

A scenic photograph of an Arizona desert landscape. In the foreground, a lush green golf course with several sand traps is visible, surrounded by dense desert vegetation and cacti. In the background, a range of dark, rugged mountains stretches across the horizon under a cloudy sky. The overall lighting suggests a late afternoon or early morning setting.

Arizona Open Meeting Law Overview

*Lisa Maxie-Mullins,
Assistant City Attorney
City of Goodyear Legal Services*

Goals of Presentation



ARIZONA OPEN MEETING LAW

- Overview of the Legal Requirements
- Best Practice Tips



History of Arizona Open Meeting Law

ARS 38-431

- Adopted in 1962
- Amended and expanded in 1974
- Amended in 1982 to authorize Arizona Attorney General and County Attorneys to enforce the statute and pursue legal action against violators
- Has not been amended or added to since minor changes in 2012.

Underlying Principle of Open Meeting Law



The public body's decision-making
process shall be open to the public.

Arizona Attorney General Opinion 75-7

Legislative Policy 1978 Amendment



A.R.S. 38-431.09(A)

Declaration of Public Policy

A.R.S. § 38-431.09(A)

- Meetings of public bodies must be public
- All people can attend and listen to deliberations and proceedings.
- All legal action must occur in public meeting
- *No right to participate.

The Underlying Principle of Open Meeting Law



How is “openness” accomplished?

Arizona law promotes openness through the following mechanisms:

- Notice & Agenda
 - Opportunity for the public to listen & attend meetings of the public body
 - Minutes
 - Construe the law in favor of open and public meetings
- Exceptions:
 - Executive Sessions
 - Emergencies

TEN GENERAL OPEN MEETING LAW REQUIREMENTS

OML Requirements



Requirement # 1

Provide proper notice of all public body meetings.

NOTICE & AGENDA OF PUBLIC MEETINGS

- The public must be given notice of all meetings, including executive sessions.
- All notices must be posted at specific locations at least 24 hours before the scheduled meeting.
- Notice of meeting may also include an Agenda of Items to be discussed.
- There are a couple of exceptions:
 - Emergencies
 - Recess & Resume

A.R.S. § 38-431.02

OML Requirements



Requirement # 2

Discussions of public body matters should not be discussed outside of a meeting among a quorum of the public body.

Meeting of a Quorum

- “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 any deliberations by a quorum with respect to such action.
- All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.
- All legal action of public bodies shall occur during a public meeting.

A.R.S. §38-431.01

Splintering the Quorum

- The public body may not circumvent OML by splintering the quorum or engaging in serial communications.
- A quorum cannot meet in person, via phone, email, or other mechanisms (staff, social networking sites) outside of a properly noticed meeting for the purpose of deliberations, discussion, or legal actions concerning matters within the public body's authority.
- Refrain from any discussions that appear to be in violation of OML.

Attorney General Opinion 105-004

OML Requirements



Requirement # 3

A public body may only discuss items listed on the agenda.

Agenda

- An agenda must be provided to the public.
- The public body may only discuss, deliberate, or take legal action on matters listed on the agenda and others matters related thereto.

A.R.S. § 38-431.02

OML Requirements



Requirement # 4

A public body's agenda should contain specific details and not "general references."

"Specific Matters"

The Agenda must:

- List specific matters to be discussed, considered or decided
- Contain information reasonably necessary to inform the public
- Exceptions:
 - Current Events Summary - A.R.S. § 38-431.02
 - Executive Sessions – A.R.S. § 38-431.03(A)

Current Events

Chief Administrator of the Agency, presiding officer of the public body, or a member of the public body

- May present a brief summary of current events **without listing** in the agenda the specific matters to be summarized
- **IF** . . .
 - Current Events is an agenda item
 - **AND** members of the public body do not propose, discuss, deliberate or take legal action on the brief summaries

A.R.S. § 38-431.02(K)

OML Requirements



Requirement # 5

A public body must maintain accurate minutes for all public body meetings and subcommittee meetings.

OML Requirements



Minutes

- Written minutes or recording are required
- Minutes Content
 - Date, time and place of meeting
 - Members present & absent
 - General description of matters considered
 - Accurate description of legal action
 - Names of members who propose each motion
 - Names of persons, as given, making statements or presenting material to the public body; and
 - A reference to the legal action about which they made statements or presented material

OML Requirements



Minutes

- Must be available to the public 3 working days after the meeting Cannot withhold until “approved”
- Cities and Towns with population over 2,500 Must post on website (except subcommittees and advisory committees)
 - Post approved minutes within 2 days of approval

A.R.S. § 38-431.01(D)

A.R.S. § 38-431.01(E)

OML Requirements



Requirement # 6

A public body may not discuss an issue raised by a citizen during the Call to the Public, unless the issue presented by the citizen is properly noticed on the agenda or the issue is covered by one of the statutory exemptions.

OML Requirements



Call to the Public

The public body MAY allow an open call to the public during the meeting.

However, the public body may not discuss or take action on an item raised during the call to the public.

What can a board member do during the call to the public?

1. Respond to Criticism;
2. Ask staff to review the matter; or
3. Instruct staff to put the matter on a future agenda.

Time, manner, place restrictions

- Can limit time
- Repetition
 - May require speakers on the same side with no new comments to select spokesperson
- Prohibit disruptive behavior

A.R.S. § 38-431.01(H)

OML Requirements



Requirement # 7

Executive Session may only be convened for one of the seven specific purposes set forth in the law.

OML Requirements



Executive Sessions

- Discussion of personnel matters
- Discussion of Confidential Records
- To obtain legal advice
- Instructions regarding pending litigation/negotiations
- Employee Compensation
- International/Interstate/Local/Tribal Negotiations
- Disposition of Real Property

Executive Sessions

An Executive Session is a closed door session of the public body.

- The public may not participate in Executive Sessions.
- Executive Sessions may only be utilized for seven specific statutory purposes.
- Only a "general description" on the agenda.

A.R.S. § 38-431.03

Executive Sessions

Executive Session General Requirements

- Executive Sessions must be properly noticed.
- Majority of the members present must vote to convene an Executive Session.
- Only persons "reasonably necessary" may be present in an Executive Session.
- Executive Sessions are memorialized with minutes.
- Come back into public session following Executive Session
 - vote
 - direction
 - announce no action to be taken

Executive Session: Legal Advice

Consultation for legal advice

- With lawyers for the Public Body and not someone else's lawyers
- Not just because the lawyer is present
- Attorney consultation regarding a legal issue or question
- The presence of an attorney "at an Executive Session cannot be used to circumvent the open meeting law requirements."

OML Requirements



Requirement # 8

Executive Sessions are confidential.

OML Requirements



Executive Sessions Confidential

- All information shared in executive sessions are confidential.
- Exceptions:
 - open meeting law violation investigation
 - audit

Requirement # 9

The Open Meeting Law is also applicable to subcommittees and advisory committees of the public body.

Subcommittees

Advisory committee or subcommittee

- An entity officially established on motion or order by the public body or presiding officer
- Whose members are specifically appointed to make a recommendation
- Must take minutes or record meetings

A.R.S. § 38-431(1); 38-431.01(B)

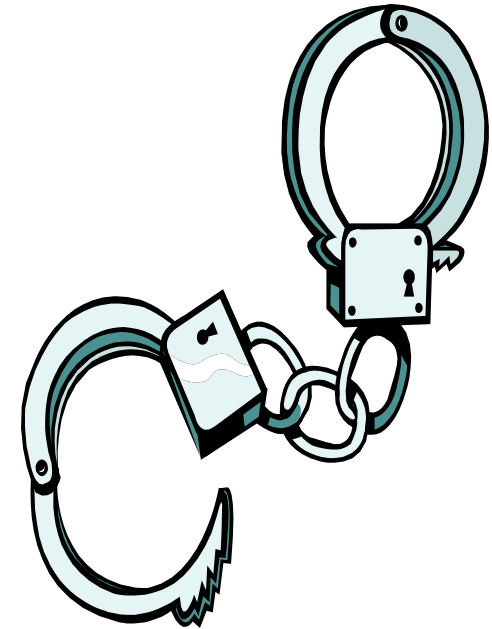
Requirement # 10

Violations of the Open Meeting Law may result consequences as set forth in the provision.

Violations of Open Meeting Law



- Actions are null and void.
- The Attorney General or County Attorney may investigate (court action may be utilized if someone fails to comply with an investigation)
- Ratify previous actions
- \$500 penalty
- Pay attorney's fees and court costs
- Removal from the public office
- **Embarrassment and loss of public trust**





Underlying Principle of Arizona OML

Open Meeting Law

All decision making must be carried out in public.

When in doubt, err on the side of openness.

Open Meeting Law



Resources

- The Arizona Ombudsman – Citizens' Aide Handbook – The Arizona Open Meeting Law
- Ombudsman website www.azoca.gov
- Arizona Agency Handbook, Chapter 7, www.azag.gov – Quick Links
- Attorney General Opinions – www.azag.gov
- City Attorney