

**City of Bisbee
Bisbee Arts Commission
Meeting
118 Arizona Street
Bisbee, AZ 85603**

Monday, September 12, 2016

Action Agenda

*THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO
MODIFICATION AT THE MEETING.*

Call to Order: 6:06 p.m.

Roll Call: Present

**Jill Darnielle, Chairperson, Late
Marie Minor, Vice Chairperson
Kurt Minick
Karen Schumacher
Poe Dismuke
Kelly Galligan**

Shar Porier, Staff Liaison

Absent: Eugene Conners, City Council Liaison

Welcome new member Kelly Galligan

CALL TO THE PUBLIC: No Comments

Item 1.

APPROVAL OF THE MINUTES FROM THE JUNE 6 MEETING

Ms. Minor pointed out a correction in the minutes on the vote for the Vice Chairperson vote. It was not unanimous; the vote was three to two. Ms. Darnielle and Mr. Minick voted nay.

Item 2.

Open Meeting Law Presentation and Work Session

Presented by Attorneys Lori Owen/Elda Orduno

The purpose of the presentation was to make clear what was required of the BAC members to comply with Open Meeting Law (OML). Ms. Owen led the presentation and provided slides focusing on the importance of following the OML for the purposes of transparency and to allow the public to participate in the processes of city government.

All meetings and work sessions must be posted both online and at City Hall at least 24 hours in advance, and that does not include weekend days, she added.

Then members are to follow the agenda items as written and not deviate from the issues that were published.

Ms. Owen also talked about the importance of conducting a meeting with members only allowed to speak after requesting permission of the chairperson.

The BAC members may also set a three-minute time limit on Calls to the Public and agenda items, unless it involves a special presentation by a guest speaker, and is on the agenda. In that situation 15 minutes would be more appropriate.

Ms. Owen was asked if the members could share addresses, phone numbers and cell phone numbers. The answer was no. That can allow an opportunity to be discussing BAC business out of the public domain.

However, if a member has a communication that needs to be shared that can be done via the staff liaison with the approval of the City Clerk. Still, one needs to keep in mind that just because something was sent doesn't mean that members can talk to each other. Comments are to be saved for the agenda for the next meeting.

Item 3.

DISCUSSION ON FINANCIAL STATUS

Insufficient data was provided on the financial report and will be provided at the October 3, 2016.

Item 4.

MOVE DISCUSSION OF REVISING BY-LAWS TO OCTOBER MEETING

Ms. Darnielle asked the members to postpone talking about the bylaws until a later date due to the focus now on holding the BAC Art Auction. The members unanimously agreed.

Item 5.

DISCUSSION OF PLANNING THE ART AUCTION.

BAC members decided to hold the Art Auction May, preferably on May 6.

Thanks to former event coordinators, there was some information for the members to review from the last auction in 2010. There was a list of all the things necessary for the auction – location, contracts, tables, chairs, and volunteers.

The budget for the 2010 art auction showed that \$11,603 was the net proceeds, but only \$5,617 was raised for BAC. \$1,877 was spent on ads and that was one part of budget he wanted to trim.

Mr. Dismuke led the conversation on how to trim the budget down by trimming certain expenses like advertising. He said the Sierra Vista Herald and the Bisbee Daily Review as well as the Bisbee Observer could help by printing stories on the revival of the BAC Art Auction.

Auctioneers were also discussed and Bisbee's own Doug Stanhope was recommended as a possible auctioneer with other town talent filling in various spots for the live auctions.

The higher priced works of art would be auctioned live, while less expensive pieces would be a part of the silent auction.

They will be trying to fill in the gaps of artists contact information through searches from past BAC members

In the meantime, Ms. Schumacher volunteered to start a Facebook page to start getting the word out for artists and patrons that would support the auction and be a site to keep up with the progress of the project.

Item 6.

DISCUSSION ON CHALKING FUNDRAISER FOR FEBRUARY.

Ms. Darnielle suggested holding the Chalk Art event in February, but the other members said that just getting the Art Auction up and running would take a lot of time. They agreed that it was a good idea, but decided to put it on the back burner for a while.

ADJOURMENT: 8 : 3 3 p . m .

Next Regular Meeting, October 3, 2016 at 6:00p.m. at City Hall in the Council Meeting Room.

Should anyone need any special accommodations for this meeting, please contact Shar Porier City Staff, at (520) 432-6016 at least twenty- four hours before the meeting.

LOCATION

Select Location

Sign Contract

Tables =

Chairs =

Stage

Sound System

Alcohol

Set Up - Saturday

Clean Up - Saturday

FOOD

Restaurant List

Tables Required

Determine Location

SILENT AUCTION

Sheets

Set Up

Event Coordinator

VOLUNTEERS

Recorders

Vannas

Spotters

Cashier

Absentee Bids

Wrappers

Friday Receive/Hang

ADVERTISING

DONATIONS

Mail Artist Letters

Follow Up

2010 BAC ART AUCTION FINAL REPORT		
RECEIPTS		
Ad Sales	\$400	
Live Auction Sales	\$10,375	
Silent Auction Sales	\$4,271	
Admission & Donations	\$1,724	
Donation - SOS - Food	\$450	
	\$17,220	
EXPENSES		
Advertising		
Vital Signs - Banner	\$175	
UPS Store - Posters	\$134	
Prints Made Easy - Postcards (2500)	\$213	
Kathys Posters	\$120	
Wick Ads	\$450	
Bisbee Observer Ads	\$110	
Desert Leaf Ad	\$359	
Prism	\$57	
Postage	\$258	
SUBTOTAL ADVERTISING		\$1,877
Event		
Food	\$450	
Ice	\$12	
Staples Supplies	\$114	
Wrapping Paper	\$48	
Nancy Weaver - Music	\$150	
Plaque - Rose Johnson	\$100	
Space Rental	\$300	
Complimentary Drink (180@\$3)	\$540	
Banner - SA Forms (150)	\$98	
Ann Widman - Photography	\$125	
Auctioneer	\$520	
Terry Wolf - Rose Johnson prints	\$125	
Paper for artist thank yous	\$28	
SUBTOTAL EVENT		\$2,610
Contract Services		
Gilles - Graphic Artist	\$1,550	\$1,550
Artist Payments		
SUBTOTAL ARTISTS	\$5,566	\$5,566
TOTAL EXPENSES		
		\$11,603
NET INCOME		
		\$5,617

429

ARIZONA'S OPEN MEETING LAW



Elda E. Orduño, Esq.
Lauri J. Owen, M.A., Esq.

Attorneys for the City of Bisbee
and Cochise County

COURSE OBJECTIVES

1. Know **who** is subject to the OML;
2. Know **which activities** are subject to the OML;
3. Understand **what notice** is required;
4. Know what **agendas** must contain;
5. Understand **executive sessions**;
6. Know what will **violate** the OML, and **what penalties** can be incurred as a result; and
7. Understand **minutes'** requirements.

PURPOSE OF THE OPEN MEETING LAW

- OML is designed to (1) maximize public access to the governmental process; (2) open deliberations and proceedings to the public; and (3) prevent public bodies from making decisions in secret.
- There is a **very strong presumption** in favor of disclosure, and that affects the AG's and the Ombuds' Office's interpretation of situations that could be construed as trying to thwart the purpose or effect of the OML.



LEGISLATIVE INTENT

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. A.R.S. § 38-431.09(A).

WHO IS SUBJECT TO THE OML

- 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 “the legislature, all boards and commissions of this state or political subdivisions, . . . all quasijudicial bodies, and all standing, special, or advisory committees or subcommittees of, or appointed by, the public body.”



IN SUM: WHAT PUBLIC BODIES HAVE TO DO



- Provide notice
- Prepare, post, and follow an agenda
- Meet in public
- Permit public to attend
 - Exception: authorized executive sessions
- Take all action in public
- Prepare and post meeting minutes

NOTICE REQUIREMENTS

1. **All public bodies** must 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).
 - a. 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 second location identified in the disclosure statement.** A.R.S. § 38-431.02(A).
 - b. Note that in addition to the electronic posting, there should **also** be **a physical posting place, or two.** Public bodies shall also give “additional public notice as is reasonable and practicable as to all meetings.” A.R.S. § 38-431.02(A)(1)(a).
2. Public bodies of the **State, counties, and school districts** must post the disclosure statement on their **websites.** A.R.S. § 38-431.02(A)(1)-(2).
3. **Special districts** governed by Title 48, A.R.S., must post the required disclosure statement on their **own website or may file it with the Clerk of the Board of Supervisors.** A.R.S. § 38-431.02(A)(3).
4. 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.** A.R.S. § 38-431.02(4).

WHEN THE AGENDA MUST BE POSTED

- Twenty-four (24) hours before a meeting
- Seventy-two (72) hours before a meeting where any ratifications will occur



WHAT THE NOTICE MUST CONTAIN

- Information identifying the public body and the date, time, and place of the meeting, including the street address of the building and the room number or other information identifying the specific room. |
- An agenda containing descriptions of the specific matters to be considered and upon which action can or will be taken by the public body during the meeting. A.R.S. § 38-431.02(G).
 - This requirement does not permit the use of generic agenda terms such as “personnel,” “new business,” “old business,” or “other matters” unless the specific matters or items to be discussed are separately, and clearly, identified.
- When an executive session is to be held, the notice must state the specific provision of law authorizing the executive session. A.R.S. § 38-431.02(B).

WHAT MAY BE DISCUSSED AND DONE

- Only items listed on the agenda may be discussed
- Only action listed on the agenda may be taken



WHAT IS A “MEETING”?

A “meeting” is defined as “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.” A.R.S. § 38-431(4).

NOTE: 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.

WHAT ELSE CONSTITUTES A “MEETING”?



All discussions, deliberations, considerations, or consultations among a majority of the members of a public body (whether at once or by “splintering the quorum,” including “polling,” – see next slide) 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. **Whether the matter to be discussed may foreseeably require final action is the key to this inquiry.**



See Ariz. Att’y Gen. Ops. 75-8, I79-4. See also A.R.S. §§ 38-431.01(A), -431(3) and Ariz. Att’y Gen. Op. I05-004.

CIRCUMVENTING THE OML

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. This is called “**splintering the quorum.**”

Public officials may not circumvent public discussion by “**splintering the quorum**” and having separate or serial discussions about a topic that has been or later may be presented to the public body for a decision, even if discussions occur at different times, and regardless if done by meeting in person, by telephone, electronically, or through other means.

“**Polling,**” which is also prohibited, occurs when a staff member purposefully gains information outside of a public meeting about how the board member will vote in an upcoming meeting, or when a vote is discussed during an executive session.

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.

See Ariz. Att'y Gen. Op. 75-8.

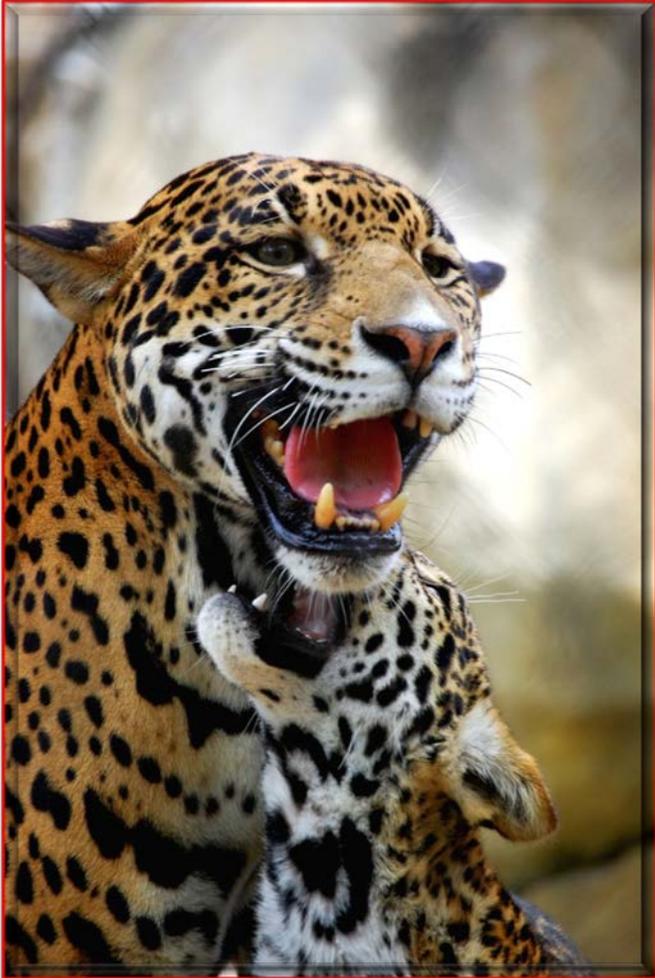
VIOLATIONS OF THE OML

- All legal action transacted by any public body during a meeting held in violation of any provision of the Open Meeting Law is **null and void** unless subsequently ratified. A.R.S. § 38-431.05(A).
 - Ratification merely validates the prior action; it does not eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties (\$500 per occurrence) and attorney's fees.
 - NOTE: The Open Meeting Law does **not** automatically render null and void **all legal action** taken at a meeting at which a violation occurs with respect to a **single improperly noticed agenda item**. Ariz. Att'y Gen. Op. 108-001.
- Legal actions taken in violation of the Open Meeting Law are **voidable** at the discretion of an Arizona court. Karol v. Bd. Of Educ. Trustees, 122 Ariz. 95, 97 (1979).

EXECUTIVE SESSIONS

- An executive session 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).
 - Personnel matters; confidential records or information; for legal advice from the body’s attorney, discussion with the body’s attorney of current or pending litigation; discussions regarding salary and benefit negotiations; international/interstate negotiations, or a city’s negotiations with members of a tribal council of an Indian reservation located within or adjacent to the city or town; and discussions regarding negotiations for the purchase, sale or lease of real property. A.R.S. § 38-431.03(A)(1)-(7).
- An executive session may be convened solely for the purpose of discussing matters and, in limited instances, giving instructions to attorneys and designated representatives. A.R.S. § 38-431.03(D).
- No votes or legal actions may be taken during the executive session. Id.

EXECUTIVE SESSIONS: PROCEDURE



- The item must have been listed on the agenda in specific-enough detail to provide adequate notice, and the agenda item must have included a note that the body may/will go into executive session to discuss the item and the statutory ground authorizing the executive session.
- During the meeting, but before a public body may go into executive session, a majority of the members constituting a quorum must vote in a public meeting to hold the executive session. A.R.S. § 38-431.03(A).
- The motion must state the ground(s) for the executive session so that the public understands why the public body is entering executive session.
- Minutes must be taken during an executive session.

EXECUTIVE SESSIONS: CONFIDENTIALITY

The minutes of an executive session and all discussions that take place at an executive session are confidential under A.R.S. § 38-431.03(B) and may not be disclosed to anyone except the following people:

1. **Any member of the public body**, regardless of whether he or she attended the executive session. A.R.S. § 38-431.03(B)(1).
2. Any officer, appointee, or employee who was **the subject of discussion** at an executive session authorized by A.R.S. § 38-431.03(A)(1) may see those portions of the minutes directly pertaining to them. A.R.S. § 38-431.03(B)(2).
3. **Staff personnel**, to the extent necessary for them to prepare and maintain the minutes of the executive session.
4. The **attorney for the public body**, to the extent necessary for the attorney to represent the public body.
5. The **Auditor General** in connection with the lawful performance of its duty to audit the finances or performance of the public body. A.R.S. § 38-431.03(B)(3); Ariz. Att’y Gen. Op. I79-130.
6. The **Attorney General or County Attorney** when investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4).
7. The **court**, for purposes of a confidential inspection where an open meeting violation has been alleged. A.R.S. § 38-431.07(C).

EXECUTIVE SESSIONS: CONFIDENTIALITY 2

Members of a public body and others attending the executive session **must ensure that the information remains confidential**. In addition to violating the Open Meeting Law, criminal charges may arise from a release of confidential information from executive session.

The law designates a knowing or intentional violation of this provision as a Class 6 **felony** and a reckless or negligent violation as a Class 1 **misdemeanor**. A.R.S. § 38-510(A). Either type of violation could lead to criminal penalties in addition to forfeiture of office or employment. A.R.S. § 38-510(B).



WHAT CAN THE PUBLIC DO IN MEETINGS?

During a public meeting, the public is entitled to:

1. Attend
2. Listen
3. Record

The public is **not** entitled to:

1. Speak
2. Disrupt the meeting

Note: Public body cannot require attendees to identify themselves or sign in unless they are making a presentation.



CALLS TO THE PUBLIC



A public body may make an open call to the public to allow individuals to address the public body on any issue within the jurisdiction of the public body. A.R.S. § 38-431.01(H).

The public body may (and should) set a time limit for each speaker.

The public body may ban repetitive comments.



Members of the public body may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. Id.

Public body members may, however, respond to criticism made by those who have addressed the public body, ask staff to review a matter, or ask that a matter be put on a future agenda. Id. See also Ariz. Att'y Gen. Op. I99-006.

MINUTES OF MEETINGS

- Minutes must be taken during meetings, and during all executive sessions.
- Minutes may be taken in writing or may be recorded by an audio or video recorder. A.R.S. § 38-431.01(B).
- The minutes or a recording of a public meeting must be available for public inspection within three working days after the meeting. A.R.S. § 38-431.01(D).
- If the minutes have been recorded by an audio or video recorder, allowing the public to have access to that recording is sufficient.
- The minutes of an executive session are confidential and may not be disclosed except to certain authorized persons. A.R.S. § 38-431.03(B).



REVIEW: WHAT PUBLIC BODIES HAVE TO DO



- Provide notice
- Prepare, post, and follow an agenda
- Meet in public
- Permit public to attend
 - Exception: authorized executive sessions
- Take all action in public
- Prepare and post meeting minutes

RESOURCES

- Chapter 7, “Open Meetings,” of the Arizona Attorney General’s Arizona Agency Handbook (2013): <https://www.azag.gov/sites/default/files/sites/all/docs/agency-handbook/ch07-2013.pdf>
- Arizona Ombudsman’s Open Meeting Law Handbook (2012): <http://www.azoca.gov/wp-content/uploads/Open-Meeting-Law-Bookletprintable3-2015.pdf>
- Open Meeting Law 101: Arizona’s Open Meeting Law in a Nutshell by Liz Hill, Assistant Ombudsman (2010): <http://www.azoca.gov/wp-content/uploads/Open-Meeting-Law-101.pdf>
- Call your attorney!