

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2011 Summer  
Supp.

To amend the District of Columbia Administrative Procedure Act to require that meetings of government bodies be open to the public, to establish exemptions, notice requirements, meeting procedures, recording requirements, enforcement mechanisms, and training, and to establish the District of Columbia Open Government Office; and to amend the Advisory Neighborhood Councils Act of 1975 to include additional notice requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Open Meetings Amendment Act of 2010”.

Sec. 2. The District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-501 *et seq.*), is amended by adding new Titles IV and V to read as follows:

“TITLE IV. OPEN MEETINGS.

“Sec. 401. Short title.

“This title may be cited as the “Open Meetings Act”.

“Sec. 402. Statement of policy.

“The public policy of the District is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them.

“Sec. 403. Rules of construction.

“This title shall be construed broadly to maximize public access to meetings. Exceptions shall be construed narrowly and shall permit closure of meetings only as authorized by this act.

“Sec. 404. Definitions.

“For the purposes of this title, the term:

“(1) “Meeting” means any gathering of a quorum of the members of a public body, including hearings and roundtables, whether formal or informal, regular, special, or emergency, at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless whether held in person, by telephone, electronically, or by other means of communication. The term “meeting” shall not include:

“(A) A chance or social gathering; provided, that it is not held to avoid

the provisions of this paragraph; or

“(B) A press conference.

“(2) “Open Government Office” means the District of Columbia Open Government Office established by section 502.

“(3) “Public body” means any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, or an advisory body that takes official action by the vote of its members convened for such purpose. The term “public body” shall not include:

“(A) A District agency or instrumentality (other than the board which supervises or controls an agency or the board of directors of an instrumentality);

“(B) The District of Columbia courts;

“(C) Governing bodies of individual public charter schools;

“(D) The Mayor’s cabinet;

“(E) The professional or administrative staff of public bodies when they meet outside the presence of a quorum of those bodies; or

“(F) Advisory Neighborhood Commissions; provided, that this title shall not affect the requirements set forth in section 14 of the Advisory Neighborhood Councils Act of 1975, effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.11).

“Sec. 405. Open meetings.

“(a) Except as provided in subsection (b) of this section, a meeting shall be open to the public. A meeting shall be deemed open to the public if:

“(1) The public is permitted to be physically present;

“(2) The news media, as defined by D.C. Official Code § 16-4701, is permitted to be physically present; or

“(3) The meeting is televised.

“(b) A meeting, or portion of a meeting, may be closed for the following reasons:

“(1) A law or court order requires that a particular matter or proceeding not be public;

“(2) To discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the public body;

“(3) To discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;

“(4)(A) To consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements; provided, that, upon request, the public body may decide to waive the privilege.

“(B) Nothing herein shall be construed to permit a public body to close a

meeting that would otherwise be open merely because the attorney for the public body is a participant;

“(5) Planning, discussing, or conducting specific collective bargaining negotiations;

“(6) Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;

“(7) To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award;

“(8) To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure;

“(9) To discuss disciplinary matters;

“(10) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials;

“(11) To discuss trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

“(12) To train and develop members of a public body and staff;

“(13) To deliberate upon a decision in an adjudication action or proceeding by a public body exercising quasi-judicial functions; and

“(14) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation.

“(c)(1) Before a meeting or portion of a meeting may be closed, the public body shall meet in public session at which a majority of the members of the public body present vote in favor of closure.

“(2) The presiding officer shall make a statement providing the reason for closure, including citations from subsection (b) of this section, and the subjects to be discussed. A copy of the roll call vote and the statement shall be provided in writing and made available to the public.

“(d) A public body that meets in closed session shall not discuss or consider matters other than those matters listed under subsection (b) of this section.

“(e) A public body shall not keep the number of attendees below a quorum to avoid the requirements of this section.

“(f) Notwithstanding any provision of this act, the Council may adopt its own rules to ensure the District’s open meetings policy, as established in section 402, is met with respect to

Council meetings; provided, that the rules of the Council shall comply with section 405 and the definition of meeting in section 404(1); provided further, that until the Council adopts rules pursuant to this subsection, this title shall apply to the Council.

“(g) Within 60 days after the effective date of this title, the relevant committee of the Council with jurisdiction on this issue shall submit a report to the Council that presents recommendations on whether the sections of this title should apply to Advisory Neighborhood Commissions.

“Sec. 406. Notice of meetings.

“Before meeting in open or closed session, a public body shall provide advance public notice as follows:

“(1) Notice shall be provided when meetings are scheduled and when the schedule is changed. A public body shall establish an annual schedule of its meetings, if feasible, and shall update the schedule throughout the year. Except for emergency meetings, a public body shall provide notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting.

“(2) Notice shall be provided by posting:

“(A) In the office of the public body or a location that is readily accessible to the public; and

“(B) On the website of the public body or the District government.

“(3) Notwithstanding the notice requirement of paragraph (2) of this subsection, notice of meetings shall be published in the District of Columbia Register as timely as practicable.

“(4) When a public body finds it necessary to call an emergency meeting to address an urgent matter, notice shall be provided at the same time notice is provided to members and may be provided pursuant to any method in paragraph (2) of this subsection.

“(5) Each meeting notice shall include the date, time, location, and planned agenda to be covered at the meeting. If the meeting or any portion of the meeting is to be closed, the notice shall include, if feasible, a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure under section 405(b), and a description of the matters to be discussed.

“Sec. 407 Meeting procedures.

“(a) A meeting may be held by video conference, telephone conference, or other electronic means; provided, that:

“(1) Reasonable arrangements are made to accommodate the public’s right to attend the meeting;

“(2) The meeting is recorded; and

“(3) All votes are taken by roll call.

“(b) All provisions of this title shall apply to electronic meetings.

“(c) E-mail exchanges between members of a public body shall not constitute an electronic meeting.

“(d) When an emergency meeting is convened, the presiding officer shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency, and how public notice was provided.

“Sec. 408. Record of meetings.

“(a) All meetings of public bodies, whether open or closed, shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept.

“(b) Copies of records shall be made available for public inspection according to the following schedule; provided, that a record, or a portion of a record, may be withheld under the standard established for closed meetings pursuant to section 405(b):

“(1) A copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than 3 business days after the meeting.

“(2) A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.

“Sec. 409. Enforcement; authority.

“(a) The Open Government Office may bring a lawsuit in the Superior Court of the District of Columbia for injunctive or declaratory relief for any violation of this title before or after the meeting in question takes place; provided, that the Council shall adopt its own rules for enforcement related to Council meetings. Nothing in this title shall:

“(1) Be construed to create or imply a private cause of action for a violation of this title; or

“(2) Restrict the private right of action citizens have under section 742 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42).

“(b) In any lawsuit filed under this section, the burden shall be on the public body to sustain its action or proposed action. The court shall determine the matter de novo and may examine the record of a closed meeting to determine whether this section has been violated.

“(c) If the court finds that a public body plans to hold a closed meeting or portion of a meeting in violation of subsection (d) of this section, the court may:

“(1) Enjoin the public body from closing the meeting or portion of the meeting;

“(2) Order that future meetings of the same kind be open to the public; or

“(3) Order that the record of a meeting be made public.

“(d) If the court finds that a resolution, rule, act, regulation, or other official action was taken, made, or enacted in violation of this title, the court may order an appropriate remedy, including requiring additional forms of notice, postponing a meeting, or declaring action taken at a meeting to be void. Actions shall not be declared void unless the court finds that the balance of equities compels the action or the court concludes that the violation was not harmless.

“(e) If the court finds that a member of a public body engages in a pattern or practice

of willfully participating in one or more closed meetings in violation of the provisions of this title, the court may impose a civil fine of not more than \$250 for each violation.

“(f) The court may grant such additional relief as it finds necessary to serve the purposes of this title.

“(g) A public body may seek an advisory opinion from the Open Government Office regarding compliance with this title.

“Sec. 410. Training.

“The Office of Boards and Commissions, established December 19, 2001 (Mayor’s Order 2001-189), in coordination with the Open Government Office, shall:

“(1) Develop a training manual for members of public bodies; and

“(2) Annually advise all members of public bodies of their responsibilities under this title.

“TITLE V. OPEN GOVERNMENT OFFICE.

"Sec. 501. Short title.

"This title may be cited as the "Open Government Office Act".

"502. Establishment of the District of Columbia Open Government Office.

"The District of Columbia Open Government Office ("Open Government Office") is established as an independent agency to promote open governance in the District of Columbia.

"Sec. 503. Powers and duties of the Open Government Office.

"(a) The Open Government Office shall:

"(1) Report annually, on or before February 1, on its activities, including recommendations for changes in the law;

"(2) Issue advisory opinions to public bodies on compliance with Title IV;

"(3) Provide training to public bodies, officials, and employees related to Title IV; and

"(4) Issue rules to implement the provisions of this title and Title IV.

"(b) The Open Government Office may bring suit to enforce section 409.

"(c) The Open Government Office may issue advisory opinions on implementation of Title II.

"Sec. 504. Director.

"(a) The Open Government Office shall be headed by a Director appointed by the Mayor with the advice and consent of the Council to serve a 5-year term.

"(b) The Director may be reappointed and, if not reappointed, the Director shall serve until his successor has been confirmed.

"(c) The Director shall not be removed before expiration of the 5-year term except for cause.

"(d) The Director shall employ staff as needed."

**ENROLLED ORIGINAL**

**Amend  
§ 1-309.11**

Sec. 3. Section 14 of the Advisory Neighborhood Councils Act of 1975, effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.11), is amended as follows:

(a) Subsection (d)(1)(D) is amended by striking the phrase “special committees;” and inserting the phrase “special committees, including provisions for giving public notice of all committee meetings;” in its place.

(b) Subsection (g) is amended by striking the phrase “Each Commission shall be subject” and inserting the phrase “Each Commission, including each committee of a Commission, shall be subject” in its place.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia