

Open Public Meetings Act for Municipal Boards

Fall 2017



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Open Public Meetings Act

All meetings of public boards and bodies are subject to the

Open Public Meetings Act

which requires the meeting to be properly advertised and allow for public participation.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

What is a “Meeting”

A “Meeting” is any gathering, whether in person or by electronic means which is attended by or open to all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Participation Issues

You cannot avoid a public meeting by failing to invite one or more members.

On occasions members can participate in a live meeting by joining by phone or other electronic communication.

We recommend at least a quorum be present in the room in case the technology connection is terminated.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Hopewell's Public Bodies

Affordable Housing Committee

Agricultural Advisory Committee

Board of Health

Deer Management Advisory Committee

Environmental Commission

Finance Advisory Committee

Board of Fire Commissioners

Historic Preservation Commission

Marshall's Corner Pennytown Task Force

Open Space Advisory Committee

(continued on next page)



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Planning Board

Recreation Advisory Committee

Senior Advisory Board

Stony Brook Regional Sewerage Authority

Township Committee

Youth Advisory Committee

Zoning Board of Adjustment

Although Boards without the ability to spend public funds are not automatically bound by public meeting law requirements, in the spirit of openness, Hopewell requires all of its subordinate bodies to follow the requirements.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Defining Public Business

Any matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business.

If members see each other in other settings, dinner, golfing, the grocery store, weddings, etc., they must avoid discussing public business.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Types of Meetings

There are three types of meetings:

1. Regular Meeting;
2. Special Meeting;
3. Emergency Meeting.

Each has different notice requirements and action items.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Regular Meetings

A Regular Meeting is a meeting which was included as part of the body's annual schedule which was adopted by the body during its reorganization meeting.

No additional notice is required other than the standard annual notice.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Regular Meetings

The Reorganization meeting should be done within the first seven days of the year.

If no reorganization meeting is scheduled (for boards) than the schedule must be published by January 10th.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Annual Notice Requirement for Regular Meetings

Every public body must

1. Post and maintain the schedule;
2. Publish in two official newspapers;
3. File with Clerk;
4. Send to anyone who has requested copy of the notice.

The body can revise the annual notice by following the same four steps.

- The body can also use the internet to announce its meetings but that is not a substitute for the above requirements.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Regular Meetings

Sometime “Regular Meetings” are advertised as “work sessions.” It is important that the meeting, whether called a regular or work session meeting is included on the annual list of meetings and indicates that formal action may be taken.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Special Meetings

Special Meeting – when the body needs to hold a meeting for public business outside of the published schedule it needs to publish for a Special Meeting.

Special Meetings require “adequate notice.”



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Special Meetings require Adequate Notice

Adequate notice must provide:

1. Date, time and location;
2. Agenda to the extent known; and
3. Whether formal action will be taken.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Adequate Notice

Adequate notice must be sent to

1. Two official newspapers with the realistic opportunity to publish 48 hours in advance of the meeting;
2. To the Clerk for filing;
3. Posted where notices are typically posted;
4. To anyone that has requested a copy.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

48 hours depends upon publication deadlines

A committee did not satisfy the notice requirement for a special meeting by arranging for publication of notice in at least two newspapers, when it distributed notices so late that only one newspaper could publish 48 hours before the meeting.

Lakewood Citizens for Integrity in Government, Inc.
v. Lakewood Twp. Comm., 306 N.J. Super. 500 (Law
1997).



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Emergency Meeting

Emergency Meeting

An emergency meeting can be called when the body must take action which delay would cause substantial harm to the public.

It is not realistic that any board other than the governing body would have a reason to call an emergency meeting.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Emergency Meeting

An emergency meeting must begin with an affirmative vote by ¾ of the members present that the meeting is necessary because:

1. Substantial harm to public interest;
2. Meeting is limited to emergency topic;
3. Notice is provided as soon as possible by posting notice and by notifying the two newspapers by telephone or hand delivery; and
4. Either the public body could not have foreseen the emergency or if it could have foreseen the emergency, it nevertheless failed to provide notice.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Meeting Agendas

In addition to the meeting's business, all meetings must include:

Call to Order;

Reading of notice provision;

Roll Call;

Flag Salute;

Public participation.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Meeting Minutes

All boards are required to keep reasonably comprehensible minutes of their meetings.

Include the date, time and location; participants, actions taken, vote summary and any other information required to be kept by law.

The minutes must be provided to the Township Clerk in draft form and then when made final.

The Clerk needs immediate access to the minutes and resolutions in the event a request is made under the Open Public Records Act.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Executive Session

The law allows for a body to move into executive session for certain matters including, and limited to:

- Matters which are confidential by federal or state law;
- Matters in which release of information may prevent the receipt of funds from the federal government;

(continued on next page)



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Additional Reasons for Executive Session

- Unwarranted invasion of individual privacy;
- Collective bargaining and contract negotiations;
- Acquisition of land;
- Tactics and techniques in protecting safety and property of the public;
- Pending or anticipated litigation;
- Personnel matters;

(continued on next page)



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Additional Reasons for Executive Session

- Deliberations of body occurring after a public hearing that may result in specific civil penalty;
- Matters protected by the attorney-client privilege.

It is very rare that any body other than the Township Committee will adjourn into executive session.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Entering Executive Session

Must pass the Township's standard Resolution before entering executive session.

- The topics must be announced;
- The approximate time length must be indicated;
- The body must inform the public whether formal action will be taken. ("will be taken," "will not be taken," or "may or may not be taken" are the three appropriate announcements.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Returning from Executive Session

Upon returning from executive session, the chair must re-announce, the time and the matters discussed on the record.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Minutes of Executive Session

- Use same format as regular session minutes;
- Use topic heading consistent with permitted reasons for entering executive session;
- Annually the minutes should be reviewed to see if the materials can be fully released or released with redactions.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Potentially Illegal Meetings

- Members of the body should not discuss public business outside of the meeting;
- If Member A calls Member B and then Member B calls Member C, and so on, that could be considered an illegal meeting depending upon the board's quorum limit.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Consequences of Illegal Meetings

The County Prosecutor's office reviews complaints regarding violations of the Open Public Meeting Act and members can be personally fined in Superior Court.

Actions taken in the meeting can be voided by the Superior Court.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Local Government Ethics Law

- Establishes minimum standards of conduct;
- Requires financial disclosure statements of certain officials;
- Enforced by the Local Finance Board;
- Local Ethics Boards allowed;
- Sanctions include fines.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Standards of Conduct

- No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Standards of Conduct

- No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal *involvement* that might reasonably be expected to impair his objectivity or independence of judgment.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Financial Disclosure

- Local government officers shall annually file a financial disclosure statement;
- Due each April 30th;
- File with the Municipal Clerk;
- It is a Public Record;
- Expect financial sanctions for failure to file on time.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Local Government Officer

. . . Compensated or not . . . Part-time or full-time

- Elected to any local office;
- On a body that can enact ordinances, approve development applications or grant zoning variances;
- A member of an independent municipal; county or regional authority;
- A managerial executive or confidential employee of a local government agency . . . But shall not mean any employee of a school district or member of a school board.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Comments

- Participation in local government can be exciting and rewarding.
- It is essential to our democracy that capable, well-meaning people are willing to serve.
- Thus a governing philosophy that eliminates friction, stress and rancor is essential.
- Adherence to proper procedures and customs of civility will smooth the process, even when differences of opinion exist.



PARKER McCAY
COUNSEL WHEN IT MATTERS.™