



Ohio Township Association Risk Management Authority

UPDATE

SUMMER 2021

COMPLIANCE WITH OHIO'S OPEN MEETINGS ACT (OMA)

By Robert J. Gehring, Esq., and Christen M. Steimle, Esq.
Beuchner Haffer Meyers & Koenig Co., LPA

The Ohio Open Meetings Act (OMA or the Act) requires public bodies to conduct all deliberations upon official business in open meetings.¹ This article is designed to provide a broad overview of the Act's requirements. Questions as to specific issues should be directed to legal counsel.

I. To Whom Does the Act Apply?

The Act applies to any decision-making body, including a township's board of trustees, its committees, and subcommittees.²

II. What Is a "Meeting"?

Generally, there are three elements as to what constitutes a "meeting" under the Act. They are:

- A. a pre-arranged gathering,
- B. that discusses public business,
- C. of a majority of the decision-making body.³

By way of example, committee meetings, work sessions, and retreats constitute "meetings" under the Act. Isolated conversations, information

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¹ R.C. §121.22.

² R.C. §121.22(B)(1)(a)-(c).

³ R.C. §121.22(B)(2).

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Photo courtesy of Danbury Township, Ottawa County.

gathering or attendance at presentations do not constitute “meetings” under the Act. “Meetings” need not be in person. The Ohio Supreme Court has held that the exchange of telephone calls, video conferences, emails, text messages and social media can constitute a “meeting” for purposes of the Act.⁴

III. Notice of a Meeting Is Required

There are three types of meetings contemplated by the Ohio Revised Code. Each has separate notice requirements.

A. Regular Meeting

A regular meeting is one that is held at pre-scheduled intervals, such as monthly or bimonthly meetings. The public body must establish, by rule, a reasonable method that provides notice to the public of the time and place of the regular meeting.⁵

B. Special Meeting

A special meeting is a meeting other than a regular meeting. There must be an established rule that provides a reasonable method to provide notice to the public of the time, place and purpose of the special meeting. The Revised Code requires that there be at least 24 hours advance notification of special meetings to all media outlets that have requested such notification (except in the event of an emergency). The notice must provide a statement of the meeting’s purpose and the issues that will be considered. Only those specified issues may be discussed at the meeting. If there is discussion of matters at a special meeting that were not disclosed in the notice of purpose, such discussions are a violation of the Open Meetings Act.⁶

C. Emergency Meeting

An emergency meeting is a special meeting that a public body convenes when immediate official action is required. A public body that schedules an emergency meeting must immediately notify all media outlets that have specifically requested notice of the time, place and purpose of the emergency meeting. The specificity required of special meetings also applies to any notice of an emergency meeting.⁷

IV. A Meeting Must Be Open to the Public

The Act requires that the public be given the opportunity to attend a meeting.⁸ However, a decision-making body can regulate the rights of individuals to participate in a meeting.



V. Minutes Are Required

Minutes must be taken at a meeting and be made available to the public. Minutes need not be verbatim but must provide sufficient information to identify topics covered and the nature of discussions and deliberations. The minutes must accurately reflect votes and action taken.⁹

VI. Executive Session

A frequent area of litigation involves the use of executive session. While meetings are required to be open, there are exceptions and when those exceptions apply, the public body may go into “executive session.”¹⁰ Discussions occurring during executive session are not open to the public. However, because executive sessions are exceptions

⁴ *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, Syllabus.

⁶ *State, ex rel. Jones v. Board of Education*, 2018-Ohio-767, ¶51-66.

⁷ R.C. 121.22(F), *State ex rel. Bates v. Smith*, 147 Ohio St.3d 322, 2016-Ohio-5449, ¶s13-17.

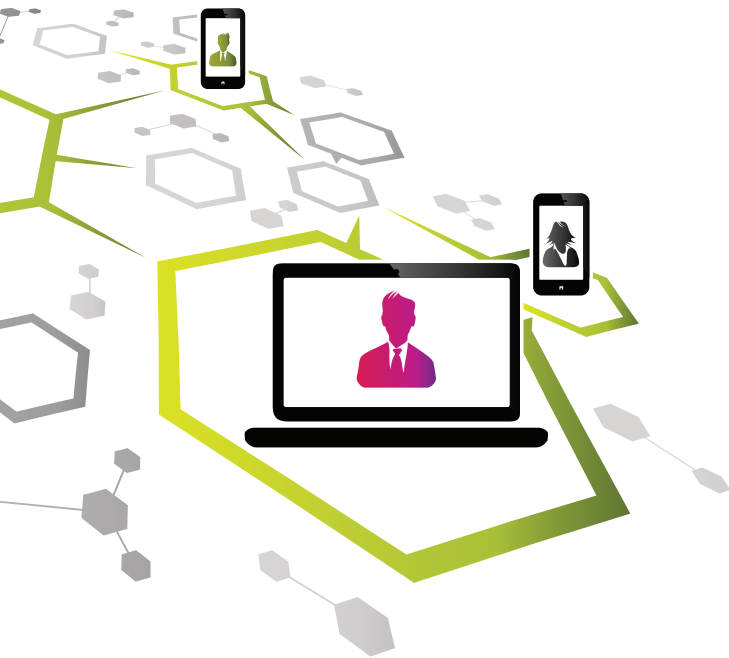
⁸ R.C. §121.22(C).

⁹ R.C. §121.22(C).

¹⁰ R.C. §121.22(G).

to the general rule of openness, the procedures for entering into executive session are strictly construed.

Under the OMA, executive session is appropriate for discussion of:



- A. Certain personnel matters
- B. Purchase or sale of property
- C. Conferences with an attorney for a public body concerning disputes that are the subject of pending or imminent court action
- D. Collective bargaining matters
- E. Matters required to be kept confidential by federal or state law
- F. Details related to security arrangements and emergency response protocols if disclosure could jeopardize security of the public body or public office
- G. Confidential business information of an applicant for economic development assistance
- H. Hospital trade secrets and veterans service commission applications.¹¹

VII. Executive Session Procedures

- A. A specific reason for the executive session must be made on the record and recorded in the minutes.

- B. There must be a motion on the record followed by a second to go into executive session.
- C. There must be a roll call vote and the vote to enter into executive session must be approved by a majority of a quorum of the public body. The roll call and vote must be recorded in the minutes.
- D. Meetings must always begin and end in open session where the public may be present. If the public body goes into executive session during a meeting, it has to exit executive session to properly end the meeting.
- E. The public body cannot vote or take any action while in executive session.

VIII. Executive Session Problem Issues

- A. The reasons for entering into executive session must be specific and follow the OMA. A frequent area of litigation is the use of executive session for personnel matters. A motion to enter into executive session must specify which of the particular personnel matters listed in the statute will be discussed.
- B. **Important** - As to personnel discussions or deliberations, a motion to enter into executive session to discuss “personnel matters” is not sufficient. The motion to go into executive session must contain one of the following reasons. Further, the minutes must accurately reflect the precise reason given to go into executive session for personnel issues.
 1. To consider the appointment, employment, dismissal, discipline, promotion, demotion or compensation of a public employee or official, or
 2. To consider the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the employee, official, licensee, or regulated individual requests a public hearing.¹²

IX. Remedies for Violations of the OMA

A. Right to File a Lawsuit

The OMA provides that a person who believes that a public body has violated or intends to violate the Act, may file a lawsuit in the Common Pleas Court to enforce the Act. The Act provides that “any person” has standing to file for an injunction to enforce the Act. That person need not demonstrate any stake in the

¹¹ R.C. §121.22(G)(1)-(8).

¹² R.C. §121.22(G).

outcome of the lawsuit. Any lawsuit must be brought within two years after the date of the alleged violation or threatened violation.¹³

An injunction, if granted, will order the members of the public body to comply with the law either by (1) refraining from any prohibited behavior or (2) by lawfully conducting their meetings when they have previously failed to do so. Any person is authorized to seek access to the public body's minutes and may file a "mandamus" action under the Public Records Act to compel access or creation of minutes.

If a court finds that a member of a public body committed a "knowing" violation of the Act, the official may be removed from office.¹⁴

B. Formal Action May Be Invalidated

Formal action is invalid unless adopted in an open meeting. Formal action is invalid if that action results from deliberations not open to the public unless the deliberations were in a properly conducted executive session. Similarly, if there is not proper notice, formal action taken at a meeting will be invalid.¹⁵

C. Mandatory Civil Forfeiture

If the court issues an injunction, the court shall order the public body to pay a civil forfeiture of \$500.00 plus court costs to the person who filed the action.¹⁶

D. Attorney's Fees

If the court issues an injunction, it may order the public body to pay the reasonable attorney's fees of the person who filed the action. Courts have discretion to reduce or deny attorney's fees, if the court finds 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.¹⁷

E. The Public Body's Rights to Attorney's Fees and Costs

If the court finds that the lawsuit was frivolous and does not issue an injunction, the court will order the person who filed the suit to pay all of the public body's court costs and reasonable attorney's fees.¹⁸

X. COVID-Related Issues – H.B. 197/H.B. 404

In light of the ongoing COVID crisis, the legislature has amended the Open Meetings Act so that public bodies are permitted to conduct meetings by teleconference, video conference and other electronic technologies. Currently, H.B. 404 has extended these temporary changes until July 1, 2021.¹⁹ A public body must continue to provide notice to the public and the media that have requested notification.

If public bodies are not able to have in-person meetings, they still must provide public access to any meeting that the public would otherwise be entitled to attend. The public must be able to observe and hear discussions of all participants. Under the Emergency Act, all actions taken through an electronic meeting have the same effect as if they were conducted during in-person meetings.

XI. Conclusion

The above discussion is only intended to be a primer on the requirements of Ohio's Open Meetings Act. There are numerous statutory sections and cases that further discuss the Act and its application to political subdivisions. Specific questions or issues should be referred to counsel as this article does not contain a complete discussion of all legal issues and factual scenarios.



Robert J. Gehring is a shareholder with the Cincinnati law firm of Buechner Haffer Meyers & Koenig Co., LPA, and practices in the areas of governmental law, torts, insurance, professional responsibility, and business litigation. A past president of the Cincinnati Bar Association, he is board certified as a civil trial advocate by the National Board of Trial Advocacy.

Robert J. Gehring



Christen M. Steimle is an attorney with the Cincinnati law firm of Buechner Haffer Meyers & Koenig Co., LPA, and practices in the areas of employment, torts, insurance, business litigation and governmental law. Christen has practiced for ten years and has clerked for federal judges.

Christen M. Steimle

¹³ R.C. §121.22(I).

¹⁶ R.C. §121.22(I)(2)(a).

¹⁴ R.C. §121.22(I)(2)(6)(4).

¹⁷ R.C. §121.22(I)(2).

¹⁵ R.C. §121.22(H).

¹⁸ R.C. §121.22(i)(2)(b).

¹⁹ See, Sub. H.B. 404 of 133rd General Assembly, effective Nov. 22, 2020.

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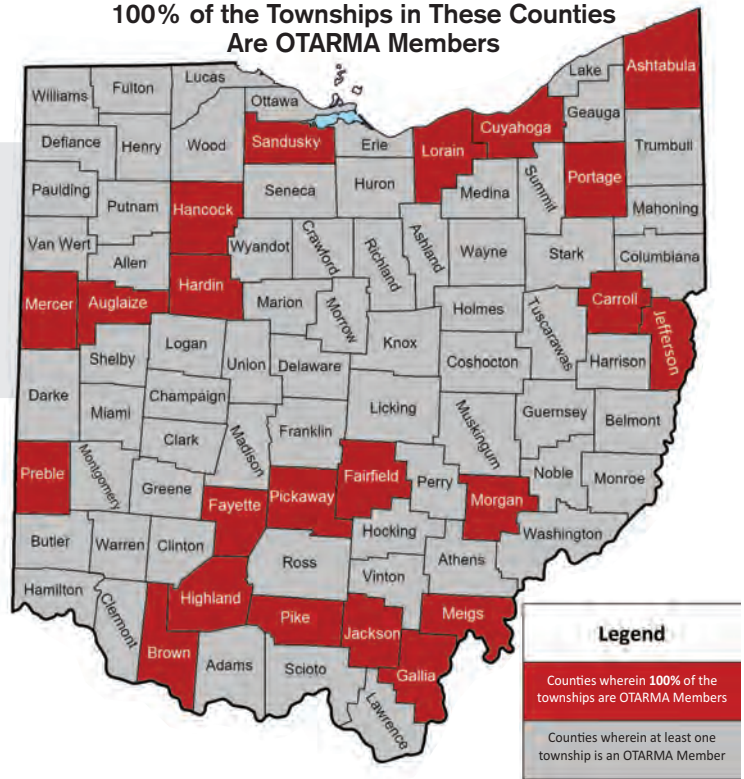
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Today, over 1,040 townships (80% of Ohio's 1,308 townships) – representing **all** 88 Ohio counties – are OTARMA Members. Large and small, urban and rural, OTARMA is uniquely designed to provide all Ohio townships with the coverages necessary to properly protect their assets while offering competitive and stable pricing.

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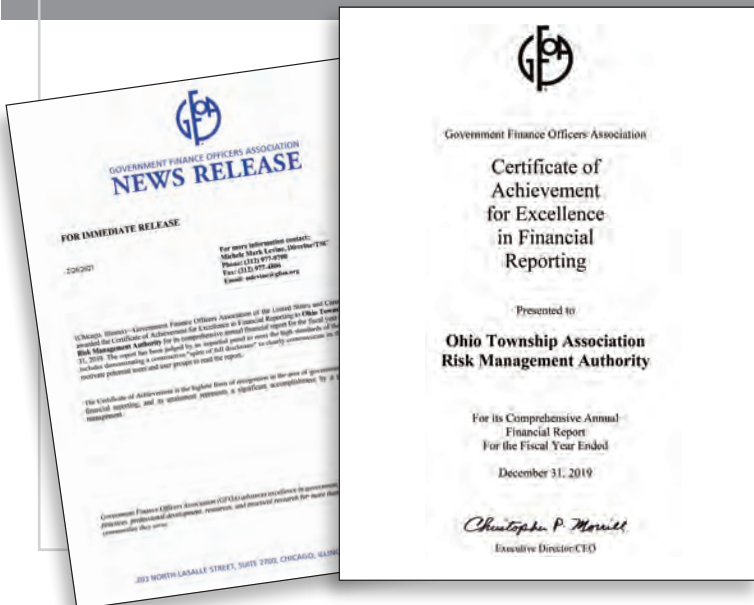
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OTARMA RECEIVES CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE



For the seventh consecutive year, the Government Finance Officers Association of the United States and Canada (GFOA) awarded the Certificate of Achievement for Excellence in Financial Reporting to **Ohio Township Association Risk Management Authority** for its comprehensive annual financial report for the fiscal year ended December 31, 2019. This Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment.

LEADING A REMOTE TEAM THROUGH CHANGE

By Allison Horak and Antoinette Joy
Horak and Joy

“It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change.” This quote from Charles Darwin is timeless, as the pandemic has so generously reminded us.

Our last article discussed remote workplace challenges and solutions, designed to help leaders manage the new workplace. This article explores the change process and how leaders can help their teams prosper during change.

How do we lead a team through change when many of us are fearful and reluctant to embrace the new? A good

place to start is by understanding psychologist Kurt Lewin’s change model. This model, commonly used by change management practitioners, reveals that humans experience change in three phases, and the time it takes each of us to transition through the phases varies. **Empathy** is the key strategy for supporting our teams through these phases.

Below is an explanation of phases, empathic insight, and recommended leadership actions you can take to effectively lead your remote teams through change.

PHASE 1: MELT

The first phase occurs when the change is introduced for the first time. Resistance is triggered because our current way of doing things, which is predictable and safe, is being disrupted. To move from this phase into the next, we have to start to melt the resistance.

Empathy mindset: Employees may be feeling angry and apprehensive during this phase. These feelings are brought about by the disruption to their “normal” and uncertainty about being successful in the new environment. They may question if there is a place for them in the new normal or if they will be obsolete.

Recommended actions for leaders

- Be transparent; clearly explain why the change is occurring.
- Highlight the benefits of the change: Your employees are capable of accepting change when they know what this change will bring them.
- Avoid denouncing the old; focus on the need for new.
- Appreciate and acknowledge the reservations and uncertainties of others, as it is normal and expected.
- Allow people time to grieve the loss; remember, people move through the stages at different speeds.

PHASE 2: MOVE

In this second phase, new expectations are being implemented, and employees are trying to adapt to the new way of doing things.

Empathy mindset: Many people attach their identity to their jobs, and changes to their jobs may be seen as a threat to their identity and security. Employees may be feeling anxious because (1) they sense a lack of control, (2) they question the pace of their progress and worry about mistakes, and therefore, (3) they are fearful about their future.

Recommended actions for leaders

- Communicate frequently and consistently about the purpose, process, benefits, and effects of the future state.
- Encourage positivity by modeling the new way and encourage others to follow.
- Involve employees in change efforts, ask for feedback, and be receptive to their implementation ideas and needs.
- Provide training, resources, tools, and (most of all) time to adjust.

E M P A

“ It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change. ”

– Charles Darwin



PHASE 3: MOLD

In this last phase, the organization ensures the change is being accepted, used, and incorporated into the business operations and culture. The new way is now the only way. The challenge is to resist the temptation some may have to go back to the old way.

Empathy mindset: There should be a shift in emotions in this phase. If the first two phases have been managed well, employees are now embracing the change, understanding its importance, actively building new skills, and experiencing the rewards of their hard work.

Recommended actions for leaders

- Continue frequent and consistent communication on accomplishments.
- Validate the new way by sharing the successes.
- Continue skill training, support, and resources to reinforce the new.
- Celebrate successes – often.

Conclusion

Leaders can make a big difference when employees face change. The actions we take can be the difference between success and frustration. Purposeful, strategic, and well-planned communication is critical. Remember: Everyone transitions through the phases at different time intervals, and emotional responses are normal and expected. Managing with an empathetic mindset can result in less stress and a more efficient and effective transition.



Allison Horak

Allison Horak is a consultant and trainer. She helps organizations work more efficiently through better leadership and communication practices. She's an expert in plain language, technical and business writing, and the process of editing and proofreading. Allison offers relevant and insightful in-person and virtual training for professional development. Her client list includes over 30 state agencies and over 20 California counties, cities, and special districts. Allison is an attorney licensed in both California and Oregon and has a degree in Communication from UC San Diego.



Antoinette Joy

Antoinette Joy is a training consultant with over 20 years' experience creating and maintaining healthy work environments. As an HR Director, she influenced organizational culture, designed training and recognition programs, and partnered with executives on strategic initiatives. Antoinette works with organizations to deliver engaging course content, both in person and virtually. She has a BA in Business Administration and Human Resources from California State University, Sacramento; some of her professional certifications include PHR, SHRM-CP, and DiSC.

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OTARMA WELCOMES NEW MEMBERS

Green Township, Wayne County

Green Township is one of 16 townships in Wayne County. It currently has a population of approximately 12,000 residents. Green Township was established in 1817, and was named after Major General Nathaniel Greene, a revolutionary soldier from Warwick, Rhode Island. The Wayne County Historical Society of Ohio lists many interesting historical landmarks in Green Township, such as the Barnet-Hoover House (also known



as the Fike House), the first log home in the township, built in 1818. Green Township became an OTARMA Member for increased coverage, the MORE Grant program, and recommendations from other OTARMA Members.

Hicksville Township, Defiance County

Hicksville Township is one of 12 townships in northwest Ohio's Defiance County. The township is located in the southwestern corner of the county, along the Indiana border. Hicksville Township was organized in 1839,



and currently has nearly 5,000 residents. Hicksville Township joined OTARMA for improved coverage at a better price and benefits such as the MORE Grant program.

Springfield Township, Jefferson County

Springfield Township, established in 1804, is the oldest of Jefferson County's 14 townships. The population is approximately 2,200 people. When Springfield Township joined OTARMA in January 2021, it resulted in 100% of Jefferson County's townships being OTARMA Members. Springfield Township selected OTARMA for increased coverage at a better price, the broker relationship, and grant opportunities.



If your township is not yet an OTARMA Member...
we welcome the opportunity to meet with you, learn more about your township, and discuss how OTARMA can best serve you.