

Overview of Arizona Open Meeting Law

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The Spirit and Purpose of Arizona Open Meeting Law

Core principle: All meetings of public bodies must be conducted openly.

Purposes:

1. Protect the public: Prevent secret decision making; promote gov't accountability
2. Protect officials: Shields you from liability; provides clear framework for compliance
3. Encourage knowledgeable public participation (notices, agendas, minutes/recording)

Scope: To Whom Does the Law Apply?

Arizona Open Meeting Law (OML) applies to all “public bodies”

- Boards, commissions, and other multi-member governing bodies;
- The Arizona legislature (except Puente limits the application)
- Quasi-governmental corporations;
- Quasi-judicial bodies;
- Advisory committees; and
- Standing and special committees and subcommittees of any of the above.

See A.R.S. 38-431(6)

What is a “Meeting”

“Meeting” means the gathering, in person *or through technological devices*, of a quorum of members of a public body at which they discuss, propose, or take legal action, including deliberations.

See A.R.S. § 38-431(4)

- ◆ Key elements of a meeting:
 - Quorum is present
 - Discussion, proposals, deliberations, or legal action occurs
 - Includes in-person, phone, email, or virtual contact

What is a “Legal Action”

“Legal action” means a collective decision, commitment or promise made by a majority of the members of a public body pursuant to the constitution, their charter, bylaws or specified scope of appointment and authority.”

See A.R.S. § 38-431(3)

What is a “Legal Action” (cont’d)

What does that include?

- Voting on motions, resolutions, or policies
- Agreeing (even informally) to take action later
- Promising to act in a particular way
- Deliberations that lead to a decision

What is not included?

- Attending a social event where no Board-related discussion occurs
- Casual conversation between fewer than a quorum
- Individual opinion-sharing outside meetings (without coordination)

Notice Requirements for Meetings

24-Hour Rule: **At least** 24 hours' notice required for both public body members and the general public.

Posting Location:

- Conspicuously posted on the public body's website.
- Or, a disclosure statement filed with Secretary of State indicating physical and electronic notice locations.

Content Essentials:

Notices and agendas must contain information "reasonably necessary" to inform the public of matters to be discussed or decided.

Agenda Requirements

- **Content:** Must list specific matters to be discussed, considered, or decided.
- **Information Standard:** Must include information "reasonably necessary" to inform the public.
- **Binding Constraint:** The agenda defines the scope of the meeting's business. Do not discuss matters that are not on the agenda.
- **Strict Limitation on Public Call:** Matters raised during an open call to the public cannot be discussed or acted upon unless properly noticed on the agenda for discussion and legal action.
- **Spontaneous discussions or decisions on unagendized items are prohibited.**

Public Participation

Purpose: Allows individuals to address the public body on issues within its jurisdiction.

Permissible Restrictions: Public bodies can impose reasonable time, place, and manner restrictions (e.g., time limits; one spokesperson for similar viewpoints).

Dealing with unnoticed items:

- Thank the speaker for his or her comment
- Board can direct staff to review the matter
- Board can request that a matter be placed on a future agenda for formal consideration

Safeguard: Prevents using the public call as a loophole to circumvent notice requirements. This happens frequently.

Executive Sessions

Definition: Gathering of a quorum from which the public is excluded and which is authorized by A.R.S. § 38-431.03

Strict Limitations:

- Public is not allowed to attend or listen.
- Public bodies are prohibited from taking final action, voting, or conducting a poll (i.e., determine who is inclined to vote which way).

Purpose: Specific, confidential discussion spaces. Not decision-making forums.

Executive Sessions (cont'd)

- Requires a majority vote of a quorum
- Motion should state the reason for executive session, for example:

“I move that we go into executive session to obtain legal advice from the Board’s attorney regarding Item A on the agenda.”

“I move that we go into executive session on Item G to discuss records that are confidential by law.”

Executive Sessions (cont'd)

The board must give confidentiality statement, such as, “minutes of and discussion held in executive session must be kept confidential.”

The only people who may be present are individuals whose presence is reasonably necessary in order for the Board to carry out its executive session responsibilities:

- Board members
- Staff person to take minutes
- Subject of personnel decision if applicable
- Auditor General (if an audit is taking place)
- Legal Counsel for the Board

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Executive Sessions (cont'd)

- Avoid roving discussions in executive session.
- No straw polls and no voting
- Session for legal advice is limited to the Board's attorney giving legal advice and board members asking the attorney questions about the advice.
- If the Board's attorney is not present, the board cannot go into executive session for legal advice.

A.R.S. § 38-431.03(A)

Provides a list of authorized topics for executive session, including: personnel matters, confidential records, legal advice, legal consultation, labor negotiations, inter-governmental negotiations, and real property negotiations.

Courts have strictly construed the authorized executive session topics because the legislative charge is to “promote openness in government, not to expand exceptions which could be used to obviate the rule.” See *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz. 116, 124 (App. 1995).

Meeting Minutes

Requirement: All public bodies must take written minutes OR a recording of all meetings, including executive sessions.

Minutes must include:

- Date, time, and place.
- Names of members present or absent.
- General description of matters considered.
- Accurate description of all legal actions proposed, discussed, or taken, including how each member voted.
- Names of members who propose each motion.
- Names of public speakers and reference to their topic.

Public Accessibility of Minutes and Recordings

Public Session Minutes/Recording: Must be made available for public inspection no later than three working days after the meeting. See A.R.S. § 38-431.01(E)

Online Posting (required for cities/towns population > 2,500):

- Post statement of legal actions or the meeting recording within three (3) working days
- Approved minutes: Post within two (2) working days of approval.
- Subcommittee/Advisory Committee: Minutes/recordings within ten (10) working days.

Investigation and Enforcement of Arizona OML

- Authority: Attorney General (AG) and appropriate County Attorney can initiate investigations (on own initiative or from a written complaint).
- Ombudsman Role: Office of the Ombudsman-Citizens Aide investigates complaints and educates.
- Powers: AG or County Attorney can issue investigative demands and administer oaths.
- Role of the AAG here: Ensure meetings are conducted in compliance with OML, provide legal advice, ensure that the board complies with statutes and rules.
- AAG represents the board as a whole, not individual members.

Helpful tips

- Each person should announce or be recognized by Chairperson before speaking; this is important for the clarity of the recording
- **Avoid side conversations and whispering to each other**
- Only one person speaks at a time.
- Public has the right to attend and take photographs/audio record, but may not disrupt the meeting.
- Disruptive persons should be given verbal warnings. If they continue to be disruptive, ask them to leave.

Helpful tips (cont'd)

- Follow the agenda - it's your roadmap
- If you want something added to next agenda, request it for the next meeting through your chairperson or staff
- Keep your motions simple and clear; **focus on one decision at a time**
- Board members should communicate with a quorum about board business at open public meetings, **not through e-mails**

Conclusion

Be prepared, be fair, and you cannot help but do good work.