

**Notice of Meeting
Location Change:
Community Development
Building 85 N. Florence St.
Florence, AZ 85132 Start
time pending adjournment
of BOA hearing**



**Notice of Meeting Location
Change: Community
Development Building 85
N. Florence St. Florence,
AZ 85132 Start time
pending adjournment of
BOA hearing**

NOTICE OF PUBLIC MEETING AND EXECUTIVE SESSION
PINAL COUNTY BOARD OF ADJUSTMENTS AND APPEALS
SUMMARY OF AGENDA FOR MEETING
Thursday, May 25, 2023

10:30 AM - CALL TO ORDER

PINAL COUNTY ADMINISTRATIVE COMPLEX
BOARD OF SUPERVISORS HEARING ROOM
135 N. PINAL STREET
FLORENCE, AZ 85132

Action means discussion, approval, disapproval on the following Planning Cases. (Numbers are shown for administrative convenience only. All interested persons should be aware that the cases may be heard in an order different than that shown on the agenda).

A work session is not a public hearing. For matters that are not listed as "public hearings" the public may attend and listen to the proceedings, but may only address the Board with its permission. Some members may participate telephonically.

(1) **CALL TO ORDER AND ROLL CALL OF BOARD MEMBERS:**

- () **KENNEDY, Chairman**
- () **MARSH, Vice Chairman**
- () **BEGEMAN, Member**
- () **MAULLER, Member**
- () **SANCHEZ, Member**

(2) **WORK SESSION: CIVIL HEARING OFFICE RULES**

**Item
Revised**

A. **WORK SESSION: CIVIL HEARING OFFICE RULES TRAINING**

(3) **WORK SESSION: OPEN MEETING LAW**

**Item
Revised**

A. **OPEN MEETING LAW TRAINING**

ADJOURNMENT

Support documents for the above-listed matters are available at the Pinal County Community Development Office for the public inspection at least 48 hours prior to the meeting at the Pinal County Community Development Department, Pinal County Complex, 85 N. Florence Street, Florence, Arizona, Monday through Friday between the hours of 8:30 a.m. and 4:30 p.m.

NOTE: One or more members of the Board may participate in this meeting by telephonic conference call.

The Board may go into Executive Session for the purpose of obtaining legal advice from the County's Attorney(s) on any of the above agenda items pursuant to A.R.S. 38-431.03(A)(3).

In accordance with the requirement of Title II of the Americans with Disabilities Act (ADA), the Pinal County Board of Adjustment and Appeals does not discriminate against qualified individuals with disabilities admission to public meetings. If you need accommodation for a meeting, please contact the Community Development Department at (520) 866-6442, at least (5) five business days prior to the meeting (not including weekends or holidays) so that your request may be accommodated.

Posted this 24th day of May at 9 a.m. /s/ Todd Williams



AGENDA ITEM

May 25, 2023 ADMINISTRATION BUILDING A
FLORENCE, ARIZONA

REQUESTED BY:

Funds #:

Dept. #:

Dept. Name:

Director:

BRIEF DESCRIPTION OF AGENDA ITEM AND REQUESTED BOARD ACTION:

WORK SESSION: CIVIL HEARING OFFICE RULES TRAINING

BRIEF DESCRIPTION OF THE FISCAL CONSIDERATIONS AND/OR EXPECTED FISCAL IMPACT OF THIS AGENDA ITEM:

BRIEF DESCRIPTION OF THE EXPECTED PERFORMANCE IMPACT OF THIS AGENDA ITEM:

MOTION:

History	Who	Approval
Time		

ATTACHMENTS:

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☐ [CIVIL HEARING OFFICE RULES TRAINING](#)



Code Enforcement Appeals from Hearing Office

Brent Billingsley, Community Development Director

May 25, 2023



Ordinance Number 062211-HOROP-01 establishes the rules for the Hearing Office

- Rule 25

- Any party may appeal the Hearing Officer Decision.

- Rule 26

- Ticket complaints are appealable directly to the Superior Court

- Rule 27

- All non-ticket complaints, except decisions regarding County Alarm Systems Ordinance, is appealable to the Board of Supervisors.

Rule 27

➤ 27.1


- The party requesting review shall file a Notice of Appeal (NOA) with the hearing office within fifteen (15) calendar days from the date the decision is served.

➤ 27.2

- NOA filed on a form provided by the Hearing Office
- Must designate attorney or representative on that form or it constitutes waiver of representation.

➤ 27.3

- The clerk will send a copy of the NOA to the other party.



Rule 27.4

Record on Appeal

- ▶ The BOS' review of the Hearing Officer Decision SHALL be **limited to the record of proceedings before the Hearing Officer** and **NO NEW EVIDENCE MAY BE INTRODUCED** (*emphasis added*).
- ▶ What is the Record?
 - ▶ All pleadings, orders, evidence admitted at the hearing, and audiotape of the proceeding.
- ▶ 27.4.1
 - ▶ Any party may have transcript included as part of record at their expense.
- ▶ 27.4.2
 - ▶ If BOS determines that a transcript is necessary, they may request an official transcript be prepared at County expense.

Rule 27 (cont.)

➤ 27.4.3

- If the BOS determines that the record is insufficient, it may remand the case back to the hearing office for a Trial de Novo.

➤ 27.5

- Upon receipt of the NOA by the Hearing Office, the clerk shall within thirty (30) days transmit the record to the Clerk of the BOS.
- Upon transmission of the Record, the Clerk shall send by first class mail to all parties notice that the record has been transmitted.
- Upon receipt of the transmitted record, the Clerk for the BOS shall provide written notice to the parties that written memoranda are due within fifteen (15) days from the date of the transmission of the record.

Rule 27 (cont.)

➤ 27.6

- Each party may file a written memorandum no later than fifteen (15) days following the transmission of the record to the BOS.

➤ 27.7

- Clerk places on agenda and written notices are sent to the parties.

➤ 27.8

- Oral argument limited to five (5) minutes per side.
- Based on Record and no new evidence presented.

Rule 27.9

- After Oral Argument the BOS may increase, decrease or modify the penalty so long as it does not exceed amount set by applicable codes and it may:
 - Affirm, in whole or in part, the Decision of the Hearing Officer
 - Reverse, in whole or in part, the Decision of the Hearing Officer;
 - Vacate, in whole or in part, the Decision of the Hearing Officer and remand back to the Hearing Office for further proceedings.
- 27.10
 - Written notice of final decision of BOS shall be hand delivered or mailed to parties within five (5) days of decision.
- Rule 28
 - BOS Final Decision appealable to the Superior Court.

ANOTHER OPTION . . .

- **In place of the Board of Supervisors, the Board of Adjustment could hear appeals from the hearing office.**
- A.R.S. 11-816(B)(3) – The Board of Adjustment may if authorized by the board of supervisors, review decisions by a hearing officer who hears and determines zoning violations . . .



AGENDA ITEM

May 25, 2023 ADMINISTRATION BUILDING A
FLORENCE, ARIZONA

REQUESTED BY:

Funds #:

Dept. #:

Dept. Name:

Director:

BRIEF DESCRIPTION OF AGENDA ITEM AND REQUESTED BOARD ACTION:

OPEN MEETING LAW TRAINING

BRIEF DESCRIPTION OF THE FISCAL CONSIDERATIONS AND/OR EXPECTED FISCAL IMPACT OF THIS AGENDA ITEM:

BRIEF DESCRIPTION OF THE EXPECTED PERFORMANCE IMPACT OF THIS AGENDA ITEM:

MOTION:

History	Who	Approval
Time		

ATTACHMENTS:

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☐ [Arizona Open Meeting Laws](#)

Arizona Open Meeting Laws

(an Overview)

Presented to the Pinal County Board of Adjustment
On
Thursday, May 24, 2023

By: Daron J. Garey, Deputy County Attorney





Sources of Law

Arizona Revised Statutes (“A.R.S.”) §§ 38-431– 38-431.09 (the “Open Meeting Law”)

Article 3.1

Public Meetings and 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; definitions

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; civil penalty; removal from office; in camera review

38-431.08

Exceptions; limitation

38-431.09

Declaration of public policy



Sources of Law



Arizona Attorney General
Kris Mayes

Arizona Attorney General Opinions

Arizona Agency Handbook, Chapter 7

Per A.R.S. § 41-192(A)(8), the Attorney General must “compile, publish and distribute . . . to persons and government entities on request, at least every ten years, the Arizona agency handbook .”

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



Sources of Law

Case Law:

WESTLAW EDGE

LITIGATION History Folders My links Notifications Sign out

All content adv: "open meeting" Arizona Search Tips > Advanced >

Content types Filters

Set default

Overview 12

Cases 119

Trial Court Orders 30

Statutes & Court Rules 121

Secondary Sources 10,000

Practical Law 0

Regulations 25

Public Records

Administrative Decisions & Guidance 4,579

Arbitration Materials 0

Briefs 315

Expert Materials 0

Cases (119)

1 - 20 > Sort: Date

☐ Select all items • No items selected

☐ 1. **Arizona Public Service Company v. Arizona Corporation Commission**
Court of Appeals of Arizona, Division 1. • March 07, 2023 • 91 Arizona Cases Digest 31 • 526 P.3d 914

ENERGY AND UTILITIES — Coal. Corporation Commission could adopt fair value increment of 0.15% and 8.9% return on equity, but could not disallow investment based on future data.
▶ Show synopsis

1 of 1 snippet

...to seasonal use. Over eight days, the Commission held an open meeting to consider the Recommended Order and Opinion. Following the open meeting, the Commission amended the recommendation and issued the Decision. In...

☐ 2. **Puente v. Arizona State Legislature**
Supreme Court of Arizona. • December 30, 2022 • 254 Ariz. 265 • 86 Arizona Cases Digest 29

GOVERNMENT — Public Officials. Political question doctrine applied to prohibit courts from adjudicating complaint that legislative committees met in violation of Open Meeting Law.

Related documents

Why Open Meeting Law?

Legislative Intent: “The Legislature has repeatedly expressed its intent that the Open Meeting Law be construed to maximize public access to the governmental process. In first enacting the Open Meeting Law in 1962, the Legislature declared that: It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly.” (Arizona Agency Handbook § 7.2.2)



Why Open Meeting Law? (Cont'd)

“In 1978, after a series of court opinions narrowly construing the Open Meeting Law, the Legislature reiterated its policy by adding A.R.S. § 38-431.09(A). That statute now provides that: ‘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. Toward this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings.’”
(Emphasis added) (Id.)



Why Open Meeting Law? (Cont'd)

“In keeping with this expressed intent, any uncertainty under the Open Meeting Law should be resolved in favor of **openness** in government.”
(*Id.*)





Why Open Meeting Law? (Cont'd)

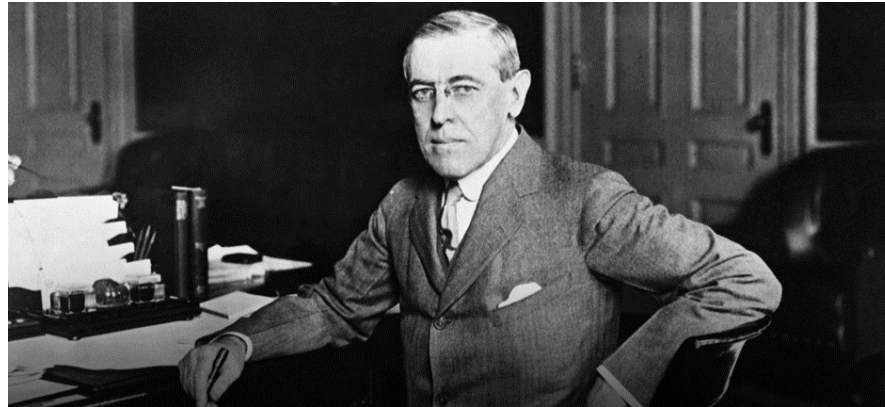
- So, why do we have open meeting laws?
- Think back to what the legislature said in 1962 when it enacted the Open Meeting Law, and let's focus on some key words: "It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly."
- We are public servants —servants of the people of Pinal County —and as such, we are about the "people's business." And, if we are here to serve the public and be about their business, then the public must have access to the affairs of their government, and the Open Meeting Law gives them that access.



Why Open Meeting Law? (Cont'd)

“Government ought to be all outside and no inside. . . . Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety.”

-Woodrow Wilson





Why Open Meeting Law? (Cont'd)

“A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both.”

- James Madison, 1832



Public Participation in Meetings

- “While the public must be allowed to attend and listen to deliberations and proceedings taking place in all public meetings, A.R.S. § 38-431.01(A), the Open Meeting Law does not establish a right for the public to participate in the discussion or in the ultimate decision of the public body. Ariz. Att’y Gen. Op. 78-1. Other statutes may, however, require public participation or public hearings. For example, before promulgating rules, state agencies must permit public participation in the rule making process, including the opportunity to present oral or written statements on the proposed rule.” (Arizona Agency Handbook § 7.10.1)
- “The Open Meeting Law does not prevent a public body from requiring persons who intend to speak at the meeting to sign a register so as to permit the public body to comply with the minute-taking requirements.” (*Id.*)



Public's Rights

The public has the right to:

- Attend
- Listen
- Tape Record
- Video Record

But, the public has no right to:

- Speak
- Disrupt
- Participate in the ultimate decision of the public body



*Practical pointer: Make a good record of warnings.
See A.R.S. § 38-431.01(A), (F)*

Public Access to Meetings

“The public body must provide public access to public meetings. See A.R.S. § 38-431.01(A). This requirement is not met if the public body uses any procedure or device that obstructs or inhibits public attendance at public meetings, such as holding the meeting in a geographically isolated location, in a room too small to accommodate the reasonably anticipated number of observers, in a place to which the public does not have access, such as private clubs, or at an unreasonable time. Relatedly, the public body must ensure that the public can observe and listen to the full contours of public meetings. For example, a public meeting in which the public cannot hear discussions by members of the public body because of the low volume of the microphone or speaker systems would likely violate the Open Meeting Law.” (Arizona Agency Handbook § 7.10.2)

Why Open Meeting Laws? In a Nutshell...



To protect the public

- To avoid decision-making by public bodies in secret.
- To promote accountability by encouraging public officials to act responsively and responsibly.
- To maximize public access to the government process through open deliberations and proceedings.

To protect public officials

- To avoid being excluded (notice)
- To prepare and avoid being blindsided (agenda)
- To accurately memorialize what happened (minutes)

To maintain integrity of the government

To foster an informed citizenry

To build trust between the government and citizenry



Does the Open Meeting Law Apply to the Board of Adjustment?



The Open Meeting Law Applies to all “Meetings” of the BOA



The Open Meeting Law

Applies to All Public Bodies



- The provisions of the Open Meeting Law apply to all public bodies. A public body is defined in A.R.S. § 38-431(6) as follows:
- “Public body” means 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 a 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.” Political subdivisions include counties. A.R.S. § 38-431(5).

Does the Open Meeting Law Apply to the Community Development Department?

- No. “The Open Meeting Law applies only to multimember bodies and does not apply to the deliberations and meetings conducted by the single head of an agency.” See Ariz. Att’y Gen. Ops. I92-007, 75-7.
- “Accordingly, the director of a department or state agency is not subject to the Open Meeting Law when meeting with staff members to discuss the operations of the department.” (Arizona Agency Handbook § 7.3.2).
- Please note, however, that Arizona’s public records laws do apply to the Community Development Department . . . But that is a discussion for another day. 😊

Open Meeting Law General Requirements

- “[M]eetings of public bodies be conducted **openly** and . . . **notices and agendas** [must] 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(A).
- All **meetings** of a public body shall be public, and all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings. A.R.S. § 38-431.01(A).
- All legal action of public bodies shall occur during a **public meeting**. *Id.*

What is a Meeting? (a technical definition)

- A meeting is defined as: (1) **the gathering, in person or through technological devices**, (2) **of a quorum of the members of a public body** at which they (3) **discuss, propose or take legal action**, including any deliberations by a quorum with respect to that action." A.R.S. § 38-431(4).
- *Quorum = Majority of the public body. A.R.S. § 1-216(B)*

Can a Dinner Gathering be a Meeting? What About Golfing Together or Other Public Events?

Yes, yes, and yes. "It does not matter what label is placed on a gathering; it may be called a "work" or "study" session, or the discussion may occur at a social function. Ariz. Att'y Gen. Op. I79-4. (Arizona Agency Handbook § 7.5.1).



Can a Dinner Gathering be a Meeting? What About Golfing Together or Other Public Events?

Take-away: Be aware of whether other Board members will be present when you meet with others, even when attending social gatherings—it just might be a “meeting” in disguise, in which case, you run the risk of violating open meeting laws. Remember: “Meetings” require notice to the public and agendas.



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A meeting can also be . . .



- A discussion on Facebook;
- E-mail correspondence;
- Twitter dialogue;
- Fax;
- Telephone;
- It can also happen in the parking lot before or after a noticed meeting, in the grocery store, at a football game, etc.
- “If you count to three, then you must flee.”
- Remember, the Open Meeting Law is designed to protect against the APPEARANCE of impropriety too!





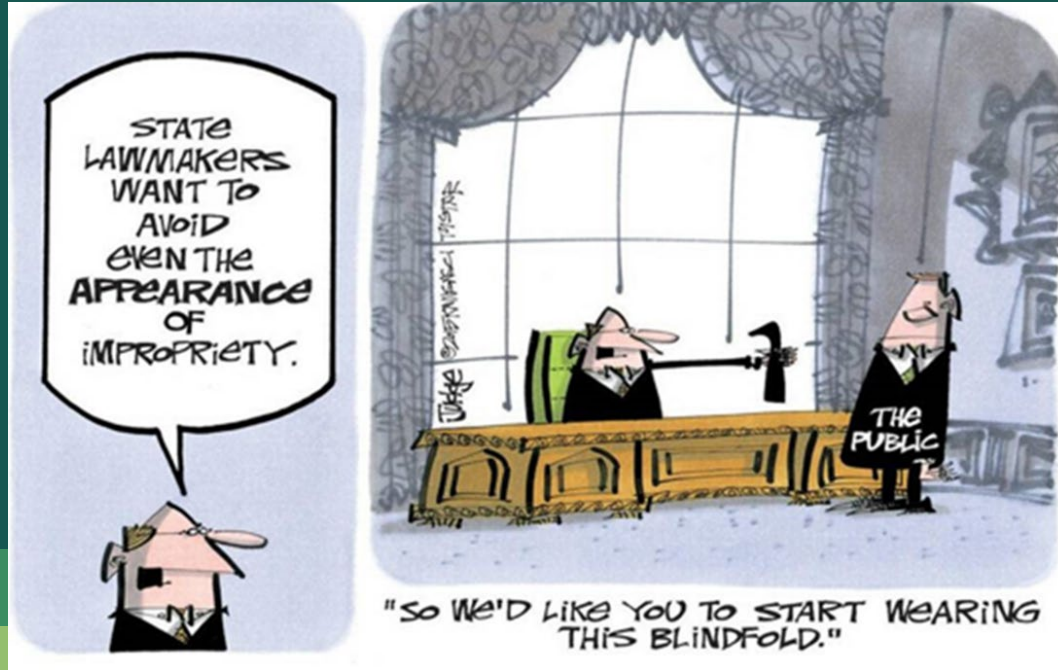
Be careful of these things that can get
you in trouble . . .



- Whispering to other Board members;
- Passing notes;
- Talking to other Board members while holding a hand over the microphone
- Texting
- Even if it is not a violation, it could sure look like one! It is all about appearances.



So, Avoid Even the Appearance of Impropriety





What About Communications Between
Members of a Public Body (e.g., the
BOA), Which Do Not Take Place at the
Same Time or Place?
Can There Still Be a Meeting?



Yes. "Even if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a 'meeting.'" See *Del Papa v. Bd. of Regents of Univ. and Cmty. Coll. Sys. Of Nev.*, 114 Nev. 388, 393, 956 P.2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place).



Can There Still Be a Meeting?



“Accordingly, the definition of meeting was modified by the Arizona Legislature in 2000 to prohibit a quorum of a public body from secretly communicating through technological devices (including, for example, facsimile machines, telephones, texting, and e-mail), and further modified in 2018 in order to provide additional guidance on electronic communications.” (Arizona Agency Handbook § 7.5.1).



Can There Still Be a Meeting?

The following instances of electronic communication are now expressly considered “meetings” under the Open Meeting Law:

1. “A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action .”
2. “An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action .” A.R.S. § 38-431(4)(b)



Can There Still Be a Meeting?



- “If an electronic communication from one member of the public body proposes legal action and is sent to enough members of the public [body] to form a quorum, A.R.S. § 38-431(4)(b)(i).” (Arizona Agency Handbook § 7.5.1) a violation occurs even if no member of the public body responds to the electronic communication
- “However, other one -way communications, with no further exchanges, are not per se violations, and further examination of the facts and circumstances would be necessary to determine if a violation occurred. Ariz. Att’y Gen. Op. 105-004.” (*Id.*)



Can There Still Be a Meeting?

E-mail Don'ts:

- Don't use e-mail among a quorum;
- Don't forward an e -mail to other Board members;
- Don't send a copy of a reply to other Board members.





Can There Still Be a Meeting? (Recap)

- “Put simply, 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’ and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law.” Ariz. Att’y Gen. Ops. 758, 179-4. *See also* A.R.S. §§ 38-431.01(A), -431(3) and Ariz. Att’y Gen. Op. 105-004. (Arizona Agency Handbook § 7.5.1).
- “The key to this inquiry is whether the matter to be discussed may foreseeably require final action. It is difficult to say precisely when this foreseeability test has been met. Each case should be viewed on its own merits with doubts resolved in favor of compliance with the Open Meeting Law. The safest course of action is to assume the Open Meeting Law applies whenever a majority of the body discusses the business of the public body.” (*Id.*)

What About Statements/Communications Made by a Member of a Public Body (e.g., the BOA) During Something Other Than a “Meeting”?

“While discussion of the public body's business may take place only in a public meeting or an executive session in accordance with the requirements of the Open Meeting Law, the Open Meeting Law does not prohibit a member of a public body from voicing an opinion or discussing an issue with the public either at a venue **other than a public meeting of the body**, or through media outlets or other public broadcast communications or technological means, **so long as the ‘opinion or discussion is not principally directed at or directly given to another member of the public body,’ and ‘there is no concerted plan to engage in collective deliberation to take legal action.’**” A.R.S. § 38-431.09(B); Ariz. Att’y Gen. Op 107-013. (Arizona Agency Handbook § 7.5.1)



A Note About Circumvention



“Don’t do it.” “Discussions and deliberations (in person or otherwise) between less than a majority of the members of a governing body, violate the Open Meeting Law when used to circumvent the purposes of the Open Meeting Law.” See Ariz. Att’y Gen. Op. 758; *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). (Arizona Agency Handbook § 7.5.2)





A Note About Circumvention (Cont'd)



“Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that has been or later may be presented to the public body for a decision .

Public officials should refrain from any activities that may undermine public confidence in the public decision making process established in the Open Meeting Law, including actions that may appear to remove discussions and decisions from public view.” (*Id.*)





A Final Note About Circumvention



- **Applicability to Staff Members and Others**. The Open Meeting Law further provides that members of public bodies shall not knowingly direct any staff member to communicate in violation of the Open Meeting Law. A.R.S. § 38-431.01(I). (Arizona Agency Handbook § 7.5.3)
- People knowingly aiding, agreeing to aid or attempting to aid another person in violating the Open Meeting Law can be liable for civil penalties, attorneys' fees, and costs pursuant to A.R.S. § 38-431.07(A). (*Id.*)
- Splintering a quorum may also occur when members of a public body share their positions and proposals with other public body members **through staff members or other non -members**. For example, a staff member who meets with each member individually regarding official business and then shares the comments made by other members would violate the Open Meeting Law. Although a staff member may provide information to members separately (*see* Ariz. Att'y Gen. Op. 105-004 at 9), that person must be careful not to facilitate a discussion or deliberation by a quorum through sharing information with other members in subsequent meetings." (*Id.*)
- Passive receipt of information from staff, without more, does not violate open meeting law —e.g., board packets.

So, What About “Notice”?



- “The Open Meeting Law generally requires at least twenty -four hour advance notice of all meetings to the public body and to the general public . A.R.S. § 38-431.02(C). This excludes Sundays and legal holidays prescribed under A.R.S. § 1-301. Saturdays are included if the public has access to the physical and electronic posted locations .” (Arizona Agency Handbook § 7.6.1)
- “Notice enables members of the public to attend public meetings by informing them of when and where to go, and how to get information regarding the matters under consideration.” (*Id.*)

So, What About “Notice”?



The “Public Notice Two-Step”:

- “Notice of all meetings, including executive sessions, must be given to the public. A.R.S. § 38-431.02. Giving public notice is a two-step process.” Id. (Arizona Agency Handbook § 7.6.1).



So, What About “Notice”?



Step One: Disclosure Statement.

- “The first step is for the public body to conspicuously post a disclosure statement identifying the physical and electronic locations where public notices of meetings will be displayed. A.R.S. § 38-431.02(A). Public bodies of the State, counties, school districts, and governing bodies of charter schools must post the disclosure statement on their websites. *Id.* § (A)(1)-(2).”
- “The notification location identified in the statement must be a place to which the public has reasonable access. *Carefree Improvement Ass’n v. City of Scottsdale*, 133 Ariz. 106, 111, 649 P.2d 985, 990 (App. 1982). The location should have normal business hours, should not be geographically isolated, should not have limited access, and should not be difficult to find.” (Arizona Agency Handbook § 7.6.3.1)

So, What About “Notice”?



Step Two: Public Notice of Meetings

- Once the disclosure statement has been filed or posted, the second step is for the public body to give notice of each of its meetings by posting a copy of the notice on its website as well as at the location identified in the disclosure statement. A.R.S. § 38-431.02(A)
- Public bodies shall also give "additional public notice as is reasonable and practicable as to all meetings." Id. § (A)(1)(a)



So, What About “Notice”?

(Social Events & Seminars)



- You might consider posting a “courtesy agenda” announcing event and explain that a quorum might be present.
- Identify date, time, and purpose (location details will vary depending on event).
- State that no business of the public body will be discussed and no legal action will be proposed or taken.
- Members must be scrupulous to avoid improper discussion.

So, What About “Notice”?



“Arizona courts have emphasized the importance of sufficient notice. The Arizona Court of Appeals explained, ‘[t]he notice provisions in the open meeting law are obviously designed to give meaningful effect to [the Open Meeting Law]. The goal of exposing the public decision-making process to the public itself could be significantly, if not totally thwarted, in the absence of mandatory notice provisions and their enforcement.’” *Carefree Improvement Ass'n v. City of Scottsdale*, 133 Ariz. 106, 111, 649 P.2d 985, 990 (App. 1982) (Arizona Agency Handbook § 7.6.1)

So, What About ‘Notice’?



There are three (3) exceptions to the twenty -four hour notice requirement.

- “First, in the case of an ‘actual emergency,’ the meeting may be held upon such shorter notice as is ‘appropriate to the circumstances.’ A.R.S. § 38-431.02(D). An actual emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequence that would result from waiting until the required notice could be given. *See Carefree Improvement Ass’n v. City of Scottsdale*, 133 Ariz. 106, 113, 649 P.2d 985, 992 (App. 1982). (Arizona Agency Handbook § 7.6.5)
- “Second, notice of a meeting at which the public body will consider ratifying a prior act taken in violation of the Open Meeting Law must be given seventy -two hours in advance of the meeting.” A.R.S. § 38-431.05(B)(4). (*d.*);
- “Finally, less than twenty -four hours notice may be given when a properly noticed meeting is recessed to the next day.” A.R.S. § 38-431.02(E). (*d.*)

Contents of Notice



- The name of the public body
- Date, Time and Place
 - Address and room number
- Must include an agenda OR inform the public how to obtain a copy of the agenda.

Agendas

In general, “[i]n addition to notice of the time, date, and place of the meeting, the public body must provide an agenda of the matters to be discussed, considered, or decided at the meeting. A.R.S. § 38-431.02(G).” (Arizona Agency Handbook § 7.7.1)





Contents of the Agenda (Public Meeting)

- “The agenda for a public meeting must contain a listing of the ‘specific matters to be discussed, considered or decided at the meeting.’ A.R.S. § 38-431.02(H).
 - This requirement does not permit the use of generic agenda items such as ‘personnel,’ ‘new business,’ ‘old business,’ ‘reports,’ or ‘other matters’ unless the specific matters or items to be discussed are separately identified in conjunction with the general terms.”
See Thurston v. City of Phoenix, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988).
(Arizona Agency Handbook § 7.7.2)
- “As a general rule, public bodies should always be mindful of the Legislature's declaration of policy that agendas ‘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(A). When in doubt, resolve questions in favor of greater disclosure of information.” (Arizona Agency Handbook § 7.7.1)



Distribution of the Agenda

- “The agenda may be made available to the public by including it as part of the public notice or by stating in the public notice how the public may obtain a copy of the agenda and then distributing the agenda in the manner prescribed.” A.R.S. § 38-431.02(G) (Arizona Agency Handbook § 7.7.4);
- “Because both the public notice and the agenda must be available at least twenty -four hours in advance of a meeting, the simplest procedure is to include the agenda with the public notice.” (Id.)



Discussing and Deciding Matters Not Listed on the Agenda

- The agenda must include information reasonably related to an adequately described agenda item. All discussion must be reasonably related to an adequately described agenda item.
- “The public body may discuss, consider, or decide only those matters listed on the agenda and "other matters related thereto ." A.R.S. § 38-431.02(H).



"Ms. Smith, I have a meeting in ten minutes and I can't find my hidden agenda."



Discussing and Deciding Matters Not Listed on the Agenda

“The ‘other matters’ clause provides some flexibility to a public body but should be construed narrowly. The ‘other matters’ must in some reasonable manner be ‘related’ to an item specifically listed on the agenda. *Thurston v. City of Phoenix*, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). (Arizona Agency Handbook § 7.7.6)





Discussing and Deciding Matters Not Listed on the Agenda

- “If a matter not specifically listed on the agenda is brought up during a meeting, the better practice, and the one that will minimize subsequent litigation, is to defer discussion and decision on the matter until a later meeting so that the item can be specifically listed on the agenda.” (Arizona Agency Handbook § 7.7.6)
- If the matter demands immediate attention and is a true emergency, the public body should consider using the emergency exception described in A.R.S. § 38-431.02(D). However, if action is taken at a meeting on an item not properly noticed, then that particular action violates the Open Meeting Law and is null and void. *Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2001); A.R.S. § 38-431.05(A). The public body may ratify the action pursuant to A.R.S. § 38-431.05(B), although the violation may still subject the public body to the penalties described in A.R.S. § 38-431.07(A). (Id.)



Agenda (Current Event Summaries)

“The Open Meeting Law allows the chief administrator, presiding officer or a member of a public body to present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that the summary is listed on the agenda and that the public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action. A.R.S. § 38-431.02(K). Thus, the summary of current events consists merely of one of the above-referenced people summarizing recent occurrences without any discussion or feedback from the remainder of the public body. The agenda should specifically list “Summary of Current Events” as an agenda item and identify who will present the summary.” (Arizona Agency Handbook § 7.7.8)



Agenda “Take-Aways”

- If it is not on the agenda, you cannot discuss it !
- New items must wait for a future meeting and be properly “agendized”.





What About Executive Sessions?



“A.R.S. Section 38-431.03 contains an exception to the general requirement that all meetings must be open to the public. That exception is for an **executive session**, which is defined as "a gathering of a quorum of members of a public body from which **the public is excluded** for one or more of the reasons prescribed in [A.R.S.] § 38-431.03." A.R.S. § 38-431(2)





What About Executive Sessions?

The Open Meeting Law identifies seven (7) specific instances in which a public body may discuss matters in an executive session. A.R.S. § 38-431.03(A):

1. Personnel Matters.

“The discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, discipline, resignation, or dismissal of a public officer, appointee, or employee of a public body may take place in an executive session. A.R.S. § 38-431.03(A)(1). If the public body proposes to discuss a personnel matter in an executive session, and the affected officer, appointee, or employee requests that the discussion occur in a public meeting instead, then these discussions must be conducted in a public meeting and not in an executive session. A.R.S. § 38-431.03(A)(1). Accordingly, the Open Meeting Law requires that an officer, appointee, or employee who is the subject of the discussion in executive session must be given advance written notice of the proposed executive session.” *Id.* (Arizona Agency Handbook § 7.9.5.1)



What About Executive Sessions?

2. Confidential Records.

“An executive session may be held when the public body considers or discusses “records exempt by law from public inspection.” A.R.S. § 38-431.03(A)(2). This specifically includes situations in which the public body receives or discusses “information or testimony that is specifically required to be maintained as confidential by state or federal law.” Id. (Arizona Agency Handbook § 7.9.5.2).

“However, when confidential matters can be adequately safeguarded, the discussion may take place during a public meeting.” Cf. Ariz. Att’y Gen. Op. 187-038 (medical records). (Id.)



What About Executive Sessions?

3. Legal Advice.

A public body may also go into executive session for the purposes of "discussion or consultation for legal advice with the attorney or attorneys of the public body." A.R.S. § 38-431.03(A)(3). For this exemption to apply, the attorney giving the legal advice must be the attorney for the public body. Id. (Arizona Agency Handbook § 7.9.5.3)



What About Executive Sessions?

4. Litigation , Contract Negotiations, and Settlement Discussions .

“A public body may hold an executive session for the purpose of ‘[d]iscussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.’ A.R.S. § 38-431.03(A)(4). This provision allows consideration and instruction only—it does not allow a public body to conduct contract negotiations or settlement discussions in an executive session.” (Arizona Agency Handbook § 7.9.5.4)



What About Executive Sessions?

5. Discussions with Designated Representatives Regarding Salary Negotiations .

“A public body may hold an executive session for the purpose of ‘[d]iscussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.’” A.R.S. § 38-431.03(A)(5). (Arizona Agency Handbook § 7.9.5.5)



What About Executive Sessions?

6. International, Interstate, and Tribal Negotiations.

“A public body may go into executive session for the purpose of ‘[d]iscussion , consultation, or consideration for international and interstate negotiations.’” A.R.S. Agency Handbook § 7.9.5.6)

discussion , consultation, or
§ 38-431.03(A)(6). (Arizona



What About Executive Sessions?

7. Purchase, Sale or Lease of Real Property.

“A public body may meet in executive session to discuss and consult with its representatives concerning negotiations for the purchase, sale, or lease of real property. A.R.S. § 38-431.03(A)(7). This provision does not authorize an executive session for the purpose of meeting with representatives of the party with whom the public body is negotiating. For example, a school district violates open meeting laws by choosing a site for a proposed high school in executive session.” *Tanque Verde Unified Sch. Dist. No. 13 of Pima County v. Bernini*, 206 Ariz. 200, 208, 76 P.3d 874, 882 (App. 2003). (Arizona Agency Handbook § 7.9.5.7)



What About Executive Sessions ? (In a Nutshell)

- **Public excluded**
- **Only permitted for specific matters**
 - A.R.S. §§ 38-431.03(A)(1) through (9)
- **Must include possibility of executive session in the meeting notice and agenda** . *(Notice must include the statutory section authorizing the executive session and the agenda must provide a general description of the matters to be discussed or considered without defeating the purpose of the executive session —e.g., may not compromise the legitimate privacy interests of a public officer, appointee, or employee or compromise the attorney -client privilege.)*
- **Must vote to enter executive session** (public majority vote required)
- **Discussion is confidential** (Chair must remind members about the confidentiality requirement every time. *See* A.R.S. § 38-431.03(C))
- **No action permitted!** (All votes must take place in public)
- **Must have minutes or recording** . *See* A.R.S. § 38-431.01(B)



Minutes

A.R.S. § 38-431.01(B)



Minutes or recording required for all meetings (including executive sessions; however, executive session minutes shall be kept confidential per A.R.S. § 38-431.03(B)).



**MEETING
MINUTES**



Content of Public Meeting Minutes

Minutes of public meetings must include:

- The date, time and place of the meeting;
- Members present and absent;
- General description of matters considered;
- Accurate description of “all legal actions proposed, discussed or taken”;
- A record of how each member voted;
- Names of persons making statements or presenting material to the public body; and
- A reference to the legal action about which they made statements of presented materials.

A.R.S. § 38-431.01(B)



Executive Session Meeting Minutes

- Shall have written minutes or a recording
- Shall include the following:
 - Date, time and place of meeting;
 - Members present & absent;
 - General description of matters considered;
 - An accurate description of all instructions given;
 - Such other matters as deemed appropriate by the public body
- Shall be kept confidential A.R.S. § 38-431.03(B)



Penalties for Violations - A.R.S. § 38-431.07(A)

- Aggrieved individual, Attorney General, or County Attorney may file suit in Superior Court (to require compliance or prevent violations (as to the public body as a whole), determine applicability of open meeting laws);
 - Only AG can file suit against an individual member of a public body for “knowing” violations of the open meeting laws;
- Civil penalties (\$) (paid by individual) – up to \$500 for second offense, up to \$2,500 for third + offenses;
 - Public body may not pay or reimburse for penalty imposed on individual.
- Attorney fees and costs;
- Equitable relief;
- Removal of the public officer;
 - Assess attorney fees and costs against the removed officer.

THANK YOU!

Your service on the Board is important!

Any questions?

daron.j.garey@pinal.gov



AGENDA ITEM

May 25, 2023 ADMINISTRATION BUILDING A
FLORENCE, ARIZONA

REQUESTED BY:

Funds #:

Dept. #:

Dept. Name:

Director:

BRIEF DESCRIPTION OF AGENDA ITEM AND REQUESTED BOARD ACTION:

Posted this 24th day of May at 9 a.m. /s/ Todd Williams

BRIEF DESCRIPTION OF THE FISCAL CONSIDERATIONS AND/OR EXPECTED FISCAL IMPACT OF THIS AGENDA ITEM:

BRIEF DESCRIPTION OF THE EXPECTED PERFORMANCE IMPACT OF THIS AGENDA ITEM:

MOTION:

History	Who	Approval
Time		

ATTACHMENTS:

[Click to download](#)

No Attachments Available