

Open Meeting Law

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Two Core Concepts

- All meetings of any public body shall be public meetings and all persons so desiring should shall be permitted to attend and listen to the deliberations and proceedings. A.R.S. § 38-431.01(A).
- Doubts should be resolved in favor of open meetings.

Policy Behind the OML

- “It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.” A.R.S. § 38-431.09

Activities Covered

- “Meeting” means a 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.” A.R.S. § 38-431(4)
- “Gathering...of a quorum”
 - “Quorum” defined / Serial Communications
- “In person or through technological devices”
 - Telephone, e-mail, etc.
- “At which they discuss, propose, [deliberate], or take legal action.”
 - “Legal Action” means... “[A] collective decision, commitment or promise made by a public body pursuant to the constitution, the public body’s charter, bylaws or specified scope of appointment and the laws of this state.” A.R.S. § 38-431(3)

Procedural Safeguards

- Notice
- Agenda
- Minutes
- “Actual Emergencies”

■ **NOTICES:**

- **Purpose** - expose the public body's decision-making process to public scrutiny
- must contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided
- Minimum of 24 hours notice (exceptions exist)
- Must "conspicuously" post notice on website
- Include Agenda or point to location of Agenda

- **AGENDA:**

- Must contain information reasonably necessary to inform the public of the matters to be discussed or decided
- Must be provided 24 hours before meeting
- Describe the specific matters to be discussed, considered or decided at the meeting
- If the Board anticipates the need to discuss any agenda item in executive session with legal counsel, the agenda should state this fact clearly:
 - “The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board’s attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).” Agency Handbook, Ch. 7 § 7.7.2

■ MINUTES:

- Must take minutes of all meetings, including executive sessions, advisory committees and subcommittees. (See A.R.S. § 38-431.01(B) for required content)
- Minutes must be open for public inspection not later than 3 working days after meeting (except for E-Sessions)
- Must post approved minutes within 2 working days (except for E-Sessions)
- Subcommittee or Advisory: must post within 10 working days either a statement of legal action taken or a recording of meeting

Emergencies

- “In case of an actual emergency, a meeting, including an executive session, may be held upon such notice as is appropriate to the circumstances.” A.R.S. § 38-431.02(D).
- **Narrowly Construed:**
 - Immediate action is necessary
 - To avoid some serious consequence
 - Due to unforeseen circumstances

Agency Handbook, Ch. 7 § 7.6.5

Emergencies

- ***AFTER*** taking “emergency action”:
 - Post public notice within 24 hours, containing:
 - Statement that emergency session has been held
 - Information that would normally be required to be provided in the agenda. A.R.S. § 38-431.02(D)
 - Place in the minutes of the meeting a statement of the reasons necessitating emergency action. A.R.S. § 38-431.02(J)

Executive Sessions

- **Definition**

- “Executive Session” means a gathering of a quorum of members of a public body from which the public is excluded....” A.R.S. § 38-431(2)

- **Rule**

- “Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but ONLY for the following purposes:...” A.R.S. § 38-431.03(A)

1. **Certain Employee Matters**

- Discussion or consideration of employee issues
- MUST provide written notice to the employee at least 24 hours in advance
- At employee's request, the hearing must be conducted in a public meeting

2. **Legal advice from the District's own lawyer**

- Attorney for District must be present (but presence alone is not enough to justify E-Session)
- Confine discussion to legal advice

3. **Records Exempt by Law**

- Discussion or consideration of records exempt by law from public inspection.

4. **Litigation, Contract Negotiation and Settlement Discussion**

- Discussion or consultation for legal advice from the District's own lawyers "to consider its position and instruct its attorney regarding the [District's] position on contracts that are the subject of negotiations, impending or contemplated litigation or in settlement discussion conducted in order to avoid or resolve litigation."
- CANNOT conduct contract negotiations or settlement discussions in E-Session.

5. **Negotiations with Employee Organizations**

- Discussion or consultation with designated representatives of the District "to consider its position and instruct its representatives regarding negotiations with employee organizations regarding salary, schedules or compensation."

6. **Discussion, consultation or consideration for international, interstate or tribal negotiations.**
 7. **Purchase, Sale or Lease of Real Property**
 - Discussions or consultations with designated District representatives “in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.”
 - CANNOT meet in E-Session to negotiate with representative of potential buyer/lessee.
- **Note: Only purposes 2 & 4 require attendance by an attorney**

- The permissible purposes are “strictly construed.” — *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz 116 (App. 1995)
- NOTE: The OML merely permits, but does not require that discussion of the permissible topics take place in an Executive Session.

Executive Session Procedure

- **Confidentiality of Executive Session Information**

- “Any person receiving executive session information...shall not disclose that information.” A.R.S. § 38-431.03(F)
- “The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.” A.R.S. § 38-431.03(C)

- **Confidentiality of Minutes** - A.R.S. § 38-431.03(B)

- Minutes of and discussion at E-Session shall be kept confidential except from:
 - Members of the District which met in the particular Executive Session
 - Officers, appointees, or employees who were the subject of discussion or consideration in the particular Executive Session authorized for employee matters.
 - The Auditor General for authorized audit purposes
 - County Attorney or Attorney General when investigating alleged violations of the OML.

- **Restrictions on Matters Considered**

- In the absence of an “actual emergency,” “a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.” A.R.S. § 38-431.03(E)

- **Emergency Executive Sessions**

- “The reason for consideration of [an] emergency measure shall be announced publicly immediately prior to the executive session.” A.R.S. § 38-431.03(J)

- **NO VOTING IN EXECUTIVE SESSIONS!!**

- This prohibition extends to “straw polls” or preliminary votes

- **Telephonic Participation**

- Member *must* be alone; *no* person able to hear either end of the conversation

Common Misunderstandings

- There is no requirement that the public participate in the discussions and deliberations
- There is no requirement to include an open call to the public.
- The Public is not allowed to attend or listen to the discussions of limited Executive Sessions.

- If a properly conducted call to the public is made:
 - An individual public officer may briefly respond to verbal criticism or ask staff to make note to review an item in the future
 - BUT, an individual public officer or public body may *not* engage in discussion with a speaker or collectively discuss or take action on a speaker's topic unless the matter is specifically listed on the agenda
 - Public Body must impose reasonable time, place, and manner restrictions on speakers
 - Public Body must not knowingly direct a staff member to communicate in violation of the Open Meeting Law

- Related Matters not On Agenda: Must not take action on a subject or issue, except in case of an actual emergency.
- Discussions in Executive Sessions: Must pay strict attention to the substance of discussions; keep discussion in strict compliance with Open Meeting Laws.
- Splintering the Quorum: Must not circumvent the public discussion by splintering into smaller than quorum size groups
- Email and online discussions may constitute meetings within Open Meeting Law (to be discussed)

Ramifications

- Any individuals who violate the Open Meeting Law or who knowingly aid, agree to aid, or attempt to aid another is subject to:
 - Civil penalties of \$500 per violation; assessment of attorneys' fees and costs; removal from public office; and other equitable relief
 - Action taken at meeting is null and void unless subsequently ratified at a properly held meeting within 30 days of violation discovery

Disclaimer

- This package was designed and tailored for presentation before the Rio Nuevo Board Members. The information presented does not presume to nor does it address all parts of the Open Meeting Law.
- For more information regarding Open Meeting Law see A.R.S. §§ 38-431 - 38-431.09, or consult your Attorney General Representative.