closing the meeting, and (3) the reason(s) for closing the meeting.
  - c. The Closing Statement is a public document, and if a member of the public objects to the closed meeting, the Commission must send a copy of the Closing Statement to the Compliance Board.
    - i. The information provided in the written statement does not have to be so revealing as to compromise the confidentiality of the session, but the public body may not merely repeat the words of the statute.
  - d. Closing Statements are required to be retained for one year.
2. The presiding officer must conduct a recorded vote (in which each member’s vote is specified) on a motion to close the meeting.
  - a. Each closed meeting must be preceded by an open meeting where the Commissioners vote to close the meeting.
3. A member who has received training on the requirements of the Act must attend the open meeting at which the Commission votes to hold the close session, or the Commission must complete a “Compliance Checklist” (posted on the Attorney General’s website) and attach it to the open-session minutes.
4. During the closed meeting, the Commissioners must confine their discussion to the topics and the scope of the exception disclosed on the Closing Statement.
5. After the closed meeting, the minutes of the next open session must include (1) information that discloses what was actually discussed in the closed meeting; (2) who attended the closed meeting; (3) and what actions HOC took.

### Minutes:

The Commission must prepare minutes “as soon as practicable” after they meet, unless live and archived video or audio streaming of the open session is available. The Commission must retain minutes and recordings for five (5) years and, to the extent practicable, post them online. Minutes must be made available for public inspection during ordinary business hours.

Minutes do not become official until adopted by the Commission. However, the Commission does not have to prepare minutes for an open session if live and archived video or audio streaming of the open session is available.

Closed meeting minutes are ordinarily sealed and thus not available for public inspection. They are available to the Open Meetings Compliance Board when a complaint has been made that the Commission has violated the Act by holding a closed meeting.

Minutes (both open and closed) must reflect three types of information:

1. Each item that the public body considered;
  - a. Each item must be described in sufficient detail so that a member of the public who examines the minutes can understand the issue under consideration.
2. The action that HOC took on each item; and
3. Each vote that was recorded.

After a public body has met in a closed meeting, it must include a summary of the closed meeting in the minutes of its next public meeting. The summary must include:

1. The time, place, and purpose of the closed meeting;
2. Each member's vote on the motion to close the meeting;
3. The statutory exception claimed as a basis for excluding the public; and
4. A list of the topics discussed, persons present, and actions taken in the closed meeting.

The public body is only required to disclose as much information as it can without compromising the confidentiality of the meeting.

APPENDIX A – County Ethics Law (Chapter 19A)  
(Code & COMCOR attached)

## Chapter 19A. Ethics. 1

### **Article I. General Provisions.**

- § 19A-1. Short title.
- § 19A-2. Legislative findings and statement of policy.
- § 19A-3. Conflicts of law.
- § 19A-4. Definitions.

### **Article II. Administration.**

- § 19A-5. Ethics Commission.
- § 19A-6. Authority and duties of Commission; appeal of Commission decisions.
- § 19A-7. Advisory Opinions.
- § 19A-8. Waivers.
- § 19A-9. Investigations.
- § 19A-10. Complaint; Adjudicatory Hearing.

### **Article III. Conflicts Of Interest.**

- § 19A-11. Participation of public employees.
- § 19A-12. Restrictions on other employment and business ownership.
- § 19A-13. Employment of former public employees.
- § 19A-14. Misuse of prestige of office; harassment; improper influence.
- § 19A-15. Disclosure of confidential information; ex parte communications.
- § 19A-16. Soliciting or accepting gifts.
- § 19A-16A. Political activities of quasi-judicial officials.

### **Article IV. Financial Disclosure.**

- § 19A-17. Who must file a financial disclosure statement.
- § 19A-18. Financial disclosure statement; procedures.
- § 19A-19. Content of financial disclosure statement.
- § 19A-20. Reserved.

### **Article V. Lobbying Disclosure.**

- § 19A-21. Who must register as a lobbyist; exceptions.
- § 19A-22. Certification of authority.
- § 19A-23. How and when to register as a lobbyist.

§ 19A-24. Compensation must not be contingent.

§ 19A-25. Reports by lobbyist to the commission.

§ 19A-26. Public inspection of lobbyist registration documents.

## **Article VI. Enforcement.**

§ 19A-27. Injunctive or other relief; cease and desist orders; voiding official actions.

§ 19A-28. Penalties.

§ 19A-29. Civil recovery.

§ 19A-30. Termination or other disciplinary action; suspension of compensation.

§ 19A-31. Retaining papers and documents.

§ 19A-32. Removal for failure to file financial disclosure statement.

---

## Notes

**1 Editor's note**—Section 3 of 1999 L.M.C., ch. 30, reads as follows:

"Regulations. All personnel regulations in effect when this Act becomes law [March 3, 2000] continue in effect, except that any reference in the regulations to an employee's "spouse" (or equivalent term, such as "widow") or a "spouse's dependent" means "spouse or domestic partner" and "spouse's or domestic partner's dependent", respectively, when that meaning is consistent with this Act. Within 120 days after this Act becomes law [March 3, 2000], the County Executive must submit to the Council, for approval under method (1), amendments to the personnel regulations to implement this Act. In this Section, "employee" includes both active and retired employees."

Section 1 of 1990 L.M.C., ch. 21 amended ch. 19A to read as set out in §§ 19A-1—19A-32. The chapter formerly consisted of §§ 19A-1—19A-27 and was derived from 1983 L.M.C., ch. 1, § 1; 1983 L.M.C., ch. 22, § 23; 1983 L.M.C., ch. 29, § 1; 1983 L.M.C., ch. 33, §§ 1—7, 9; 1984 L.M.C., ch. 24, § 21; 1985 L.M.C., ch. 7, § 1; 1985 L.M.C., ch. 57, § 1.

**Editor's note**—Chapter 19A and individual sections are cited in *Sugarloaf Citizens Assn. v. Gudis*, 319 Md. 558, 573 A.2d 1325 (1990). Chapter 19A applied in *Sugarloaf Citizens Association v. Gudis*, 78 Md.App. 550, 554 A.2d 434 (1989).

**Charter references**—Ethics generally, § 405 et seq.; code of ethics required, § 410.

## **Article I. General Provisions.**

---

### **Sec. 19A-1. Short title.**

This chapter may be cited as the Montgomery County Public Ethics Law. (1990 L.M.C., ch. 21, § 1.)

## Sec. 19A-2. Legislative findings and statement of policy.

(a) Our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.

(b) The confidence and trust of the people erodes when the conduct of County business is subject to improper influence or even the appearance of improper influence.

(c) To guard against improper influence, the Council enacts this public ethics law. This law sets comprehensive standards for the conduct of County business and requires public employees to disclose information about their financial affairs.

(d) The Council intends that this Chapter, except in the context of imposing criminal sanctions, be liberally construed to accomplish the policy goals of this Chapter. The Council also intends that this Chapter meet the requirement under state law that the County adopt legislation that is similar to the state public ethics law. (1990 L.M.C., ch. 21, § 1; 1997 L.M.C., ch. 37, §1.)

**Editor's note**-The above section is quoted in Sugarloaf Citizens Assn. v. Gudis, 319 Md. 558, 573 A.2d 1325 (1990) and in Sugarloaf Citizens Association v. Gudis, 78 Md.App. 550, 554 A.2d 434 (1989).

See County Attorney Opinion dated [12/6/02](#) discussing whether a public employee may accept an honorarium or other reimbursement of expenses in return for a speech or presentation. See County Attorney Opinion dated [7/8/02](#) describing the extent to which quasi-judicial officials may engage in political activities.

## Sec. 19A-3. Conflicts of law.

If any other County statute or regulation relating to conflicts of interest, financial disclosure, or lobbying disclosure is more stringent than this law, the more stringent provision applies. (1990 L.M.C., ch. 21, § 1.)

## Sec. 19A-4. Definitions.

Unless the context clearly indicates otherwise, the following words have the following meanings:

(a) *Agency* or *County agency* means:

- (1) any department, principal office, or office of the executive or legislative branch of County government;
- (2) any board, commission, committee, task force, or similar body appointed by the County Executive or County Council;

(3) the Revenue Authority, the Housing Opportunities Commission, and the Board of License Commissioners;

(4) each independent fire department or rescue squad that receives funds from the County or uses property owned by the County; and

(5) any other public body if the Commission finds that:

(A) the public body is subject to the County's legislative authority to enact an ethics law; and

(B) the policies articulated in section 19A-2 would be significantly furthered by the application of this Chapter to the public body.

(b) *Business* means any for-profit or non-profit enterprise, including a corporation, general or limited partnership, sole proprietorship, joint venture, association, firm, institute, trust, or foundation. Business does not include a County agency, but includes an independent fire department or rescue squad.

(c) *Commission* means the Montgomery County Ethics Commission, established under Section 19A-5.

(d) *Compensation* means any money or thing or value, regardless of form, including the sale or delivery of tangible or intangible property, that an employer pays or agrees to pay for services rendered.

(e) *Doing business with* means:

- (1) being a party with a County agency to a transaction that involves at least \$1,000 during a year;
- (2) negotiating a transaction with a County agency that involves at least \$1,000 during a year; or
- (3) submitting a bid or proposal to a County agency for a transaction that involves at least \$1,000 during a year.

(f) *Employer* means any person who pays or agrees to pay compensation for services rendered.

(g) *Employment* or *employ* means engaging in an activity for compensation.

(h) *Gift* means the transfer of anything of economic value, regardless of form, without an exchange of consideration of at least equal value. Gift does not include a transfer regulated by state or federal law governing political campaigns or elections.

(i) *Immediate family* means spouse and dependent children. A child is a dependent if the child may be claimed as a dependent for federal income tax purposes. For a public employee, immediate family also includes the employee's domestic partner if the partner is receiving County benefits.

(j) *Interest* or *economic interest* means any source of income or any other legal or equitable economic interest, whether or not the interest is subject to an encumbrance or a condition, which is owned or held in whole or in part, jointly or severally, and directly or indirectly. Interest does not include:

(1) an interest in a time deposit or demand deposit in a financial institution or in a money market fund with assets of at least \$10,000,000;

(2) an interest in an insurance policy, endowment policy, or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;

(3) an interest in a deferred compensation plan that:

(A) has more than 25 participants; and

(B) the Internal Revenue Service has determined qualifies under section 457 of the Internal Revenue Code;

(4) an interest in a common trust fund or a trust that forms part of a pension plan or profit-sharing plan that:

(A) has more than 25 participants; and

(B) the Internal Revenue Service has determined to be a qualified trust or college savings plan under the Internal Revenue Code; or

(5) an interest in a mutual fund, exchange-traded fund, closed-end fund, or unit investment trust that:

(A) has more than 25 participants;

(B) is regulated by the Securities and Exchange Commission; and

(C) the investor does not control the purchase or sale of the individual securities held by the fund.

(k) *Lobbying* means any attempt to influence any legislative, executive, or administrative action by a County agency.

(l) *Lobbyist* means any individual or organization who spends money or is compensated to influence legislative, executive, or administrative action by a County agency.

(m) *Public employee* means:

- (1) the County Executive and each member of the County Council;
- (2) any person employed by a County agency, including the director of the agency;
- (3) any person appointed by the County Executive or County Council to a board, commission, committee, task force, or similar body, whether or not:
  - (A) the person is compensated for serving on the body; or
  - (B) the body is permanent or temporary;
- (4) any member of the Revenue Authority, the Housing Opportunities Commission, or the Board of License Commissioners; and
- (5) any other person providing services without compensation to a County agency if that person:
  - (A) exercises any responsibility for government-funded programs, procurement, or contract administration for an agency; or
  - (B) has access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration.

(n) *Relative* means:

- (1) the public employee's siblings, parents, grandparents, children, grandchildren;
- (2) the public employee's spouse, or domestic partner receiving County benefits, and the spouse's or partner's siblings, parents, grandparents, children, grandchildren; and
- (3) the spouses of these relatives.

(o) *Restricted donor* means a person or business that:

- (1) is registered or must register as a lobbyist under Section 19A-21;
- (2) does business with the County agency with which the public employee is affiliated;
- (3) is engaged in an activity regulated or controlled by the County agency with which the public employee is affiliated; or
- (4) has a financial interest that may be substantially and materially affected in a manner distinguishable from the public generally by the performance or nonperformance of the public employee's duties.

(p) *Year* means calendar year. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, § 1; 1999 L.M.C., ch. 30, § 2; [2010 L.M.C., ch. 5](#), § 1; [2015 L.M.C., ch. 38](#), § 1.)

**Editor's note**—Section 19A-4, paragraph (n) (the definition of "relative") was quoted in *Tyma v. Montgomery County*, 369 Md. 497, 801 A.2d 148 (2002).

See County Attorney Opinion dated [12/6/02](#) discussing whether a public employee may accept an honorarium or other reimbursement of expenses in return for a speech or presentation.

## **Article II. Administration.**

---

### **Sec. 19A-5. Ethics Commission.**

(a) *Creation.* The Montgomery County Ethics Commission is established. The Commission has 5 members. Each Commission member is appointed by the County Executive and confirmed by the Council.



(b) *Composition; Qualifications for Membership.* Each member of the Commission must meet the following qualifications:

(1) The member must reside in the County and be registered to vote in the County.

(2) During the member's term of office, the member must not:

(A) hold or be a candidate for any state, County or local elected or appointed office;

(B) be an employee of:

(i) the state;

(ii) a political subdivision of the state; or

(iii) a public body created by the state or a political subdivision of the state;

(C) be an employee or officer of a political party;

(D) participate (except by voting or contributing money) in any state, County, or local political campaign;

(E) participate (except by voting or contributing money) in support of or opposition to any question placed on the ballot by state, County, or local government, except a question that directly affects the Commission; or

(F) be a lobbyist.

(3) No more than 3 members may be registered to vote in primary elections of the same political party.

(c) *Term.* Commission members serve for a term of 4 years. The terms of no more than 2 members may expire in any one year. Any vacancy must be filled only for the remainder of the unexpired term. A Commission member serves until the Council confirms a successor unless the member resigns before a successor is confirmed.

(d) *Chair.* The Commission must select a chair annually. The Commission may select other officers annually as it finds appropriate.

(e) *Removal.*

(1) The Council or the County Executive may initiate the removal of a Commission member for:

(A) neglect of duty;

(B) misconduct in office;

(C) disability that renders the member unable to perform the duties of office; or

(D) violation of law.

(2) The Council or the County Executive must give the member written notice of the reason for the removal. The member is entitled to a hearing held under Chapter 2A. If the County Executive initiates the removal, the hearing must be held by the Council or a hearing officer designated by the Council. If the Council initiates the removal, the hearing must be held by the County Executive or a hearing officer designated by the Executive.

(3) A member is removed if the Council and the County Executive concur in removal.

(4) If the County Executive does not approve a removal within 14 days after the Council votes to remove a member, the Council may remove the Commission member without the approval of the County Executive by a vote which would be sufficient to enact legislation over the disapproval of the Executive under Section 208 of the Charter. The Council must take this action within 30 days after it first voted to remove the member.

(f) *Administrative Support.*

(1) The Commission must be allocated merit system staff, separate office space, equipment, and supplies within the limits of the Commission's appropriations. Commission staff serve at the Commission's direction to perform duties assigned by the Commission. The Commission must appoint a staff director/chief counsel to perform duties assigned by the Commission, and may remove the staff director/chief counsel. Subject to the general supervision of the Commission, the staff director/chief counsel must appoint and supervise and may remove other Commission staff. The appointment, retention, and removal of all Commission staff must be subject to applicable merit system laws and regulations. The staff director/chief counsel must be an attorney licensed to practice law in Maryland, and may advise and represent the Commission without the approval or supervision of the County Attorney.

(2) The Commission may ask the County Attorney to provide an opinion on any legal issue relating to the Commission's duties,

(3) The County Attorney must, on request of the Commission, provide the Commission with legal services. The County Attorney must provide an attorney to prosecute a case before the Commission under Section 19A-10 unless the Commission assigns or retains a different attorney or other staff member to perform that function. An individual attorney in the office of the County Attorney who is assigned to provide general legal advice to the Commission must not be an investigator under Section 19A-9 or prosecute a case before the Commission under Section 19A-10 for one year after the attorney's Ethics Commission assignment ends.

(4) The Commission may retain legal services from persons outside the Office of the County Attorney and without the approval of the County Attorney if:

(A) the Commission finds that obtaining independent legal services is necessary for the Commission effectively to perform its responsibilities; and

(B) the County Council approves the Commission's decision to select legal counsel and appropriates sufficient funds to cover the cost of the legal services. (1990 L.M.C., ch. 21, § 1; FY 1991 L.M.C., ch. 9, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, § 1; 1999 L.M.C., ch. 13, § 1; [2010 L.M.C., ch. 38](#), § 1.)

**Editor's note**—[2010 L.M.C., ch. 38](#), § 3, states, in part: The position of Executive Director of the Ethics Commission is abolished by operation of law on the date that the Commission appoints a staff director/chief counsel, as authorized by County Code Section 19A-5(f), as amended by Section 1 of this Act.

The above section is cited in [FOP, Montgomery County Lodge No. 35 v. Mehrling](#), 343 Md. 155, 680 A.2d 1052 (1996).

See County Attorney Opinion dated [4/13/99-A](#) discussing what should occur when an Ethics Commission member holds over as a result of the Council not having confirmed a newly appointed member.

**Sec. 19A-6. Authority and duties of Commission; appeal of Commission decisions.**

(a) *Authority.* The Commission may:

- (1) conduct investigations under Section 19A-9;
- (2) authorize the issuance of summonses and subpoenas, and administer oaths and affirmations;
- (3) impose sanctions under Section 19A-10;
- (4) adopt regulations to implement this Chapter under method (2);

(5) extend a deadline for distribution or filing of forms for up to 6 months if the Commission finds that the deadline creates an unreasonable burden. An extension may apply to an individual or a class of individuals. The extension must be in writing. However, the Commission must not extend the time in which a complaint must be filed under Section 19A-10;

(6) conduct public education and information programs regarding the purpose and implementation of this Chapter;

(7) publish opinions under Section 19A-7;

(8) establish procedures to govern the conduct of Commission affairs;

(9) interpret this Chapter and advise persons as to its application; and

(10) take all other necessary acts to carry out the purposes of this Chapter.

(b) *Duties.* The Commission must:

(1) prepare and distribute all financial disclosure forms under Article IV and lobbying disclosure forms under Article V;

(2) maintain, as official custodian, forms and records filed under this Chapter;

(3) act on a complaint filed under Section 19A-10;

(4) respond to a request for a waiver under Section 19A-8;

(5) act on a request for other employment approval under Section 19A-12; and

(6) respond to a request for an advisory opinion submitted under Section 19A-7.

(c) *Appeals.* A final decision of the Commission on a complaint, request for a waiver, or request for other employment approval may be appealed to the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. An appeal does not stay the effect of the Commission's decision unless the court hearing the appeal orders a stay. Any party aggrieved by a judgment of the Circuit Court may appeal that judgment to the Court of Special Appeals.

(d) *Request for rehearing or reconsideration.*

(1) A person affected by a final decision of the Commission on a complaint, request for waiver, or request for other employment approval may ask the Commission for a rehearing or reconsideration.

(2) A request for rehearing or reconsideration:

(A) must be filed within 30 days after the issuance of the Commission's final decision; and

(B) must state in writing all reasons in support of the request.

(3) The filer of the request must mail or deliver a copy of the request to all parties of record.

(4) A request for rehearing or reconsideration does not stay the effect of the Commission's decision unless the Commission orders otherwise.

(5) A request for rehearing or reconsideration stays the time in which an appeal under subsection (c) may be filed until the Commission takes final action on the request.

(e) *Cooperation with Inspector General.* The Commission may ask the Inspector General to investigate any matter within the Inspector General's or the Commission's jurisdiction, and if the matter is within the Commission's jurisdiction, to report any findings confidentially to the Commission. The Commission may disclose confidentially to the Inspector General any information it has that the Inspector General reasonably needs to perform statutory duties.

(f) *Annual report.* The Commission must publish an annual report each year, not later than March 1, summarizing the actions it has taken during the preceding calendar year and describing each waiver it approved and advisory opinion it issued during that year. The report must not mention the names of any individual, unless

otherwise properly made public, who was the subject of any action or opinion. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, §1; [2003 L.M.C., ch. 15](#), § 1.)

**Editor's note**—2003 L.M.C., ch. 15, § 2, states: Effective Date. Section 19A-6(c) of the County Code, as amended by Section 1 of this Act, applies to any appeal from an action of the Ethics Commission: (1) pending in the Circuit Court when this Act takes effect [November 6, 2003]; or (2) filed in the Circuit Court after this Act takes effect [November 6, 2003].

### **Sec. 19A-7. Advisory Opinions.**

(a) Any person subject to this Chapter or Sections 2-109, 11B-51 or 11B-52(a) may ask the Commission for an advisory opinion on the meaning or application of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) to that person. A supervisor or department head may ask the Commission for an advisory opinion about the meaning or application of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) to the employment-related conduct of any public employee supervised by the supervisor or department head. Unless the subject of the opinion authorizes disclosure, the Commission must keep the names of the requesting party and the subject of the opinion confidential.

(b) The Commission must publish each opinion when it is issued unless the Commission finds that the privacy interest of a public employee or other person clearly and substantially outweighs the public's needs to be informed about Commission actions. The Commission at least annually must publish a list of all unpublished opinions, with the reason why each opinion was not published. The Commission must take all reasonable steps consistent with making the opinion useful for public guidance to keep confidential the identity of any person who is affected by the opinion request. (1990 L.M.C., ch. 21, § 1; 1997 L.M.C., ch. 37, §1.)

**Editor's note**-The above section is interpreted in Sugarloaf Citizens Assn. v. Gudis, 319 Md. 558, 573 A.2d 1325 (1990).

See County Attorney Opinion dated [7/8/02](#) describing the extent to which quasi-judicial officials may engage in political activities.

### **Sec. 19A-8. Waivers.**

(a) After receiving a written request, the Commission may grant to a public employee or a class of public employees a waiver of the prohibitions of this Chapter and Sections 11B-51 and 11B-52(a) if it finds that:

(1) the best interests of the County would be served by granting the waiver;

(2) the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and

(3) granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

(b) After receiving a written request, the Commission may waive the prohibitions of subsection 19A-12(b) if it finds that:

(1) the waiver is needed to ensure that competent services to the County are timely and available;

(2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or

(3) the proposed employment is not likely to create an actual conflict of interest.

(c) After receiving a written request, the Commission may waive the prohibitions of Section 19A-13(b) if it finds that:

(1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or

(2) the proposed employment is not likely to create an actual conflict of interest.

(d) The Commission may waive the prohibitions of Sections 19A-12 or 19A-13 without making the findings required in subsection (b) or (c) if an employer certifies, and the Commission agrees, that releasing pertinent facts about the proposed other employment is not in the interest of effective law enforcement or the national security of the United States.

(e) The Commission may impose appropriate conditions to fulfill the purposes of this Chapter when it grants a waiver.

(f) Each waiver request must:

(1) be in writing;

(2) be signed under oath by the public employee who applies for the waiver;

(3) disclose all material facts;

(4) show how the employee meets the applicable waiver standard, and

(5) include a statement from the public employee's agency head (or the Chief Administrative Officer if the employee is not supervised by an agency head) indicating whether the agency head concurs with the waiver request.

(g) The Commission must disclose to the public any waiver that it grants and, on request of any person, must disclose the underlying waiver request and any statement filed under subsection (f)(5) from the employee's agency head or the Chief Administrative Officer. If the Commission denies a request for a waiver, the Commission may publish its response as an advisory opinion under Section 19A-7(b). But the identity of any public employee who applies for a waiver must be kept confidential until the waiver is granted. The Commission may reveal the identity of any public employee who applies for a waiver that is not granted if:

(1) the public employee authorizes public disclosure; or

(2) the Commission has reasonable cause to believe that the public employee has engaged in the conduct for which the waiver was sought.

(h) After giving the public employee notice and an opportunity to respond, the Commission may revoke any waiver if it finds that the public employee who applied for the waiver did not disclose a material fact in the waiver request.

(i) The Commission must include the pertinent facts in each waiver.

(j) The Commission must promptly notify the State Ethics Commission, the Chief Administrative Officer, and the Council when it waives any prohibition of this Chapter for any class of public employees. (1990 L.M.C., ch. 21, § 1; 1997 L.M.C., ch. 37, § 1; [2010 L.M.C., ch. 5](#), § 1; [2016 L.M.C., ch. 2](#), § 1.)

**Editor's note**-The above section is cited in [FOP, Montgomery County Lodge No. 35 v. Mehrling](#), 343 Md. 155, 680 A.2d 1052 (1996).

### **Sec. 19A-9. Investigations.**

(a) The Commission may on its own initiative investigate any matter that the Commission believes may constitute a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) if the Commission finds in writing that an investigation is necessary to resolve the matter.

(b) Any investigation must be conducted by the staff of the Commission, the County Attorney, or a special counsel or other person temporarily retained by the Commission to conduct the investigation. The Commission must not actively participate in any investigations.

(c) An investigator acting under the authority of the Commission may require any person to:

- (1) respond under oath to written questions within 30 days;
- (2) produce verified copies of records within 30 days; and
- (3) on 15 days notice, attend a deposition to answer under oath questions asked by the investigator.

The investigator must disclose to the person from whom information is sought the general nature and purpose of the inquiry. A person must not refuse to answer written questions, produce records, attend a deposition, or answer questions at a deposition unless the refusal is permitted by law. The investigator may seek from a court of competent jurisdiction an order compelling compliance with this subsection.

(d) The identity of any person who supplies information to an investigator and the report of the investigator must be kept confidential, except as otherwise expressly provided in this Chapter.

(e) The investigator must give the Commission a confidential written report of the investigator's factual findings, the sources of information, and the identity of each person providing information. (1990 L.M.C., ch. 21, § 1; 1997 L.M.C., ch. 37, §1.)

**Editor's note**—See County Attorney Opinion dated [8/23/02](#) describing the elements required for a complaint to the Ethics Commission to initiate an investigation.

### **Sec. 19A-10. Complaint; Adjudicatory Hearing.**

(a) (1) Any individual may file a confidential written complaint with the Commission. The complaint must allege facts under oath that would support a reasonable person in concluding that a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) occurred.

(2) (A) The complaint must be filed within the later of 2 years after:

(i) the alleged violation; or

(ii) the complainant learned or should have learned of facts that would lead a reasonable person to conclude that a violation occurred.

(B) A complaint may not be filed more than 6 years after the alleged violation occurred.

(3) The Commission may refer the complaint to Commission staff or the County Attorney for investigation under Section 19A-9 or may retain a special counsel or other person to conduct an investigation.

(4) If the complaint does not allege facts sufficient to state a violation of this Chapter, the Commission may dismiss the complaint. The Commission must inform the complainant of its decision to dismiss the complaint. The Commission may inform the subject of the complaint that the complaint was filed and dismissed, but must not disclose the identity of the complainant.

(b) The Commission may file, on its own motion, a complaint based on a report received from an investigator under Section 19A-9, if the complaint is filed within the time limits established in subsection (a).

(c) If, based on a complaint and a report, if any, submitted under Section 19A-9, the Commission finds reasonable cause to believe that a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) has occurred, the Commission must hold an adjudicatory hearing. However, the Commission may dispose of a matter by consent order instead of holding an adjudicatory hearing.

(d) If the Commission holds an adjudicatory hearing, the Commission must:

(1) give the subject of the complaint a copy of the complaint, including the identity of the complainant; and

(2) give the subject of the complaint copies of those portions of approved minutes of the Commission relating to the complaint, and any report issued under Section 19A-9.

(e) The Commission may:

- (1) issue summonses and subpoenas to compel attendance at a hearing;
- (2) require any person to produce records at a hearing; and
- (3) administer oaths or affirmations to witnesses.

(f) The parties to the hearing are the subject of the complaint and the County. The prosecuting attorney may be the investigator who issued a report under Section 19A-9, an attorney in the County Attorney's office, or a special counsel. Each party may be represented by counsel. Each party may present evidence and cross-examine witnesses. The subject of the complaint may require the Commission to issue subpoenas for witnesses and documents to the same extent a party in litigation in state court would be entitled to the summons or subpoena.

(g) The rules of evidence used in judicial proceedings do not apply. The Commission may admit and give appropriate weight to evidence, including hearsay, that possesses probative value commonly accepted by reasonable and prudent persons.

(h) A hearing is closed to the public. However, the Commission may in its sole discretion open the hearing to the public if the subject of the complaint requests that the hearing be open. The Commission may issue additional rules of procedure governing an adjudicatory hearing.

(i) The Commission must make written findings of fact and conclusions of law based on the record made at the hearing. If after a hearing the Commission finds that no violation of this Chapter has occurred, the Commission must dismiss the complaint.

(j) If the Commission dismisses a complaint without holding a hearing or after holding a closed hearing, the Commission must not release to the public the identity of the subject of the complaint, the complainant, or any witness.

(k) If the Commission finds that a violation of this Chapter has occurred, the Commission must publicly disclose its findings and conclusions, including the identity of the subject of the complaint, the complainant, and the witnesses.

(l) The Commission must promptly notify the complainant and the subject of the complaint of its findings and conclusions and the disposition of the complaint.

(m) If the Commission finds a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a), the Commission may:

- (1) seek injunctive relief under Section 19A-27;
- (2) proceed under Section 19A-28;
- (3) seek recovery under Section 19A-29;
- (4) seek the imposition of disciplinary action by appropriate public employees under Section 19A-30;
- (5) order the subject of the complaint to stop any violation;
- (6) issue a public or private reprimand, and
- (7) impose a fine which does not exceed \$1000.

(n) The Commission may, at any time, refer to an appropriate prosecuting attorney any information that indicates that a criminal offense may have occurred. (1990 L.M.C., ch. 21, § 1; 1997 L.M.C., ch. 37, § 1; [2010 L.M.C., ch. 5](#), § 1.)

**Editor's note**—See County Attorney Opinion dated [12/17/08](#) discussing the authority and role of the Merit System Protection Board and the role of the County Attorney as legal adviser. See County Attorney Opinion dated [8/23/02](#) describing the elements required for a complaint to the Ethics Commission to initiate an investigation.

2010 L.M.C., ch. 5, § 2, states in part. This Act takes effect on April 1, 2010. The amendment to Section 19A-10 made in Section 1 of this Act applies to any complaint filed after this Act takes effect.

## **Article III. Conflicts of Interest.**

---

### **Sec. 19A-11. Participation of public employees.**

(a) *Prohibitions.* Unless permitted by a waiver, a public employee must not participate in:

(1) any matter that affects, in a manner distinct from its effect on the public generally, any:

(A) property in which the public employee holds an economic interest;

(B) business in which the public employee has an economic interest; or

(C) property or business in which a relative has an economic interest, if the public employee knows about the relative's interest;

(2) any matter if the public employee knows or reasonably should know that any party to the matter is:

(A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee;

(B) any business in which a relative has an economic interest, if the public employee knows about the interest;

(C) any business with which the public employee has an active application, is negotiating, or has any arrangement for prospective employment;

(D) any business that is considering an application from, negotiating with, or has an arrangement with a relative about prospective employment, if the public employee knows about the application, negotiations, or the arrangement;

(E) any business or individual that is a party to an existing contract with the public employee or a relative, if the contract could reasonably result in a conflict between private interests and official duties;

(F) any business that is engaged in a transaction with a County agency if:

(i) another business owns a direct interest in the business;

(ii) the public employee or a relative has a direct interest in the other business; and

(iii) the public employee reasonably should know of both direct interests;

(G) any business that is subject to regulation by the agency with which the public employee is affiliated if:

(i) another business owns a direct interest in the business;

(ii) the public employee or a relative has a direct interest in the other business; and

(iii) the public employee reasonably should know of both direct interests; or

(H) any creditor or debtor of the public employee or a relative if the creditor or debtor can directly and substantially affect an economic interest of the public employee or relative.

(3) any case, contract, or other specific matter affecting a party for whom, in the prior year, the public employee was required to register to engage in lobbying activity under this Chapter.

(b) *Exceptions.*



(1) If a disqualification under subsection (a) leaves less than a quorum capable of acting, or if the disqualified public employee is required by law to act or is the only person authorized to act, the disqualified public employee may participate or act if the public employee discloses the nature and circumstances of the conflict.

(2) Subsection (a) does not apply to an administrative or ministerial duty that does not affect an agency's decision on a matter.

(3) Paragraph (a)(1) does not apply to a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to the body.

(4) Subparagraph (a)(2)(A) does not apply to a public employee, if the County Executive or the County Council appoints the public employee to serve as an officer, director, or trustee of a business to represent the public interest.

(5) Subparagraph (a)(2)(A) does not apply to a public employee who is an officer, director, or trustee of an organization, if the public employee discloses the relationship, is not compensated by the organization, and has no:

- (A) managerial responsibility or fiduciary duty to the organization;
- (B) authority to approve the organization's budget;
- (C) authority to select any officer or employee of the organization; or
- (D) authority to vote on matters as a member of the governing body of the organization.

(6) If expressly authorized by regulation, subsection (a) does not apply to:

- (A) a police officer's exercise of the officer's police authority during approved outside employment; or
- (B) a police officer or fire/rescue employee who is exercising the employee's official duties in an emergency affecting a business or property in which the employee or a relative of the employee has an economic interest.

(c) *Thresholds.* In this section, interest or economic interest means:

(1) any source of income, direct or indirect, if the employee:

- (A) received more than \$1,000 from that source of income in any of the last 3 years;
- (B) is currently receiving more than \$1,000 per year from that source of income; or
- (C) is entitled to receive at least \$1,000 in any year in the future from that source of income;

(2) a business in which the public employee or a relative owns more than 3 percent;

(3) securities that represent ownership or can be converted into ownership of more than 3 percent of a business; or

(4) any other economic interest worth more than \$1,000. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1 [2015 L.M.C., ch. 38](#), § 1; [2018 L.M.C., ch. 7](#), §1.)

**Editor's note**—See County Attorney Opinion dated [12/14/98](#) addressing the creation of “Friends of Recreation” for revenue-raising activities.

## **Sec. 19A-12. Restrictions on other employment and business ownership.**

(a) *General restrictions.*

(1) A public employee must not engage in any other employment unless the employment is approved by the Commission. The Commission may impose conditions on its approval of other employment.

(2) The Commission may adopt appropriate procedures to receive and decide other employment requests.

(3) The appointing authority should give a copy of this Section to applicants for positions that are affected by this Section. The Supervisor of Elections should give a copy to candidates for elected offices that are affected by this Section.

(4) A request for approval of other employment is confidential. Commission action on the request is also confidential. However, the Commission must disclose to the public each action approving an employment request, including:

- (A) the name of the employee;
- (B) the name of the employer;
- (C) the nature of the other employment; and
- (D) any conditions imposed by the Commission.

(5) After giving the public employee notice and an opportunity to respond, the Commission may revoke any action approving an employment request if it finds that the public employee did not disclose a material fact in the request.

(b) *Specific restrictions.* Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

(1) be employed by, or own more than one percent of, any business that:

- (A) is regulated by the County agency with which the public employee is affiliated; or
- (B) negotiates or contracts with the County agency with which the public employee is affiliated; or

(2) hold any employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee.

(c) *Exceptions.*

(1) Subsections (a) and (b) do not apply to:

(A) a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to it;

(B) a public employee whose government duties are ministerial, if the employment does not create a conflict of interest;

(C) a member of a board, commission, or similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required. The appointing authority must forward a record of the disclosure to the Commission, which must keep a record of the disclosure on file; or

(D) an elected public employee in regard to employment held at the time of election, if the employment is disclosed to the County Board of Elections before the election. The Commission must file the disclosure received from the County Director of Elections with the financial disclosure record of the elected public employee.

(2) If expressly authorized by regulation, subparagraph (b)(1)(A) and paragraph (b)(2) do not prohibit a police officer from working outside employment for an organization solely because that organization is located in the County or in the district where the officer is assigned.

(d) *Prohibition against unapproved employment.* Unless the Commission permits it or subsections (a) and (b) do not apply, a person must not knowingly employ a public employee.

(e) *Prohibition against contingent compensation.* A public employee must not assist or represent a party for contingent compensation in a matter before or involving a County agency except in a judicial or quasi-judicial proceeding. However, a public employee may assist or represent a party for contingent compensation in any matter for which contingent fees are authorized by law. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, §1; 1997 L.M.C., ch. 37, § 1; [2006 L.M.C., ch. 33](#), § 1; [2010 L.M.C., ch. 5](#), § 1; [2018 L.M.C., ch. 7](#), §1; [2019 L.M.C., ch. 23](#), §1.)

**Editor's note**—The above section is cited in [FOP, Montgomery County Lodge No. 35 v. Mehrling](#), 343 Md. 155, 680 A.2d 1052 (1996).

See County Attorney Opinion dated [3/28/06](#) regarding whether steering committee members affiliated with a non-profit may receive and respond to a solicitation issued by the County and the implications under the Ethics law if the member is considered a public employee. See County Attorney Opinion dated [7/8/02](#) describing the extent to which quasi-judicial officials may engage in political activities.

### **Sec. 19A-13. Employment of former public employees.**

(a) A former public employee must not work on or otherwise assist any party, other than a County agency, in a case, contract, or other specific matter if the employee significantly participated in the matter as a public employee.

(b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business if the public employee significantly participated during the previous 3 years:

(1) in regulating the person or business; or

(2) in any procurement or other contractual activity concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

(c) Significant participation means making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or similar action taken as an officer or employee. Significant participation ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

(d) A person serving as County Executive or Councilmember must not engage in lobbying to influence a legislative action for which lobbying registration would be required under this Chapter for one calendar year after leaving office except to represent a municipal corporation, a county, or a State government entity. (1990 L.M.C., ch. 21, §1; [2003 L.M.C., ch. 5](#), § 1; [2016 L.M.C., ch. 2](#), § 1; [2018 L.M.C., ch. 7](#), §1.)

**Editor's note**—See County Attorney Opinion No. 95.002 dated [5/17/95](#) explaining that a member of the retirement plan who retires under the retirement incentive plan may participate in a County contract awarded under the procurement process.

2003 L.M.C., ch. 20, § 2, states: Timetable; transition.

(a) The first resolution adopted under Section 2-119(a), inserted by Section 1 of this Act, must take effect on July 1, 2004. Any corporation that seeks to be designated as the local management board must submit proposed articles of incorporation and bylaws to the County Executive and County Council for review and comment by May 1, 2004.

(b) By February 1, 2004, the Director of the Department of Health and Human Services must submit to the Executive and Council a local management board transition plan to address such issues as financial oversight during a transition; modification of service contracts to assure that services to children and families are not disrupted; and transition of affected employees.

(c) Notwithstanding any inconsistent provision of County Code Section 19A-13, a person employed by the Department of Health and Human Services before July 1, 2004, may be employed by a corporation after it is designated as the local management board, and if so employed may immediately work on any matter that the person significantly participated in as a Department employee.

2003 L.M.C., ch. 5, § 2, states: Applicability. Section 19A-13, as amended by Section 1 of this Act, applies to any public employee who leaves public employment after this Act takes effect [July 11, 2003].

#### **Sec. 19A-14. Misuse of prestige of office; harassment; improper influence.**

(a) Unless expressly authorized by regulation or as may be permitted under Section 19A-16, a public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection.

(b) Unless expressly authorized by the Chief Administrative Officer, a person must not use an official County or agency title or insignia in connection with any private enterprise.

(c) A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is:

- (1) generally available to the public; or
- (2) authorized by a County law, regulation, or administrative procedure.

(d) (1) A public employee must not appoint, hire, or advocate the advancement of a relative to a position that is under the jurisdiction or control of the public employee.

(2) A relative of a public employee must not be employed in a position if the public employee:

- (A) would exercise jurisdiction or control over the position; and
- (B) advocates the relative's employment.

(e) A public employee must not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with that person's freedom to engage in political activity.

(f) A person must not influence or attempt to influence a public employee to violate this Chapter.

(g) (1) A public employee must not with respect to a particular matter represent another person, or provide advice to another person that would qualify as an expert opinion in a court, if:

(A) a County agency or the County is a party to the matter and the person being assisted has a position adverse to the County agency or the County; or

(B) the County agency or the County has a direct and substantial interest in the matter that is adverse to the interests of the person being assisted.

(2) This subsection does not apply to a public employee who renders assistance to:

- (A) another public employee if the matter involves a personnel action;
- (B) a member of the public employee's immediate family if the public employee renders the assistance without compensation; or
- (C) a person for whom the public employee serves as a guardian, trustee or other personal fiduciary.

(3) This subsection does not apply to:

- (A) a public employee while carrying out the employee's official duties; or
- (B) a member of a board, committee or commission if:

- (i) the member is not compensated by the County;
- (ii) the matter does not relate to the responsibilities of the board, committee or commission; and
- (iii) the board, committee or commission solely performs an advisory function.

(4) In this subsection "represent" means to act on behalf of another person, and includes acting as an agent or attorney for the other person. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, § 1; [2015 L.M.C., ch. 38](#), § 1.)

**Editor's note**—See County Attorney Opinion dated [12/6/02](#) discussing whether a public employee may accept an honorarium or other reimbursement of expenses in return for a speech or presentation. See County Attorney Opinion dated [8/23/02](#) describing the elements required for a complaint to the Ethics Commission to initiate an investigation. See County Attorney Opinion dated [7/8/02](#) describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion dated [8/11/00](#) explaining that an elected official running for office must devote "official" time to official duties. See County Attorney Opinion dated [4/21/00](#) explaining that conducting union business on County property does not violate the ethics law, because union business is public, not personal.

### **Sec. 19A-15. Disclosure of confidential information; ex parte communications.**

(a) Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency that is not available to the public. A public employee or former public employee must not use confidential information for personal gain or the gain of another. Unless expressly prohibited by law, a public employee may disclose validly obtained confidential information to another public employee if the other public employee reasonably needs the information to carry out the employee's official duties.

(b) (1) A public employee decision-maker must not consider any communication made outside of the record regarding any matter that must be decided on the basis of a record after an application is filed or a proceeding is otherwise initiated.

(2) Except as otherwise expressly authorized by law, any public employee decision maker, and any public employee who directly advises a decision maker, must not:

(A) initiate or participate in any communication outside the record with any person regarding a matter that must be decided on the basis of a record; or

(B) conduct an independent investigation of any fact related to a matter that must be decided on the basis of a record.

(3) The recipient of any communication made outside the record, including advice rendered by officials or staff of another government agency, must promptly enter that communication in the record. If the communication was oral, the recipient must write down the substance of the communication and enter it into the record. The decision-making body may consider any communication made outside of the record if all parties are given a reasonable opportunity to respond.

(4) This subsection does not restrict a communication that consists solely of:

(A) advice rendered to a decision-maker by an attorney employed or retained by the decision-maker's agency;

(B) advice rendered to a decision-maker by appropriate officials or staff of the decision-maker's agency;

(C) a procedural question that does not involve the substance of facts in a record; and

(D) discussions between members of a decision-making body. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, § 1; [2010 L.M.C., ch. 4](#), § 1.)

**Editor's note**—See County Attorney Opinion dated [12/6/02](#) discussing whether a public employee may accept an honorarium or other reimbursement of expenses in return for a speech or presentation. See County Attorney Opinion dated [8/23/02](#) describing the elements required for a complaint to the Ethics Commission to initiate an investigation.

### **Sec. 19A-16. Soliciting or accepting gifts.**

(a) Except as permitted by Subsection (b) or by Commission regulation, a public employee must not solicit any gift to the employee or for another person from a restricted donor or another public employee. In addition, a public employee must not solicit a gift from any person to the employee or another person:

- (1) during official work hours, or at a County agency;
- (2) while wearing all or part of an official uniform of a County agency, or while otherwise identifiable as a public employee; or
- (3) with the intent of affecting or offering to affect any action by a County agency.

(b) A public employee may solicit a gift:

- (1) from a public employee for a charitable drive that is approved by the County Executive or (for public employees of the legislative branch) the President of the Council, when the solicitation is part of the public employee's official duties;
- (2) from any person to a charitable organization, as defined in the state law regulating public charities, or a municipality, if the public employee does not solicit gifts primarily from a restricted donor or from other employees who are supervised directly or indirectly by the public employee;
- (3) from any person, during official work hours, while identifiable as a public employee, or at a County agency, for the benefit of a County agency or a nonprofit organization formally cooperating on a program with a County agency if the solicitation is authorized by the County Executive or (for public employees of the legislative branch) the President of the Council in an order printed in the County Register that designates:
  - (A) the public employee authorized to solicit the gift;
  - (B) the purpose for which the gift is sought;
  - (C) the manner in which the gift may be solicited;
  - (D) the persons or class of persons from whom gifts may be solicited; and
  - (E) the type of gifts that may be solicited;
- (4) while wearing all or part of a uniform of the corporation, to a nonprofit fire or rescue corporation of which the public employee is a member; or
- (5) from any person to a charitable organization, as defined in the state law regulating public charities, while identifiable as an elected official, if the employee lists in a supplement to each annual financial disclosure statement each organization to which the employee solicited a contribution during that year.

(c) A public employee must not knowingly accept a direct or indirect gift from a restricted donor.

(d) Subsection (c) does not apply to:

- (1) meals and beverages consumed in the presence of the restricted donor or sponsoring entity at a function attended by at least 20 persons or, if fewer than 20 persons attend, meals and beverages consumed in the presence of the restricted donor or sponsoring entity which do not exceed \$50 in value from the same source in any calendar year;
- (2) ceremonial gifts or awards that have insignificant monetary value;

- (3) unsolicited gifts of nominal value that do not exceed \$20 in cost, or trivial items of informational value;
  - (4) reasonable expenses for food, travel, lodging, and scheduled entertainment of the public employee, given in return for the public employee's participation in a panel or speaking at a meeting;
  - (5) a gift to an elected official, if the gift:
    - (A) is a courtesy extended to the office; and
    - (B) consists of tickets or free admission for the elected official and one guest to attend a charitable, cultural, civic, labor trade, or political event attended by at least 20 participants, including meals and beverages served at the event; and
    - (C) is provided by the person sponsoring the event.
  - (6) any item that is solely informational or of an advertising nature, including a book, report, periodical, or pamphlet, if the resale value of the item is \$20 or less;
  - (7) gifts from a relative;
  - (8) honoraria for speaking to or participating in a meeting if the offering of the honorarium is not related to the employee's official position and is unsolicited; or
  - (9) a specific gift or class of gifts which the Commission exempts from this Section after finding in writing that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency.
- (e) Subsection (c) does not apply to unsolicited gifts to a County agency.

(f) A public employee who receives a gift that the public employee must not accept under this Section must report the gift to the Commission, if otherwise required to report it, and return the gift to the donor or transfer the gift to the County. If the unacceptable gift is a perishable item, the employee, instead of transferring the gift to the County, may transfer it to a charitable or educational organization that can make timely and effective use of the gift, so long as the employee is not an officer, director, trustee, partner, or employee of the receiving organization. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, § 1; [2010 L.M.C., ch. 5](#), § 1; [2015 L.M.C., ch. 38](#), § 1.)

**Editor's note**—See County Attorney Opinion dated [12/6/02](#) discussing whether a public employee may accept an honorarium or other reimbursement of expenses in return for a speech or presentation. See County Attorney Opinion dated [7/8/02](#) describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion dated [12/14/98](#) addressing the creation of “Friends of Recreation” for revenue-raising activities.

### **Sec. 19A-16A. Political activities of quasi-judicial officials.**

- (a) A County quasi-judicial official must not:
  - (1) solicit or accept from a person within the official's jurisdiction a financial contribution for any political candidate, political organization or ballot question (other than a ballot question which directly affects the official's agency); or
  - (2) solicit from a person within the official's jurisdiction an endorsement of or opposition to a political candidate.
- (b) In this Section:
  - (1) County quasi-judicial official means:
    - (A) a member or alternate member of the Animal Matters Hearing Board;

- (B) a member of the County Board of Appeals;
- (C) a member of the Board of Electrical Examiners;
- (D) a member of the Board of Registration;
- (E) a member or alternate member of the Commission on Landlord-Tenant Affairs;
- (F) a voting member of the Commission on Common Ownership Communities;
- (G) a member of the Ethics Commission;
- (H) a member of a case review board of the Human Rights Commission;
- (I) a member of the Merit System Protection Board;
- (J) a member of the Sign Review Board;
- (K) a member of the Historic Preservation Commission;
- (L) a member of the Contract Review Committee;
- (M) the Chief Administrative Officer;
- (N) a hearing examiner in the Office of Zoning and Administrative Hearings;
- (O) any Public Hearing Officer in the Office of the County Executive; and
- (P) a member of the Cable Compliance Commission.

(2) Political organization means;

- (A) an “authorized candidate campaign committee” as defined in the state election law;
- (B) a “partisan organization” as defined in the state election law;
- (C) a “political committee” as defined in the state election law;
- (D) a “political action committee” as defined in the state election law; and
- (E) a “political party” as defined in the state election law.

(3) Candidate has the same meaning as in the state election law.

(4) Person within the official’s jurisdiction means an individual who:

(A) is registered, or is required to register, as a lobbyist on a matter that is or could be considered by the official;

(B) owns or operates a business that is regulated by the official;

(C) does business with or has a matter pending before the official’s agency; or

(D) has an identifiable economic interest, different from that of the general public, that the official may substantially affect in performing the official’s duties. ([2001 L.M.C., ch. 23](#), § 1; [2003 L.M.C., ch. 15](#), § 1; [2009 L.M.C., ch. 5](#), § 1.)

**Editor’s note**—See County Attorney Opinion dated [7/8/02](#) describing the extent to which quasi-judicial officials may engage in political activities.

## Article IV. Financial Disclosure. [Note]

---



## Notes

[Note] \***Editor's note**-A prior County financial disclosure law was upheld in Montgomery County v. Walsh, 274 Md. 502, 336 A.2d 97 (1975), appeal dismissed, 424 U.S. 901, 96 S.Ct. 1091, 47 L. Ed 2d 306.

**Sec. 19A-17. Who must file a financial disclosure statement.**

The following persons must file a public financial disclosure statement under oath:

- (a) each incumbent and candidate for:
  - (1) County Executive; and
  - (2) County Council;
- (b) the following public employees:
  - (1) Chief Administrative Officer and any Deputy or Assistant Chief Administrative Officer;
  - (2) special assistants to the County Executive;
  - (3) director and deputy director of each department, principal office, and office in the County government;
  - (4) any officer holding a position designated by law as a non-merit position;
  - (5) each Hearing Examiner in the Office of Zoning and Administrative Hearings;
  - (6) members of the County Board of Appeals;
  - (7) members of the Commission;
  - (8) each member of the Fire and Emergency Services Commission, Board of License Commissioners, Revenue Authority, and Housing Opportunities Commission;
  - (9) members of the Merit System Protection Board;
  - (10) the Executive Director of the Office of the County Council and the Deputy Director of the Office of the County Council, if any;
  - (11) each Senior Legislative Analyst, Legislative Analyst, Senior Legislative Attorney, and Legislative Attorney for the County Council;
  - (12) the Legislative Information Officer for the County Council;
  - (13) each Senior Legislative Analyst and Legislative Analyst in the Office of Legislative Oversight;
  - (14) each Legislative Senior Aide III for the County Council;
  - (15) the Inspector General and the deputy Inspector General; and
  - (16) any person who is appointed to serve in an acting capacity in any position listed in the preceding paragraphs while the position is vacant; and
- (c) the following public employees, if not already required to file under this Section:
  - (1) any public employee in the Management Leadership Service;
  - (2) any paid member of any board, commission, or committee of County government, and any other member of a board, commission, or committee of County government who the Chief Administrative Officer designates; and

(3) any other public employee in the Executive branch of County government designated by the Chief Administrative Officer, and any public employee in the legislative branch of County government designated by the Council Administrator.

(d) In designating other public employees to file financial disclosure statements, the Chief Administrative Officer and Council Administrator respectively should include those employees whose duties and responsibilities are likely to substantially affect private interests and require significant participation through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a government action regarding:

- (1) contracting or procurement;
- (2) administering grants or subsidies;
- (3) land use, planning and zoning;
- (4) regulating, licensing or inspecting any business;
- (5) other decisions with significant economic impact; and

(6) law enforcement. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, §1; [2000 L.M.C., ch. 35](#), § 1; [2001 L.M.C., ch. 4](#), § 1; [2006 L.M.C., ch. 33](#), § 1; [2009 L.M.C., ch. 5](#), § 1; [2010 L.M.C., ch. 5](#), § 1; [2013 L.M.C., ch. 4](#), § 1; [2015 L.M.C., ch. 38](#), § 1; [2018 L.M.C., ch. 3](#), §1.)

**Editor's note**-In Department of Transportation v. Armacost, 311 Md. 64, 532 A.2d 1056 (1987), the court quoted with approval from the opinion in Montgomery County v. Walsh, 274 Md. 502, 523, 336 A.2d 97 (1975), appeal dismissed, 424 U.S. 901, 96 S.Ct. 109-1, 47 L.Ed.2d 306 (1976), which upheld as constitutional the delegation of power to the County Executive to implement by regulation a prior County financial disclosure law containing provisions similar to those currently in §§ 19A-17(a)(4) and 19A-17(b)(7). In Walsh, the court also held that the prior County ethics law met the requirements of the State ethics law and did not violate employees' right to privacy.

### **Sec. 19A-18. Financial disclosure statement; procedures.**

(a) Each public employee required to file a public financial disclosure statement under Section 19A-17 must file a financial disclosure statement in the system established by the Chief Administrative Officer under subsection (h):

(1) by April 15 of each year if that person was a filer at the end of the previous calendar year, covering the year just ended or;

(2) within 15 days after a public employee begins employment in a position covered by Section 19A-17, covering the prior year and the current year up to the date of filing;

(3) before an employee leaves a position covered by Section 19A-17, unless the employee has taken another position covered by Section 19A-17. The Director of Finance must not issue an employee's final paycheck until the employee has filed a statement required by this paragraph. Any statement filed under this paragraph must cover the period since the employee's last filed statement;

(4) before the Council confirms the appointment of any person nominated by the County Executive to hold any office listed in subsection 19A-17(b), covering the prior year and the current year up to the date of filing. Any person required to file a report under this paragraph need not file a report under paragraph (2) unless 90 days has passed since the filing of the report under this paragraph; and

(5) as part of the application for a Council-appointed office listed in subsection 19A-17(b), covering the prior year and the current year up to the date of filing. Any person required to file a report under this paragraph need not file a report under paragraph (2) unless 90 days has passed since the filing of the report under this paragraph.

(b) Each candidate for an office listed in subsection 19A-17(a) must file with the County Board of Elections a financial disclosure statement covering the prior year and the current year up to the date of filing the candidate's certificate of candidacy. The statement must be filed with the certificate of candidacy or certificate of nomination. The County Board of Elections must not accept a certificate of candidacy or certificate of nomination unless a financial disclosure statement in proper form has been filed. If a statement has been filed under subsection (a), then the statement required by this subsection need only cover the current year up to the date of filing the certificate of candidacy or nomination.

(c) If at the end of a calendar year in which a candidacy is pending and no election has occurred, the candidate must file a financial disclosure statement with the County Board of Elections covering the year just ended. The statement must be filed on or before the last day to withdraw a candidacy. The County Board of Elections must notify each candidate of this obligation to file the financial disclosure statement at least 20 days before the last day to withdraw a candidacy. If the candidate does not file a timely statement under this subparagraph, the candidacy is withdrawn by operation of law.

(d) The County Board of Elections must not accept a certificate of candidacy or certificate of nomination unless the candidate has filed a financial disclosure statement in proper form.

(e) (1) (A) Any person, other than a candidate for elective office, who is required to file under Section 19A-17, must file a financial disclosure statement in an electronic system set up to receive and administer financial disclosure reports. The filer must certify that each statement was made to the best of the filer's knowledge and belief.

(B) The Chief Administrative Officer must review each statement for filers in the Executive Branch, and the Council Administrator must review each statement for each filer in the Legislative Branch, to see if the answers are complete.

(C) For departments and offices in the Executive Branch, the Chief Administrative Officer may designate the head of a department or office to review a statement. For offices of the Legislative Branch, the Council Administrator may designate the head of an office to review a statement. A director of a County department or office or the Chief Administrative Officer or the Council Administrator, as appropriate, may designate the deputy director of the department or the chief of a division to review a statement. Each designation must be reported to the Chief Administrative Officer or the Council Administrator, as appropriate, and to the Commission. The reviewer may seek the advice of public employees familiar with the filer's official responsibilities, including the filer's supervisor, in evaluating the report under subparagraph (B).

(2) Each reviewer must certify within 30 days that the statement has been completed.

(f) The Commission must make available each statement filed under this Article for examination and copying during normal office hours. The Commission must redact a public employee's home addresses from a statement that is made available for examination or copying. The Commission may charge reasonable fees and adopt procedures to examine and copy statements.

(g) The Commission must make available the electronic form for filing annual financial disclosure statements by the first business day of each calendar year.

(h) The Chief Administrative Officer must establish and maintain an electronic system to facilitate filing of and public access to financial disclosure statements required under this Article. Any electronic system must report an accurate list of each public employee required to file a statement under Section 19A-17, whether the employee is required to file under subsections 19A-17(a), (b), or (c), and include the employee's position, necessary contact information, the reviewer, and whether the report is an initial, annual, or final report. This list should be current and correspond to personnel records and records of memberships in boards, committees and commissions. Any electronic system must be able to generate reports upon request of the Chief Administrative Officer, the Council Administrator, or the Commission detailing who is required to file and the current state of compliance by public employees with financial disclosure filing and review requirements under this Article. The County Executive must annually, or more frequently as requested, provide the list of employees designated to

file financial disclosure reports to the Council. The Commission must make all necessary accommodations for any person who does not have access to the electronic system.

(i) A person must not use any financial disclosure statement required under this Chapter for commercial purposes.

(j) The Commission must retain each financial disclosure statement filed under this Article for 4 years. For each filer filing under subsection 19A-17(a), the retention period must be at least 6 years. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, § 1; [2010 L.M.C., ch. 5](#), § 1; [2015 L.M.C., ch. 38](#), § 1; [2018 L.M.C., ch. 7](#), §1.)

**Editor's note**— Section 19A-18 is cited in Seipp v. Baltimore City Board of Elections, 377 Md. 362, 833 A.2d 551 (2003).

### **Sec. 19A-19. Content of financial disclosure statement.**

(a) Each financial disclosure statement filed under Section 19A-17(a) must disclose the following:

(1) *Interests in real property.*

(A) The statement must identify each interest in real property, regardless of the property's location.

(B) For each interest in real property, the statement must include:

(i) the nature of the property, and the location by street address, mailing address, or legal description of the property;

(ii) the nature and extent of the interest held, including any condition or encumbrance on the interest;

(iii) the date when, the manner in which, and the identity of the person from whom the interest was acquired;

(iv) the nature and amount of the consideration given in exchange for the interest or, if the interest was acquired other than by purchase, the fair market value of the interest when it was acquired;

(v) if any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of each person to whom the interest was transferred; and

(vi) the identity of any other person with an interest in the property.

(2) *Interests in corporations, partnerships or other businesses.*

(A) The statement must list each interest in any corporation, partnership, limited liability partnership, limited liability corporation, sole proprietorship, or other business.

(B) For each interest reported, the statement must specify:

(i) the name and, unless the interest is traded publicly on a national exchange, the address of the principal office of the corporation, partnership, limited liability partnership, limited liability corporation, sole proprietorship, or other business;

(ii) the nature and amount of the interest held, including any condition or encumbrance on the interest;

(iii) for any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(iv) for any interest acquired during the reporting period:

(1) the date when, the manner in which, and the identity of the person from whom the interest was acquired; and

(2) the nature and amount of the consideration given in exchange for the interest or, if the interest was acquired other than by purchase, the fair market value of the interest when it was acquired.

(C) A filer may satisfy the requirement to report the amount of the interest held under subparagraph (B) (ii) by reporting, instead of a dollar amount:

(i) for an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(ii) for an equity interest in a partnership, the percentage of equity interest held.

(3) The Commission may, by method 2 regulation, permit a filer to satisfy the requirement to report the amount of consideration paid or received for an interest in real property, a corporation, partnership, or other business by identifying a category of values established in the regulation.

(4) *Gifts.*

(A) The statement must list each gift valued at more than \$20 or any series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, a restricted donor.

(B) For each gift listed, the statement must specify:

(i) the nature and value of the gift; and

(ii) the identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) *Employment with, or interests in, entities doing business with the County.*

(A) The statement must identify each office, directorship, and salaried employment by the filer or member of the filer's immediate family held at any time during the reporting period with any entity doing business with the County.

(B) For each position listed under this Section, the statement must include:

(i) the name and address of the principal office of the business entity;

(ii) the title and nature of the office, directorship, or salaried employment held, and the date it started; and

(iii) the name of each County agency with which the entity is involved, indicated by identifying one or more of the three categories of "doing business", as defined in Section 19A-4(e).

(6) *Indebtedness to entities doing business with the County.*

(A) The statement must identify each liability, other than a retail credit account to any person doing business with the County owed at any time during the reporting period by:

(i) the filer; or

(ii) a member of the filer's immediate family if the filer was involved in the transaction giving rise to the liability.

(B) For each liability reported under this paragraph, the statement must specify:

(i) the identity of the person to whom the liability was owed, and the date the liability was incurred;

(ii) the amount of the liability owed at the end of the reporting period;

(iii) the terms of payment of the liability, and the extent to which the principal amount of the liability was increased or reduced during the year; and

(iv) the security, if any, given for the liability.

(7) *Employment with the County.* The statement must identify each immediate family member of the filer employed by the County in any capacity at any time during the reporting period.

(8) *Sources of earned income.*

(A) The statement must list the name and address of:

(i) each employer of the filer, other than the County Government;

(ii) each employer of a member of the filer's immediate family; and

(iii) each business entity of which the filer or a member of the filer's immediate family was a sole or partial owner and from which the filer or member of the filer's immediate family received earned income at any time during the reporting period.

(B) The filer need not disclose a minor child's employment or business ownership if the agency with which the filer is affiliated does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(9) *Income for lobbying activity.* The statement must list the name and address of any entity that has hired the filer's spouse to lobby under this Chapter.

(10) The statement may also include any additional interest or information that the filer wishes to disclose.

(b) For the purposes of subsections (a)(1) and (a)(2), the following interests must be treated as the interests of the filer of the statement:

(1) an interest held by a member of the filer's immediate family;

(2) an interest held by a relative of the filer, if the filer, at any time during the reporting period, directly or indirectly controlled the interest;

(3) an interest held by a business entity in which the filer held a 30% or greater interest at any time during the reporting period; or

(4) an interest held by a trust or estate in which, at any time during the reporting period:

(A) the filer held a reversionary interest or was a beneficiary; or

(B) if a revocable trust, the filer was a settlor.

(c) Each statement filed under Sections 19A-17(b) and 19A-17(c) must disclose all information required to be disclosed under subsection (a). However, the filer need not specify the nature or amount of consideration given in exchange for an interest or the fair market value of an interest. For a debt, the filer need only disclose the information required under subsection (a)(6)(A). (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1994 L.M.C., ch. 28, § 1; [2001 L.M.C., ch. 4](#), § 1; [2015 L.M.C., ch. 38](#), § 1; [2016 L.M.C., ch. 2](#), § 1; [2018 L.M.C., ch. 7](#), §1.)

## **Sec. 19A-20. Reserved.**

**Editor's note**—[2015 L.M.C., ch. 38](#), deletes former Sec. 19A-20, Interests attributable to filers.

## **Article V. Lobbying Disclosure.**

---

### **Sec. 19A-21. Who must register as a lobbyist; exceptions.**

(a) Any individual or organization must register as a lobbyist under this Article if, during a year, that individual or organization:

(1) communicates with a public employee to influence legislative action by a County agency, and for that purpose either:

(A) spends more than \$500, or

(B) receives compensation, including a pro-rated part of a salary or fee for services, totaling more than \$500; or

(2) communicates with a public employee to influence executive or administrative action by a County agency, and for that purpose spends a total of more than \$500 for:

(A) meals and beverages;

(B) transportation;

(C) lodging;

(D) provision of any service;

(E) one or more special events; and

(F) one or more gifts.

(b) In this Article, legislative action does not include any matter covered by subsection 19A- 15(b).

(c) This Article does not apply to:

(1) drafting bills or advising clients about proposed or pending legislation without any other attempt to influence the legislative process;

(2) communicating with a County agency when requested by the agency, without engaging in any other activity to influence legislative, administrative, or executive action on the subject of the communication;

(3) communicating with a County agency as an official act of an official or employee of the state, a political subdivision of the state, or the United States, and not on behalf of any other person or business;

(4) actions of a publisher or working journalist in the ordinary course of disseminating news or making editorial comment to the general public, without engaging in other lobbying that would directly and specifically benefit the economic interests of a specific person or business;

(5) appearing before a County agency at the request of a lobbyist if the witness:

(A) takes no other action to influence legislative, administrative, or executive action; and

(B) identifies himself or herself as testifying at the request of the lobbyist;

(6) communicating on behalf of a religious organization for the sole purpose of protecting the right of its members to practice the doctrine of the organization;

(7) communicating as an official duty of an officer, director, member, or employee of an organization engaged exclusively in lobbying for counties or municipalities, and not on behalf of any other person or business;

(8) an action of any person representing an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if:

(A) the action promotes the exempt purposes of the organization; and

(B) the organization gave gifts totaling less than \$500 to public employees in a year; and

(C) the representative is paid or spends less than \$1,000 in a year to influence executive, administrative, and legislative action.

(d) An individual or organization is exempt from the reporting requirements of this Article if the individual or organization:

(1) compensates one or more lobbyists;

(2) reasonably believes that each lobbyist will timely register and report all expenditures required to be reported; and

(3) engages in no other lobbying.

If a lobbyist fails to report timely any information required under this Article, the lobbyist's employer is immediately subject to the reporting requirements of this Article. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; [2004 L.M.C., ch. 28](#), § 1; [2018 L.M.C., ch. 7](#), §1.)

### **Sec. 19A-22. Certification of authority.**

(a) *Certification.* Each lobbyist required to register under this Article must certify under oath or affirmation that the lobbyist is authorized to lobby for the individual or organization who hired the lobbyist.

(b) *Contents of certification.* The written certification must include:

(1) the full legal name and business address of the individual or organization;

(2) for an individual, the full name and contact information for the individual;

(3) for an organization, the name, contact information, and official title of the representative of the organization who authorized the hiring of the lobbyist;

(4) the full legal name and business address of the regulated lobbyist;

(5) the period during which the regulated lobbyist is authorized to act; and

(6) the proposal or subject on which the regulated lobbyist represents the individual or organization. (1990 L.M.C., ch. 21, § 1; [2018 L.M.C., ch. 7](#), §1.)

### **Sec. 19A-23. How and when to register as a lobbyist.**

(a) Every person required to register with the Commission under Section 19A-21 must disclose the following information on a form provided by the Commission:

(1) the lobbyist's name and permanent address;

(2) the name and permanent address of any person who will lobby on behalf of the lobbyist;

(3) the name, address, and nature of business of any person who compensates the lobbyist; and

(4) the identification, by formal designation if known, of each matter on which the lobbyist expects to lobby or employs someone to lobby.

(b) This form must be filed not later than 5 days after an individual or organization first meets the requirements for registration under this Article.

(c) A lobbyist must register separately for each employer.

(d) Each lobbyist may file a notice of termination within 30 days after:

(1) stopping any lobbying activity; and

(2) filing the reports required under this Article.



(e) The Commission may charge each lobbyist a reasonable annual registration fee in an amount set by an Executive regulation adopted under method (2). The revenue to be raised by the fee must not exceed the cost of administering this Article. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; [2018 L.M.C., ch. 7](#), §1.)

### **Sec. 19A-24. Compensation must not be contingent.**

A person must not pay another person compensation that depends on or varies with the success or defeat of any legislative, administrative, or executive action by a County agency. (1990 L.M.C., ch. 21, § 1.)

### **Sec. 19A-25. Reports by lobbyist to the Commission.**

(a) Each registered lobbyist must file with the Commission, under oath:

- (1) a report covering the period from January 1 through June 30, filed by July 31; and
- (2) a report covering the period from July 1 through December 31, filed by January 31.

(b) If the lobbyist is not an individual, an authorized officer or agent of the lobbyist must sign the form. Each lobbyist must file a separate report for each individual or organization that compensates the lobbyist.

(c) Each report must include:

- (1) a complete and current statement of the information required under Section 19A- 23;
- (2) total expenditures on lobbying in each of the following categories:

- (A) office expenses;
- (B) professional and technical research and assistance;
- (C) publications that expressly encourage persons to communicate with public employees;
- (D) names of witnesses and the fees and expenses paid to each;
- (E) meals and beverages for public employees or their immediate families;

(F) special events, including parties, dinners, athletic events, entertainment, and other functions, to which all members of the Council or the governing body of an agency are invited;

(G) expenses for food, lodging, and scheduled entertainment of public employees given in return for participation in a panel or speaking engagement at a meeting;

(H) other gifts to or for public employees or their immediate families; and

(I) other expenses;

(3) total compensation paid to the lobbyist. If lobbying is only part of the person's employment, compensation means a prorated amount based on the time spent on lobbying compared to the time spent on other employment activities. A prorated amount must be labeled as such; and

(4) the name of each public employee or relative who receives, directly or indirectly, a gift given by a lobbyist or any person acting on behalf of a lobbyist, if the gifts have a total value of at least \$50 during the year. The lobbyist must list each gift by the date given, the beneficiary, the amount or value, and the nature of the gift.

(d) Expenses reported in subparagraphs (c)(2)(F) and (G) need not be allocated to individual public employees. However, the lobbyist must specify the date, location, total expenses incurred, and the names of the employees who attended each event.

(e) The Commission may require any lobbyist to submit additional reports or information to fulfill the purposes of this Chapter. (1990 L.M.C., ch. 21, § 1.)

## **Sec. 19A-26. Public inspection of lobbyist registration documents.**

(a) The Commission must maintain all required documents under this Article and make them available to the public for inspection and copying. The Commission may establish procedures and charge reasonable fees.

(b) By September 30 and March 31 each year, the Commission must compute and make available to the public:

(1) a subtotal under each category in paragraph 19A-25(c)(2) for each lobbyist;

(2) a subtotal representing the combined total of subparagraphs 19A-25(c)(2)(E), (F), and (G), for each lobbyist; and

(3) the total amount reported by each lobbyist for lobbying activities during the year.

(c) If any report filed with the Commission contains the name of a public employee or relative as required under paragraph 19A-25(c)(4), the Commission must notify the public employee within 30 days after the report is filed.

(d) After being notified that a public employee's or relative's name appears in a report, the public employee may, within 30 days after receiving the Commission's notice, file a written exception to the inclusion of the name. The Commission must include the exception in its files. (1990 L.M.C., ch. 21, § 1.)

## **Article VI. Enforcement.**

---

### **Sec. 19A-27. Injunctive or other relief; cease and desist orders; voiding official actions.**

(a) The Commission may ask special counsel appointed under Section 19A-5(f)(4) or the County Attorney to, or the County Attorney may on his or her own initiative, seek injunctive or other appropriate relief to require compliance with this Chapter or Sections 2-109, 11B-51 or 11B-52(a) in a court of competent jurisdiction.

(b) The court may:

(1) order a person to stop violating this Chapter or Sections 2-109, 11B-51 or 11B-52(a); or

(2) void an official action if:

(A) the action arises from or involves the subject matter of a conflict of interest for which no waiver was granted;

(B) the outcome of the official action was substantially affected by the conflict of interest; and

(C) legal action is filed within 90 days after the official action.

(c) The court, after hearing and considering all the circumstances, may grant all or part of the relief sought. However, an official action is not voidable if that action:

(1) appropriates funds;

(2) levies a tax; or

(3) provides for the issuance of bonds, notes, or other evidence of public obligation.

(d) Except as expressly provided otherwise, any remedy specified in this Article may be invoked regardless of whether the Commission has found, after holding a hearing under Section 19A-10(c), that a public employee violated this Chapter. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 1997 L.M.C., ch. 37, § 1; [2010 L.M.C., ch. 5](#), § 1.)

**Editor's note**—In *Sugarloaf Citizens Ass'n., Inc. v. Gudis*, 78 Md. App. 550, 554 A.2d 434 (1989), aff'd on other grounds, 319 Md. 558, 573 A.2d 1325 (1990), the Court of Special Appeals held that § 19A-22(b) did not create a private right of action to enforce the County ethics law and that the Ethics Commission has primary jurisdiction to hear and investigate complaints of violations of the County ethics law. In *Sugarloaf Citizens Assoc., Inc., v. Gudis*, 319 Md. 558, 573 A.2d 1325 (1990), the Court of Appeals held that § 19A-22(b) unconstitutionally granted to the judiciary discretionary authority to invalidate an action of the County Council (on the basis of conflict of interest) if the court deemed it in the "public interest" to do so. The court also held § 19A-22(b) to be severable such that the remainder of the County ethics law (§§ 19A-1 through 19A-32) continued in force. Section 19A-22(b) was subsequently renumbered § 19A-27(b) by 1990 L.M.C., ch. 21, without substantive change.

See County Attorney Opinion dated [8/23/02](#) describing the elements required for a complaint to the Ethics Commission to initiate an investigation.

### **Sec. 19A-28. Penalties.**

(a) Unless otherwise indicated, any violation of this Chapter or regulations adopted under it, or any violation of an order of the Commission, is a class A violation.

(b) The County Executive may authorize Commission staff or another County employee to issue a citation for any violation. (1990 L.M.C., ch. 21, § 1; 1997 L.M.C., ch. 37, § 1; [2010 L.M.C., ch. 5](#), § 1.)

### **Sec. 19A-29. Civil recovery.**

(a) The County may recover damages, property, and the value of anything received by any person in a transaction that violates:

- (1) Article III of this Chapter;
- (2) Article XII of Chapter 11B; or
- (3) Section 2-109.

(b) The County may use a setoff, attachment, garnishment, or any other appropriate legal action or proceeding to recover any amount or property due.

(c) A taxpayer of the County may file a legal action under subsection (a) on behalf of the County if:

(1) the taxpayer files a written demand with the County Attorney to bring an action under subsection (a); and

(2) the County Attorney does not file the action within 60 days after receiving the written demand.

(d) The Court may order that a substantially prevailing party to an action under this Section be reimbursed court costs and litigation expenses, including a reasonable attorney fee. (1990 L.M.C., ch. 21, § 1; 1997 L.M.C., ch. 37, § 1; [2010 L.M.C., ch. 5](#), § 1.)

### **Sec. 19A-30. Termination or other disciplinary action; suspension of compensation.**

If the Commission finds after holding a hearing under Section 19A-10(c) that a public employee has violated this Chapter, the appointing authority may:

(a) terminate employment or take other disciplinary action; and

(b) suspend payment of salary or other compensation until the employee complies with an order of the Commission. (1990 L.M.C., ch. 21, § 1.)

**Editor's note**—See County Attorney Opinion dated [12/17/08](#) discussing the authority and role of the Merit System Protection Board and the role of the County Attorney as legal adviser.

**Sec. 19A-31. Retaining papers and documents.**

(a) Any person who is subject to this Chapter must obtain and preserve all documents that are necessary to complete and substantiate any reports, statements, or records required under this Chapter. These documents must be retained for 3 years after the report, statement, or record that involves the documents is filed. These documents must also be available for inspection by the Commission after reasonable notice.

(b) The Commission must retain for 4 years all documents submitted to it. (1990 L.M.C., ch. 21, § 1.)

**Sec. 19A-32. Removal for failure to file financial disclosure statement.**

(a) If a public employee does not file a complete financial disclosure statement when required to under Section 19A-18, the Chief Administrative Officer (for employees in the Executive Branch) or the Executive Director of the Office of the County Council (for employees in the Legislative Branch) may remove the employee from employment with a County agency or from membership on a board, commission or similar body, paid or unpaid. Before an employee is removed for failing to file a financial disclosure statement, the County Attorney must give the employee 30 days notice of the proposed removal. The Chief Administrative Officer and the Executive Director of the Office of the County Council must not remove an employee if the employee files the required financial disclosure statement within the time specified in the notice. This section does not apply to an elected public employee.

(b) In addition to any action taken under subsection (a), the Commission may impose a fine of \$2 per day, up to a maximum of \$250, against any person who does not file a complete financial disclosure statement on or before the date it is due. Within 30 days after a fine is imposed under this subsection, the person against whom the fine is assessed may file a written request with the Commission to reduce or waive the fine for good cause. (1990 L.M.C., ch. 21, § 1; [2010 L.M.C., ch. 5](#), § 1; [2013 L.M.C., ch. 4](#), § 1; [2018 L.M.C., ch. 3](#), §1.)

## CHAPTER 19A. ETHICS — REGULATIONS

- COMCOR 19A.09.01 Commission Proceedings Concerning Possible Violations of the Public Ethics Law
- COMCOR 19A.12.01 Administrative Policies and Procedures for Outside Employment
- COMCOR 19A.14.01 Additional Guidance Concerning Misuse of Prestige of Office; Improper Influence
- COMCOR 19A.16.01 Gift Acceptance by Montgomery County Employees
- COMCOR 19A.17.01 Financial Disclosure: Ranges of Values for Disclosure by Elected Officials
- COMCOR 19A.23.01 Lobbyist Registration Fee

### SEC. 19A-6 AUTHORITY AND DUTIES OF COMMISSION; APPEAL OF COMMISSION DECISIONS — REGULATIONS

(Administrative History: Reg. No. 8-00 (COMCOR 19A.06.01) (Method 2); Dept.: Police; Removed – Contained a July 1, 2001 sunset date.)

(Administrative History: Reg. No. 25-01 (COMCOR 19A.06.02) (Method 2); Dept.: Ethics Commission, was superseded and removed effective July 24, 2018, by Reg. No. 22-16AM.)

#### COMCOR 19A.09.01 Commission Proceedings Concerning Possible Violations of the Public Ethics Law

##### 19A.09.01.01 Applicability

This regulation addresses the handling of enforcement matters pursuant to the Public Ethics Law by the Ethics Commission and its staff. Enforcement issues covered by this regulation arise when a violation of the Montgomery County Public Ethics Law may have occurred and the Commission staff or the Commission becomes aware of the issue. The regulation covers the handling of issues by the Commission and not by other agencies; thus, other proceedings, such as adverse personnel actions, may be instituted separate and apart from Commission consideration of an enforcement issue.

##### 19A.09.01.02 Preliminary Procedures for Addressing Possible Violations

2.0 Preliminary Inquiry – When Commission staff becomes aware of a possible ethics violation, it will assess the information received for compliance with Public Ethics Law requirements. Commission staff may conduct a preliminary inquiry (which does not involve the statutory investigative authorities of the Commission) to determine whether a matter merits being presented to the Commission for its consideration or other resolution. Where the Commission staff obtains prima facie evidence of a violation of the Public Ethics Law, Commission staff has available to it a number of options to resolve the matter.

2.1 Resolution of Minor Violations – Many potential violations involve minor compliance issues with financial disclosure, outside employment, and lobbying registration and reporting requirements. Commission staff will resolve many of the compliance issues by obtaining compliance with requirements by the responsible person.

2.2 Civil Citations – Authorized Commission staff can issue a civil citation for an apparent offense of the Public Ethics Law, enforceable in District Court.

2.3 Settlement – In lieu of issuing or enforcing a civil citation, Commission staff can seek a settlement from the person cited or to be cited; any payment to settle a matter may not exceed statutory limits for violations of the Public Ethics Law.

2.4 Fines – For financial disclosure non-compliance, Commission staff may impose the statutory fine in 19A-32(b) and refer the filer to the Chief Administrative Officer or the Council Administrator for disciplinary action.

Within 30 days after a fine is imposed, the filer may request a waiver or reduction of the fine. The request must be in writing to the Commission showing good cause why the fine should be waived or reduced. Upon continued failure of a filer to file the required report or pay the fine imposed, authorized Commission staff may issue a citation enforceable in District Court imposing additional fines and penalties or present the noncompliance issue to the Commission.

**2.5 Proposals to Cure Apparent Violations** – Commission staff can elevate a noncompliance issue by presenting it to the Commission for consideration of whether to cause an investigation and (after investigation) file a complaint. Commission staff can ask the person responsible for the possible violation any time before the Commission files a complaint or sets a matter for hearing if he or she would like to propose a cure to the Commission to remedy the possible violation. Any proposal to cure must recite stipulations of fact and law and any actions taken or agreed to be taken. Commission staff must present any such proposal to the Commission for its consideration. The Commission may accept or reject the proposal independent of staff's recommendation or agreement. In the event the Commission accepts the proposal to cure, the Commission staff may resolve the matter based on the terms agreed to by the Commission. Upon satisfaction of the terms of the accepted proposal, the Commission staff will close the matter. Any accepted proposal acknowledging a violation of the ethics law will be made public.

### **19A.09.01.03 Commission Disposition of Matters**

**3.0 General** – The Commission will consider information presented to it by staff about a potential violation and may take any one of the following courses of action.

**3.1 Obtaining Additional Information** – The Commission may ask staff to request information from County agency officials or conduct a preliminary inquiry into a matter to obtain sufficient information to determine if an investigation is necessary to resolve a matter or if other action is warranted.

**3.2 Referral to Management** – The Commission can refer a matter to a County agency for management consideration and resolution without conducting a Commission investigation or making any findings. In deciding whether to refer a matter, the Commission will weigh the benefit of reaching independent conclusions through investigation and adjudication versus the efficiency of agencies resolving matters themselves through internal investigation and personnel action if appropriate. The decision whether to employ Commission investigation and possible adjudication will include analysis of whether Commission action is necessary to ensure public confidence.

**3.3 Citation Issuance** – The Commission may direct authorized staff to issue a citation in connection with an apparent offense. The direction to issue a citation in a matter does not constitute a finding of a violation of the Public Ethics Law by the Commission. A citation is an appropriate remedy for apparent violations of the Public Ethics Law involving failure to meet financial disclosure or lobbying filing requirements; financial disclosures of prohibited gifts; outside employment without an approved outside employment request; and other instances where an apparent violation of the Public Ethics Law exists and the Commission determines that a matter would be better handled through the citation process rather than through the Commission's investigation and adjudicatory process. Factors the Commission may consider in making this determination include the complexity of the facts involved; whether novel issues of law are present; and the relative importance of the matter in terms of the Commission's mission to ensure public confidence in the impartiality of public employees.

**3.4 Investigation Authorization** – The Commission can cause a matter to be investigated if it finds in writing that an investigation is necessary to resolve the matter.

**3.5. Closure** – The Commission may close a matter or decide to take no further action in a matter if in the Commission's discretion it determines that no further action is warranted.

### **19A.09.01.04 Formal Complaint Process**

**4.0 Formal Complaints** – A formal complaint is an allegation of facts made under oath that would support a reasonable person in concluding that a violation of the Public Ethics Law or Sections 2-109, 11B-51, or 11B-52(a) has occurred.

4.1. Review of Complaints – A formal complaint received by Commission staff must be presented to the Commission. Upon review of a formal complaint, the Commission can dismiss the complaint for failure to include facts sufficient to support a violation, set the matter for hearing, or cause an investigation of the matter. The Commission may also dismiss the Complaint without prejudice on the basis that the matter does not merit the resources associated with investigation and adjudication of the alleged violation and refer the matter to Commission staff for resolution or for referring to agency management for appropriate disposition.

4.2 Commission Complaints – The Commission can, on its own motion and based on a report of investigation, file a complaint regarding a matter.

### **19A.09.01.05 Commission Investigations**

5.0 A Commission investigation is an investigation conducted pursuant to 19A-9 of the Public Ethics Law after the Commission has found in writing that an investigation is necessary to resolve a matter. The investigation will be conducted by the Commission staff, the County Attorney, the Inspector General or such other person temporarily retained to conduct the investigation.

### **19A.09.01.06 Conduct of Commission Hearings**

6.0 Setting a Matter for Hearing – Once a formal complaint has been filed, and a report of investigation, if any, has been received by the Commission, the Commission may set a matter for hearing if it finds reasonable cause to believe that a violation of the ethics law has occurred.

6.1 Consent Orders – Once a matter has been set for hearing, the Commission may dispose of a matter by consent order instead of conducting the adjudicatory hearing. The terms of a consent order can be negotiated between the subject of the complaint and the person assigned to prosecute the matter. Any consent order proposed by the parties must be presented to the Commission for its consideration. The Commission may accept or reject the proposed consent order, independent of any proposed agreement entered into between the prosecuting party and the subject of a complaint. In the event the Commission accepts the consent order, the Commission staff will notify the complainant, if any, of the resolution and close the matter. Any accepted proposal acknowledging a violation of the ethics law will be made public. If the Commission rejects the proposed consent order, the hearing will be conducted as originally scheduled.

6.2 Procedures – Commission proceedings are not governed by the County’s Administrative Procedures Act (Chapter 2A of the County Code), though the Commission will look to the Act when appropriate for guidance, including section 2A-7(b) regarding permissible discovery. All papers and pleadings filed with the Commission must contain a Certificate of Service indicating service upon the other party. Each party must file a Notice of Service with the Commission for any discovery served upon the other party. Responses to requests for written discovery are due 30 days after service.

#### **6.3 Prehearing Submissions and Conferences –**

a. The contents of prehearing submissions must meet the requirements of Section 2A-7(a) of the County Code.

b. The Commission may request the parties to attend a prehearing conference and submit to Commission staff a prehearing statement including a proposed list of witnesses; any documents that will be introduced at the hearing; and an estimated length of the presentation of their case. Any evidence sought to be admitted at the hearing that has not been provided to the Commission with the prehearing statement at least 10 days before the hearing may be barred from admission into evidence, at the discretion of the Chair of the Commission.

c. The Commission may designate a Commission member to conduct a prehearing conference to address preliminary motions; scheduling; the issuance of subpoenas; discovery; stipulations or other agreements to avoid unnecessary evidence; identification of witnesses; and avoidance of presentation of unnecessary, cumulative evidence. The presiding Commission member may issue a prehearing order ruling on the issues addressed at the prehearing conference. Any exception taken to a prehearing order must be taken within 5 business days of the issuance of the prehearing order.

6.4 Ex Parte Communications – Commission hearings are subject to the rule prohibiting ex parte communications in 19A-15(b).

### **19A.09.01.07 Imposition of Penalties**

7.0 If the Commission concludes a violation of the Public Ethics Law occurred, the Commission may order a subject of a complaint to stop violating the ethics law. The Commission may seek a court of competent jurisdiction to order a person to stop violating the ethics law or to void an official action, under limited circumstances. The Commission may: direct staff to issue a citation; seek recovery for damages or the value of anything received by a person for certain violations; seek the imposition of disciplinary action by an appropriate agency; issue a public or private reprimand; and impose a fine which does not exceed statutory limits. The Commission may, at any time, refer to an appropriate prosecuting attorney any information that indicates that a criminal offense may have occurred.

(Administrative History: Reg. No. 22-16AM (Method 2); Dept.: Ethics Commission)

## **SEC. 19A-12 RESTRICTIONS ON OTHER EMPLOYMENT AND BUSINESS OWNERSHIP — REGULATIONS**

---

### **COMCOR 19A.12.01 Administrative Policies and Procedures for Outside Employment**

#### **19A.12.01.01 Applicability**

This Regulation applies to the outside employment of all County employees, as those terms are defined below.

#### **19A.12.01.02 Definitions**

2.0 Definitions contained in Chapter 19A are hereby incorporated. See Section 19A-4, Montgomery County Code.

2.1 Confidential Information – Information, whether oral or written, in the custody of a County employee or an uncompensated appointed official which is not available to the public pursuant to Title 4 of the General Provisions Article, Annotated Code of Maryland. This information includes personnel records, confidential commercial information and information protected by law.

2.2 Compensation for Services – Includes receipt of any money or thing of value, regardless of form, paid for services rendered, including sharing in benefits from a business to which an employee provides services and active or earned income from a real estate or other investment business; compensation does not include the receipt of passive income from investment activities.

2.3 County Employee – Any person, including elected or appointed officials, who is compensated in whole or in part by the Montgomery County Government, but does not for purposes of this Regulation include employees of the following: Revenue Authority, Housing Opportunities Commission, or Board of License Commissioners, independent fire departments or rescue squads. A member of a County board, committee, or commission is not a County Employee for purposes of this Regulation.

2.4 County Property – All assets of the County, including but not limited to computers, office equipment, telephones, copiers, County letterhead, and County cars.

2.5 Outside Employment – The employment of a County employee performing work for compensation for other than the County or an agency, or the Revenue Authority, Housing Opportunities Commission, Board of License Commissioners, independent fire departments and rescue squads, Montgomery County Public Schools, Montgomery College, the State's Attorney's Office in Montgomery County, the Office of the Sheriff, and the Circuit Court. Outside employment does not include any military, National Guard or volunteer (non-paid) service.

2.6 Regulated by a County Agency – Subject to the authority of or doing business with the County agency.



2.7 Supervisor – A County employee who has authority to hire, fire, rate the performance of, or direct the day-to-day activities of a subordinate employee or to participate in these actions.

### 19A.12.01.03 Purpose

3.0 To set forth the policies associated with the requirement to obtain approval for outside employment for County employees. Approval for outside employment does not supersede any other conduct prohibition or need for a waiver.

### 19A.12.01.04 Policies

4.0 Ethics Commission Approval – County employees must receive approval pursuant to these regulations for all outside employment, regardless of whether the employment is performed after hours or during vacation periods.

4.1 Prohibition on Referrals, Acceptance of Referrals and Solicitation of Referrals – County employees and uncompensated appointed officials, while on duty, may not refer, accept referrals, or solicit referrals for their outside employment, nor sell or offer to sell or otherwise market products or services related to their outside employment to other County employees during work hours.

4.2 Restriction on Supervisory Roles – In engaging in outside employment, County employees are prohibited from:

- a. Supervising or being supervised by any person(s) the County employee supervises or is supervised by in County employment; and
- b. Working for any business in which a person the County employee supervises or who supervises the County employee as part of County employment owns a five percent or greater interest.

4.3 Prohibited Outside Employment – County employees may not be employed by any business that is regulated by or negotiates or contracts with the County agency with which the employee is affiliated.

4.4 Use of County Property – County employees and uncompensated appointed officials may not use any County property whatsoever in the discharge of their outside employment including transport to and from their outside employment. The Commission may permit an employee to use County property if the employee obtains written approval by the agency head or pursuant to a regulation of the agency.

4.5 Agency Outside Employment Requirements – Individual County agencies may have directives in regard to outside employment activities in addition to but not less restrictive than Commission regulations.

4.6 Confidential Information – County employees and uncompensated appointed officials may not use or disclose confidential information gained in County employment for personal financial gain, gain of another, or for any purpose other than use in County employment.

4.7 Assistant State Fire Marshal – County employees with Assistant State Fire Marshal powers and responsibilities may not engage in any outside employment in the State of Maryland which involves fire safety practices, prevention or corrective activities, coordination of fire safety programs or critical analysis and evaluation of Maryland fire loss statistics.

4.8 Exemption for Limited Outside Employment – Employment of less than one day for services of \$100 or less with a person or entity that does no business with the County employee's employing agency and is not otherwise affected by the performance of County duties by the County employee is exempt from the requirement for outside employment approval by the Commission.

4.9 Exemption for Certain Job Classes – Uncompensated appointed officials, employees below grade 27 who work for the County less than 10 hours per week, and County employees in the classifications within Grades S1-S6 and 5-13 are exempt from the requirement for outside employment approval by the Commission, except from the classifications listed below:

Data Application Trainee

Computer Operator Trainee

Crossing Guard

Data Entry Operator I & II

Data Application Specialist I & II

Legislative Intern

However, all County employees and appointed officials remain subject to the provisions of all other Commission policies and the provisions of the Montgomery County Code, Chapter 19A.

4.10 Waiver – A County employee may request a waiver of these policies by the Commission in accordance with the criteria established in § 19A-8 of the Montgomery County Code.

### **19A.12.01.05 Procedures for Approval**

5.0 Employee – A County employee must apply for outside employment using the Outside Employment Online System which will automatically forward the request to reviewing officials in the employee's agency. If there are no reviewing officials for an employee, such as may be the circumstance for elected officials, the Chief Administrative Officer or the Council Administrator, the request will be reviewed by the Commission without agency review.

5.1 Agency Head and Supervisor – The Agency Head and Supervisor must recommend approval or disapproval of the employee's request and forward the employee's request with recommendations, including specific conditions when appropriate, to the Commission. If disapproval is recommended, the Agency Head or Supervisor should state the specific reasons for the disapproval recommendation. The Agency Head may delegate the recommendation function to a designee, but sub-delegation by a designee is not permitted. Requests for outside employment with a duration of six (6) weeks or less may be approved by the Agency Head or designee and will be considered approved by the Commission without further review where there is no question by the approving official concerning conflicts of interest.

5.2 Commission – With the exception of requests with a duration of six (6) weeks or less, the Commission will review the request and make a final decision. The Commission will then notify the employee and agency head in writing of its final decision.

5.3 Date Work May Begin – County employees may begin outside employment when the employment is approved by the agency head, with the understanding that continuation of the outside employment is contingent upon final approval by the Commission.

5.4 Changes in Outside Employment – County employees who have outside employment approval must submit a new request for outside employment if there are changes in the identity of outside employer or the duties involved in the outside employment.

5.5 Changes in County Employment – A County employee who receives approval for outside employment and later transfers to another agency (or accepts another position within the agency) must within thirty (30) days of the transfer submit a new request for outside employment to continue the outside employment. If a new request is submitted within thirty (30) days after the transfer, the original approval will remain effective until the Commission either grants or denies the new request. If a new request is not submitted, the original approval will terminate thirty (30) days after the transfer.

5.6 Effective Dates – An approval of an outside employment request will be effective for no more than three (3) years after the approval of the request by the Commission. Employees may be granted outside employment approval for a specific period of time less than three years.

5.7 Submission of Continuation Requests – A County employee seeking to continue outside employment beyond the three year approval period or for a lesser specified period must submit a new request for outside employment thirty (30) days or more prior to the expiration of the applicable period. If a new request is submitted at least thirty (30) days prior to the expiration of the applicable period, the original approval will remain effective until the Commission either grants or denies the new request.

5.8 Violations – Failure to obtain Agency or Commission approval for outside employment, or failure to comply with any Agency or Commission imposed or adopted rules or conditions related to outside employment, violates the Ethics Law and may result in disciplinary action, the temporary or permanent revocation of permission to engage in outside employment, and other penalties as provided by law.

5.9 Revocation of Approval – After giving a County employee notice and an opportunity to respond, upon a determination by the Ethics Commission that any approved outside employment is inconsistent with the Public Ethics Law, the Commission may revoke a previously granted approval. An employee must respond within 30 days to a notice from the Commission regarding a proposed revocation of an outside employment approval.

### **19A.12.01.06 Additional Provisions Applicable to Police Officers**

In addition to the other provisions of this regulation, the following provisions also apply to police officers.

6.1 Use of County Equipment and Uniforms by Police Officers in Outside Employment – Police officers may use County equipment and uniforms in outside employment only as expressly authorized by regulation.

6.2 General Use of County Vehicles – Police officers may use County vehicles only as expressly authorized by regulation.

(Administrative History: Reg. No. 22-16AM (Method 2); Dept.: Ethics Commission)

## **SEC. 19A-14 MISUSE OF PRESTIGE OF OFFICE; HARASSMENT;**

### **IMPROPER INFLUENCE — REGULATIONS**

#### **COMCOR 19A.14.01 Additional Guidance Concerning Misuse of Prestige of Office; Improper Influence**

##### **19A.14.01.01 Applicability**

This Regulation applies to all public employees except as otherwise specified by law. A public employee may request a waiver of these policies by the Commission in accordance with the criteria established in § 19A-8 of the Montgomery County Code.

##### **19A.14.01.02 Policies**

2.0 A public employee must not intentionally use public office or authority for the employee's private gain or the private gain of another or to coerce or induce another, including a subordinate, to provide any benefit to the employee or to friends, relatives, or persons with whom the employee is affiliated with in a nongovernmental capacity.

2.1 Use of a Subordinate's Time – A public employee must not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

2.2 Endorsements, Letters of Recommendation – A public employee must not use or permit the use of any authority associated with public office in a manner that could reasonably be construed to imply that the employee's agency or the County sanctions or endorses the employee's personal activities or those of another. Letters of recommendation using official title may be issued only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom the employee has dealt in the course of County employment or whom the employee is

recommending for County employment. An employee must not use or permit the use of his or her Government position or title or any authority associated with his or her public office to endorse any product, service or enterprise except:

a. In furtherance of statutory authority to promote products, services or enterprises; or

b. As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

2.3 Teaching, Speaking and Writing – When teaching, speaking, or writing in a personal capacity, the employee may refer to the employee's official title or position as one of several biographical details when such information is given to identify the employee provided that his title or position is given no more prominence than other significant biographical details. An employee may not focus on Montgomery County policies and practices in a compensated teaching, speaking or writing activity or divulge the specifics of experience as a public employee for private gain.

2.4 Nepotism, Employee Prohibition – A public employee must not appoint, hire, or advocate the advancement of a relative (as that term is defined in the Public Ethics Law) to a County position.

2.5 Nepotism, Employment Prohibition – A relative of a public employee must not be employed in a position if the public employee:

a. Would exercise jurisdiction or control over the position; or

b. Advocates the relative's employment.

2.6 Representation by Employees of Persons Before the County – A public employee must not:

a. While identifying oneself as a public employee assist or represent another person in any matter before any County agency or employee or in a matter in which the County has an interest; or

b. Receive any gratuity, or any share of or interest in any matter before any County agency or employee, in consideration of assistance in the matter.

2.7 Exceptions to Representation Prohibition – Subsection 2.6 does not apply to:

a. The performance of usual and customary constituent services without additional compensation;

b. A Board, Commission or Committee member with respect to matters before County agencies other than the Board, Commission or Committee on which the member serves unless the member has as a public employee at any time participated personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in the matter;

c. Assistance to or representation of an employee without compensation in an employment-related matter by an employee other than an elected or appointed employee;

d. Acting as an agent or attorney for, or otherwise representing the employee's parents, spouse, child, or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

i. in those matters in which the employee has participated personally and substantially as a public employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

ii. in those matters which are the subject of the employee's official responsibility;

e. Giving testimony under oath or making statements required to be made under penalty of perjury or contempt;

f. Any provision of any other Federal, Maryland or County law that authorizes labor-management relations between the County and any labor organization that represents its employees;

g. A public employee who is appointed as a representative to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to it.

2.8 Acting as a Representative on a Board, Commission, Committee, Task Force or Similar Body – A member of a body who is appointed to the body to represent the viewpoint of a particular industry, business or advocacy group may make recommendations to the body in furtherance of the those interests if: 1) the other members of the body are informed of the member’s representative status; and 2) the member does not participate in a matter if the member knows or reasonably should know that an entity in which the member has an economic interest, including an employment relationship, is a party to a specific matter before the body.

(Administrative History: Reg. No. 22-16AM (Method 2); Dept.: Ethics Commission)

## **SEC. 19A-16 SOLICITING OR ACCEPTING GIFTS — REGULATIONS**

---

### **COMCOR 19A.16.01 Gift Acceptance by Montgomery County Employees**

#### **19A.16.01.01 Applicability**

This Regulation applies to all public employees except as otherwise specified by law.

#### **19A.16.01.02 Policies**

2.0 Montgomery County Public Ethics Law 19A-16(c) prohibits a public employee from accepting a direct or indirect gift from a restricted donor. A gift given to an employee because of the employee’s official position also may not be accepted as to do so would be a misuse of the prestige of office. There are several exceptions to these prohibitions, and the Ethics Commission, pursuant to 19A-16(d)(9), may exempt from the prohibition a specific gift or class of gifts where accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency. Pursuant to this regulation, the Commission exempts the acceptance of the gifts identified in 2.2-2.5 on the basis that acceptance is not detrimental to the impartial conduct of the business of a County agency subject to the limitation that notwithstanding any exemption, an employee must not:

a. Accept a gift in return for being influenced in the performance of an official act;

b. Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain.

2.1 Gift Reporting in Financial Disclosure – The existence and availability of an exemption does not negate any obligations to report gifts under financial disclosure or lobbying reporting requirements of County law.

2.2 Gifts Based on Outside Business and Employment Relationships – An employee may accept a gift of meals, lodgings, transportation and other benefits based on outside business or employment relationship:

a. Resulting from the business or employment activities of an employee’s spouse when it is clear that such benefits have not been offered or enhanced because of the employee’s official position; or

b. Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee’s duties, acceptance is permitted only if the employee first is disqualified from any matters that could affect the potential employer.

2.3 Gifts Based on Personal Relationships – An employee may accept an otherwise prohibited gift based on personal relationship where:

a. The history of the relationship demonstrates that the relationship is unrelated to the employee’s work as a Government employee and is not based on the employee’s official position or performance of official duties;

b. The person giving the gift personally pays for the gift;

- c. The value of the gift is appropriate to the circumstances of the gift; and
- d. Gifts received from a single source pursuant to this exemption are not excessive in number or value; and, further,
- e. Where a gift is given in connection with a special event, such as a wedding, baby shower, or retirement party, the giver of the gift is an invitee to the event.

#### 2.4 Acceptance of Certain Opportunities and Benefits – A public employee may accept:

- a. Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all public employees;
- b. Reduced membership or other fees for participation in organization activities offered to all public employees by professional organizations if the only restrictions on membership relate to professional qualifications; and
- c. Opportunities and benefits, including favorable rates and commercial discounts:
  - i. Offered to members of a group or class in which membership is unrelated to County employment; or
  - ii. Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to County employment if the same offer is broadly available to large segments of the public through organizations of similar size.

2.5 Gifts Between Public Employees – Under certain circumstances, one employee can be a “restricted donor” as to another employee, as, for example, employees may be when they are in a superior-subordinate relationship. Additionally, gifts between employees, depending on the circumstances, can raise concerns regarding the misuse of the prestige of office. Notwithstanding these restrictions, a gift may be given and received between employees on an occasional basis, including:

- a. Any occasion on which gifts are traditionally given or exchanged, where the gift is an item, other than cash, with an aggregate market value of \$20 or less per occasion;
- b. Items such as food and refreshments to be shared in the office among several employees;
- c. Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;
- d. Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions;
- e. Leave solicited for and donated under personnel policies of the County, as long as the recipient or person soliciting donated leave is shielded from the identity of any person who is donating leave.
- f. A gift appropriate to the occasion may be given and received from another employee or group of employees and an employee may request voluntary contributions of nominal amounts from fellow employees for appropriate gifts:
  - i. In recognition of infrequently occurring occasions of personal significance such as marriage, illness, death in the family, or the birth or adoption of a child; or
  - ii. Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer; and
- g. An employee may request voluntary contributions of nominal amounts from fellow employees on an occasional basis, for items such as food and refreshments to be shared in the office among several employees, or for an agency-wide fund for gifts to be given under paragraph f. Coercion in collection of voluntary contributions is prohibited. A process allowing for anonymous contributions to such a fund is recommended to help avoid any suggestion of coercion in the collection or favoritism in the disposition of funds.

(Administrative History: Reg. No. 22-16AM (Method 2); Dept.: Ethics Commission)

## **SEC. 19A-17 WHO MUST FILE FINANCIAL DISCLOSURE STATEMENTS — REGULATIONS**

---

### **COMCOR 19A.17.01 Financial Disclosure: Ranges of Values for Disclosure by Elected Officials**

#### **19A.17.01.01 Policy**

In accordance with State law requirements, the Public Ethics Law requires greater and more detailed disclosure by elected officials and candidates for elective office than other public employees who are filers. Consistent with the Public Ethics Law and the policies of the State Ethics Commission, these regulations balance the privacy interests of elected financial disclosure filers with the requirements for detailed financial disclosure.

#### **19A.17.01.02**

With respect to those requirements of financial disclosure identified in this regulation, elected officials and candidates for elective office who are required to file financial disclosure statements in accordance with Article IV of Chapter 19A of the County Code may, in lieu of providing exact amounts on financial disclosure statements, use ranges of values as provided in these regulations.

#### **19A.17.01.03 Interests in Real Property**

In the section of the financial disclosure statement requiring disclosure of interests in real property, in lieu of exact amounts for consideration given when a property was acquired, fair market value (where required), or consideration received when a property was transferred, an elected official (or candidate) may disclose the range for the amount of value as follows:

\$1,000 or less

From \$1,001 to \$50,000

From \$50,001 to \$100,000

From \$100,001 to \$500,000

From \$500,001 to \$1,000,000

More than \$1,000,000.

#### **19A.17.01.04 Ownership of Stock or Other Interests in Corporations, Partnerships or Other Businesses**

4.1 In the section of the financial disclosure statement requiring disclosure of interests in corporations, partnerships or other businesses, in lieu of exact amounts for value of holdings, consideration given when an interest was acquired, or consideration received when an interest was transferred, an elected official (or candidate) may disclose the range for the amount or value as follows:

\$1,000 or less

From \$1,001 to \$50,000

From \$50,001 to \$100,000

From \$100,001 to \$500,000

From \$500,001 to \$1,000,000

More than \$1,000,000.

4.2 In the section of the financial disclosure statement requiring disclosure of interests in corporations, partnerships or other businesses, in lieu of dollar amounts for holdings, an elected official (or candidate) may, for publicly traded holdings, disclose the number of shares rather than the dollar value of the holdings. In so doing, the filer may, disclose the number of shares using the ranges below for number of shares:

100 or less

From 101 to 500

From 501 to 1000

More than 1000.

4.3 In the section of the financial disclosure statement requiring disclosure of interests in corporations, partnerships or other businesses, in lieu of dollar amounts for holdings, an elected official (or candidate) may, for non-publicly traded corporate holdings, disclose the number of shares and the percentage of equity held. In disclosing the number of shares, the filer may use the ranges identified in 4.2 of this regulation, and in disclosing the percentage of equity held, the filer may use the following ranges:

Under 3%

From 3 to 9%

From 10 to 24%

From 25 to 49%

From 50 to 74%

From 75 to 99%

100%

4.4 In the section of the financial disclosure statement requiring disclosure of interests in corporations, partnerships or other businesses, in lieu of dollar amounts for holdings, an elected official (or candidate) may, for partnership holdings, disclose the percentage of equity held using the ranges identified in 4.3.

### **19A.17.01.05 Indebtedness to Entities Doing Business with the County**

5.1 For the amount of indebtedness to an entity doing business with the County, in lieu of the dollar amount owed at the end of the year, an elected official (or candidate) may use the range for the amount of value as follows:

\$0

\$1000 or less

\$1001 to \$25,000

\$25,001 to \$50,000

\$50,001 to \$100,000

More than \$100,000.

5.2 For the amount of increase or decrease in the amount of change in principal owed to an entity doing business in the County, the filer may use the range for the amount of change in value as follows:

\$0

\$1000 or less



\$1001 to \$25,000

\$25,001 to \$50,000

\$50,001 to \$100,000

More than \$100,000.

(Administrative History: Reg. No. 22-16AM (Method 2); Dept.: Ethics Commission)

(Administrative History: Reg. No. 2-14AM (Method 2), amended by Reg. No. 11-15 (COMCOR 19A.17.01); Dept.: Office of the Chief Administrative Officer; which superseded Reg. No. 25-12AM, which superseded Reg. No. 19-11, which superseded Reg. No. 15-10, which superseded Reg. No. 24-09AM, which superseded Reg. No. 35-08, which superseded Reg. No. 27-07, which superseded Reg. No. 25-06, which superseded Reg. No. 25-05, which superseded Reg. No. 23-05, which superseded Reg. No. 23-04, which superseded Reg. No. 6-03, which superseded Reg. Nos. 6-03T and 21-99AM, was repealed effective January 17, 2017, by Reg. No. 21-16.)

(Administrative History: Reg. No. 33-01 (COMCOR 19A.17.02) (Method 2); Dept.: Ethics Commission, was superseded and removed effective July 24, 2018, by Reg. No. 22-16AM.)

## **SEC. 19A-23 HOW AND WHEN TO REGISTER AS A LOBBYIST — REGULATIONS**

---

### **COMCOR 19A.23.01 Lobbyist Registration Fee**

#### **19A.23.01.01. Annual Lobbyist Registration Fee Established**

Pursuant to section 19A-23(e) of the Montgomery County Code (2004), as amended, each registered lobbyist must pay the Ethics Commission an annual registration fee in the amount of \$125.

(Administrative History: Reg. No. 21-08 (Method 2); Dept.: Ethics Commission)

## **SEC. 19A-26 PUBLIC INSPECTION OF LOBBYIST REGISTRATION DOCUMENTS — REGULATIONS**

---

*See also* COMCOR 19A.23.01 Lobbyist Registration Fee

**APPENDIX B – Open Meetings Act**  
(statutes and OMA Manual attached)  
(see sections 3-101 through 3-501 of statute)

a municipal corporation, shall take and subscribe the oath required by Article I, § 9 of the Maryland Constitution before a clerk or a deputy clerk of the circuit court.

§2–301.

An individual elected or appointed to an office shall be deemed to have refused the office if the individual declines or neglects to take and subscribe the oath required by Article I, § 9 of the Maryland Constitution or by other State or local law:

(1) within 30 days after the office of a clerk of a circuit court receives the commission of the individual; or

(2) if the commission is not sent to a clerk of a circuit court, within 30 days after the individual receives the commission or the notice of appointment.

§2–302.

(a) At least once each month, the clerk of each circuit court shall report to the Secretary of State the names and offices of all officers who have taken and subscribed an oath before the clerk.

(b) The Secretary of State:

(1) shall preserve a report required by subsection (a) of this section;  
and

(2) equally with the clerk of a circuit court, is competent to certify that an officer has qualified by taking and subscribing an oath before the clerk.

§3–101.

(a) In this title the following words have the meanings indicated.

(b) (1) “Administrative function” means the administration of:

(i) a law of the State;

(ii) a law of a political subdivision of the State; or

(iii) a rule, regulation, or bylaw of a public body.

(2) “Administrative function” does not include:

(i) an advisory function;

- (ii) a judicial function;
- (iii) a legislative function;
- (iv) a quasi-judicial function; or
- (v) a quasi-legislative function.

(c) “Advisory function” means the study of a matter of public concern, or the making of recommendations on the matter, under a delegation of responsibility by:

- (1) law;
- (2) the Governor or an official who is subject to the policy direction of the Governor;
- (3) the chief executive officer of a political subdivision of the State or an official who is subject to the policy direction of the chief executive officer; or
- (4) formal action by or for a public body that exercises an administrative function, judicial function, legislative function, quasi-judicial function, or quasi-legislative function.

(d) “Board” means the State Open Meetings Law Compliance Board.

(d-1) “Class on the open meetings law” means:

- (1) an online class on the requirements of the open meetings law offered by the Office of the Attorney General and the University of Maryland’s Institute for Governmental Service and Research;
- (2) a class on the requirements of the open meetings law offered by the Maryland Association of Counties or the Maryland Municipal League through the Academy for Excellence in Local Governance; or
- (3) a class on the requirements of the open meetings law offered by the Maryland Association of Boards of Education through the Boardsmanship Academy Program.

(e) (1) “Judicial function” means the exercise of any power of the Judicial Branch of the State government.

(2) “Judicial function” includes the exercise of:

(i) a power for which Article IV, § 1 of the Maryland Constitution provides;

(ii) a function of a grand jury;

(iii) a function of a petit jury;

(iv) a function of the Commission on Judicial Disabilities; and

(v) a function of a judicial nominating commission.

(3) “Judicial function” does not include the exercise of rulemaking power by a court.

(f) “Legislative function” means the process or act of:

(1) approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy;

(2) approving or disapproving an appointment;

(3) proposing or ratifying a constitution or constitutional amendment; or

(4) proposing or ratifying a charter or charter amendment.

(g) “Meet” means to convene a quorum of a public body to consider or transact public business.

(h) (1) “Public body” means an entity that:

(i) consists of at least two individuals; and

(ii) is created by:

1. the Maryland Constitution;

2. a State statute;

3. a county or municipal charter;

4. a memorandum of understanding or a master agreement to which a majority of the county boards of education and the State Department of Education are signatories;

5. an ordinance;

6. a rule, resolution, or bylaw;

7. an executive order of the Governor; or

8. an executive order of the chief executive authority of a political subdivision of the State.

(2) “Public body” includes:

(i) any multimember board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, or appointed by an official who is subject to the policy direction of the Governor or chief executive authority of the political subdivision, if the entity includes in its membership at least two individuals not employed by the State or the political subdivision;

(ii) any multimember board, commission, or committee that:

1. is appointed by:

A. an entity in the Executive Branch of the State government, the members of which are appointed by the Governor, and that otherwise meets the definition of a public body under this subsection; or

B. an official who is subject to the policy direction of an entity described in item A of this item; and

2. includes in its membership at least two individuals who are not members of the appointing entity or employed by the State; and

(iii) The Maryland School for the Blind.

(3) “Public body” does not include:

(i) any single member entity;

(ii) any judicial nominating commission;

(iii) any grand jury;

(iv) any petit jury;

(v) the Appalachian States Low Level Radioactive Waste Commission established in § 7–302 of the Environment Article;

(vi) except when a court is exercising rulemaking power, any court established in accordance with Article IV of the Maryland Constitution;

(vii) the Governor’s cabinet, the Governor’s Executive Council as provided in Title 8, Subtitle 1 of the State Government Article, or any committee of the Executive Council;

(viii) a local government’s counterpart to the Governor’s cabinet, Executive Council, or any committee of the counterpart of the Executive Council;

(ix) except as provided in paragraph (1) of this subsection, a subcommittee of a public body as defined in paragraph (2)(i) of this subsection;

(x) the governing body of a hospital as defined in § 19–301 of the Health – General Article; and

(xi) a self–insurance pool that is established in accordance with Title 19, Subtitle 6 of the Insurance Article or § 9–404 of the Labor and Employment Article by:

1. a public entity, as defined in § 19–602 of the Insurance Article; or

2. a county or municipal corporation, as described in § 9–404 of the Labor and Employment Article.

(i) “Quasi–judicial function” means a determination of:

(1) a contested case to which Title 10, Subtitle 2 of the State Government Article applies;

(2) a proceeding before an administrative agency for which Title 7, Chapter 200 of the Maryland Rules would govern judicial review; or

(3) a complaint by the Board in accordance with this title.

(j) “Quasi–legislative function” means the process or act of:

(1) adopting, disapproving, amending, or repealing a rule, regulation, or bylaw that has the force of law, including a rule of a court;

(2) approving, disapproving, or amending a budget; or

(3) approving, disapproving, or amending a contract.

(k) “Quorum” means:

(1) a majority of the members of a public body; or

(2) the number of members that the law requires.

### §3–102.

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

(1) public business be conducted openly and publicly; and

(2) the public be allowed to observe:

(i) the performance of public officials; and

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

(b) (1) The ability of the public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies and to witness the phases of the deliberation, policy formation, and decision making of public bodies ensures the accountability of government to the citizens of the State.

(2) The conduct of public business in open meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.

(c) Except in special and appropriate circumstances when meetings of public bodies may be closed under this title, it is the public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.

### §3–103.



(a) Except as provided in subsection (b) of this section and § 3–104 of this subtitle, this title does not apply to:

(1) a public body when it is carrying out:

(i) an administrative function;

(ii) a judicial function; or

(iii) a quasi-judicial function; or

(2) a chance encounter, a social gathering, or any other occasion that is not intended to circumvent this title.

(b) This title applies to a public body when it is meeting to consider:

(1) granting a license or permit; or

(2) a special exception, variance, conditional use, or zoning classification, the enforcement of any zoning law or regulation, or any other zoning matter.

#### §3–104.

If a public body recesses an open session to carry out an administrative function in a meeting that is not open to the public, the minutes for the public body's next meeting shall include:

(1) a statement of the date, time, place, and persons present at the administrative function meeting; and

(2) a phrase or sentence identifying the subject matter discussed at the administrative function meeting.

#### §3–105.

Whenever this title and another law that relates to meetings of public bodies conflict, this title applies unless the other law is more stringent.

#### §3–201.

There is a State Open Meetings Law Compliance Board.

§3-202.

- (a) (1) The Board consists of three members.
- (2) At least one of the members shall be an attorney admitted to the Maryland Bar.
- (3) The Governor shall appoint the members with the advice and consent of the Senate.
- (b) From among the members of the Board, the Governor shall appoint a chair.
- (c) (1) The term of a member is 3 years.
- (2) The terms of members are staggered as required by the terms provided for members of the Board on October 1, 2014.
- (3) At the end of a term, a member continues to serve until a successor is appointed.
- (4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.
- (5) A member may not serve for more than two consecutive 3-year terms.

§3-203.

- (a) A majority of the full authorized membership of the Board is a quorum.
- (b) The Board shall determine the times and places of its meetings.
- (c) A member of the Board:
  - (1) may not receive compensation as a member of the Board; but
  - (2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.
- (d) The Office of the Attorney General shall provide staff for the Board.

§3-204.

(a) The Board shall:

(1) receive, review, and, subject to § 3–207 of this subtitle, resolve complaints from any person alleging a violation of this title; and

(2) issue a written opinion as to whether a violation has occurred.

(b) The Board shall receive and review any complaint alleging a prospective violation of this title as provided under § 3–212 of this subtitle.

(c) The Board shall:

(1) study ongoing compliance with this title by public bodies; and

(2) make recommendations to the General Assembly for improvements in this title.

(d) The Board, in conjunction with the Office of the Attorney General and other interested organizations or persons, shall develop and conduct educational programs and distribute educational materials on the requirements of the open meetings law for the staffs and attorneys of:

(1) public bodies;

(2) the Maryland Municipal League;

(3) the Maryland Association of Counties; and

(4) the Maryland Association of Boards of Education.

(e) (1) On or before October 1 of each year, the Board shall submit an annual report to the Governor and, subject to § 2–1257 of the State Government Article, the General Assembly.

(2) The report shall:

(i) describe the activities of the Board;

(ii) describe the opinions of the Board;

(iii) state the number and nature of complaints filed with the Board and discuss complaints that reasonable notice of a meeting was not given;

(iv) identify the provisions of this title that the Board has found a public body to have violated and the number of times each provision has been violated;

(v) identify each public body that the Board has found to have violated a provision of this title; and

(vi) recommend any improvements to this title.

§3–205.

(a) Any person may file a written complaint with the Board seeking a written opinion from the Board on the application of this title to the action of a public body covered by this title.

(b) The complaint shall:

(1) identify the public body that is the subject of the complaint;

(2) describe the action of the public body, the date of the action, and the circumstances of the action; and

(3) be signed by the complainant.

§3–206.

(a) Except as provided in subsection (c) of this section, on receipt of the written complaint, the Board promptly shall:

(1) send the complaint to the public body identified in the complaint;  
and

(2) request that a response to the complaint be sent to the Board.

(b) (1) The public body shall file a written response to the complaint within 30 days after it receives the complaint.

(2) On request of the Board, the public body shall include with its written response to the complaint a copy of:

(i) the notice provided under § 3–302 of this title;

(ii) any written statement made under § 3–305(d)(2)(ii) of this title; and

(iii) the minutes and any recording made by the public body under § 3–306 of this title.

(3) The Board shall maintain the confidentiality of the minutes and any recording submitted by a public body that are sealed in accordance with § 3–306(c)(3)(ii) of this title.

(c) (1) If the public body identified in the complaint no longer exists, the Board promptly shall send the complaint to the official or entity that appointed the public body.

(2) The official or entity that appointed the public body shall comply, to the extent feasible, with the requirements of subsection (b) of this section.

(d) If a written response is not received within 45 days after the notice is sent, the Board shall decide the case on the facts before the Board.

#### §3–207.

(a) (1) The Board shall review the complaint and any response.

(2) If the information in the complaint and response is sufficient for making a determination, within 30 days after receiving the response the Board shall issue a written opinion as to whether a violation of this title has occurred or will occur.

(b) (1) If the Board is unable to reach a determination based on the written submissions before it, the Board may schedule an informal conference to hear from the complainant, the public body, or any other person with relevant information about the subject of the complaint.

(2) An informal conference scheduled by the Board is not a contested case within the meaning of § 10–202(d) of the State Government Article.

(3) The Board shall issue a written opinion within 30 days after the informal conference.

(c) (1) If the Board is unable to render an opinion on a complaint within the time periods specified in subsection (a) or (b) of this section, the Board shall:

(i) state in writing the reason for its inability to render an opinion; and

(ii) issue an opinion as soon as possible but not later than 90 days after the filing of the complaint.

(2) An opinion of the Board may state that the Board is unable to resolve the complaint.

(d) The Board shall send a copy of the written opinion to the complainant and the affected public body.

§3-208.

(a) The Board may send to any public body in the State any written opinion that will provide the public body with guidance on compliance with this title.

(b) On request, the Board shall provide a copy of a written opinion to any person.

§3-209.

The opinions of the Board are advisory only.

§3-210.

Except as provided in § 3-211 of this subtitle, the Board may not require or compel any specific actions by a public body.

§3-211.

(a) This section does not apply to a public body that is:

(1) in the Judicial Branch of State government; or

(2) subject to governance by rules adopted by the Court of Appeals.

(b) If the Board determines that a violation of this title has occurred:

(1) at the next open meeting of the public body after the Board has issued its opinion, a member of the public body shall announce the violation and orally summarize the opinion; and

(2) a majority of the members of the public body shall sign a copy of the opinion and return the signed copy to the Board.

(c) The public body may not designate its counsel or another representative to provide the announcement and summary.

(d) Compliance by a public body or a member of a public body with subsections (b) and (c) of this section:

(1) is not an admission to a violation of this title by the public body; and

(2) may not be used as evidence in a proceeding conducted in accordance with § 3–401 of this title.

(e) If the Board determines that a public body has violated a provision of this title, the Board shall post on the Maryland Open Meetings Act page of the Office of the Attorney General website the name of the public body and the opinion that describes the violation.

#### §3–212.

(a) On receipt of an oral or written complaint by any person that a meeting required to be open under this title will be closed in violation of this title, the Board, acting through its chair, a designated Board member, or any authorized staff person available to the Board, may contact the public body to determine the nature of the meeting that will be held and the reason for the expected closure of the meeting.

(b) When at least two members of the Board conclude that a violation of this title may occur if the closed meeting is held, the person acting for the Board immediately shall inform the public body of the potential violation and any lawful means that are available for conducting its meeting to achieve the purposes of the public body.

(c) The person acting for the Board shall inform the person who filed the complaint under subsection (a) of this section of the result of any effort to achieve compliance with this title under subsection (b) of this section.

(d) The person acting for the Board shall file a written report with the Board describing the complaint, the effort to achieve compliance, and the results of the effort.

(e) The filing of a complaint under subsection (a) of this section and action by a person acting for the Board under subsections (b), (c), and (d) of this section may not prevent or bar the Board from considering and acting on a written complaint filed in accordance with § 3–205 of this subtitle.

§3-213.

(a) This section does not apply to a public body that is:

- (1) in the Judicial Branch of State government; or
- (2) subject to governance by rules adopted by the Court of Appeals.

(b) Each public body shall designate at least one individual who is an employee, an officer, or a member of the public body to receive training on the requirements of the open meetings law.

(c) Within 90 days after being designated under subsection (b) of this section, an individual shall complete a class on the open meetings law.

(d) (1) This subsection applies only to a public body that meets in a closed session on or after October 1, 2017.

(2) A public body may not meet in a closed session unless the public body has designated at least one member of the public body to receive training on the requirements of the open meetings law.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, at least one individual designated under paragraph (2) of this subsection shall be present at each open meeting of the public body.

(ii) If an individual designated under paragraph (2) of this subsection cannot be present at an open meeting of the public body, the public body shall complete the Compliance Checklist for Meetings Subject to the Maryland Open Meetings Act developed by the Office of the Attorney General and include the completed checklist in the minutes for the meeting.

§3-301.

Except as otherwise expressly provided in this title, a public body shall meet in open session.

§3-302.

(a) Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.

(b) Whenever reasonable, a notice under this section shall:



- (1) be in writing;
- (2) include the date, time, and place of the session; and
- (3) if appropriate, include a statement that a part or all of a meeting may be conducted in closed session.

(c) A public body may give the notice under this section as follows:

(1) if the public body is a unit of State government, by publication in the Maryland Register;

(2) by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part;

(3) if the public body previously has given public notice that this method will be used:

(i) by posting or depositing the notice at a convenient public location at or near the place of the session; or

(ii) by posting the notice on an Internet website ordinarily used by the public body to provide information to the public; or

(4) by any other reasonable method.

(d) A public body shall keep a copy of a notice provided under this section for at least 1 year after the date of the session.

#### §3-302.1.

(a) (1) Subject to subsection (b) of this section, before meeting in an open session, a public body shall make available to the public an agenda:

(i) containing known items of business or topics to be discussed at the portion of the meeting that is open; and

(ii) indicating whether the public body expects to close any portion of the meeting in accordance with § 3-305 of this subtitle.

(2) If an agenda has been determined at the time the public body gives notice of the meeting under § 3-302 of this subtitle, the public body shall make available the agenda at the same time the public body gives notice of the meeting.

(3) If an agenda has not been determined at the time the public body gives notice of the meeting, the public body shall make available the agenda as soon as practicable after the agenda has been determined but no later than 24 hours before the meeting.

(b) If a public body is unable to comply with the provisions of subsection (a) of this section because the meeting was scheduled in response to an emergency, a natural disaster, or any other unanticipated situation, the public body shall make available on request an agenda of the meeting within a reasonable time after the meeting occurs.

(c) A public body is not required to make available any information in the agenda regarding the subject matter of the portion of the meeting that is closed in accordance with § 3-305 of this subtitle.

(d) (1) A public body required to make available an agenda under subsection (a) of this section may make available the agenda using a method authorized for giving notice under § 3-302(c) of this subtitle.

(2) The method a public body uses for making available an agenda may be different from the method a public body uses for giving notice.

(e) Nothing in this section may be construed to prevent a public body from altering the agenda of a meeting after the agenda has been made available to the public.

### §3-303.

(a) Whenever a public body meets in open session, the general public is entitled to attend.

(b) A public body shall adopt and enforce reasonable rules regarding the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings.

(c) (1) If the presiding officer determines that the behavior of an individual is disrupting an open session, the public body may have the individual removed.

(2) Unless the public body or its members or agents act maliciously, the public body, members, and agents are not liable for having an individual removed under this subsection.

§3-304.

(a) This section applies only to the Executive and Legislative branches of the State government.

(b) On request and to the extent feasible, a unit that holds a public hearing shall provide a qualified interpreter to assist deaf individuals to understand the proceeding.

(c) A request for an interpreter must be submitted in writing or by telecommunication at least 5 days before the proceeding begins.

(d) The unit shall determine, in each instance, whether it is feasible to provide an interpreter.

§3-305.

(a) The exceptions in subsection (b) of this section shall be strictly construed in favor of open meetings of public bodies.

(b) Subject to subsection (d) of this section, a public body may meet in closed session or adjourn an open session to a closed session only to:

(1) discuss:

(i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom it has jurisdiction; or

(ii) any other personnel matter that affects one or more specific individuals;

(2) protect the privacy or reputation of an individual with respect to a matter that is not related to public business;

(3) consider the acquisition of real property for a public purpose and matters directly related to the acquisition;

(4) consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;

(5) consider the investment of public funds;

(6) consider the marketing of public securities;

- (7) consult with counsel to obtain legal advice;
- (8) consult with staff, consultants, or other individuals about pending or potential litigation;
- (9) conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- (10) discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including:
  - (i) the deployment of fire and police services and staff; and
  - (ii) the development and implementation of emergency plans;
- (11) prepare, administer, or grade a scholastic, licensing, or qualifying examination;
- (12) conduct or discuss an investigative proceeding on actual or possible criminal conduct;
- (13) comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter;
- (14) discuss, before a contract is awarded or bids are opened, a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process; or
- (15) discuss cybersecurity, if the public body determines that public discussion would constitute a risk to:
  - (i) security assessments or deployments relating to information resources technology;
  - (ii) network security information, including information that is:
    - 1. related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;

2. collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

3. related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity; or

(iii) deployments or implementation of security personnel, critical infrastructure, or security devices.

(c) A public body that meets in closed session under this section may not discuss or act on any matter not authorized under subsection (b) of this section.

(d) (1) Unless a majority of the members of a public body present and voting vote in favor of closing the session, the public body may not meet in closed session.

(2) Before a public body meets in closed session, the presiding officer shall:

(i) conduct a recorded vote on the closing of the session; and

(ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.

(3) If a person objects to the closing of a session, the public body shall send a copy of the written statement to the Board.

(4) The written statement shall be a matter of public record.

(5) A public body shall keep a copy of the written statement for at least 1 year after the date of the session.

§3-306.

(a) This section does not:

(1) require any change in the form or content of the Journal of the Senate of Maryland or Journal of the House of Delegates of Maryland; or

(2) limit the matters that a public body may include in its minutes.

(b) (1) Subject to paragraphs (2) and (3) of this subsection, as soon as practicable after a public body meets, it shall have minutes of its session prepared.

(2) A public body need not prepare minutes of an open session if:

(i) live and archived video or audio streaming of the open session is available; or

(ii) the public body votes on legislation and the individual votes taken by each member of the public body who participates in the voting are posted promptly on the Internet.

(3) The information specified under paragraph (2) of this subsection shall be deemed the minutes of the open session.

(c) (1) The minutes shall reflect:

(i) each item that the public body considered;

(ii) the action that the public body took on each item; and

(iii) each vote that was recorded.

(2) If a public body meets in closed session, the minutes for its next open session shall include:

(i) a statement of the time, place, and purpose of the closed session;

(ii) a record of the vote of each member as to closing the session;

(iii) a citation of the authority under § 3–305 of this subtitle for closing the session; and

(iv) a listing of the topics of discussion, persons present, and each action taken during the session.

(3) (i) A session may be recorded by a public body.

(ii) Except as otherwise provided in paragraph (4) of this subsection, the minutes and any recording of a closed session shall be sealed and may not be open to public inspection.

(4) The minutes and any recording shall be unsealed and open to inspection as follows:

(i) for a meeting closed under § 3–305(b)(5) of this subtitle, when the public body invests the funds;

(ii) for a meeting closed under § 3–305(b)(6) of this subtitle, when the public securities being discussed have been marketed; or

(iii) on request of a person or on the public body's own initiative, if a majority of the members of the public body present and voting vote in favor of unsealing the minutes and any recording.

(d) Except as provided in subsection (c) of this section, minutes of a public body are public records and shall be open to public inspection during ordinary business hours.

(e) (1) A public body shall keep a copy of the minutes of each session and any recording made under subsection (b)(2)(i) or (c)(3)(i) of this section for at least 5 years after the date of the session.

(2) To the extent practicable, a public body shall post online the minutes or recordings required to be kept under paragraph (1) of this subsection.

§3–401.

(a) (1) This section does not apply to the action of:

(i) appropriating public funds;

(ii) imposing a tax; or

(iii) providing for the issuance of bonds, notes, or other evidences of public obligation.

(2) This section does not authorize a court to void an action of a public body because of any violation of this title by another public body.

(3) This section does not affect or prevent the use of any other available remedies.

(b) (1) If a public body fails to comply with § 3–301, § 3–302, § 3–303, § 3–305, or § 3–306(c) of this title, any person may file with a circuit court that has venue a petition that asks the court to:

- (i) determine the applicability of those sections;
- (ii) require the public body to comply with those sections; or
- (iii) void the action of the public body.

(2) If a violation of § 3–302, § 3–305, or § 3–306(c) of this title is alleged, the person shall file the petition within 45 days after the date of the alleged violation.

(3) If a violation of § 3–301 or § 3–303 of this title is alleged, the person shall file the petition within 45 days after the public body includes in the minutes of an open session the information specified in § 3–306(c)(2) of this title.

(4) If a written complaint is filed with the Board in accordance with § 3–205 of this title, the time between the filing of the complaint and the mailing of the written opinion to the complainant and the affected public body under § 3–207(d) of this title may not be included in determining whether a claim against a public body is barred by the statute of limitations set forth in paragraphs (2) and (3) of this subsection.

(c) In an action under this section:

(1) it is presumed that the public body did not violate any provision of this title; and

(2) the complainant has the burden of proving the violation.

(d) A court may:

(1) consolidate a proceeding under this section with another proceeding under this section or an appeal from the action of the public body;

(2) issue an injunction;

(3) determine the applicability of this title to the discussions or decisions of public bodies;

(4) declare the final action of a public body void if the court finds that the public body willfully failed to comply with § 3–301, § 3–302, § 3–303, or § 3–306(c) of this title and that no other remedy is adequate;

(5) as part of its judgment:



(i) assess against any party reasonable counsel fees and other litigation expenses that the party who prevails in the action incurred; and

(ii) require a reasonable bond to ensure the payment of the assessment; and

(6) grant any other appropriate relief.

(e) (1) A person may file a petition under this section without seeking an opinion from the Board.

(2) The failure of a person to file a complaint with the Board is not a ground for the court to stay or dismiss a petition.

#### §3-402.

(a) In accordance with § 3-401 of this subtitle, a public body that willfully meets with knowledge that the meeting is being held in violation of this subtitle is subject to a civil penalty not to exceed:

(1) \$250 for the first violation; and

(2) \$1,000 for each subsequent violation that occurs within 3 years after the first violation.

(b) When determining the amount of a fine under subsection (a) of this section, the court shall consider the financial resources available to the public body and the ability of the public body to pay the fine.

#### §3-501.

This title may be cited as the Open Meetings Act.

#### §4-101.

(a) In this title the following words have the meanings indicated.

(b) “Applicant” means a person or governmental unit that asks to inspect a public record.

(c) “Board” means the State Public Information Act Compliance Board.

(d) “Custodian” means:

# OPEN MEETINGS ACT MANUAL



OFFICE OF THE  
MARYLAND ATTORNEY GENERAL

BRIAN E. FROSH  
ATTORNEY GENERAL

NINTH EDITION (DECEMBER 2016)

PREPARED by:

OPINIONS and ADVICE DIVISION  
200 SAINT PAUL PLACE  
BALTIMORE, MARYLAND 21202  
(410) 576-6327

WEBSITE: [WWW.MARYLANDATTORNEYGENERAL.GOV/](http://WWW.MARYLANDATTORNEYGENERAL.GOV/)

Revised June 2017

## PREFACE

As Supreme Court Justice Louis D. Brandeis famously said, “Sunlight is said to be the best of disinfectants.” In that spirit, the Maryland Open Meetings Act was adopted so that government bodies in the State would open their meetings to the public. Beyond that straightforward premise, however, lie important implementation considerations. Some arise from the rules that govern meetings subject to the Act. Others arise from the exceptions, exclusions, and special definitions that carry out the General Assembly’s decisions on which entities in the State do not have to discuss their business in public, which types of public business do not have to be conducted in public, and which topics do not have to be discussed in public.

Some of the provisions of the Act are easy to understand and apply; some are not. A few have been construed and explained by the courts; most have not. The overall policy of the Act—that it “is essential to the maintenance of a democratic society that, except in special and appropriate circumstances . . . public business be conducted openly and publicly”—can get lost in the details.

In 1991, fourteen years after the first version of the Act took effect, the General Assembly recognized that public bodies needed guidance on compliance with the Act, and it amended the Act to establish an independent board, the Open Meetings Compliance Board, to provide that guidance. The Board was directed to provide guidance by issuing advisory opinions in response to complaints from the public and by conducting educational programs for the staffs and attorneys of public bodies and the local government associations. The Office of the Attorney General was directed to share the education responsibilities and provide staff for the Board. Over the years, the Board has issued advisory opinions on almost every aspect of the Act. Under the aegis of this Office and as resources allow, the Board’s staff have conducted seminars on the Act, developed forms and other written guidance, indexed and published the Board’s opinions, and, in a collaborative effort with the Institute for Governmental Service and Research at the University of Maryland, developed the online course that public bodies’ designees may take to fulfill the training requirement now set by the Act.

This latest edition of the Open Meetings Act Manual supplements those efforts. Although it is not a substitute for advice from a public body’s own counsel, we hope it gives public bodies some practical guidance on how to comply with the Act. We hope also that this manual, along with the FAQs - A Quick Guide to Maryland’s Open Meetings Act, provides members of the media and the public with information on what they may expect.

Brian E. Frosh  
Attorney General  
December 2016

## **Table of Contents**

---

# **TABLE OF CONTENTS**

## **Introduction**

A. The Act – its policy and purpose .....	i
B. Other laws .....	ii
C. How to use this manual .....	ii

## **Chapter 1: Applicability of the Act**

Chapter summary .....	1-1
A. Is the entity a “public body” subject to the Act? .....	1-1
B. Is the public body holding a “meeting,” or did the members instead gather merely by chance, for social reasons, or for another occasion not intended to evade the Act? .....	1-7
C. Is the meeting subject to the Act because the public body is performing a “function” subject to the Act, or instead exempt because the public body is performing one of the three “functions” expressly excluded from the Act? .....	1-13

## **Chapter 2: Notice and Agendas**

Chapter summary .....	2-1
A. Timing .....	2-2
B. Format and Contents.....	2-3
C. Methods .....	2-4
D. Agendas .....	2-5

## **Chapter 3: Open Meeting Requirement**

Chapter summary .....	3-1
A. The right to “attend” a meeting .....	3-1
B. Size of the meeting place.....	3-2
C. Access to the meeting place .....	3-2
D. Videotaping and recording; meeting rules .....	3-4
E. Role of the presiding officer; disruptions.....	3-5

## **Table of Contents**

---

### **Chapter 4: Permissibility of Closed Sessions**

Chapter summary .....	4-1
A. The “personnel matters” exception .....	4-2
B. The “privacy or reputation” exception .....	4-3
C. The “real property acquisition” exception.....	4-3
D. The “business location” exception .....	4-4
E. The “investment of public funds” exception .....	4-5
F. The “marketing of public securities” exception .....	4-5
G. The “legal advice” exception.....	4-6
H. The “pending or potential litigation” exception .....	4-7
I. The “collective bargaining” exception .....	4-7
J. The “public security” exception .....	4-8
K. The “scholastic, licensing and qualifying examination” exception .....	4-8
L. The “investigative proceeding regarding criminal conduct” exception .....	4-8
M. The “other law” exception.....	4-9
N. The “procurement” exception .....	4-9

### **Chapter 5: Conditions for Closing a Meeting**

Chapter summary .....	5-1
A. Before the closed session: designated member, closing statement, and vote .....	5-2
B. During the closed session, the duty to discuss only the disclosed topics.....	5-5
C. After the closed session, the disclosure of the events of the session .....	5-6

### **Chapter 6: Meeting Documents**

Chapter summary .....	6-1
A. Written meeting notice .....	6-2
B. Meeting minutes – open and closed sessions .....	6-2
C. Closing statement (see also Chapter 5) .....	6-9

## **Table of Contents**

---

### **Chapter 7: Guidance, Judicial Enforcement, and Training**

Chapter summary .....	7-1
A. The Compliance Board.....	7-2
B. The courts .....	7-7
C. The Office of the Attorney General .....	7-8

# Introduction

## A. *The Act – its policy and purpose*

When it adopted the Act, the Maryland General Assembly declared the goals to be achieved by ensuring that public business be conducted openly:

- (1) The ability of the public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies and to witness the phases of the deliberation, policy formation, and decision making of public bodies ensures the accountability of government to the citizens of the State.
- (2) The conduct of public business in open meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.

§ 3-102(b).<sup>1</sup>

To those ends, the General Assembly stated the overriding policy of the Act that public bodies meet in public:

Except in special and appropriate circumstances when meetings of public bodies may be closed under this [Act], it is the public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.

§ 3-102(c).

---

<sup>1</sup> As currently codified, the Act appears at §§ 3-201 through 206 of the General Provisions Article of the Maryland Annotated Code (2014, with 2016 supp.). The “§” and “Section” citations in this Manual are to that article. The Act is posted under “Other Resources” on the Open Meetings page of the Attorney General’s website: [www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx](http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx). The Maryland Code can be found online on the website of the General Assembly of Maryland: [mgaleg.maryland.gov/webmga/frmlst.aspx?tab=home](http://mgaleg.maryland.gov/webmga/frmlst.aspx?tab=home).

To implement this policy, the General Assembly has defined the entities that are subject to the Act, detailed the circumstances in which meetings could be closed to the public, exempted some types of public business from the Act entirely, and set minimum standards for giving notice and disclosing in minutes the events of open and closed sessions. The Act thus reflects the balance that the General Assembly struck between the public's need to know about the conduct of public business and the government's need, in "special and appropriate circumstances," to address certain types of matters behind closed doors. In case of doubt, the balance tilts towards openness: the default set by the Act is "except as otherwise expressly provided by [the Act], a public body shall meet in open session." § 3-301.

### ***B. Other laws***

This manual only addresses the Maryland Open Meetings Act, §§ 3-101 through 3-501 of the General Provisions Article of the Maryland Code. Some public bodies are additionally subject to open meetings requirements set forth in different laws, such as a county charter or other law applicable only in certain political subdivisions. *See, e.g.*, 89 Op. Att'y Gen. 22 (2004) (discussing the St. Mary's County Open Meetings Act). Under the Act, when the other law contains a provision that "is more stringent," that provision will apply. § 3-105. As explained by the Court of Appeals in *City of College Park v. Cotter*, 309 Md. 573 (1987):

This provision establishes that, although the Maryland Sunshine Law is the touchstone by which public bodies are to conduct their meetings, the statute is not exclusive in its application. The statute only outlines the minimum requirements for conducting open meetings. . . . It does not supersede legislative enactments designed to bring more openness to public meetings.

*Id.* at 586. *See also* 94 Op. Att'y Gen. 161 (2009) (discussing the provision that is now § 3-105).

### ***C. How to use this manual***

This manual is based on four sources of information about the Act: the Act itself, the published opinions of Maryland's appellate courts, the opinions that the Attorney General has issued in response to public officials' questions about the Act,<sup>2</sup> and the advisory opinions of the Open Meetings Compliance Board. Only the first two sources are

---

<sup>2</sup> Opinions of the Attorney General are posted at [www.marylandattorneygeneral.gov/Pages/Opinions/index.aspx](http://www.marylandattorneygeneral.gov/Pages/Opinions/index.aspx).



binding authority. The other two, like this manual, are secondary sources that the courts sometimes consult.<sup>3</sup> So, while this manual attempts to explain the current state of the open meetings law, it is not binding authority.

We have organized this manual by seven broad topics that correspond to the broad topics in the online index to the Compliance Board's opinions. By turning to the index, the reader can often find specific examples of the principles explained here. For example, a reader who has consulted Chapter 2 in the manual for information about the Act's meeting notice requirements can turn to Section 2 of the topical index for a list of the Compliance Board's opinions on subtopics such as timing, method, and content.

Compliance Board opinions are cited by volume, page number, and year. They can be found through the link for the particular volume and then by page number in that volume. For example, 9 *OMCB Opinions* 283 (2015) can be found by clicking on the link for volume 9, by scrolling down past the earlier opinions in that volume to the one at p. 283, near the end, and, finally, by clicking on that link. The opinions are posted on the Open Meetings page of the Attorney General's website under the link for "Compliance Board." [www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx](http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx).

---

<sup>3</sup> For example, the Court of Special Appeals of Maryland, after noting that there were no cases on the question before it, cited an Opinion of the Attorney General that, in turn, cited Compliance Board opinions and an earlier edition of this manual. *Dyer v. Board of Education*, 216 Md. App. 530, 536-38 (2014).

# Chapter 1: Applicability of the Act

## Chapter One: When does the Act apply?

(Index Topic 1)

**Chapter Summary:** To be subject to the Act, an entity must fall within the Act’s definition of a “public body.” Then, for a gathering of the public body’s members to be subject to the Act, the members must be “meeting,” as defined by the Act, and they must be performing one of the “functions” subject to the Act. Determining whether the Act applies to a particular gathering is thus a three-step process.<sup>1</sup> Each step, in turn, has multiple elements, some with multiple sub-parts. The Act’s threshold provisions are more complicated than the rest of the Act.

### A. *Is the entity a “public body” subject to the Act? (Index topic 1-A)*

The Act only applies to “public bodies.” An entity is a “public body” if it meets any of the three tests set by the definition of that term in § 3-101(h). An additional consideration is whether the entity is one of those expressly excluded from the definition. And, the courts have sometimes deemed private entities to be “public bodies” by virtue of considerations such as the government’s control over the particular entity’s existence, governance, and functions. The General Assembly has added specific entities and types of entities to the statutory definition over the years, so the Compliance Board’s opinions on the subject should be checked against the current law.

To figure out whether an entity meets the definition, a person needs first to gather the facts on how the entity was created (for example, by a statute, or by a person?), by whom its members are appointed, and what functions it serves. Only then can one apply

---

<sup>1</sup> For an illustration of the Compliance Board’s application of the three-step process, see 6 *OMCB Opinions* 21 (2010).

the five sets of principles discussed below. If an entity does not meet the Act's definition of "public body," the Act does not apply to that entity's gatherings.

**1. The first test - more than one member; created by a law, bylaw, resolution, or other legal instrument (the "created by law" test)**

The "created by law" test, which is set forth in § 3-101(h)(1), is usually easy to apply. First, a single person, while perhaps an official or government employee, does not constitute a "public body." For example, one hearing officer is not a "public body," 1 *OMCB Opinions* 176 (1996), nor is a county executive. 9 *OMCB Opinions* 234, 237 (2015). Also, an agency run by a secretary or department head is not an entity that "consists" of the government employees who work for it; the Act, read as a whole, contemplates an entity that consists of members whose presence can create a quorum. See 4 *OMCB Opinions* 132, 137 (2005) ("agency staff meetings are not generally subject to the Open Meetings Act, because staff members are not a 'public body'"); 7 *OMCB Opinions* 284 (2011) (the Maryland Department of the Environment is "not a body either of 'individuals,' for purposes of [§ 3-101(h)(1)] or of 'members appointed by the Governor'"); 9 *OMCB Opinions* 53 (2013) (State procurement personnel who were invited to attend periodic updates on developments in the field were not "conducting public business as 'members of a 'public body,'" but rather were "simply agency employees attending agency information sessions"); 9 *OMCB Opinions* 302 (2015) (mediation session held by Department of Natural Resources employees for lease applicant and protestants was not a gathering of a "public body").

Next, the entity has to have been created by one of the eight types of legal instruments listed in the definition. Among other things, the list includes State and local laws and executive orders, the State constitution, local governments' charters, and a "rule, resolution, or bylaw." § 3-101(h)(2). The State's Board of Public Works meets this test; it was created by Article XII, § 1 of the Maryland Constitution. See 6 *OMCB Opinions* 69, 72 (2009). By contrast, a gathering of government employees by their own volition does not meet the test. 80 *Op. Att'y Gen.* 90, 92 (1995).

The list of instruments was amended in 2013 to add memoranda of understanding ("MOUs") and master agreements signed by the Department of Education and a majority of the county boards of education. § 3-101(h)(ii)(4). As to other MOUs, the Compliance Board has stated that when a public body, by resolution, enters into an MOU with another entity to create a new board, commission, or other body, the new entity might well meet this first test. See 9 *OMCB Opinions* 94, 97 (2013) ("the Act should not be interpreted to allow a parent public body to sidestep the Act by creating committees through MOUs with private entities").

Questions arise as to when a committee of a public body meets the “created by law” test for a public body. The test is clearly met when the committee is identified by name in the public body’s bylaws, resolutions, or rules, as when a bylaw provision states, “There shall be a Finance Committee.” Less clear is the status of a committee created under the authority granted by a bylaw, resolution, or rule that does not itself create the committee. The answer might depend on the degree to which the provision identifies the function of the committee—that is, the more precisely the provision identifies the function of a committee, the more likely it is that the committee will be deemed a public body. A case decided by the Court of Appeals and later applications of the definition by the Compliance Board give some general guidance on where that dividing line might fall.

In *Avara v. The Baltimore News American*, 292 Md. 543 (1982), the Court of Appeals addressed the status of the House-Senate Conference Committee appointed in 1981 under the rules of each house of the General Assembly. Those rules, as described by the Court, “authorize[d] the appointment of conference committees where the two Houses ‘are unable to concur on the final form of a Bill.’” *Id.* at 546. The committee had been appointed to “resolve differences between the two Houses in the budget.” The Court noted that such a committee had been appointed in every year since 1976 and that it was “likely” that a similar committee would be appointed in 1982. *Id.* at 547. Rejecting the State’s argument that the committee was not a “public body” because it was not created by the rules themselves, the Court stated that “Conference Committees are established and exist only in pursuance of House and Senate Rules and in the sense contemplated by [the definition] are plainly the creation of a rule.” *Id.* at 550. To conclude otherwise, the Court stated, “would be to ascribe an intention to the legislature to exclude from the Act’s coverage all those entities which, though lawfully transacting public business and exercising legislative or advisory functions, were nevertheless merely authorized but not required to exist.” *Id.* at 550-51. The Court further stated that such a result “would seriously undercut the Act’s effectiveness and would be wholly at odds with the broad public policy underlying its passage.” *Id.* at 551.

Likewise, the Compliance Board has deemed a committee to be a “public body” when a law, regulation, or bylaw has required the creation of an entity to perform certain tasks. *See 5 OMCB Opinions* 189 (2007) (panel “established in accordance with a statute that required the Critical Area Commission to appoint a panel of 5 of its members to conduct a public hearing on a proposal to amend a local critical area program”); *7 OMCB Opinions* 21, 27 (2010) (boundary study committee appointed by an assistant superintendent in accordance with Board of Education policy requiring the appointment of such committees to advise on school districting); *7 OMCB Opinions* 176, 184 (2011) (committee mandated by parent body’s resolution to perform certain functions); *10 OMCB Opinions* 117 (2016) (development corporation that city created as private entity to perform city function). By contrast, the Compliance Board has found that the definition was not

met by a library board's finance committee that had been appointed pursuant to the board president's broad power, under the bylaws, to appoint special committees and the board's power to appoint "such standing committees as the [b]oard may desire." 7 *OMCB Opinions* 105 (2011). Unlike the provisions in *Avara*, the boundary committee matter, and the Critical Area Commission matter, the bylaws neither described the particular committee nor delegated particular functions to a committee. The Compliance Board found that the committee had not been created by the bylaws.

Another question about committees is whether a committee that the parent body creates by an "informal consensus," as opposed to a formal resolution, meets the "created by law" test. The Compliance Board has concluded that a committee created informally does not meet this prong. See, e.g., 4 *OMCB Opinions* 132, 137 (2005) ("We have long distinguished between entities established by formal action of a public body versus entities established less formally, at the prerogative of a presiding officer or consensus of the body. While the former are subject to the Open Meetings Act, the latter are not."). Nonetheless, a public body that creates a committee by consensus has not necessarily put that committee beyond the reach of the Act. The Compliance Board has cautioned that a public body's formal delegation of duties to an informally-created committee "comes very close to making that group a public body for that purpose." See 9 *OMCB Opinions* 83, 85 (2013). As discussed below in ¶ 5, the courts, too, have been unwilling to promote form over function when considering whether an entity is a "public body." See, e.g., *Avara*, 292 Md. 543.

**2. The second test – for State entities - members appointed by the Governor or someone subject to his policy direction, with at least two individuals who are not employed by the State government.**

**For local entities - members appointed by the chief executive authority or someone subject to the executive's policy direction, with at least two individuals who are not employed by the local government (the "executive appointment" test)**

The "executive appointment test," which is set forth in § 3-101(h)(2)(i), is not always easy to apply. A multi-member entity is a "public body" if it was appointed by "an official subject to the policy direction" of the Governor or the chief executive authority of the political subdivision, *and* if it includes at least two people not employed by the State or political subdivision—unless the group is a "subcommittee" of such a body. § 3-101(h)(2)(i). For example, the Compliance Board found that a task force created by the Secretary of the Environment was a public body because the secretary was an "official subject to the policy direction of the Governor." 5 *OMCB Opinions* 182 (2007).

The Act does not provide guidance on who is “subject to the policy direction” of the executive. The Compliance Board addressed that question in the case of a committee appointed by a county police captain. The police captain, a merit system employee, was supervised by the deputy to the police chief, who had been appointed by the county executive. Relying on the legislative history of the provision, the Compliance Board found that the police captain was too far removed from the county executive to be deemed subject to the executive’s policy direction. 9 *OMCB Opinions* 279 (2015).

Section 3-101(h)(3)(ix) expressly excludes subcommittees of this type of public body from the definition of a “public body.” For the scope of that exclusion, see part 4, below.

**3. The third test, for State entities only – appointed either by an Executive Branch public body whose members were appointed by the Governor or by someone subject to that entity’s policy direction, with at least two individuals who are not employed by the State (the “executive entity appointment” test)**

The “executive entity appointment” test, which is set forth in § 3-101(h)(2)(ii), is best explained through an example. When a gubernatorially-appointed board or its director creates a committee that includes at least two people not employed by the State, that committee will be a “public body.” The test thus brings under the Act the committees that are made by State agencies headed by boards, rather than by a department secretary. This definition of “public body” was added in 2009 with the enactment of House Bill 1194.

**4. The exclusions – entities that are specifically excluded from, or included in, the definition**

The General Assembly has provided that some entities are not subject to the Act, even though those entities would meet one of the Act’s three tests, and that other entities expressly are subject to the Act. *See* § 3-101(h)(2), (3). Among the specific exclusions are certain subcommittees, judicial nominating commissions, grand juries, petit juries, courts (except when they are engaged in rulemaking), the Governor’s Cabinet, and a local counterpart to the Governor’s Cabinet. § 3-101(h)(3). One entity, the Maryland School for the Blind, is expressly identified as a public body. § 3-101(h)(2)(iii).

The subcommittee exclusion, § 3-101(h)(3)(ix), applies only to subcommittees of public bodies that meet the executive appointment test. In 7 *OMCB Opinions* 284 (2011), for example, the Compliance Board concluded that the exclusion applied to a subcommittee of a task force that had been appointed by the Secretary of the Environment.

*Practice notes on the subcommittee exception:*

- A subcommittee meeting will be deemed to be a meeting of the parent public body if a quorum of the members of the parent body attends.
- “Subcommittees,” in the usual sense, are comprised only of members of the parent public body.
- Subcommittee should not be used as a way to perform the parent body’s functions behind closed doors. The courts construe the Act so as to prohibit “evasive devices,” and a subcommittee that conducts the parent body’s own business risks being deemed a public body.

#### **5. The final set of considerations – the courts’ “constructive public body” factors**

The Maryland appellate courts have sometimes deemed a privately-incorporated entity to be a “public body” subject to the Act. When doing so, they have looked to various factors, including the degree to which the entity’s board is controlled by the government, as when the board members are appointed and subject to termination by a government official, the entity performs a purely public function, and the entity has few private functions. The inquiry is fact-specific. *See, e.g., City of Baltimore Development Corp. v. Carmel Realty Associates*, 395 Md. 299 (2006). The fact that a private entity receives or administers government funds is not by itself enough. In 9 *OMCB Opinions* 203 (2015), for example, the Compliance Board found that the facts that the private entity had applied to provide services to a government agency and that the agency selected it and regulated the provision of the services did not make it a “public body.” *Id.* at 204.

In addressing an entity incorporated by the city attorney, at the mayor’s direction, to operate the city’s zoo, the Court of Special Appeals explained:

A private corporate form alone does not insure that the entity functions as a private corporation. When a private corporation is organized under government control and operated to carry on public business, it is acting, at least, in a quasi-governmental way. When it does, in light of the stated purposes of the statute, it is unreasonable to conclude that such an entity can use the private corporate form as a parasol to avoid the statutorily-imposed sunshine of the Open Meetings Act.

*Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 154-55 (1999). The Compliance Board discussed these principles in 7 *OMCB Opinions* 195 (2011) and 9 *OMCB Opinions* 246 (2015). A key consideration is whether the privately-incorporated entity is structured in such a way that a governmental entity controls its governance, as when a governmental entity has the power to dissolve it or appoint its board. *See id.* at 252-54 (discussing cases).

***B. Is the public body holding a “meeting,” or did the members instead gather merely by chance, for social reasons, or for some other occasion not intended to evade the Act? (Index topic 1B)***

The next threshold question is whether the members of the public body are holding a “meeting,” because the Act only applies when a public body “meets.” The Act does not govern whether a particular public body must conduct public business in a meeting; the Act simply sets the rules that apply when a public body *does* meet. *See* 94 Op. Att’y Gen. 161, 173 (2009) (“[O]ur longstanding advice has been that the Open Meetings Act does not specify when a public body must hold a meeting”).

The Act defines the verb to “meet” as “to convene a quorum of a public body to consider or transact public business.” § 3-101(g). The Act does not apply to a “chance encounter, social gathering, or other occasion that is not intended to circumvent” the Act. § 3-103(a)(2). So, a public body’s gathering will be a “meeting” under the Act if three elements are met: (1) a quorum of its members is present; (2) the gathering is convened for the “consideration or transaction” of public business; and (3) when the gathering occurred by chance or social reasons, the quorum nonetheless used it to discuss public business.

To figure out whether a public body has “met,” a person needs to gather the facts on how many members of the particular body it takes to create a quorum, whether the group was discussing the public body’s business, and how many members were present for that discussion. If a quorum was not “meeting,” the Act does not apply.

**1. The presence of a quorum**

This element raises the questions of “what is a quorum?” and “can a quorum be met when the members are not physically present?”

A “quorum” is “a majority of the members of a public body” or else “the number of members that the law requires.” § 3-101(k). For example, if eight members of a 15-member board gather, their presence will usually create a quorum. Their presence will not create a quorum, however, if the statute that creates the board requires the presence of nine



members for a quorum. A particular public body's quorum might be defined by regulations and executive orders. However, the Compliance Board has concluded that a bylaw, by itself, is not "other law" that would exempt a public body from the Act's definition of a quorum as the majority of the members. *See 9 OMCB Opinions* 307, 310 (2015).

As for physical presence, a member who participates in a meeting by telephone will be deemed present. *Cf. Tuzeer v. Yim, LLC*, 201 Md. App. 443, 471 (2011) (stating that the Act does not "prohibit[] a meeting with one or more members participating by telephone conference as long as the conference call is broadcast over a speakerphone so it can be heard by members of the public"). A discussion conducted entirely by teleconference will thus meet this element when a quorum is on the call.

The presence of a quorum for purposes of the Act gets murky when the members are not simultaneously in one place or on one conference call but nonetheless seem able to discuss public business as a group. The Compliance Board has often addressed complaints that a public body reached a decision through e-mails, separately-held telephone calls, or other modes of communication outside of a meeting of a quorum of the members. Usually, the Act's definition of a "meeting" to require the presence of a quorum has meant that the Act does not apply to sequential or written communications among the members. The Compliance Board reached that usual result in *7 OMCB Opinions* 193 (2011). There, the board of commissioners seemed to have reversed itself on a decision without having deliberated in public, and the complainant inferred that they had met secretly. In fact, as explained to the Compliance Board, the commissioners had not "met"; they had reached the consensus "through sequential and one-on-one communications" with the board president, "conducted in person, by e-mail, and by telephone." *Id.* Nonetheless, the Compliance Board cautioned against "this way of proceeding." *Id.* at 194. *See also 8 OMCB Opinions* 38, 40 (2012) ("when a public body . . . decides [a] matter, without discussion, on the basis of a lengthy motion, the public body should not be startled when a member of the public infers that every aspect of the matter was discussed and decided in secret.").

The Compliance Board has also cautioned that courts might look beyond the quorum requirement to determine whether, as a practical matter, a quorum of the public body was in on the discussion. In *8 OMCB Opinions* 56 (2012), a county board heard a land-use appeal in open session, announced that it would take the matter under advisement, and then, at a subsequent open meeting, adopted without discussion a written statement of its findings and conclusions. The board's counsel explained that, as was the custom, he had prepared the statement and taken it to each member separately, and that the members had not discussed the document as a group. On those facts, the Compliance Board concluded that no "meeting" had occurred—but it also advised the public body of the risks of such practices:

We are reluctant . . . to give the impression that the quorum requirement provides public bodies with an absolute defense to an alleged Open Meetings Act violation. In fact, a public body risks violating the Act by manipulating a quorum so as to avoid the Act's mandates. The Court of Appeals addressed such a violation in *Community and Labor United for Baltimore Charter Committee* ("C.L.U.B.") v. *Baltimore City Board of Elections*, 377 Md. 183 (2003). There, the City Council President closed a meeting without a vote after she ascertained that a quorum of the councilmembers was not present. *Id.* at 190-91. The Court held that the Council had violated the Act, and, further, that it had done so willfully. *Id.* at 196-97. The C.L.U.B. Court thus concluded that a public body, acting willfully to evade the Act, may be subject to the Act even in the absence of an actual quorum.<sup>[2]</sup>

*Id.* at 59.<sup>3</sup>

In 9 *OMCB Opinions* 283 (2015), the Compliance Board held that a county board of appeals violated the Act when it abruptly called a ten-minute recess in the middle of detailed deliberations on a special exception application and then returned to open session

---

<sup>2</sup> The Compliance Board further explained that courts in other states have given the term "walking quorum" to a public body's use of the quorum requirement to avoid deliberating in public. *See, e.g., Asgeirsson v. Abbott*, 773 F. Supp. 2d 684, 706-707 (W.D. Tex. 2011) (walking quorums "occur when members of a governmental body gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum of that body") (citations and some internal punctuation omitted); *Mabry v. Union Parish Sch. Bd.*, 974 So. 2d 787, 789 (La.App. 2 Cir. 2008) (a "walking quorum" is "a meeting of a public body where different members leave the meeting and different members enter the meeting so that while an actual quorum is never physically present an actual quorum during the course of the meeting participates in the discussion"); *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433, 471-478 (W.D. Tex. 2001) (reviewing cases on public bodies' use of a quorum requirement to avoid public deliberations). *See also State ex. rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (Ohio 1996) (in addressing meetings held on three different days, stating, "The Ohio Sunshine Law cannot be circumvented by scheduling back-to-back meetings which, taken together, are attended by a majority of a public body.").

<sup>3</sup> C.L.U.B. implicitly qualifies the Court's earlier dicta in *City of College Park v. Cotter*, 309 Md. 573 (1987). In *Cotter*, the Court of Appeals applied a municipal open meeting ordinance which was stricter than the Act in that it did not permit the council to close a session to confer with its attorney. *Id.* at 592-94. Applying the similarly-worded definition of the term "meeting" in that ordinance, the Court stated in a footnote that "nothing prevents the City Attorney from meeting in closed session with less than a quorum of the Council members." *Id.* at 595 n. 32. However, under C.L.U.B., such meetings, if designed to circumvent the Act, could be subject to challenge. *See also* fn. 4.

with a complete resolution of the matter. The board had recessed after its counsel suggested a break to “let your thoughts settle down,” and all of the members had left the meeting room together. Immediately upon their return, the chair stated, “we’ve had a little bit more discussion . . . OK, would someone like to make a motion at this point?” *Id.* at 285. Noting that the public body had not closed the meeting for reasons permitted by the Act, and that a consensus was reached during the recess whether or not the discussion was held in the presence of a simultaneous quorum, the Compliance Board stated that it did not “construe the Act to permit the use of recesses as a setting in which to consider public business behind closed doors.” *Id.* at 284. The Compliance Board further advised: “Public bodies may not use behind-the-scenes recesses as a means of shortcutting further public discussion of a matter that they have just been considering in open session.” *Id.* at 288. Citing the result in *C.L.U.B.*, 377 Md. 183, the Compliance Board cautioned that “the Act does not automatically switch off during a discussion when the number of members present falls briefly below the number required for a quorum.” *Id.* “Of more significance” for such recesses, the opinion states, “will be the totality of the circumstances, including whether the deliberations have continued during the break.” *Id.*<sup>4</sup>

Questions arise as to whether the exchange of electronic communications among a quorum means that a quorum is present. This Office opined in 1996 that sequential e-mail communications, which it then analogized to the exchange of information through regular mail, are not subject to the Act. *See* 81 Op. Att’y Gen. 140, 142 (1996). That conclusion, reached before the development of most forms of social media and easy texting, should not be construed to apply automatically to all forms of electronic communication or even to all e-mail communications. In fact, the opinion states that the “result would be different” if the members were able to “use e-mail for ‘real time’ simultaneous interchange.” *Id.* at 143-44. Under the functional approach taken by the Court in *C.L.U.B.*, an online discussion in which a quorum of the public body participates on a near-simultaneous basis might well be deemed to meet this element of the “meeting” test.<sup>5</sup>

---

<sup>4</sup> For another example of a “totality of the circumstances” approach to the quorum requirement, *see Armstrong v. Mayor & City Council of Baltimore*, 409 Md. 648 (2009). There, the Court of Appeals quoted at length, but did not explicitly review, the circuit court’s finding that a council committee had violated the Act by circulating a draft zoning bill among its members for their approval at separate times. Noting that “it is true that a quorum is technically necessary to trigger the Act,” the circuit court nonetheless examined whether, from the “totality of the circumstances,” the committee had violated the Act. The circuit court found that the committee had “intentionally avoid[ed] holding a meeting” of a quorum. The circuit court then concluded that it was “not consistent with the goal of the [Act]” to meet publicly on a bill without discussing it and then to circulate it later “from member to member without the public being permitted to observe any of the deliberative process.” *Id.* at 662-63 (quoting the circuit court’s opinion). The extent to which the Court adopted the circuit court’s reasoning is unclear. *See* 94 Op. Att’y Gen. 161 (2009).

<sup>5</sup> Some states’ open meetings laws expressly include “electronic communications” in the definition of “meeting.” *See, e.g.,* Iowa Code Ann. § 21.2 (West) (“Meeting” means a gathering in person or by electronic

The Compliance Board has advised public bodies about the risks of using the “reply all” and forward functions in email communications among the members of a public body. *See 9 OMCB Opinions* 259, 264 (2015). There, the Compliance Board quoted with approval the advice of Wisconsin’s Attorney General on the use of electronic communications by entities subject to that state’s open meetings law. The advice included the following prediction of the factors that courts would likely consider in addressing whether an email exchange was a meeting: “(1) the number of participants involved in the communication; (2) the number of communications regarding the subject; (3) a time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications.” *Id.* (quoting 2005 Wisc. AG LEXIS 29, 2-4 (Wisc. AG 2005)) (internal quotation marks and citation omitted).

**2. The gathering is convened for the “consideration or transaction” of public business; or,**

**3. If the quorum instead came together by chance or for social purposes, the quorum used the occasion to discuss public business**

These two related elements are met when a quorum comes together to consider *or* transact public business, and they are *not* met when the members are together for some other reason and do not discuss public business.

Some clear guidelines have emerged. First, the location of the meeting is irrelevant. If a quorum of the public body’s members comes together at a restaurant by chance and discusses public business, all of the elements of a “meeting” are met. *7 OMCB Opinions* 269 (2011). The same is true of a “retreat.” *See, e.g., 3 OMCB Opinions* 122, 124 (2001).

Also irrelevant is the fact that the quorum does not make a decision or take an action. The Court of Appeals has said that a public body’s “consideration” of public business includes all phases of its deliberation, not just the decision,<sup>6</sup> and the Compliance Board has

---

means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties.”). A survey of the states’ laws on this topic and others can be found in the online Open Government Guide published by the Reporters Committee for Freedom of the Press: [www.rcfp.org/open-government-guide](http://www.rcfp.org/open-government-guide). The Reporters Committee has also published a guide to the federal open meetings law: [www.rcfp.org/federal-open-government-guide](http://www.rcfp.org/federal-open-government-guide).

<sup>6</sup> *See, e.g., City of New Carrollton v. Rogers*, 287 Md. 56, 72 (1980) (“It is . . . the deliberative and decision-making process in its entirety which must be conducted in meetings open to the public since every step of the process, including the final decision itself, constitutes the consideration or transaction of public business.”).

explained that receiving a briefing on public business is part of the process of considering it. *See* 7 *OMCB Opinions* 85, 87 (2011). Relevant instead are the facts about what the members discussed. If a quorum of members attends the same social event, the members are not “meeting” unless they gather and start discussing the public body’s business. *See, e.g.,* 5 *OMCB Opinions* 93 (2007). Likewise, for example, if two members of a three-member board find themselves in the same restaurant or store, they are not “meeting” unless they start discussing the public body’s business. 7 *OMCB Opinions* 269.

Less clear is whether a public body is meeting to transact “public business” when a quorum is present at an event that another entity has convened to conduct that entity’s business. The Maryland courts have addressed that question in two contexts. *See City of New Carrollton v. Rogers*, 287 Md. 56 (1980); *Ajamian v. Montgomery County*, 99 Md. App. 665 (1994). In *Rogers*, the Court held, without lengthy discussion, that a city council had not conducted a “meeting” when a quorum of its members attended a civic association’s meeting to address questions about a possible annexation of property. 287 Md. at 81. In *Ajamian*, a quorum of a county council attended a closed meeting of the county Democratic Central Committee, and the council president responded to a request for a briefing on various councilmanic redistricting plans. 99 Md. App. at 671-72. A discussion about the plans ensued, and the central committee voted to support the plan proposed by the redistricting commission. The council members neither joined the discussion nor voted. *Id.* The trial court found that there was “no vote,” no “deliberation by councilmembers,” no “meeting to deliberate and decide,” no intention to “evade the law,” “no evidence that the law was in fact evaded,” and “no factual basis for a finding of violation of [the Act].” *Id.* at 680 (internal punctuation omitted). The Court of Special Appeals upheld those findings of fact, and affirmed the trial court’s judgment.

Applying *Ajamian*, the Compliance Board has advised:

[M]embers of a public body do not violate the Act merely by attending a meeting of an entity that is not itself subject to the [Act], even if the topic of discussion relates directly to a matter before the public body. . . . The crucial point [of *Ajamian*] was that the Act applies only if the public body itself separately conducts public business, as distinct from the proceedings of the larger group. If interaction among the members of the public body does not occur, and the larger group is not a mere subterfuge to evade the law, no violation occurs.

1 *OMCB Opinions* 120, 121 (1995); *see also* 7 *OMCB Opinions* 105, 110 (2009). For example, the Compliance Board concluded that various election boards had not violated the statute when a quorum of each had attended a closed meeting of a private association of election personnel, because there was no evidence that any individual board had

conducted public business there. *Id.* By contrast, a public body “met” when a quorum of its members attended an event that the public body itself had organized for presentations on a matter that was then pending before the public body. 8 *OMCB Opinions* 19 (2012).

In short, “[w]hen a quorum of a public body convenes and discusses public business within one of the functions covered by the Act, that gathering is deemed a meeting of the public body, even when the quorum was created accidentally or the discussions occurred in a meeting not called by the public body itself.” 8 *OMCB Opinions* 76, 79 (2012). See also, e.g., 3 *OMCB Opinions* 30, 33-34 (2000) (concluding that the Act applied to an informal briefing when a quorum was created by the unexpected arrival of an additional member); 6 *OMCB Opinions* 155, 158 (2009) (concluding that a public body “met” under the Act when a quorum of its members attended a subcommittee meeting).

*Practice notes on the presence of a quorum:*

- Members of public bodies should know how many members it takes to create a quorum so that they know when the Act applies to their discussions.
- Near-simultaneous electronic discussions among a quorum raise questions as to whether the members are “meeting” as a quorum, and those discussions should be avoided.
- The Act does not require public bodies to “meet,” but a public body that reaches decisions by other means might create a perception that it operates in the dark.
- The quorum requirement might not provide a defense to a public body that has called a brief recess in the middle of its deliberations when a quorum departs together and comes back with a decision.
- The quorum requirement also might not provide a defense to a public body that has intentionally evaded the Act.

***C. Is the meeting subject to the Act because the public body is performing a “function” subject to the Act, or instead exempt from the Act because the public body is performing one of the three “functions” expressly excluded from the Act? (Index topics 1C through K)***

Even when a “public body” is “meeting,” the Act might not apply, because the Act applies to some “functions” that a public body might perform, but not others. The Act defines six “functions.” Meetings that fall within the definitions of the legislative, quasi-

legislative, and advisory functions are subject to the Act. Generally, meetings that fall within the definitions of the administrative, judicial, and quasi-judicial functions are not subject to the Act. § 3-103. However, the Act does apply when a public body meets to consider granting a license or permit or to consider various zoning matters. § 3-103(b). And when a public body recesses an open meeting to carry out an administrative function in a closed session, it must make the disclosures specified by the Act. § 3-104.

The Compliance Board has interpreted the Act to apply to discussions that do not fall into any of the functions. That conclusion is supported by § 3-301, which requires a public body to meet in open session “[e]xcept as otherwise expressly provided” by the Act. If a meeting does not fall within an express exclusion, then the Act applies. *See also* 78 Op. Att’y Gen. 275, 278, n. 3 (1993) (stating, in effect, that the Act applies “if a public body is carrying out a function that cannot be categorized under any one of the six defined functions”).

To figure out what “function” the public body performed at a meeting, a person needs to gather the facts on what the members addressed there. The topic index provides useful examples of how the Compliance Board has characterized various discussions.

**1. The functions subject to the Act: advisory, legislative, quasi-legislative functions, and licensing, permitting, and land use deliberations**

*a. Advisory function (Index topic 1D)*

Public bodies perform “advisory” functions when they “stud[y] . . . a matter of public concern” or “mak[e] recommendations on the matter,” and are doing so under a “delegation of responsibility” by any of four authorities:

- “law”
- the Governor or someone subject to his “policy direction”
- the chief executive officer of a political subdivision or someone subject to that officer’s policy direction
- “formal action by or for a public body that exercises an administrative, judicial, legislative, quasi-judicial, or quasi-legislative function.”

§ 3-101(c)(4).

The advisory function is usually performed by task forces and commissions that have been appointed to study an issue and report back. For example, a standing committee

created by a public body's bylaws to recommend changes to the public body's organizational structure performed an "advisory function" when it met to discuss that topic. 9 *OMCB Opinions* 1, 8 (2013).

*b. "Legislative function" (Index topic 1F)*

This definition extends to more than just acting on proposed legislation. Section 3-101(f) provides:

"Legislative function" means the process or act of:

- (1) approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy;
- (2) approving or disapproving an appointment;
- (3) proposing or ratifying a constitution or constitutional amendment; or
- (4) proposing or ratifying a charter or charter amendment.

§ 3-101(f).

*c. Quasi-legislative function (Index topic 1J)*

This provision also applies more broadly than its name might suggest. Section 3-101(j) provides:

"Quasi-legislative function" means the process or act of:

- (1) adopting, disapproving, amending, or repealing a rule, regulation, or bylaw that has the force of law, including a rule of a court;
- (2) approving, disapproving, or amending a budget; or
- (3) approving, disapproving, or amending a contract.

For example, a public body that approves a budget performs a quasi-legislative function (and a legislative function, if adoption is by ordinance), while a public body that is statutorily charged with recommending a budget for approval by another entity is performing an advisory function. Either way, the discussion is subject to the Act.

*d. Licensing, permitting, and land use matters (Index topic 1G)*

Section 3-103(b) provides that the Act applies when a public body "is meeting to consider: (1) granting a license or permit; or (2) a special exception, variance, conditional use, or zoning classification, the enforcement of any zoning law or regulation, or any other zoning matter." Until 1991, when the provision was added, proceedings on many licensing, permitting, and land use matters had been considered quasi-judicial or administrative in



nature and, hence, not subject to the Act, which expressly excludes meetings held to perform those functions. Now, licensing, permitting, and various land use matters fall within the scope of the Act no matter what “function” the public body is performing.

The Court of Appeals has interpreted the catch-all phrase “any other zoning matter” to include development plan applications, usually considered to be a “planning” matter. *Wesley Chapel Bluemont Association v. Baltimore County*, 347 Md. 125, 137-50 (1997). After extensively reviewing the legislative history of the provision, the Court found “no evidence” that the General Assembly had incorporated into the Act the “technical distinctions that the courts had drawn between land use planning, zoning, and development control.” *Id.* at 144. The Court accordingly held that the Act applied to the hearings held by the county board of appeals on the development plan. *Id.* at 148. *See also* 100 Op. Att’y Gen. 55, 68-70 (2015) (discussing the history of the provision). Other land use cases in which Open Meetings Act issues were raised include *Tuzeer v. Yim, LLC*, 201 Md. App. 443 (2011) (use permit) and *Handley v. Ocean Downs, LLC*, 151 Md. App. 615 (2003) (special exception).

**2. The functions exempt from the Act: judicial, quasi-judicial, administrative - unless the public body is considering granting a license or permit or taking certain land-use actions**

*a. “Judicial Function” (Index topic 1E)*

The judicial function is defined to mean “the exercise of any power of the Judicial Branch of the State government,” except for “the exercise of rulemaking power by a court.” § 3-101(e). The definition also includes the exercise of the powers delegated to juries and two courts-related commissions.

*b. “Quasi-judicial function” (Index topic 1I)*

As defined by the Act, the “quasi-judicial” function means the “determination” of a “contested case,” as defined by Title 10, Subtitle 2 of the State Government Article, or of a matter before an administrative agency for which judicial review would be governed by Title 7, Chapter 200 of the Maryland Rules. The “quasi-judicial function” also includes the Compliance Board’s determination of an open meetings complaint under the Act. § 3-101(i).

Many licensing and land use matters that fall within this definition are nonetheless expressly subject to the Act under § 3-103(b). It provides that the Act applies when a public body “is meeting to consider: (1) granting a license or permit; or (2) a special exception,

variance, conditional use, or zoning classification, the enforcement of any zoning law or regulation, or any other zoning matter.” See 1(d), above.

- c. “*Administrative function*”- *the two-step analysis, plus the licensing/permitting inquiry (Index Topic 1C)*

The Act defines “administrative function” in both the negative—what an administrative function is *not*—and the affirmative—what it *is*. In an opinion approved by the Court of Special Appeals, this Office explained the two-step analysis that the Compliance Board has used to determine whether a particular activity is an administrative function:

The first step is to evaluate whether the meeting falls within any other function defined in the statute. If it does, the analysis ends because, by definition, the meeting does not involve an administrative function. [§ 3-101(b)(2)]. If the session does not involve one of the other defined functions, the second step is to evaluate whether the public body is involved in the administration of an existing law, rule, or regulation (as opposed to the development of new policy). If it is, the meeting likely involves an administrative function and the [Act] does not apply; if not, the discussion is not an administrative function and the [Act] does apply.

95 Op. Att’y Gen. 152, 155-56 (2010); *see also Dyer v. Board of Education*, 216 Md. App. 530, 537-38 (2014) (quoting the opinion and applying the Compliance Board’s two-step test).

A third inquiry, as with the quasi-judicial exclusion explained above, is to determine whether the meeting, even though “administrative” in nature, is subject to the Act anyway as a licensing, permitting, or land use matter under § 3-103(b).

1. The first step: A topic that falls within the advisory, legislative, quasi-legislative, judicial, and quasi-judicial functions does *not* fall within the administrative function.

If the topic of discussion falls into the definition of any other function, then it is not “administrative.” § 3-101(b)(2).

*Practice notes on the first step:*

- Task forces that have been created to make recommendations seldom perform “administrative” functions other than choosing a presiding officer and meeting place and discussing logistical matters associated with the performance of their duties.
  - A legislative body that is approving an appointment is performing a quasi-legislative function and therefore not an administrative function.
  - The judicial and quasi-judicial functions are exempt from the Act anyway, so if the meeting in question involves a judicial or administrative body’s consideration of a particular case, it is usually easier to apply those definitions before analyzing the meeting under the administrative function exclusion.
  - A public body that prepares a budget to recommend to another public body performs an advisory, and thus not an administrative, function.
2. The second step: The “administration” of a law, rule, regulation, or bylaw *is* within the administrative function.

The second step is to apply the Act’s definition of what an administrative function *is*. See § 3-101(b)(1). The definition is circular – “administrative” is defined only by reference to “administration” – and it can be hard to apply confidently. Section 3-101(b)(1) provides:

“Administrative function” means the administration of:

- (i) a law of the State;
- (ii) a law of a political subdivision of the State; or
- (iii) a rule, regulation, or bylaw of a public body.

The Compliance Board has construed § 3-101(b)(1) this way: ““there [must be] an identifiable prior law to be administered, and the public body holding the meeting must be vested with legal responsibility for its administration.”” 7 *OMCB Opinions* 131, 136 (2011) (quoting 5 *OMCB Opinions* 42, 44 (2006)).

One generalization that has emerged is that “administering” a law can include applying an existing provision to a set of facts, as when an ethics commission applies existing ethics regulations to a particular set of facts in order to resolve a complaint, *Dyer v. Board of Education*, 216 Md. App. 530, 538 (2014), or a medical review panel applies regulations to the facts of the cases before it. 7 *OMCB Opinions* 250, 254 (2011). Another generalization is that the development of new policy does not qualify as “administrative.” *See id.*; *see also* 9 *OMCB Opinions* 1, 8 (2013) (“discussions about prospective policies and recommendations of future actions on subjects of public concern very seldom, if ever, qualify for the administrative function exclusion”); 7 *OMCB Opinions* at 254 (medical review panel’s discussion of “what the standards should be” would not be “administrative”).<sup>7</sup>

The Compliance Board has repeatedly commented on the difficulty of applying the administrative function exclusion with confidence.<sup>8</sup> If in doubt, the public body should proceed on the assumption that the Act applies. If the public body wants to treat the matter as “administrative” because the topic is confidential, the public body should instead analyze whether the meeting may be closed under the “exceptions” in the Act that permit closed-door discussions of certain topics. *See* Chapter 4.

---

<sup>7</sup> The Compliance Board has given these examples of how it has applied the administrative exclusion:

When a public body met to dismiss an employee, 1 *OMCB Opinions* 166 (1996), evaluate an employee’s performance, 3 *OMCB Opinions* 218, 221 (2002), fill a vacancy, 1 *OMCB Opinions* 252 (1997), or make an appointment, 6 *OMCB Opinions* at 61, we have found those discussions to be administrative in nature. And, we have found that the wording of press releases and the procedures for issuing them are topics that fall within the exclusion. 1 *OMCB Opinions* 133 (1995) (discussion of press release by board of aldermen was not subject to the Act); 8 *OMCB Opinions* 89, 91 (2012) (county commissioners’ discussion of current press release procedures “fall easily into the administrative function exclusion as we have applied it”).

9 *OMCB Opinions* 110, 112-) 13 (2014). For examples of administrative, and non-administrative, functions performed by a board of county Commissioners, *see* 7 *OMCB Opinions* 225 (2011).

<sup>8</sup> For example, in 9 *OMCB Opinions* 110 (2014), the Compliance Board commented on “the regrettable difficulty, for public bodies, the public, and representatives of the press alike, of applying the administrative function exclusion.” *Id.* at 113. As noted there, the Compliance Board had studied the issue in 2005. *Id.*, citing Use of the Executive Function Exclusion under the Maryland Open Meetings Act - Study and Recommendations by the Open Meetings Compliance Board (December, 2005). One confusing aspect of the administrative function exclusion noted in the study was that the exclusion might also apply to discussions that fall within the “personnel matters” exception that permits a public body to close a meeting that is subject to the Act. *Id.*, citing Study p. 6. *See also* fn. 10, above, and Chapter 4, part A, below, of this manual.

*Practice notes on the second step:*

- A policy that has not yet been adopted is not susceptible to being “administered.” For example, a county council that had not yet adopted its position on legislation in the General Assembly could not claim that it was merely implementing that position when, before voting on the position, it held closed sessions to hire a lobbyist. *See 7 OMCB Opinions* at 137.
- A public body is “administering” its bylaws when it elects its own officers under a bylaw requiring it to do so. *See 9 OMCB Opinions* at 9, 10 (“this part of the test is met when a public body elects its own officers”).
- A discussion that begins as “administrative” in nature can easily stray into policy matters that may only be discussed in an open meeting. For that reason, many public bodies perform administrative functions in open meetings that satisfy the requirements for meetings subject to the Act. Otherwise, the discussion must be postponed until proper notice can be given.

## Chapter 2: Notice and Agendas

### **Chapter 2: For meetings subject to the Act, did the public body give “reasonable advance notice” and make an agenda available?**

(Index Topic 2)

**Chapter Summary:** The Act states the “public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.” § 3-102(c). That policy is implemented by § 3-302, which sets the requirement that public bodies “give reasonable advance notice” before meeting in an open or closed session and then addresses the form, content, and method of giving notice. The Compliance Board has observed that a “deficiency in one regard may sometimes be ameliorated by the public body’s extra efforts in another, as when a public body takes extra measures to publish a last-minute notice of an urgently-called meeting.” 8 *OMCB Opinions* 76, 80 (2012). The Compliance Board has also emphasized that “[t]he notice provisions of the Act are not merely technical; a meeting held without notice to the public is a secret meeting.” *Id.* at 79. The failure to give notice, thus, also means that the public body has violated the Act’s default requirement that public bodies “shall meet in open session.” *See* § 3-301.

Section 3-302 requires public bodies to retain a copy of their meeting notices; that requirement is discussed in Chapter 6, below of this manual.

To figure out whether a public body gave proper notice, a person needs a copy of any notice that was posted online or published by other means, the date of the posting, and the date of the meeting. Also relevant might be the circumstances behind the scheduling of a meeting on short notice. Usually, the public body or its website is the best source of this information.

In 2016, the Act was amended to require public bodies to make an agenda available when they post notice, or, if the agenda has not been determined then, as soon as practicable, but at least 24 hours before the meeting. *See* § 3-302.1.

**A. *Timing – did the public body post the notice “reasonably in advance” of the meeting?***

The Act states the policy that notice be “adequate,” § 3-102(c), and requires that “reasonable advance notice” be given. § 3-302(a). The Act does not specify how far in advance notice must be given; there is no requirement that notice be given “at least X days in advance.” The Compliance Board has explained:

As for timeliness, we have stated that “the touchstone of ‘reasonableness’ is whether a public body gives notice of a future meeting as soon as is practicable after it has fixed the date, time, and place of the meeting.” 5 *OMCB Opinions* 83, 84 (2006). A public body has not provided “reasonable advance notice” if it knew the deadline by which it needed to meet on a certain matter and delayed setting the date. 5 *OMCB Opinions* 139, 143 (2007). Put another way, when “a meeting is scheduled on short notice, as sometimes will be required by unexpected developments, the person responsible for scheduling [it] must provide the best public notice under the circumstances.” 1 *OMCB Opinions* 38, 39 (1993). For example, notice of a meeting one day in advance is insufficient when a public body could have anticipated the need for the meeting earlier. *See* 5 *OMCB Opinions* at 143.

8 *OMCB Opinions* at 80. Most of the Compliance Board’s timeliness opinions address allegations that a public body waited until the last minute to give notice. One complaint, however, alleged that the public body posted notice too early. *See* 8 *OMCB Opinions* 125 (2013).

The Compliance Board has approved standing website notices of regularly scheduled meetings (“The Council meets on the third Wednesday of every month, at 3 p.m., in Room 12 at City Hall”). Public bodies must also post cancellation notices, 1 *OMCB Opinions* 183, 189 (1996), and changes to the required information. 3 *OMCB Opinions* 85, 87 (2001).

The Board has found that last-minute notices given on a website alone do not constitute “reasonable advance notice” because that method is effective only for members of the public who happened to check the website shortly before the meeting. For meetings held to address truly urgent matters, the Compliance Board has suggested the use of “save-the-date” type notices when the meeting details will not be known until shortly beforehand. In 9 *OMCB Opinions* 125 (2014), the Board addressed the meetings of an entity that had to address urgent matters on short notice. Noting that “it can be hard for a public body’s

staff to publish timely notice when the members have not yet decided on the date, time, and place of the meeting,” the Compliance Board advised:

Two methods, when used together, will often suffice. First, as soon as a public body knows that it will need to meet urgently, it might post that expectation on its website and alert the public to watch the website for details. At the same time, the public body might send that message by e-mail or through social media to the representatives of the press who follow its activities. Public bodies that often must meet on short notice might also develop a list of members of the public who want to receive such notices.

*Id.* at 126. The Compliance Board itself has posted a notice on its webpage that it occasionally must meet on short notice during the General Assembly to address questions about its position on pending legislation and that the public should check the website frequently during the General Assembly’s session.

A meeting should not be held on short notice if the matters are not urgent. The Compliance Board has advised that a public body has two options when it discovers, shortly before a meeting, that it has not given notice: “(1) if there is no emergency that must be addressed that day, it may postpone the meeting and give proper notice for a meeting at a later time; or, (2), if the meeting must be held that day, the public body may make good-faith efforts to reach its interested public by whatever method is likely to work.” 9 *OMCB Opinions* 199, 200 (2015). If the public body discovers at the meeting that notice was not given, it must adjourn the meeting and re-convene only after it has given adequate notice. These principles apply whether or not a meeting is a “continuance” of an earlier one; the Compliance Board has advised that a public body that “continues” a meeting to a different date must give notice of that date. *See, e.g.*, 5 *OMCB Opinions* 184, 186 (2007).

***B. Format and contents – was the notice written, and did it contain the required information?***

Section 3-302(b) provides that notice must, “whenever reasonable,” be “written” and specify the “date, time and place” of the meeting. When notice is given on a website, the public body should print out or save a screenshot. As discussed in Chapter 6, the Act requires public bodies to retain a copy of each meeting notice for one year, and more than one public body has had trouble retrieving a notice that was no longer posted. *See, e.g.*, 8 *OMCB Opinions* 188, 189-90 (2013). To establish the timeliness of notice given on a website, public bodies may also wish to include the posting date on the notice.



Additionally, under § 3-302(b)(3), the notice must, “whenever reasonable” and “if appropriate,” “include a statement that a part or all of a meeting may be conducted in closed session.” Read by itself, the provision seems to contemplate that a public body may post notice of an entirely closed session. However, if a meeting is subject to the Act, it may only be closed after the members have voted in public to do so. *See* § 3-305(d). The Compliance Board has, therefore, advised that the public body’s notice of a closed session must invite the public to an open meeting right before the anticipated closed session. *See, e.g., 8 OMCB Opinions* 150, 158 (2013) (approving the public body’s notice that “The Board will meet in open session only for the purpose of voting to close its meeting to discuss matters that the Open Meetings Act permits it to discuss in closed session.”).

The Act also does not address the question of whether public notices may include a request that people interested in attending contact the public body in advance. The Compliance Board has approved such requests as a way to ensure that the meeting place can accommodate the attendees. *See 9 OMCB Opinions* 206, 209 (2015).

As discussed in D, below, the Act now requires public bodies to have an agenda for each meeting and to make it available.

***C. Methods of posting notice - does the public body use methods that are reasonably likely to reach people who would be interested in attending its meetings?***

The Act gives public bodies considerable discretion on how to provide “reasonable advance notice.” Section 3-302 (c) provides:

A public body may give the notice under this section as follows:

- (1) if the public body is a unit of State government, by publication in the Maryland Register;
- (2) by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part;
- (3) if the public body previously has given public notice that this method will be used:

- (i) by posting or depositing the notice at a convenient public location at or near the place of the session; or
  - (ii) by posting the notice on an Internet Web site ordinarily used by the public body to provide information to the public; or
- (4) by any other reasonable method.

The Compliance Board has suggested that public bodies periodically revisit their choice of methods, because methods that once seemed adequate for a particular constituency might have become ineffective. *See 9 OMCB Opinions* 206, 209 (2015) (encouraging public bodies to “review their notice methods, to reasonably adapt them to the changing ways in which their interested public gets information, and, if possible, to use several methods”). Consistency is also important; a change in method should be posted the usual way before that way is abandoned. And a public body that uses its website to post meetings of its committees should use that method for all of its committees. *See 8 OMCB Opinions* 76, 83 (2012) (remarking on the appearance created by the “public body’s failure to employ its usual method of giving notice, particularly when that method is seemingly easy and efficient”).

*Practice notes on notice:*

- Members of public bodies can avoid unintentional violations of the Act by asking, at the outset of each meeting, how and when notice was provided to the public and by getting a clear understanding of which staff member has lead responsibility for doing that.
- Public bodies that create citizen task forces should, at the same time, assign lead administrative staff.
- Public bodies that might have to meet on an emergency basis should consider developing procedures and email notification lists to use in those emergencies.
- Copies of meeting notices must be retained, as discussed also in Chapter 6, and screenshots of notices given online should be printed out, with a notation of the posting date.

***D. Agenda Requirement – Has the public body made an agenda available within the applicable deadlines?***

Formerly, the Act did not require public bodies to either create or produce agendas before their meetings. That changed on October 1, 2016, with the enactment of § 3-302.1.

With one exception, the new provision requires: “Before meeting in an open session, the public body must make available to the public an agenda” that (1) contains “known items of business or topics to be discussed at the portion of the meeting that is open” and (2) indicates “whether the public body expects to close any portion of the meeting” under GP § 3-305. Public bodies are not required to make available any information in the agenda regarding the subject matter of the closed portion of the meeting. GP § 3-302.1 (a), (c). Further, “A public body is not prevented from altering the agenda of a meeting after the agenda has been made available to the public.” GP § 3-302.1(e).

The deadline for making an agenda available depends on when the agenda items or topics have been determined. If they have been determined at the time notice is given, the public body is to make the agenda available then. Otherwise, the public body must make the agenda available as soon as practicable, but no later than 24 hours before the meeting. GP § 3-302.1 (a)(2), (3).

Section 3-302.1 gives public bodies flexibility as to the methods for making the agenda available. A public body may make the agenda available by any of the methods authorized for giving notice under GP § 3-302(c). Also, the “method that a public body uses for making available an agenda may be different from the method a public body uses for giving notice.” GP § 3-302.1 (d).

There is one exception to the requirement that an agenda be provided before a meeting. If a public body cannot meet the deadlines because it scheduled the meeting “in response to an emergency, a natural disaster, or any other unanticipated situation,” the public body must make the agenda available, on request, within a reasonable time after the meeting occurs. GP § 3-302.1(b).

## Chapter 3: Open Meeting Requirement

### Chapter 3: Will the meeting, in fact, be open to the public?

(Index Topic 3)

**Chapter summary:** Section 3-102(c) states the policy that public bodies' meetings must be held "in places reasonably accessible to individuals who would like to attend these meetings." Section 3-102(b) states that the ability of the public, its representatives, and the media to attend, report on, and broadcast . . . ensures the accountability of government to the citizens of the State."

The Act does not define what the right to "attend" a meeting entails. Two sections touch on the subject: § 3-303 requires public bodies to adopt rules of conduct and addresses the role of the presiding officer, and § 3-304, applicable only to State public bodies, addresses the provision of interpreters. The Compliance Board has elaborated on logistical questions, such as, the size of the meeting room and the handling of videotaping. The circumstances under which a public body may meet in closed session are discussed in Chapters 4 and 5.

While this Manual does not address a public body's duties under the Americans with Disabilities Act and analogous State and local laws, those duties should be considered when the public body is choosing a meeting place.

To figure out whether a particular meeting met this requirement, a person needs facts on the public body's arrangements for the meeting and what occurred there.

#### A. *The right to "attend" a meeting*

Section 3-303(a) provides: "Whenever a public body meets in open session, the general public is entitled to attend." That means that members of the public may come to a meeting and observe it. With one exception pertaining to the closing of a meeting (see Chapter 5), it does not mean that they are entitled to speak. *See City of New Carrollton v. Rogers*, 287 Md. 56, 72 (1980) ("While the Act does not afford the public any right to

participate in the meetings, it does assure the public right to observe the deliberative process and the making of decisions by the public body at open meetings.”). So, unless the public body is governed by laws that require the particular public body to receive public comment, the decision of whether to allow members of the public to speak is up to the public body. Ordinarily, the management of the public comment period is up to the presiding officer. *See, e.g., 9 OMCB Opinions 232, 233 (2015)* (stating that the Act does not regulate the presiding officers’ decisions on whether to allow a member of the public to speak). Complaints about the manner in which a presiding officer conducts a public comment period, thus, do not state Open Meetings Act violations. *8 OMCB Opinions 84, 85 (2012)*.

The ability to “observe” does not mean that the public body must provide to the audience copies of the documents being reviewed by the members. However, the public must be given a grasp of what is being discussed and acted on. The Compliance Board has advised that an oral summary or general description of the documents in question will ordinarily serve this purpose. *See, e.g. 9 OMCB Opinions 206, 212-13 (2015)*. Requests for records fall under the Public Information Act, with the exception of the meeting documents discussed in Chapter 6.

### ***B. Size of the meeting space***

Providing a “place reasonably accessible” to people who would like to attend the meeting includes holding the meeting in a room large enough to hold them. *3 OMCB Opinions 118, 120 (2001)*. The Compliance Board has stated that “a public body would violate the Act if it had reason to expect a large crowd but nevertheless deliberately chose to meet in too small a space when a suitable, larger space was available.” *Id.* Public bodies may include in their meeting notices a request that members inform staff of their intention to attend the meeting, and the Compliance Board has recommended that practice for public bodies without regular access to large meeting rooms. *9 OMCB Opinions 206, 211 (2015)*. The Compliance Board’s opinions on the use of overflow space include *10 OMCB Opinions 18 (2016)* and *10 OMCB Opinions 40 (2016)*.

### ***C. Access to the meeting space***

As explained by this Office and the Compliance Board, the public must be provided with access to the meeting. A public body, thus, may not meet in a juvenile detention center that does not permit the general public to enter, *see 78 Op. Att’y Gen. 240 (1993)*, or at a private business that likewise is closed to the public. *See 8 OMCB Opinions 188*

(2013), *cf.* *WSG Holdings, LLC v. Bowie*, 429 Md. 598 (2012) (in applying open meetings provisions of a land-use law, holding that members of the public were improperly excluded from site visit to private property). A meeting may be held at a restaurant so long as the public is provided with places to sit and the members' discussion is audible. *See* 8 *OMCB Opinions* 111, 114 (2012) ("the Act does not prohibit a public body from having a meal during a meeting; does not prohibit a public body from meeting in a private meeting space to which there is access to members of the public at no cost to them; and does not regulate the members' choices of food and drink"). Members of the public who attend public meetings may be required to cooperate with the security procedures for the building in which the meeting is held. 9 *OMCB Opinions* 296 (2015).

The ability to gain access to the meeting space must be provided to all who wish to attend. Thus, "a public body may not deny, through its choice of meeting site, the right of a person with a disability to observe an open meeting," 1 *OMCB Opinions* 237, 239 (1997), may not restrict attendance to people who pay an admission fee, 8 *OMCB Opinions* 18, 25 (2012), may not restrict attendance to people on an invitation list, 7 *OMCB Opinions* 49 (2010), and may not exclude the press. 2 *OMCB Opinions* 67 (1999); *see also* 9 *OMCB Opinions* 290, 291 (2015) (meetings to be open to press and public "on equal terms"). The Court of Appeals has explained that "any action taken by the public body which discourages public attendance at the meeting to any substantial degree would likely violate the Act's provisions." *City of New Carrollton v. Rogers*, 287 Md. 56, 69 (1980).

When the meeting "place" is a conference call, the public may be provided access either via a call-in number or by access to a meeting room with a speakerphone. 8 *OMCB Opinions* 111, 113 (2012). Some states limit public bodies' use of conference call meetings; for example, California law requires at least one member to be present in a meeting room. *See* Cal Gov't Code § 11123(b)(1)(F). Maryland does not limit the use of conference-call meetings. Still, the members of public bodies that meet by teleconference should identify themselves and speak audibly so as to assure that the meeting, is in fact, "open" to the public. It may also be advisable for each member to tell the group whether anyone is with the member at the time.<sup>1</sup>

---

<sup>1</sup> The California open meetings statute sets several ground rules to ensure that members of the public can truly "attend" teleconference meetings. Votes must be by roll call, agendas must be provided in the room provided to the public, and the discussion must be "audible" to members of the public who listen in on the meeting. Cal Gov't Code § 11123(b)(1). The Texas open meetings law requires that minimum standards be set for the audio signal and requires that it be of "sufficient quality" that the public can "hear the voice of each participant." Tex. Gov't Code Ann. § 551.127 (West). Only regional or statewide governmental bodies may meet by teleconference, and, even then, one member must be present at a meeting room open to the public. *See id.* ("A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if the member of the governmental body

The only Maryland case relevant to teleconferences is *Tuzeer v. Yim, LLC*, 201 Md. App. 443, 468 (2011). There, the court held that the presence of one member by telephone counted towards a quorum and that the meeting met the Act's "accessibility" requirement because "there was no indication that anyone was unable to hear her comments." *Id.* at 471. Not at issue, and not discussed, was the question of whether a meeting conducted entirely by telephone meets the Act's requirement that the public be "allowed to observe" the conduct of public business. *See* § 3-102(a) (2).

#### ***D. Regulation of videotaping and recording; meeting rules***

Section 3-303 requires public bodies to "adopt and enforce reasonable rules regulating the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings." The Compliance Board has found that a prohibition on videotaping is not a "reasonable rule" and that public bodies violate the Act when they refuse to permit videotaping. 3 *OMCB Opinions* 356 (2003). The Compliance Board has also found that public bodies may not prohibit the videotaping of members of the public who are at the meeting. *See* 1 *OMCB Opinions* 137, 140 (1995) ("There is no right to be protected against the gaze of an observer in a public forum, or against the lens of the observer's camera.").

The Compliance Board deems a rule on the use of video recording equipment "reasonable" if the rule "(1) is needed to protect the legitimate rights of others at the meeting; and (2) does so by means that are consistent with the goals of the Act." 5 *OMCB Opinions* 22, 24-25 (2006). An example of a rule found "reasonable," if adequately posted beforehand, is a requirement that people wishing to videotape a meeting check in with staff before the meeting so that staff may tell them where they may stand. *Id.* Public bodies must afford members of the public and reporters access to an open meeting on equal terms. *Id.*, citing 2 *OMCB Opinions* 67 (1999).

For the Compliance Board's summary of the principles applicable to videotaping, along with citations to its opinions on the subject, *see* 8 *OMCB Opinions* 128, 131-33 (2013).

Model rules are posted under "Sample Forms and Checklists" at [www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx](http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx). Public bodies that allow public comment may wish to include additional rules about such matters

---

presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.").

as time limits, advance registration if required, and the presiding officer's conduct of the session. The Open Meetings Act, however, does not require public comment periods and does not regulate them.

***E. Role of the presiding officer; disruptions***

Under § 3-303(c)(1), the public body may “have [an] individual removed” if the “presiding officer determines that the behavior of [the] individual is disrupting an open session.” *Id.* The Compliance Board has also noted that the presiding officer has the discretion to ask that videotaping be done from an unobtrusive location. *See 8 OMCB Opinions* at 133 (“A presiding officer thus has the authority to determine that a person’s conduct is disruptive and, by implication, to address that problem by asking her to move.”). A person making a presentation to the public body does not have the authority to order photographers to move. *Id.*

As above, the presiding officer ordinarily manages the meeting and any public comment period. *See also* Robert’s Rules of Order (10th ed.), p. 434 (describing presiding officer’s duties).



## Chapter 4: Permissibility of Closed Sessions

### **Chapter 4: Will the discussion fall within one of the 14 “exceptions” that permit the public body to exclude the public?**

(Index Topic 4)

**Chapter summary:** When a public body holds a meeting subject to the Act, the meeting must be open to the public unless the topic of discussion falls within one of the fourteen exceptions that allow a public body to exclude the public. *See* §§ 3-301, 3-305. Before closing an open meeting under one of the statutory exceptions, the public body must disclose the particular exception that permits the closed session. Then, in the closed session, the attendees may discuss only matters within the scope of that exception. § 3-305(b), (d); *see also* 7 *OMCB Opinions* 125, 127 (2011) (“discussions at closed meetings must fall within the scope of the exception claimed by the public body in advance”). This chapter explains the fourteen exceptions. For an explanation of how to invoke an exception, see Chapter 5.

For the most part, the decision to invoke an exception to close a meeting is discretionary. Although other laws, such as medical privacy laws, might require a public body to discuss a topic in a closed session, the Act itself does not mandate closed sessions; instead, it provides that the public body “may” meet in closed session to discuss an excepted topic. § 3-305(b).

Public bodies must construe the fourteen exceptions “strictly . . . in favor of open meetings.” § 3-305(a). Public bodies should apply the exceptions in light of the Act’s stated policy that public bodies’ meetings are to be open “except in special and appropriate circumstances.” *See* § 3-102(c). As noted below, two exceptions - the procurement and public security exceptions, may only be invoked after the public body finds that a public discussion of the matter would cause certain types of harm.

The Act does *not* authorize public bodies to close meetings for discussions that fall outside of the exceptions. *See* § 3-305(b) (providing that a public body may close a meeting “only” to discuss one of the fourteen topics). Formerly, the Act broadly permitted public bodies to close a meeting for “an exceptional reason” that was “so compelling” as to

override the public interest in open meetings. That exception was repealed in 1991. *See* 1991 Laws of Md. ch. 655. The exceptions now reflect the General Assembly’s efforts to balance the public’s need to know with public bodies’ need to address certain specific topics in private. A local government with home rule powers may enact an open meetings ordinance with fewer exceptions—that is, a law that more stringently requires openness—but it may not add exceptions. *See* § 3-105 (“Whenever [the Act] and another law that relates to meetings of public bodies conflict, [the Act] applies unless the other law is more stringent.”).

It is important to note that no exception authorizes a closed session unless the public body has disclosed its reliance on the exception *before* the closed session. Put another way, if the public body has not cited the exception before it excludes the public, the exception does not apply. That condition and the multiple other conditions that the Act places on closing a session, including two new ones added in 2017, are discussed in Chapter 5, as are the disclosures that must be made after a closed meeting and the members’ duty to confine the discussion to the matters disclosed on the closing statement.

To figure out whether a closed-session discussion fell within an exception, a person should gather the public body’s written disclosures about the session, as well as any other facts that have emerged about it. The Compliance Board’s opinions on each exception can be found under Topic 4 in the Index, in the order in which they appear here and in the Act.

#### **A. *The “personnel matters” exception: § 3-305(b)(1)***

This exception allows a public body to close a meeting to discuss various personnel actions with regard to, or the evaluation of, “an appointee, employee, or official over whom it has jurisdiction” or “any other personnel matter that affects one or more specific individuals.” The discussion must involve individual employees. Discussions about an entire class of employees, even when the class is small, do not fall within the exception. *See, e.g., 7 OMCB Opinions* 131, 134 (2011); *see also 11 OMCB Opinions* 38 (2017).

To the same effect, the Compliance Board has explained that a discussion about the “‘elimination of a position,’ while it is vacant, likely involves the setting of policy, rather than the discussion of information specific to a particular individual.” *7 OMCB Opinions* 216, 220 (2011). The discussion about the elimination of a position or department must be open “[e]ven where the discussion involves a position held by so few employees that everyone knows whose positions are being discussed, . . . unless it involves the performance or other attributes of those individual employees.” *3 OMCB Opinions* 335, 337 (2003). This exception thus “does not apply where anyone in the position would be affected by the action being considered.” *Id.* It also does not extend to policy issues such as the method of making the appointment. *See, e.g., 3 OMCB Opinions* 67, 69 (2000).

A discussion of another entity's employee, appointee, or official would not fall within the exception unless the public body was considering appointing or employing that individual. *See, e.g., 9 OMCB Opinions* 132, 136 (2014) (“[A] discussion that involves a vendor’s performance of its contract to supply people to provide services would likely exceed the exception.”).

The Compliance Board has found that some discussions about particular employees or appointees also fall within the administrative exclusion. *See* notes 7 and 8 in Chapter 1. In that case, the Act would not apply, with exception of the disclosure requirements applicable when a public body closes an open meeting to address administrative matters. *See* § 3-104. If in doubt, the public body should proceed on the assumption that the Act applies, for multiple practical reasons: the courts have not addressed this point, so the law is not settled; a public body that convenes behind closed doors to address administrative matters invites suspicion that its members are secretly conducting more substantive business; the disclosure requirements that attach to meetings closed under the Act give the public some assurance that the closed session is legal and some information about it; and, though the Act’s requirement that public bodies prepare minutes is regarded by some as a nuisance and a reason to treat a discussion as “administrative,” memorializing the events of a meeting is one of the basics of efficient meetings practices.

***B. The “privacy or reputation” exception: § 3-305(b)(2)***

This exception allows a public body to close a meeting to “protect the privacy or reputation of an individual with respect to a matter that is not related to public business.” The Compliance Board has seldom addressed it, probably because most discussions about a person’s private matters would not likely relate to public business, and many others would fall, instead, into the personnel exception. In *9 OMCB Opinions* 71 (2013), a university board cited the exception as a basis for closing a meeting to discuss possible honorees. The Compliance Board found that the exception applied to the discussion of “the personal and non-University related reputations of [the] potential honorees.” *Id.* at 77. A discussion of public information about an individual would not fall within the exception, as the closed session would not be necessary to “protect” that information. The Compliance Board has suggested that a discussion about honorees’ personal attributes might also fall within the exception for the discussion of personnel and appointees. *8 OMCB Opinions* 166, 167-68 (2013).

***C. The “real property acquisition” exception: § 3-305(b)(3)***

This exception allows a public body to close a meeting to “consider the acquisition of real property for a public purpose and matters directly related to the acquisition.” Within the exception are discussions about acquiring interests in real property, whether by

purchase, lease, or easement. *See, e.g.*, 7 *OMCB Opinions* 225, 233 (2011) (easement). The purpose of the exception is to protect the public body's bargaining power.

The exception does not extend to discussions about selling or renting out the public body's own property. *See, e.g.*, 9 *OMCB Opinions* 29, 34 (2013) ("Th[e] exception does not apply to discussions about real property the public body already owns."). It also does not apply to acquisitions of personal property. *See* 1 *OMCB Opinions* 73, 77 (1994) (council's discussion about selling the city's junk-grade cars did not fall within the exception, because it involved neither an acquisition nor real property).

In the one reported case on the application of the exception, the Court of Appeals held that the exception applied to a closed meeting at which a board of town aldermen voted to condemn some land for a town parking garage. The Court held that the exception permitted the aldermen to discuss and vote on the matter, an action that the Court deemed legislative in nature. The Court emphasized the evidence that the aldermen had held multiple public hearings on the matter and had included the garage in the budget. After reviewing Open Meetings Act cases in which public bodies had clearly intended to evade the Act, the Court noted that "no such evasive devices have been exploited by the Aldermen in a very public campaign to construct a new parking deck." *J.P. Delphey Ltd. P'ship v. Mayor & City of Frederick*, 396 Md. 180, 201 (2006).<sup>1</sup>

#### **D. The "business location" exception: § 3-305(b)(4)**

This exception allows a public body to close a meeting to "consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State." The Compliance Board has noted that the General Assembly added the exception on the basis of its "understanding that some businesses might be deterred from making proposals about relocation, expansion, or retention of an existing facility if all such

---

<sup>1</sup> The *Delphey* opinion adds a little uncertainty to the application of § 3-105, which requires that, when the Act and "another law that relates to meetings of public bodies conflict, [the Act] applies unless the other law is more stringent." The Court found that the real property exception, which the Court construed to permit the aldermen to vote on the real estate matter in closed session, conflicted with Article 23A, § 8 (now § 4-104 of the Land Use Article), which prohibits municipal legislative bodies from adopting ordinances and resolutions in closed sessions. 396 Md. at 198-99. Under § 3-305, it would seem that Article 23A, § 5, as the more stringent provision, would have taken precedence. However, without mentioning § 3-105 (then § 10-504 of the State Government Article), the Court applied the common-law canon of statutory construction that resolves conflicts between statutes by preferring the more specific provision. The Court then decided that the real property acquisition exception, as the more specific provision on the topic under discussion, prevailed. *Id.* Nonetheless, the opinion contains no indication that the Court intended to modify *City of College Park v. Cotter*, 309 Md. 573 (1987), (see fn. 3 in Chapter 1), and the Court's application of § 3-105 in *Cotter* is probably still good law. *See* 94 Op. Att'y Gen. 161, 172, n. 20 (2009) (noting that neither party in *Delphey* had "focus[ed]on" the provision in their briefs).

discussions were open to public view.” 7 *OMCB Opinions* 148, 159-63 (2011) (summarizing the prior Compliance Board opinions on the exception). The Compliance Board therefore has interpreted the exception “to address the business’s interest in protecting its own identity and information,” *id.* at 163, and not to apply to discussions of information that does not belong to the business or plans that the business itself has disclosed in earlier public meetings. See 9 *OMCB Opinions* 15, 25 (2013).

Noting that the Act requires that the exceptions be construed strictly, the Compliance Board has stated that it does “not construe [§ 3-305(b)(4)] broadly to apply every time a property owner, its developer, or a coordinating agency seeks legislation to enable a land use or financing that might in turn generate proposals from new businesses.” *Id.* at 27. The Compliance Board thus does not construe the exception to extend to “steps in the legislative process.” *Id.*; see also, e.g., 7 *OMCB Opinions* at 163 (declining to extend the exception to “closed-session discussions on generally applicable land-use legislation”).

***E. The “investment of public funds” exception: § 3-305(b)(5)***

This exception pertains to the use of public funds for investment purposes and not to the expenditure of public funds. The Compliance Board has instructed, generally, that the discussion must be “sufficiently related to a concrete investment possibility as to justify invoking the exception.” 4 *OMCB Opinions* 114, 117 (2005). The Compliance Board has declined to extend the exception to a public body’s discussions about whether to donate funds to a charity. 7 *OMCB Opinions* 195, 203-05 (2011). Also not within the exception was that public body’s meeting to approve a governing document of a corporation owned by the public body. *Id.* at 204-05.

After the funds have been invested, the public body must unseal the minutes of the closed meeting. § 3-306(c)(5).

***F. The “marketing of public securities” exception: § 3-305(b)(6)***

This exception shields a public body’s discussions about the terms on which to issue bonds. After the bonds have been issued, the public body must unseal the minutes of the closed meeting. § 3-306(c)(4).

The Compliance Board has construed this exception in a matter that involved the issuance of tax increment financing (“TIF”) bonds for which the sole buyer was to be the developer of the project that was to be financed through the bonds. See 9 *OMCB Opinions* at 27-28. The Compliance Board questioned whether that “market” of one would be adversely affected by public disclosure of the discussion and found that, in any event, discussions about the developer’s site plans and whether to approve legislation for the TIF

did not fall within the exception. *Id.* In another matter involving proposed tax increment financing, the Compliance Board concluded that the exception did not apply to a development corporation's discussion, at an early concept stage, about whether to recommend to a city council the adoption of ordinances that would lead to steps that would result in the city's marketing of TIF bonds. 10 *OMCB Opinions* 46 (2016). The Compliance Board found that the connection between the particular discussion and the actual marketing of securities was "too attenuated for the exception to apply." *Id.* at 49.

**G. The "legal advice" exception: § 3-305(a)(7)**

The original version of this exception was known as the "legal matters" exception and broadly permitted public bodies to "consult with counsel on a legal matter." The General Assembly narrowed the exception in 1991 to apply only when the public body wishes to "consult with counsel to obtain legal advice." *See* 1991 Md. Laws, ch. 655. Thus, as explained by the Compliance Board, the exception "is to be narrowly construed to cover only the interchange between the client public body and its lawyer in which the client seeks advice and the lawyer provides it." 1 *OMCB Opinions* 1, 5 (1992). The exception "does not allow for closed discussion among members of the public body merely because an issue has legal ramifications." 1 *OMCB Opinions* 53, 54 (1993); 11 *OMCB Opinions* 38 (2017).

The Compliance Board has concluded that a city council exceeded the "legal advice" exception when it discussed the need to have an ordinance drafted, "however brief and devoid of substantive discussion." 1 *OMCB Opinions* 145, 149 (1995). The Compliance Board instructed: "Once the advice has been sought and provided, the body must return to open session to discuss the policy implications of the advice it received or anything else about proposed legislation." *Id.* Likewise, two public bodies violated the Act when, in a joint closed session, the conversation "strayed away from advice from [counsel] and instead became a government-to-government discussion." *See* 1 *OMCB Opinions* at 55.

The exception does not apply to a discussion between the public body and anyone other than its lawyer. *See* 1 *OMCB Opinions* at 3. To close a session on the theory that the discussion will involve "legal advice," the public body must either consult with counsel to receive legal advice under this exception, or, under the exception provided by § 3-305(b)(8), consult with others about pending or potential litigation. Further, if the public body is communicating to the attorney information that would be protected by the attorney-client privilege, the "other law" exception, discussed in Part M below, would potentially apply to the communication.

### **H. The “pending or potential litigation” exception: § 3-305(b)(8)**

This exception authorizes a public body to “consult with staff, consultants, or other individuals about pending or potential litigation.” Counsel need not be present; this exception contemplates, for example, that staff may brief the public body on the progress of settling a particular claim before suit is filed. *See, e.g., 1 OMCB Opinions* 38, 41 (1993).

The Compliance Board has explained that “potential” litigation means more than a theoretical possibility: “Strict construction of the “litigation” exception means that the exception may be invoked regarding “potential litigation” only when suit has been threatened or a realistic possibility of a suit is otherwise obvious.” *1 OMCB Opinions* 38, 41 (1993). For example, a public body “may not discuss budgetary or related matters in a closed session merely because someone speculates that a lawsuit is possible if funds are not spent for some purpose.” *Id.* By contrast, the exception does permit a public body to close a meeting to discuss options for settling a particular claim before suit is filed. *Id.*

As with the “legal advice” exception, the pending or potential litigation exception “may not be used as a pretext for engaging in closed discussions concerning an underlying policy issue that, though related to the litigation, can reasonably be discussed separately.” *7 OMCB Opinions* 148, 152 (2011); *see also 1 OMCB Opinions* 56, 60-61 (1994) (while city council could discuss in closed session possible ways to avert a lawsuit related to alleged zoning violation by a day care center, its discussion of alternative locations for the day care center exceeded the scope of the exception).

The exception does not apply after the “pending litigation” has been settled or otherwise concluded. *See 8 OMCB Opinions* 42, 44 (2012).

### **I. The “collective bargaining” exception: § 3-305(b)(9)**

Under this exception, a public body may close a meeting to “conduct collective bargaining negotiations or consider matters that relate to the negotiations.” The Compliance Board has concluded that this exception applies to a public body’s discussions about whether to approve collective bargaining agreements that are not deemed final without that approval. *9 OMCB Opinions* 71, 76 (2013).

For other applications of this exception, *see 7 OMCB Opinions* 58, 61-62 (2009).

**J. The “public security” exception: § 3-305(b)(10)**

Added to the Act after 9/11, this conditional exception permits public bodies to close a meeting to discuss “public security, including (i) the deployment of fire and police services and staff; and (ii) the development and implementation of emergency plans.” Before closing a meeting under this exception, the public body must first “determine that public discussion would constitute a risk to the public or to public security.”

It is unclear whether the General Assembly intended this exception to shield discussions about the security of data systems that contain personal information. The Public Information Act, however, requires records custodians to “deny inspection of the part of a public record that contains information about the security of an information system,” § 4-338, and a discussion that would result in the disclosure of that information will potentially fall under the “other law” exception provided by § 3-305(b)(13), discussed in Part M, below of this Chapter.

The public body should document its “public risk” finding in the minutes of the public body’s proceedings on a motion to close a meeting under § 3-305(b)(14), in the presiding officer’s written statement of the reasons for closing the session, or both. For an application of this exception, see 7 *OMCB Opinions* 225, 229 (2011).

**K. The “scholastic, licensing, and qualifying examination” exception: § 3-305(b)(11)**

Boards that “prepare, administer, or grade a scholastic, licensing, or qualifying examination” may perform those duties in closed session.

The Compliance Board has applied this exception once, in a matter involving a county board of electrical examiners. See 1 *OMCB Opinions* 13 (1992).

**L. The “investigative proceeding regarding criminal conduct” exception: § 3-305(b)(12)**

A public body may close a session to “conduct or discuss an investigative proceeding on actual or possible criminal conduct.”

The Compliance Board found that this exception permitted a town council to close a session to discuss efforts to prompt the State prosecutor to conduct a criminal investigation of the mayor’s conduct. 1 *OMCB Opinions* 50 (2000). The town council in 5 *OMCB Opinions* 42 (2006) failed to properly invoke the exception before holding a



closed-door session with the State’s Attorney to discuss an investigation into the misappropriation of town funds. Had the town cited the exception as a basis for closing the meeting, the exception would have applied to the session. *Id.* at 45.

When a “criminal conduct” discussion involves the public body’s own employee, the discussion might also fall within the personnel exception discussed in Part A, above.

**M. The “other law” exception: § 3-305(b)(13)**

The Act contains a catch-all exception that permits a public body to close a meeting to “comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosure about a particular proceeding or matter.” Examples of laws that might prevent public disclosure are the State procurement laws, which govern the disclosure of offers and offerors’ names before bids or proposals are opened, *see* St. Fin. & Proc. § 13-210; federal laws that prevent the disclosure of various types of personal information, *see, e.g.*, Health Insurance Portability and Accountability Act (“HIPAA”), 42 U.S.C. § 1320d *et seq.* (2012); and provisions of the Public Information Act (“PIA”) that require a governmental unit to deny requests for certain records or types of information. *See* §§ 4-304 through 326 (specifying records that may not be inspected); §§ 4-328 through 355 (specifying the types of information that may not be inspected).

For example, as explained by the Compliance Board, a provision of the PIA, § 4-335,

prevents public disclosure of confidential commercial or financial information contained in documents possessed by a State agency. Therefore, under exception 13 of the Act, a public body is permitted to close a meeting when public discussion of that information would compromise its confidentiality.

8 *OMCB Opinions* 137, 142, n. 4 (2013). The Act itself prevents a public body from disclosing closed-session minutes until they are unsealed, so a public body may invoke this exception to meet in closed session to discuss those minutes. *See* 9 *OMCB Opinions* 160, 164 (2014) (“Public bodies must adopt minutes of their closed sessions, and those minutes, by law, ‘shall be sealed and may not be open to public inspection.’”).

**N. The “procurement” exception: § 3-305(b)(14)**

The procurement exception is conditional. It allows a public body to close a meeting to “discuss, before a contract is awarded or bids are opened, a matter directly related to a negotiating strategy or the contents of a bid or proposal”—but only “if public discussion or disclosure would adversely impact the ability of the public body to participate in the

competitive bidding or proposal process.” The Compliance Board has explained that “a public body may close a meeting to hear competing offerors’ presentations of their proposals, because that information, if made public, would give an advantage to the offerors who have not yet presented their proposals and would thereby compromise the process.” *See 7 OMCB Opinions 1, 3 (2010).*

Several criteria for the procurement exception have emerged from the Compliance Board’s opinions. First, the discussion must involve “a pending procurement or an impending procurement that is actually in the works.” *9 OMCB Opinions 132, 137 (2014).* This criterion is not met by “the possibility that a public body might decide to initiate a competitive procurement process in the future.” *Id.* A general discussion about procurement procedures thus exceeds the scope of the exception. *Id.*

Second, § 3-305(b)(14) protects the competitive procurement process and does not shield discussions about other contract matters. Thus, discussions about sole-source contracts and modifications of a contract that has already been awarded seldom fall within the exception. The Compliance Board has posited that the discussion might apply when a public body is awarding a sole-source “gap” contract for services needed while a competitive procurement for those services is pending, but only “if the public body can establish that the disclosure of the discussion about the gap contracts would affect the public body’s leverage in the competitive procurement.” *8 OMCB Opinions 8, 15 (2012).*

Third, the public body must find that public discussion of the matter would “adversely impact the ability of the public body to participate in the competitive bidding or proposal process.” § 3-305(b)(14). The public body should document that finding in the minutes of the public body’s proceedings on a motion to close a meeting under § 3-305(b)(14), in the presiding officer’s written statement of the reasons for closing the session, or in both. *See, e.g., 8 OMCB Opinions 63, 66 (2012).*

*Practice notes on the exceptions:*

- None of the exceptions applies to a meeting that was closed without a public vote to close and a closing statement. *See Chapter 5.*
- Ideally, the need for a closed session will be identified before the meeting, so that counsel (or, if counsel is not available, an officer, member, or employee who has taken training on the Act), can assess whether the discussion will fall within an exception.

- If, during the meeting, a member of the public body unexpectedly requests a closed session, the member must disclose enough information for the presiding officer to complete the closing statement and the other members to hold an informed vote on whether to exclude the public. *See* Chapter 5, Part A.
- If a public body expects to close part of a meeting, it must include that expectation on its meeting notice. *See* Chapter 2, Part B.
- If in doubt about whether an exception applies to the discussion that the public body expects to hold, the presiding officer may recess the meeting briefly in order to consult separately with counsel. Or, the presiding officer may call for a vote to close the meeting and disclose on a written closing statement that counsel's advice will be sought on the permissibility of the proposed closed session. *See* Chapter 5, Part A.

## Chapter 5: Conditions for Closing a Meeting

### Chapter 5: Did the public body take the necessary steps before, during, and after the closed session?

(Index Topic 5)

**Chapter summary:** As of October 1, 2017, public bodies may not close a session subject to the Act if they have not designated a member to take training on the Act. The Act then imposes five additional conditions on a public body’s exercise of its discretion to close a meeting to discuss one of the topics listed in § 3-305.

Three conditions must be met in open session, after proper notice, *before* the meeting is closed. First, the presiding officer must “make a written statement of the reason for closing the meeting.” § 3-305(d). In that statement, often called a “closing statement,” the presiding officer must also disclose the “topics to be discussed” and the statutory exception relied upon as authority for closing the meeting. Second, the presiding officer must conduct a recorded vote—a vote for which each member’s vote is specified—on a motion to close the meeting to the public. § 3-305(d)(1). Third, as of October 1, 2017, a member designated for training must attend the open meeting at which the public body votes to hold the closed session, or, otherwise, the public body must complete the Compliance Checklist posted on the Attorney General’s website and attach it to the open-session minutes. 2017 Laws of Md. Ch. 525 (adding § 3-213(d)).

The fourth condition must be met *during* the closed session. That condition requires the members of the public body to confine their discussion to the topics and the scope of the exception disclosed on the closing statement. *See* § 3-305 (permitting a closed session “only to” discuss the excepted topics and only in accordance with the pre-conditions set by § 3-305(d)); *see also* Chapter 4, Chapter Summary. In effect, the presiding officer’s closing statement sets the agenda for the closed session, such that, during the closed session, members of the public body may not bring up “new business.” *See, e.g., 9 OMCB Opinions*

46, 50 (2013) (rejecting the public body’s argument that it was not required to specify the topics to be discussed on its closing statement because, at the time of the vote, the members did not yet know what topics might come up in the closed session).

Fifth, *after* the meeting, the public body must disclose, in the minutes of the next open session, information that discloses what was actually discussed, who attended the closed meeting, and what actions the public body took. *See* § 3-306(c)(2). Disclosure requirements also apply to sessions closed for the performance of an administrative function. § 3-104.

To figure out whether a public body complied with the disclosure requirements, a person should inspect the open-session minutes for the session that was closed and for the next open session, as well as the closing statement.

***A. Before the closed session: designated member, closing statement and recorded vote***

A public body may not meet in a closed session subject to the Act “unless the public body has designated at least one member of the public body to receive training on the requirements [of the Act].” § 3-213(d)(effective October 1, 2017). Moreover, before a public body closes a meeting subject to the Act, it must hold a public meeting, after notice, in order to vote to close the session and to make written disclosures, known as a “closing statement.” § 3-305(d). A designated member must attend that public meeting, or, if a designated member “cannot be present,” the public body must complete the Compliance Checklist posted on the Attorney General’s website and attach it to the open-session minutes. 2017 Laws of Md. Ch. 525, adding § 3-213(d) (effective October 1, 2017).

The closing statement must contain three items of information: the “topics to be discussed” in the closed session, a citation to the exception applicable to each topic, and “the reason for closing the meeting.” § 3-305(d). Once adopted by the members’ recorded vote, the closing statement is the public body’s representation to the public that the closed session will comport with the Act. In fact, members of the public are entitled to a copy of the closing statement when the meeting is closed. *See 7 OMCB Opinions* 5, 6 (2010) (“[T]he statement is a matter of public record that must be available at the time a public body concludes its public session immediately before the start of the closed meeting.”). Further, if a member of the public objects to the closing, the public body must send a copy of the closing statement to the Compliance Board. § 3-305(d)(3).

The Compliance Board has explained the purposes to be served by closing statements:

As might be inferred from the fact that the General Assembly assigned to the presiding officer the duty to make the written statement, the performance of that duty is not a mere formality. A properly-completed written statement serves to prompt each member of the public body, before voting, to consider whether the reason is sufficient to depart from the Act's norm of openness. It helps members of the public who will be barred from the closed session to understand that this exception to the principle of openness is well-grounded. It serves as an accountability tool, because it enables the public to compare the pre-meeting disclosures with the minutes summarizing the actual conduct of the meeting and thereby to assess whether the discussion stayed within the exceptions that the public body had claimed. And, in the event that a complaint is filed, it tells us that the members of the public body considered the legality of closing the meeting and gives us their reason at the time for doing so. An after-the-fact justification for closing a meeting is not a good substitute for that information.

9 *OMCB Opinions* 15, 22-23 (2013) (citing and quoting 4 *OMCB Opinions* 46, 48 (2004) (quotation marks omitted)). See also 8 *OMCB Opinions* 166, 168 (2013) (“[T]he public body’s objective should be to treat each decision to exclude the public as a substantive decision for which each member of the public body is accountable and to demonstrate that fact to the public in the ways required by the Act.”).

Closing statements that merely parrot the words of the statutory exception rarely convey enough detail about the topics to be discussed and the reason for excluding the public. Particularly, the text of the claimed exception does not tell the public why the closed session was necessary; after all, the exceptions allow, but do not require a public body to close a meeting.<sup>1</sup> For example, a closing statement that merely states the words of the business relocation exception, which allows the public body to exclude the public from its discussion of a proposal for a business to locate in the public body’s jurisdiction, does not tell the public anything about why the discussion has to be secret, especially if the identity of the business has already been made public. See, e.g., 9 *OMCB Opinions* 46, 50 (2013).

---

<sup>1</sup> For a list of the opinions in which the Compliance Board has found that a public body violated the Act by adopting a closing statement that contained only “uninformative boilerplate,” see Topic 5(C)(3) in the index under the “Compliance Board” heading at [www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx](http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx).

In most cases, a description of the topic alone also does not convey why the public body needs to exclude the public. Occasionally, though, the Compliance Board has found that a description of the topic to be discussed adequately conveyed the public body's reason for closing a meeting, as when the public body has described the topic as discipline matters respecting individual employees. *See, e.g.*, 4 *OMCB Opinions* 188, 196 (2005). The better practice is to state the citation, topic, and reason for closing as separate pieces of information.

*Practice notes on avoiding closing statement violations:*

- Closing statements must be prepared and adopted *before* the public body closes the meeting. That means that the public must be given notice of an open meeting. If the only public portion of a meeting will be the motion and vote to close, the meeting notice should say so. § 3-202(b)(3); *see also* 8 *OMCB Opinions* 150, 158 (2013) (suggesting wording for notices of such meetings).
- Public bodies may use the model closing statement forms posted on the open meetings page of the Attorney General's website. Use of the forms is not mandatory, but they prompt the presiding officer to provide the required information. 8 *OMCB Opinions* 166, 168 (2013).
- Public bodies may use a closing statement pre-prepared by staff, so long as it remains accurate when the members vote to close the meeting. 9 *OMCB Opinions* 1, 6 (2013). To ensure that, it is a good practice for the presiding officer to read the closing statement out loud, entertain a motion to adopt it, and then conduct the recorded vote.
- When someone other than the presiding officer has prepared the closing statement, it is a good idea for the presiding officer to sign or initial it to show compliance with the Act's requirement that the presiding officer "make" the statement. *See* 8 *OMCB Opinions* 166, 168 (2013) (stating that although a "public body may record the presiding officer's acknowledgment of the written statement in its minutes if it prefers," the "better practice is to include it in the written statement, which is immediately available to the public").

- The presiding officer should take a copy of the closing statement into the closed session as a reminder of the permissible scope of the discussion. The original, as adopted before the closed session, should be left outside with staff in case a member of the public requests a copy and also as a record of the disclosures made before the closed session. 8 *OMCB Opinions* 182 (2013).
- Topics should be described as fully as possible without compromising the confidentiality of the discussion. *See, e.g., 9 OMCB Opinions* 71, 75 (2013) (finding the description of the topics as “institutional strategic, budgetary and administrative matters” to be “so vague as to be insufficient”).
- A “public body may close a meeting to discuss several topics—if each topic falls within an exception and if each is clearly traceable to the relevant statutory exception and reason for closing.” 9 *OMCB Opinions* 1, 3 (2013).
- Ideally, the need for a closed session will be anticipated beforehand so that the presiding officer, staff, and counsel, as appropriate, can evaluate whether the Act authorizes excluding the public from the particular discussion.
- When a member unexpectedly calls for a closed session during the open session, and the presiding officer does not know what the discussion will entail or whether an exception applies, the presiding officer must gather the information needed for the closing statement and for the other members’ informed vote on why they are voting to exclude the public. Those goals might be met by recessing the meeting briefly to confer separately with the particular member and counsel, if counsel can be reached. Or, if counsel is present, the presiding officer might entertain a motion to close the meeting to receive legal advice under § 3-305(b)(7), consult with counsel on whether the session may be closed, and then reconvene in open session to present the closing statement and conduct the vote to close. *See 9 OMCB Opinions* 46, 51 (2013) (“The Act neither requires nor permits members of a public body to vote to exclude the public from a meeting without information on the merits of that action.”).



***B. During the session, the duty to discuss only the disclosed topics, only within the scope of the claimed exception***

As discussed in Chapter 4, the public body's discussion in a meeting closed under § 3-305 must stay within the confines of the exception or exceptions that the presiding officer disclosed on the closing statement. For example, the discussions about an individual employee in a meeting properly closed under the personnel exception may not stray into discussions of more general employment matters. *See, e.g., 6 OMCB Opinions* 180, 185 (2009). In that example, the topic identified, such as "retirement benefits of specific employee," might seem to include policy matters on the provision of retirement benefits generally, but a discussion of those matters would not fall within the personnel exception.

When the discussion begins to stray beyond the topics and exceptions claimed beforehand, the presiding officer must stop the discussion so that it may be conducted in the open. *See, e.g., 9 OMCB Opinions* 195, 196 (2014) ("Whether or not a topic falls within one of the fourteen exceptions, it may not be discussed in a closed session if it has not been disclosed beforehand on the written statement."). If the closed session was the last item on the agenda of the public body's meeting, the public body may not immediately return to an open session; the public would have had no notice of the session.

***C. After the closed session, the disclosure of the events of the session***

After meeting in a closed session under § 3-305, the public body must disclose what actually transpired in the closed session in as much detail as it can without disclosing the information that the claimed exception permitted the public body to keep confidential. The requirements for post-session disclosures and minutes are discussed in Chapter 6, Part B.4.

## Chapter 6: Meeting Documents

### **Chapter 6: Did the public body prepare and retain the required documents and post its minutes online?**

(Index Topic 6)

**Chapter summary:** Public bodies must prepare minutes “as soon as practicable” after they meet unless “live and archived video or audio streaming of the open session is available” or “the public body votes on legislation and the [members’] individual votes . . . are posted promptly on the Internet.” § 3-306(b). Public bodies must retain meeting minutes and recordings for five years and, “to the extent practicable,” must “post online the minutes or recordings” that they are required to retain. § 3-306(e). Meeting notices and closing statements for closed sessions must be retained for one year. *See* §§ 3-302, 3-305. Additionally, public bodies must make an agenda available before they meet. For that requirement, see Chapter 2, Part D.

Ordinarily, open-session minutes and closing statements should be produced for inspection, at no cost, when a member of the public comes to the public body’s office and asks to see them, though the Compliance Board has recognized that a public body might not be able to grant immediate access to documents more than a year old. The Act does not require public bodies to send copies of minutes to members of the public at no charge.

The Act’s documents requirements can pose challenges for unfunded task forces that have not been assigned administrative staff and do not have any members employed by the parent public body. *See, e.g., 8 OMCB Opinions* 188, 189 (2013). The Compliance Board has “urge[d] officials and government bodies that create task forces to provide a level of staffing that will enable the members to do their work without violating the Act.” *Id.; see also 7 OMCB Opinions* 121, 122-23 (2011) (“Where, as here, a local government structures an unfunded advisory committee of citizens as a public body subject to the Open Meetings Act, we suggest that measures be taken to provide that body with a repository for minutes and with a means of providing citizens with access to them.”).

### A. *Written meeting notice*

The Act requires public bodies to issue their meeting notices “in writing” “[w]henever reasonable,” § 3-302(b), and then to “keep a copy” for at least one year after the date of the meeting. § 3-302(d). Only rarely will a meeting occur on such an emergency basis that the only feasible way of giving notice is to telephone members of the press, and, even then, it is likely that the message could be conveyed “in writing” by social media or e-mail. So, the public body will almost always have a written notice to copy or print out and keep for a year.

Public bodies that post (and cancel) their meeting notices online have sometimes had trouble establishing later that they gave proper notice of a meeting. In one matter, for example, a city task force’s only evidence that it gave notice online was the work orders that its staff sent to the city’s website staff. *See* 8 *OMCB Opinions* 188, 189 (2013). The Compliance Board found that the task force had violated the one-year retention requirement and advised the task force to “ensure that staff print out a screenshot of the written notice and of any e-mailed notice given to the media, record the date of the print-out, and retain it.” *Id.* at 190. In another matter, the Compliance Board found that a county committee had complied with the retention requirement after the county’s information technology staff was able to recover a notice that the committee had posted online. 9 *OMCB Opinions* 175, 176 (2014).

Public bodies are not required to continue to post outdated notices on their websites. 9 *OMCB Opinions* 151, 154 (2014). They are also not required to include on the notice the date on which they posted it, but providing that information to the public might guard against suspicion that the public body posted the notice after the fact.<sup>1</sup>

For a discussion of the required content of meeting notices and the agenda requirement, see Chapter 2.

### B. *Meeting minutes – open and closed sessions*

Generally, “as soon as practicable after a public body meets, it shall have minutes of its session prepared.” § 3-306(b)(1). There are two exceptions to that rule. First, a public body need not prepare minutes for an open session if “live and archived video or audio

---

<sup>1</sup> As explained in 6 *OMCB Opinions* 164, 167 (2009), the Compliance Board recommended, in its 2008 annual report to the Governor and General Assembly, “legislation that would have required meeting notices provided on a website reflect the date the notice was posted.” *See* Sixteenth Annual Report of the Open Meetings Compliance Board, pp. 5-6 (October 2008). No such legislation has been enacted.

streaming of the open session is available,” and, second, “the public body votes on legislation and the individual votes taken by each member of the public body who participates in the voting are posted promptly on the Internet.” § 3-306(b)(2).<sup>2</sup>

Closed-session minutes are ordinarily sealed and thus not available for public inspection. They are available to the public body itself and, when there has been a complaint that the public body violated the Act by holding a closed session, to the Compliance Board. §§ 3-306(c)(3), 3-206(b)(2), (3). Generally, a public body that has not closed a session to discuss a confidential topic may not later redact the confidential material from its open-session minutes. 7 *OMCB Opinions* 64 (2010) (“If a matter was discussed in an open session governed by [the Act] – even if the meeting could have been closed under [§ 3-305], but the public body did not elect to do so – the minutes of that meeting are available to the public.”). So, although it might not occur to a public body to vote to close a meeting when no members of the public are present, the minutes of the discussion will not be sealed unless the meeting has been closed.

Public bodies must keep a copy of the minutes and any tape recording of the session for at least five years, must post them online “to the extent practicable,” and must make them “open to public inspection during ordinary business hours.” § 3-306(e), (d). Problems sometimes arise when someone asks for old minutes that are no longer retained in the public body’s main office. The Compliance Board has “generally recognized that public bodies do not necessarily keep older records handy for inspection upon demand.” 9 *OMCB Opinions* 218, 224 (2015). It has “encouraged members of the public to recognize that reality, and public bodies to agree to retrieve [minutes] within a ‘reasonable period.’” *Id.*

As to open-session minutes, the complaints before the Compliance Board usually fall into four categories: insufficient content generally; insufficient disclosures about closed sessions; belated adoption; and problems with providing members of the public with access. For closed-session minutes, questions sometimes arise as to a public body’s duties to unseal them. These issues usually do not arise for live and archived video or audio streaming, though questions are sometimes raised about the quality of the audio and the public’s ability to identify the speakers. When a public body relies on audio streaming for its minutes, the presiding officer should take special care to recognize the speakers by name.

---

<sup>2</sup> Some public bodies keep written minutes as well as audio or video minutes. Written minutes provide a more compact summary of each meeting, serve as a backup in case of technology failures, and, in any case, are required by some public bodies’ bylaws. Written minutes may be handwritten, so long as they are legible. See 7 *OMCB Opinions* 121, 123 (2011); 1 *OMCB Opinions* 63, 64 (1994).

## 1. Content of minutes, generally

Under the Act, minutes must “reflect” three types of information: “each item that the public body considered,” “the action that the public body took on each item,” and “each vote that was recorded.” § 3-306(c). As to minutes for an open session, the Compliance Board has explained that “[e]ach item must be described in sufficient detail so that a member of the public who examines the minutes can understand the issue under consideration.” 3 *OMCB Opinions* 164, 166 (2001) (citing the 4<sup>th</sup> edition of this Manual). Also, as of October 1, 2017, a public body that conducts a vote to close a meeting, in the absence of a member designated to take training on the Act, must complete the Compliance Checklist that is posted on the Attorney General’s website and include that document in the minutes. 2017 Laws of Md., ch. 525, adding § 3-213(d).

Closed-session minutes, which are initially sealed, should also meet the § 3-306(c) standards. The minutes of meetings closed under two of the fourteen exceptions must be unsealed at certain times,<sup>3</sup> and the minutes of meetings closed under the other exceptions are subject to unsealing if a majority of the members of the public body votes to do so, whether on its own initiative or in response to a person’s request. § 3-306(c)(4)(iii). Additionally, closed minutes must be provided to the Compliance Board upon its request, and implicit in that requirement is the assumption that closed-session minutes will enable the Compliance Board to determine whether the discussion exceeded the bounds of the disclosures on the closing statement. *See* § 3-206(b)(2).

Otherwise, the contents of a public body’s minutes are a matter for the public body’s regulation, as permitted by other laws that might apply to its governance.

## 2. Audio or Video Streaming

“Audio or video streaming” may only be substituted for minutes if it is live and archived. § 3-306(b)(2)(i). If a public body elects either of these two methods of keeping minutes, it should take steps to ensure that the video or audio has captured at least the content that would be available had written minutes been prepared. For example, streaming should be designed in such a way as to capture the identities of speakers and of those voting to close a meeting. And, in cases of technological difficulty, the public body will need to prepare written minutes in order to comply with § 3-306. 9 *OMCB Opinions* 256 (2015). Because written minutes serve many functions in addition to those required by the Act, many public bodies continue the practice.

---

<sup>3</sup> Under § 3-306(c)(4), the minutes of meetings closed to discuss the marketing of public securities and the investment of public funds, § 3-305((b)(5) and (6), “shall be unsealed” when the securities have been marketed or the funds invested.

### 3. Internet Posting of Votes on Legislation

When a public body has met to vote on legislation, it may, instead of preparing written minutes recording that vote, “promptly” post each member’s individual vote on the internet. § 3-306(b)(2)(ii). As a practical matter, few public bodies other than the General Assembly meet exclusively to hold a vote on legislation.

### 4. Disclosure, in open-session minutes, of events of prior closed session

After a public body has met in a session closed under § 3-305, it must include a summary of the session in the minutes of its next public meeting. *See* § 3-306(c)(2). Public bodies may instead include the summary in the minutes of the public meeting held that day—that way, the public will see the summary sooner—but should follow a consistent practice or a cross-reference in the later set of minutes so that the public knows where to look.

The summary must include: (1) the time, place, and purpose of the closed session; (2) each member’s vote on the motion to close the session; (3) the statutory exception claimed as a basis for excluding the public; and (4) a list of the topics discussed, persons present, and actions taken in the closed session. *Id.* The closed-session summary “serves as the members’ representation of what occurred out of the public’s view.” *Id.* at 162.

As with closing statements, the public body is only required to disclose as much information as it can without compromising the confidentiality of the session. For example, if a public body closes a meeting under the personnel exception to discuss with an employee a disciplinary matter involving that employee, the list of “persons present” may refer to the employee generically. The “persons present” disclosure may also pose a challenge for closed meetings held by teleconference. For those closed meetings, each member should disclose whether there is anyone else in earshot and take the call out of the presence of any member of the public who would not have been admitted to an actual meeting room.

The closing statement does not serve as a substitute for the post-session disclosures, even when the closed session has gone as predicted on the closing statement. As explained by the Compliance Board, “a statement prepared before the meeting cannot report on the actions taken during the meeting, and a prediction as to the topics to be discussed during the closed session will not reflect the actual event . . . .” 9 *OMCB Opinions* 160, 161 (2014). As discussed in Part C of this Chapter and in Chapter 5, the second section of the model closing statement, labeled “for use in the minutes of the next regular meeting,” is there to prompt the person keeping the minutes of the closed session to gather the information that the public body must include in the minutes of the next open meeting.

That section is not part of the closing statement, and the notes made on it do not constitute the public body's summary of the session until the public body adopts them as part of the minutes of its next open session. *Id.*

## 5. Timing of minutes

The Act requires public bodies to “have minutes prepared” “as soon as practicable” after their meetings. § 3-306(b). As explained by the Compliance Board, a draft summary of a meeting does not become a set of “minutes” until the public body has adopted it as minutes. *See* 6 *OMCB Opinions* 187, 190 (2009) (“To qualify as minutes of the public body, the public body must approve them.”).

The Compliance Board has stated that the “[a]s soon as practicable” requirement “requires us to strike a balance between, on the one hand, the goal of promptly informing members of the public who cannot attend a meeting of the events that occurred there, and, on the other, the practical constraints faced by the public body that must prepare and adopt the minutes.” 8 *OMCB Opinions* 150, 159 (2013). Given that the General Assembly chose not to quantify what is “practicable” for the wide variety of entities subject to the Act, the Compliance Board has seldom pronounced generally how long is too long. *See, e.g.,* 3 *OMCB Opinions* 85, 89 (2001) (“The Act allows practical circumstances to be considered and does not impose a rigid time limit”) (citation and quotation marks omitted).<sup>4</sup> The Compliance Board instead has stated that, as “a general rule,” “minutes are to be available on a cycle paralleling a public body’s meetings” and has recognized that “special

---

<sup>4</sup> The circumstances addressed by the Compliance Board in 8 *OMCB Opinions* 173 (2014) illustrate the difficulty of setting a “rigid time limit” to be met by all of the public bodies subject to the Act. The advisory council there, comprised of 34 members, had a 3% share (less than 2 hours per week) of an administrative staffer’s time. The staffer prepared detailed draft minutes within two to three weeks for review by the officers and then adoption at the next meeting, about eight weeks later. The council’s policy was to provide the draft to people who asked for it. Although a copy of the draft was provided promptly to complainant, she complained to the Compliance Board that the council had not adopted minutes in a timely manner.

The Compliance Board found that, given the circumstances, the council did not violate the “as soon as practicable” standard. The Compliance Board observed:

Of course, in an ideal world, every public body would be sufficiently funded and staffed and thus able either to stream its meetings online or to produce and adopt written minutes quickly. When the ideal fails to materialize through no fault of the public body, we suggest accommodations.

*Id.* at 174-75.

circumstances might justify a delay.” 6 *OMCB Opinions* 164, 169 (2009) (citations to other opinions omitted).

Not included in that general rule are public bodies that meet only a few times a year. In 6 *OMCB Opinions* 85, 88 (2009), for example, the Compliance Board advised that “routine delays of several months would be unlawful,” and it found that a “nearly four-month delay” violated the Act. 8 *OMCB Opinions* 173 (2013).<sup>5</sup> For public bodies that meet rarely, the Compliance Board has approved, albeit with a caution, the practice of adopting minutes by circulating copies among the members.<sup>6</sup> The Compliance Board has also encouraged public bodies to make draft information available, when possible, and members of the public to accept it, pending the adoption of the final set. *See, e.g.*, 8 *OMCB Opinions* 173, 174-75 (2013). There, for example, staff had sent detailed draft minutes to the complainant three days after she requested them. Noting that it was “not at all clear” that the complainant had been denied timely access to meeting information, the Compliance Board advised that members of the public who want to “know quickly what happened at a meeting might attend the meeting, or accept draft minutes, or ask a participant for details.”

## 6. Inspection of minutes by the public

The Act requires public bodies to retain a copy of their minutes and any tape recordings of the meeting for five years. Minutes and tape recordings of open sessions “are

---

<sup>5</sup> *See also* 8 *OMCB Opinions* 176, 177 (2013) (“Public bodies that routinely only meet quarterly, we have stated, should find an alternative way of adopting minutes so that people who could not attend the meeting do not have to wait three months to find out what the public body did. That is the only objective standard we have set in our interpretation of the minutes requirement.”)

<sup>6</sup> In 8 *OMCB Opinions* 125 (2013), for example, the Compliance Board stated:

[O]ur encouragement, only to public bodies that meet infrequently, to adopt minutes by e-mail should not be taken either as an encouragement to regularly-meeting public bodies to adopt minutes that way or as our approval of any more general practice of taking actions by e-mail. As we have stated before, the practice of taking actions by e-mail does not serve the goal of the Act that public business be conducted publicly. The distinction between the adoption of minutes by e-mail when a public body meets rarely and any broader use of the practice is simple: the prompt availability of minutes serves the interest of transparency, though at some sacrifice to the ability of the public to observe the public body’s discussion of the draft, while the discussion of other issues by e-mail serves no goal of the Act.

*Id.* at 126-27; *see also* 8 *OMCB Opinions* 150, 159 (2013) (same); 8 *OMCB Opinions* 176, 177 (2013) (“[W]e have very expressly stated that the adoption of minutes [other than in an open meeting] is the rare exception to the principle that public business should be conducted in the open.”).



public records and shall be open to public inspection during ordinary business hours.” § 3-306(c), (d). The Compliance Board has opined that written closing statements are also to be available for inspection by the public, not only at the meeting that was closed, but also “as a matter of course to any requester for at least the one-year period during which the statement must be kept.” 5 *OMCB Opinions* 184, 187 (2007); *see also* § 3-305(d)(5) (requiring that closing statements be retained for one year).

As noted above, public bodies must now post online, “to the extent practicable,” “the minutes or recordings” that they are required to retain. § 3-306(e). The Act does not require public bodies either to mail hard copies of minutes to members of the public or to scan minutes and send them electronically. A request for scanned or copied minutes is instead a request for records under the Public Information Act (“PIA”), which states the deadlines applicable to responses to such requests and permits government bodies to recoup copying costs. The Compliance Board has explained:

[A] person who wants to see meeting documents has two separate options: either go to the public body’s place of business and inspect them for free, as the Open Meetings Act provides, or, instead, ask the public body to send copies in accordance with the Public Information Act, wait for the public body’s response under the timetable provided by that law, and pay such costs as the public body may charge, again under that law.

9 *OMCB Opinions* 218, 220 (2015). Thus, the Compliance Board explained, “the fact that a request for copies includes a request for meeting documents does not mean that the requester may jump in front of the line of other [PIA] requesters whose requests the public body might be processing.” *Id.*

The expectation set by the Act for public access—that public bodies should be able to produce minutes for inspection by anyone who comes to the public body’s office and asks for them—is workable for the public bodies, such as many municipalities, that maintain them in binders in an office staffed for in-person inquiries from members of the public. *See, e.g.,* 8 *OMCB Opinions* 122, 123 (2012). That expectation is harder to achieve for the many task forces and commissions without a central place of business, without dedicated staff, without any other function requiring in-person availability to the public, or with competing deadlines that staff must meet when the requester appears. Problems have arisen when the public body is a task force that has no assigned office space, *see* 7 *OMCB Opinions* 121 (2011) (minutes retained by chair of citizen task force without staff); when a member of the public asks for years’ worth of minutes and the public body maintains minutes in the file for each meeting, *see* 8 *OMCB Opinions* 1 (2012) (member of the public came to office and requested minutes for the prior six years); when the public body’s sole employee cannot leave the requester alone while she goes into the file room where the

minutes are kept, *see id.*, or when the minutes that the person wants to see are with staff in another office at the time, as might happen if someone has requested copies of them under the Public Information Act and staff are preparing them for production that way, or the requester arrives on a day when staff have other pressing demands, or the minutes are those of a task force with which staff are unfamiliar. *See, e.g., 9 OMCB Opinions 218 (2015).*

The Compliance Board has set a general rule of reasonableness and good faith for both the members of the public who seek the minutes of a public body and the public body's staff. *See, e.g., 8 OMCB Opinions 1.*

### **C. Closing statement**

For an explanation of the written disclosures (“closing statement”) that a public body must make before closing a session under the Act, see Chapter 5, Part A. Closing statements must be kept for one year, are a matter of public record, and, the Compliance Board has stated, must be available for inspection, at the time of closing, by members of the public who so request. *See § 3-305(d); 5 OMCB Opinions 184, 187 (2007).* If a member of the public objects to the closing of a session, the public body must send a copy of the closing statement to the Compliance Board.

Of the two parts to the closing statement form posted on the Attorney General's website, only the first part, when completed, is the closing statement itself. The second part, with spaces for the information that must be disclosed in subsequent open-session minutes, is a worksheet for the use of the person who is recording the events of the closed session and is not a public record unless that part of the document is incorporated into the open-session minutes. The closing statement itself does not serve as a substitute for the post-session disclosures that must be made in the minutes of the next open session. See Part B.4 of this chapter and *9 OMCB Opinions 160, 161 (2014).*

## **Chapter 7: Guidance, Judicial Enforcement, and Training**

### **Chapter 7: What roles does the Act assign to the Compliance Board, the courts, and the Office of the Attorney General?**

(Index Topic 7)

**Chapter summary:** The Act assigns separate roles to the Compliance Board, the courts, and the Office of the Attorney General. The Compliance Board is an independent State agency and is not a division of either the Office of the Attorney General or any other unit of State government. The Act spells out the Compliance Board's duties. Broadly described, those duties are to issue advisory opinions in response to complaints that the Act has been violated, to recommend legislation to improve the Act, to receive certain documents, and to develop and conduct educational programs, in conjunction with the Office of the Attorney General, for public bodies' attorneys and staff. Although the Compliance Board may request certain documents from public bodies, it does not have the power to compel compliance with the Act, to subpoena documents, to administer oaths, or to issue orders.

Only courts may enforce the provisions of the Open Meetings Act. To seek judicial enforcement of the Act, a person must file a lawsuit in the circuit court for the county in which the public body is located. During that process, a person may request that representatives of the public body give sworn testimony and produce documents. The Compliance Board and its staff from the Attorney General's Office have no role in this process.

The Office of the Attorney General shares the Compliance Board's educational duties and provides staff and counsel for the Compliance Board. The Attorney General is the legal advisor of the State, charged with performing the legal work for State officers and State government units. The lawyers in the Attorney General's Office are not authorized to either advise or represent individual members of the public.



## A. *The Compliance Board*

The Act creates the Compliance Board as a three-member public body comprised of members who are appointed by the Governor. They serve as volunteers. The Compliance Board has no budget of its own. Its duties include: issuing advisory opinions in response to complaints that a public body has violated the Act; recommending legislation; submitting an annual report to the Governor and the General Assembly; receiving copies of certain documents; and developing and conducting training, in conjunction with the Office of the Attorney General and others, for the “staffs and attorneys” of public bodies, the Maryland Municipal League, the Maryland Association of Counties, and the Maryland Association of Boards of Education. §§ 3-204 through 213. The Compliance Board may also attempt to resolve a prospective complaint that a meeting that the Act requires to be open will be closed. § 3-212. The Office of the Attorney General provides the Compliance Board with counsel and administrative assistance.

### 1. **The complaint process**

The Compliance Board complaint process provides the public with a way to raise concerns about a possible violation with regard to a particular meeting without hiring a lawyer and without waiting for the matter to make its way through the courts. The process also provides public bodies with relatively quick guidance on how to comply with the Act. The process is streamlined by design. When the Act was amended to create the Compliance Board, the Act had been in effect for 14 years, and it had become apparent both that public bodies needed educational programs and guidance on compliance and that members of the public needed a way to submit complaints without having to sue.

The trade-off for the State’s provision of a free and straightforward complaint mechanism is that the Compliance Board’s opinions are “advisory only.” § 3-209. Although the Act authorizes the Compliance Board to request certain documents and requires public bodies to comply with those requests, the Act does not empower the Compliance Board to issue orders enforceable by a court. § 3-210. Also, the Compliance Board does not conduct investigations in the usual sense of the word; it cannot subpoena documents, summon witnesses, or administer oaths, and it is not set up to take testimony. *See* 3-210; *see also* 8 *OMCB Opinions* 170, 171 (2013) (explaining that the Board is “an advisory board, not a fact-finding tribunal”).

The complaint process is simple and much more informal than litigation. As described in the “Complaint Procedures” posted on the Open Meetings page of the Attorney General’s website, any person may submit to the Compliance Board a written complaint that a public body has violated the Act on a particular occasion. *See* § 3-205.

Complaints must “identify the public body,” and “describe the action of the public body” and the date and circumstances of the action. § 3-205(b)(1), (2). Complaints must also be signed and therefore may not be submitted anonymously. *See* § 3-205(b)(3).

The Compliance Board has not expected complaints to recite all the facts that would prove a violation. “After all,” the Compliance Board has explained, “it normally is the public body, not the complainant, that has the information, including the actual date a specific action might have taken place, that is necessary to allow us to fully evaluate whether or not a violation occurred.” 6 *OMCB Opinions* 69, 72 (2009). And in contrast to a plaintiff who files suit in court, a complainant in the Compliance Board process “need not satisfy any particular burden of proof.” *Id.* Nonetheless, the Compliance Board expects complaints to be founded on a “good-faith belief that the Act was indeed violated, based on a reasonable inquiry into the available facts.” 8 *OMCB Opinions* 99, 101 (2012). There, the Compliance Board declined to address a “speculative allegation” and “mere surmise” that the public body “probably discussed public business during the lunch recess disclosed in its minutes.” Noting that there was no evidence that the members of the public body were even together during the recess, the Compliance Board stated that it did not “construe the Act to require us to address complaints that mention no indicia of the alleged violation – indicia such as errors in documents required to be kept under the Act, comments or actions by members of the public body or staff evidencing improper conduct, or an apparently rubber-stamped decision suggesting an improper closed meeting, to name a few.” *Id.*

The Compliance Board also encourages complainants to contact the public body with questions before filing a complaint. In 8 *OMCB Opinions* 170, 172 (2013), for example, the complainant alleged, apparently without looking into the matter, that a county council had not given any notice of a meeting. The response showed that notice had been given by several methods. The Compliance Board, finding that the “allegations had no basis in fact,” stated: “A ‘reasonable inquiry’ often yields the citizen a faster answer than we can provide, sometimes serves to avoid an unnecessary complaint and unnecessary expenditure of the public body’s resources, and, otherwise, enables the complainant to provide us with more information.” *Id.*

The Act requires the Compliance Board to send the complaint to the public body, which then must respond within 30 days of its receipt of the complaint. § 3-206.<sup>1</sup> Just as

---

<sup>1</sup> Occasionally, people submit complaints about matters that clearly do not lie within the Compliance Board’s authority, as when a person has only alleged violations of other laws. When no reading of the complaint would bring it within the Compliance Board’s authority, the complainant is informed by letter that the Compliance Board will not address it.

there is no set format for a complaint, a response may take the form of a simple letter to the Compliance Board. The response should include the relevant meeting documents and explains any relevant circumstances. The Act does not require public bodies to submit sworn testimony, but they may. When the matter involves a complaint that a meeting was improperly closed, the Compliance Board may ask the public body to include the sealed minutes of the closed session. § 3-206(b)(2). The Compliance Board keeps the contents of those minutes confidential. § 3-206(b)(3).<sup>2</sup> A public body's failure to respond to the Compliance Board's request for documents "is itself a violation" of the Act. 5 *OMCB Opinions* 14, 21 (2006).

Although the Act contemplates no role for a complainant beyond the filing of the complaint, *see* § 3-207, the Compliance Board permits the complainant to reply to the public body's response when the reply would add factual information. The public body may then have the last word. Replies that merely reiterate the complaint are discouraged, because they delay the Compliance Board's issuance of guidance on whether the public body has violated the Act and what it should do to comply. *See* Complaint Procedures.

Usually, the submissions and the meeting documents—written notice, closing statement, minutes, sealed minutes—provide the Compliance Board with the information it needs to resolve the complaint quickly so that the public body can correct any practices that violate the Act. Sometimes, however, the written submissions of a complainant and a public body reflect factual disputes that are not resolved by the meeting documents, such as a dispute over whether the public body unreasonably delayed giving notice of a meeting or adopting minutes. The Act accounts for this possibility in two ways: first, the Compliance Board may state its inability to resolve an issue, § 3-207(c)(2); and second, the Compliance Board may conduct an "informal conference" with the public body or anyone else if more information is needed. § 3-207(b)(1). In the interest of providing prompt advice, the Compliance Board has usually found it most useful to give guidance on the most likely scenarios. In 9 *OMCB Opinions* 171, 173 (2014), for example, where the meeting in question had occurred over two years earlier and differing inferences about a closed-meeting discussion could be drawn from the available information, the Compliance Board addressed "some possibilities in the alternative."

---

<sup>2</sup> In addressing allegations that a public body's discussion strayed beyond the scope of the claimed exception, the Compliance Board preserves the confidentiality of the closed-session minutes by referring to the events of the session only generically and then only as needed to resolve the complaint. *See, e.g.*, 9 *OMCB Opinions* 44 (2013).

After considering the submissions, the Compliance Board issues a written advisory opinion within 30 days, or, if it has stated its inability to meet that target, within 90 days. § 3-207(a), (c). Staff then send copies of the opinion to the public body and the complainant and post it online with headnotes keyed to the online index to the Compliance Board's opinions. From July 1, 2017 on, the list of opinions for each volume identifies the opinions in which the Compliance Board found a violation.

## **2. Announcement and acknowledgment of violations**

If the Compliance Board has found a violation, a member of the public body must summarize the opinion at the public body's next open meeting, and a majority of the members of the public body must sign a copy of the complaint and submit it to the Compliance Board. § 3-211(a), (b). The members' signatures signify their acknowledgment that they have received the opinion, not an admission that they have violated the Act. § 3-211(c). Compliance Board opinions are potentially admissible in court; in 2013, the General Assembly repealed the Act's broad prohibition on the admission of a Compliance Board opinion in a case brought under the Act to enforce the Act. *See* 2013 Md. Laws ch. 612. However, the evidentiary rules applicable to actions in circuit court do not apply to submissions to the Compliance Board, and a Compliance Board opinion would not necessarily be admissible in circuit court as proof that a violation did or did not occur.

## **3. The Compliance Board's annual reports to the Governor and General Assembly, and its meetings**

The Act requires the Compliance Board to report annually to the Governor and General Assembly on its activities, its opinions, the violations it found, and the complaints it received that a public body failed to give reasonable notice of a meeting. The annual report must also "recommend any improvements" to the Act. § 3-204(e). The report is due by October 1 of each year. The Compliance Board usually meets in late summer to discuss the activities of the year and to hear and consider comments from the public, representatives of the media, public bodies, and representatives from the Maryland Association of Counties and the Maryland Municipal League. When the Compliance Board decides at an annual meeting to propose legislative changes, those are included in the annual report.

The Compliance Board sometimes meets during the General Assembly's session to consider commenting on pending Open Meetings Act legislation. The Compliance Board members gather as needed to deliberate on complaints. Section 3-101(i) of the Act defines



those deliberations as a quasi-judicial function that is exempt from the Act under § 3-103(a).

#### 4. The Board's receipt of documents; the training requirement

In addition to responding to complaints, public bodies must submit two types of documents to the Compliance Board: closing statements, when a member of the public has objected to the closing of a session (*see* Chapters 5, Part A and 6, Part C) and a signed copy of the Compliance Board's opinion, if the Compliance Board has found that the public body violated the Act (*see* Part 2 of this Chapter). §§ 3-305(d)(3), 3-211.

Regarding training, generally, each public body must designate an employee, officer, or member to "receive training on the requirements of the meeting law." § 3-213. However, as of October 1, 2017, public bodies that wish to conduct closed sessions must designate at least one *member* to take the training. *See* Chapter 5, Part A. As of July 1, 2017, public bodies are no longer required to submit to the Compliance Board the names of the individuals whom they have designated to take training on the Act; those records remain with the particular public body. 2017 Laws of Md., ch. 525 (repealing former § 3-213(a)(2)). Details on complying with the requirement are posted on the Open Meetings page of the Attorney General's website.

The training must be taken in one of three ways: the online class "offered by the Office of the Attorney General and the University of Maryland's Institute for Governmental Service and Research"; an open meetings class "offered by the Maryland Association of Boards of Education through the Boardsmanship Academy Program"; or an open meetings class "offered by the Maryland Association of Counties or the Maryland Municipal League through the Academy for Excellence in Local Governance." *Id.* The online class is free and available to the general public. The organizations generally offer their classes at their conferences, so the designees of most State public bodies take the online class. The Compliance Board does not have the authority to approve other forms of training. Training received before October 1, 2013, does not satisfy the requirement. Newly-created public bodies need not designate a trainee before their first meeting, 9 *OMCB Opinions* 268 (2015), so long as that meeting will not include a closed session.

The Compliance Board does not monitor compliance with the requirement, which applies to every entity in the State that meets the Act's definition of a public body. The Act applies, for example, to temporary task forces appointed by local and State government executives and by people "subject to the control" of those officials. § 3-101(h)(2). The Compliance Board, a body of three volunteers with no budget of its own, has noted that it would not be able to monitor compliance and that identifying every public body in existence at any given time would be difficult. *See, e.g.*, Minutes of January 29, 2013 meeting of Compliance Board. The Compliance Board, working with seven other entities,

must report on the “cost-benefit” of “tracking the names” of designees who have taken training. 2017 Laws of Md., ch. 525, § 2.

### **5. Members of the Compliance Board**

The Compliance Board members are appointed by the Governor to three-year terms on a staggered basis. Although they may not serve more than two consecutive terms, their service continues until a successor has been appointed. As of the date of this Manual, the Compliance Board has had only four chairs: Walter Sondheim, who served from 1992 until his death in 2007; Elizabeth L. Nilson, Esq., who served from February 2007 until June 1, 2014; Monica J. Johnson, Esq., who served as a recess appointee from June 1, 2014 to April 13, 2015; and the current chair, Jonathan A. Hodgson, Esq., who was appointed on August 14, 2015.

The longest-serving Compliance Board member, Courtney McKeldin, served from 1992 until May 2014. Other members of the public appointed to take on this volunteer work include past members Tyler G. Webb, Esq., Julio Morales, Esq., Wanda Martinez, Esq., and Mamata Poch, Esq. The current members are Rachel Grasmick Shapiro, Esq. and April Ishak, Esq., appointed in June 2015 and reappointed in 2016 and 2017, respectively.

### ***B. The courts - judicial enforcement of the Act***

The enforcement provisions of the Act are set forth in §§ 3-401 and 3-402. They do not apply to the actions of “appropriating public funds,” imposing a tax, “or providing for the issuance of bonds, notes, or other evidences of public obligation.” Otherwise, they apply when a public body has failed to comply with five provisions of the Act: § 3-301, which requires generally that public bodies meet in the open unless the Act expressly permits otherwise; § 3-302, which requires public bodies to give notice of their meetings; § 3-303, which states the public’s right to attend open meetings; § 3-305, which regulates closed sessions; and § 3-306(c), which addresses the contents of minutes. *See* § 3-401(b).

For those types of violations, any person may file in the appropriate circuit court a petition that asks the court to determine whether those provisions apply to the circumstances, to require the public body to comply with them, or, subject to § 3-401(d)(4), to “void the action of the public body.” The 45-day limitation period is triggered by various events, depending on the type of violation alleged, and is extended by the filing of a complaint with the Compliance Board. § 3-401(b). The petitioner need not file a complaint with the Compliance Board before filing suit. § 3-401(e).

Section 3-401 provides that the Act’s judicial enforcement provisions do “not affect or prevent the use of any other available remedies.” In applying that section, the Court of Special Appeals has held that Act’s judicial remedy is not exclusive and that the statute of limitations for actions under the Act does not apply to an open meetings claim in an action for judicial review brought under other laws. *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 636-39 (2003).

The enforcement provisions set a presumption “that the public body did not violate any provision of [the Act],” and they assign the burden of proof to the petitioner. § 3-401(c). A court may only declare void a final action of the public body “if the court finds that the public body willfully failed to comply with § 3-301, § 3-302, § 3-303, or § 3-306(c) [of the Act] and that no other remedy is adequate.” § 3-401(d)(4). The remedy thus is not available for violations of § 3-305 alone.

Courts may order other forms of relief, such as an injunction and counsel fees, without finding willfulness. *See* § 3-40(d) 1), (2), (3), and (5); *see also* *Armstrong v. Mayor & City Council of Baltimore*, 409 Md. 648, 694 (2009). Section 3-402 authorizes the court to impose a civil penalty on a “public body that willfully meets with knowledge that the meeting is being held in violation of [the Act].” After considering the public body’s financial resources and ability to pay the fine, the court may impose a fine of up to \$250 for the first violation and \$1,000 for each subsequent violation within three years. *Id.*

### ***C. The Office of the Attorney General***

The Office of the Attorney General is required to provide staff for the Compliance Board and to work “in conjunction” with the Compliance Board on training for the staffs and attorneys of public bodies and the two local government associations. §§ 3-203, 3-204(d). The Act does not confer any other authority on the Office of the Attorney General.

The duties of the Office of the Attorney General are set forth in the Maryland Constitution and the Maryland Code. As described on the Attorney General’s website, “The Attorney General's Office has general charge, supervision and direction of the legal business of the State, acting as legal advisors and representatives of the major agencies, various boards, commissions, officials and institutions of State Government.”<sup>3</sup>

The Office of the Attorney General provides the Compliance Board with administrative staff and counsel, both traditionally housed in the Opinions and Advice

---

<sup>3</sup> <http://www.marylandattorneygeneral.gov/Pages/About.aspx>.

Division of the Attorney General's Office, and hosts an open meetings webpage, maintained with the assistance of Fritz Schantz, the Office's director of multimedia services. Since the Compliance Board was first constituted in 1992, it has had only two administrators: Kathy Izdebski, who served from 1992 to 2012, and Deborah Spence. Its counsel, and the authors of successive versions of this Manual, have been former Assistant Attorneys General Jack Schwartz and William Varga, and Assistant Attorney General Ann MacNeille, with the guidance of the Chief Counsel of Opinions and Advice at the time, variously Jack Schwartz, Robert N. McDonald, and Adam D. Snyder.

Open meetings resources on the Attorney General's website<sup>4</sup> include the text of the Act, FAQs, a compliance checklist, various forms, instructions for the training requirement, and a link to the online course hosted by the Institute for Governmental Service and Research at the University of Maryland. Also posted there are the Compliance Board's meeting notices and documents, its complaint and response procedures, its opinions, and a topical index and search box for the opinions.

---

<sup>4</sup> [www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx](http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx).

APPENDIX C – HOC Bylaws  
(attached)

# Housing Opportunities Commission of Montgomery County

## SECOND AMENDED AND RESTATED BYLAWS

### ARTICLE I – THE COMMISSION

- Section 1.            *Name of the Commission.* The name of the Commission shall be “The Housing Opportunities Commission of Montgomery County”.
- Section 2.            *Seal of the Commission.* The seal of the Commission shall bear the name of the Commission and the year of its organization.
- Section 3.            *Office of the Commission.* The office of the Commission shall be at 10400 Detrick Avenue, Kensington, Maryland 20895. The Commission may hold its meetings at its offices or such other place as it may designate by resolution.

### ARTICLE II – OFFICERS

- Section 1.            *Officers.* The officers of the Commission shall be a Chair, Vice-Chair, Chair Pro Tem and a Secretary-Treasurer.
- Section 2.            *Chair.* The Chair shall preside at all meetings of the Commission. Except as otherwise authorized by resolutions of the Commission, the Chair shall sign all contracts, deeds, and other instruments made by the Commission. At each meeting, the Chair shall submit such recommendations and information as the Chair may consider proper concerning the business affairs and policies of the Commission.
- Section 3.            *Vice-Chair.* The Vice-Chair shall perform the duties of the Chair in the absence or incapacity of the Chair and, in case of the resignation or death of the Chair, the Vice-Chair shall perform such duties as are imposed on the Chair until the Commission shall select a new Chair.
- Section 4.            *Chair Pro Tem.* The Chair Pro Tem shall perform the duties of the Chair in the absence or incapacity of the Chair and Vice-Chair.
- Section 5.            *Secretary-Treasurer.* The Commission may employ a Secretary-Treasurer who shall serve as Executive Director. The Secretary-Treasurer shall keep the records of the Commission, shall act as Secretary of the meetings of the Commission and shall be responsible for having records maintained of all votes. A record of all

the proceedings of the Commission in a journal of proceedings shall be kept for such purpose in accordance with the State Public Information Act, Article 10-600 of the State Government Article (the "Public Information Act"). The Secretary-Treasurer shall perform all duties incident to such office. The Secretary-Treasurer shall keep in safe custody the seal of the Commission and shall have the power to affix such seal to all contracts and instruments authorized to be executed by the Commission.

The Secretary-Treasurer shall have the care and custody of all funds of the Commission and shall deposit the same in the name of the Commission in such bank or banks and in such manner, as the Commission shall determine by resolution. Except as otherwise authorized by resolution, the Secretary-Treasurer shall sign all orders and checks for the payment of money and shall pay out and disburse such monies under the direction of the Commission.

The Secretary-Treasurer shall provide for the maintenance of regular books of accounts showing receipts and expenditures and shall render to the Commission, upon request but not less than quarterly, an account of all transactions and also of the financial condition of the Commission.

The Commission shall determine the compensation of the Secretary-Treasurer provided that a temporary appointee selected from among the Commissioners of the Commission shall serve without compensation, other than the payment of necessary expenses.

Section 6.

*Additional Duties.* The officers of the Commission shall perform such other duties and functions as may from time to time be required by the Commission or by-laws or rules and regulations of the Commission.

Section 7.

*Election or Appointment.* The Chair, Vice-Chair, and Chair Pro Tem shall be elected at the Annual Meeting of the Commission and annually thereafter, from among the Commissioners of the Commission, and shall hold office for one year or until their successors are elected and qualified. The Commission shall appoint the Secretary-Treasurer. Any person appointed to fill the office of Secretary-Treasurer, or any vacancy therein, shall have such term as the Commission fixes, but no Commissioner shall be eligible to this office except as a temporary appointee.

Section 8.

*Vacancies.* Should the office of Chair, Vice-Chair, or Chair Pro Tem come vacant, the Commission shall elect a successor from its membership at the next regular meeting, and such an election shall be for the unexpired term of said office. When the office of Secretary-



Treasurer becomes vacant, the Commission shall appoint a successor, as aforesaid.

Section 9.

*Additional Personnel.* The Commission may from time to time employ such personnel, as it deems necessary to exercise its powers, duties and functions as prescribed by the Housing Authorities Law and all other laws of the State of Maryland and Montgomery County applicable thereto. The selection and compensation of such personnel (including the Secretary-Treasurer) shall be determined by the Commission, subject to the laws of the State of Maryland.

**ARTICLE III – MEETINGS**

Section 1.

*Annual Meeting.* The Annual Meeting of the Commission shall be held on the first regular meeting day of the Commission in the month of February at such location as shall be designated by the Commission.

Section 2.

*Regular Monthly Open Meetings.* The Commission shall hold regular monthly open meetings for the purpose of conducting any or all of its business at such time and location as it may determine by resolution or subject to a call by the Chair, provided that no less than one such regular meeting shall be held each month; provided, however, that the Chair and Executive Director may agree not to convene a regular monthly meeting in a specific month so long as the Commission provides the public with reasonable advance notice thereof in accordance with the State Open Meetings Act, Section 3-101 et seq. of General Provisions Article of the Maryland Annotated Code (the “Open Meetings Act”). One or more Commissioners may participate and vote on matters at a regular open meeting by teleconference or electronic medium as long as (i) a quorum of the Commission participates; and (ii) all Commissioners, staff and members of the public can communicate and interact with each other clearly during the period of time scheduled for the deliberation and action, as well as view materials clearly, including the meeting agenda and all documents and materials to be considered or acted upon at the meeting. Notwithstanding the above, at the Annual Meeting, a quorum must consist of four (4) Commissioners physically present.

Section 3.

*Special Meetings.* The Chair of the Commission may, when deemed expedient, at his/her own discretion or upon the written request of the Executive Director or three (3) members of the Commission, call a special meeting of the Commission for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered in person to each member of the Commission, mailed to the business or home address of each member of the Commission, or communicated by electronic medium providing for

evidence of receipt at least one day prior to the date of such special meeting, so long as the Commission provides the public with reasonable advance notice thereof as soon as practicable in accordance with the Open Meetings Act. At such special meeting, no business shall be considered other than as designated in the call and announced to the public. Some or all of the Commissioners may participate and vote in the special meeting by teleconference or other electronic media as long as (i) a quorum of the Commission participates; (ii) all Commissioners and staff (and, for open meetings, members of the public who wish to participate) can communicate and interact with each other clearly during the period of time scheduled for the deliberation and action, as well as view materials clearly, including the meeting agenda and all documents and materials to be considered or acted upon at the meeting; (iii) the public is provided sufficient and reasonable advance notice of the telephone number and/or other method to participate; and (iv) any resolution passed or other action taken at any special meeting at which there is less than a quorum physically present will be presented for ratification at the next regular open meeting. If a quorum of the members of the Commission participate in a special meeting, either in person or through telephone or other electronic media, any and all business may be transacted at such special meeting; provided, however, that actions taken at a special meeting at which less than a quorum is physically present must be ratified at a regular open meeting of the Commissioners. Action at such a special meeting shall be taken only by majority vote of the participating Commissioners and such action shall be recorded in the minutes to be adopted at the next regular open meeting of the Commission.

Section 4.

*Emergency Special Meetings.* In the event of an emergency requiring immediate action when there is insufficient time to provide the notice required above and it is not feasible to delay action to a regular meeting, and/or it is not possible to physically convene the Commission, an emergency special meeting by teleconference or other electronic media may be convened by the Chair (or in the absence of the Chair, by the Vice-Chair, or Chair Pro Tem as the case may be), provided that (i) a quorum of the Commission participates, (ii) all Commissioners and staff (and for open meeting, any members of the public who wish to participate) can communicate and interact with each other clearly during the period of time scheduled for deliberation and action, as well as view materials clearly, including the meeting agenda and all documents and materials to be considered or acted upon at the meeting; and (iii) any resolution passed or other action taken at any emergency special meeting will be presented for ratification at the next regular open meeting with suitable provision for notice of the agenda. Action at such an emergency special meeting may be taken only when at least four (4) members of the Commission concur and such action. Any materials provided to the

Commissioners for consideration, to the extent not protected from disclosure under the Open Meetings Act, shall be included in the minutes to be adopted at the next regular meeting of the Commission.

Section 5.

*Quorum.* The powers of the Commission shall be vested in the Commissioners thereof in office from time to time. A simple majority of the seven-member Commission, irrespective of vacancies (four (4) Commissioners), shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may convene from time to time until a quorum is obtained. When a quorum is obtained for deliberation and participation, action may be taken by the Commission upon a majority vote provided that no less than three (3) votes are cast on the matter. For the purpose of the foregoing, a vote shall be any vote other than an abstention

Section 6.

*Order of Business.* At the regular meetings of the Commission, the order of business shall be set by the Chair and provided to the Commission in advance of the meeting.

All resolutions shall be in writing and shall be copied in a journal of the proceedings of the Commission.

Section 7.

*Manner of Voting.* The voting on all questions coming before the Commission shall be by voice vote. At the order of the Chair, a roll call vote may be taken with the Chair voting last. The yeas and nays shall be entered upon the minutes of such meeting. In special circumstances when additional information is requested or additional time is required in order to fully deliberate on a particular component matter within a resolution, but the matter is time-sensitive and cannot wait until the next regular open meeting or special meeting for action, the Chair may (at the request of another Commissioner or the Executive Director) permit a motion to approve a resolution with instructions that approval as to said particular component matter of the resolution is conditioned on the subsequent approval by the Commission through a vote by telephonic conference call or other electronic medium, including electronic mail, provided that (i) a quorum of Commissioners participates in the subsequent vote; (ii) the Commissioners and staff can interact with each other clearly and view all the relevant materials and information being presented for consideration; and (iii) any action taken is presented for ratification at the next regular open meeting. The vote (whether by phone or electronic medium) and the materials presented to the Commissioners for consideration prior to the vote, to the extent not protected from disclosure under the Open Meetings Act, will be recorded in the minutes to be approved at the next regular open meeting.

Section 8.            *Notice and Conduct of Meeting.* All meetings of the Commission and notices with regard to its actions shall be performed in compliance with the applicable provisions of the Maryland Public Information Act and Open Meetings Act. Where permitted, every effort shall be made to provide notice by electronic communication in accordance with law. The rules of parliamentary practice and procedure as set forth in the latest published edition of Robert's Rules of Order shall govern the Commission in all matters not provided for herein.

Section 9.            A written agenda shall be prepared for each meeting by the Chair or in the manner established by resolution. The agenda shall include an order of proceeding and description of items for consideration.

Section 10.          Any Commissioner may move to add to or delete any item from the agenda.

#### **ARTICLE IV – AMENDMENTS**

Section 1.            *Amendments to the By-laws.* The by-laws of the Commission shall be amended only with the approval of at least four of the members of the Commission at a regular or special meeting. But no such amendments shall be adopted unless at least three days written notice thereof has been previously given to all members of the Commission.

#### **ARTICLE V – INDEMNITY**

Section 1.            The Commission shall indemnify any person who was or is a party or is threatened to be a party to any action, suit or proceeding whether civil, criminal or administrative by reason of the fact that the party is or was a Commissioner, officer or member of the Commission or is or was serving at the request thereof as a Commissioner, officer or member of another corporation or as an official of any other entity, against expenses (including attorney's fees), judgments, awards, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding. If the actions were in good faith, performed in discharge of reasonably believed to be in, or not opposed duties authorized by law and in a manner to, the best interests of the Commission and, with respect to any criminal action or proceeding by judgment. Order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith. Or in discharge of duties authorized by law or in a manner that was reasonably believed to be in. Or not opposed to, the best interests of the Commission, and with respect to any criminal action or proceedings, that there existed no reasonable cause to believe that the conduct was lawful.

Section 2.

The indemnification provided herein shall not be deemed exclusive of any other rights to which a person seeking indemnification there under may be entitled under any by-law, agreement or otherwise. The indemnification shall continue as to a person who has ceased to be a Commissioner, officer or member, and shall inure to the benefit of the heirs and personal representatives of such person.

Section 3.

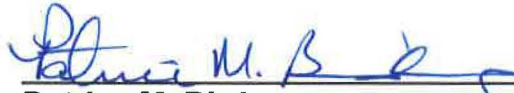
The Commission shall have power to purchase or reimburse the cost of insurance on behalf of any person who is or was a Commissioner, officer or member thereof, or is or was serving at the request of the Commission as a director, officer or member of any other entity, against any liability asserted which may be incurred in any such capacity, or arising out of such status, whether or not the Commission would have the power to indemnify against such liability under the provisions of Section 1 herein.

Section 4.

Anything to the contrary notwithstanding, no Commissioner, officer, or member shall be indemnified against any liability to which he would otherwise be subject to by reason of willful misfeasance, malice, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of the office.

I HEREBY CERTIFY that the attached is a true and correct copy of the Second Amended and Restated Bylaws of the Housing Opportunities Commission of Montgomery County, adopted by the Commissioners on March 25, 2020.



  
\_\_\_\_\_  
**Patrice M. Birdsong**  
**Special Assistant to the Commissioners**

Date: March 25, 2020