

Authorities & Responsibilities of Michigan Townships

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Public participation

It's important to note that there is no constitutional or First Amendment right to open meetings. The public's right to attend and participate in meetings of a public body is statutory, defined by Michigan's Legislature.

It is not an absolute right; it is limited to the OMA's provisions that allow a person: 1) to attend and record or telecast a meeting, and 2) to speak during a public comment period under rules established by the public body. The public does not have a statutorily protected right to speak outside of a public comment period or to participate in the public body's decision-making process. The OMA also allows a public body to adopt rules to minimize disruption of its ability to do business.

Attending

Any person may attend the open sessions of a public meeting. A public body cannot put conditions on attendance, such as requiring a person to identify him- or herself. A person may be excluded from a specific open meeting only for a breach of the peace committed at that meeting. (MCL 15.263 and Attorney General Opinion 5183 of 1977)

Recording

MCL 15.263 states, "The right of a person to attend a meeting of a public body includes the right to tape record, to videotape, to broadcast live on radio and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting."

There is no specific statement in general law township law, but Section 7 of the Charter Township Act states that the township board "shall determine its own rules and order of business." (MCL 42.7(6))

"Reasonable rules and regulations" in the past have included directing that recording equipment be in a specific area of the meeting room to minimize risks of tripping over cords and blocking the view of the audience. But nowadays, smartphones and other devices mean that you may not know that people are recording. A person recording the open

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session of a public meeting does not have to tell anyone that he or she is recording the meeting or get permission to do so.

A public meeting is a public forum, with little or no expectation of privacy (except for closed sessions), so public bodies should just assume that everyone in the room during open session is recording. Those recordings may be posted on the internet or social media—even live-streamed as the meeting is happening—or otherwise distributed or broadcast by private individuals or the media.

Public comment

The public has a right “to address a meeting of a public body under rules established and recorded by the public body.” (MCL 15.263) The public must have at least one opportunity to speak publicly at an open meeting, and this has come to be known as the “public comment period.”

Only one public comment period is required by law, but a township board may choose to provide additional public comment opportunities during its meetings.

A public body may adopt rules for the public comment period. According to Attorney General Opinion 5183 of 1977, “The rules regulating the right of public address may include such controls as the length of time any one person may be permitted to address the body, the portion of the agenda set aside for public address, and a requirement that persons wishing to address the public body identify themselves and make it known ahead of time that they wish to address the body in order to facilitate the planning of time allotments to various portions of the agenda.”

Attorney General Opinion 5183 stresses, however, that “these rules must be reasonable, flexible and designed to encourage public expression and not discourage or prohibit it.” For example, it is the opinion of the authors that a person cannot be refused the opportunity to speak during the public comment period required by the OMA if they do not identify themselves.

A public body may limit the amount of time it will allow each individual speaker to address the meeting. Note that this is not the length of the public comment period itself; it is the length of time an individual

speaker gets to speak. If 100 people want to speak, they each must be given the opportunity to speak. For that reason, consider choosing a limit such as two or three minutes. Few people need more time than that to make their point. Any time limit rules should be imposed consistently.

Consider allowing a group of individuals who wish to present a specific point of view to designate a spokesperson who may have additional time to adequately represent the group's views. This is only an option, however; a public body cannot require a group to use a spokesperson.

A person's right to speak during a public comment period implicates the First Amendment right to free speech, particularly on matters of public concern. Restrictions on the public comment period should be limited to content-neutral "time, place and manner" restrictions that serve a significant government interest and allow ample alternative channels of communication. Avoid attempting to regulate what a person is saying (the content of the speech).

For example, Attorney General Opinion 5332 of 1978 states that a public body may adopt a rule that "prohibits a person from using the board's and the public's time to make a personal attack upon an individual" if the content of the speaker's attack "refers to conduct of the person being attacked that is totally unrelated to the manner in which he or she performs his or her duties" (is not a matter of public concern). The opinion goes on to state that, if the speaker's attack "is intended to refer to the manner in which an employee of the board or board member carries out his or her duties, the rule would be invalid" Commenting on how officials perform their duties is political free speech.

Basically, the only times a person might not be allowed to speak during public comment is if that person has already had his or her one opportunity—there is no "rebuttal" or follow-up option required by law—or if they have begun to make personal attacks unrelated to the function of the government, at which point the supervisor may ask them to limit their comments.

The supervisor should not allow board members to interfere with the public's right to speak during that public comment period. During public comment, the board listens to the public. Conversely, the public cannot demand that individual board members respond during

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public comment, and the board members should not be responding or directing comments individually to members of the audience. If a response is appropriate, the board should direct that specific staff or officials contact the person or meet with them, or initiate a response in the normal course of business.

A board meeting is for board business

Outside of a public comment period or public hearing, the board addresses the business on its agenda, and the public is the audience, watching the board do its business. They can only participate in the business portion of the meeting to the extent, if any, that the board, through the supervisor, seeks their comments. The supervisor should not recognize members of the public unless it's in compliance with the board's rules and agenda.

Nothing prevents a public body from allowing a greater degree of openness than the law requires. An individual township board can choose to give more notice and allow for more public involvement in its meetings. The spirit of the OMA emphasizes transparency in government. Many boards do encourage and allow the public to comment on individual agenda items, and that's an individual board's choice, which should be spelled out in policy for both the board and the public to understand what is allowed outside of the OMA-mandated public comment period.

But remember that, under the OMA, the *only* place a township board can do its business is in a public meeting of the township board. Board meetings are the business meetings of the township board, and it's in the best interest of the township as a whole that the board conduct its business in an organized, productive and business-like manner.

The public, however, can interact with the township at any time, going to the township offices, phoning or emailing the township or specific officials, or visiting the township website—even buttonholing board members at the grocery store.

Township board meetings are not “town hall meetings” where everyone has a say in the decisions, and they are not meant to be extended complaint sessions or arguments. This is something that many people, including township boards themselves, lose sight of, especially

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nowadays when national politicians regularly use the term “town hall meeting” to refer to a public forum. But that does not represent the form of local representative government we have in Michigan.

A township board meeting is not a debate or equal time situation for the public. The idea that all concerns, complaints, opinions, etc., must be expressed at a board meeting is not mandated by law or recommended from a practical standpoint. By their nature, board meetings can put either “side” on the defensive in a very public place.

Many issues the public brings to a board meeting are better handled—in the interests of the public—by township officials or staff in the office during business hours. Comments or questions raised by the public at board meetings are, for the most part, not specific township business that must be transacted *by the board*. They are often issues involving administrative procedures, and there is no question that this is an important aspect of a township doing its business properly. But until or unless it rises to a level that must be addressed by the board, such a question or concern can and should be addressed by the appropriate township official or staffer following township policies and practices in a business-like and customer service-oriented approach. If it is appropriate for a board member or staff member to address a member of the public’s concerns, then it’s usually something best handled in the office, where officials or staff can meet with the person individually to respond to their concerns, with the appropriate resources or information at hand.