

Open Meetings Act Memorandum RE: 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." There are numerous court decisions and attorney general opinions on public comment. It is 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, as defined by Michigan's Legislature. It is not however an absolute right; it is limited to the Open Meeting Act's (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. That is because a public meeting is the only place a public body like a township board may lawfully make decisions and do its business. The public has many other opportunities to interact or do business with a township, outside of a board meeting. But the board is restricted to acting only in an open meeting. With that in mind, the OMA also allows a public body to adopt rules to minimize disruption of its ability to do business.

A person may be excluded from a specific open meeting only for a breach of the peace actually committed at that meeting. (MCL 15.263). 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." 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; as 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). However, 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.

Also see excerpt from Michigan Attorney General Open Meetings Act Handbook. (Enclosed).

Of final note, Gerrish Township further has a Public Morals and Conduct Ordinance prohibiting conduct by any person with purpose to prevent or disrupt a lawful meeting from doing any act tending to obstruct or interfere with it physically; or making any utterance, gesture or display designed to outrage the sensibilities of the group. A violation of the Ordinance is a misdemeanor carrying up to 90 days in jail and/or up to \$500 fine.

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Public Participation Rules

Persons wishing to address the Board at the appropriate place in the meeting agenda shall be subject to the following:

1. Each person shall be allowed to speak on an agenda item one (1) time when the issue is taken up by the Board, and one (1) time on non-agenda issues under Brief community comments, for up to three minutes. An extension of time may be granted by the chairman if the extension will not interfere with conduct of board business or with other persons who also wish to address the board. Persons may address the board without time limitation at the conclusion of all business items on the agenda.
2. Each person wishing to address the Board may remain by their seat or may sit/stand at the designated table and shall identify themselves by name and address. Persons representing an organization or group shall indicate whether their comments represent the official view of the organization or group.
3. If a delegation wishes to address the Board, the delegation may select up to five representatives to speak on its behalf, for a total time of not more than 20 minutes.
4. The Board shall be provided by the Clerk or by the speaker with copies of all written comments submitted.
5. Persons addressing the Board shall observe rules of common courtesy. Complaints should first be considered through proper channels before being considered by the Board. Personal attacks against a Board member or township employee unrelated to the Board member's or employee's performance of duties shall not be permitted. Board members or employees may request a closed hearing to hear complaints related to the performance of their official duties.
6. Board members may question speakers but are not obligated to answer questions or make statements or commitments in response to issues raised by the public. In general, such issues will be referred to the Supervisor for investigation, study, and recommendation or designated as a future agenda item.
7. Disorderly Conduct The chairperson shall call to order any person who is being disorderly by speaking or otherwise disrupting the proceedings, by failing to be germane, by speaking longer than the allotted time, or by speaking vulgarities. Such person shall thereupon be seated until the chairperson shall have determined whether the person is in order. If a person so engaged in presentation shall be ruled out of order, he or she shall not be permitted to speak further at the same meeting except upon special leave by the Board of Trustees. If the person shall continue to be disorderly and to disrupt the meeting, the chairperson may order the Sergeant at Arms to remove the person from the meeting. No person shall be removed from a public meeting except for an actual breach of the peace committed at the meeting.

These rules, having been adopted by the Gerrish Township Board at a meeting held on _____, 2022, may be amended or rescinded by a majority vote of the Board elected and serving. They shall remain in effect until amended or rescinded. Any proposed amendment to these rules, properly presented to the Gerrish Township Board shall take immediate effect when adopted, unless the board, at the time of adoption, stipulates otherwise. These rules also may be reviewed at the beginning of each calendar year.