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# OPEN MEETINGS ACT

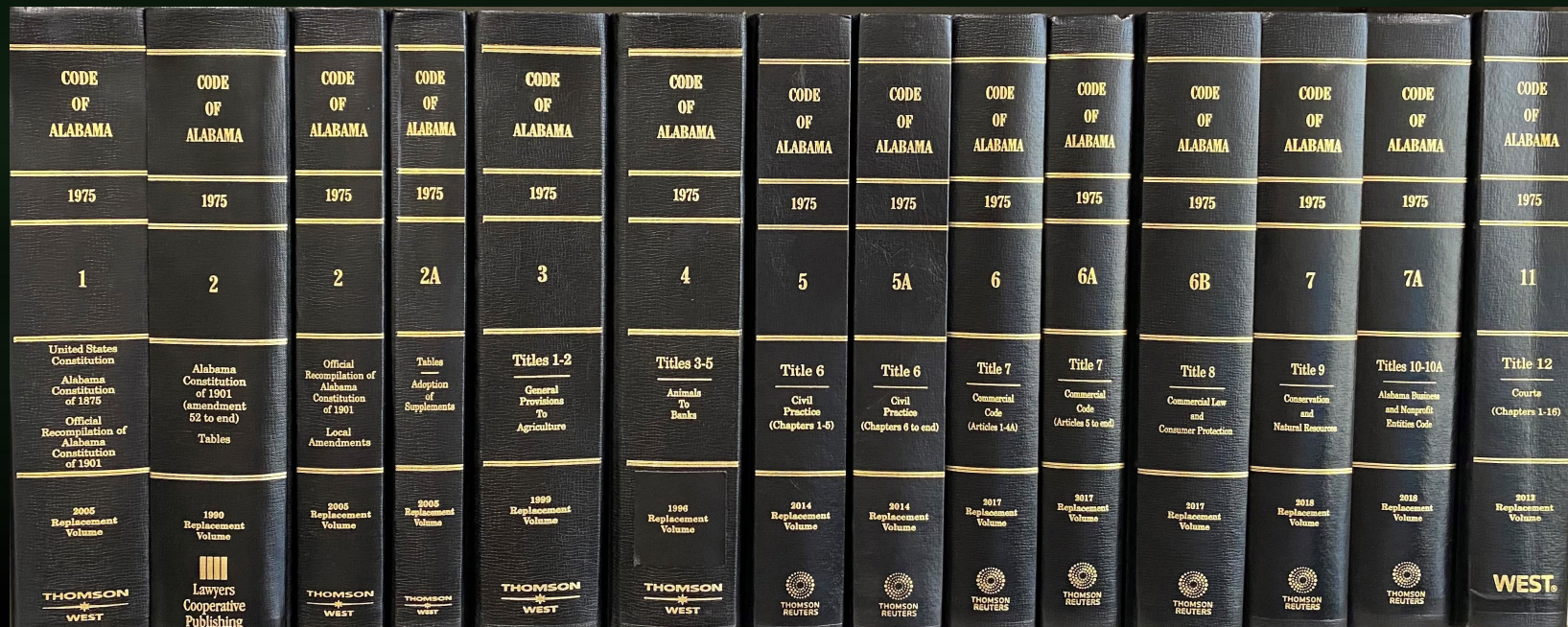


**PRESENTED BY:  
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GENERAL COUNSEL  
ALABAMA LEAGUE OF MUNICIPALITIES**



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# Sections 36-25A-1 to 36-25A-11 Code of Alabama, 1975





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# WHO IS COVERED?

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



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## WHO IS COVERED?

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



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## WHO IS NOT COVERED?

**“voluntary membership associations comprised of public employees, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or Governor.”**



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## WHICH ONE OF THESE ORGANIZATIONS IS NOT COVERED UNDER THE OPEN MEETINGS ACT?

- a) City Finance Committee (made up of members of city council)
- b) Homewood Garden Club (including members of the city council and city employees)
- c) Zoning Board of Adjustment (no council members serve)
- d) City Recreation Board (one city council serves)



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# QUORUM





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# QUORUM

- “...majority of the voting members of a governmental body.”
- Newly elected but not yet in office
- Under 12,000 population - Mayor





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# ESTABLISHING A QUORUM

- Physically Present
- Telephone Conference???
- Voting or Participating via Electronic Means???

\*\*\***(COVID-19 Exception)**

**respond to COVID-19**

**essential minimum functions of the governmental body**



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# WHAT IS A “MEETING”

## MEETING #1

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



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# WHAT IS A “MEETING”

## MEETING #2

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



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# WHAT IS A "MEETING"

## MEETING #3

- Gathering (Prearranged or Not)
- Quorum – (Majority)
  - Governmental Body
- Deliberation
- Discussion of specific matters that at the time of the exchange the participating members EXPECT to come before the full governmental body at a later date



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# DELIBERATION

- Exchange of information / ideas
- Reach / Influence a Decision as to how to vote
- Matters Expected to Come Before Body
- Immediately / Later Time



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# WHAT'S NOT A "MEETING"

## QUORUM, but ...

- Social Gatherings
- Conventions
- Conferences
- Training Programs
- Press Conference
- Media Events
- Association Meetings
- On-site Inspections
- Meetings with Applicants for Economic Incentives or Assistance

**No DELIBERATION** of matters expected to come before the body at a later date.



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# WHAT'S NOT A "MEETING"

- Quorum
  - In Person
  - Electronic Communication
- State or Federal Officials
- Reporting or Obtaining Information
- Seeking Support



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# WHAT ABOUT EMAILS?

- Cannot use email communication to avoid a “meeting” under the OMA
- Quorum?
- Deliberation?
- Pushing out information is ok
- “replying all” and engaging in deliberation is not ok





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Quorum

+ Deliberation

= Open Meetings Act



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# SERIAL MEETINGS





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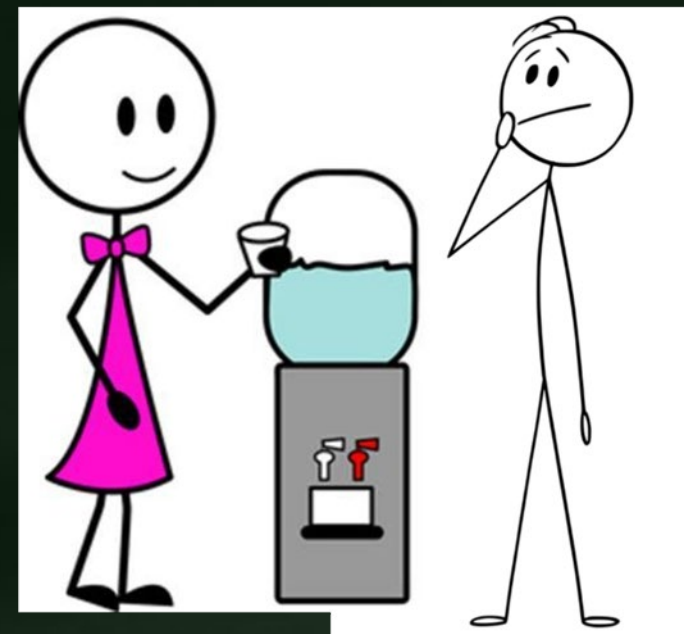
# WHAT IS A SERIAL MEETING?

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



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# SERIAL MEETING?



**YES!**



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# NOT A SERIAL MEETING

## 2 Members of a 3 Member Body

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



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# NOT A SERIAL MEETING

A Series of Gatherings to Fill a Position

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

Once search narrowed to less than 3,  
must comply with OMA



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# NOT A SERIAL MEETING

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



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# NOTICE REQUIREMENTS

- **Council**
  - 7 Days Notice (regular meeting)
  - At least 24 Hours Notice (special called meeting)
  - Public Bulletin Board at City Hall
- **Separate Corporation**
  - Public Bulletin Board at City Hall/ Principal Office of the Corporation
- **All Other Governmental Bodies**
  - Location that is Reasonably Accessible or Convenient to the Public





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# NOTICE REQUIREMENTS – EMERGENCY MEETING

**Imminent Threat of Harm to People or Property  
Minimum of 1 Hour Notice**





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# NOTICE REQUIREMENTS

- Time
- Date
- Place
- General Description of Nature and Purpose
- Preliminary Agenda (as soon as practicable)



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## DIRECT NOTIFICATION

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



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# CONDUCTING MEETINGS

- Parliamentary Procedure
- Voice Votes vs. Roll Call Votes
- No Secret Ballots
- No Voting in Executive Sessions
- Video and Audio Recordings Allowed\*

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



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# MINUTES

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



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# MINUTES

## Work Sessions?

## Executive Sessions?





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# MINUTES





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# EXECUTIVE SESSIONS







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## PROCEDURE FOR GOING INTO EXECUTIVE SESSION

- Properly noticed public meeting
- Majority of quorum vote to go into executive session – recorded votes
- Reason stated on the record
- Estimate of time to reconvene public meeting



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## REASON FOR GOING INTO EXECUTIVE SESSION

- Sunshine Law – 2 reasons
  - Good name and character
  - Pending litigation
- Open Meetings Act - 9 reasons



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## REASON FOR GOING INTO EXECUTIVE SESSION

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



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## **CANNOT Discuss Job Performance of:**

- Elected / Appointed Officials
- Appointed State/ Local Board Members
- Appointed State / Local Commission Members
- Public Employees who file Statement of Economic Interests Forms

## **CANNOT Discuss Salary, Compensation, and Job Benefits of:**

- Specific Public Officials or Specific Public Employees



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## REASON FOR GOING INTO EXECUTIVE SESSION

### **2. Consider Discipline, Dismissal or Hear Formal Written Complaints or Charges Against:**

- Public Employee
- Student at Public School or College
- Individual, Corporation, or Partnership
- Other Legal Entity



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## REASON FOR GOING INTO EXECUTIVE SESSION

### **3. Discuss Legal Ramifications and Options with Attorney:**

- Pending Litigation
- Controversies Imminently Likely to be Litigated
- Meet or Confer with Mediator or Arbitrator



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## REASON FOR GOING INTO EXECUTIVE SESSION

4. **Security Plans, Procedures, Assessments, Measures,...or Security or Safety of Persons, Structures, Facilities, or Other Infrastructures, where Public Disclosure Could be Detrimental.**
5. **Identity of Undercover Law Enforcement Agents or Informers**
  - Criminal Investigation of Persons (except public officials)
  - File Criminal Complaint



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## REASON FOR GOING INTO EXECUTIVE SESSION

### **6. Acceptable Offers for Purchase, Sale, Exchange, Lease or Market Value of Real Property.**

- Material Terms of the Contract **MUST** be Disclosed
- Only Persons Representing the Interests of the Governmental Body

### **7. Preliminary Negotiations**

- Involving Trade or Commerce
- In Competition with Private or Public Entities
- Alabama Trade Secrets Act





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## REASON FOR GOING INTO EXECUTIVE SESSION

- 8. Strategy for Negotiations Between the Governmental Body and a Group of Public Employees**
  
- 9. Deliberate and Discuss Evidence or Testimony Presented During a Public or Contested Case Hearing**



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- Never have to go into Executive Session
- No vote or action taken in Executive Session
- No minutes are kept
- Only those who need to be in there for the limited purpose of the Executive Session should attend



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# ABSOLUTE IMMUNITY

- **Members of the Council**
- **Employees**
- **OMA Compliant Meeting**
- **ANY Statements Made During the Meeting**

*Chance*

**THIS CARD MAY BE KEPT  
UNTIL NEEDED, OR SOLD**

**GET OUT OF JAIL  
FREE**





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# CIVIL VIOLATION

- **Suit brought in County where City Hall is located**
  - Media Organization
  - Alabama Citizen Impacted Greater than the Public At Large (Evidence)
  - Attorney General
  - District Attorney
- **No Local Public Official vs. Public Official**
- **60 Days of Date Plaintiff Knew/ Should have Known**
- **2 Years of Alleged Violation**



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



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# PENALTY

**Up to \$1,000 or half the monthly salary of the official,  
*whichever is LESS.***



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