

ANATOMY OF A COUNCIL MEETING & OPEN MEETING LAW

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Presentation Overview

- Introduction of laws, rules, and procedures relating to council meetings
 - Your conduct and the public's role
- Intended to be an overview
- Questions – if not answered today, please contact the League. Contact information is on the final slide.

Anatomy of a Council Meeting



Council Meetings

Purpose

- Transact the business of city/town
- Inform public of business
- Hear input from public (optional)

Governing Law

- State Law
- Procedural Rules
 - Local Rules of Procedure
 - Parliamentary
 - Rules for conducting the business at a public meeting
 - Common-sense & courtesy rules (Riggins' Rules)

State Law

Open Meeting Law A.R.S. §§ 38-431 - 38-431.09

Arizona law requires meetings:

- To be open to the public and transparent
- Physically accessible
- More in-depth discussion on this later.

Quorum and Vote A.R.S. § 9-233

- A quorum (majority of the full membership) is required to take action
- Sometimes a supermajority vote is required
 - Zoning protests & emergency clause: $\frac{3}{4}$ of all members
 - Some local rules require $\frac{2}{3}$ vote for budget transfers
- Supermajority is calculated based on membership, not on members present

State Law

Conflict of Interest

A.R.S. §§ 38-501 -38-511

Arizona law prohibits a public officer or employee from participation in a decision or contract if the public officer or employee has a direct or indirect pecuniary or proprietary interest. **If you have a conflict, you are required to disclose the conflict and recuse yourself from discussions/vote.**

- Fact-intensive assessment – See League’s “You As A Public Official” publication
- Questions? Contact League (general) or your city/town attorney (specific)

Procedures

Three types

- Council-adopted local rules of procedure
- Common-sense and common-courtesy rules (Riggins' Rules)
- Rules of parliamentary procedure (Robert's Rules)

Procedures – Local Rules

- A council may adopt its own procedural rules
 - Many parliamentary rules don't fit
 - Tailor rules to fit how your council operates
- Not sure of your local rules?
 - Ask your attorney, city or town clerk or another council member

Procedures – Common Sense & Courtesy (Selected Riggins' Rules)

DO:

- Your homework
- Be on time
- Dress appropriately
- Be polite & impartial
- Be attentive
- Use titles of respect
- Be objective
- Invite public participation (at designated times)
- Respect staff work

DON'T:

- Get personal
- Try making anyone look bad
- Interrupt
- Permit speaking from the audience
- Answer technical questions
- Allow two speakers at once

Procedures – Parliamentary Rules

- Rules for conducting the business at a public meeting
- Allows the public to hear from all council members.

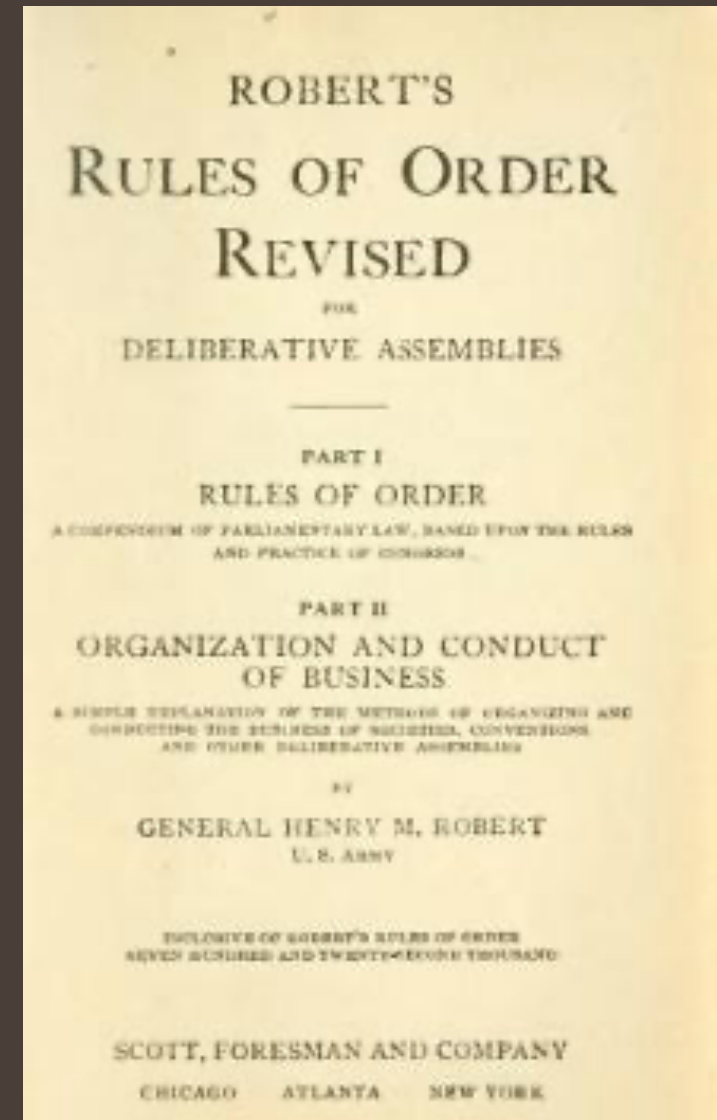
Debate (spoken comment on motion) and Decorum (conduct during debate)

- Speakers must be recognized by the chair *before* speaking
- Comments are addressed to the chair and the council
- Debate must be confined to the issue before the council (stick to the agenda item!)
- Debate must avoid personalities
- Council procedures may restrict how many times a council member may speak on a motion
- Questions or suggestions are not debate

Procedures – Parliamentary Rules

Robert's Rules of Order

- Type of motions/priority of motions
- When can you make them
- How to rescind something you voted on
- How to reconsider something
- How to postpone something

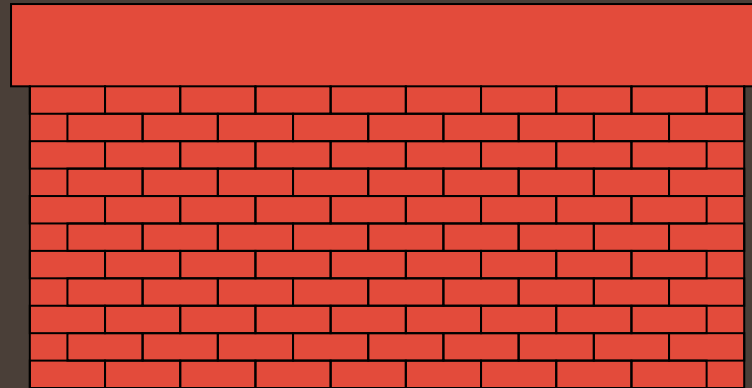


Parliamentary Rules - Motions

- A formal proposal that certain action be taken
- Made by council members, not the public
- A motion requires a second
- Seconding a motion does not indicate an endorsement of the motion

Parliamentary Rules – How Motions Work

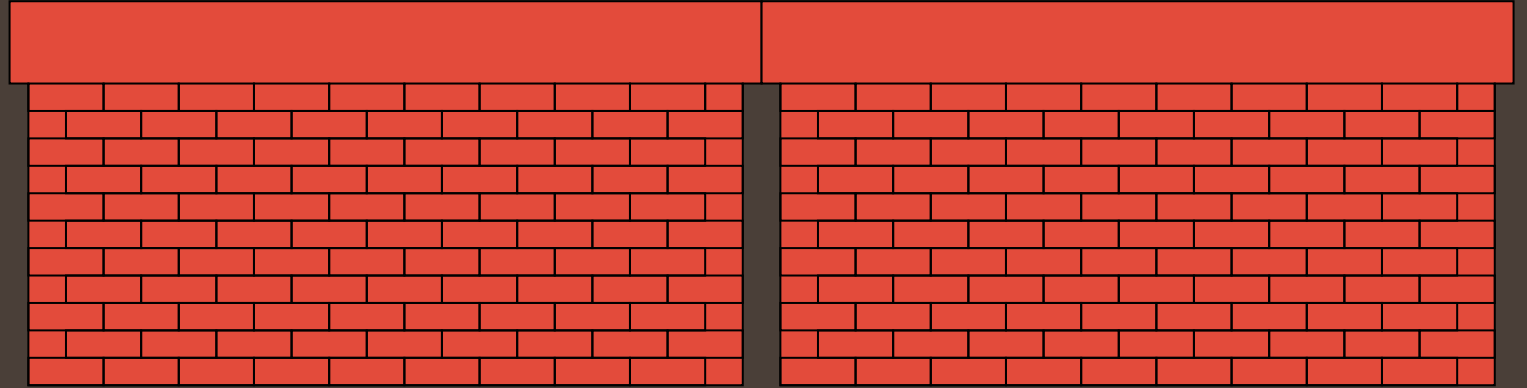
Original motion



“I move we build a brick wall”

Parliamentary Rules – How Motions Work

Amended motion



“I move we build a brick wall at double the size”

Retains the original motion with changes

Parliamentary Rules – How Motions Work

Substitute Motion



“I move a substitute motion that we build a picket fence”

Completely different from original motion

Parliamentary Rules – Common Motions

- Motion to adopt
- Motion to reconsider (usually must have voted on prevailing side)
- Call for the question (cut off debate)
- Motion to postpone consideration (continue)
- Motion to suspend the rules (e.g., speaker time; meeting time limit)

Parliamentary Rules – Voting

- A motion passes if a majority of those present vote for it
 - Exceptions: A supermajority requirement such as a zoning protest or an emergency clause
- A tie vote means the motion fails
- Abstentions are counted and noted, but not as a “yes” or “no” vote.
- Votes can be done by roll call or voice vote



The background of the image is a close-up, slightly angled view of the Arizona State Seal. The seal is circular and features a large, five-pointed star in the center. The star is yellow with a white outline. The star is set against a blue background. The star is surrounded by a red and yellow striped border. The words "ARIZONA" and "1912" are visible in the upper part of the seal, and "STATE" and "201" are visible in the lower part. The seal is set against a background of reddish-brown bricks.

Open Meeting Law

OML Overview

- Purpose
 - What is the OML? Why do I have to follow the OML?
- Definitions/Meeting Requirements
 - Does the law apply to me? How does it apply to me?
- Violations/Penalties
 - Who investigates a complaint? What happens if I violate the OML?
- Resources
 - Who can I talk to when I have an OML question?

What is the Open Meeting Law?

A.R.S. §§ 38-431–38-431.09

An Act mandating open deliberations and proceedings to the public and prohibiting public bodies from making decisions in secret.

Purpose of the Open Meeting Law

A.R.S. § 38-431.09

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas for those meetings contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.”

Interpret the OML in favor of open and public meetings.

Purpose of the Open Meeting Law

Legislative History- Highlights

- Enactment: Laws 1962, Ch. 138, Sec. 2
- Amended: Laws 1974, Ch. 196, Sec. 1
 - Expanded definition of **governing bodies**;
 - Laws 1978, Ch. 86 Expanding scope to **include advisory committees**.
 - Laws 1982, Ch. 278 Revising provisions relating to notice, agenda, executive session and penalties.
 - Laws 2000, Ch. 358 Expanded “meeting” to **include technological devices**; investigation process for violations.
 - Laws 2010, Ch. 88 Requiring posting of notices online.
 - Laws 2018, Ch. 229 Requires formal record of motions and votes; **establishes new penalties**.

Why Do I Have to Follow the OML?

- As a public official, you have a responsibility to abide by the law.
- The public the right to attend and listen to how public business is being conducted; avoid decisions being made behind closed doors.
- Promotes accountability by encouraging responsive and responsible actions.
- Maintains integrity and builds trust between you and the people you were elected/appointed to represent.

What Are Your Responsibilities?

A.R.S. § 38-431.01(G)

The City/Town Clerk must conspicuously post open meeting law materials prepared and approved by the attorney general on their website.

A person elected or appointed to a public body shall review the open meeting law materials at least one day before the day that person takes office.

How Do I Know If the OML Applies?

A.R.S. § 38-431
(Definitions)

The Open Meeting Law applies IF:

- You a Public Body; AND
- You are Meeting.

What is a Public Body?

A.R.S. § 38-431(6)

The legislature, all boards and commissions of this state or **political subdivisions, all multimember governing bodies** of departments, agencies, institutions and instrumentalities **of this state or political subdivisions**, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision.

A city or town is a public body.

What is a Public Body?

A.R.S. §38-431(6)

Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.

What is a Public Body?

A.R.S. § 38-431(5),(6)

Five basic categories of public bodies:

- 1) Boards, commissions, and other multimember governing bodies of the state or political subdivisions, including those “established by the Arizona Constitution or by way of ballot initiative;”
- 2) Quasi-governmental corporations;
- 3) Quasi-judicial bodies;
- 4) Advisory committees; and
- 5) Standing and special committees and subcommittees of any of the above.

What is a Public Body?

Advisory Committee or Subcommittee

A.R.S. § 38-431(1)

Any entity, however designated, that is

- 1) officially established, on motion and order of a public body or by the presiding officer of the public body, and
- 2) whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

What is a Public Body?

Advisory Committee or Subcommittee

A.R.S. § 38-431(1)

Does OML apply if members of the Board are serving on the subcommittee?

- YES, the OML applies regardless of whether or not the subcommittee is made up of council members, in whole or in part.
Ariz. Att'y Gen. Op. 180-202

What is a Public Body?

Exceptions

(from Agency Handbook)

A city or town is a public body *and* a subcommittee of a city or town may be a public body.

However, there are types of proceedings that don't fall within the definition of public body:

- Staff meetings.
- Staff appointed committees that advise staff (not the City/Town Council).
- Single department head.

How the Open Meeting Law Applies

A.R.S. § 38-431
(Definitions)

1. Are you a Public Body? **YES**
 - Includes advisory/subcommittee.
2. Are you Meeting?
 - Is a quorum of the public body gathering?
 - Is the quorum taking legal action?



How the Open Meeting Law Applies

What is a Meeting?

A.R.S. § 38-431 (4)

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 any deliberations by a quorum with respect to such action.

**Quorum + Gathering + Legal Action
(Discussion/Deliberations) = MEETING**

How the Open Meeting Law Applies

A.R.S. § 38-431
(Definitions)

- Is there a quorum of the public body gathering?
- A quorum is a majority of the full membership of the Board.
See *A.R.S. § 1-216(B)*
 - *Unless otherwise noted in statute or governing documents.*

How the Open Meeting Law Applies

A.R.S. § 38-431
(Definitions)

How is a quorum affected by disqualifications due to conflict of interest?

- A disqualified member present at the meeting may not be counted for quorum purposes to discuss or decide the particular matter for which the member is disqualified.
- Example: A five-member Board has three members present but one member has declared a conflict. The Board cannot proceed on that matter until another member attends. See *Croaff v. Evans*, 130 Ariz. 353, 356, 636 P.2d 131, 134 (App. 1981).

Splintering the Quorum

Separate or serial discussions with a majority of the members of the public body.

- E-mail, Skype, Chat, Messenger, etc.
- Telephones, including Text Messaging
- Polling
- Staff
 - Cannot direct staff to communicate in violation of open meeting law.



Quorum at a Social Event

Social Event: a function or outing at a given place or time (typically involves entertainment).

If more than a quorum will be present at a social event, a “courtesy agenda” MAY be posted announcing:

- The event;
- A quorum may be present; and
- A statement that no business of the public body will be discussed and no action will be taken.

A courtesy agenda is NOT required.

What Makes a Meeting?

Quorum
+
Gathering
+
**Discussion/
Deliberations (Legal Action)**



How the Open Meeting Law Applies

“Gathering”

A.R.S. § 38-431 (4)

A meeting includes:

- A **one-way** electronic communication sent from one member of a public body to a quorum of the members and that **proposes** legal action; and
- An **exchange** of electronic communications **among a quorum** of the members of a public body that involves a **discussion, deliberation or legal action** on a matter that may likely come before the body.

E-Mail, Texting, & Other Electronic Communications

The type of medium doesn't negate the effect of the law - emails, phone, texts, chat, skype, messenger, instant messaging – these are all technological devices.

See Ariz. Att'y Gen. Op. 105-004.

Codified by Laws 2018, Ch. 229 (H.B. 2065)



What Makes a Meeting?

Quorum
+
Gathering
+
Discussion/
Deliberations (Legal Action)



What is Legal Action?

A.R.S. §§ 38-431 (3),
38-431.01(A), 38-431.03

A collective decision, commitment or promise made by the council pursuant to the constitution, the council's charter, bylaws or specified scope of appointment and the laws of this state.

All LEGAL ACTION of councils shall occur during a public meeting.

What is Legal Action?

A.R.S. §§ 38-431 (3),
38-431.01(A), 38-431.03

All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body, constitute "legal action."

See Ariz. Att'y Gen. Ops. and Ariz. Att'y Gen. Op. 105-004.

Social Media Considerations

If a complaint is filed alleging that you used social media to circumvent the open meeting law, the Attorney General must determine if you were “meeting:”

- Is it a gathering?
 - Social media platforms are electronic communications.
- Was there a gathering of the quorum on social media?
 - Are a quorum of Board members your “friends” or “followers”?
 - Is the public able to access your online community or is it a limited group?
- Were you discussing legal action?
 - Is the platform used to share neutral information or are you posting opinions and ideas about various issues?
 - Did other Board members comment on your posts? Did you exchange comments with them?

There is no clear guidance. Be cautious with your communications - don't be the first court case!



Social Media Considerations

Best Practices

- Don't "friend" or "follow" other members of the Board; or be selective about which pages to follow (personal v. professional).
- If you choose to "friend" or "follow" other Board members, do not post about any Board business.
- Don't comment on their posts or "friends of friends" posts of other Board members if the matter relates to Board business (legal action).
- Don't create message groups that include a quorum of the Board about matters relating to city/town.

How the Open Meeting Law Applies

Are you a **public body**? If yes, are you **meeting**?

- Is there a quorum?
- Are you gathering?
 - In person, by phone, some type of online medium such as Skype, chats, e-mail, or any combination of these, etc.
- Are you discussing, proposing or taking legal action?
 - Is the matter being discussed, deliberated or proposed something that could result in final action by the body?
 - Is the matter within your scope of work or purpose as a public body stemming from the Constitution, state and local laws or IGA?

If the answer is yes to the underlined questions, it's a meeting.

Public Body + Meeting = OPEN MEETING LAW APPLIES

What Makes a Meeting?

Quorum



+

Gathering



+

Discussion/
Deliberations (Legal
Action)



= MEETING

Who Can I Talk To???

- Other council members if:
 - There is less than a quorum and no effort to circumvent the law by splintering the quorum.
 - Best Practice: Avoid using electronic mediums if discussing council business – too easy to accidentally transmit to other members.
 - Not discussing matters coming before the council (no legal action).
- Staff, including City/Town Attorney
- Constituents
 - May copy the full council on responses– be careful that no one hits “Reply All” and begins a discussion.
- Media

Communications to the Press

A.R.S. § 38-431.09(B)

Public officials may express opinion publicly if it is not principally directed at another member and is not part of a concerted plan to engage in collective deliberation.



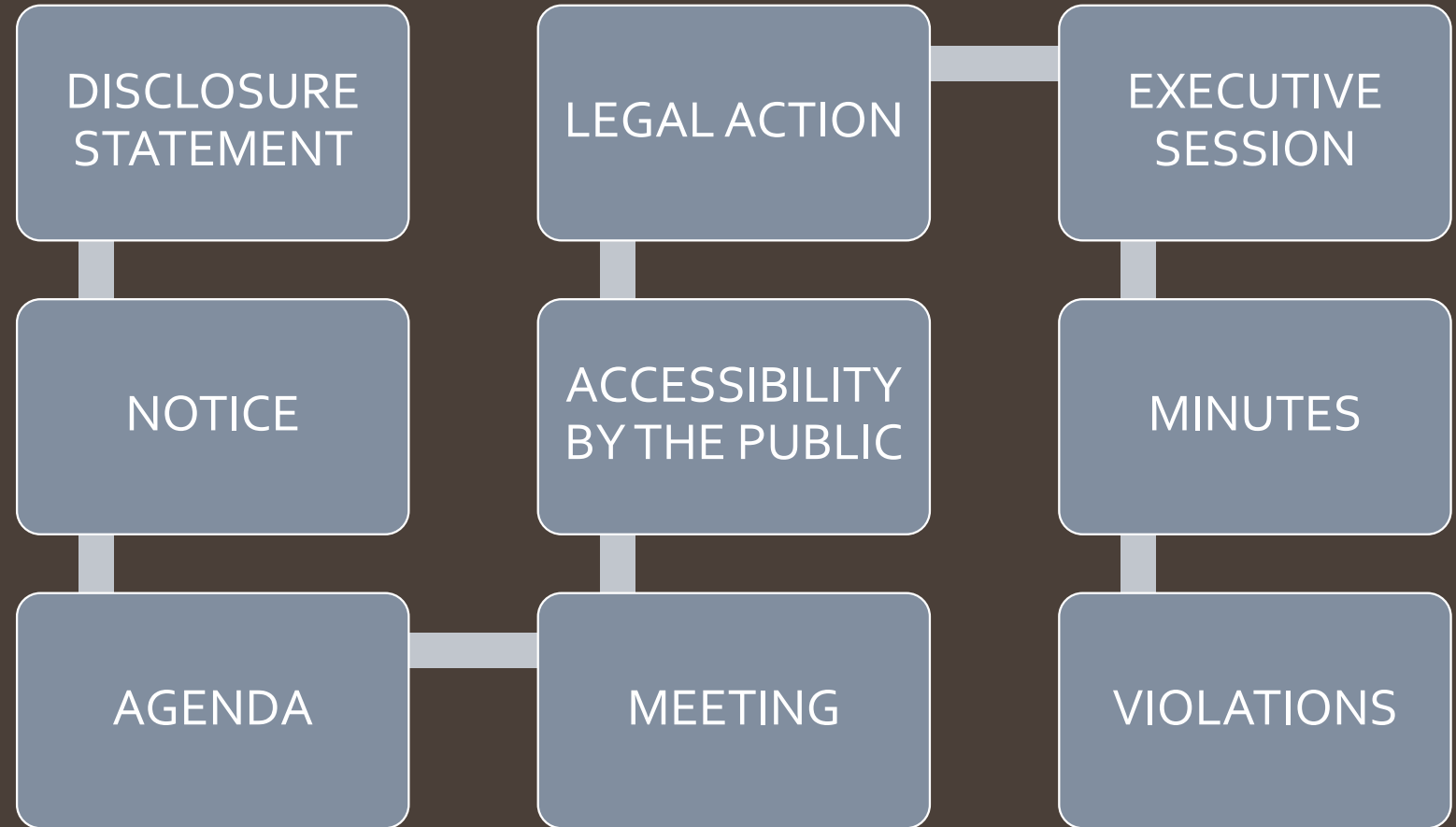
Hypothetical Scenarios – How OML Applies

1. As a five-member council, can you talk to another member outside a council meeting about an issue that may foreseeably come before the council?
2. After talking to the member, can you share your conversation with a third member about that same matter?
3. Can three members of a five-member council attend a conference together?
4. Can you talk to a reporter about how you might vote on an upcoming agenda item?
5. Can you post on your social media account how you might vote on an upcoming agenda item?



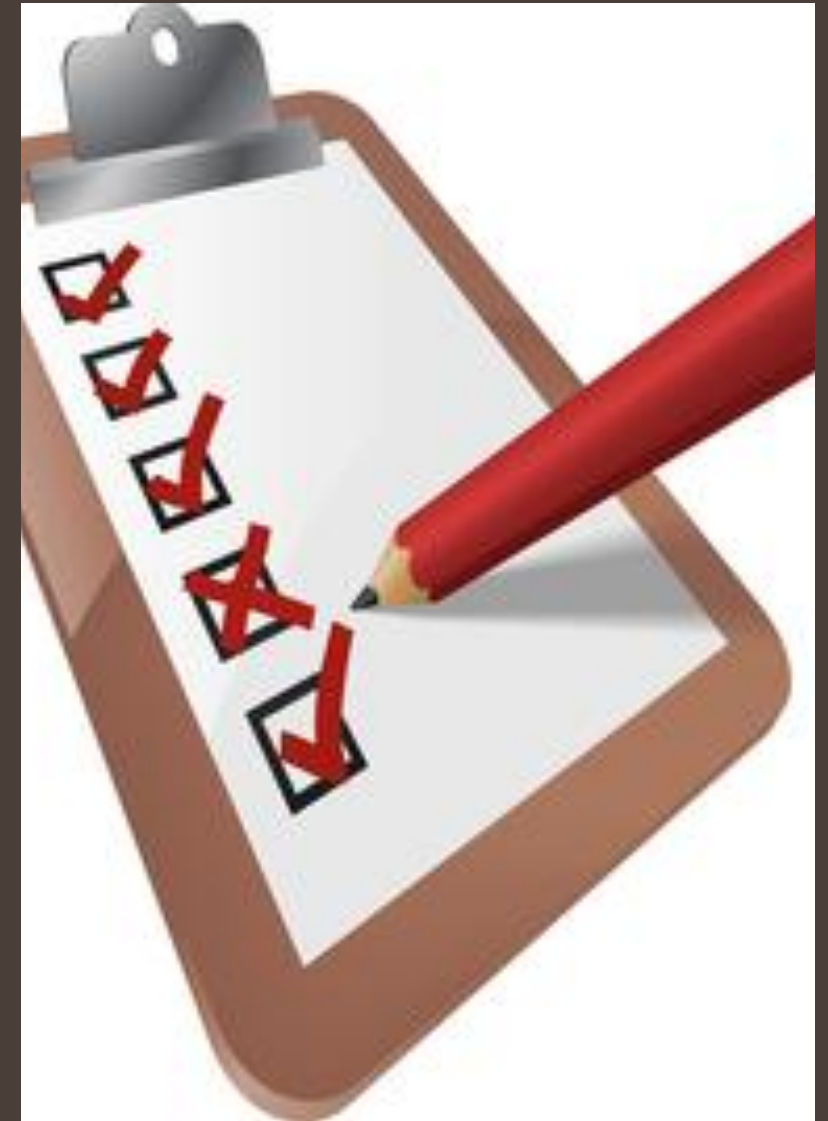
If I Am Subject to the Open Meeting Law, How Does It Apply?

Council Meeting Map



Pre-Meeting Requirements

- Disclosure Statement
 - Tells the public where all meeting notices will be posted
- Notice of the Meeting
 - Members
 - Public
- Agenda



Notices Generally

Why Do We Post Notices?

A.R.S. § 38-431.02

- Makes it possible for the public to attend the meeting;
- Informs the public of when and where the meeting will be held; and
- Provides the means for how the public will get information regarding matters under consideration.

Notices are a two-step process:

1. Disclosure Statement: tells the public where all meeting notices will be posted.
2. Public Notice of Each Meeting

Disclosure Statement of Notices

A.R.S. § 38-431.02(A)(4)

- *Conspicuously* post a disclosure statement identifying the physical and electronic locations where public notices of meetings will be displayed.
 - Public must have reasonable access to notification location.
 - Normal business hours, not geographically isolated, no limitations on access or be difficult to find.
- Public bodies of cities and towns must post the required information on their own websites or on the website of an association of towns and cities.

Meeting Notices

Contents

A.R.S. §38-431.02

Date, time, and place of meeting (including the street address of the building and room number or any other specific identifying information).

Public Notice of a Meeting

A.R.S. § 38-431.02(C),(G)

- Must include the agenda or where the public can obtain the agenda.
- Post on website and the location(s) identified in the Disclosure Statement.
- Provide “additional notice” of meetings as is “reasonable and practicable.”
 - News releases, e-mailing notices, newsletters, public access TV announcements, publications, etc.
- Three Exceptions to 24-Hour Notice Requirement...

Public Notice - Exceptions to 24-Hour Notice Requirement

A.R.S. §§ 38-431.02(D),
(E), 38-431.05(B)

1. Emergency Exception

- Requires an actual emergency.
- The meeting is held upon such shorter notice as is “appropriate to the circumstances.”
- Must post public notice and agenda within 24 hours.

2. May recess and reconvene a properly posted meeting within 24 hours (prior to recess, must announce time and place of resumption, OR method by which such notice will be given).

3. Ratification of prior legal action

- Posting is required 72 hours before meeting.

One-Time Public Notice Allowed

A.R.S. § 38-431.02(F)

- A public body that intends to meet for a specified calendar period, on a regular day, date or event during the calendar period, and at a regular place and time, may post public notice of the meetings at the beginning of the period. The notice shall specify the period for which notice is applicable.
- E.g. Your meetings are the second Tuesday of the month at 6 p.m. at Town Hall – you may post one notice but it must include where agenda will be posted 24 hours prior to the meeting.

Agendas

A.R.S. §38-431.02(H)

- Time, Date, Place of Meeting.
- Must list the specific matters to be discussed, considered or decided at the meeting. **Action may only be taken (discussed or considered) on listed items. Discussing items not listed on the agenda is an OML VIOLATION!**
- Agendas must contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.
- **If there is doubt, all questions should be resolved in favor of greater disclosure of information!**

Agenda- Writing Pitfalls

A.R.S. §§ 38-431.02(H),
(I),(K), 38-431.03

- Generally: Do not use generic agenda items topics such as “personnel,” “new business,” “old business,” or “other matters.”
- Executive Session Item: Agenda must state specific provision of law authorizing the session and specify the item. The provision must include a general description of matters to be considered. **Listing only the statutory authorization is insufficient.**
- Current Events: Presiding officer, chief administrator or a member of the public body may present brief “summary of current events.” **One-way communication only; no further discussion allowed!**
- Consent Agenda: Must still provide information sufficient to apprise the public in attendance of the basic subject matter of the action. *Karol v. Bd. Of Education Trustees*, 122 Ariz. 95 (1979); **do not vote on matters designated only by number.**

Agenda Meeting Pitfalls

- What if you fail to properly list an item the Board was planning to discuss?
 - Cannot discuss the item.
- What if a Board member begins speaking on a topic not listed on the agenda?
 - Instruct the member to cease discussion on the topic.
 - Ensure all members know how to properly place an item on the agenda.
- What happens if you take legal action on an item not listed on the agenda?
 - The item is null and void.
 - Sanctions by the Attorney General



Hypothetical Scenarios – Notices & Agendas

1. Can a notice be posted at a location not listed on the disclosure statement?
2. Can the council post one notice for all of its meetings if held on different dates/times?
3. Can a council member discuss or motion to vote on a matter not listed on the agenda?
4. Can a staff member other than the administrator provide a current events summary?
5. Can another council member ask questions about the current events summary?

At the Meeting Parliamentary Rules of Procedure

- Determine quorum
- Record members present, absent
- Adopt minutes
- Agenda order/changes
- Record Motions/Voting

At the Meeting: Public Access

A.R.S. § 38-431.01(A)

The council must provide the public with access to all meetings.

The council cannot obstruct or inhibit attendance by:

- Requiring the public to sign-in prior in order to attend (but ok to require sign-in if person is speaking);
- Holding the meeting in a remote location;
- Holding the meeting in a room too small to accommodate the reasonably anticipated number of observers;
- In a place to which the public does not have access (e.g. private club); or
- Holding the meeting at an unreasonable time.

At the Meeting: Calls to the Public

A.R.S. § 38-431.01(A),(H)

“All persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.”

- A public body **may** make an open call to the public. Once a call is made, must abide by reasonable time, place and manner restrictions.
- Must treat everyone the same - cannot prevent a person from speaking. The public may address issues *within the jurisdiction* of the public body.
- It's ok to impose a time limit but it must be uniformly applied to all speakers.
- Sign-in sheets (optional) but persons addressing the body should identify themselves for the record (include name and subject in minutes).



At the Meeting: Remote Conferencing by Council Members

- Allowed? Check city/town ordinance
- Generally, if there is a problem reaching a quorum, participation by telephone is OK, but:
 - The public must be able to hear the person on the phone;
 - The person on the phone must be able to hear everyone at the meeting; and
 - Participation on the phone must be noted on the agenda and reflected in the minutes.

At the Meeting: Remote Conferencing by Council Members

Recent AG
Opinion
(March 13, 2020)

- Specific to regular meetings of the public body – other public hearings under state law may have more stringent requirements.
- Best Practices:
 - Post a statement on the city or town website informing the public that a meeting will be held remotely through technological means;
 - Provide a website location for a video conference and post directions on how to access a meeting;
 - Provide a conference call number for telephonic meetings; or
 - Provide technical support for questions, concerns, or difficulty accessing a meeting.

At the Meeting: Remote Conferencing by Council Members

Recent AG
Opinion
(March 13, 2020)

Best Practices:

- Post a statement on the city or town website informing the public that a meeting.
- Ask members of the council, staff, presenters and members of the public to identify themselves each time they begin speaking;
- Include copies of presentations, documents, etc. that will be discussed at a meeting with the agenda, and post any information relevant to the public meeting on the public body's website;
- Ask all participants to ensure microphones/phones are muted when not speaking;
- Record the meeting; or
- Take any additional steps the council deems necessary to ensure that its meetings are conducted publicly and openly.

TRANSPARENCY IS THE CORE OF LEGALITY

Meeting Pitfalls

- Whispering to, or texting, fellow members.
- Privately using modern technology.
- A quorum of members begins talking to individuals before the meeting officially starts or after the meeting officially ends.
- Engaging in discussion with speakers during call to the public.
- Poor reception if a member is participating in the meeting by telephone or other electronic device
 - Must be allowed by public body and noted on the agenda and reflected in the minutes.



At the Meeting

What is an Executive Session?

A.R.S. §§ 38-431(2),
38-431.02(l), 38-431.03

- A gathering of a quorum of members of a public body that **excludes** the public for one or more of the reasons listed in A.R.S. § 38-431.03.
- E-Session is a limited exception to the public meeting.
 - Must vote in open meeting for executive session.
- Agenda must state specific provision of law authorizing the session and specify the item.
- Must include a general description of matters to be considered.
 - Listing only the statutory authorization is insufficient.

At the Meeting: Executive sessions

Who May Attend?

A.R.S. § 38-431(2)

- Members of the public body.
- Persons subject to a personnel discussion.
- Auditor general.
- Individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities.
 - Clerk to take minutes/run tape.
 - Attorney to give legal advice.
 - Tip: Put on the record why certain staff are reasonably necessary.

At the Meeting: Moving into Executive Session

A.R.S. § 38-431.03(A)

- The vote to move into an executive session must be conducted in the public meeting (motion can be made for e-session on a future date).
- Make sure the room is cleared and only those authorized to be present are in attendance; survey the room and ensure that there are no belongings or recording devices left behind by the public.
- Members should put away all electronic devices.
- Once in the executive session, remind all those in attendance that all discussions are **confidential**.



At the Meeting

Executive Session Purposes

A.R.S. § 38-431.03(A)

- There are seven statutory purposes for a public body to meet in executive session.
- Courts have construed exceptions to the OML very narrowly because of the policies that favor open and public meetings.

See Ariz. Op. Atty. Gen. No. 196-012 citing *Fisher v. Maricopa County Stadium District*, 185 Ariz. 116, 912 P.2d 1345 (App. 1995).

At the Meeting

Executive Session Purposes

A.R.S. § 38-431.03(A)

1. Personnel Matters: Employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation.
2. Records exempt by law from public inspection.
3. Discussion or consultation for *legal advice* with the attorney of the public body.
4. Discussion or consultation with the *attorneys* to consider and instruct regarding contract negotiations, pending or contemplated litigation, or settlement discussions to avoid or resolve litigation.

At the Meeting

Executive Session Purposes

A.R.S. § 38-431.03(A)

5. Discussions or consultations with employee organizations for *negotiating* salaries, salary schedules, or compensation.
6. Discussion, consultation re: interstate, international, or tribal negotiations.
7. Discussion or consultations to consider and instruct on negotiations for purchase, sale, or lease of real property.

At the Meeting

Executive Session Purposes

A.R.S. § 38-431.03(A)

8. Discussion or consideration of matters relating to school safety operations or school safety plans or programs.
9. Discussions or consultations with designated representatives of the city or town to discuss security plans, procedures, assessments, measures or systems relating to, or having an impact on, the security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the city or town.

At the Meeting

Confidentiality of E-session

- Minutes and discussions must be held confidential.
- Except from members of the body and certain other limited exceptions.
- Best Practice Tip: Keep these minutes apart from the public session minutes to avoid accidental disclosure but remember where you keep the confidential minutes!

At the Meeting

Executive Session Pitfalls

- Failure to keep executive session discussion confidential.
- Failure to advise persons about the confidentiality requirement.
- Best practices for preserving confidentiality:
 - Do not fax backup materials to members.
 - Members should not take confidential materials home from the meeting.
 - Let staff destroy extra copies.

Hypothetical Scenarios – Executive Session

1. Can the council only list the statutory authorization for the executive session?
2. Are executive session minutes available to the public?
3. Can a council member who was absent from the meeting review the executive session minutes?
4. Can the council take a vote in executive session?



Post-Meeting

Regular Meeting Minutes

A.R.S. § 38-431.01
(D),(E)(2),(J)

- Must be available for public inspection within 3 working days after the meeting (mark as draft or unapproved) – minutes should not be withheld from the public pending approval.
- Within two working days following approval of the minutes, post approved minutes of the council's meetings on its website.
- Minutes must remain on website for 1 year.
- Subject to public records law and record retention requirements (see Titles 39 and 41).

Post-Meeting

Regular Meeting Minutes

A.R.S. § 38-431.01(B)

Minutes must contain:

- Date, time and place of the meeting;
- Members present/absent at the meeting;
- A general description of the matters discussed or considered;
- An accurate description of legal actions (including the names of those making statements; if an emergency exists, the nature of the emergency; or if a prior act was ratified, a copy of the disclosure statement required for ratification);
- The name of each person making statements or presenting material to the public body and a reference to the legal action;

Post-Meeting

Regular Meeting Minutes

A.R.S. § 38-431.01(B)

Minutes must contain:

- If items were discussed at an emergency meeting, a full description of the nature of the emergency.
- If a prior act was ratified, a copy of the disclosure statement required for ratification.
- A record of how each member voted, including abstentions, recusals or those otherwise not voting (best practice: roll call)
- A record of the names of members who propose each motion;
- Any speaker who presents material to the Board.

Post-Meeting

E-session Minutes

A.R.S. §§ 38-431.01(C),
38-431.03(B)

- Executive Session Minutes must adequately summarize the discussion and identify those who participated in the discussion (as a best practice, keep an audio or video recording).
- Minutes and discussions are confidential (with exceptions).
- Executive Session minutes must contain same contents as regular minutes plus:
 - An accurate description of all instructions given to attorneys or designated representatives.
 - If holding an emergency meeting, a statement of the reasons for emergency consideration of any matters not on the agenda;
 - Any other information as appropriate.

What If
There Is An
OML
Violation?



Meeting Held in Violation of OML

A.R.S. §38-431.05(A)

All legal action is **null** and **void**.

What is Ratification?

A.R.S. § 38-431.05(B)

- When a public body must retroactively validate a prior act in order to preserve the earlier effective date of the action.
- Ratification validates a prior action in order to make the legal action valid and enforceable.
- Ratification does NOT eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties and attorney's fees.

Requirements for Ratification

A.R.S. § 38-431.05(B)

- Public meeting within 30 days after discovery of the violation.
- Special Notice Requirements:
 - Written description of the action to be ratified, a clear statement proposing ratification, and where the public can access the information;
 - Public shall be able to access all deliberations, consultations, and decisions by members relating to the action; and
 - Posted at least 72 hours in advance of the public meeting at which the ratification is taken.

Ratification

Is it Required?

- If the public body discusses a matter in violation of OML but thereafter meets in a lawful meeting and takes a formal vote as its “final action” then ratification is not required. *Cooper v. Arizona Western Coll. Dist. Governing Bd.*, 125 Ariz. 463, 468-469, 610 P.2d 465, 470-71(App. 1980); *Valencia v. Cota*, 126 Ariz. 555, 617 P.2d 63 (App. 1980).
- If the public body wishes to preserve the effective date of the earlier action rather than simply redecide the matter, it must go through the ratification process. See Agency Manual 7.13.1.

Who Investigates a Complaint?

Attorney General or County Attorney

A.R.S. § 38-431.06(A),(B)

- The AG primarily handles inquiries, conduct investigations and enforcement proceedings relating to complaints of violations of the Open Meeting Law.
- Upon a written, signed complaint the AG or County Attorney may issue written investigative demands, administer an oath or affirmation to any person for testimony, examine under oath, examine by means of inspecting accounts, books, computers, documents, minutes, papers, recordings, records.

What If I Violate the OML?

Consequences of a Violation

A.R.S. § 38-431.07

- Any person (or the Attorney General or county attorney) affected by alleged violation may commence suit in superior court to force compliance with OML *by the public body as a whole*.
- The Attorney General can bring an action against an individual member of the public body who KNOWINGLY violates the OML.
 - First Offense: The court may impose penalty as appropriate.
 - Second Offense: a civil penalty up to \$500.
 - Third/Subsequent Offense: not to exceed \$2,500
 - A person can be removed from office if the court determines the person knowingly violated OML.
- Penalties also apply to a person who knowingly aids, agrees to aid or attempts to aid in violating the OML.

What If I Violate the OML?

Consequences of a Violation

A.R.S. § 38-431.07

- The public body is prohibited from paying, or reimbursing, the civil penalty for any member who is found to knowingly violate the OML;
- Contains a safe harbor provision - specifies that if the court finds that person who might otherwise be liable for an open meeting violation objected on a public record to the action of the public body, the court may choose not to impose a civil penalty on that person.

What If I Violate the OML?

Failure to
Comply with
Attorney
General or
County Attorney

A.R.S. § 38-431.06(D)

- Possible filing of action in superior court for an order to enforce the demand.
- Failure to comply could result in:
 - Contempt of court.
 - Injunctive order against conduct.
 - Any other relief the court deems proper.




OML Best Practices

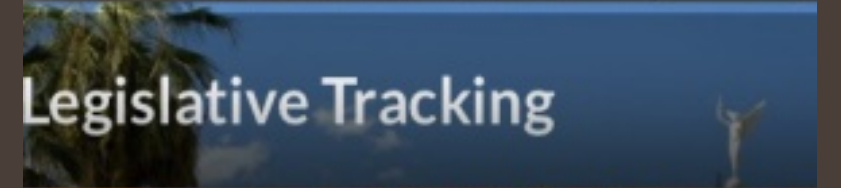
- Understand your role in the process
 - If an OML issue arises during the meeting, who addresses it? You or the attorney? Discuss beforehand with the attorney.
- Stay up-to-date on the law
 - Trainings (including requesting the League to present OML training to your Board)
- Ask questions
 - Clerk, attorney, League, ombudsman's office, etc.

Arizona Revised Statutes – www.azleg.gov
Title 38 Public Officers and Employees - Chapter 3 Conduct of
Office - Article 3.1 Public Meetings & Proceedings


38-431	Definitions
38-431.01	Meetings shall be open to the public
38-431.02	Notice of meetings
38-431.03	Executive sessions
38-431.04	Writ of mandamus
38-431.05	Meeting held in violation of article; business transacted null and void; ratification
38-431.06	Investigations; written investigative demands
38-431.07	Violations; enforcement; removal from office; in camera review
38-431.08	Exceptions; limitations
38-431.09	Declarations of public policy



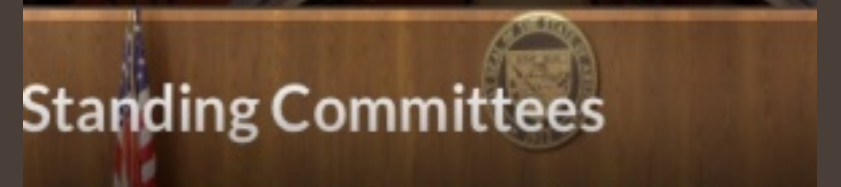
Members




Legislative Tracking



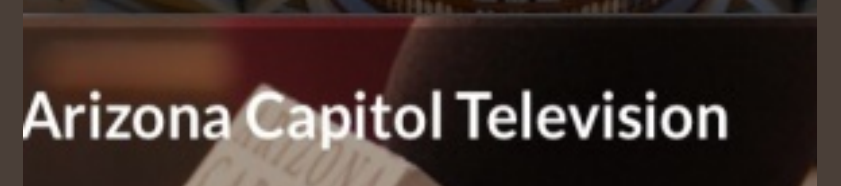
Request to Speak



Standing Committees



Committee Agendas



Arizona Capitol Television

Resources

Arizona Agency Handbook – Ch. 7

Agency Handbook | Arizona Attorney General - Google Chrome
https://www.azag.gov/agency-handbook

Translate Select Language |

Arizona Attorney General
Mark Brnovich

OFFICE COMPLAINTS OUTREACH CIVIL RIGHTS CONSUMER CRIMINAL MEDIA & RESOURCES

Home » Agency Handbook

Agency Handbook

Arizona Revised Statute §41-192(A)(8) requires the Attorney General to "compile, publish and distribute to . . . persons and government entities on request, at least every ten years, the Arizona agency handbook." Due to the high cost of publishing, the current version of the Handbook is posted on the Attorney General's Web site to satisfy this statutory requirement. (Revised 2013)



PREFACE

I proudly present the 2014 edition of the Arizona Agency Handbook. This publication is intended to provide guidance to State officers and employees and to the lawyers who represent the State or appear before its boards and agencies. The Handbook does not itself create legal rights or obligations; instead it is a reference source that discusses laws otherwise created by statutes, regulations, and the state or federal constitutions.

Facebook Twitter YouTube Google+ LinkedIn RSS

<https://www.azag.gov/outreach/publications/agency-handbook>

Resources

Arizona Ombudsman Citizens' Aide


Arizona Ombudsman – Arizona State Legislature - Google Chrome
www.azoca.gov

Arizona Ombudsman
CITIZENS' AIDE

Arizona State Legislature

Home About Resources Make a Complaint Open Meeting & Public Records Law Child Safety (DCS)

Search ...



We make government more responsive to the people of Arizona.

The role of the Ombudsman Office is to help people who are having a problem with an Arizona state agency, or who have a public records or open meeting law dispute with a state or local agency. **We are an independent, apolitical agency that works directly for the State Legislature.**

What We Do / Our Role

If you feel a state agency has treated you unfairly, or if you have disputes regarding public records or open meeting laws, you can turn to the Ombudsman – Citizens' Aide.

[More >](#)

Filing a Complaint?

We offer objectivity to citizens when they think Arizona government has treated them unfairly. Read on to learn how we can help.

[More >](#)

Helpful Resources

Commonly requested web links, phone numbers and answers to frequently asked questions

[More >](#)

Ombudsman Law

The statutes and rules that apply to the Ombudsman Office are based in Arizona state law, as are the rules for open meetings and public records.

[Arizona Title 41 Article 5](#)

[More >](#)

<http://www.azoca.gov/open-meeting-and-public-records-law/open-meetings/>

Resources

League of Arizona Cities and Towns



<http://www.azleague.org/> or 602-258-5786

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