



AGENDA FOR THE VIRTUAL MEETING

March 25, 2020

7:00 p.m.

Revision #3

CALL TO ORDER

ADOPTION OF EMERGENCY RESOLUTION TO HOLD VIRTUAL MEETING ON-LINE

- [Legal Opinion from Maryland Municipal Attorney's Association – Summary of Conference Calls & Virtual Meetings Under Maryland's Open Meetings Act](#)
- [Resolution 20-02 – Emergency Resolution to Authorizing the Town to Conduct Open Public Meetings by of Virtual Meetings](#)

UNFINISHED BUSINESS:

- [Consideration of Changes to the Middletown Election 2020](#)

NEW BUSINESS:

-

PUBLIC COMMENTS:

ANNOUNCEMENTS:

ADJOURNMENT

PUBLIC PARTICIPATION ACCESS VIA ZOOM APP

Topic: Virtual Meeting - March 25, 2020

Time: Mar 25, 2020 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/938417516?pwd=aWVJREMrV05vMXI1UXN3dCsxMnNNQT09>

Meeting ID: 938 417 516

Password: 069465

One tap mobile

+13126266799,,938417516# US (Chicago)

+19292056099,,938417516# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 253 215 8782 US

+1 301 715 8592 US

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Meeting ID: 938 417 516

Find your local number: <https://zoom.us/j/abOWtxf567>

MARYLAND MUNICIPAL ATTORNEYS ASSOCIATION SUMMARY OF
CONFERENCE CALLS AND VIRTUAL MEETINGS UNDER MARYLAND'S OPEN MEETINGS ACT

Virtual meetings, electronic online meetings and conference calls can comply with the Open Meetings Act (Md. General Provisions Code Ann., § 3-101 et seq.) as long as they meet the goals of the Act to provide a meaningful opportunity to observe the conduct of public business. Emergencies can also justify a public body's departure from its customary and usual practices as long as that meaningful opportunity is provided. For additional guidance, see the Attorney General's Open Meetings Manual (2017).

1. **In person meetings are not always required.** The Open Meetings Compliance Board has held that the Act allows conference calls. The Court of Special Appeals has also held that members can participate by telephone conference or a "broadcast over a speakerphone" as long as it is accessible and "can be heard by the public." *Tuzeer v. Yim, LLC*, 201 Md. App. 443, 471 (2011). Thus, conference calls can comply with the Open Meetings Act, as well as other options, depending on the circumstances, as long as the public can hear member comments:
 - Meetings of public bodies are typically an in-person meeting to which the public is invited to attend
 - A public meeting can, if accessible to the public, also consist of:
 - A conference call (an option explicitly approved by the Compliance Board)
 - An electronic online meeting
 - A virtual online meeting, such as by Skype
 - An in-person meeting of the public body not open to public in person attendance, but allowing the public to observe a live feed online
 - *The meeting format must be accessible to the public.* Not only must access codes and numbers be provided to allow accessibility, but the meeting format must be reasonably accessible to the public it serves. Thus, an electronic online meeting in a community where few residents have computer access would not be accessible, but a conference call would provide accessibility.
2. **The same Open Meetings Act requirements apply no matter the method for holding the meeting:**
 - Posting of reasonable advance public notice, indicating how the meeting will be conducted and how the public can observe (per § 3-302).
 - Such notice must be reasonably calculated to inform the public in advance
 - For a conference call: a telephone call-in number and code, if applicable
 - For online electronic: website or email address allowing the public to log in and observe
 - For virtual online: website to log onto to observe
 - For all, may also use the option of access to a meeting room with a speakerphone or computer screen connected to the meeting
 - An agenda at least 24 hours prior to the meeting (per §3-302.1)
 - Minutes afterwards (per §3-306)
 - Note that the Open Meetings Act does not require public participation (though other applicable laws might, depending on the topic being discussed).
 - The same process is applicable for any closed meeting
 - Exception and reason to close (per §3-305)
 - Public vote to close with written statement
 - Stay within exception
 - Summary of closed session in minutes (per §3-306)
3. **Practicalities to Consider:**
 - When not using customary and usual practices for a meeting, make extra efforts to provide notice
 - Advance notice is critical, and to the extent possible, using the same notice process is recommended
 - For conference calls, speakers need to announce their name before speaking
 - Public body members should identify anyone who is in the room with them
 - If a closed meeting is approved, a different call/website/email will be needed to ensure no public observation.

Notice: This summary is provided by the Maryland Municipal Attorneys Association as general guidance regarding the Open Meetings Act. It is not to be considered legal advice. Municipal officials should seek advice and direction from their town or city attorney on any specific questions.

THE EFFECTIVE DATE OF THE RESOLUTION IS March 25, 2020

RESOLUTION NO. 20-02

**AN EMERGENCY RESOLUTION TO CREATE AN ORDINANCE AUTHORIZING
THE TOWN OF MIDDLETOWN TO CONDUCT OPEN PUBLIC MEETINGS BY WAY
OF VIRTUAL MEETINGS, ELECTRONIC ONLINE MEETINGS AND/OR
CONFERENCE CALLS.**

PREAMBLE

WHEREAS, the Burgess and Commissioners recognizes that no community is immune from the effects of large-scale emergencies and disasters; and

WHEREAS, pursuant to Section 401 of the Town Charter, the Burgess and Commissioners “shall have the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or this charter as it may deem necessary... for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in the town..;” and

WHEREAS, the Burgess and Commissioners recognize that the current Coronavirus/Covid-19 pandemic (the “pandemic”) has affected the entire State of Maryland;

WHEREAS, as a result of the pandemic, the Governor of the State of Maryland issued Executive Order 20-03-19-01 which prohibits “social, community, spiritual, religious, recreational, leisure and sporting gatherings and events of more than 10 people;” and

WHEREAS, in an abundance of caution and for the safety and welfare of Middletown residents, the Burgess and Commissioners are interpreting Executive Order 20-03-19-01 to prohibit any community gathering of more than 10 people at Open Public Meetings; and

WHEREAS, the Burgess and Commissioners recognize that despite large-scale emergencies and disasters, such as the current pandemic, public meetings must still occur in order for the Town to conduct important and necessary public business; and

WHEREAS, virtual meetings, electronic online meetings and conference calls can comply with the Open Meetings Act (Md. General Provisions Code Ann., § 3-101 et seq.) as long as they meet the goals of the Act to provide a meaningful opportunity to observe the conduct of public business; and

WHEREAS, the adoption of this resolution ensures that the Town of Middletown can continue to conduct public business during large-scale emergencies and disasters; and

WHEREAS, a duly advertised virtual public meeting was held on this update on March 25, 2020. The public had an opportunity to comment on this update at this public meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE BURGESS AND COMMISSIONERS OF THE TOWN OF MIDDLETOWN, MARYLAND, that the Town of Middletown may, as deemed necessary and during times of large-scale emergencies and disasters, conduct public meetings virtually, which virtual means may include, but not be limited to, electronic online meetings, virtual online meetings, conference calls, or other means by which the general public can participate in said meetings (collectively “virtual meetings”).

AND BE IT FURTHER RESOLVED, reasonable notice of any virtual meeting shall be provided to the public indicating how the meeting will be conducted and how the public can observe;

AND BE IT FURTHER RESOLVED, that notice of any virtual meeting shall include:

- o For a conference call: a telephone call-in number and code, if applicable
- o For online electronic: website or email address allowing the public to log in and observe
- o For virtual online: website to log onto to observe
- o For all, may also use the option of access to a meeting room with a speakerphone or computer screen connected to the meeting

AND BE IT FURTHER RESOLVED, that except for conducting virtual meetings, all other provisions of the Maryland Open Meetings Act, including, but not limited to, the posting of an agenda at least twenty-four hours prior to said virtual meeting, and the taking of meeting minutes shall apply.

The undersigned hereby certify that this resolution was approved and adopted on this 25th day of March, 2020.

BE IT FURTHER RESOLVED that this Emergency Resolution shall take effect immediately.

INTRODUCED March 25, 2020

APPROVED March 25, 2020

ATTEST:

BURGESS AND COMMISSIONERS
OF MIDDLETOWN, MARYLAND

Andrew J. Bowen
Town Administrator

BY: _____
John D. Miller
Burgess

March 25, 2020

Burgess and Commissioners
Town of Middletown
31 West Main Street
Middletown, Maryland 21769

RE: Legal opinion requested concerning the Town Election
Scheduled for April 6, 2020

Dear Burgess Miller and Commissioners:

As a result of the current Coronavirus/Covid-19 pandemic and as a result of Governor Larry Hogan's Executive Order 20-03-19-01, which prohibits "social, community, spiritual, religious, recreational, leisure and sporting gatherings and events of more than 10 people," I have been requested to provide a legal opinion regarding the Town of Middletown's upcoming election scheduled for Monday, April 6 2020.

Specifically, I have been asked to provide an opinion as to whether the Burgess and Commissioners can enact an Ordinance to postpone the upcoming election.

As will be discussed below, the answer to this question must be "no," because, "no ordinance shall be approved without the favorable votes of a majority of the legislative body." See Section 305 of the Town Charter.

1. **The Town Charter**

First, it should be noted from the outset that Section 504 of the Town Charter prescribes the election process for the Burgess and Commissioners as follows.

Section 504. - Election of Burgess and Commissioners

Elections for the burgess and commissioners of Middletown shall be held biennially on the first Monday of April, between the hours of 7:00 a.m. and 8:00 p.m. every even-numbered year.

On the first Monday in April, 2000, and on the same day every four years thereafter, the qualified voters of the town shall elect a burgess and two commissioners to serve for a term of four years.

On the first Monday in April, 2002, and on the same day every four years thereafter, the qualified voters of the town shall elect three commissioners. Said three commissioners shall serve for a term of four years.

The burgess and commissioners shall at least fourteen (14) days prior to any scheduled election appoint two or more persons to serve as election judges on the day of the election.

The only way to amend the Town Charter, and thus change and/or postpone the election date, would be for the Town to enact an Ordinance. However, as set forth in Section 305 of the Town Charter, no ordinance "shall be approved without the favorable votes of a majority of the legislative body:

Section 305. - Quorum

A majority of the legislative body shall constitute a quorum for the transaction of business, ***but no ordinance shall be approved without the favorable votes of a majority of the legislative body***. For other business matters voted upon by the burgess and commissioners, unless for a specific action identified herein or by ordinance a different majority is required, a favorable vote of a majority of the members of the legislative body present and voting is required for passage.

2. **Conflict of Interest**

The problem as it pertains to the upcoming election arises from the fact that the Town's current Burgess and two (2) Commissioners are up for re-election.

Section 4.16.030 of the Town Code provides:

Except as permitted by commission regulation or opinion, an official or employee may not participate in:

A. Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest.

Inasmuch as the Burgess and two Commissioners have a direct interest in the outcome of the upcoming election, it would be an ethics violation and/or a conflict of interest for those individuals to vote on whether a postponement of the election is warranted.

It follows, then, that it would be impossible – as the Town Charter and Code are currently written -- to pass any ordinance without the favorable votes of a majority of the legislative body. Could a future ordinance to allow for some postponement or rescheduling of an election in the event of an emergency be approved by the Burgess and Commissioners at some point where there exists no conflicts of interest? Yes. However, the Town Charter should not be amended or modified except as absolutely necessary.

3. **Alternative Recommendations**

Based on the foregoing, it would not be a conflict of interest for the Burgess and Commissioners to vote on the administrative or ministerial task of how to manage the voting process in the upcoming election. For example, so long as the integrity of the

election process is maintained, the Burgess and Commissioners could undertake a vote to hold the election entirely by absentee ballot. Also, the Burgess and Commissioners could consider other logistical safe alternatives to undertake if they feel that allowing citizens to vote in person could be accomplished without compromising public safety and to maintain adherence to the State prohibition on gatherings of more than ten (10) people. Examples of this could be accomplished via "drive thru" elections or limiting the number of persons, distance between them, and materials (ballot/pencil, etc.) touched by each citizen.

I trust this satisfies your request. Should you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, consisting of a stylized, cursive 'B' followed by a horizontal line that tapers to the right.

Brandy A. Peeples