



approach

ETHICS WEEK 2021
REAPPROACHING ETHICAL VALUES



Ethics Week Presentation: Best Practice Recommendations for Open Meetings Act Compliance

OCTOBER 20, 2021

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Introduction

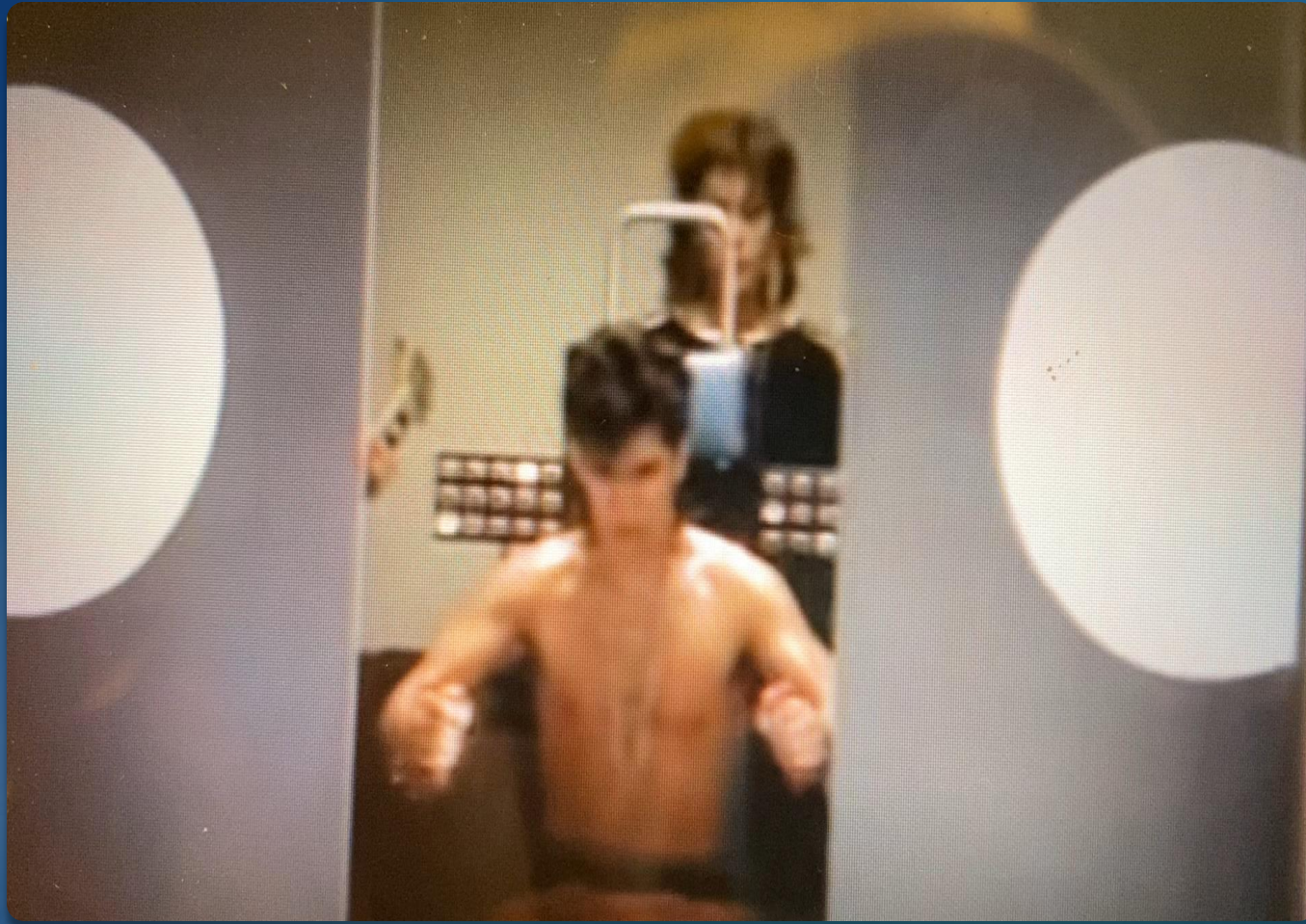
What is a meeting to which the Best Practice Recommendations` apply?

Application of OMA Principles and Rules Using Hypotheticals.

Questions and Answers.



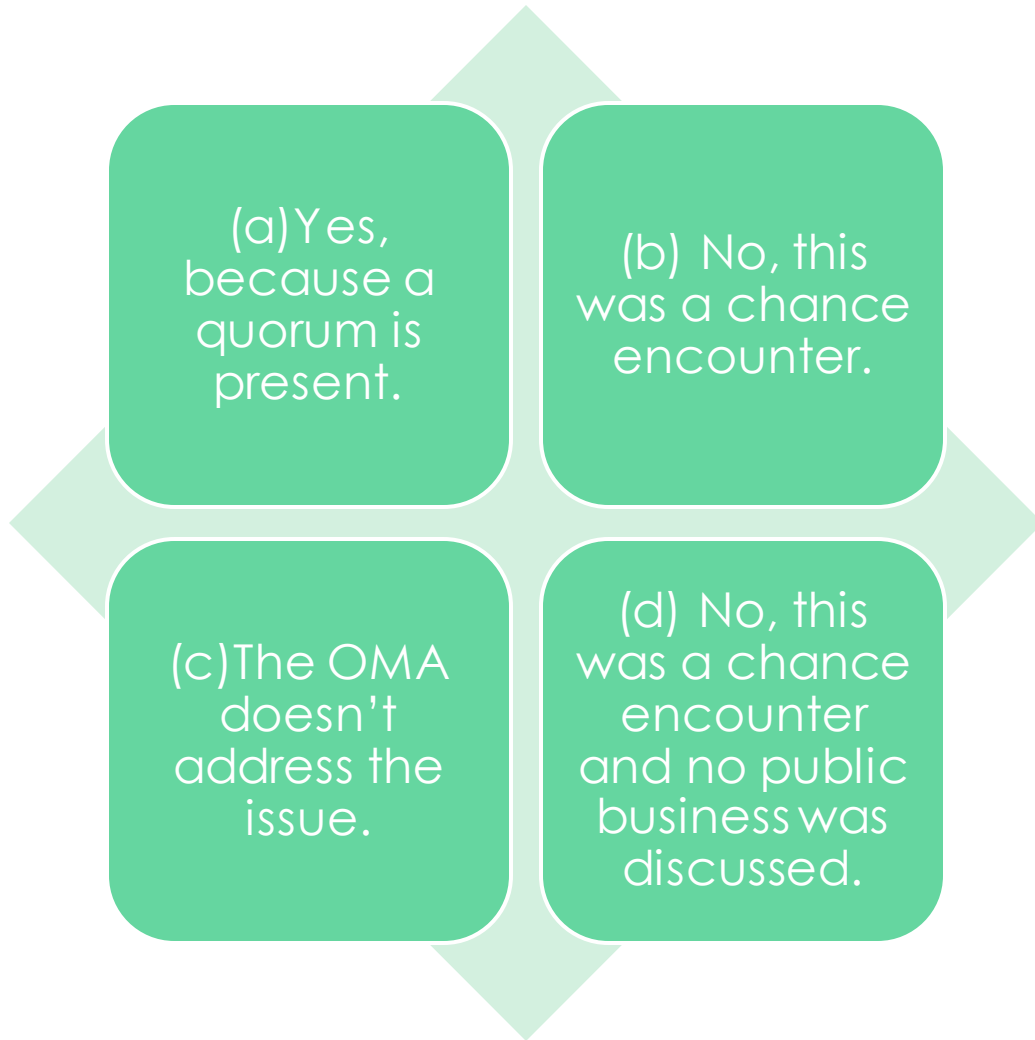
When is a gathering a meeting that is subject to the OMA?



OMA
meeting in
the ladies'
room?

OMA meeting in the ladies' room

- ▶ A quorum of a certain public body consists of 3. By chance, with no unlawful intent, three members of the public body happen to be in the restroom of a restaurant at the same time. While there, they discuss their respective plans for an upcoming holiday. Member of the public is also present, hears the conversation and believes this to violate the OMA.
- ▶ What say you?



Is this encounter a meeting under the OMA?



Under the
OMA a
meeting is. .

..

A GATHERING OF A QUORUM OF THE MEMBERS OF A PUBLIC BODY WHERE THE MEMBERS CONSIDER, CONDUCT, OR ADVISE ON PUBLIC BUSINESS. Meetings can be formal or informal. IN A MEETING THE MEMBERS MAY BE GATHERING INFORMATION, TAKING TESTIMONY, DISCUSSING, DELIBERATING, RECOMMENDING, OR VOTING.

The term “meeting” shall not include: A chance or social gathering; provided, that it is not held to avoid the provisions of this paragraph; or A press conference. (D.C. Official Code § 2-574(1)).

And the answer
is. . . .

- ▶ No, (d) is the correct response. This a chance encounter. Under the OMA, chance encounters and social gatherings are not meetings subject to the statute, provided it is not held to evade the OMA (D.C. Official Code § 2-574(1)(A).
- ▶ Remind your public body members that to avoid drifting into an illegal meeting by not discussing public business during chance encounters and social gatherings.



Right on
time may
be too
late!

Houston, do we have a problem?

- ▶ Public body publishes the notice of its upcoming meeting 2 business days and 48 hours before it is to occur. The meeting was scheduled for 9 am. However, the day before the meeting, Mr. Public notifies the public body that the public notice has no proposed agenda, date, location or time. He and his senior group planned to attend and offer public comment. When told the meeting is 9 am tomorrow, he responds, that's not enough time for us to organize and get there. I'm calling my Councilmember and the OOG!
- ▶ What say you, can this public body meet?

48 hours or two business before the meeting is to occur whichever is greater

- ▶ Notice to the Public of 48 hours or two business days, whichever is greater before the meeting is to occur complies with the OMA notice provisions D.C. Official Code § 2-576(1).
- ▶ Notice must be:
- ▶ posted on the public body's website or the OOG's Central Meeting Calendar;
- ▶ physically posted in the public body's office or a location readily accessible to the public; and
- ▶ published in the DCR.



Notice the public as early as possible!

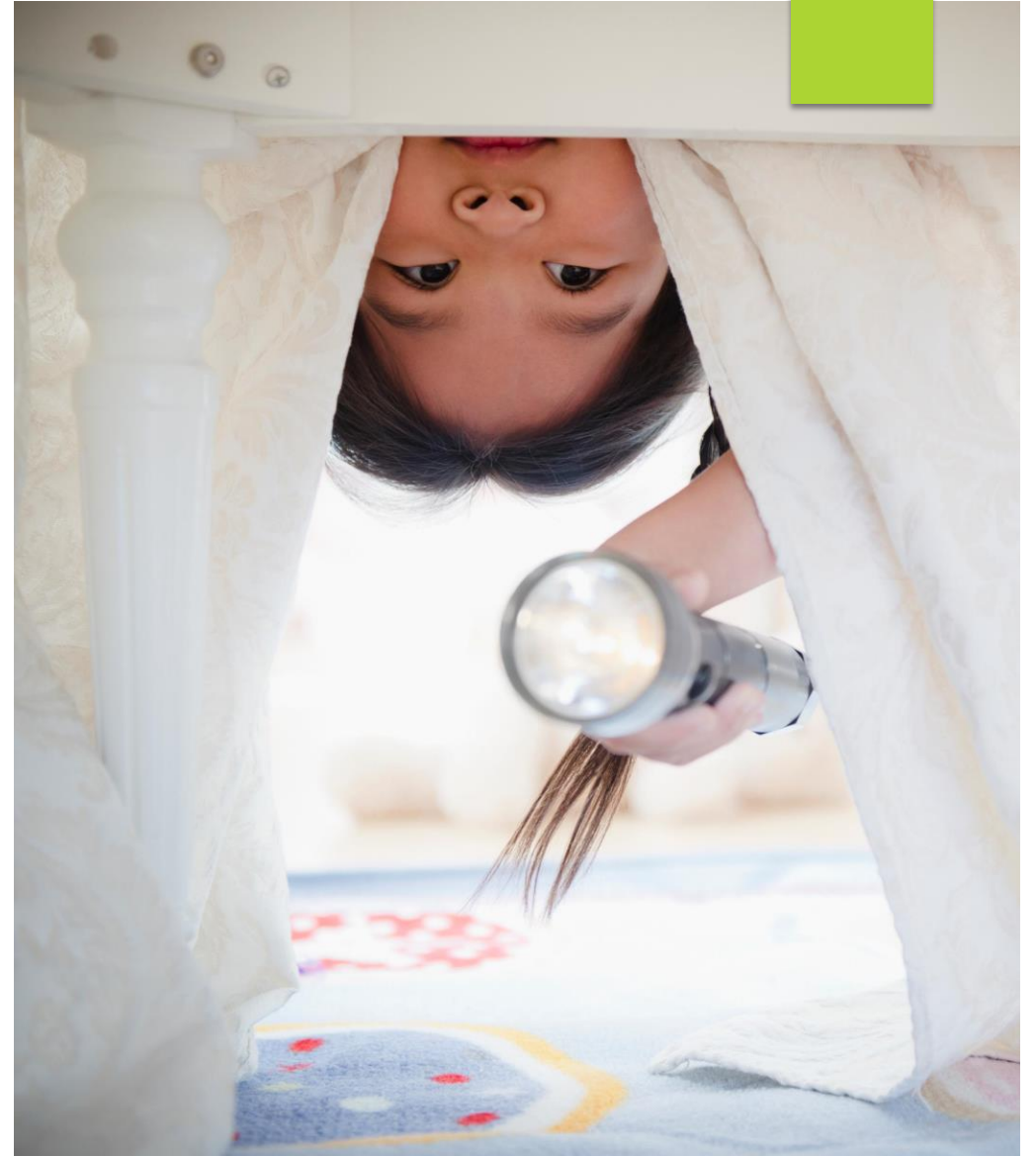
D.C. Official Code § 2-576

- ▶ Before meeting a public body must provide advance public notice of the meeting. Meetings held in violation of proper notice are unlawful under the OMA.

D.C. Official Code § 2- 576(1)

- ▶ Notice shall be provided when meetings are scheduled and when the schedule is changed. A public body shall establish an annual schedule of its meetings, if feasible, and shall update the schedule throughout the year. Except for emergency meetings, a public body shall provide notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting.

OVERLOOKED OMA LANGUAGE



Same problem, different outcome

- ▶ Public body publishes the notice of its upcoming meeting 9 business days before its upcoming meeting. The meeting is scheduled for 9 am. However, five days before the meeting, Mr. Public notifies the public body that its public notice has no proposed agenda, date, location or time.

Overlooked Language

- ▶ The phrase “a public body shall provide as much notice to the public as possible,” precedes the 48 hours or two business days, whichever is greater” language. However, the former is sometimes overlooked (D.C. Official Code § 2-576(1)). Take advantage of the additional time and post and publish notices earlier!

NO WORRIES, DON'T SWEAT IT!



TIME TO SPARE!

- ▶ By providing more than 48 hours and 2 business days public notice before the meeting occurs, you build in time, in most instances to correct any notice defects and move forward with your meeting.



MEETING
PROCEEDS AS
PLANNED AND
SCHEDULED!

WHAT ABOUT THE DCR REQUIRED NOTICE?

- ▶ What happens, if due to the DCR's submission requirements, it is impossible to timely re-publish a corrected meeting notice in the DCR and meet the OMA's notice requirement?



HMMMMMM

OOG's OPINION

The OOG has opined that in the limited instances where: (1) a public notice was defective, corrected and timely physically posted as required, and; (2) was timely posted not only on the public body's website or the OOG central meeting calendar; and (3) the public body published its yearly calendar of meetings in the DCR, but it cannot timely re-publish in the DCR; then it is impracticable to publish in the DCR in this instance and would not constitute an OMA violation.

Notwithstanding the notice requirement of paragraph (2) of this subsection, except for meetings of boards of trustees for public charter schools, notice of meetings shall be published in the District of Columbia Register as timely as practicable. D.C. Official Code § 2-576(3).

It's the day of a remote meeting

- ▶ All OMA notice requirements have been met.
- ▶ The quorum of members is awaiting the dial in time.
- ▶ The public anxiously awaits to dial in.
- ▶ Everyone is online. The chairperson begins to speak but there is no sound at all. No one can hear anyone speak.

Mic check 1, 2, 3

- ▶ Test the meeting platform near the meeting time to ensure it is accessible to public body members and the public.

Closed/Executive Sessions

After finishing business on the open agenda items, the Board's Chair politely states, "this concludes all open session agenda items, thank you for coming today. I must now respectfully ask the public to leave the room. We are now entering closed session."

Protocol for entering closed/executive session.

- ▶ Entering closed or executive sessions is another area that the OOG receives concerns and questions from the public.
- ▶ D.C. Official Code § 2-575(c) provides that:
“(1) [B]efore a meeting or portion of a meeting may be closed, the public body shall meet in public session at which a majority of the members of the public body present vote in favor of closure. (2) The presiding officer shall make a statement providing the reason for closure, including citations from subsection (b) of this section, and the subjects to be discussed. A copy of the roll call vote and the statement shall be provided in writing and made available to the public.”



Prepare a script for the presiding officer

Among other things, I have heard “clear the room, were about to enter closed session,” to transition from an open to a closed session.

Where there is a new chair, or a member is chairing the meeting instead of the chair, considering providing them with a script that lists the protocol and requirements to transition from an open to a closed session. We are happy to assist with the script or review a script that has been prepared.



ADD AN ADDITIONAL LINE



IF AN EXECUTIVE OR
CLOSED SESSION IS
NEEDED, THE OOG
RECOMMENDS THE
PUBLIC BODY HAVE TWO
SEPARATE ONLINE
MEETINGS LINKS.
REMEMBER THAT A ROLL
CALL VOTE FOR AN
EXECUTIVE OR CLOSED
SESSION IS NEEDED IN A
PUBLIC MEETING BEFORE
CLOSING THE MEETING
TO MEMBERS ONLY.



THE PUBLIC MEETING
MUST CONTINUE FOR THE
DURATION OF THE
EXECUTIVE OR CLOSED
SESSION.

Prepare a script for the presiding officer

- ▶ Preparation of a script for the presiding officer serves an additional purpose.
- ▶ D.C. Official Code § 2-575(c)(2) provides that: “[T]he presiding officer shall make a statement providing the reason for closure, including citations from subsection (b) of this section, and the subjects to be discussed. A copy of the roll call vote and the statement shall be provided in writing and made available to the public.”
- ▶ The prepared script negates having to prepare one if asked for a copy by the public.



Closed Meetings: Discussing Additional Matters

While meeting lawfully in a closed/executive session that was properly publicly noticed solely to “train and develop members of a public body and staff” (D.C. Official Code § 2-575(b)(12), public body chairperson states the need to also discuss “specific collective bargaining negotiations” pursuant to D.C. Official Code § 2-575(5). The members concur and the discussion take place.

What say you, can the additional matter be discussed during closure?

And the
correct
answer is?

- ▶ (a) The OMA permits the discussion, since it is one of the lawful reasons for entering closure under the statute.
- ▶ (b) The OMA doesn't address this issue.
- ▶ (c) THE OMA provides that A public body may only discuss during closure items properly noticed to the public and that fall under the statute. D.C. Official § 2-575(b).



(c) is the correct answer. THE OMA provides that A public body may only discuss during closure items properly noticed to the public and that fall under D.C. Official § 2-575(b).


D.C. Official Code § 2-576(5) mandates that if a meeting or any portion of the meeting is to be closed, the notice shall include a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure and a description of the matters to be discussed. Additionally, the subject discuss must fall within the reasons for entering closure under D.C. Official § 2-575(b).

And the
correct
answer is . . .

.

Give us the 411 as a hypothetical, we can help!

- ▶ GC provides script for public body chair to read. It contains the protocol for transitioning from open to closed session. Agency point of contact (“APOC”) tells GC that chair keeps transitioning to closed session, the chair’s way. APOC tells GC, they keep discussing items in closed session that were not on the agenda.
- ▶ OOG provides OMA trainings upon request. D.C. Official Code § 2-580(2).
- ▶ Provides that the “Mayor in coordination with the OOG shall Annually advise all members of public bodies of their responsibilities under this OMA.”



Give us the
411 as a
hypothetical,
we can help!

- ▶ During the OMA trainings for your public body the OOG will tactfully stress any areas of concern.
- ▶ The OOG currently monitors remote meetings. We can also provide advice if asked while in attendance.



THANK YOU FOR
PARTICIPATING!

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