CITY OF FINDLAY

Findlay City Council
Ad Hoc Committee
Meeting Date: March 13, 2024

Committee Members:

- [x] Josh Palmer, 7th Ward, Chair
- [x] Dan DeArment, Ward 4
- [x] Dennis Hellmann, Ward 2
- [ ]
- [ ]

Staff:

- [x] Don Rassmussen
- [x] Rob Fleighner
- [ ]
- [ ]

Meeting Start Time: 4:08

Meeting End Time: 4:45

Guests: Many citizens

Agenda:

Call to Order

Roll Call

New Items

Review 2024-2025 Council Rules of Procedure

Adjournment

Josh Palmer
Ad Hoc Committee Chair

COMMITTEE REPORT

THE CITY COUNCIL OF THE CITY OF FINDLAY, OHIO

An **AD HOC COMMITTEE** met on March 13, 2024 to review the 2024-2025 Council Rules of Procedure.

We recommend

Continued discussion on Rules of Procedure changes at the next Ad-Hoc Committee meeting on 26 March 2024 @ 4 pm.

☑ Aye ☐ Nay Josh Palmer, Chair

☑ Aye ☐ Nay Dan DeArment

☑ Aye ☐ Nay Dennis Hellmann

AD-HOC COMMITTEE

LEGISLATION: _____

DATED: March 13, 2024

COUNCIL OF THE CITY OF FINDLAY, OHIO
RULES OF PROCEDURE 2024-2025

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COUNCIL OF THE CITY OF FINDLAY, OHIO
RULES OF PROCEDURE 2020-2021

The following rules and regulations are hereby adopted by the Council of the City of Findlay, Ohio, as the rules and procedure governing the conduct and business of said legislative body. They shall be in full force and effect from and after February 21, 2023, subject, however, to amendment or repeal in whole or in part, at any time, by the Council of the City of Findlay, in accordance with the rules and regulations hereinafter set forth governing the amendment or repeal of these rules and procedure.

SECTION I. GENERAL PROVISIONS

A. DEFINITIONS

The following definitions are relevant throughout this document:

1. Majority – six or more members of council
2. Presiding Officer – the President of Council or the person filling that role at meetings where the President of Council is unable to preside
3. Quorum – six or more members of council
4. Speaker – any elected official, member of the administration or staff member who, upon recognition by the Presiding Officer, shall be entitled to participate in a discussion of an issue before council
5. Three-fourths Majority – eight or more members of council
6. Two-thirds Majority – seven or more members of council

B. LEGISLATION

Legislation from council must be requested by at least two councilmembers. Requests for appropriations that require legislation for money already budgeted may be requested by the administration.

All routine requests for legislation proposed for the consideration of council shall be in the hands of the Director of Law by noon on the Wednesday preceding the meeting at which it is to be considered. Proposed legislation must accompany the agenda of legislation.

No proposed legislation regarding zoning issues shall be presented to council unless they have gone through City Planning Commission and the Planning and Zoning Committee.

C. REPORTS

All reports and written communications from the public, Administration officials, department heads and employees shall be delivered to the Council Office by noon on the ~~Friday~~Wednesday (Denise request) preceding each regular meeting.

D. REPRESENTING FINDLAY CITY COUNCIL

1. An Official City Council Position Requires a Public Vote

   Council does not have an official position on any issue, whether the issue is political or non-political in nature, unless council has taken a public vote and a Majority votes to adopt the position. Failure of a Majority of council to vote in favor of a position shall not constitute adoption of a contrary position; in such cases council shall continue to have no official position on the issue.

2. Speaking On Behalf of the Council

   If a councilmember appears on behalf of the whole Council for the purpose of commenting on an issue, the councilmember must state the official position of the council on such issue.

3. Personal Opinions Must Be Distinguished from Council Positions

   Whenever a councilmember is speaking to a person or group of persons and expresses an opinion on an issue, whether the issue is political or non-political, the councilmember must clearly state whether the opinion represents the official position of the City of Findlay and/or its City Council, or whether it is only the councilmember's personal opinion.

E. GOVERNING LAWS

Should any of these Rules of Procedure or portions thereof conflict with the law of the State of Ohio or of the United States of America, such law shall govern the conduct of council.

F. DISCIPLINARY ACTION

Council may punish or expel any member from committee assignment, without chair approval, or from current proceedings for disorderly conduct or for violation of its rules. A vote of Two-thirds Majority of council will expel a member from current proceedings, but only after notice of the charge on which the motion for expulsion is based and an opportunity for the member to be heard.

G. SALARY ORDINANCE

Salary consideration for elected officials must be passed and approved by December 31 of the year prior to commencement of the elected officials' term.

SECTION II. COUNCIL MEETINGS

A. REGULAR MEETINGS

1. Schedule

   Regular meetings will be held on the first and third Tuesday of each month beginning at 6 p.m.

2. Holidays & Election Days

   Should a Regular meeting fall on a legal holiday or the day of an election, the meeting shall be rescheduled to the next business day that is not a legal holiday or an election day.

3. Cancellation

   In case of inclement weather or other emergency, the President of Council, or in absence of the President of Council any two members of council, may cancel a Regular meeting. The meeting shall be rescheduled to the next business day after the inclement weather or emergency has passed.

   Notice of the cancellation shall be given immediately to each councilmember by email and to the public.

4. Location

   Regular meetings shall be held in the Chambers of the Council of the City of Findlay (hereinafter referred to as "Council Chambers") located in the Municipal Building, 318 Dorney Plaza, Findlay, Ohio.

   Regular meetings may be held in any other public place within the confines of the City of Findlay, provided that 24-hour public notice be given prior to meeting.

B. SPECIAL MEETINGS

A Special Meeting may be called at any time by the Mayor or any three members of council.

Special Meetings shall be held in Council Chambers or in any other public place within the confines of the City of Findlay.

Notice shall be given to each councilmember, served personally; left at the member's residence or usual place of business; or by email with receipt verification received by the sender at least 24-hours prior to the time of such meeting.

24-hour public notice shall be given prior to the time of such meeting.

C. EXECUTIVE SESSIONS

Executive sessions may only be called when confidential matters need to be considered in accordance with Ohio Revised Code 121.22.

D. QUORUM

No business shall be conducted at any meeting of council unless a Majority of the councilmembers shall be present.

E. ATTENDANCE

Councilmembers shall inform the President of Council in advance if the councilmember will be unable to attend, or will be late to attend, any council meeting. The President of Council shall then announce, during roll call, that the councilmember will be absent or late and shall be noted in the minutes as such. Absence at a scheduled council meeting due to sudden illness or emergency shall be noted in the minutes as such. Any absence requires a majority vote of council members present to be considered an excused absence.

The Mayor, Director of Law, City Auditor, City Treasurer, Safety Director, Service Director and City Engineer are requested to attend the regular meetings of council and to answer questions relating to the affairs of the city under their respective supervision and control.

In the event of a public health emergency declared by either the State or County Health Department, all who attend a Findlay City Council meeting or committee meeting are required to adhere to all guidelines prescribed by the State or County Health Departments upon a majority vote of Council.

F. ADJOURNMENT OF MEETING

Councilmembers may adjourn a meeting to another designated time and/or public place.

G. AGENDA OF LEGISLATION

The Director of Law shall prepare a detailed agenda of legislation to be considered by council at each meeting. Such agenda shall be available to each councilmember and available to the public by 5 p.m. on the Friday preceding each Regular meeting.

Such agenda shall be available to each councilmember and the public at least 24-hours prior to a Special meeting.

No legislation, reports, or other communications shall be added to the Agenda unless council, upon majority vote of councilmembers present, determines that it is immediately necessary to insure the continued operation of essential City services.

H. ORDER OF BUSINESS

The order of business at all regular council meetings is:

1. Call to Order
2. Roll Call
    a. Acceptance of excused absences

3. Pledge to the Flag and moments of meditation

   The Presiding Officer shall be authorized to invite members of the Clergy and the community to open the meeting with a prayer, not to exceed two minutes in length.

4. Approval of Minutes
5. Additions to the Agenda
6. Resolutions of Commendation

   Retirement or special recognition resolutions may be voted on by Council and presented if the recipient is present.

7. Public Communications
   a. Written communications
   ~~b. Oral communications~~

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8. Reports of Municipal Officers and Departments
9. Committee Reports
10. Agenda of Legislation
    a. Resolutions
    b. Ordinances
11. Unfinished Business
12. New Business
~~12.~~13. Public oral communications non-specific to an agenda item
~~13.~~14. Adjournment

I. PUBLIC COMMUNICATIONS

1. Written Communications

   All letters addressed to and received by Findlay City Council will be on display to the public during regular council office hours. In all cases, letters that do not have a proper name, address, and signature of the sender will not be considered as sent to council.

   Incorrect, incomplete or unsigned petitions and other communications to council shall be returned by the Clerk of Council to the petitioner or communicator, accompanied by an explanation as to why they are found to be improper and will not be presented to council until in proper order.

   Only those letters making a specific request for service or letter that should be referred to a committee of council will be placed on the agenda.

2. Oral Communications

   Speakers from the gallery can speak to a specific item on the agenda or a non-agenda item. Speakers addressing a specific item will be called upon by the presiding officer during the discussion of that agenda item. Speakers addressing non-agenda items will be called upon by the presiding officer to speak after new business.

   Speakers from the gallery shall be required to fill out a form giving the speaker's name, address and the ~~subject~~ specific agenda item addressed by~~of~~ his or her presentation. The speaker can specify on the form that they will be presenting on a non-agenda item. The form must be presented to the Presiding Officer prior to the start of the meeting. The form becomes part of the official record of the meeting. Council will not entertain incomplete speaker forms.

   Oral comment from the gallery shall be limited to four minutes per person. No more than three speakers shall speak to each side of a specific question or issue before council. Time shall not be transferred from one speaker to another. When speaking on a specific agenda item, the speaker shall stay on topic without straying to other subjects. Each speaker can only present once per meeting.

3. Promoting Political Candidates is Prohibited

   No person may address the council for the purpose of assisting a campaign for election of a person to any office.

4. Advertising is Prohibited

   No person may address the council for the purpose of advertising any item, service, or product for profit or otherwise.

5. Other Prohibited Remarks

   Any person who causes actual disruption by making personal attacks, slanderous remarks or other disruptive conduct while addressing the council shall be barred from further participation in the meeting by the Presiding Officer, unless permission to continue is granted by a majority vote of councilmembers present.

6. Signs and Banners Prohibited

   Signs and banners are not permitted in Council Chambers. This prohibition does not apply to charts, diagrams, enlarged photographs or other demonstrative exhibits or visual media utilized by a speaker in presenting testimony to Council.

7. No citizen or interested party will be refused the right to address council, within the limits described above.

8. Any variance or waiver of these rules shall be by a majority vote of councilmembers present.

J. DEBATE

1. Right to Participate

   All elected officials, the President of Council excepted, members of the administration and staff members shall be entitled to take part in the discussion of all issues before the council.

2. Right to Question

   All elected officials, the President of Council excepted, shall have the right to question any individual, including any elected official, administration or staff member present, or public persons in attendance, on matters as long as the questioning adheres to the rules and procedures hereto and are germane to the issue before the Council for discussion.

3. Request to Speak

   A Speaker must request the right to speak by addressing the Presiding Officer. Upon being recognized, the Speaker may proceed. A Speaker may request the right to speak a subsequent time only after all others present, with a right to participate, have been given the opportunity to speak.

4. Limitations of Speakers

   Speakers shall confine their remarks to matters currently under discussion.

   No Speaker may filibuster. No Speaker shall speak for more than five minutes on any question, except by leave of the Presiding Officer or by a majority vote of councilmembers present.

   Under no circumstances shall a Speaker's questioning be conducted in a manner that would constitute a cross-examination of or an attempt to ridicule or degrade the individual being questioned.

   No one shall interrupt or argue with any Speaker who has the floor, other than the Presiding Officer in order to preserve order during meetings.

5. Courtesy

   In the discussion, comments, or debate of any matter or issue, all Speakers shall be courteous in their language and deportment, and shall not discuss or comment on personalities, or indulge in derogatory remarks or make insinuations about any other elected official, or any member of the staff or the public.

6. Violations

   If a Speaker violates these rules on debates, the Presiding Officer shall call such Speaker to order, and the offending Speaker shall be silent except to explain or continue in order. If the Presiding Officer violates these rules on debate or fails to call a Speaker to order, any other councilmember may, under a point of order, call the Presiding Officer or such other offending Speaker to order, and the person being called to order shall be silent except to explain or continue in order.

7. Any councilmember shall have the right to challenge any action or ruling of the Presiding Officer or another councilmember, as the case may be, in which case the decision of the majority of the councilmembers present shall govern.

K. LIMITATIONS ON POLITICAL SPEECH

Except where the Council is properly considering a motion regarding whether the City shall take an official position on a political issue, no Speaker shall use a Council meeting as an occasion to express an opinion in support of or in opposition to a candidate for public office or a ballot measure.

L. MAJORITY REQUIREMENTS FOR COUNCIL ACTION

All actions of council shall be by a Majority vote of those elected or appointed thereto, except emergency legislation, which shall require Three-fourths Majority vote of council to suspend the Statutory Rules and Two-thirds Majority vote of council to enact said emergency legislation. Also, any other affirmative requirement dictated by the laws of Ohio, or by financial procedure, or in order to secure public funding shall be adhered to, even though in conflict with these requirements for council action.

M. VOTING

1. Vote by Rotation

   Every vote will be by rotation so that one councilmember will not always vote first.

2. Motion to Suspend Reading

   A motion to suspend the Statutory Rules in order to give legislation its second and/or third reading shall require Three-fours Majority vote in order to prevail.

3. Motion for Reconsideration

   Any member who was absent or voted with the prevailing side may move a reconsideration of any action of council, excepting measures which shall be in immediate effect.

   Such a Motion for Reconsideration shall be made not later than the next regular meeting after the action to which it relates was taken.

   No Motion for Reconsideration shall be made more than once on any measure.

   A Motion for Reconsideration shall require a Majority vote of council in order to prevail.

4. Breaking Tie Votes

   The President of Council shall break a tie vote of all council members. A tie vote by less than all council members shall not be broken.

5. Abstentions

   A councilmember may abstain from discussion and voting on a question because of a stated conflict of interest. Notice of intent to abstain shall be given prior to any discussion or participation on the subject matter or as soon thereafter as the councilmember perceives a need to abstain, after which the affected councilmember shall remove himself or herself from the council's deliberations

and considerations of the matter and shall have no further participation in the matter.

Prior to the time that a council member gives notice of intent to abstain, the affected councilmember may confer with the Director of Law to determine if abstention is truly required. If the intended abstention can be anticipated in advance, the conference with the Director of Law should occur prior to the meeting at which the subject matter is scheduled to come before the council. If that cannot be done, the affected councilmember should advise the Presiding Officer that he or she has an "abstention question" that he or she wants to review with the Director of Law. A brief recess should then be taken for that purpose.

N. WRITTEN CORRESPONDENCE

For all written correspondence the Clerk of Council will read the author(s) name and title, date of the correspondence, and a summary of its content aloud during the appropriate portion of the council meeting. A specific correspondence shall be read aloud in its entirety upon request of a councilmember, member of the administration, Director of Law, City Auditor or City Treasurer and upon approval of a majority of councilmembers present.

O. MINUTES

The Clerk of Council shall deliver by email, or otherwise make available minutes of each Regular and Special meeting to or for each elected official as soon as approved by the President of Council, or in the absence of the President of Council, President Pro-Tem ~~not more than seven days after such meeting~~. (Denise request)

Consider alternative language:

The Clerk of Council shall make best effort to deliver by email, or otherwise make minutes of each Regular and Special Meeting to or for each elected official by the next regularly scheduled Council Meeting.

P. RULES OF ORDER

Council hereby adopts Robert's Rules of Order, the latest edition, to govern the conduct of business at all meetings of council insofar as said rules are not in conflict with these Rules of Procedure and Ohio statutes.

SECTION III. PRESIDENT OF COUNCIL

A. The President of Council shall preside at all regular and special meetings of council but shall have no vote therein except in the case of a tie.

B. The President of Council shall be the Acting Mayor when the Mayor is absent or unable to perform his or her duties but shall not serve as President while acting as Mayor. While acting as Mayor, the President of Council shall retain the right to vote on matters before the council as the person would otherwise have as President of Council.

C. The President of Council shall refer matters requiring study by committee to the proper committee(s). Council, by a majority vote of members present, can refer matters to a standing committee.

D. The President of Council is separately elected official and being part of the Executive Branch of City Government shall not enter into debate on any question before council, in accordance with Robert's Rule of Order.

E. The President of Council shall appoint one councilmember to the Tax Incentive Review Council per ORC 5709.85.

SECTION IV. OFFICERS OF COUNCIL

A. PRESIDENT PRO TEMPORE

A councilmember shall be elected President Pro Tempore within the first ten (10) days of the term of council. The President Pro Tempore shall:

1. Preside at all regular and special meetings where the President of Council is unable to preside. While acting as the Presiding Officer, the President Pro Tempore shall retain the right to debate and vote on matters before the council as the person would otherwise have as a councilmember.
2. The President Pro Tempore shall appoint members to all ad hoc committees as may be created.
    a. Confirmation for the creation of an ad hoc committee, and membership thereof, is required by a Majority of council.
3. The President Pro Tempore will appoint a representative for contract negotiations for police and fire as needed.

B. CLERK OF COUNCIL

Within 10 days from the commencement of their term, the members of council shall elect a Clerk of Council who shall serve for two years unless sooner removed.

In the absence of the President and the President Pro Tempore, the Clerk shall call the meeting of council to order and call the roll. If a Quorum is present, the council shall appoint one of its members President Pro Tempore, who shall act as the Presiding Officer for the meeting proceed with the Order of Business.

C. PARLIAMENTARIAN

The Director of Law shall act as the Parliamentarian of Council. In absence of the Director of Law, an Assistant Director of Law shall act as the Parliamentarian of Council.

SECTION V. COMMITTEES

A. RULES/ORGANIZATION

A committee comprised of at least three members of council appointed by the President Pro Tempore, shall submit proposed committee assignments and committee chairs to council before the start of each two-year term. Confirmation of these recommendations is required by a Majority of council during the first meeting of its two-year term.

B. STANDING COMMITTEES

The following committees shall be standing committees:

1. Appropriations
    a. The Appropriations Committee shall have five members.
2. Planning and Zoning
    a. The Planning & Zoning Committee shall have five members.
3. Strategic Planning Committee
    a. Council shall have five representatives on this committee selected as follows:
        i. One Council representative from each of the following Standing Committees:
            1. Appropriations
            2. Planning and Zoning
            3. Streets, Sidewalks and Parking
            4. Water and Sewer
        ii. One representative, appointed as chair of the Strategic Planning Committee
4. Streets, Sidewalks and Parking
    a. The Streets, Sidewalks and Parking Committee shall have three members.
5. Water and Sewer
    a. The Water and Sewer Committee shall have five members.

All committee meetings shall be open to the public.

The committees of council shall expeditiously investigate and dispose of all matters coming within the area of their committee responsibility and all matters referred to the committee. A written report of their dispositions shall be submitted. All committee recommendations should be written during the meeting when possible. Voting to accept the committee report is a vote accepting the recommendation as written.

C. COUNCIL REPRESENTATIVES

Council shall have a representative or representatives appointed to each of the following boards/commissions/committees:

1. Airport Advisory Board
2. The Alliance Board
3. Blanchard River Watershed Partnership
4. Downtown Findlay Improvements District
5. Energy Special Improvement District Board of Directors
6. Hancock Regional Planning Commission
    a. The Chair of the Planning & Zoning Committee should be appointed as council's representative to this commission.
7. Income Tax Board
    a. The Chair of the Appropriations Committee shall be appointed as council's representative on this board.
8. Parks and Recreation Board
    a. Council shall have two representatives on this board.
9. Re-investment Area Housing Council & Revolving Loan Fund
10. Shade Tree Commission
11. Street Designation Committee
    a. The Chair of the Streets & Sidewalks Committee shall be appointed as one member of the Street Designation Committee per Codified Ordinances of the City of Findlay, Ohio 509.01(d).
12. Tax Incentive Review Council
    a. The President of Council shall appoint the council's representative on this council per ORC 5709.85.
    b. The Chair of the Appropriations Committee is recommended to be appointed as council's representative on this board.
13. Traffic Commission
14. Utility Termination Board of Appeals

D. COMMITTEES OF THE WHOLE

A Committee of the Whole may be called by a Majority of councilmembers to discuss an issue(s) which is deemed to be of such importance so as to involve the entire council.

All Committee of the Whole meetings shall be open to the public.

E. AD HOC COMMITTEES

Ad Hoc Committees may be created at the request of a Majority of councilmembers.

1. No ad hoc committee shall have a number of members equal to or greater than the Majority of councilmembers.
2. The President Pro Tempore shall appoint members to all ad hoc committees.
    a. Confirmation for the creation of an ad hoc committee, and membership thereof, is required by a Majority of council.
3. All ad hoc committee meetings shall be open to the public.
4. An ad hoc committee shall expire with the council that created it.

SECTION VI. ADOPTION

The above Rules of Procedure are hereby adopted and shall be in full force and effect as of the time of their adoption.

Adopted by Council January 2, 2024

Neutral
As of: March 11, 2024 6:33 PM Z

Drake v. Stenehjem

United States District Court for the District of North Dakota

September 15, 2023, Decided; September 15, 2023, Filed

Case No.: 1:20-cv-00231

Reporter
2023 U.S. Dist. LEXIS 164701 *; 2023 WL 6049251

Robert Drake, Plaintiff, vs. Wayne Stenehjem, Attorney General of the State of North Dakota, in his official capacity, City of Valley City, North Dakota; Dave Carlsrud, President, in his official capacity; Duane Magnuson, Michael Bishop, Jeffery Erickson, and Dick Gulmon, Commissioners, in their official capacities, Defendants.

Prior History: *Drake v. Stenehjem, 2021 U.S. Dist. LEXIS 242616 (D.N.D., July 30, 2021)*

Core Terms

city commission, ***rights***, official capacity, meetings, summary judgment, agenda, custom, open ***meeting***, city employee, ***public*** forum, alleges, manner restriction, ***public meeting***, restrictions, limitations, council meeting, indifference, deliberate, ***speaking***, asserts, member of the public, individual capacity, due process ***right***, content neutral, personal attack, reasonable time, agenda item, non-movant, regulation, regular

Counsel: [*1] For Robert Drake, Plaintiff: Lynn M. Boughey, LEAD ATTORNEY, Boughey Law Firm, Mandan, ND.

For City of Valley City, North Dakota, Dave Carlsrud, President, in his official capacity, Duane Magnuson, Commissioner, in his official capacity, Michael Bishop, Commissioner, in his official capacity, Jeffery Erickson, Commissioner, in his official capacity, Dick Gulmon, Commissioner, in his official capacity, Defendants: Daniel L. Gaustad, Joseph E. Quinn, Pearson Christensen, PLLP, Grand Forks, ND; Ella Braaten, Pearson Christensen, PLLP, North Dakota, Grand Forks, ND.

Judges: Daniel M. Traynor, United States District Judge.

Opinion by: Daniel M. Traynor

Opinion

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

[¶ 1] THIS MATTER comes before this Court upon Defendants City of Valley City, North Dakota ("City"); Dave Carlsrud, President, in his official capacity; Duane Magnuson, Michael Bishop, Jeffrey Erickson, and Dick Gulmon, in their official capacities (collectively with the City, "City Defendants") Motion for Summary Judgment filed on July 12, 2022. Doc. No. 31. Plaintiff Robert Drake ("Drake") filed a Response on September 8, 2022. Doc. No. 43. The City [*2] Defendants filed a Reply on September 29, 2022. Doc. No. 47.

[¶ 2] Also before the Court is Drake's Cross Motion for Summary Judgment filed on October 28, 2022. Doc. No. 48. The City Defendants filed a Response on November 18, 2022. Doc. No. 50. Drake declined to submit a Reply.

[¶ 3] For the reasons set forth below, the City Defendants' Motion for Summary Judgment is **GRANTED** and Drake's Cross-Motion for Summary Judgment is **DENIED**.

BACKGROUND

[¶ 4] This is the case of a disgruntled man who was frustrated he was not permitted to make every single point he wanted to the Valley City Commission. Drake alleges the City violated his and Lloyd Nelson's ("Nelson") *First Amendment* ***rights*** to ***speak*** at City Commission meetings. See Doc. No. 1. For years, Drake attended City Commission meetings on several occasions to ask questions, make statements

concerning the City's budget, employees, projects, and legislative items. Id at ¶ 24. On occasion, Drake and Nelson were asked not to ***speak***, not to question the committee, or asked to leave the podium at City Commission meetings. See id.

[¶ 5] The City implemented a policy to regulate the public's participation in City Commission meetings, which was based on the North Dakota **[*3]** Attorney General's Open Meeting Manual ("OMM"). Doc. Nos. 33, ¶ 6, 33-1, p. 67. This Court has already concluded the OMM is an "interpretation of case law, state statutes, past Attorney General opinions, and administrative rules regarding open records and meetings." Doc. No. 23, ¶ 6. The Attorney General's OMM indicates, "[t]he purpose of the open meetings law is to give members of the public access to the meetings of a governing board of a public entity but that access does not give members of the public the ***right*** to participate or ***speak*** at the ***public meeting***." North Dakota Office of Attorney General, Open Meetings Manual, p. 12, found at https://attorneygeneral.nd.gov/sites/ag/files/documents/OpenMeetingsManual.pdf ; see also Doc. No. 33, p. 2 (noting the OMM is available for review at the web address); Doc. No. 33-1, p. 67 (memo from City Attorney Marl Martineck to Mayor Dave Carlsrud explaining the OMM and quoting the same); Doc. No. 34.

[¶ 6] The Public Comment section of the City Commission agenda provides guidance based upon the OMM:

> Attorney General's "A Citizen's Guide to North Dakota Open Records & Open Meetings Laws" *"A member of the public does not have the **right** to **speak** **[*4]** to the governing body at an open **meeting**. The **public** is only entitled to see and hear what happens at a meeting, and to record or broadcast those observations.*
>
> • No personal attacks to persons present or not
> • No inflammatory language used during time that you have the platform
> • 5 minute maximum or as directed by the chair
> • Thank you for participating in City Government.

Doc. No. 33, p. 2. On May 19, 2008, the City adopted the Attorney General's OMM in their Rules of Order and Decorum Applicable to ***Speaking*** at Regular Open Meetings of the Valley City Commission, adopting the following policy:

> 1. No longer than five minutes will be allowed for the presentation of any agenda item to the Commission by an individual other than a City official or employee, unless additional time is given by the presiding officer or by a majority vote of the City Commission. The comments will be relevant to and focused upon the agenda item.
>
> 2. General public participation and comment apart from agenda items will be scheduled for all regular open meetings. A five minute time limit will also apply to such participation and comment. Those wishing to ***speak*** must place their name and the subject to be addressed on **[*5]** a sign in sheet prior to the meeting. The presiding officer will allow comment if the subject matter is considered relevant to current city business.

Doc. No. 33, pp. 2-3 (this policy can be viewed at https://www.valleycity.us/commission).

[¶ 7] Disruptive individuals or those who violate the City Commission's policies, rules, or procedures will be informed they may be subject to removal from the meeting if they continue to be disruptive or violate the rules. Id at p. 3. The City commission has taken certain actions to enforce its authority under its policies:

> • The City Commission sets the agenda for the City Commission Meeting. All Agenda items to be discussed at a regular City Commission Meeting shall be submitted to the office of the City Auditor of the City of Valley City by 5:00 PM on the Wednesday prior to that City Commission ***meeting***.
>
> • Informed the general ***public*** that open meetings law do not give members of the public the ***right*** to participate or ***speak*** at the ***public meeting*** but the individual could ***speak*** with Commissioners or City staff following the meeting.
>
> • The City Commission, to assess whether proffered questions are relevant to the agenda, may require preapproval of questions **[*6]** or for questions to be submitted in writing prior to a City Commission meeting.
>
> • When the City Commission permits the general public to ***speak***, the City Commission limits the comments to items and topics relevant to the items on the agenda.

Id.

[¶ 8] On June 21, 2019, the City Attorney issued a letter

to City officials explaining the City's purpose behind its open ***meeting*** policy allowing ***public*** access to City commission meetings. Id at pp. 3-4. He indicated existing law does not give citizens a ***right*** to ***speak*** at a ***public meeting***. Doc. No. 33-1, p. 67. In his letter, the City Attorney stated it is City policy to provide time for public comment subject to the limitations adopted in the Rules of Order and Decorum Applicable to ***Speaking*** at Regular Open Meetings of the Valley City Commission. Id

[¶ 9] Drake took numerous actions to participate in the City Commission meetings, including the following relevant actions:

1. On April 21, 2015, Drake submitted an agenda request asking to discuss prices associated with two properties bought by the City as well as garbage collection rates. Id. at p. 2

2. Around October 27, 2015, Drake submitted an agenda request asking to publicly demand Valley City **[*7]** Chief of Police, Fred Thompson, be fired at the November 9, 2015, City Commission meeting. Id at p. 3. The next day, Drake withdrew his request. Id

3. Around November 3, 2015, Drake asked to place on the agenda his request to demand the Valley City Commission terminate the Chief of Police's employment. Id at p. 4. He withdrew his request on November 5, 2015, and asked that it be placed on the November 17, 2015, agenda. Id at p. 5. Ultimately, after discussing the matter with the City Attorney, this item was removed from the agenda. Id at pp. 15-19. The City Attorney noted the need to properly investigate complaints against City employees. Id

4. Around May 5, 2016, Drake submitted an agenda request for the May 17, 2016, Commission meeting to discuss Officer Swenson's regular and overtime pay, claiming the officer may have committed a class B felony. Doc. No. 33-1, p. 51. This item was removed from the agenda. Id. at p. 60.

5. On February 11, 2016, the City Commission held a special meeting. The purpose was to discuss how to handle employee grievances filed against the Mayor. There was a discussion of hiring an outside neutral attorney to handle the grievance process. Drake ***spoke*** at this **[*8]** special meeting. He argued the grievances were not valid and failed to follow the proper procedure. The Commissioners discussed the issue he raised and Drake threatened a recall election if outside counsel was hired. Despite this threat, the Commission decided to hire an outside attorney to investigate the validity of the grievances based on Drake's request. If they were valid, an attorney would be hired to initiate the grievance process. Doc. No. 33-2 (conventionally filed audio recording of this special meeting). See also Doc. No. 33-1, p. 48 (letter from Drake to Commissioner Pederson thanking him for giving him the chance to ***speak*** at the February 11, 2016 meeting); Id. at p. 49-50 (letters from Drake to Commissioners Magnuson and Luke apologizing for some of the things he said at the February 11, 2016 meeting).

6. Drake submitted another agenda request around January 5, 2018. This time, Drake wanted to have a public discussion of why the Commission agreed to pay former Police Chief Thompson $100,000 in severance pay, knowing of alleged sexual harassment claims against him. Id. at p. 61. There were no public comments taken at the January 16, 2018, meeting Doc. No. 33, p. 4.

7. At **[*9]** the December 18, 2018, meeting, the Commission met to discuss, among other things, the "Valley City-Barnes County Development Corporation request forx $250,000 for a Two Year Workforce Development Program, funded through City Sales Tax Dedicated to Economic Development." Doc. No. 33-1, p. 65. Drake asked about the availability of this program for high school students. See id. Jennifer Feist informed him it was. Id. At this meeting, the City Commission also approved an engineering agreement regarding the 5th Avenue NW reconstruction in an amount not to exceed $118,500. Drake was allowed to ask "if property owners will be able to protest out the special assessments." Id. The City Auditor confirmed protest was an option. Id. Drake then asked if he could "protest out the widening of the street only." Id. Commission "President Carlsrud stated the wider street without parking is a reason to hold another ***public meeting***." Id.

[¶ 10] In response to Drake's request to discuss certain allegations against Chief of Police, the City Attorney and City Administrator came up with a proposed policy to create a process for citizens to lodge complaints against city employees and personnel. Id. at pp. 6-8. **[*10]** This process was intended to protect the due process ***rights*** of the city employees and personnel. Id. at p. 6 ("[I]n the

event that a citizen complaint would eventually lead to a court action involving that City employee, there is a very real possibility that a Court could find the City denied the City employee or City Department head of his/her constitutional Due Process ***rights***."). According to the City Attorney, prior to terminating an employee, due process requires notice of the intent to fire the employee and an opportunity for that employee to be heard. Id. at p. 8. According to the City Attorney, if Drake were permitted to lodge a complaint against the Chief of Police without a formal written complaint and the Chief of Police being given an opportunity to respond, permitting Drake to lodge the complaint at an open Commission meeting "would violate the Due Process ***rights*** of the Police Chief." Id.

[¶ 11] Drake submitted an affidavit in opposition to the City's Motion for Summary Judgment. Doc. No. 45-1. Drake repeatedly alleged the City denied him the opportunity to raise his concerns and to discuss issues at public meetings. Id. at 1, 4. He asserts in his affidavit that the City **[*11]** improperly applied state statutes, commission policy and legal opinions from the City Attorney in violation of his *First Amendment* ***rights*** "to be heard at a ***public*** city commission[] ***meeting***." Id. at 1. Importantly, little of these allegations are substantiated with a documentary record.[1]

[¶ 12] Drake's Complaint alleges four claims. Doc. No. 1. Drake brought four claims pursuant *42 U.S.C. § 1983*: (1) a violation of his *First Amendment* ***rights***; (2) a request for declaratory relief; (3) a request for injunctive relief; (4) and a request for attorney's fees. Doc. No. 1. Claims two, three, and four are contingent on whether there has been a violation of his *First Amendment* ***rights*** and are more properly considered relief rather than causes of action. Drake alleges the City violated his and Nelson's *First Amendment* ***rights*** by (1) refusing to allow them to ***speak*** at council meetings; (2) imposing time restrictions on their ***speech***; (3) threatening their removal from council meetings; (4) preventing display of a placard on live broadcast; and (5) maintaining a file regarding their interactions with the city council. This Court has jurisdiction under *28 U.S.C. §§ 1331*, *1343(a)(3)*.

DISCUSSION

I. Summary Judgment Standard

[¶ 13] Summary judgment is appropriate when the evidence, viewed in the **[*12]** light most favorable to the non-movant, indicates there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(a)*. A fact is material if it may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. A factual dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-movant. Id. "[W]e give the nonmoving party the benefit of all reasonable inferences which may be drawn without resorting to speculation." *TCF Nat'l Bank v. Mkt. Intelligence, Inc., 812 F.3d 701, 707 (8th Cir. 2016)* (internal quotations omitted).

[¶ 14] The purpose of summary judgment is to determine whether the evidence presents sufficient disagreement as to warrant submission of the case to a jury or whether the evidence is so one-sided that one party must prevail as a matter of law. *Diesel Mach., Inc. v. B.R. Lee Indus., Inc., 418 F.3d 820, 832 (8th Cir. 2005)*. The movant bears the burden of informing the Court of the basis for its motion and must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Torgerson v. City of Rochester, 643 F.3d 1031, 1042 (8th Cir. 2011)*. The non-movant may not rely on allegations or denials made in its pleading, rather its response must set out specific facts showing a genuine issue for trial. Id.; *Fed. R. Civ. P. 56(c)(1)(A)*. There is no genuine issue for trial and summary judgment is proper when the record, taken as **[*13]** a whole and viewed in the light most favorable to the non-movant, could not lead a rational trier of fact

[1] The City Defendants object to portions paragraphs 2, 3, 6, 7, 9, 9, 16, 17, and 18-21 of the affidavit because it violates *Rule 56(c)(4) of the Federal Rules of Civil Procedure* because (1) it largely fails to provide facts based on personal knowledge; (2) sets out inadmissible facts; and (3) contains numerous legal conclusions and opinions guised as facts. Doc. No. 47, pp. 1-2. The City Defendants also argue the affidavit contains a number of conclusory facts but fail to reference anything other than this "self-serving affidavit." Id at p. 3. The Court agrees with the City Defendants. Plaintiff was required to submit more than a self-serving affidavit to avoid summary judgment because he is not permitted "to replace conclusory allegations of a complaint or answer with conclusory allegations of an affidavit." *Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990)*; see also *Gander Mountain Co. v. Cabela's, Inc., 540 F.3d 827, 831 (8th Cir. 2008)* (quoting *Conolly v. Clark, 457 F.3d 872, 876 (8th Cir. 2006)*) ("'[A] properly supported motion summary judgment is not defeated by self-serving affidavits.'").

to find in favor of the non-movant. Diesel Mach., Inc., 418 F.3d at 832.

II. Drake Lacks Standing to Pursue Nelson's Claims

[¶ 15] Throughout the Complaint, Drake references Nelson's interactions with the City commission and seeks relief for the City Defendant's alleged violations of Nelson's First Amendment ***rights***. Doc. No. 1. Drake alleges that Nelson's ***rights*** were violated when the City Commission asked Nelson to leave the lectern, required preapproval of his questions to the commission, and by cutting his personal attacks against City employees short. Doc. No. 45-1 at 6-9. The City Defendants argue Drake lacks standing to assert claims on behalf of Nelson. The Court Agrees with the City Defendants.

[¶ 16] Standing "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." Spokeo, Inc. v. Robins, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). The principle of standing is to determine whether a party is sufficiently affected in order to present a justiciable controversy before the court. United Fin. Cas. Co. v. Penrod, 2014 U.S. Dist. LEXIS 188410, 2014 WL 11531336, at *4 (D.N.D. 2014). The Court does not have jurisdiction to enforce private ***rights*** unless one has a real interest in the cause of action. 2014 U.S. Dist. LEXIS 188410, [WL] at *5. Standing ensures a litigant has **[*14]** a personal stake in the outcome of the matter. See Potter v. Norwest Mortg., Inc., 329 F.3d 608, 611 (8th Cir. 2003). The United States Supreme Court held that federal courts should hesitate to resolve controversies based on the ***rights*** of third parties not privy to the litigation. Singleton v. Wulff, 428 U.S. 106, 113, 96 S. Ct. 2868, 49 L. Ed. 2d 826 (1976).

[¶ 17] The parties do not dispute that Nelson "passed away before this lawsuit was filed." Doc. No. 1 at 2-3. However, Drake's Complaint contains several references to Nelson's interactions with the City commission, seeks this Court's declaration that Nelson's ***rights*** have been violated and requests attorney's fees for time "expended" on the deceased's claims. Id. at 10, 42. Drake cannot invoke this Court's jurisdiction to enforce the ***rights*** of the deceased because he has no legal interest in Nelson's claims. See Warth v. Seldin, 422 U.S. 490, 499, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975) ("[T]his Court has held that the plaintiff generally must assert his own legal ***rights*** and interests, and cannot rest his claim to relief on the legal ***rights*** or interests of third parties."). Nelson is not named a party to this action because he was deceased before Drake filed the Complaint. Doc. No. 1 at 1. This Court cannot resolve controversies based on the ***rights*** of Nelson as he was deceased prior to this action's commencement. See Singleton, 428 U.S. at 114 ("[O]ne may not claim standing **[*15]** . . . to vindicate the constitutional ***rights*** of some third party."). Therefore, the claims asserted by Drake regarding the ***rights*** of Nelson are hereby **DISMISSED**.

III. Drake's *First Amendment* Claim

[¶ 18] The Complaint alleges the City Defendants violated Drake's ***right*** to ***speak*** before the City Commission and to voice his concerns regarding City funds, taxation and conduct of City employees. Doc. No. 1. The City asserts that it is not subject to civil liability under 42 U.S.C. § 1983 due to qualified immunity. Doc. No. 32 at 11. The City also asserts Drake cannot establish a violation of his First Amendment ***rights*** because the City has a legitimate government interest in conducting orderly government meetings. Id. at 13, 16-24. In response to Drake's Cross-Motion for Summary Judgment, the City argues it is entitled to summary judgment over Drake's official capacity claims. Doc. No. 50, pp. 13-15. The Court agrees the Complaint must be dismissed because the claims are against the City Defendants in their official capacity and no reasonable fact-finder could conclude a constitutional violation occurred.[2]

[¶ 19] The first question the Court must resolve is whether this is a case against the City Defendants in their official capacity, individual **[*16]** capacity, or both. See Johnson v. Outboard Marine Corp., 172 F.3d 531, 535 (8th Cir. 1999) ("Public servants may be sued under section 1983 in either their official capacity, their individual capacity, or both."). The principal question governing claims under 42 U.S.C. § 1983 is whether a violation of a ***right*** secured by the United States Constitution occurred under the color of state law. Albright v. Oliver, 510 U.S. 266, 271, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994). A party alleging a constitutional injury under 42 U.S.C. § 1983 must prove

[2] Although this issue was first raised in the City's Response brief to Drake's cross-motion for summary judgment and the Court would not ordinarily consider summary judgment arguments raised for the first time in similar circumstances, this issue is ultimately dispositive of this case and must be resolved.

(1) a violation of a constitutional ***right***, (2) by a state actor, (3) who acted with the requisite culpability and causation to violate a ***right*** secured by the Constitution. *Hart v. City of Little Rock, 432 F.3d 801, 804 (8th Cir. 2005)*. *Section 1983* does not create any ***rights***; rather, it is a method for asserting constitutional ***rights***. *Albright, 510 U.S. at 271*. *Section 1983* claims do not provide a remedy unless a constitutional violation has occurred. See *Doe v. Gooden, 214 F.3d 952, 955 (8th Cir. 2000)*.

[¶ 20] "A plaintiff may assert *§ 1983* claims against a public official acting in his individual capacity and in his official capacity." *Baker v. Chisom, 501 F.3d 920, 923 (8th Cir. 2007)*. When a complaint is silent as to what capacity it sues the defendant under, the Eighth Circuit has established a clear presumption the claim is against the defendants in their official capacities only. Id. (quoting *Egerdahl v. Hibbing Cmty. Coll., 72 F.3d 615, 619 (8th Cir. 1995)*). In other words, unless the complaint specifically names a defendant in his or her individual capacity, courts presume it is an official capacity **[*17]** claim only. Id Indeed, the Eighth Circuit has been clear its caselaw "require[s] more than ambiguous pleading" and that "a 'cryptic hint' in plaintiffs complaint is not sufficient." *Id. at 924*. "[S]pecific pleading of individual capacity is required." *Andrus ex rel. Andrus v. Arkansas, 197 F.3d 953, 955 (8th Cir. 1999)*. "Because *section 1983* liability exposes public servants to civil liability and damages, [the Eighth Circuit has] held that only an express statement that they are being sued in their individual capacity will suffice to give proper notice to the defendants." *Johnson, 172 F.3d at 535*.

[¶ 21] Here, there is no question Drakes claims against the City Defendants are in their official capacities.[3] The Complaint's caption indicates the suit is against them in their official capacities and the redress sought does not include money damages against them individually. See Doc. No. 1, pp. 1, 38-43. There is nothing—not even a "cryptic hint"—in the Complaint to suggest a suit against the Defendants in anything other than their official capacities. See *Baker, 501 F.3d at 925*. As such, this suit is against the City Defendants in their official capacities only.

[¶ 22] In the Eighth Circuit, "[a] suit against a government official in his or her official capacity is 'another way of pleading an action against an entity **[*18]** of which an officer is an agent.'" *Baker, 501 F.3d at 925* (quoting *Monell v. Dep't of Social Services, 436 U.S. 658, 690 n.55, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)*); see also *Veatch v. Bartels Lutheran Home, 627 F.3d 1254, 1257 (8th Cir. 2010)* ("A suit against a government officer in his official capacity is functionally equivalent to a suit against the employing governmental agency."). To sustain an official capacity claim, Drake "must prove that the [City] '*itself* caused the constitutional violation at issue.'" *Parrish v. Ball, 594 F.3d 993, 997 (8th Cir. 2010)* (quoting *Elder-Keep v. Aksamit, 460 F.3d 979, 986 (8th Cir. 2006)*). It is well-established "[a] political subdivision may not generally be held vicariously liable under *section 1983* for the unconstitutional acts of its employees." *Johnson, 172 F.3d at 536* (citing *Monell, 436 U.S. at 694*). Indeed, "*Section 1983* liability for a constitutional violation may attach to a municipality if the violation resulted from (1) an 'official municipal policy,' *Monell, 436 U.S. at 691*, (2) an unofficial 'custom' *id. at 690-91*; or (3) a deliberately indifferent failure to train or supervise, see *City of Canton, Ohio v. Harris, 489 U.S. 378, 388, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989)*." *Atkinson v. City of Mt. View Mo., 709 F.3d 1201, 1214 (8th Cir. 2013)*. The Complaint only asserts claims of an unconstitutional official policy or custom. See Doc. No. 1, ¶¶ 24-26. The Court will address those two issues below.

[¶ 23] As an initial matter, the Court will dismiss the claims against the named Defendants—Dave Carlsrud, Duane Magnuson, Michael Bishop, Jeffrey Erickson, and Dick Gulmon—in their official capacities as redundant of those against the City itself. See *Veatch, 627 F.3d at 1257* ("A suit against a government **[*19]** officer in his official capacity is functionally equivalent to a suit against the employing governmental entity. Thus, the court properly dismissed the claim against Leonard as redundant of the claim against the City." (internal citation omitted)). Accordingly, each claim as alleged against Dave Carlsrud, Duane Magnuson, Michael Bishop, Jeffery Erickson, and Dick Gulmon in their official capacities are **DISMISSED with prejudice** as redundant of those against the City of Valley City.

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[3] The Parties spend a vast majority of their time arguing qualified immunity against the named defendants. The Court does not reach this issue because it is inappropriate when the claims are clearly against each Defendant in their official capacity. See *Bankhead v. Knickrehm, 360 F.3d 839, 844 (8th Cir. 2004)* ("Qualified immunity is a defense only against a claim in one's individual capacity."); *Johnson 172 F.3d at 535* ("Qualified immunity is not a defense available to governmental entities, but only government employees sued in their individual capacity. And because the pleadings are construed as a suit against the county, the only issue raised on appeal, qualified immunity, is irrelevant.").

1. City Policy

[¶ 24] Drake argues the Commission's use of the policy to justify denying him the opportunity to address the commission shows the policy itself is unconstitutional. The City argues the policy is constitutional on its face as a content neutral time, place, and manner restriction on ***speech*** at City Council meetings because the City Council meetings are limited public forums. The Court agrees with the City.

[¶ 25] The Court has already alluded the City Council meetings are limited public forums. See Doc. No. 23, ¶ 15 ("When a State, like North Dakota, opens certain meetings of its political subdivisions to the public, those meetings are typically designated 'limited public forums,' and, therefore, **[*20]** 'subject to reasonable limitations as to the time, place, and manner of ***speech***.'" (quoting *Palmore v. City of Pac., 851 F.Supp.2d 1162, 1172 (E.D. Mo. 2010)*). The Supreme Court has noted, "[p]lainly, public bodies may confine their meetings to specified subject matter and may hold non public sessions to transact business." *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Emp. Resl. Comm'n, 429 U.S. 167, 175 n.8, 97 S. Ct. 421, 50 L. Ed. 2d 376 (1976)*. In Wright v. Anthony, the Eighth Circuit concluded a five-minute time limit on presenting to a United States Congressman was a reasonable time, place, and manner restriction. *733 F.2d 575, 577 (8th Cir. 1984)*. Indeed, it is well-established "[t]he Constitution does not grant to members of the public generally a ***right*** to be heard by public bodies making decisions of policy." *Minn. State Bd. for Cmty. Colls. v. Knight, 465 U.S. 271, 284, 104 S. Ct. 1058, 79 L. Ed. 2d 299 (1984)*. When looking at the reason for excluding certain ***speech*** in a limited public forum, "[t]he government's purpose is the controlling consideration." Id.

[¶ 26] Time, place, and manner restrictions are valid if they do not reference the content of the regulated ***speech***, "are narrowly tailored to serve a significant governmental interest, and they leave open ample alternative channels for communication of the information." *Clark v. Cmty For Creative Non-Violence, 468 U.S. 288, 293, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984)*. The main inquiry "is whether the government has adopted a regulation of ***speech*** because of disagreement with the message it conveys." *Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989)*. Even when a regulation incidentally **[*21]** regulates some speakers but not others, the regulation is constitutional on its face if it is neutral. *Ward, 491 U.S. at 791*.

[¶ 27] Here, the policy at issue is content neutral and facially constitutional. It limits speakers to address agenda items and keep their time under five minutes. Doc. No. 32, p. 3. The presiding commissioner can extend the time if appropriate. Id. If a speaker wishes to address a non-agenda item, it must be scheduled for another open meeting. Id. The time the speaker will have to address that non-agenda item would be five minutes. Id. Importantly, there are no content restrictions on what agenda items may be discussed and what a citizen may request to be discussed at a regular open meeting. See id. The policy simply sets out rules governing how an individual may address the City Council at appropriate times without any reference to a specific type of prohibited ***speech***. This is clearly content neutral and the policy is not unconstitutional on its face. See *Ward, 491 U.S. at 791* ("A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others."); *Wisconsin Emp. Resl. Comm'n, 429 U.S. at 175 n.8* (noting municipalities may limit their public **[*22]** meetings to specific tops); *Wright, 733 F.2d at 577* (holding a five-minute time-limit was a reasonable time, place, and manner restriction).

[¶ 28] Accordingly, to the extent Complaint alleges a claim the City's Policy is unconstitutional, this claim fails as a matter of law and is **DISMISSED with prejudice.**

2. City Custom

[¶ 29] Drake contends the City had an unconstitutional custom of preventing him from addressing the City Council and placing matters on the meeting agendas to discuss at future meetings.[4] The City argues there is no evidence of an unconstitutional custom of prohibiting Drake from ***speaking*** at City Council meetings.

[¶ 30] To establish liability for the City for an unconstitutional custom, Drake must demonstrate:

> 1) The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by

[4] The Court construes his argument as such. He never specifically makes this argument because he does not provide any analysis on the claims as official capacity claims. He focuses solely on the arguments as though he alleged individual capacity claims.

the governmental entity's employees;
2) Deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and
3) That plaintiff was injured by acts pursuant to the governmental entity's custom, i.e., that the custom was a moving force behind the constitutional violation.

Johnson v. Douglas Cnty. Med. Dep't, 725 F.3d 825, 828 (8th Cir. 2013) (quoting *Thelma D. ex rel. Delores A. v. Bd. Of Educ. Of City of St. Louis, 934 F.2d 929, 932-33 (8th Cir. 1991)*).

[¶ 31] This **[*23]** claim involves the City's repeated refusal to allow Drake to ***speak*** on the issues of firing the Chief of Police as he had requested of the City prior to its meetings. Insofar as Drake asserts a claim for an unconstitutional custom of excluding Drake from ***speaking*** at City Commission meetings, Plaintiffs claim necessarily fails because prohibiting Drake from ***speaking*** was a reasonable time, place, and manner restriction on ***speech*** in a limited public forum.

[¶ 32] Restrictions in a limited public forum "must only be reasonable and viewpoint neutral." *Bowman v. White, 444 F.3d 967, 976 (8th Cir. 2006)*. (internal citation omitted). A limited public forum is generally "not open for public expression, but that the government has opened for use for free ***speech*** only on a limited period of time, a limited topic, or a limited class of speakers." *Forbes v. Ark. Educ. Television Commc'n Network Found., 22 F.3d 1423, 1429 (8th Cir. 1994)* (citations omitted).

[¶ 33] As a limited public forum, the City was well within its ***rights*** to customarily prohibit ***speaking*** on certain topics it deemed inappropriate for City Commission meetings. See id. The City's purported custom of excluding discussion of internal personnel issues, such as whether to terminate the employment of the Chief of Police were taken off the table by the City Commission because **[*24]** they were concerned about violating the Chief of Police's due process ***rights***. Because this case involves a limited public forum, the government's purpose of prohibiting Drake from raising certain personnel issues relating to the Chief of Police at City Commission meetings governs this dispute. See *Knight, 465 U.S. at 284* ("The government's purpose is the controlling consideration."). The purpose of excluding Drake's comments was because they believed personnel issues should be investigated privately before bringing the matter to the public because of significant due process concerns. Contrary to Drake's repeated assertions, it is well-established "[t]he Constitution does not grant to members of the public generally a ***right*** to be heard by public bodies making decisions of policy." Id. In short, the purported "custom" of excluding Drake from discussions at City Commission meetings was justified under the circumstances.

[¶ 34] Clearly, the purpose of this custom was to prevent unsubstantiated personal attacks on city employees from occurring. While, the *First Amendment* recognizes the importance of unencumbered debate as to issues of public concern, *Frisby v. Schultz, 487 U.S. 474, 479, 108 S. Ct. 2495, 101 L. Ed. 2d 420 (1988)*, an individual engaged in protected ***speech*** of public concern may not leverage **[*25]** this protection to make personal attacks on public officials, *Dunn v. Carroll, 40 F.3d 287, 293 (8th Cir. 1994)*. When such ***speech*** turns into a caustic personal attack on a public official, the ***speech*** is no longer "deemed relevant to a matter of public concern" and thus no longer protected. Id. "[T]he *First Amendment* does not guarantee persons the ***right*** to communicate their views at all times or in any manner that may be desired." *Palmore, 851 F.Supp.2d at 1171* (internal quotations omitted). Rather the ***right*** to express a view depends on the nature of the forum. See *Cornelius v. NAACP Legal Defense and Educational Fund, Inc., 473 U.S. 788, 802, 105 S. Ct. 3439, 87 L. Ed. 2d 567 (1985)* ("[T]he extent to which the Government can control access depends on the nature of the relevant forum.").

[¶ 35] Indeed, the United States Supreme Court has long recognized that governments have a significant interest in conducting orderly, efficient, and dignified public meetings. *City of Madison, Joint Sch. Dist., 429 U.S. at 175 n.8*. "Reasonable time, place and manner restrictions on the exercise of *first amendment* ***rights*** are not repugnant to the Constitution." *Wright, 733 F.2d at 577*. Time limitations on ***speech***, and limitations not based on the content of ***speech*** serve a significant government interest in conducting orderly meetings and are thus reasonable. See id. ("Reasonable time, place and manner restrictions on the exercise of *first amendment* ***rights*** are not repugnant to the constitution.").

[¶ 36] Here, Drake was **[*26]** not prevented from addressing the City Commission. Rather he was only limited to specified time intervals for ***speech***, agenda subject matter requirements and City rules prohibiting personal attacks. Drake concedes the City's ***speech***

restrictions are content-neutral, however he argues without specific evidence that the City's restrictions are not applied in a content neutral manner. Doc. No. 45 at 25. The record, however, is clear the City adopted its procedural restrictions governing meeting participation in reliance on the North Dakota Attorney General's OMM and out of due process concerns relating to the termination of City employees. The City's refusal to allow Drake to address the commission to (1) demand firing the Chief of Police for his purported sexual harassment; (2) make a citizen's complaint against a police officer's compensation; and (3) discuss the police chief's severance pay are all consistent with the City's content neutral restrictions. *Ward, 491 U.S. at 791*; see also *Wright, 733 F.2d at 577* (reasonable restrictions on ***rights*** are not repugnant to the Constitution); see *City of Madison, Joint Sch. Dist., 429 U.S. at 175* (stating orderly, efficient, and dignified public meetings are significant government interests). Because the actions of the City Commission **[*27]** in this case were entirely reasonable, the limitations placed on Drake's ***speech*** were not unconstitutional. See *Wright, 733 F.2d at 577* ("Reasonable time, place and manner restrictions on the exercise of *first amendment* ***rights*** are not repugnant to the constitution."). As such, there was no unconstitutional custom that prohibited Drake from addressing the County Commission.

[¶ 37] Likewise, the record conclusively shows the City was not deliberately indifferent in this case. In determining whether the City acted with deliberate indifference, the Court looks to whether the City disregarded "its known or obvious consequences." *Bd. Of Cnt'y Com'rs of Bryan Cnt'y Okl. v. Brown, 520 U.S. 397, 407, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997)*. "Thus, only where a municipality's failure to adopt adequate safeguards was the product of deliberate indifference to the constitutional ***rights*** of its inhabitants will the municipality be liable for an unconstitutional policy under *§ 1983*." *Szabla v. City of Brooklyn Park, Minn., 486 F.3d 385, 390 (8th Cir. 2007)*.

[¶ 38] Here, the City carefully decided whether they were permitted to prohibit Drake from ***speaking*** at the various City Council meetings. They looked to the Policy, which fairly and accurately reflected the North Dakota Attorney General's guidance. This Court previously found the OMM was constitutional. Prior to making their decisions regarding Drake, the City also consulted **[*28]** with the City Attorney. who advised the City Commissioners to adopt a policy to address citizen complaints on the employment of City employees. This was out of due process concerns. In all, this shows the City carefully reflected on the impact their decision would have on Drake and they made a reasoned decision, not a deliberately indifferent one. The City Commission clearly sought advice and counsel on how to proceed with Drake. Drake's claims against the City Defendants fail as to their purported deliberate indifference.

[¶ 39] Accordingly, the undisputed material facts show Drake's *First Amendment* Claim for an unconstitutional custom of the City fails. This claim is, therefore, **DISMISSED with prejudice**.

CONCLUSION

[¶ 40] The undisputed facts show the City and its employees acted reasonably and gracefully in the face of Drake's repeated rudeness and unjustified requests of the City Commission. The Policy is plainly constitutional. The City's decisions to prohibit Drake from addressing the City Commission regarding firing the Chief of Police were both reasonable and likely necessary to protect the Chief of Police's due process ***rights***. Implementing a policy governing complaints against City employees **[*29]** likewise provided Drake an opportunity to bring the alleged issues with the Chief of Police to the City Commission's attention in manner consistent with the Chief of Police's due process ***rights***.

[¶ 41] Accordingly, for the reasons set forth above, the City's Motion for Summary Judgment is **GRANTED** and Drake's Motion for Summary Judgment is **DENIED**. The Complaint[5] is, therefore, **DISMISSED with prejudice**.

[¶ 42] **IT IS SO ORDERED**.

[¶ 43] **LET JUDGMENT BE ENTERED ACCORDINGLY**.

DATED September 15, 2023.

/s/ Daniel M. Traynor

Daniel M. Traynor, District Judge

United States District Court

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[5]The "claims" for declaratory relief, injunctive relief, or attorneys fees necessarily fail because they were contingent on a finding of a possible constitutional violation. As the Court concluded, there was no constitutional violation in this case.

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The Ohio Open Meetings Act

Overview of the Ohio Open Meetings Act

What is a "public body"?

- A "public body" is a decision-making body at any level of government.
- A public body may include the committees or subcommittees of a public body, even if these committees do not make the final decisions of the public body.

What is a "meeting"?

- A "meeting" is (1) a prearranged gathering, (2) of a majority of the members of the public body, (3) who are discussing or deliberating public business.
- A meeting does not have to be called a "meeting" for the OMA requirements to apply—if the three elements above are present, the OMA requirements apply even if the gathering is called a "work session," "retreat," etc.

What is "discussion" or "deliberation" of public business?

- "Discussion" is an exchange of words, comments, or ideas.
- "Deliberation" is the weighing and examination of reasons for and against taking a course of action.
- "Discussion" or "deliberation" does not generally include information-gathering, attending presentations, or isolated conversations between employees.

What are the duties of a public body if the OMA applies?

- A public body must give appropriate notice of its meetings.
  - For regular meetings, notice must include the time and place of the meeting. For all other meetings—special and emergency meetings—notice must include the time, place, and purpose of the meeting.
- A public body must make all meetings open to the public at all times.
  - Secret ballots, whispering of public business, and serial meetings or discussions are all prohibited under the openness requirement.
- A public body must keep and maintain meeting minutes.
  - Minutes must be (1) promptly prepared, (2) filed, (3) maintained, and (4) open to the public. Meeting minutes do not need to be verbatim transcripts but must have enough detail to allow the public to understand and appreciate the rationale behind a public body's decisions.

What are the requirements for an "executive session"?

- Proper procedure must be followed to move into an executive session, including a motion, second, and roll call vote in open session.
- Discussion in an executive session must be limited to one of the proper topics listed in the OMA.

The Ohio Open Meetings Act

The Ohio Open Meetings Act

The Open Meetings Act requires public bodies in Ohio to take official action and conduct all deliberations of official business only in open meetings where the public may attend and observe. Public bodies must provide advance notice to the public indicating when and where each meeting will take place and, in the case of special meetings, the specific topics that the public body will discuss. The public body must take full and accurate minutes of all meetings and make these minutes available to the public, except in the case of permissible executive sessions.

Executive sessions are closed-door sessions convened by a public body, after a roll call vote, and attended by only the members of the public body and persons they invite. A public body may hold an executive session only for a few specific purposes, which are listed in the law. Further, no vote or other decision-making on the matter(s) discussed may take place during the executive session.

The Open Meetings Act is a "self-help" statute. This means that a person who believes that the Act has been violated must independently pursue a remedy, rather than asking a public official (such as the Ohio Attorney General) to initiate action on his or her behalf. If any person believes that a public body has violated the Open Meetings Act, that person may file an action in a common pleas court to compel the public body to obey the Act. If the court issues an injunction, the public body must correct its actions and pay court costs, a fine of $500, and reasonable attorney fees subject to possible reduction by the court. If the court does not issue an injunction, and the court finds the lawsuit was frivolous, it may order the person who filed the suit to pay the public body's court costs and reasonable attorney fees. Any formal action of a public body that did not take place in an open meeting, that resulted from deliberations in a meeting improperly closed to the public, or that was adopted at a meeting not properly noticed to the public is invalid. A member of a public body who violates an injunction imposed for a violation of the Open Meetings Act may be subject to removal from office.

Like the Public Records Act, the Open Meetings Act is intended to be read broadly in favor of openness. However, while they share an underlying intent, the terms and definitions in the two laws are not interchangeable: the Public Records Act applies to the *records of public offices*; the Open Meetings Act addresses *meetings of public bodies*.

A Note about Case Law

When the Supreme Court of Ohio issues a decision interpreting a statute, that decision must be followed by all lower Ohio courts. Supreme Court decisions involving the Public Records Act are plentiful because a person may file a public records lawsuit at any level of the judicial system and often will choose to file in the court of appeals, or directly with the Supreme Court. By contrast, a lawsuit to enforce the Open Meetings Act must be filed in a county court of common pleas. While the losing party often appeals a court's decision, common pleas appeals are not guaranteed to reach the Supreme Court, and rarely do. Consequently, the bulk of case law on the Open Meetings Act comes from courts of appeals, whose opinions are binding only on lower courts within their district, but they may be cited for the persuasive value of their reasoning in cases filed in other districts.

VIII. Chapter Eight: "Public Body" and "Meeting" Defined

Only entities that meet the definition of "public body" are subject to the Open Meetings Act. The Open Meetings Act requires "public bodies" to conduct their business in "meetings" that are open to the public. A "meeting" is any prearranged gathering of a public body by a majority of its members to discuss public business.[963]

A. "Public Body"

1. Statutory definition – R.C. 121.22(B)(1)

The Open Meetings Act defines a "public body" as any of the following:

a. Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;[964]

b. Any committee or subcommittee thereof;[965] or

c. A court[966] of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district or for any other matter related to such a district other than litigation involving the district.[967]

"Public body" under the Open Meetings Act has a different meaning and application than "public office" under the Public Records Act. An entity that is a "public body" that must comply with the Open Meetings Act may not also be a "public office" that must comply with the Public Records Act.[968]

2. Identifying public bodies

The term "public body" applies to many different decision-making bodies at the state and local level. A statute may specifically identify an entity as a "public body" or it may state that an entity is not subject to the Open Meetings Act. Otherwise, courts will apply several factors to determine what constitutes a "public body," including:

- The way the entity was created;[969]
- The name or official title of the entity;[970]
- The membership composition of the entity;[971]
- Whether the entity engages in decision-making;[972] and
- Who the entity advises or to whom it reports.[973]

3. Applying the definition of "public body"

Using the above factors, some courts of appeals have held that the following entities are public bodies:

- A selection committee established on a temporary basis by a state agency for the purpose of evaluating responses to a request for proposals and making a recommendation to a commission.[974]

- An urban design review board that provided advice and recommendations to a city manager and city council about land development.[975]
- A board of hospital governors of a joint township district hospital.[976]
- A citizens' advisory committee of a county children services board.[977]
- A board of directors of a county agricultural society.[978]

Courts have found that the Open Meetings Act does not apply to individual public *officials* (as opposed to public *bodies*) or to meetings held by individual officials.[979] Moreover, if an individual public official creates a group solely pursuant to his or her executive authority or as a delegation of that authority, the Open Meetings Act probably does not apply to the group's gatherings.[980]

However, at least one court determined that a selection committee whose members were appointed by the chair of a public body, not by formal action of the body, is nevertheless a public body and subject to the Open Meetings Act.[981]

4. When the Open Meetings Act applies to private bodies

Some private entities are considered "public bodies" for purposes of the Open Meetings Act when they are organized pursuant to state statute and are statutorily authorized to receive and expend government funds for a governmental purpose. For example, one court held that an economic opportunity planning association is a public body within the meaning of the Act based on the following factors: (1) its designation by the Ohio Department of Development as a community action organization pursuant to statute; (2) its responsibility for spending substantial sums of public funds in the operation of programs for the public welfare; and (3) its obligation to comply with state statutory provisions in order to keep its status as a community action organization.[982]

5. Public bodies/officials that are NEVER subject to the Open Meetings Act:

- The Ohio General Assembly;[983]
- Grand juries;[984]
- An audit conference conducted by the State Auditor or independent certified public accountants with officials of the public office that is the subject of the audit;[985]
- The Organized Crime Investigations Commission;[986]
- County child fatality review boards or state-level reviews of deaths of children;[987]
- The board of directors of JobsOhio Corp., or any committee thereof, and the board of directors of any subsidiary of JobsOhio Corp., or any committee thereof;[988] and
- An audit conference conducted by the audit staff of the Department of Job and Family Services with officials of the public office that is the subject of that audit under R.C. 5101.37.[989]
- Fatality- or mortality-review boards established under R.C. 3738.01, 3707.071, 307.631, 307.641, and 307.651.[990]

6. Public bodies that are SOMETIMES subject to the Open Meetings Act:

a. Public bodies meeting for specific purposes

Some public bodies are not subject to the Open Meetings Act when they meet for particular purposes, including:

- The Adult Parole Authority, when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine pardon or parole;[991]
- The State Medical Board,[992] the State Board of Nursing,[993] the State Chiropractic Board[994] when determining whether to suspend a license or certificate without a prior hearing;[995]
- The State Board of Pharmacy when determining whether to suspend a license, certification, or registration without a prior hearing (including during meetings conducted by telephone conference); [996] or when determining whether to restrict a person from obtaining further information from the drug database without a hearing;[997]
- The Emergency Response Commission's executive committee when meeting to determine whether to issue an enforcement order or to decide whether to bring an enforcement action;[998] and
- The Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board when determining whether to suspend a practitioner's license without a hearing.[999]
- Nonprofit corporations that created a special improvement district under R.C. 1710 when the corporation is not discussing business relating the purpose for which the improvement district was created.[1000]

b. *Public bodies handling specific business*

When meeting to consider "whether to grant assistance for purposes of community or economic development," certain public bodies may conduct meetings that are not open to the public. Specifically, the Controlling Board, the Tax Credit Authority, and the Minority Development Financing Advisory Board may close their meetings by *unanimous* vote of the members present to protect the interest of the applicant or the possible investment of public funds.[1001]

The meetings of these three bodies may only be closed "during consideration of the following information confidentially received ... from the applicant:"

- Marketing plans;
- Specific business strategy;
- Production techniques and trade secrets;
- Financial projections; and
- Personal financial statements of the applicant or the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.[1002]

In addition, the board of directors of a community improvement corporation, when acting as an agent of a political subdivision, may close a meeting by *majority* vote of all members present during consideration of non-public record information set out in R.C. 1724.11(A).[1003]

B. *"Meeting"*

1. *Definition*

The Open Meetings Act requires members of a public body to take official action, conduct deliberations, and discuss the public business in an open meeting, unless the subject matter is

specifically exempted by law.[1004] The Act defines a "meeting" as: (1) a prearranged gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business.[1005]

a. Prearranged

The Open Meetings Act governs prearranged discussions,[1006] but it does not prohibit unplanned encounters between members of public bodies, such as hallway discussions. One court held that neither an unsolicited and unexpected email sent from one board member to other board members, nor a spontaneous one-on-one telephone conversation between two members of a five-member board was a prearranged meeting.[1007] In another case, the court held that two members of a three-member commission did not have a prearranged meeting when one member came to the office of another and had an impromptu discussion.[1008] However, the "prearranged" element does not require the parties to participate at the same time, and a series of emails exchanged among a majority of board members can constitute a "prearranged gathering" even when the emails started with one board member sending an unsolicited email to other board members.[1009]

b. Majority of members

The requirement that a gathering of a majority of the members of a public body constitutes a meeting applies to the public body as a whole and also to the separate memberships of all committees and subcommittees of that body.[1010] For example, if a council is comprised of seven members, four constitute a majority in determining whether the council as a whole is conducting a "meeting." If the council appoints a three-member finance committee, two of those members would constitute a majority of the finance committee.

i. Attending in person

A member of a public body must be present in person at a meeting in order to be considered present, vote, or be counted as part of a quorum.[1011] A small number of public bodies have statutory authority to conduct meetings via teleconference, videoconference, or other remote means.[1012] In the absence of specific statutory authority, however, public bodies may not conduct a meeting via electronic or telephonic conferencing.

ii. Serial "meetings"

Unless two members constitute a majority, isolated one-on-one conversations between individual members of a public body regarding its business, either in person or by telephone, do not violate the Open Meetings Act.[1013] However, a public body may not "circumvent the requirements of the statute by setting up back-to-back meetings of fewer than a majority of its members, with the same topics of public business discussed at each."[1014] Such conversations may be considered multiple parts of the same, improperly private, "meeting."[1015] Serial meetings may also occur over the telephone or through electronic communications, like email.[1016]

c. Discussing public business

With narrow exceptions, the Open Meetings Act requires the members of a public body to discuss and deliberate on official business only in open meetings.[1017] "Discussion" is the exchange of words, comments, or ideas by the members of a public body.[1018] "Deliberation" means the act of weighing and examining reasons for and against an action.[1019] One court described "deliberation" as a thorough discussion of all factors involved, a careful weighing of positive and negative factors, and a cautious consideration of the ramifications of the proposal, while gradually arriving at a decision.[1020] Another court described the term as involving "a decisional analysis, i.e., an exchange of views on the facts in an attempt to reach a decision."[1021] Discussions of public business may also be conducted over any other media, such as the telephone, video conference, email, text, or tweet.[1022] In other words, just because a discussion did not occur in-person does not mean it is exempt from the requirements of the Open Meetings Act.

In evaluating whether a gathering of public officials constituted a "meeting," one court opined that the Open Meetings Act "is intended to apply to those situations where there has been actual formal action taken; to wit, formal *deliberations* concerning the public business."[1023] Under this analysis, courts have determined that gatherings strictly of an investigative and information-seeking nature that do not involve actual discussion or deliberation of public business are not "meetings" for purposes of the Open Meetings Act.[1024] More importantly, the Supreme Court of Ohio has not ruled on whether "investigative and informational" gatherings are or are not "meetings." Consequently, public bodies should seek guidance from their legal counsel about how such gatherings are viewed by the court of appeals in their district, before convening this kind of private gathering as something other than a regular or special meeting.

Some courts have distinguished "discussions" or "deliberations" that must take place in public from other exchanges among a majority of members at a prearranged gathering. These courts have opined that the following are not "meetings" subject to the Open Meetings Act:

- Question-and-answer session between board members, the public body's legal counsel, and others who were not public officials, was not a meeting because a majority of the board members did not engage in discussion or deliberation of public business *with one another*;[1025]
- Conversations among staff members employed by a city council;[1026]
- A presentation to a public body by its legal counsel when the public body receives legal advice,[1027] or when a public body requests a legal opinion from its counsel;[1028]and
- A press conference.[1029]

2. *Applying the definition of "meeting"*

If a gathering meets all three elements of the definition of a "meeting"—(1) a prearranged gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business—a court will consider it a "meeting" for the purposes of the Open Meetings Act. This is true regardless of whether the public body initiated the gathering itself or whether it was initiated by another entity. Further, if majorities of multiple public bodies attend one large meeting, a court may construe the gathering of each public body's majority of members as separate "meetings" of each public body.[1030]

a. *Work sessions*

A "meeting" by any other name is still a meeting. "Work retreats" or "workshops" are "meetings" when a public body discusses public business among a majority of the members of a public body at a prearranged time.[1031] When conducting any meeting, the public body must comply with its obligations under the Open Meetings Act: openness, notice, and minutes.[1032]

b. *Quasi-judicial proceedings*

Public bodies whose responsibilities include adjudicative duties, such as boards of tax appeals and state professional licensing boards, are considered "quasi-judicial." The Supreme Court of Ohio has determined that public bodies conducting quasi-judicial hearings, "like all judicial bodies, [require] privacy to deliberate, i.e., to evaluate and resolve, the disputes."[1033] Quasi-judicial proceedings and the deliberations of public bodies when acting in their quasi-judicial capacities are not "meetings" and are not subject to the Open Meetings Act.[1034] Accordingly, when a public body is acting in its quasi-judicial capacity, the public body does not have to vote publicly to adjourn for deliberations or to take action following those deliberations.[1035]

c. County political party central committees

The convening of a county political party central committee to conduct purely internal party affairs, unrelated to the committee's duties of making appointments to vacated public offices, is not a "meeting" as defined by the Open Meetings Act. Thus, the Act does not apply to such a gathering.[1036]

d. Collective bargaining

Collective bargaining meetings between public employers and employee organizations are private and are not subject to the Open Meetings Act.[1037]

Notes:

[963] R.C. 121.22(B)(2).
[964] R.C. 121.22(B)(1)(a).
[965] R.C. 121.22(B)(1)(b); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001) ("R.C. 121.22(B)(1)(b) includes any committee or subcommittee of a legislative authority of a political subdivision, *e.g.*, a village council, as a 'public body' for purposes of the Sunshine Law, so that the council's personnel and finance committees constitute public bodies in that context."); *State ex rel. Maynard v. Medina Cty. Facilities Taskforce Subcommt.*, 9th Dist. Medina No. 19VA0083-M, 2020-Ohio-5561, ¶ 18-20 (finding that subcommittee can be sued for Open Meetings Act violation even though it is not a "decision-making body" and does not have "decision-making authority").
[966] Except for sanitation courts, the definition of "public body" does not include courts. *See Walker v. Muskingum Watershed Conservancy Dist.*, 5th Dist. Tuscarawas No. 2007 AP 01 0005, 2008-Ohio-4060, ¶ 27. Note that R.C. 121.22(G) prohibits executive sessions for sanitation courts.
[967] R.C. 121.22(B)(1)(c).
[968] "[The Supreme Court of Ohio has] never expressly held that once an entity qualifies as a public body for purposes of R.C. 121.22, it is also a public office for purposes of R.C. 149.011(A) and 149.43 so as to make all of its nonexempt records subject to disclosure. In fact, R.C. 121.22 suggests otherwise because it contains separate definitions for 'public body,' R.C. 121.22(B)(1), and 'public office,' R.C. 121.22(B)(4), which provides that '[p]ublic office' has the same meaning as in section 149.011 of the Revised Code.' Had the General Assembly intended that a 'public body' for the purposes of R.C. 121.22 be considered a 'public office' for purposes of R.C. 149.011(A) and 149.43, it would have so provided." *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶ 38.
[969] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (selection committee established by Ohio Rail Development Commission was a "public body" under the Open Meetings Act because it made decisions and advised the commission; that the selection committee was created without formal action was immaterial); *State ex rel. Mohr v. Colerain Twp.*, 1st Dist. Hamilton No. C-210369, 2022-Ohio-1109 (land-use planning committee created by a township's board of trustees was a "public body" under the Open Meetings Act because the committee's members were appointed to make recommendations for a land-use plan that the trustees had the power to approve; the committee's lack of formal decision-making power was not dispositive); ***but see*** *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶ 44 (groups formed by private entities to provide community input, not established by governmental entity, and to which no government duties or authority have been delegated, were not "public bodies"); *State ex rel. Massie v. Lake Cty. Bd. of Commrs.*, 11th Dist. Lake No. 2020-L-087, 2021-Ohio-786, ¶ 41 (county visitor's bureau, a non-profit corporation, was not a public body because it was not established by statute and its authority was independent from any government entity).
[970] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (in finding that a selection committee was a "public body," it was relevant that the entity was called a "committee," a term included in the definition of a "public body" in R.C. 121.22); *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 103 (3d Dist. 1985) (finding relevant that the name of the entity is one of the public body titles listed in R.C. 121.22(B)(1), *i.e.*, Board of Hospital Governors).
[971] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding relevant that commissioners of the parent Ohio Rail Development Commission comprised a majority of a selection committee's membership).
[972] *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (tasks such as making recommendations and advising involve decision-making); *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (whether urban design review board, comprised of a group of architectural consultants for the city, had ultimate authority to decide matters was not controlling because the board actually made decisions in the process of formulating its advice); *State ex rel. Mohr v. Colerain Twp.*, 1st Dist. Hamilton No. C-210369, 2022-Ohio-1109 (land-use planning committee's lack of formal decision-making power was not dispositive because it made recommendations and advised other public bodies, which necessitated making decisions); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (selection committee made decisions in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission).
[973] *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding an urban design review board that advised not only the city manager, but also the city council, to be a public body).
[974] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding relevant that the group was called a "committee," a term included in the definition of a "public body" in R.C. 121.22; that a majority of the selection committee's members were commissioners of the commission itself; that the selection committee made decisions in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission (a public body); that the selection committee was established by the committee without formal action is immaterial).
[975] *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (whether an urban design review board, comprised of a group of architectural consultants for the city, had ultimate authority to decide matters was not controlling, as the board actually made decisions in the process of formulating its advice; the board advised not only the city manager, but also the city council, a public body); *State ex rel. Mohr v. Colerain Twp.*, 1st Dist. Hamilton No. C-210369, 2022-Ohio-1109 (a land-use planning committee created by a township's board of trustees was a "public body" even though it had no formal decision-making power, because it was a subcommittee to which the trustees referred business- and because it made recommendations and advised other public bodies, which necessitated making decisions).
[976] *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 102-03 (3d Dist. 1985) (the Board of Governors of a joint township hospital fell within the definition of "public body" because this definition includes "boards"; the board made decisions essential to the construction and equipping of a general hospital; and the board was of a "township" or of a "local public institution" because it existed by virtue of authority granted by the legislature for the creation of joint township hospital facilities).
[977] *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (committee was a public body because the subject matter of the committee's operations is the public business, each of its duties involves decisions as to what will be done, and the committee by law elects a chairman who serves as an *ex officio* voting member of the children services board, which involves decision-making).
[978] 1992 Ohio Atty.Gen.Ops. No. 078.
[979] *Smith v. Cleveland*, 94 Ohio App.3d 780, 784-785 (8th Dist. 1994) (city safety director is not a public body and may conduct disciplinary hearings without complying with the Open Meetings Act).
[980] *Beacon Journal Publishing Co. v. Akron*, 3 Ohio St.2d 191 (1965) (boards, commissions, committees, etc., created by executive order of the mayor and chief administrator without the advice and consent of city council were not subject to the Open Meetings Act); *eFunds v. Ohio Dept. of Job & Family Serv.*, Franklin C.P. No. 05CVH09-10276 (2006) (an "evaluation committee" of government employees under the authority of a state agency administrator is not a public body); 1994 Ohio Atty.Gen.Ops. No. 096 (when a committee of private citizens and various public officers or employees is established solely pursuant to the executive authority of the administrator of a general health district for the purpose of providing advice pertaining to the administration of a grant, and establishment of the committee is not required or authorized by the grant or board action, such a committee is not a public body for purposes of the Open Meetings Act and is not subject to the requirements of the Act).
[981] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460 (10th Dist. 2001).
[982] *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn. of Greater Toledo,* 61 Ohio Misc.2d 631, 640 (C.P. 1990) (an economic opportunity planning association was a public body because it was designed as a community action agency under the Open Meetings Act).

[983] While the Open Meetings Act does not apply to the General Assembly as a whole, legislative committees are required to follow the guidelines set forth in the General Assembly's own open meetings law (R.C. 101.15), which requires committee meetings to be open to the public and that minutes of those meetings be made available for public inspection. Like the Open Meetings Act, the legislature's open meetings law includes some exemptions. For example, the law does not apply to meetings of the Joint Legislative Ethics Committee, other than those meetings specified in the law (R.C. 101.15(F)(1)), or to meetings of a political party caucus (R.C. 101.15(F)(2)).
[984] R.C. 121.22(D)(1).
[985] R.C. 121.22(D)(2).
[986] R.C. 121.22(D)(4).
[987] R.C. 121.22(D)(5).
[988] R.C. 121.22(D)(11).
[989] R.C. 121.22(D)(12).
[990] R.C. 121.22(D)(16)-(19), (21).
[991] R.C. 121.22(D)(3).
[992] R.C. 4730.25(G); R.C. 4731.22(G).
[993] R.C. 4723.281(B).
[994] R.C. 4734.37.
[995] R.C. 121.22(D)(6)-(7), (9).
[996] R.C. 121.22(D)(8)(a); R.C. 4729.16(D); R.C. 3796.14(B); R.C. 4752.09(C); R.C.3719.121(B).
[997] R.C. 121.22(D)(8)(b); R.C. 4729.75; R.C. 4729.86(C).
[998] R.C. 121.22(D)(10).
[999] R.C. 121.22(D)(13)-(15); R.C. 4755.11; R.C. 4755.47; R.C. 4755.64.
[1000] R.C. 121.22(D)(20).
[1001] R.C. 121.22(E).
[1002] R.C. 121.22(E)(1)-(5).
[1003] R.C. 1724.11(B)(1) (providing that the board, committee, or subcommittee shall consider no other information during the closed session).
[1004] R.C. 121.22(A), (B)(2), (C).
[1005] R.C. 121.22(B)(2).
[1006] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544 (1996) (back-to-back, prearranged discussions of city council members constitute a "majority," but clarifying that the Open Meetings Act does not prohibit impromptu meetings between council members or prearranged member-to-member discussion).
[1007] *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Hamilton Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 7.
[1008] ***State ex rel. Ames v. Portage Cty. Bd. of Commrs.***, 11th Dist. Portage No. 2023-P-0044, 2024-Ohio-146, ¶ 32-33.
[1009] *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶ 15-20.
[1010] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001).
[1011] R.C. 121.22(C).
[1012] The following are examples of public bodies that have statutory authority to conduct meetings via teleconference, videoconference, or other remote means: R.C. 308.051 (board of trustees of a regional airport authority); R.C. 339.02 (board of county hospital trustees); R.C. 715.693 (board of directors of joint economic development zones); R.C. 940.39(B) (board of supervisors of a soil and water conservation district; R.C. 3307.091 (State Teachers Retirement Board); R.C. 3316.05(K) (school district financial planning and supervision commission); R.C. 3345.82 (board of trustees of a state institution of higher education); R.C. 4517.35 (motor vehicle dealers board); R.C. 4582.60(A) (board of directors of a port authority); R.C. 5123.35(F) (developmental disabilities council); R.C. 5126.0223 (county board of developmental disabilities); R.C. 6133.041(A) (joint board of county commissioners of joint county ditches). NOTE: this list is not exhaustive, consult with legal counsel or conduct independent legal research to determine if a specific public body has statutory authority to meet via remote means.
[1013] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544 (1996) ("[The Open Meetings Act] does not prohibit member-to-member prearranged discussions."); *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Hamilton Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 11 (a spontaneous telephone call from one board member to another to discuss election politics, not school board business, did not violate the Open Meetings Act).
[1014] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 543 (1996) (city council members had a "meeting" for purposes of the Open Meetings Act when it held back-to-back, prearranged discussions of public business).
[1015] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 542-44 (1996) (noting the purpose of the Open Meetings Act is to prevent a game of "musical chairs" in which elected officials contrive to meet secretly to deliberate on public issues without accountability to the public); ***State ex rel. Floyd v. Rock Hill Local School Bd. of Edn.***, 4th Dist. Lawrence No. 1862, 1988 Ohio App. LEXIS 471, *4, 13-16 (Feb. 10, 1988) (school board president improperly discussed and deliberated dismissal of principal with other board members in multiple one-on-one conversations, and came to next meeting with letter of non-renewal ready for superintendent to deliver to principal, which the board voted to approve without discussion); ***but see*** *Wilkins v. Harrisburg*, 10th Dist. Franklin No. 12AP-1046, 2013-Ohio-2751 (two presentations were not serial meetings when the gatherings were separated by two months, the presentations were discussed at regularly scheduled meetings, and a regularly scheduled meeting was held between the two presentations).
[1016] *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶ 16-18 ("Allowing public bodies to avoid the requirements of the Open Meetings Act by discussing public business via serial electronic communications subverts the purpose of the act.").
[1017] R.C. 121.22(A), (B)(2), (C).
[1018] ***DeVere v. Miami Univ. Bd. of Trustees***, 12th Dist. Butler No. CA85-05-065, 1986 Ohio App. LEXIS 7171, *10 (June 10, 1986) (no discussion of public business when board president simply conveyed information to the board and there was no exchange of words, comments, or ideas).
[1019] *State ex rel. Mohr v. Colerain Twp.*, 1st Dist. Hamilton No. C-210369, 2022-Ohio-1109, ¶ 39.
[1020] ***State ex rel. Ames v. Brimfield Twp. Bd. of Trustees,*** 11th Dist. Portage No. 2019-P-0018, 2019-Ohio-5311, ¶ 13-15.
[1021] *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 14 (4th Dist.).
[1022] *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶ 16; *State ex rel. Mohr v. Colerain Twp.*, 1st Dist. Hamilton No. C-210369, 2022-Ohio-1109, ¶ 39.
[1023] ***Holeski v. Lawrence***, 85 Ohio App.3d 824, 829 (11th Dist. 1993).
[1024] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 11th Dist. Portage No. 2017-P-0093, 2018-Ohio-2888, ¶ 25 (no deliberations occurred when the evidence established that the public body convened for informational purposes, and the members did not "exchange[] any ideas amongst one another"); *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 14-18 (4th Dist.) (a board may gather information on proposed school district in private, but it cannot deliberate privately in the absence of specifically authorized purposes); *State ex rel. Massie v. Lake County Bd. Of Commrs.*, 11th Dist. Lake No. 2020-L-087, 2021-Ohio-786, ¶ 27 (evidence supported finding that commission members' gathering was for information-seeking and was not a "meeting" under the Open Meetings Act); *State ex rel. Kovoor v. Trumbull Cty. Bd. of Elections*, 11th Dist. Trumbull No. 2022-TR-0101, 2023-Ohio-2256, ¶ 33 (board's request for a legal opinion from the prosecutor constituted information-gathering).

[1025] *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.) (a non-public information-gathering investigative session with legal counsel was not a "meeting" under the Open Meetings Act because board members did not deliberate or discuss public business).
[1026] *Kandell v. City Council of Kent*, 11th Dist. Portage No. 90-P-2255, 1991 Ohio App. LEXIS 3640 (Aug. 2, 1991); *see also State ex rel. Bd. of Edn. for Fairview Park School Dist. v. Bd. of Edn. for Rocky River School Dist.*, 40 Ohio St.3d 136, 140 (1988) (employee's discussions with a superintendent did not amount to secret deliberations within the meaning of R.C. 121.22(H)).
[1027] *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.).
[1028] *State ex rel. Kovoor v. Trumbull Cty. Bd. of Elections*, 11th Dist. Trumbull No. 2022-TR-0101, 2023-Ohio-2256, ¶ 29-33.
[1029] *Holeski v. Lawrence*, 85 Ohio App.3d 824 (11th Dist. 1993).
[1030] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *State ex rel. Wengerd v. Baughman Twp. Bd. of Trustees*, 9th Dist. Wayne No. 13CA0048, 2014-Ohio-4749.
[1031] *State ex rel. Singh v. Schoenfeld*, 10th Dist. Franklin Nos. 92AP-188, 92AP-193, 1993 Ohio App. LEXIS 2409 (May 4, 1993).
[1032] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990).
[1033] *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998).
[1034] *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998) ("[T]he Sunshine Law does not apply to adjudications of disputes in quasi-judicial proceedings, such as the [Board of Tax Appeals]."); *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 125 Ohio St.3d 438, 445, 2010-Ohio-2167, ¶ 32 (board of elections proceeding determining whether to remove a candidate from the ballot was a quasi-judicial proceeding and the Open Meetings Act did not apply); *Pennell v. Brown Twp.*, 5th Dist. Delaware No. 15 CAH 09 0074, 2016-Ohio-2652, ¶ 34-37 (board of zoning appeals hearing was quasi-judicial and Open Meetings Act did not apply); *Wightman v. Ohio Real Estate Comm.*, 10th Dist. Franklin No. 16AP-466, 2017-Ohio-756, ¶ 26 (state professional licensing board was quasi-judicial and Open Meetings Act did not apply).
[1035] *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 125 Ohio St.3d 438, 2010-Ohio-2167 (because the Open Meetings Act did not apply to the elections board's quasi-judicial proceeding, there was no violation in failing to publicly vote on whether to adjourn the public hearing to deliberate, and failing to publicly vote on the matters at issue following deliberations); *In re Application for Additional Use of Property v. Allen Twp. Zoning Bd. of Appeals*, 6th Dist. Ottawa No. OT-12-008, 2013-Ohio-722, ¶ 15 (board of zoning appeals was acting in its quasi-judicial capacity in reviewing applications for conditional use); *Beachland Ents., Inc. v. Cleveland Bd. of Rev.*, 8th Dist. Cuyahoga No. 99770, 2013-Ohio-5585, ¶ 44-46 (board of review was acting in quasi-judicial capacity in adjudicating tax dispute between the city commissioner of assessments and licenses and the taxpayer); *Electronic Classroom of Tomorrow v. Ohio State Bd. of Edn.*, 10th Dist. Franklin No. 17AP-510, 2018-Ohio-716, ¶ 20-28 (consideration of hearing officer's recommendation was a quasi-judicial function); *Howard v. Ohio State Racing Comm.*, 10th Dist. Franklin No. 18AP-349, 2019-Ohio-4013, ¶ 46 (proceedings before Ohio State Racing Commission were quasi-judicial in nature and Commission not obligated to deliberate in public); *Nosse v. Kirtland*, 11th Dist. Lake No. 2022-L-032, 2022-Ohio-4161, ¶ 28 (public hearing on police chief's removal was a quasi-judicial proceeding).
[1036] 1980 Ohio Atty.Gen.Ops. No. 083; *see also Jones v. Geauga Cty. Republican Party Cent. Commt.*, 11th Dist. Geauga No. 2016-G-0056, 2017-Ohio-2930, ¶ 35 (upholding the trial court's dismissal of the case because the meeting at issue concerned purely internal affairs, not public business, and was therefore not subject to the Open Meetings Act); *State ex rel. Ames v. Geauga Cty. Republican Cent. & Executive Commts.*, 11th Dist. Geauga No. 2021-G-0004, 2021-Ohio-2888 (the Open Meetings Act does not apply to meeting of county political party central committee when purpose of the meeting is to conduct internal party business).
[1037] R.C. 4117.21; *see also Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emps.*, 106 Ohio App.3d 855, 869 (9th Dist. 1995) (R.C. 4117.21 manifests a legislative interest in protecting the privacy of the collective bargaining process); *Back v. Madison Local School Dist. Bd. of Edn.*, 12th Dist. Butler No. CA2007-03-066, 2007-Ohio-4218, ¶ 6-10 (school board's consideration of a proposed collective bargaining agreement with teachers was properly held in a closed session; collective bargaining meetings are exempt from Open Meetings Act requirements under RC. 4117.21).

IX. Chapter Nine: Duties of a Public Body

The Open Meetings Act requires public bodies to provide: (A) openness, (B) notice, and (C) minutes.

A. Openness

The Open Meetings Act declares all meetings of a public body to be public meetings open to the public at all times.[1038] The General Assembly mandates that the Act be liberally construed to require that public officials take official action and "conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law."[1039]

1. Where meetings may be held

A public body must conduct its meetings in a venue that is open to the public.[1040] Although the Open Meetings Act does not specifically address where a public body must hold meetings, some authority suggests that a public body must hold meetings in a public meeting place[1041] that is within the geographical jurisdiction of the public body.[1042] Clearly, a meeting is not "open" when the public body has locked the doors to the meeting facility.[1043]

Where space in the facility is too limited to accommodate all interested members of the public, closed-circuit television may be an acceptable alternative.[1044] Allowing members of the public to observe the meeting from the hall and through the open meeting door may also be acceptable.[1045] Federal law requires that a meeting place be accessible to individuals with disabilities.[1046]

2. Method of voting

Unless a particular statute requires a specific method of voting, the public cannot insist on a particular form of voting. The body may use its own discretion in determining the method it will use, such as voice vote, show of hands, or roll call.[1047] The Open Meetings Act only specifies the method of voting when a public body is adjourning into executive session by requiring that the vote for that purpose be by roll call.[1048] The Supreme Court of Ohio held that the Act precludes a public body from taking official action by way of secret ballot.[1049] Voting by secret ballot contradicts the openness requirement of the Open Meetings Act by hiding the decision-making process from public view.[1050]

Using a consent agenda whereby a public body votes on the entire agenda in a single motion and with a single vote may violate the Open Meetings Act if doing so constructively closes a public meeting, or otherwise acts as a way around the openness requirement of the Act.[1051] A public body is also prohibited from voting on a consent agenda when the public has no way of knowing all the items the consent agenda contains.[1052]

3. Right to hear but not to be heard or to disrupt

The public must be able to hear meetings of a public body. Thus, one court found that members of a public body who whispered and passed documents among themselves constructively closed that portion of their meeting by intentionally preventing the audience from hearing or knowing the business the body discussed.[1053] However, the Open Meetings Act does not provide (or prohibit) attendees the right to be heard at meetings. Note that other laws may apply to limit the restrictions the public body can place on the public's ability to speak during meetings.[1054] Further, a disruptive person waives his or her right to attend meetings, and the body may remove that person from the meeting.[1055]

4. Audio and video recording

A public body cannot prohibit the public from audio or video recording a public meeting.[1056] A public body may, however, establish reasonable rules regulating the use of recording equipment, such as

requiring equipment to be silent, unobtrusive, self-contained, and self-powered to limit interference with the ability of others to hear, see, and participate in the meeting.[1057]

5. Executive sessions

Executive sessions (discussed below in Chapter Nine) are portions of open meetings from which the public can be excluded. However, public bodies may not vote or take official action in an executive session.[1058]

B. Notice

Every public body must establish, by rule, a reasonable method for notifying the public in advance of its meetings.[1059] The public body's notice rule must provide for "notice that is consistent and actually reaches the public."[1060] The requirements for proper notice vary depending on the type of meeting a public body is conducting, as detailed in this section.

1. Types of meetings and notice requirements

a. Regular meetings

"Regular meetings" are those held at prescheduled intervals, such as monthly or annual meetings.[1061] A public body must establish, by rule, a reasonable method that allows the public to know the *time* and *place* of regular meetings.[1062]

b. Special meetings

A "special meeting" is any meeting other than a regular meeting.[1063] A public body must establish, by rule, a reasonable method that informs the public of the *time*, *place*, and *purpose* of special meetings[1064] and conforms with the following requirements:

- A public body must provide at least 24-hours advance notification of a special meeting to all media outlets that have requested such notification,[1065] except in the event of an emergency requiring immediate official action (see "Emergency meetings," below).
- When a public body holds a special meeting to discuss particular issues, the statement of the meeting's purpose must specifically indicate those issues, and the public body can only discuss those specified issues at that meeting.[1066] When a special meeting is simply a rescheduled "regular" meeting occurring at a different time, the statement of the meeting's purpose may be for "general purposes."[1067] Discussing matters at a special meeting that were not disclosed in the notice of purpose, either in open session or executive session, is a violation of the Open Meetings Act.[1068]

c. Emergency meetings

An emergency meeting is a type of special meeting that a public body convenes when a situation requires immediate official action.[1069] Rather than the 24-hours advance notice usually required, a public body scheduling an emergency meeting must *immediately* notify all media outlets that have specifically requested such notice of the time, place, and purpose of the emergency meeting.[1070] The purpose statement must comport with the specificity requirements discussed above.

2. Rules for giving notice

The Open Meetings Act requires every public body to adopt rules establishing reasonable methods to notify the public of the time and place of all regularly scheduled meetings, and the time, place, and purpose of all special meetings.[1071] A parent public body may impose its own notice rules on a subordinate committee.[1072]

Those rules must include a provision for any person, upon request and payment of a reasonable fee, to obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.[1073] The statute says that provisions for advance notification may include mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person requesting notice.[1074]

3. Notice by publication

Courts have found that publication of meeting information in a newspaper is one reasonable method of noticing the public of its meetings.[1075] This method, however, does not satisfy the notice requirement if the public body does not have a rule providing for it or if the newspaper has discretion not to publish the information.[1076] Courts have addressed situations in which the media misprints meeting information and have not found a violation of the notice requirement.[1077] Many public bodies that adopt some other means of notice by rule also notify their local media of all regular, special, and emergency meetings as a courtesy.

C. Minutes

1. Content of minutes

A public body must keep full and accurate minutes of its meetings.[1078] Minutes do not have to be a verbatim transcript of the proceedings, but must include enough facts and information for the public to understand and appreciate the *rationale* behind the public body's decisions.[1079] Thus, minutes must include more than a record of roll call votes.[1080] However, minutes may be sufficient even if information such as the date of the meeting is missing.[1081] Minutes are inadequate when they contain inaccuracies that are not corrected.[1082] A public body cannot rely on sources other than their approved minutes to argue that their minutes contain a full and accurate record of their proceedings.[1083]

Because executive sessions are not open to the public, the meeting minutes need to reflect only the general subject matter of the executive session via the motion to convene the session for a permissible purpose or purposes (see "Executive Session," discussed later in Chapter Ten).[1084] Including details of members' pre-vote discussion following an executive session may prove helpful, though. At least one court found that the lack of pre-vote comments reflected by the minutes supported the conclusion that the public body's discussion of the pros and cons of the matter at issue must have improperly occurred during executive session.[1085]

2. Making minutes available "promptly" as a public record

A public body must promptly prepare, file, and make its minutes available for public inspection.[1086] The term "promptly" is not defined. One court has adopted the definition applied by courts to the Public Records Act (without delay and with reasonable speed, depending on the facts of each case), to define that term in the Open Meetings Act.[1087] The final version of the official minutes approved by members of the public body is a public record.[1088] Note that a draft version of the meeting minutes that the public body circulates for approval,[1089] as well as the clerk's handwritten notes used to draft minutes,[1090] may also be public records.

3. Medium on which minutes are kept

Because neither the Open Meetings Act nor the Public Records Act addresses the medium on which a public body must keep the official meeting minutes, a public body may make this decision itself. Some public bodies document that choice by adopting a formal rule or by passing a resolution or motion at a meeting.[1091] Many public bodies make a contemporaneous audio recording of the meeting to use as a back-up in preparing written official minutes. The Ohio Attorney General has

opined that such a recording constitutes a public record that the public body must make available for inspection upon request.[1092]

D. Modified Duties of Public Bodies under Special Circumstances

1. Declared emergency

During a declared emergency,[1093] R.C. 5502.24(B) provides a limited exemption to fulfilling the requirements of the Open Meetings Act. If, due to a declared emergency, it becomes "imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual place," the governing body may meet at an alternate site previously designated (by ordinance, resolution, or other manner) as the emergency location of government.[1094] Further, the public body may exercise its powers and functions in light of the exigencies of the emergency without regard to or compliance with time-consuming procedures and formalities of the Open Meetings Act. Even in an emergency, however, there is no exemption to the "in person" meeting requirement of R.C. 121.22(C), and the provision does not permit the public body to meet by teleconference, unless the public body otherwise has a specific statutory authority to do so.[1095]

2. Municipal charters

The Open Meetings Act applies to public bodies at both the state and local government level. However, because the Ohio Constitution permits "home rule" (self-government), municipalities may adopt a charter under which their local governments operate.[1096] A charter municipality has the right to determine by charter the manner in which its meetings will be held.[1097] Charter provisions take precedence over the Open Meetings Act when the two conflict.[1098] If a municipal charter includes specific guidelines regarding the conduct of meetings, the municipality must abide by those guidelines.[1099] In addition, if a charter expressly requires that all meetings of the public bodies must be open, the municipality may not adopt ordinances that permit executive session.[1100]

Notes:

[1038] R.C. 121.22(C).
[1039] R.C. 121.22(A).
[1040] R.C. 121.22(C); *State ex rel. Randles v. Hill*, 66 Ohio St.3d 32, 35 (1993) (locking the doors to the meeting hall, whether or not intentional, is not an excuse for failing to comply with the requirement that meetings be open to the public); *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No. 2012-T-0035, 2013-Ohio-881, ¶ 22 (a public body may limit the time, place, and means of access to its meetings, if the restrictions are content neutral and narrowly tailored to serve a significant governmental interest).
[1041] *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No. 2012-T-0035, 2013-Ohio-881, ¶ 24 ("While [the Open Meetings Act] does not state where a public body must hold its public meetings, it has been held that the public body must use a public meeting place."); 1992 Ohio Atty.Gen.Ops. No. 032.
[1042] 1992 Ohio Atty.Gen.Ops. No. 032.
[1043] *Specht v. Finnegan*, 149 Ohio App.3d 201, 2002-Ohio-4660, ¶ 33-35 (6th Dist.).
[1044] *Wyse v. Rupp*, 6th Dist. Fulton No. F-94-19, 1995 Ohio App. LEXIS 4008 (Sept. 15, 1995) (Ohio Turnpike Commission handled large crowd in a reasonable and impartial manner when it aired the meeting via closed circuit television in an adjacent room).
[1045] *State ex rel. Ames v. Portage Cty. Bd. Of Commrs.*, 11th Dist. Portage No. 2023-P-0044, 2024-Ohio-146, ¶ 37-39. NOTE: the public body in this case was meeting when occupancy restrictions were in place due to the COVID-19 pandemic.
[1046] 42 U.S.C. 12101 (Americans with Disabilities Act of 1990, P.L. §§ 201-202) (providing that remedy for violating this requirement would be under the ADA and does not appear to have any ramifications for the public body under the Open Meetings Act).
[1047] *But see State ex rel. Roberts v. Snyder*, 149 Ohio St. 333, 335 (1948) (council had no authority to adopt a conflicting rule when enabling law limited council president's vote to solely in the event of a tie under statute that preceded enactment of Open Meetings Act).
[1048] R.C. 121.22(G).
[1049] *State ex rel. More Bratenahl v. Bratenahl*, 157 Ohio St.3d 309, 2019-Ohio-3233, ¶ 8-20; 2011 Ohio Atty.Gen.Ops. No. 038 (voting by secret ballot is contrary to the principles of observing the workings of the government and holding government representatives accountable).
[1050] *State ex rel. Bratenahl v. Village of Bratenahl*, 157 Ohio St.3d 309, 2019-Ohio-3233, ¶ 15.
[1051] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio-2374, ¶ 19 (public body violated the Open Meetings Act when it approved multiple consent agendas in a single vote; use of a consent agenda in such a way "constructively closes its public meetings and is an impermissible end run around the Open Meetings Act").
[1052] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio-2374, ¶ 19.
[1053] *Manogg v. Stickle*, 5th Dist. Licking No. 97CA00104, 1998 Ohio App. LEXIS 1961 (Apr. 8, 1998).
[1054] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (the Open Meetings Act does not require that a public body give the public an opportunity to comment at its meetings, but if public participation is permitted, it is subject to the protections of the First and Fourteenth Amendments); *Forman v. Blaser*, 3d Dist. Seneca No. 13-87-12, 1988 Ohio App. LEXIS 3405 (Aug. 8, 1988) (the Open Meetings Act guarantees the right to observe a meeting, but not necessarily the right to be heard); *see also Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No 2012-T-0035, 2013-Ohio-881, ¶ 19-29 (while the Public Records Act permits a requester to be anonymous when making a public records request, the Open Meetings Act does not have a similar anonymity requirement; thus a public body can require attendees at meetings to disclose their identities by signing a sign-in sheet as long as the practice is content-neutral and narrowly tailored to serve a significant interest).
[1055] *Froehlich v. Ohio State Med. Bd.*, 10th Dist. Franklin No. 15AP-666, 2016-Ohio-1035, ¶ 25-27 (no violation of Open Meetings Act where disruptive person is removed); *Forman v. Blaser*, 3d Dist. Seneca No. 13-87-12, 1988 Ohio App. LEXIS 3405, *8 (Aug. 8, 1988) ("When an audience becomes so uncontrollable that the public body cannot deliberate, it would seem that the audience waives its right to, or is estopped from claiming a right under the Sunshine Law to continue to observe the proceedings."); *see also Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (no violation of First or Fourteenth Amendments when disruptive person was removed from a public meeting).
[1056] *McVey v. Carthage Twp. Trustees*, 4th Dist. Athens No. 04CA44, 2005-Ohio-2869, ¶ 14-15 (trustees violated the Open Meetings Act when they banned videotaping of their meetings).
[1057] *Kline v. Davis*, 4th Dist. Lawrence Nos. 00CA32, 01CA13, 2001-Ohio-2625 (blanket prohibition on recording a public meeting is not permissible); 1988 Ohio Atty.Gen.Ops. No. 087 (opining that trustees have authority to adopt reasonable rules for use of recording equipment at their meetings); *see also Mahajan v. State Med. Bd. of Ohio*, 10th Dist. Franklin Nos. 11AP-421, 11AP-422, 2011-Ohio-6728 (when rule allowed board to designate reasonable location for placement of recording equipment, requiring appellant's court reporter to move to the back of the room was reasonable, given the need to transact board business).
[1058] R.C. 121.22(A); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03CA55, 2003 Ohio App. LEXIS 6654, *12 (Dec. 24, 2003) (reaching a consensus to take no action on a pending matter, as reflected by members' comments, is impermissible during an executive session).
[1059] R.C. 121.22(F); *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn.*, 121 Ohio App.3d 579, 587 (4th Dist. 1997) ("Typically, one would expect regular meetings to be scheduled well in advance ....").
[1060] *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 3d Dist. Putnam No. 12-13-05, 2014-Ohio-2717, ¶ 24; *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002).
[1061] 1988 Ohio Atty.Gen.Ops. No. 029; *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn.*, 121 Ohio App.3d 579, 587 (4th Dist. 1997).
[1062] R.C. 121.22(F); *see also Wyse v. Rupp*, 6th Dist. Fulton No. F-94-19, 1995 Ohio App. LEXIS 4008, *21 (Sept. 15, 1995) (finding a public body must specifically identify the time at which a public meeting will start).
[1063] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97, 100 (1990) ("The council either meets in a regular session or it does not, and any session that is not regular is special."); 1988 Ohio Atty.Gen.Ops. No. 029 (opining that, "[w]hile the term 'special meeting' is not defined in R.C. 121.22, its use in context indicates that a reference to all meetings other than 'regular' meetings was intended").
[1064] R.C. 121.22(F); *see also Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272-73 (2d Dist. 2002) (a board violated the Open Meetings Act by failing to establish, by rule, method to provide reasonable notice to the public of time, place, and purpose of special meetings); *State ex rel. Stiller v. Columbiana Exempted Village School Dist. Bd. of Edn.*, 74 Ohio St.3d 113, 119-20 (1995) (public body did not violate the Open Meetings Act when it gave general notice that nonrenewal of contract would be discussed, even though ancillary matters were also discussed).
[1065] R.C. 121.22(F); 1988 Ohio Atty.Gen.Ops. No. 029.
[1066] *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶ 35-36, 40-43 (special meeting notice of "2015-2016 school year" was not specific enough to meeting's purpose to discuss a school closure, and large crowds did not prove notice was sufficient); *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. Warren No. CA2012-02-013, 2013-Ohio-1111 (school board failed to comply with special meeting notice requirements when notice indicated that the purpose of the special meeting was "community information," but during the meeting the board entered executive session "to discuss negotiations with public employees concerning their compensation and other terms and conditions of their employment"); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees*, 11th Dist. Portage No. 2019-P-0019, 2019-Ohio-5412, ¶ 56 (special meeting notice of "budget approval" was sufficiently specific to cover discussion of invoice payments).

[1067] *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805 (June 30, 1995); *see also Satterfield v. Adams Cty. Ohio Valley School Dist.*, 4th Dist. Adams No. 95CA611, 1996 Ohio App. LEXIS 4897, *17 (Nov. 6, 1996) (although specific agenda items may be listed, use of agenda term "personnel" is sufficient for notice of special meeting).
[1068] *State ex rel. Jones v. Bd. of Edn. of the Dayton Pub. Schs.*, 2d Dist. Montgomery No. 27649, 2018-Ohio-676, ¶ 51-66 (action taken in open session of special meeting exceeded the scope of the notice); *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. Lucas No. L-97-1240, 1998 Ohio App. LEXIS 1496, *13 (Apr. 10, 1998) (business transacted at special meetings exceeded scope of published purpose and thus violated R.C. 121.22(F)). *But see State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 11th Dist. Portage No. 2-16-P-0057, 2017-Ohio-4237, ¶ 46 (public bodies may convene into executive session in emergency meetings; doing so did not exceed the scope of the special meeting notice).
[1069] *State ex rel. Bates v. Smith*, 147 Ohio St.3d 322, 2016-Ohio-5449, ¶ 13-17 ("emergency" meeting was improper because there was no suggestion of any emergency that would necessitate such a meeting); *Neuvirth v. Bd. of Trustees of Bainbridge Twp.*, 11th Dist. Geauga No. 919, 1981 Ohio App. LEXIS 14641, **2-4 (Jun. 29, 1981) (meetings were not emergencies when evidence showed that matters could have been scheduled any time in the preceding two or three months; the public body could not postpone considering the matter until the last minute and then claim an emergency). *But see State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 11th Dist. Portage No. 2-16-P-0057, 2017-Ohio-4237, ¶ 39 (rejecting the argument "that an emergency session is invalid under R.C. 121.22(F) where a public body decides not to take official action at the close of the session").
[1070] R.C. 121.22(F).
[1071] R.C. 121.22(F).
[1072] *Ames v. Geauga Cty. Invest. Advisory Commt.*, 11th Dist. Geauga No. 2022-G-0035, 2023-Ohio-2252, ¶ 49.
[1073] R.C. 121.22(F); *State ex rel. Patrick Bros v. Putnam Cty. Bd. of Commrs.*, 3d Dist. Putnam No. 12-13-05, 2014-Ohio-2717, ¶ 33-37.
[1074] These requirements notwithstanding, many courts have held that actions taken by a public body are not invalid simply because the body failed to adopt notice rules. These courts reason that the purpose of the law's invalidation section (R.C. 121.22(H)) is to invalidate actions taken when insufficient notice of the meeting was provided. *See Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 271 (2d Dist. 2002); *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. Lucas No. L-97-1240, 1998 Ohio App. LEXIS 1496 (Apr. 10, 1998); *Barbeck v. Twinsburg Twp.*, 73 Ohio App.3d 587 (9th Dist. 1992).
[1075] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993); *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002) ("If the board would establish a rule providing that it would notify these newspapers and direct the newspapers to publish this notice consistently, it would satisfy the first paragraph of R.C. 121.22(F).").
[1076] *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002).
[1077] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (chairman of zoning commission testified that he correctly reported meeting time to newspaper but newspaper mispublished it); *Swickrath & Sons, Inc. v. Elida*, 3d Dist. Allen No. 1-03-46, 2003-Ohio-6288, ¶ 19 (no violation from newspaper's misprinting of meeting start time when village had three separate methods of providing notice of its meetings and village official made numerous phone calls to newspaper requesting correction).
[1078] R.C. 121.22(C).
[1079] *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 424 (1996) ("[F]ull and accurate minutes must contain sufficient facts and information to permit the public to understand and appreciate the rationale behind the relevant public body's decision."). *See also State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542, ¶ 27-29 (construing R.C. 121.22, 149.43, and 507.04 together, a township fiscal officer has a duty to maintain full and accurate minutes and records of the proceedings, as well as the accounts and transactions of the board of township trustees); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 9-11 (absent evidence of alleged missing details or discussions, meeting minutes stating a vote was taken and providing the resolution number being voted on were sufficient); *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 11th Dist. Portage No. 2021-P-0118, 2022-Ohio-1012, ¶ 4 (public body prepared full and accurate minutes, even though minutes referenced a report that was attached as an exhibit, because the minutes never purported to attach the report as an exhibit or otherwise expressly incorporate the report).
[1080] *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 424 (1996) (minutes "certainly should not be limited to a mere recounting of the body's roll call votes," but must contain "a more substantial treatment of the items discussed").
[1081] *State ex rel. Ames v. Portage Cty. Solid Waste Mgt. Dist. Bd. of Commrs.*, 11th Dist. Portage No. 2023-P-0045, 2023-Ohio-4870.
[1082] *State ex rel. Ames v. Portage Cty. Board of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio-2374, ¶ 23 (public body failed to keep full and accurate minutes when minutes referenced attachment that was not in the approved minutes or produced to requester).
[1083] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58 (2001); *but see Shaffer v. W. Farmington*, 82 Ohio App.3d 579, 585 (11th Dist. 1992) (minutes may not be conclusive evidence on whether roll call vote was taken); *State ex rel. MORE Bratenahl v. Bratenahl*, 8th Dist. Cuyahoga No. 105281, 2018-Ohio-497, ¶ 25 ("[T]he meeting minutes in question, along with the transcripts of the subsequent council meetings, provide an accurate and adequate record[.]"), *rev'd on other grounds*, 157 Ohio St.3d 309, 2019-Ohio-3233.
[1084] R.C. 121.22(C).
[1085] *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 380, 2005-Ohio-2868 (4th Dist.).
[1086] R.C. 121.22(C); *see also White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416 (1996); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 57 (2001) (audiotapes that are later erased do not meet requirement to maintain minutes).
[1087] *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. Warren No. CA2012-02-013, 2013-Ohio-1111, ¶ 33 (reading R.C. 121.22 with R.C. 3313.26, school board failed to "promptly" prepare minutes where it was three months behind in approving minutes and did not approve minutes at the next respective meeting).
[1088] R.C. 121.22(C).
[1089] *State ex rel. Doe v. Register*, 12th Dist. Clermont No. CA2008-08-081, 2009-Ohio-2448, ¶ 28.
[1090] *State ex rel. Verhovec v. Marietta*, 4th Dist. Washington No. 12CA32, 2013-Ohio-5415, ¶ 19-30.
[1091] In *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 57 (2001), the Supreme Court found meritless the council's contention that audiotapes complied with Open Meetings Act requirements because they were not treated as official minutes, *e.g.*, council approved written minutes, did not tape all meetings, and voted to erase tapes after written minutes had been approved.
[1092] 2008 Ohio Atty.Gen.Ops. No. 019 (opining that an audio tape recording of a meeting that is created for the purpose of taking notes to create an accurate record of the meeting is a public record for purposes of the Public Records Act; the recording must be made available for public inspection and copying and retained in accordance with the terms of the records retention schedule for such a record).
[1093] "Emergency" is defined as "any period during which the congress of the United States or a chief executive has declared or proclaimed that an emergency exists." R.C. 5502.21 (F). "Chief executive" is defined as "the president of the United States, the governor of this state, the board of county commissioners of any county, the board of township trustees of any township, or the mayor or city manager of any municipal corporation within this state." R.C. 5502.21(C).
[1094] R.C. 5502.24(B).
[1095] 2009 Ohio Atty.Gen.Ops. No. 034; R.C. 5502.24(B).
[1096] Ohio Constitution, Article XVIII, Sections 3, 7.
[1097] *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 168 (1988) (finding it unnecessary to decide the applicability of the Open Meetings Act because the charter language expressly provided for open meetings and encompassed the meeting at issue); *Hills & Dales, Inc. v.*

Wooster, 4 Ohio App.3d 240, 242-43 (9th Dist. 1982) (finding a charter municipality need not comply with the Open Meetings Act; there is "nothing in the Wooster Charter which mandates that all meetings of the city council and/or the city planning commission must be open to the public").

[1098] *State ex rel. Lightfield v. Indian Hill*, 69 Ohio St.3d 441, 442 (1994) ("In matters of local self-government, if a portion of a municipal charter expressly conflicts with a parallel state law, the charter provisions will prevail."); *Kanter v. Cleveland Heights*, 8th Dist. Cuyahoga No. 104375, 2017-Ohio-1038 (city council did not have to follow the mandates of the Open Meetings Act when its charter permitted it to maintain its own rules, and those rules distinguished council meetings from special meetings, and made recording minutes of council meetings discretionary); *Kujvila v. Newton Falls*, 11th Dist. Trumbull No. 2016-T-0010, 2017-Ohio-7957, ¶ 32-35.

[1099] *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728, 736 (1st Dist. 1989) ("If a city does choose to draft its own rules concerning the meeting of a public body and the rules are included in its charter, the city council must abide by those rules."); *State ex rel. Gannett Satellite Information Network, Inc. v. Cincinnati City Council*, 137 Ohio App.3d 589, 592 (1st Dist. 2001) (rules of city council cannot supersede city charter that mandates all meetings be open).

[1100] *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676 (1996); *see also Johnson v. Kindig*, 9th Dist. Wayne No. 00CA0095, 2001 Ohio App. LEXIS 3569, **8-9 (Aug. 15, 2001) (when charter explicitly states that all meetings shall be public and contains no explicit exemptions, charter's reference to Open Meetings Act is insufficient to allow for executive sessions).

X. Chapter Ten: Executive Session

Executive Session Overview

- Executive session is a portion of an open meeting from which the public can be excluded.
- Proper procedure is required to move into executive session:
  - Meetings must always begin and end in open session, where the public may be present
  - Motion on the record to move into executive session, followed by a second
  - Specific reason for executive session must be put in the motion and recorded
  - Roll call vote, which must be approved by the majority of a quorum of the public body
  - Motion and vote recorded in the meeting minutes
- Executive session can only be held for the following reasons:
  - Certain personnel matters
  - Purchase or sale of property
  - Pending or imminent court action
  - Collective bargaining matters
  - Matters required to be kept confidential
  - Security matters
  - Hospital trade secrets
  - Confidential business information of an applicant for economic development assistance
  - Veterans Service Commission applications
- Discussion in executive session must be limited to the specific, statutory reason for the executive session, as set forth in the motion.
- The public body can invite non-members to be present in an executive session, but cannot exclude other members of the public body from the executive session.
- Discussion in executive session is not automatically confidential, but other confidentiality rules may apply; public records considered in the executive session may be accessible through the Public Records Act.
- The public body may not vote or make any decisions in executive session.

A. General Principles

An "executive session" is a conference between members of a public body from which the public is excluded.[1101] The public body, however, may *invite* anyone it chooses to attend an executive session.[1102] The Open Meetings Act strictly limits the use of executive sessions in several ways. First, a public body may only hold executive sessions at regular and special meetings.[1103] Second, the Open Meetings Act limits the matters that a public body may discuss in executive session to those matters identified in the Act,[1104] although one court held that a public body may discuss other related issues if they have a direct bearing on the permitted matter(s).[1105] Third, a public body must follow a specific procedure to adjourn into an executive session.[1106] Finally, a public body may not take any formal action, such as voting or otherwise reaching a collective decision, in an executive session; any formal action taken in an executive session is invalid.[1107]

The Open Meetings Act does not prohibit the public body or one of its members from disclosing the information discussed in executive session.[1108] However, other laws may prohibit such disclosure.[1109] An Ohio Ethics Commission Opinion concluded that if information discussed in executive session is made confidential by statute, or has been clearly designated as confidential, public officials may have a duty to keep that information confidential under Ohio ethic laws.[1110] Public officials should seek legal counsel to determine whether ethics laws prohibit them from disclosing topics discussed during executive session.

The privacy afforded by the Open Meetings Act to executive session discussions does not make confidential any documents that a public body may discuss in executive session. If a document is a "public record" and is not otherwise exempt under one of the exemptions to the Public Records Act, the record will still be subject to public disclosure even if the public body appropriately discussed it in executive session. Thus, an executive session under the Open Meetings Act is not an exemption for public records under the Public Records Act. For example, if a public body properly discusses pending litigation in executive session, a settlement agreement negotiated during that executive session and reduced to writing may be subject to public disclosure.[1111]

B. Permissible Discussion Topics in Executive Session

A public body can only adjourn into executive session to discuss one of the following nine topics.

1. Certain personnel matters when particularly named in motion

A public body may adjourn into executive session:

- To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official; and
- To consider the investigation of charges or complaints against a public employee, official, licensee, or regulated individual,[1112] unless the employee, official, licensee, or regulated individual requests a public hearing;[1113]

  but

- A public body may not hold an executive session to consider the discipline of an elected official for conduct related to the performance of the official's duties or to consider that person's removal from office.

A motion to adjourn into executive session must specify which of the *particular* personnel matter(s) listed in the statute the movant proposes to discuss. A motion "to discuss personnel matters" *is not sufficiently specific* and *does not comply with the statute*.[1114] One court has concluded that a public body violated the Open Meetings Act by going into executive session for the stated purpose of an employee's "evaluation." That court did not "necessarily disagree" that the Act allows discussion on an employee's "job performance" in executive session, but it concluded that "the public body must

specify the context in which 'job performance' will be considered by identifying one of the statutory purposes set forth in R.C. 121.22(G)."[1115] The motion need not include the name of the person involved in the specified personnel matter[1116] or disclose "private facts."[1117]

Appellate courts disagree whether a public body must limit its discussion of personnel in an executive session to a specific individual or may include broader discussion of employee matters. At least three appellate courts have held that the language of the Open Meetings Act clearly limits discussion in executive session to consideration of a specific employee's employment, dismissal, etc.[1118] These court decisions are based on the plain language in the Act, which requires that "all meetings of any public body are declared to be open to the public at all times,"[1119] meaning any exemptions to openness should be drawn narrowly. A different appellate court, however, looked to a different provision in the Act that permits the public body to exclude the name of any person to be considered during the executive session as allowing general personnel discussions.[1120] It is important for a public body to consult the case law within its own appellate district to determine what applies.

2. *Purchase or sale of property*

A public body may adjourn into executive session to consider the purchase of property of any sort – real, personal, tangible, or intangible.[1121] A public body may also adjourn into executive session to consider the sale of real or personal property by competitive bid, or the sale or disposition of unneeded, obsolete, or unfit property under R.C. 505.10, if disclosure of the information would result in a competitive advantage to the person whose personal, private interest is adverse to the general public interest.[1122] No member of a public body may use this exemption as subterfuge to provide covert information to prospective buyers or sellers.[1123]

3. *Pending or imminent court action*

A public body may adjourn into executive session with the public body's attorney to discuss a pending or imminent court action.[1124] Court action is "pending" if a lawsuit has been commenced, and it is "imminent" if it is on the brink of commencing.[1125] Courts have concluded that threatened litigation is imminent and may be discussed in executive session.[1126] However, a general discussion of legal matters is not a sufficient basis for invoking this provision.[1127] Note that a member of a public body is not necessarily the public body's duly-appointed counsel simply because the member happens to also be an attorney.[1128]

4. *Collective bargaining matters*

A public body may adjourn into executive session to prepare for, conduct, or review a collective bargaining strategy.[1129]

5. *Matters required to be kept confidential*

A public body may adjourn into executive session to discuss matters that federal law or regulations or state statutes require the public body to keep confidential.[1130] The common law attorney-client privilege does not qualify under this enumerated exemption to allow general legal advice in executive session because the public body is not *required* to assert the privilege.[1131]

6. *Security matters*

A public body may adjourn into executive session to discuss details of security arrangements and emergency response protocols for a public body or public office if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.[1132]

7. Hospital trade secrets

Certain hospital public bodies established by counties, joint townships, or municipalities may adjourn into executive session to discuss trade secrets as defined by R.C. 1333.61.[1133]

8. Confidential business information of an applicant for economic development assistance

This topic requires that the information to be discussed in executive session be directly related to economic development assistance of specified types listed in the statute.[1134] "A unanimous quorum of the public body [must determine], by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project."[1135]

9. Veterans Service Commission applications

A Veterans Service Commission must hold an executive session when considering an applicant's request for financial assistance unless the applicant requests a public hearing.[1136] Note that, unlike the other discussion topics, discussion of Veterans Service Commission applications in executive session is mandatory.

C. Proper Procedures for Executive Session

A public body may only hold an executive session at a regular or special meeting, and a meeting that includes an executive session must always begin and end in an open session.[1137] In order to begin an executive session, there must be a proper motion approved by a majority[1138] of a quorum of the public body, using a roll call vote.[1139]

1. The motion

A motion for executive session must specifically identify "which one or more of the approved matters listed ... are to be considered at the executive session."[1140] Thus, if the public body intends to discuss one of the matters included in the personnel exemption in executive session, the motion must specify which of those specific matters it will discuss (e.g., "I move to go into executive session to consider the promotion or compensation of a public employee."). [1141] It is not sufficient to simply state "personnel" as a reason for executive session.[1142] The motion does not need to identify the person whom the public body intends to discuss.[1143] Similarly, reiterating "the laundry list of possible matters from R.C. 121.22(G)(1) without specifying which of those purposes [will] be discussed in executive session" is improper.[1144] Finally, a public body's motion to enter into executive session should include all the topics it might reasonably discuss during an executive session. But the public body is not required to discuss every topic it included in the motion during executive session.[1145]

2. The roll call vote

Members of a public body may adjourn into executive session only after a majority of a quorum of the public body approves the motion by a roll call vote.[1146] The vote may not be by a show of hands, and the public body should record the vote in its minutes.[1147]

Although a proper motion is required before entering executive session, a motion to end the executive session and return to public session is not necessary because the closed-door discussion is "off the record." Similarly, a public body does not have to take minutes during executive session. Note that any minutes taken during executive session may be subject to the Public Records Act. The minutes of the meeting need only document a motion to go into executive session that properly identifies the permissible topic or topics that the public body will discuss, as well as the return to open session (e.g., "We are now back on the record.").

Notes:

[1101] *Weisel v. Palmyra Twp. Bd. of Zoning Appeals*, 11th Dist. Portage No. 90-P-2193, 1991 Ohio App. LEXIS 3379 (July 19, 1991); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. Lorain No. 89-CA004624, 1990 Ohio App. LEXIS 2190 (May 23, 1990).
[1102] *Chudner v. Cleveland City School Dist.*, 8th Dist. Cuyahoga No. 68572, 1995 Ohio App. LEXIS 3303, **8-9 (Aug. 10, 1995) (inviting select individuals to attend an executive session is not a violation as long as no formal action of the public body will occur).
[1103] R.C. 121.22(G).
[1104] R.C. 121.22(G)(1)-(8), (J).
[1105] *Chudner v. Cleveland City School Dist.*, 8th Dist. Cuyahoga No. 68572, 1995 Ohio App. LEXIS 3303 (Aug. 10, 1995) (finding that issues discussed in executive session each had a direct bearing on topic that was permissible subject of executive session discussion).
[1106] R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion).
[1107] R.C. 121.22(H).
[1108] *But see* R.C. 121.22(G)(2) (providing that "no member of a public body shall use [executive session under property exemption] as a subterfuge for providing covert information to prospective buyers or sellers").
[1109] *See, e.g.*, R.C. 102.03(B) (providing that a public official must not disclose or use any information acquired in course of official duties that is confidential because of statutory provisions or that has been clearly designated as confidential); *Humphries v. Chicarelli*, S.D. Ohio No. 1:10-cv-749, 2012 Ohio App. LEXIS 168038, at *14-15 (Nov. 27, 2012) (prohibiting city council members from testifying as to attorney-client privileged matters discussed during executive session); *Talismanic Properties, LLC v. Tipp City*, S.D. Ohio No. 3:16-cv-285, 2017 U.S. Dist. LEXIS 90290, *6-7 (June 9, 2017) (when city council entered executive session to discuss pending litigation—this case—and allegedly made the decision not to mediate, those discussions were privileged and not subject to discovery in the subsequent litigation when (1) the council did not violate the Open Meetings Act and (2) even if it had, the information was protected by attorney-client privilege).
[1110] OEC Adv.Op. 20-02, 2020 Ohio Ethics Comm. LEXIS 2.
[1111] *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 138, 1997-Ohio-353 ("'Since a settlement agreement contains the result of the bargaining process rather than revealing the details of the negotiations which led to the result, R.C. 121.22(G)(3), which exempts from public view only the conferences themselves, would not exempt a settlement agreement from disclosure.'").
[1112] R.C. 121.22(B)(3) (defining "regulated individual" as (a) a student in a state or local public educational institution or (b) a person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or intellectual disability, disease, disability, age, or other condition requiring custodial care).
[1113] This provision does not create a substantive right to a public hearing. *See Matheny v. Frontier Local Bd. of Edn.*, 62 Ohio St.2d 362, 368 (1980) ("[T]he term 'public hearing' in subdivision (G)(1) of the Open Meetings Act refers only to the hearings elsewhere provided by law."). An employee who has a statutory right to a hearing may request a public hearing and prevent executive session. *Schmidt v. Newton*, 1st Dist. Hamilton No. C-110470, 2012-Ohio-890, ¶ 26 ("Only when a hearing is statutorily authorized, and a public hearing is requested, does R.C. 121.22(G) operate as a bar to holding an executive session to consider the dismissal of a public employee."); *Brownfield v. Warren Local School Bd. of Edn.*, 4th Dist. Washington No. 89 CA 26, 1990 Ohio App. LEXIS 3878, *13 (Aug. 28, 1990) (finding that, upon request, a teacher was entitled to have deliberations regarding his dismissal occur in open meetings). An employee with no statutory right to a hearing may not prevent discussion of his or her employment in executive session. *Stewart v. Lockland School Dist. Bd. of Edn.*, 1st Dist. Hamilton No. C-130263, 2013-Ohio-5513; *Nosse v. City of Kirtland*, 11th Dist. Lake No. 2022-L-032, 2022-Ohio-4161 (when a public body is acting in a quasi-judicial capacity, the adjudicatory hearing process is not a meeting under the Open Meetings Act; thus, the public body's deliberations may be held privately in executive session).
[1114] R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding respondents violated the Open Meetings Act by using general terms like "personnel" and "personnel and finances" instead of one or more of the specified statutory purposes listed in division (G)(1)); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 18-21 (general reference to "personnel matters" or "personnel issues" is insufficient); *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805, *8 (June 30, 1995) (stating "[p]olice personnel matters" does not constitute substantial compliance because it does not refer to any of the specific purposes listed in the Open Meetings Act); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 25 (minutes stating that executive session was convened for "personnel issues" did not comply with the Open Meetings Act).
[1115] *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 19; *see also Lawrence v. Edon*, 6th Dist. Williams No. WM-05-001, 2005-Ohio-5883 (Open Meetings Act does not prohibit a public body from discussing a public employee's evaluations or job performance in executive session). NOTE: the proper context and enumerated exemption in *Lawrence v. Edon* was "dismissal or discipline"—other enumerated exemptions that might constitute proper contexts for considering employee evaluations include "employment," "promotion," "demotion," or "compensation."
[1116] R.C. 121.22(G)(1).
[1117] *Smith v. Pierce Twp.*, 12th Dist. Clermont No. CA2013-10-079, 2014-Ohio-3291, ¶ 50-55 (finding public body's required publication of statutory purposes under R.C. 121.22(G)(1) for special meetings and executive sessions did not support claim of invasion of privacy under a publicity theory).
[1118] *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 3d Dist. Putnam No. 12-13-05, 2014-Ohio-2717, ¶ 36; *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218 (4th Dist. 1988); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. Lorain No. 89-CA004624, 1990 Ohio App. LEXIS 2190 (May 23, 1990) (rejecting the argument that an executive session was illegally held for a dual, unauthorized purpose when it was held to discuss termination of a specific employee's employment due to budgetary considerations).
[1119] R.C. 121.22(C).
[1120] *Wright v. Mt. Vernon City Council*, 5th Dist. Knox No. 97-CA-7, 1997 Ohio App. LEXIS 4931 (Oct. 23, 1997) (public body could discuss merit raises for exempt city employees in executive session without referring to individuals in particular positions).
[1121] R.C. 121.22(G)(2); *see also* 1988 Ohio Atty.Gen.Ops. No. 003. A public body can convene into executive session "[t]o consider the purchase of property for public purposes" without additional qualification, *e.g.*, "if the premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest." *Look Ahead Am. v. Stark Cty. Bd. of Elections*, 5th Dist. No. 2022-CA-00152, 2023-Ohio-2494, *appeal pending*, S.Ct. No. 2023-1059.
[1122] R.C. 121.22(G)(2); *see also* 1988 Ohio Atty.Gen.Ops. No. 003.
[1123] R.C. 121.22(G)(2).
[1124] R.C. 121.22(G)(3); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage No. 2019-P-0018, 2019-Ohio-5311, ¶ 32 (finding there is no requirement that an attorney be physically present for the exception under R.C. 121.22(G)(3) to apply, and board properly conducted conference in executive session with attorney via telephone).
[1125] *State ex rel. Cincinnati Enquirer v. Hamilton Cty. Commrs.*, 1st Dist. Hamilton No. C-010605, 2002-Ohio-2038, ¶ 20 ("imminent" is satisfied when a public body has moved beyond mere investigation and assumed an aggressive litigative posture manifested by the decision to commit government resources to the prospective litigation); *but see Greene Cty. Guidance Ctr., Inc. v. Greene-Clinton Community Mental Health Bd.*, 19 Ohio App.3d 1, 5 (2d Dist. 1984) (finding a discussion with legal counsel in executive session under 121.22(G)(3) is permitted when litigation is a "reasonable prospect").

[1126] *Maddox v. Greene Cty. Children Servs. Bd.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 22 (finding letter expressly threatening litigation if a settlement is not reached "reasonably made a lawsuit appear imminent").
[1127] *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 25 (executive session was improper when minutes stated that it was convened for "legal issues"); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees*, 11th Dist. Portage No. 2019-P-0019, 2019-Ohio-5412, ¶ 36 (because meeting minutes did not indicate that board convened in executive session to discuss "pending or imminent court action," executive session was improper even though it included discussion with an attorney).
[1128] *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 185 Ohio App.3d 707, 2009-Ohio-6993, ¶ 66-69 (10th Dist.) (board members and executive director who were attorneys were not acting as legal counsel for the board when they discussed legal matters in executive session), *aff'd* 127 Ohio St.3d 511, 2010-Ohio-6207, ¶ 8, 27-29; *Awadalla v. Robinson Mem. Hosp.*, 11th Dist. Portage No. 91-P-2385, 1992 Ohio App. LEXIS 2838, *7 (June 5, 1992) (executive session improper when a board's "attorney" was identified as "senior vice president" in meeting minutes).
[1129] R.C. 121.22(G)(4); *see also Back v. Madison Local School Dist. Bd. of Edn.*, 12th Dist. Butler No. CA2007-03-006, 2007-Ohio-4218, ¶ 8 (a school board's meeting with a labor organization to renegotiate teachers' salaries was proper because the meeting was not an executive session but was a "collective bargaining meeting," which was exempt from the Open Meetings Act's requirements under R.C. 4117.21).
[1130] R.C. 121.22(G)(5).
[1131] *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Clermont Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶ 75-79; *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage No. 2019-P-0018, 2019-Ohio-5311, ¶ 27; *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees*, 11th Dist. Portage No. 2019-P-0019, 2019-Ohio-5412, ¶ 39-42.
[1132] R.C. 121.22(G)(6).
[1133] R.C. 121.22(G)(7).
[1134] R.C. 121.22(G)(8)(a).
[1135] R.C. 121.22(G)(8)(b); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees*, 11th Dist. Portage No. 2019-P-0019, 2019-Ohio-5412, ¶ 79 (board failed to comply with R.C. 121.22(G)(8)(a) and (b) when meeting minutes reflected merely that the board moved into executive session "to discuss economic development assistance concerning" a development contract).
[1136] R.C. 121.22(J).
[1137] R.C. 121.22(G).
[1138] R.C. 121.22(G).
[1139] R.C. 121.22(G). NOTE: to consider confidential business information of an application for economic development assistance under R.C. 121.22(G)(8), the motion must be approved by a unanimous quorum. R.C. 121.22(G)(8)(b).
[1140] R.C. 121.22(G)(1), (8).
[1141] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001).
[1142] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (using general terms like "personnel" instead of one or more of the specified statutory purposes is a violation of R.C. 121.22(G)(1)); *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805, *8 (June 30, 1995) ("[A] reference to 'police personnel issues' does not technically satisfy [the R.C. 121.22(G)(1)] requirement because it does not specify which of the approved purposes was applicable in this instance.").
[1143] R.C. 121.22(G)(1); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. Columbiana No. CA-678, 1990 Ohio App. LEXIS 3761 (Aug. 29, 1990).
[1144] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001); *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 11th Dist. Portage No. 2019-P-0015, 2019-Ohio-3729, ¶ 63.
[1145] *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs.*, 171 Ohio St.3d 593, 2022-Ohio-4237, ¶ 34-36 (public body need not discuss every single topic included in the executive-session motion during executive session).
[1146] R.C. 121.22(G).
[1147] R.C. 121.22(G); 1988 Ohio Atty.Gen.Ops. No. 029; *State ex rel. MORE Bratenahl v. Bratenahl*, 8th Dist. Cuyahoga No. 105281, 2017-Ohio-8484, ¶ 29 (finding evidence in the record and on audio recording of the village council meeting that a roll call vote that took place before the council went in to executive session was sufficient to show compliance with the Open Meetings Act, even though the roll call vote technically took place before the court reporter began recording the transcript), *rev'd on other grounds*, 157 Ohio St.3d 309, 2019-Ohio-3233.

XI. Chapter Eleven: Enforcement and Remedies

The Open Meetings Act is a "self-help" statute. This means that if any person believes a public body has violated or intends to violate the Open Meetings Act, that person may file suit in a common pleas court to enforce the law's provisions.[1148] A person does not need to ask a public official (such as the Ohio Attorney General) to initiate legal action on their behalf, and no state or local government official has the authority to enforce the Act.

The Open Meetings Act states that its provisions "shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law."[1149] The executive session exemptions contained in R.C. 121.22(G) are to be strictly construed.[1150]

A. Enforcement

1. Injunction

Any person may file a court action for an injunction to address an alleged or threatened violation of the Open Meetings Act. This action must be "brought within two years after the date of the alleged violation or threatened violation."[1151] There must still be an actual, genuine controversy at the time the action is filed, or the claim may be dismissed as moot.[1152] If granted by a court, an injunction compels the members of the public body to comply with the law by either refraining from the prohibited behavior or by lawfully conducting their meetings when they previously failed to do so. If the court finds multiple violations of the Open Meetings Act through the same conduct, the court may issue a single injunction for the multiple violations.[1153]

a. Who may file and against whom

"Any person" has standing to file for an injunction to enforce the Open Meetings Act.[1154] The person need not demonstrate a personal stake in the outcome of the lawsuit.[1155]

Open Meetings Act injunction actions sometimes include the public body as the defendant, or individual members of the public body, or both. No reported cases dispute that individual members of a public body are proper defendants, but some courts have held that the public body itself is not "sui juris" (capable of being sued) for violations of the Act.[1156] Other courts find that public bodies are "sui juris" for purposes of suits alleging violations of the Act.[1157] Persons filing an enforcement action should consult case law applicable to their appellate district.

b. Where to file

The Open Meetings Act requires that an action for injunction be filed in the court of common pleas in the county where the alleged violation took place.[1158]

Appellate courts disagree on whether an injunction action must be filed as a separate original action or whether it may be brought with a related lawsuit. One court found that a party may not assert an alleged violation of the Open Meetings Act in a related action before a county board of elections.[1159] Courts have reached different conclusions as to whether a court may consider an alleged violation of the Act as a claim made within an administrative appeal.[1160] Those cases finding no jurisdiction have reasoned that the exclusive method to enforce the Act is as a separate original action filed in the common pleas court.

c. Proving a violation

The person filing an action under the Open Meetings Act generally has the burden of proving the alleged violation, even if the alleged violation occurred during an executive session.[1161] Absent

evidence to the contrary, courts will presume that public officers properly performed their duties and acted lawfully.[1162] Thus, courts should presume that a public body in executive session discussed the topics stated in its motion to enter executive session.[1163] However, courts do not necessarily accept a public body's stated purpose for an executive session if other evidence demonstrates that the public body improperly deliberated during the executive session.[1164] Upon proof of a violation or threatened violation of the Act, the court will conclusively and irrebuttably presume harm and prejudice to the person who brought the suit[1165] and will issue an injunction.[1166]

d. Curing a violation

Once a violation is proven, the court must grant the injunction, regardless of the public body's subsequent attempts to cure the violation.[1167] Courts have different views as to whether and how a public body can then cure the violation, for instance with new, compliant discussions followed by compliant formal action.[1168] One court explained that after a violation a public body must "start its decision-making process over with regard to what was illegally deliberated or decided in a closed meeting."[1169] The Supreme Court of Ohio held that a city's failure to have public deliberation regarding the adoption of a charter amendment was cured when the amendment was placed on the ballot and adopted by the electorate.[1170]

2. Mandamus

When a person seeks access to the public body's minutes, that person may also file a mandamus action under the Public Records Act to compel the creation of or access to meeting minutes.[1171] Mandamus is also the appropriate action to order a public body to give notice of meetings to the person filing the action.[1172]

3. Quo warranto

Once a court issues an injunction finding a violation of the Open Meetings Act, members of the public body who later commit a "knowing" violation of the injunction may be removed from office through a *quo warranto* action, which may only be brought by the county prosecutor or the Ohio Attorney General.[1173]

B. Remedies

1. Invalidity

A resolution, rule, or formal action of any kind is invalid unless a public body adopts it in an open meeting.[1174] However, courts have refused to allow public bodies to benefit from their own violations of the Open Meetings Act.[1175] For instance, a public body may not attempt to avoid a contractual obligation by arguing that approval of the contract is invalid because of a violation of the Act.[1176]

a. Failure to take formal action in public

The Open Meetings Act requires a public body to take all "official" or "formal" action in open session.[1177] Even without taking a vote or a poll, members of a public body may inadvertently take "formal action" in an executive session when they indicate how they intend to vote about a matter pending before them, making the later vote in open session invalid.[1178] A formal action taken in an open session also may be invalid if it results from deliberations that improperly occurred outside of an open meeting, e.g., at an informal, private meeting or in an improper executive session.[1179] Even a decision in executive session not to take action (on a request made to the public body) has been held to be "formal action" that should have been made in open session, and thus, was deemed invalid.[1180]

b. Improper notice

When a public body takes formal action in a meeting for which it did not properly give notice, the action is invalid.[1181]

c. Minutes

At least one court has found that minutes are merely the record of actions; they are not actions in and of themselves.[1182] Thus, failure to properly approve minutes does not invalidate the actions taken during the meeting.[1183]

2. Mandatory civil forfeiture

If the court issues an injunction, the court will order the public body to pay a civil forfeiture of $500 to the person who filed the action.[1184] Courts that find that a public body has violated the law on repeated occasions have awarded a $500 civil forfeiture for each violation.[1185] However, if multiple violations through the same conduct are found, the court may issue a single injunction, and order the public body to pay a single $500 civil forfeiture penalty as to all offenses.[1186]

3. Court costs and attorney fees

If the court issues an injunction, it will order the public body to pay all court costs[1187] and the reasonable attorney fees of the person who filed the action.[1188] Courts have discretion to reduce or completely eliminate attorney fees, however, if they find that, (1) based on the state of the law when the violation occurred, a well-informed public body could have reasonably believed it was not violating the law; and (2) it was reasonable for the public body to believe its actions served public policy.[1189]

If the court does not issue an injunction and decides the lawsuit was frivolous, the court will order the person who filed the suit to pay all the public body's court costs and reasonable attorney fees as determined by the court.[1190] A public body is entitled to attorney fees even when those fees are paid by its insurance company.[1191]

Notes:

[1148] R.C. 121.22(I)(1).
[1149] R.C. 121.22(A).
[1150] *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Clermont Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶ 15; *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013 CA 38, 2014-Ohio-2312, ¶ 17.
[1151] R.C. 121.22(I)(1); *see also Mollette v. Portsmouth City Council*, 179 Ohio App.3d 455, 2008-Ohio-6342 (4th Dist.); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 16.
[1152] *Tucker v. Leadership Academy*, 10th Dist. Franklin No. 14AP-100, 2014-Ohio-3307, ¶ 14-17 (finding closure of charter school rendered allegedly improper resolution under Open Meetings Act moot); *State ex rel. Crilley v. Lowellville Bd. of Educ.*, 7th Dist. Mahoning No. 20 MA 0128, 2021-Ohio-3333 (Open Meetings Act challenge based on school board's reopening plan was moot by the end of the school year).
[1153] *Ames v. Rootstown Twp. Bd. of Trustees*, 172 Ohio St.3d 1, 2022-Ohio-4605, ¶ 21.
[1154] R.C. 121.22(I)(1); *McVey v. Carthage Twp. Trustees*, 4th Dist. Athens No. 04CA44, 2005-Ohio-2869.
[1155] *Doran v. Northmont Bd. of Edn.*, 153 Ohio App.3d 499, 2003-Ohio-4084, ¶ 20 (2d Dist.); *State ex rel. Mason v. State Employment Relations Bd.*, 133 Ohio App.3d 213 (10th Dist. 1999). *But see Korchnak v. Civil Serv. Comm. of Canton*, 5th Dist. Stark No. CA-8133, 1991 Ohio App. LEXIS 291, *5 (Jan. 7, 1991) (finding a party did not have standing to challenge a public body's failure to provide requested notices of meetings when he had not followed procedures entitling him to notice).
[1156] *Mollette v. Portsmouth City Council*, 169 Ohio App.3d 557, 2006-Ohio-6289 (4th Dist.) (finding suit should have been filed against the individual council members in their official capacities).
[1157] *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013-CA-38 , 2014-Ohio-2312, ¶ 10-14; *Krueck v. Kipton Village Council*, 9th Dist. Lorain No. 11CA009960, 2012-Ohio-1787, ¶ 3-4, 16; *State ex rel. Maynard v. Medina Cty. Facilities Taskforce Subcommt.*, 9th Dist. Medina No. 19CA0083-M, 2020-Ohio-5561, ¶ 18-21 (finding that subcommittee is *sui juris* even though it is not a "decision-making body" and does not have "decision-making authority"; while individual subcommittee members were also sued, they were not necessarily parties).
[1158] R.C. 121.22(I)(1).
[1159] *State ex rel. Savko & Sons v. Perry Twp. Bd. of Trustees*, 10th Dist. Franklin No. 14AP-204, 2014-Ohio-1181.
[1160] **Courts finding jurisdiction:** *Brenneman Bros. v. Allen Cty. Commrs.*, 3d Dist. Allen No. 1-13-14, 2013-Ohio-4635; *Hardesty v. River View Local School Dist. Bd. of Edn.*, 63 Ohio Misc.2d 145 (C.P. 1993). **Courts finding no jurisdiction:** *Stainfield v. Jefferson Emergency Rescue District*, 11th Dist. Ashtabula No. 2009-A-0044, 2010-Ohio-2282; *Fahl v. Athens*, 4th Dist. Athens No. 06CA23, 2007-Ohio-4925; *Pfeffer v. Bd. of Cty. Commrs. of Portage Cty.*, 11th Dist. Portage No. 2000-P-0030, 2001 Ohio App. LEXIS 3185 (July 13, 2001).
[1161] *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs.*, 171 Ohio St.3d 593, 2022-Ohio-4237, ¶ 40 ("Plaintiffs alleging violations of Ohio's OMA, R.C. 121.22, bear the burden of proving the violations they have alleged"); *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No. 2012-T-0035, 2013-Ohio-881, ¶ 18 (requiring proof by clear and convincing evidence); *State ex rel. Masiella v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage No. 2016-P-0038, 2017-Ohio-2934, ¶ 53 (finding appellant failed to meet this burden, which required him "to demonstrate that a meeting occurred . . .[and] that a public action resulted from a deliberation in the meeting that was not open to the public").
[1162] *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs.*, 171 Ohio St.3d 593, 2022-Ohio-4237, ¶ 21.
[1163] *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs.*, 171 Ohio St.3d 593, 2022-Ohio-4237, ¶ 21; *Armatas v. Plain Twp.*, 5th Dist. Stark No. 2022 CA 00039, 2023-Ohio-204, ¶ 59 (plaintiff failed to present evidence of the public body's improper deliberations during secret meeting), *discretionary appeal not allowed*, 170 Ohio St.3d 1480, 2023-Ohio-2236.
[1164] *Sea Lakes, Inc. v. Lipstreu*, 11th Dist. Portage No. 90-P-2254, 1991 Ohio App. LEXIS 4615, *12 (Sept. 30, 1991) (finding a violation when board was to discuss administrative appeal merits privately, appellant's attorney objected, board immediately held executive session "to discuss possible legal actions", then emerged to announce decision on appeal); *In the Matter of Removal of Smith*, 5th Dist. Morgan No. CA-90-11, 1991 Ohio App. LEXIS 2409, *2 (May 15, 1991) (county commission violated the Open Meetings Act when it emerged from executive session held "to discuss legal matters" and announced decision to remove Smith from Board of Mental Health; no county attorney was present in executive session, and a request for public hearing on removal decision was pending).
[1165] R.C. 121.22(I)(3).
[1166] R.C. 121.22(I)(1); *see also Doran v. Northmont Bd. of Edn.*, 153 Ohio App.3d 499, 2003-Ohio-4084, ¶ 21 (2d Dist.) (statute's provision that an injunction is mandatory upon finding violation is not an unconstitutional violation of separation of powers); *Fayette Volunteer Fire Dept. No. 2, Inc. v. Fayette Twp. Bd. of Trustees*, 87 Ohio App.3d 51, 54 (4th Dist. 1993) (finding injunction mandatory even though challenged board action was nullified and there was no need for an injunction).
[1167] *McVey v. Carthage Twp. Trustees*, 4th Dist. Athens No. 04CA44, 2005-Ohio-2869, ¶ 9 ("Because the statute clearly provides that an injunction is to be issued upon finding a violation of the Sunshine Law, it is irrelevant that the Trustees nullified their prior [offending] action.").
[1168] **Courts finding that violation was not cured:** *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶ 44-46 (a public body cannot "cure" a violation by simply voting again on the same information improperly obtained in executive session); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 476 (10th Dist. 2001) (no cure of violation by conducting an open meeting prior to taking formal action); *M.F. Waste Ventures, Inc. v. Bd. of Amanda Twp. Trustees*, 3d Dist. No. 1-87-46, 1988 Ohio App. LEXIS 493, *9 (Feb. 12, 1988) (based on violation "the resolutions were invalid, and the fact that they were later adopted at public meetings did not cure their invalidity"); *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218, 221 (4th Dist. 1988) ("A violation of the Sunshine Law cannot be 'cured' by subsequent open meetings if the public body initially discussed matters in executive session that should have been discussed before the public."). **Courts finding violation was cured:** *Kuhlman v. Leipsic*, 3d Dist. Putnam No. 12-94-9, 1995 Ohio App. LEXIS 1269, *8 (Mar. 27, 1995) ("[A]n initial failure to comply with R.C. 121.22 can be cured if the matter at issue is later placed before the public for consideration."); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. Monroe No. CA-678, 1990 Ohio App. LEXIS 3761, *6-7 (Aug. 29, 1990) (discussing a permitted matter in executive session, without a proper motion, was cured by rescinding the resulting action and then conducting the action in compliance with the Open Meetings Act).
[1169] *Danis Montco Landfill Co. v. Jefferson Twp. Zoning Commn.*, 85 Ohio App.3d 494, 501 (2d Dist. 1993); *see also Maddox v. Greene Cty. Children Servs. Bd.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 36 (finding Open Meetings Act violation in termination of an employee did not afford employee lifetime employment but the public body must re-deliberate "at least enough to support a finding that its discharge decision did not result from prior improper deliberations").
[1170] *Fox v. Lakewood*, 39 Ohio St.3d 19 (1998); *see also Skindell v. Madigan*, 8th Dist. Cuyahoga No. 103976, 2017-Ohio-398, ¶ 5.
[1171] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54 (2001) (once a public body's minutes are prepared, the Public Records Act requires the public body to permit access to the minutes upon request); *Ames v. Portage Cty. Bd. Commrs.*, S.Ct. No. 2022-0148, 2023-Ohio-3382 (finding that when the public body violated the Open Meetings Act in failing to prepare full and accurate minutes, the relator also established a violation of the Public Records Act).
[1172] *State ex rel. Vindicator Printing Co. v. Kirila*, 11th Dist. Trumbull No. 91-T-4550, 1991 Ohio App. LEXIS 6413 (Dec. 31, 1991).
[1173] R.C. 121.22(I)(4); R.C. Chapter 2733 (quo warranto); *State ex rel. Bates v. Smith*, 147 Ohio St.3d 322, 2016-Ohio-5449 (granting *quo warranto* to remove township trustee from office because trustees unlawfully voted to declare that position vacant when officeholder was on active military

service); *State ex rel. Newell v. Jackson*, 118 Ohio St.3d 138, 2008-Ohio-1965, ¶ 8-14 (to be entitled to a writ of *quo warranto* to oust a good-faith appointee, a relator must either file a *quo warranto* action or an injunction challenging the appointment before the appointee completes the probationary period and becomes a permanent employee; this duty applies to alleged violations of the Open Meetings Act); *Randles v. Hill*, 66 Ohio St.3d 32 (1993) (granting writ of *quo warranto* reinstating petitioner when vote to remove him was made at a meeting where the public was inadvertently excluded); *McClarren v. Alliance*, 5th Dist. Stark No. CA-7201, 1987 Ohio App. LEXIS 9211 (Oct. 13, 1987) (finding that an injunction must be issued upon the finding of a violation to allow for removal from office after any future knowing violation).

[1174] R.C. 121.22(H).

[1175] *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805 (June 30, 1995); *Roberto v. Brown Cty. Gen. Hosp.*, 12th Dist. Brown No. CA87-06-009, 1988 Ohio App. LEXIS 372 (Feb. 8, 1988).

[1176] *Roberto v. Brown Cty. Gen. Hosp.*, 12th Dist. Brown No. CA87-06-009, 1988 Ohio App. LEXIS 372 (Feb. 8, 1988).

[1177] R.C. 121.22(A), (C), and (H).

[1178] *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 19 (4th Dist.) (finding that resolution to adopt proposal was invalid; even though it was adopted in open session, board members gave personal opinions and indicated how they would vote in resolution in an executive session); *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶ 37-39 (finding an attempt to "cure" a violation "with an open vote that immediately followed presentations and discussions held behind closed doors in executive sessions is exactly the type of conduct the Act seeks to prohibit"); *Mathews v. E. Local School Dist.*, 4th Dist. Pike No. 00CA647, 2001 Ohio App. LEXIS 1677 (Jan. 4, 2001) (board was permitted to discuss employee grievance in executive session, but was required to take formal action by voting in an open meeting); *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 664 (8th Dist. 1990) (once a conclusion is reached regarding pending or imminent litigation, the conclusion is to be made public, even though the deliberations leading to the conclusion were private).

[1179] R.C. 121.22(H); *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶ 30-31 (action by the public body that resulted from improper discussion in executive session was invalid); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03 CA 55, 2003 Ohio App. LEXIS 6654 (Dec. 24, 2003) (finding council reached its conclusion based on comments in executive session and acted according to that conclusion).

[1180] *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03 CA 55, 2003 Ohio App. LEXIS 6654 (Dec. 24, 2003).

[1181] R.C. 121.22(H). *But see Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. Lucas No. L-97-1240, 1998 Ohio App. LEXIS 1496, *10-11 (Apr. 10, 1998) (illustrating that actions are not invalid merely because a reasonable method of notice had not been enacted by "rule"); *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶ 35-36 (finding notice of special meeting "to discuss the 2015-2016 school year" was not specific enough to meeting's purpose to discuss a school closure); *Barbeck v. Twinsburg Twp.*, 73 Ohio App.3d 587 (9th Dist. 1992); *Huth v. Bolivar*, 5th Dist. Tuscarawas No. 2014 AP 02 0005, 2014-Ohio-4889, ¶ 20-23 (holding that, even if notice was flawed, the second reading of a proposed ordinance was not "formal action").

[1182] *Davidson v. Hanging Rock*, 97 Ohio App.3d 723, 733 (4th Dist. 1994).

[1183] *Davidson v. Hanging Rock*, 97 Ohio App.3d 723, 733 (4th Dist. 1994).

[1184] R.C. 121.22(I)(2)(a). *But see State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 32 (2013) (declining to award civil forfeiture damages and attorney fees when case was filed as mandamus action in the court of appeals instead of a request for an injunction in the court of common pleas).

[1185] *Specht v. Finnegan*, 6th Dist. Lucas No. 2-02-1012, 2002-Ohio-4660; *Manogg v. Stickle*, 5th Dist. Licking No. 98CA00102, 1999 Ohio App. LEXIS 1488 (Mar. 15, 1999); *Weisbarth v. Geauga Park Dist.*, 11th Dist. No. 2007-G-2780, 2007-Ohio-6728, ¶ 30 (holding that the only violation alleged was board's failure to state a precise statutory reason for going into executive session and that this "'technical' violation entitled appellant to only one statutory injunction and one civil forfeiture"); *Maddox v. Greene Cty. Children Servs. Bd.*, 2d Dist. Greene No. 2013 CA 38, 2014-Ohio-2312, ¶ 40-51 (stacking forfeitures for certain violations but not others). *But see Doran v. Northmont Bd. of Edn.*, 2d Dist. Montgomery No. 19956, 2003-Ohio-7097, ¶ 18, n.3 (determining that the failure to adopt rule is one violation with one $500 fine; fine is not assessed for each meeting conducted in absence of rule where meetings were, in fact, properly noticed and held in an open forum).

[1186] *Ames v. Rootstown Twp. Bd. of Trustees*, 172 Ohio St.3d 1, 2022-Ohio-4605, ¶ 21.

[1187] R.C. 121.22(I)(2)(a).

[1188] R.C. 121.22(I)(2)(a); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 60 (2001) and 93 Ohio St.3d 1230 (2001) (awarding a citizen over $17,000 in attorney fees); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 60 ("[T]he OMA is structured such that an injunction follows a violation and attorney fees follow an injunction."); *But see State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 32 (2013) (declining to award civil forfeiture damages and attorney fees when case was filed as mandamus action in the court of appeals instead of a request for an injunction in the court of common pleas).

[1189] R.C. 121.22(I)(2)(a)(i), (ii); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 61-62 (trial court could reasonably conclude that a well-informed public body would know that it must be specific when giving a reason for executive session, and that it cannot vote in executive session); *Mathews v. E. Local School Dist.*, 4th Dist. Pike No. 00CA647, 2001 Ohio App. LEXIS 1677 (Jan. 4, 2001) (the board was not entitled to reduction when two board members knew not to take formal action during executive session); *State ex rel. Jones v. Bd. of Edn. of Dayton Pub. Schs.*, 2d Dist. Montgomery No. 28637, 2020-Ohio-4931, ¶ 61-62, 71 (awarding attorney fees because no well-informed board would believe it could publish a misleading notice of a special meeting or alter a published agenda after meeting; whether public body's actions were "egregious" or benefited the public is irrelevant).

[1190] R.C. 121.22(I)(2)(b); *McIntyre v. Westerville City School Dist. Bd. of Edn.*, 10th Dist. Franklin Nos. 90AP-1024, 90AP-1063, 1991 Ohio App. LEXIS 2658, at *9 (June 6, 1991) (finding a plaintiff engaged in frivolous conduct because her actions subjected the board to a baseless suit and the incurring of needless expense); *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. Warren No. CA2013-03-025, 2014-Ohio-252, ¶ 19 (upholding award of attorney fees when "there was no possible violation of the OMA as alleged in Relator's first four allegations").

[1191] *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. Warren No. CA2013-03-025, 2014-Ohio-252, ¶ 23.

Ad Hoc Meeting

March 13, 2024

Josh Palmer (chair), Dennis Hellman, Dan DeArment, Rob Feigner

The purpose of the meeting: I believe certain members of the audience and members of the administration and Council feel like they are not being heard, understood or respected. As soon as people feel disrespected, they get emotional and its distracting to the purpose of the meeting.

Remember, the purpose of the meeting is to conduct the business of the City.

When asked about the purpose of this meeting I said " to improve the public input process."

The question is how do we minimize the disruption to the meeting without suppressing anyone's freedom of speech?

- My proposal is to restructure our council meetings exactly like our Planning Commission Meetings.
- At Planning Commission, the meeting presider introduces the topic and invites speakers from the audience to present on the topic.
- The advantage of this structure is the speakers are presenting to Council in real time. Currently, speakers are presenting at the beginning of the meeting and their topic may not be discussed until an hour later. Their comments lose their impact.
- So any speaker that wants to speak on an agenda item would identify which agenda item on their speaker form and the presider would call on them when that agenda item is being discussed. The speaker needs to stay on topic.
- For speakers that are not speaking to a specific agenda item, they would indicate that on their speaker form and they would be scheduled to speak towards the end of the meeting, after new business.
- The advantage of this structure is that it allows City Council to focus on conducting the City's business which is getting through the agenda.
- Once Council gets through the agenda, we can focus our attention on the speakers.

What I like about this proposal is that it allows council to execute the city's business more efficiently without suppressing anyone's freedom of speech.