

OPEN MEETING LAW 101

Arizona's Open Meeting Law in a Nutshell

Information compiled by:
The Ombudsman – Citizens' Aide
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Two core concepts

“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.” A.R.S. § 38-431.01(A).

“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 reasonable necessary to inform the public of the matters to be discussed or decided.” A.R.S. § 38-431.09(A).

Why do we have an Open Meeting Law?

1. To protect the public.
 - a. To avoid decision-making in secret.
 - b. To promote accountability by encouraging public officials to act responsively and responsibly.
2. To protect public officials.
 - a. To avoid being excluded (notice).
 - b. To prepare and avoid being blind sided (agenda).
 - c. To accurately memorialize what happened (minutes).
3. Maintain Integrity of government.
4. Better informed citizenry.
5. Build trust between government and citizenry.

What constitutes a meeting?

A meeting is a gathering, in person or through technological devices of a quorum of a public body at which they discuss, propose or take legal action, including deliberations. A.R.S. § 38-431(4). This includes telephone and e-mail communications.

Who must comply with Open Meeting Law?

Public bodies. "Public body" means the Legislature¹, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors

¹ While the text of the Open Meeting Law makes it apply to the Legislature and its committees, the Arizona Supreme Court held that whether the Legislature or its members violated the Open Meeting Law is a non-justiciable political question. In other words, the open meeting law cannot be enforced against the Legislature via the courts. See Puente vs. Arizona State Legislature.

are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article. A.R.S. § 38-431(6).

"Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and 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. A.R.S. § 38-431(1).

The Secretary of State, Clerk of the County Board of Supervisors, and City and Town Clerks must conspicuously post open meeting law materials prepared and approved by the Arizona Attorney General's Office 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. A.R.S. § 38-431.01(G)

What is Required under the Open Meeting Law?

1. Notice

Public bodies must post a disclosure statement on their website.² The disclosure statement states where the public body will post individual meeting notices. A.R.S. § 38-431.02(A)(1) through (4).

The open meeting law requires at least 24 hours notice of meetings to the members of the public body and the general public. A.R.S. § 38-431.02(C).

Notice must be posted on the public body's website, unless otherwise permitted by statute. Notice must also be posted at any other electronic or physical locations identified in the disclosure statement and by giving additional notice as is reasonable and practicable. A.R.S. § 38-431.02(A)(1) through (4).

2. Agenda

Agendas must contain information reasonably necessary to inform the public of the matters to be discussed or decided. A.R.S. § 38-431.09(A).

Agendas must be available at least 24 hours before the meeting. A.R.S. § 38-431.02(G).

3. Public's Rights

² Special districts formed under Title 48 may instead file a statement with the clerk of the board of supervisors "stating where all public notices of their meetings will be posted."

The public has a right to:

- Attend
- Listen
- Tape record
- Videotape

Public has no right to:

- Speak
- Disrupt

4. Calls to the Public

An open call to the public is an agenda item that allows the public to address the public body on topics of concern within the public body's jurisdiction, even though the topic is not specifically included on the agenda. A.R.S. §38-431.01(H).

Although the Open Meeting Law permits the public to attend public meetings, it does not require public participation in the public body's discussions and deliberations and does not require a public body to include an open call to the public on the agenda. *See* A.R.S. §38-431.01(H) and Ariz. Att'y Gen. Op. No. I78-00.

An individual public officer may respond to criticism, ask staff to review an item, or ask that an item be placed on a future agenda, but he or she may *not* engage in dialogue with the presenter or collectively discuss, consider, or decide an item that is not listed on the agenda. A.R.S. § 38-431.01(H). Note that individual members of the public body may respond to criticism by individuals who addressed the public body during the call to the public, but the public body may not collectively discuss or take action on the complaint unless the matter is specifically listed on the agenda. A.R.S. § 38-431.01(H).

Public bodies may impose reasonable time, place, and manner restrictions on speakers. A.R.S. §38-431.01(H). Restrictions must be narrowly tailored to affect a compelling state interest and may not be content based. Ariz. Att'y Gen. Op. I99-006.

A member of the public body may not knowingly direct a staff member to communicate in violation of the Open Meeting Law. A.R.S. 38-431.01(I).

In sum:

- *Calls to the public are permitted, but not required.*
- *Should be added as an agenda item.*
- *Public body may limit speaker's time.*
- *Public body may set ground rules:*
 - *civility*
 - *language*
 - *treat everyone the same*

5. Executive Sessions

Public bodies may hold private executive sessions under a few limited circumstances. In executive sessions, the public is not allowed to attend or listen to the discussions, and the public body is not permitted to take final action. A.R.S. § 38-431.03(D).

Members of the public body may not vote or take a poll in executive sessions. A.R.S. § 38-431.03(D).

There are seven authorized topics for executive sessions:

1. Personnel (must provide 24 hours written notice to employee).
2. Discussion or consideration of records exempt by law from public inspection.
3. Legal advice – with public body’s own lawyer(s).
4. Discussion or consultation with public body’s lawyer(s) to consider pending or contemplated litigation, settlement discussions, negotiated contracts.
5. Discuss and instruct its representative regarding labor negotiations.
6. Discuss international, interstate, and tribal negotiations.
7. Discuss the purchase, sale, or lease of real property.
8. Discuss matters related to school safety operations, plans, or programs.
9. Discuss “security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the public body.”

Notice and Agenda: Agendas for executive sessions may describe the matters to be discussed more generally than agendas for public meetings in order to preserve confidentiality or to prevent compromising the attorney-client privilege. A.R.S. § 38-431.02(I). Nonetheless, the agenda must provide more than a recital of the statute that authorizes the executive session. Id.

6. Minutes (A.R.S. §§ 38-431.01(B), (C), (D) and -431.03(B))

Public bodies must take meeting minutes of all meetings, including executive sessions. May be recorded or written.

Public session meeting minutes must include:

- Date, time and place of meeting;
- Names of members of the public body present or absent;
- A general description of matters considered; and
- An accurate description of all legal actions proposed, discussed or taken (including a record of how each member voted), and the names of members who propose each motion. The minutes shall also include the names of the 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.

Executive session minutes must include:

- Date, time and place of meeting;
- Names of members of the public body present or absent;

- A general description of matters considered;
- An accurate description of all instructions given; and
- Such other matters as may be deemed appropriate by the public body.

The minutes or a recording of the public session must be open for public inspection no later than three working days after the meeting, except as otherwise provided in the statute. A.R.S. § 38-431.01(D).

A city or town with a population of more than 2,500 persons must:

- Post a recording or statement describing legal actions taken by city or town public bodies (except for subcommittees or advisory committees) on its website within three working days. A.R.S. § 38-431.01(E)(1).
- Post approved city and town council minutes on its website within two working days following approval. A.R.S. § 38-431.01(E)(2).
- Post a recording or statement describing legal actions taken by subcommittee or advisory committee on its website within 10 working days. A.R.S. § 38-431.01(E)(3).

Minutes of executive sessions must be kept confidential except from certain individuals. A.R.S. § 38-431.03(B).

How long meeting minutes are maintained is determined by the public body's record retention and destruction schedule authorized by Arizona State Library and Archives.

Persons in attendance may record any portion of a public meeting, as long as the recording does not actively interfere with the meeting. Acceptable recording equipment includes tape recorders, cameras, or other means of reproduction. A.R.S. § 38-431.01(F).

7. Where to turn for help

Self-help resources available:

The Arizona Ombudsman – Citizens' Aide handbook and other open meeting law resources <http://www.azoca.gov/open-meeting-and-public-records-law/open-meetings/>

The Arizona Ombudsman's website, www.azoca.gov

Arizona Agency Handbook, Chapter 7, and other resources <https://www.azag.gov/sgo>

Questions/File a complaint:

Arizona Ombudsman-Citizen's Aide 602-277-7292

File a complaint/Enforcement authority

Attorney General

County Attorney's Office