

# Town of Upper Marlboro

14211 School Lane • Upper Marlboro, Maryland 20772

## BOARD OF SUPERVISORS OF ELECTIONS MEETING

January 18, 2022– 6:00 p.m.

### AGENDA

This meeting will be conducted via Zoom Video Teleconference. As the Town Hall remains closed to the public at this time, citizens may participate by video or phone

<https://uppermarlbormd->

[gov.zoom.us/j/82572640456?pwd=YmdaQ0RsdFY2d0xmUVR5NFdlM3NWZz09](https://uppermarlbormd-gov.zoom.us/j/82572640456?pwd=YmdaQ0RsdFY2d0xmUVR5NFdlM3NWZz09)

Meeting ID:825 7264 0456; Passcode 666983; Dial-in only: 301-715-8592

### 6:00 PM Call to Order

- Roll Call
- Review of Meeting Minutes From Last Meeting January 6, 2022
- Legal Discussion – Postpone January 25, 2022, Special Election
- Revise Timeline For New Special Election Date
- Other Election Logistics
- Adjournment

# **The Town of Upper Marlboro**

## **Declaration of Emergency Order 2022-01**

**AN EMERGENCY ORDER OF THE PRESIDENT OF THE TOWN OF UPPER MARLBORO POSTPONING THE SPECIAL ELECTION SET TO FILL A VACANCY IN OFFICE PREVIOUSLY SCHEDULED FOR JANUARY 25, 2022, UNTIL FEBRUARY 22, 2022; AND SUPPLEMENTING OR MODIFYING CERTAIN SAFEGUARDS, PRECAUTIONS AND REQUIREMENTS UNDER THE LOCAL STATE OF EMERGENCY ORDER INITIALLY ISSUED BY THE MAYOR ON MARCH 25, 2020, AS AMENDED OR EXTENDED.**

**WHEREAS**, in accordance with Emergency Ordinance 2020-04 (Emergency Operations), the President/Mayor may declare a Local State of Emergency for a 30-day period and the Board is authorized to ratify, extend, or modify said order; and

**WHEREAS**, Resolution 2021-27 ordered and ratified a declaration of emergency (DOE 2021-03) as the third extension of the initial proclamation issued on March 25, 2020, and extended the state of local emergency period until January 31, 2022; and

**WHEREAS**, according to Section 82-32 of the Charter, in case of a vacancy on the Board of Commissioners (the "Board") for any reason, the Board of Supervisors of Elections shall, pursuant to the provisions of Section 82-29, conduct a special election to elect some qualified person to fill such vacancy for the unexpired term, provided, however, any vacancy which occurs within 61 days of the next general election as provided for in Section 82-27 [held the first Tuesday in November in odd numbered years] shall remain vacant until said general election; and

**WHEREAS**, the Board approved Resolution 2021-28, jointly declaring along with the Mayor, a Board vacancy and selecting a special election date for January 25, 2022, subject to approval of the date by the Board of Supervisors of Elections, and modifying certain requirements and safeguards for the conduct of the election; and

**WHEREAS**, pursuant to Emergency Ordinance 2020-04 upon the issuance of an executive order of a civil municipal emergency by the President, and during the existence of such civil emergency, the President may, in a form that meets the requirements of Section 4 of said ordinance, make and proclaim the following orders: ... (22) An order to derogate express charter or ordinance provisions for conducting or postponing a municipal election or to prescribe the method of conducting a municipalelection; (23) An order abrogating or modifying any relevant and existing ordinance, resolution, rule, regulation, or charter provision to allow for extensions of permits, licenses, registrations, nominationcertificates or other permissions, deadlines or mandated filings to extend or avoid lapsing of same fora period of time extending for up to 30 days after the emergency; and

**WHEREAS**, according to Section 82-29 of the Charter, all special Town elections shall be conducted by the Board of Supervisors of Elections in the same manner and with the same personnel, as far as practicable, as regular Town elections, and in the event a special election is required pursuant to Section 82-32, the said special election shall be held not less than thirty (30) days and not more than forty-five (45) days after the vacancy is created, and the newly elected Commissioner shall take

office on the second Monday of the month [Mar. 14, 2022] following the special election; and

**WHEREAS**, the President finds that, based on the legal opinion of the Town Attorney, that the Charter provision in Sec. 82-29 stating that "[i]n the event a special election is required pursuant to Section 82-32, the special election shall be held not less than thirty (30) days and not more than forty-five (45) days after the vacancy is created..." (emphasis added) would likely be deemed as directory and not mandatory by a Maryland Court and that unless there is further language to clarify the legislative intent, the word "shall" in referring to the government when used in statutes or charters, is to be construed as "may;" and

**WHEREAS**, Ordinance 2001-2 enacted on October 9, 2001, provides for the conduct of voter registration, maintenance of registration records, conduct of elections, certification of election results and absentee ballots, except that certain provisions governing absentee ballots pertaining to the reasons for the absence are now superseded and nullified by State Law; and

**WHEREAS**, as required by Section 5 of Emergency Ordinance 2020-04 upon issuing any emergency proclamation, the President does hereby find the following:

- (i) That conditions of peril to the safety of persons and property continue to exist within said Town, caused by the COVID-19 epidemic; and
- (ii) That the President and the Board believe it is in the best interest of public safety and the protection of property that the exercise of certain rights be temporarily limited and that the conditions of this Order is designed to provide the least necessary restriction on those rights; and

**WHEREAS**, the President further finds that there are other compelling reasons to delay and hold the special election beyond 45 days from the time of the vacancy or otherwise postpone the election date during the current declared health emergency to change the special election date and impose further regulations and safeguards to govern the conduct of said election to include the following: (i) there have been no statements of candidacy filed to date and no names to place on the ballot, (ii) it would be impractical and a potential waste of tax dollars to have an election when there is no official or registered interest in being a candidate, (iii) the preparations for this special election have been delayed or hampered by the uptick in COVID, snowstorms and the recent holiday period, (iv) health and other issues regarding at least one key member of the Board of Election Supervisors and staff have contributed to delays in organizing the special election, and (v) a postponement of the special election will help mitigate or cure any lapses in judgment, irregularities or alleged improprieties or appearances of improprieties in attracting and recruiting candidates or in providing sufficient notice to attract a reasonable number of viable candidates (named on the ballot or write in) since the vacancy occurred; and

**WHEREAS**, according to Section 82-23 of the Charter, the Board of Supervisors of Elections shall give at least two weeks' notice of every registration day and every election by an advertisement published in a newspaper of general circulation in the Town.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, by the President of the Board of Commissioners for The Town of Upper Marlboro, this 14th day of January 2022, that the President

hereby orders a change to Special Election previously scheduled to be held on Tuesday, January 25<sup>th</sup>, 2022, shall be postponed until and instead held on **Tuesday, February 22nd, 2022** with the below additional emergency measures, actions or precautions to be put in place to protect voters, poll workers and other Town personnel and their families from the novel Coronavirus (COVID-19):

1. A State of Local Emergency continues to exist within the boundaries of the Town of Upper Marlboro because of ongoing concerns about the possible spread of the Coronavirus (COVID-19).
2. That during the existence of said local and/or State emergency the Town shall observe the same rules and restrictions as Prince George's County, as adopted by reference herein, except for any modifications to same found in this Joint Order and Resolution.
3. That during the existence of said local and/or State emergency the Board of Election Supervisors or any member thereof is authorized to recommend additional rules and procedures or precautions for the conduct of elections to be further ordered by the President pursuant to an emergency proclamation.
4. **Modified Election Procedures or Precautions in Response to COVID-19:**
  - A. Limit of 10 persons in voting room/conference room at a time (including up to five election judges),
  - B. Voters will enter one door and exit a different door,
  - C. 6-foot social distancing and masks will be required within the polling place,
  - D. Voters will be screened via temperature checks prior to entering Town Hall or in a designated separate or partitioned room or foyer within Town Hall,
  - E. Any otherwise qualified voter whose screening at the polls exceeds acceptable guidelines, in order to protect the public and staff, will be offered or may be required by the Chairman of the Board of Election Supervisors or his or her designee to use a provisional or emergency absentee ballot for which to vote,
  - F. Hand sanitizer will be made available at every voting booth and station to include measures for sanitizing voting equipment and other surfaces, such as pens and tables, and, paper towels, hand sanitizer, tissue to be made available, and
  - G. Elections judges and voting booths will be protected by plexiglass shields as deemed by the Board of Election Supervisors to be practicable and effective.

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President of the Board of Commissioners for The Town of Upper Marlboro that written statements of candidacy and nominating petitions shall be filed with one of the Supervisors of Elections or the Town Clerk on or before the first Monday in February of 2022 (February 7, 2022).

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President of the Board of Commissioners for The Town of Upper Marlboro that this Order shall modify and extend, as applicable, any prior existing proclamation or order of the President until such time that the present health emergency is declared terminated.

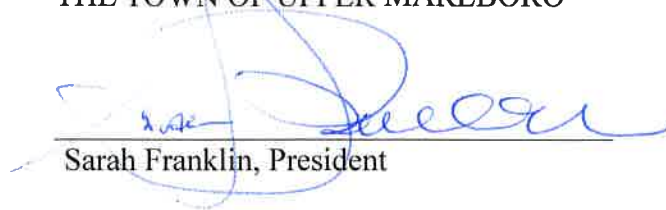
**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President of the Board of Commissioners for The Town of Upper Marlboro that this Resolution and Order and any other lawful

local orders may be enforcement by the Upper Marlboro Police Department within the corporate limits of the Town and any other law enforcement agency having jurisdiction within the Town.

ATTEST:

  
Clerk, John Hoatson

THE TOWN OF UPPER MARLBORO

  
Sarah Franklin, President

Date: 1-14-2022



## **The Town of Upper Marlboro**

RESOLUTION: 2022-\_\_ (DOE 2022-01)

SESSION: Special Town Meeting

DATED: January 14<sup>th</sup>, 2022

**AN EMERGENCY ORDER OF THE PRESIDENT AND A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO POSTPONING THE SPECIAL ELECTION SET TO FILL A VACANCY IN OFFICE PREVIOUSLY SCHEDULED FOR JANUARY 25, 2022, UNTIL FEBRUARY 22, 2022; AND SUPPLEMENTING OR MODIFYING CERTAIN SAFEGUARDS, PRECAUTIONS AND REQUIREMENTS UNDER THE LOCAL STATE OF EMERGENCY ORDER INITIALLY ISSUED BY THE MAYOR ON MARCH 25, 2020, AS AMENDED OR EXTENDED.**

**WHEREAS**, in accordance with Emergency Ordinance 2020-04 (Emergency Operations), the President/Mayor may declare a Local State of Emergency for a 30-day period and the Board is authorized to ratify, extend, or modify said order; and

**WHEREAS**, Resolution 2021-27 ordered and ratified a declaration of emergency (DOE 2021-03) as the third extension of the initial proclamation issued on March 25, 2020, and extended the state of local emergency period until January 31, 2022; and

**WHEREAS**, according to Section 82-32 of the Charter, in case of a vacancy on the Board of Commissioners for any reason, the Board of Supervisors of Elections shall, pursuant to the provisions of Section 82-29, conduct a special election to elect some qualified person to fill such vacancy for the unexpired term, provided, however, any vacancy which occurs within 61 days of the next general election as provided for in Section 82-27 [held the first Tuesday in November in odd numbered years] shall remain vacant until said general election; and

**WHEREAS**, the Board approved Resolution 2021-28, jointly declaring along with the Mayor, a Board vacancy and selecting a special election date for January 25, 2022, subject to approval of the date by the Board of Supervisors of Elections, and modifying certain requirements and safeguards for the conduct of the election; and

**WHEREAS**, pursuant to Emergency Ordinance 2020-04 upon the issuance of an executive order of a civil municipal emergency by the President, and during the existence of such civil emergency, the President may, in a form that meets the requirements of Section 4 of said ordinance, make and proclaim the following orders: ...(22) An order to derogate express charter or ordinance provisions for conducting or postponing a municipal election or to prescribe the method of conducting a municipal election; (23) An order abrogating or modifying any relevant and existing ordinance, resolution, rule, regulation, or charter provision to allow for extensions of permits, licenses, registrations, nomination certificates or other permissions, deadlines or mandated filings to extend or avoid lapsing of same for a period of time extending for up to 30 days after the emergency; and

**WHEREAS**, according to Section 82-29 of the Charter, all special Town elections shall be

conducted by the Board of Supervisors of Elections in the same manner and with the same personnel, as far as practicable, as regular Town elections, and in the event a special election is required pursuant to Section 82–32, the said special election shall be held not less than thirty (30) days and not more than forty–five (45) days after the vacancy is created, and the newly elected Commissioner shall take office on the second Monday of the month [Mar. 14, 2022] following the special election; and

**WHEREAS**, the Board finds that, based on the legal opinion of the Town Attorney, that the Charter provision in Sec. 82-29 stating that "[i]n the event a special election is required pursuant to Section 82–32, the special election shall be held not less than thirty (30) days and not more than forty–five (45) days after the vacancy is created..." (emphasis added) would likely be deemed as directory and not mandatory by a Maryland Court and that unless there is further language to clarify the legislative intent, the word “shall” in referring to the government when used in statutes or charters, is to be construed as “may;” and

**WHEREAS**, Ordinance 2001-2 enacted on October 9, 2001, provides for the conduct of voter registration, maintenance of registration records, conduct of elections, certification of election results and absentee ballots, except that certain provisions governing absentee ballots pertaining to the reasons for the absence are now superseded and nullified by State Law; and

**WHEREAS**, as required by Section 5 of Emergency Ordinance 2020-04 upon issuing any emergency proclamation, the President does hereby find the following:

- (i) That conditions of peril to the safety of persons and property continue to exist within said Town, caused by the COVID-19 epidemic; and
- (ii) That the President and the Board believe it is in the best interest of public safety and the protection of property that the exercise of certain rights be temporarily limited and that the conditions of this Order is designed to provide the least necessary restriction on those rights; and

**WHEREAS**, the President and Board further finds that there are other compelling reasons to delay and hold the special election beyond 45 days from the time of the vacancy or otherwise postpone the election date during the current declared health emergency to change the special election date and impose further regulations and safeguards to govern the conduct of said election to include the following: (i) there have been no statements of candidacy filed to date and no names to place on the ballot, (ii) it would be impractical and a potential waste of tax dollars to have an election when there is no official or registered interest in being a candidate, (ii) the preparations for this special election have been delayed or hampered by the uptick in COVID, snowstorms and the recent holiday period, (iii) health and other issues regarding at least one key member of the Board of Election Supervisors and staff have contributed to delays in organizing the special election, and (iv) a postponement of the special election will help mitigate or cure any lapses in judgment, irregularities or alleged improprieties or appearances of improprieties in attracting and recruiting candidates or in providing sufficient notice to attract a reasonable number of viable candidates (named on the ballot or write in) since the vacancy occurred; and

**WHEREAS**, according to Section 82-23 of the Charter, the Board of Supervisors of Elections shall give at least two weeks’ notice of every registration day and every election by an advertisement

published in a newspaper of general circulation in the Town.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, by the President and the Board of Commissioners for The Town of Upper Marlboro, sitting in regular or special session this \_\_\_\_\_ day of January 2022, that the President and said Board hereby orders a change to Special Election previously scheduled to be held on Tuesday, January 25<sup>th</sup>, 2022, shall be postponed until and instead held on **Tuesday, February 22nd, 2022** with the below additional emergency measures, actions or precautions to be put in place to protect voters, poll workers and other Town personnel and their families from the novel Coronavirus (COVID-19):

1. A State of Local Emergency continues to exist within the boundaries of the Town of Upper Marlboro because of ongoing concerns about the possible spread of the Coronavirus (COVID-19).
2. That during the existence of said local and/or State emergency the Town shall observe the same rules and restrictions as Prince George's County, as adopted by reference herein, except for any modifications to same found in this Joint Order and Resolution.
3. That during the existence of said local and/or State emergency the Board of Election Supervisors or any member thereof is authorized to recommend additional rules and procedures or precautions for the conduct of elections to be further ordered by the President pursuant to an emergency proclamation.
4. Modified Election Procedures or Precautions in Response to COVID-19:
  - A. Limit of 10 persons in voting room/conference room at a time (including up to five election judges),
  - B. Voters will enter one door and exit a different door,
  - C. 6-foot social distancing and masks will be required within the polling place,
  - D. Voters will be screened via temperature checks prior to entering Town Hall or in a designated separate or partitioned room or foyer within Town Hall,
  - E. Any otherwise qualified voter whose screening at the polls exceeds acceptable guidelines, in order to protect the public and staff, will be offered or may be required by the Chairman of the Board of Election Supervisors or his or her designee to use a provisional or emergency absentee ballot for which to vote,
  - F. Hand sanitizer will be made available at every voting booth and station to include measures for sanitizing voting equipment and other surfaces, such as pens and tables, and, paper towels, hand sanitizer, tissue to be made available, and
  - G. Elections judges and voting booths will be protected by plexiglass shields as deemed by the Board of Election Supervisors to be practicable and effective.

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President and the Board of Commissioners for The Town of Upper Marlboro that written statements of candidacy and nominating petitions shall be filed with one of the Supervisors of Elections or the Town Clerk on or before the first Monday in February of 2022 (February 7, 2022).

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President and the Board of Commissioners for The Town of Upper Marlboro that this Resolution and Order shall modify and

extend, as applicable, any prior existing proclamation or order of the President until such time that the present health emergency is declared terminated.

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President and the Board of Commissioners for The Town of Upper Marlboro that this Resolution and Order and any other lawful local orders may be enforcement by the Upper Marlboro Police Department within the corporate limits of the Town and any other law enforcement agency having jurisdiction within the Town.

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the Board of Commissioners for The Town of Upper Marlboro that the President is hereby authorized to sign this joint Resolution and Order on behalf of the Board.

ATTEST:

THE TOWN OF UPPER MARLBORO

\_\_\_\_\_  
Clerk, John Hoatson

\_\_\_\_\_  
Sarah Franklin, President

Date: January \_\_\_, 2022

CERTIFICATION

I, the undersigned, hereby certify that I am the Town Clerk of the Town of Upper Marlboro and that the Board of Town Commissioners of the Town of Upper Marlboro at a public meeting at which a quorum was present adopted this Resolution and Order, and that said Resolution and Order is in full force and effect and has not been amended or repealed. In witness whereof, I have hereunto set my hand and seal of the municipal corporation, this \_\_\_ day of January, 2022.

\_\_\_\_\_  
John Hoatson, Clerk



# Town of Upper Marlboro

Town Hall, 14211 School Lane  
Upper Marlboro, MD 20772

Tel: (301) 627-6905  
Fax: (301) 627-2080

[info@uppermarlboromd.gov](mailto:info@uppermarlboromd.gov)  
[www.uppermarlboromd.gov](http://www.uppermarlboromd.gov)

Mailing address: P.O. Box 280 • Upper Marlboro, MD 20773-0280

To: Board of Supervisors of Elections & Board of Town Commissioners

From: John Hoatson, Town Clerk

Date: Friday January 14, 2022

Re: Price Quotes – Ballot Printing – Special Election | February 22, 2022

Board of Supervisors of Elections and Board of Town Commissioners,

Below are two quotes being provided for printing of ballots for the upcoming Special Election on Tuesday, February 22, 2022.

## Option A:

<i>PerforatedPaper.com</i>	250 sheets of 80lbs Cover Stock Perforated: 57.95
<a href="#">Shopping Cart   Eventgroove (perforatedpaper.com)</a>	Shipping Cost: 13.55
Town Hall Printer	Grand Total: \$71.50 Receive By January 31, 2022

## Option B:

<i>H&amp;W Printing – Local Printer</i>	250 5 1/2 X 4 1/4 On Both Sides (2 versions) 80lbs – 100 lbs Cover Stock Perforated
Local Prince George's County Printer	Grand Total: \$110.00

Please choose Option A or Option B and direct Town Clerk as to how to proceed.

Any questions, please let me know.

**COMPLIANCE CHECKLIST**  
**FOR MEETINGS SUBJECT TO THE MARYLAND OPEN MEETINGS ACT \***

Name of public body \_\_\_\_\_ Date of Meeting: \_\_\_\_\_

1. \_\_\_\_ Did you give “reasonable advance notice” and keep a copy or screenshot?
2. \_\_\_\_ Did you make an agenda available when notice was posted, or, if not yet determined, as soon as practicable, but at least 24 hours before the meeting?
3. \_\_\_\_ Did you make arrangements for the public to attend?
4. \_\_\_\_ Is someone prepared to keep minutes in writing or, otherwise, to run the equipment for minutes in the form of live and archived video or audio streaming?
5. \_\_\_\_ If part of this meeting might be closed to the public, have you first:
  - \_\_\_\_ Made sure that the public body has designated a member to take training in the Act?
  - \_\_\_\_ Made sure that the topic to be discussed falls entirely within one or more of the “exceptions” that allow the closed session? (see the other side for the list)
  - \_\_\_\_ Given notice of the open meeting to be held right before the closed session, so that the presiding officer can hold the required public vote to close?
  - \_\_\_\_ Made sure that the initial open meeting will be attended by a member designated to take training in the Act, and, if a designated member cannot attend, made sure that the public body is ready to complete this compliance checklist at the open meeting and keep it to attach to the minutes?
  - \_\_\_\_ Equipped the presiding officer to prepare a written statement with the required disclosures? (for a model form with instructions, go to <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx> )
  - \_\_\_\_ Equipped the presiding officer to limit the closed session discussion to the exceptions and topics cited on the written closing statement?
  - \_\_\_\_ Arranged for closed-session minutes to be kept and adopted as sealed?
  - \_\_\_\_ Equipped someone in the closed session to keep a record of each item of information that must be disclosed in the minutes of the next open meeting? (for the list, see the model closing statement).
  - \_\_\_\_ For a meeting recessed to hold a closed administrative session, arranged to disclose, in the minutes of the next open meeting, the date, time, and place, persons present, and subjects discussed?
6. \_\_\_\_ Have you arranged for the preparation, the adoption as soon as practicable, and posting online if practicable, of minutes of the open meeting, including summaries of any prior closed sessions, and this form (when required), completed on this side?

*\*This checklist is designed for general use as well as for use at open meetings of public bodies that hold closed meetings, when a member designated for training cannot attend the initial open meeting. See GP § 3-213(d). Like the earlier checklists, this checklist gives general guidance, does not guarantee “compliance” with every provision of the Open Meetings Act, and will be revised occasionally.*

*(Revised July 2018)*

**STATUTORY AUTHORITY TO CLOSE SESSION  
(THE FIFTEEN “EXCEPTIONS”)  
General Provisions Article § 3-305(b)**

- (1) To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals;
- (2) To protect the privacy or reputation of an individual with respect to a matter not related to public business;
- (3) To consider the acquisition of real property for a public purpose and matters directly related to the acquisition;
- (4) To consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;
- (5) To consider the investment of public funds;
- (6) To consider the marketing of public securities;
- (7) To consult with counsel to obtain legal advice;
- (8) To consult with staff, consultants, or other individuals about pending or potential litigation;
- (9) To conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- (10) To discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including: (i) the deployment of fire and police services and staff; and (ii) the development and implementation of emergency plans;
- (11) To prepare, administer, or grade a scholastic, licensing, or qualifying examination;
- (12) To conduct or discuss an investigative proceeding on actual or possible criminal conduct;
- (13) To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter;
- (14) To discuss, before a contract is awarded or bids are opened, a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- (15) (Eff. 10/1/18) To discuss cybersecurity, if the public body determines that public discussion would constitute a risk to:
  - (i) security assessments or deployments relating to information resources technology;
  - (ii) network security information, including information that is: 1. Related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity; 2. Collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or 3. Related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity; or
  - (iii) deployments or implementation of security personnel, critical infrastructure, or security devices.

# Open Meetings FAQs – A Quick Guide to Maryland’s Open Meetings Act

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## 1. What’s the Open Meetings Act?

The Open Meetings Act is a Maryland statute. It states the goal that “public business be conducted openly and publicly” and sets as the policy of the State that, except in certain “special and appropriate circumstances,” the public “be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.”

The Act does not set the rules for when public bodies must meet – it just carries out the policy that when public bodies do meet, they must do so openly unless the discussion falls within one of the “special and appropriate circumstances” listed in the Act.

Sometimes, a public body is subject to other laws, for example a county or city charter, that require it to meet in order to address public business, or that impose meetings requirements that are stricter (in favor of more openness) than those in the Act.

## 2. Where can I find the text of the Open Meetings Act?

The Act appears in Title 3 of the General Provisions Article of the Maryland Code. For Links to the Open Meetings Act:

- [Westlaw](#)
- [LexisNexis](#) (See Title 3 of the General Provisions Article)
- [Maryland General Assembly](#) (See §§3–101 through 501)

## 3. When does the Act apply?

The Act applies only when a “quorum” of the members of a “public body” is “meeting.” The Act gives each of these terms a special definition.

## 4. What’s a “public body?”

A “public body” is an entity that consists of members and that was created in any of three ways. First, a multimember entity is a “public body” if it was created by: (a) a law, (the Maryland Constitution, a state statute, or county ordinance); (b) an executive order (an order of the Governor or, for a local government, its chief executive authority); (c) a rule, resolution, or bylaw of a government entity, or (d) an agreement between the State Department of Education and a majority of the county boards of education.

Second, a multimember entity is a “public body” if its members were appointed by the Governor, or by a local government’s chief executive authority, or by someone subject to the executive’s policy direction—but only when at least two members are not employed by the State or local government in question. For example, a citizen task force appointed by the Governor or a state department head will be a “public body” under this definition. A gathering of agency employees will not be a “public body”.

Finally, for state entities only, a multimember entity is a “public body” if its members are appointed by a public body whose members were appointed by the Governor or by an official subject to that appointing entity’s policy direction.

Examples of groups that are *not* “public bodies” include private homeowners associations, a private entity’s board of directors, and various court-related entities. Some entities that would otherwise fall within one of the three definitions are expressly excluded. For that list and details on the “public body” definition, see the Open Meetings Act Manual, Chapter 1, Part A.

## 5. What’s a quorum?

A quorum is a majority of the public body’s members unless the law applicable to that particular public body sets a different number.

## 6. What's a "meeting?"

A "meeting" occurs whenever a public body's quorum convenes to discuss public business. An occasion that starts out as a purely social event is a "meeting" only if a quorum uses it to discuss the public body's business. A gathering at which a quorum discusses public business is a "meeting" no matter where it occurs and no matter whether the quorum takes an action.

Generally, a quorum can be present either in person or by telephone. Email communications among a quorum, as opposed to between individual members, might constitute a meeting if the emails are so close in time as to show that a quorum was in on the discussion together. For details on "meetings," see the Open Meetings Act Manual, Chapter 1, Part B.

## 7. Are there times when a public body's meetings are *not* subject to the Open Meetings Act?

Yes. The Act classifies the work of public bodies by "function," and three functions are excluded from the Act, with one exception. The excluded functions are the judicial function (generally, the functions performed by the courts), the quasi-judicial function (generally, a public body's determination of a case that can be appealed to a court), and the administrative function (very broadly speaking, not one of the other functions, not the formation of new policy, and the performance of tasks such as the application of set policies to a set of facts). However, the Act *does* apply to most land-use and licensing matters. The functions are best understood through examples and are discussed in the Open Meetings Act Manual, Chapter 1, Part C.

If a public body only performs an excluded function in a meeting, that meeting is generally not subject to the Act. However, a reporting requirement applies when a public body recesses a meeting that is subject to the Act in order to perform an administrative function.

If a public body is meeting to perform any other function, or to conduct public business that does not seem to fall into any function, the meeting is subject to the Act. However, the Act permits the public body to exclude the public from some discussions, as explained in #11 below.

## 8. When the Open Meetings Act applies, what does it require the public body to do?

The Act requires the public body to give "reasonable advance notice" of its meetings, to make an agenda available in advance except in cases of emergency, to hold its meetings openly, to adopt minutes, and to retain them for 5 years. The Act also lists topics that a public body may discuss behind closed doors after the public body has disclosed the topics

and the basis for its decision to exclude the public from the discussion and has voted in public to close the meeting. And, as discussed in #13, there is a general training requirement for every public body and a particular training requirement for public bodies that meet in closed sessions.

A “Compliance Checklist” is posted under “Sample Forms and Checklists” at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>. It lists the requirements for meetings subject to the Act.

## 9. What’s “reasonable advance notice?”

That depends on the circumstances. Ordinarily, a public body should use notice methods that are likely to reach its constituency, including the members of the press who regularly report on the public body or the activities of the government of which the public body is a part. The Act gives examples of reasonable methods, including the use of a website that the public body ordinarily uses to provide information to the public.

As for the timing of the notice, a public body that has scheduled a meeting should not delay posting notice, unless the meeting was scheduled so far in advance that it would be more effective to post notice closer to the meeting date. The Act does not set a deadline for posting notice and thus does not prevent public bodies from meeting on short notice in emergencies. In emergencies, the public body must provide the best notice feasible under the circumstances.

The Act does set minimum requirements for what a notice must contain: the time, date, and place of the meeting, and, if the public body expects to close part of the meeting to the public, an alert to that fact. In order to plan the meeting space, a public body may include in its notice a request that members of the public contact the public body if they wish to attend. For details on notice requirements, see Chapter 2 of the Open Meetings Act Manual.

Public bodies must make an agenda available before each meeting, either when notice is posted, if the items of business are known then, or as soon as practicable, but no later than 24 hours before the meeting. There is an exception for meetings held in response to emergencies.

## 10. What does it mean to meet “openly?”

The Act’s policy statement refers to the ability of the “public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies” and to “witness the phases of the deliberation, policy formation, and decision making of public bodies.” The Act also sets the policy that meetings “be held in places reasonably accessible to individuals who would like to attend” them.

These provisions raise a number of logistical questions, which are discussed in detail in Chapter 3 of the Open Meetings Act Manual. Generally, the meeting place must be accessible to the public, but members of the public may be required to cooperate with the security procedures of the building in which the meeting room is located. Generally, the press and other attendees may film the meeting, but that does not mean that attendees may do so disruptively. Public bodies are to adopt meeting rules, and, if the presiding officer determines that someone is disrupting an open session, the public body “may have the individual removed.”

The Act does not require public bodies to allow public comment during a meeting, except that a member of the public may object to a public body’s decision to discuss a topic in closed session. A particular public body might be subject to other laws that entitle the public to comment.

## 11. When may a public body meet in a session that is closed to the public?

As of October 1, 2018, the Act lists 15 topics that a public body may choose to discuss behind closed doors if the public body has met specific conditions. The topics, referred to as “exceptions,” include such subjects as personnel discussions about particular individuals, the receipt of legal advice from the public body’s attorney, and subjects that must be kept confidential under other laws.

Each closed session must be preceded by an open session for which the public body has given notice. In the open session, the presiding officer must conduct a recorded vote on a motion to close the session. The presiding officer must also prepare a written statement, or “closing statement,” that cites the part of the Act that contains the applicable exception, lists the topics to be discussed in the closed session, and gives the public body’s reason for excluding the public. A member of the public in attendance may object to the decision and inspect the closing statement. A public body may not meet in a closed session until it has designated one or members to take training in the Act. Further, a designated member must attend the open session beforehand, or, if no designated member can attend, the public body must complete the compliance checklist (see #8) and attach the checklist to its minutes.

When the public body meets in closed session, the members may not discuss topics other than those listed on the closing statement. Likewise, their discussion of the topics that they did disclose must fall within the scope of the exception that they claimed. For the disclosures that a public body must make after a closed session, see #12, below.

Model closing statement forms are posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>, under the heading for “Sample Forms and Checklists.” They list the 15 exceptions and contain spaces for the required information. The form “with instructions” explains what

the public body must do. For details on the exceptions and conditions, see Chapters 4 and 5 of the Open Meetings Act Manual.

## 12. What minutes and other records must a public body create, and may the public inspect them?

Public bodies must draft and adopt minutes for any meeting subject to the Act, whether open or closed. The public body must also create and retain written meeting notices and closing statements. The Act requires public bodies to retain its minutes and any tape recording of a meeting for at least five years.

Open-session minutes can be in either of two forms: written, or “live and archived video or audio streaming.” Written minutes are to be adopted “as soon as practicable after a public body meets.” Under the Act, they are to be posted online if that is practicable. Also, minutes are to be open to public inspection during the public body’s regular business hours. A member of the public who wants to inspect numerous or old sets of minutes might find it helpful to contact the public body in advance so as to avoid delays at the public body’s office. A public body may charge for copies but not for producing the minutes for inspection. Generally, closed-session minutes are written, sealed and not available for public inspection. For details on public access to minutes, see Chapter 6, Part B(6) of the Open Meetings Act Manual.

When a public body has met in a closed session, it must disclose some details about the session in the minutes of its next open session. Information on the required content of minutes, including closed-session summaries, and on timeliness can be found in Chapter 6, Part B, of the Open Meetings Act Manual.

As described in #11, public bodies must prepare and adopt a closing statement before each closed meeting. Members of the public may inspect that document at the time that the meeting is closed, and it should also be available for inspection when someone comes to the public body’s office and asks to see it.

The Act does not address public access to written notices of past open sessions, but they may be requested under the Public Information Act.

## 13. What’s the training requirement, and is there a course I can take?

Each public body must designate a member, officer, or employee to take training in the Act. Public bodies that wish to hold closed meetings must designate a member for training, as explained in #11 above. The training must be through one of three types of courses: the course on open meetings offered by the Maryland Association of Counties or Maryland Municipal League through the Academy for Excellence in Local Governance, the online course made available by the office of the Attorney General and the University of

Maryland’s Institute for Governmental Service and Research, or the open meetings course offered by the Maryland Association of Boards of Education through the Boardsmanship Academy. The online course is available to the public at no cost.

A link to the online course can be found under the “Other Resources” heading at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>. More detail on the training requirement can be found in Chapter 7, Part A(4) of the Open Meetings Act Manual.

## 14. What can I do when I think a public body has violated the Open Meetings Act?

As a practical matter, you might begin by gathering the facts on whether the Act applies to the gathering in question, and, if so, what happened. Often, the entity’s staff or a member can help address questions and concerns, as might the constituent services staff for an elected official, and the entity’s website might provide background on how it was created.

The Act itself provides two routes. First, you may file a complaint with the Open Meetings Compliance Board to seek an advisory opinion on whether the public body violated the Act. The public body then has 30 days in which to respond, and the Compliance Board usually issues an opinion within 30 days after that. The Compliance Board has no budget of its own and does not have investigative powers. Its three members are appointed by the Governor and serve without compensation. The Compliance Board’s procedures are posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>. It does not address Public Information Act complaints.

The Compliance Board’s opinions are not enforceable orders; that complaint route instead is a way of seeing that the public body gets relatively prompt guidance on how to comply with the Act. However, when the Compliance Board finds a violation, a member of the public body must summarize the opinion in the next open meeting, a majority of the members must sign a copy to acknowledge that they have received it, and the violator is identified on the webpage used by the Compliance Board for publishing its opinions. The public body must send a signed copy of the opinion to the Compliance Board. The Compliance Board route is free and also faster and more informal than litigation.

Second, you may sue the public body in the circuit court where the public body is located. The Act sets deadlines for lawsuits filed under the Act’s provisions. You may file a complaint both with the Compliance Board and in court. Court rules, not the Compliance Board’s rules, govern actions filed in court.

The Act does not give the Office of the Attorney General a role in enforcing the Act’s provisions. As explained on the Attorney General’s website, the Office acts as the legal advisor to departments, officials, boards, and institutions of State government. The Office

provides the Compliance Board with legal counsel and administrative support. For more information on the approaches you can take, see Chapter 7, Parts A and B of the Open Meetings Act Manual.

September 2018