



ARIZONA GOVERNMENT 101, ANATOMY OF A COUNCIL MEETING & OPEN MEETING LAW

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Arizona Municipalities

- 91 Cities and towns
- More than half have a population under 10,000



79% of Arizonans live in one of the state's 91 incorporated cities and towns.

City History

- Cities predate statehood
- Created for
 - Transportation
 - Security
 - Efficient services and resources
 - Commerce
 - Community



Cities and Towns in Arizona

- Why do we exist?
- Level of government closest to the people; open, accessible
- Local control/local decisions
- Providers of services; deliver value at low cost
- Non-partisan
- Trusted



Arizona City Government

- Included in original Arizona Constitution
- Arizona Revised Statutes: Title 9 and others
- General Purpose governments
- Difference between city or town?
- Charter cities; general law
- State preemption
- Long planning horizon



Charter Cities

- Authorized in AZ Constitution
- Function like local Constitutions
- Voter-Approved
- Self governing on local matters
- Unlike “Dillon’s Rule” states



General Law Cities and Towns

- Default to ARS for governance

Cities vs. Counties vs. Other Local Governments

Cities and Towns...

- Adopt 10-year General Plan
- Required to have balanced budget
- Comply with state statute
- Subject to Open Meeting Law
- Subject to Conflict of Interest law
- May have term limits, local decision
- City officials are subject to recall
- Local ordinances are subject to referendum
- Created to serve local constituents

How are cities governed?

- Elected Mayor and Council
 - At large or by districts
- Organized under Council-Manager form
 - Council is the policymaking body
 - Mayor is the chair/facilitator but has equal vote with other council members
 - City is managed by professional staff led by city manager

How are cities governed? (cont.)

- Cities are managed under professional, businesslike standards, not political influence
- Mayors and City Council members are focused on serving their local community
- Locally accountable



City Revenues

Total General Fund Revenue

On average, cities and towns receive almost 40% of their revenues from state shared sources-income tax, sales tax, HURF and VLT.

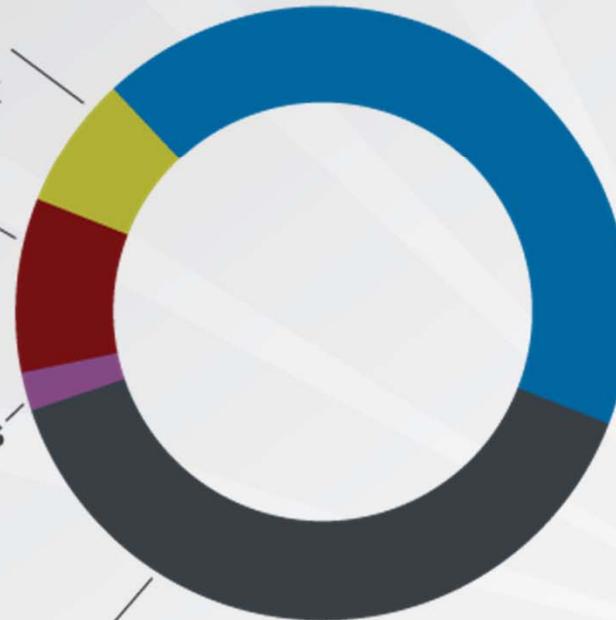
43% Local Sales & Franchise Taxes

7% Local Property Tax

9% Licenses, Permits,
User Fees
& Grants

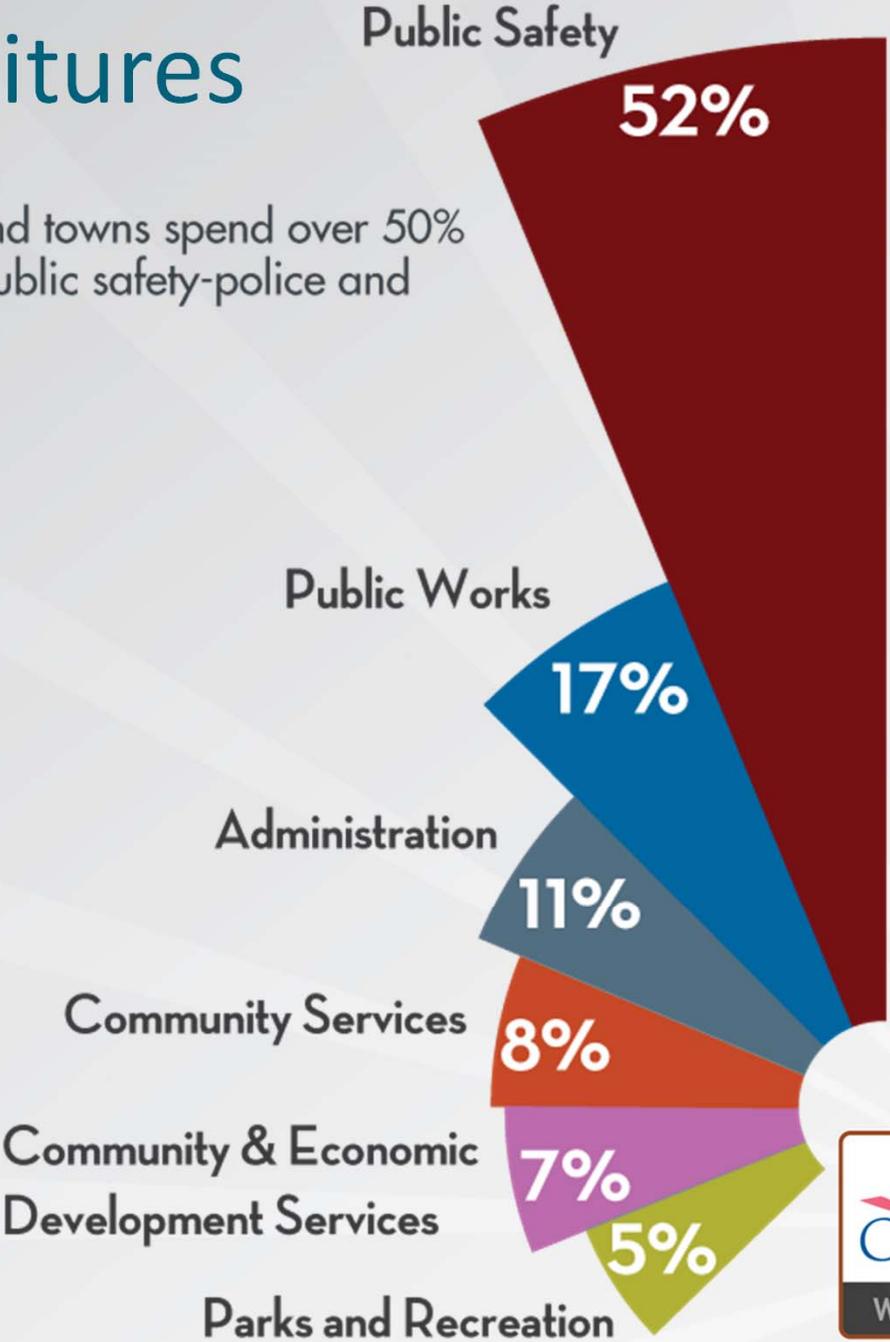
2% Fines & Forfeitures

39% State Shared Revenue



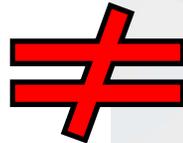
City Expenditures

Total Expenditures
On average, cities and towns spend over 50% of their budgets on public safety-police and fire departments.



Each City Is Unique

- The people create cities
- Each city meets the needs of their own community
- Different service needs; different service levels
- Choice of where people live reflects their values
- Cities are “self-correcting”
- Not “one size fits all”



ANATOMY OF A COUNCIL MEETING



Council Meetings



Purpose

- Transact the business of city/town
- Inform public of business
- Hear input from public (optional)

Governing Law

- State Law
- Procedural Rules
 - Local Rules of Procedure
 - Parliamentary
 - Rules for conducting the business at a public meeting
 - Common-sense & courtesy rules (Riggins' Rules)



State Law – Open Meeting Law

A.R.S. § § 38-431 - 38-431.09



- Arizona law requires meetings:
 - To be open to the public and transparent
 - Physically accessible

- More in-depth discussion on this later.

State Law – Conflict of Interest

A.R.S. §§ 38-501 -38-511



Arizona law prohibits a public officer or employee from participation in a decision or contract if the public officer or employee has a direct or indirect pecuniary or proprietary interest.

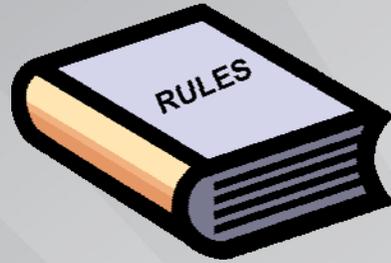
- Fact-intensive assessment – *See* League’s “You As A Public Official” publication
- Questions? Contact League (general) or your city/town attorney (specific)

State Law – Quorum and Vote

A.R.S. § 9-233

- A quorum (majority of the full membership) is required to take action
- Sometimes a supermajority vote is required
 - Zoning protests & emergency clause: $\frac{3}{4}$ of all members
 - Some local rules require $\frac{2}{3}$ vote for budget transfers
- Supermajority is calculated based on membership, not on members present

Procedures



- Three types
 - Council-adopted local rules of procedure
 - Common-sense and common-courtesy rules (Riggins' Rules)
 - Rules of parliamentary procedure (Robert's Rules)

Procedures - Local Rules



- A council may adopt its own procedural rules
 - Many parliamentary rules don't fit
 - Tailor rules to fit how your council operates
- Not sure of your local rules?
 - Ask your attorney, city or town clerk or another council member

Procedures – Common Sense & Courtesy (Selected Riggins' Rules)

Do:

- Your homework
- Be on time
- Dress appropriately
- Be polite & impartial
- Be attentive
- Use titles of respect
- Be objective
- Invite public participation
- Respect staff work

Don't

- Get personal
- Try making anyone look bad
- Mingle with the audience
- Interrupt
- Permit speaking from the audience
- Answer technical questions
- Allow two speakers at once

Procedures – Parliamentary Rules

- Rules for conducting the business at a public meeting
- Allows the public to hear from all council members.



Procedures - Debate and Decorum

- Speakers must be recognized by the chair *before* speaking
- Comments are addressed to the chair and the council
- Debate must be confined to the issue before the council (stick to the agenda item!)
- Debate must avoid personalities
- Council procedures may restrict how many times a council member may speak on a motion
- Questions or suggestions are not debate

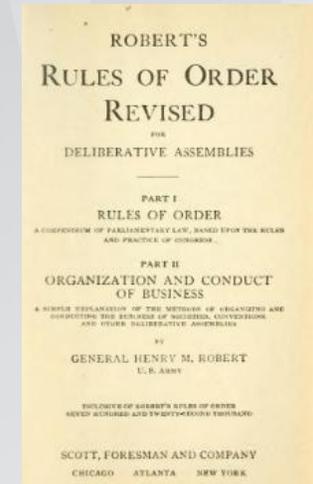
Procedures - Debate and Decorum

“Debate” = spoken comment on a pending motion

“Decorum” = conduct during debate

Procedures – Parliamentary Rules

- Robert's Rules of Order
 - Type of motions/priority of motions
 - When can you make them
 - How to rescind something you voted on
 - How to reconsider something
 - How to postpone something



Parliamentary Rules - Motions

- A formal proposal that certain action be taken
- Made by council members, not the public
- A motion requires a second
- Seconding a motion does not indicate an endorsement of the motion

Parliamentary Rules – Common Motions

- Motion to adopt
- Motion to reconsider (usually must have voted on prevailing side)
- Call for the question (cut off debate)
- Motion to postpone consideration (continue)
- Motion to suspend the rules (e.g., speaker time; meeting time limit)

Parliamentary Rules – Voting

- A motion passes if a majority of those present vote for it
 - Exceptions: A supermajority requirement such as a zoning protest or an emergency clause
- A tie vote means the motion fails
- Abstaining counts as a “no” vote
 - Exception: Abstention for a conflict of interest
- Votes can be done by roll call or voice vote

Arizona's Open Meeting Law



Arizona State Capitol, Feb. 2012 (C. Werther)

Presentation Overview

- Purpose: Legislative History/Policy
- Definitions
 - When Does the Open Meeting Law Apply?
- Meeting Requirements
 - Notice/Agenda, Minutes
 - Executive Session
- Violations/Penalties
- Resources

Training Materials

What Are Your Responsibilities?

A.R.S. § 38-431.01(G)

The City/Town Clerk must conspicuously post open meeting law materials prepared and approved by the attorney general 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.

Purpose of the Open Meeting Law

A.R.S. § 38-431.09

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas for those meetings contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.”

Interpret the OML in favor of open and public meetings.



Purpose of the Open Meeting Law

- This statement guides the public body when structuring a city or town council meeting, advisory group, subcommittee or work session and offers a reminder that any ambiguity in the law should favor transparency to the public.
- *When in doubt, be open to the public!*

Purpose of the Open Meeting Law

Legislative History - Highlights

- Enactment: Laws 1962, Ch. 138, Sec. 2
- Amended: Laws 1974, Ch. 196, Sec. 1
 - Expanded definition of **governing bodies**;
 - Laws 1978, Ch. 86 Expanding scope to **include advisory committees**.
 - Laws 1982, Ch. 278 Revising provisions relating to notice, agenda, executive session and penalties.
 - Laws 2000, Ch. 358 Expanded “meeting” to **include technological devices**; investigation process for violations.
 - Laws 2010, Ch. 88 Requiring posting of notices online.

How Do I Know If The Open Meeting Law Applies???



How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

- Are you a Public Body?
 - Includes advisory/subcommittee.
- Are you Meeting?
 - Is a quorum of the public body gathering?
 - Is the quorum taking legal action?



What is a Public Body?

A.R.S. § 38-431(6)

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 political subdivision.

A city or town is a public body.

What is a Public Body?

A.R.S. § 38-431 (6)

Public body includes all quasi-judicial bodies and **all standing, special or advisory committees or subcommittees** of, or appointed by, the public body.

What is a Public Body?

Advisory Committee or Subcommittee

A.R.S. § 38-431(1)

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.

What is a Public Body? Advisory Committee or Subcommittee

“Any entity, however designated...”

- Is the public body or presiding officer officially establishing the committee?
- Is the committee tasked with providing a recommendation to the public body about a decision or course of conduct?

If yes to both questions → **PUBLIC BODY**

What is a Public Body? Advisory Committee or Subcommittee

Does OML apply if members of the Board are serving on the subcommittee?

- YES, the OML applies regardless of whether or not the subcommittee is made up of council members, in whole or in part.

Ariz. Att'y Gen. Op. 180-202

What is a Public Body?

Exceptions

A city or town is a public body *and* a subcommittee of a city or town is a public body.

However, there are types of proceedings that don't fall within the definition of public body:

- Staff meetings.
- Staff appointed committees that advise staff (not the City/Town Council).
- Single department head.

How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

1. Are you a Public Body? **YES**

- Includes advisory/subcommittee.

2. Are you Meeting?

- Is a quorum of the public body gathering?
- Is the quorum taking legal action?



How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

- ❖ Is there a quorum of the public body gathering?
- ❖ A quorum is a majority of the full membership of the Board. See *A.R.S. § 1-216(B)*
 - ❖ *Unless otherwise noted in statute or governing documents.*
- ❖ How is a quorum affected by vacancies or disqualifications?

What is a Meeting?

A.R.S. § 38-431 (4)

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.**

What is Legal Action?

A.R.S. §§ 38-431 (3), 38-431.01(A), 38-431.03

A collective decision, commitment or promise made by the council pursuant to the constitution, the council's charter, bylaws or specified scope of appointment and the laws of this state.

All LEGAL ACTION of councils shall occur during a public meeting.



How the Open Meeting Law Applies

A city or town council (subcommittee) is a **public body**.

- Are you **meeting**?
 - Is there a quorum (majority of members) gathering?
 - In person, by phone, some type of online medium such as Skype, chats, e-mail, etc.
 - Are you discussing, proposing or taking legal action?
 - Is the matter being discussed, deliberated or proposed something that could result in final action by the council?
 - Is the matter within your scope of work or purpose as a public body stemming from the Constitution and state and local laws?
 - If the answer is yes to all these questions, it's a meeting.

Public Body + Meeting = OPEN MEETING LAW APPLIES



Is it a Meeting?



Splintering the Quorum



Separate or serial discussions with a majority of the members of the public body.

- E-mail, Skype, Chat, Messenger, etc.
- Telephones, including Text Messaging
- Polling
- Staff
 - Cannot direct staff to communicate in violation of open meeting law.

E-Mail, Texting, & Other Electronic Communications

- OML restrictions apply – the law includes gathering of a quorum through technological devices.
- The type of medium doesn't negate the effect of the law - emails, texts, chat, skype, messenger, instant messaging – these are all technological devices.

See Ariz. Att'y Gen. Op. I05-004.



E-Mail, Texting, & Other Electronic Communications

- Avoid using devices among a quorum to discuss, deliberate, or propose legal action on a matter that may reasonably be expected to come before the Council.
 - Do not propose legal action.
 - Do not use technological devices to circumvent the requirements in the OML.

See Ariz. Att’y Gen. Op. 105-004.

Recap: What is a Meeting?

- If all the requirements of what constitutes a meeting are met, as a public body the open meeting law applies to you in your capacity as an elected official.
- Remember the purpose of the OML: public policy to for open meetings to inform the public about matters to be discussed or decided.
 - You are their elected official – the OML grants the public the right to attend and listen to the meetings.
 - They want to hear your voice, understand your deliberations, and know who is influencing your decisions about matters in their city or town.

Who Can I Talk To???



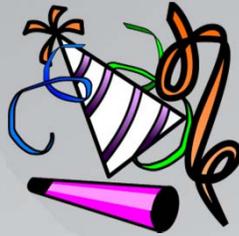
- Other council members if:
 - There is less than a quorum and no effort to circumvent the law by splintering the quorum.
 - Best Practice: Avoid using electronic mediums if discussing council business – too easy to accidentally transmit to other members.
 - Not discussing matters coming before the council (no legal action).
- Staff, including City/Town Attorney
- Constituents
 - May copy the full council on responses– be careful that no one hits “Reply All” and begins a discussion.
- Media

AG Opinion & Legislative Changes Regarding Communications to the Press A.R.S. § 38-431.09(B)



- AG's office stated that the OML does NOT prohibit a member of a public body from speaking to the media (Ariz. Att'y Gen. Op. 107-013).
- 2008 Legislation: Public officials may express opinion publicly if it is not principally directed at another council member and is not part of a concerted plan to engage in collective deliberation.

Social Event



If more than a quorum will be present at a function, outing, etc., best practice to post a “courtesy agenda” announcing:

- The event;
- A quorum may be present; and
- A statement that no business of the council will be discussed and no action will be taken.

A courtesy agenda is NOT required.

Pre-Meeting Requirements

Disclosure Statement

- Tells the public where all meeting notices will be posted

Notice of the Meeting

- Members
- Public

Agenda



Notices Generally

A.R.S. § 38-431.02

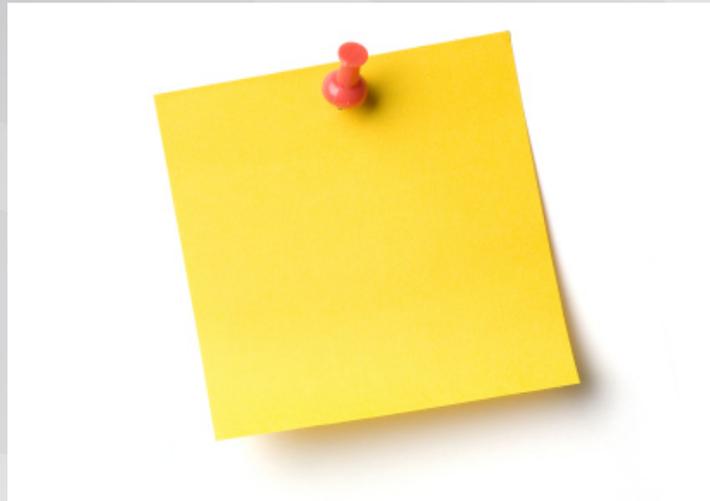
- Why do we post notices?
 - Makes it possible for the public to attend the meeting;
 - Informs the public of when and where the meeting will be held; and
 - Provides the means for how the public will get information regarding matters under consideration.

Without notice, the goal of exposing public decision-making would be thwarted. See *Carefree Improvement Ass'n. v. City of Scottsdale*, 133 Ariz. 106, 649 P.2d 985 (Ariz. App. 1982).

Notices Generally

A.R.S. § 38-431.02

- Notices are a two step process:
 1. Disclosure Statement
 2. Public Notice of Each Meeting



Disclosure Statement of Notices

A.R.S. § 38-431.02(A)(4)

- *Conspicuously* post a disclosure statement identifying the physical and electronic locations where public notices of meetings will be displayed.
 - Public must have reasonable access to notification location.
 - Normal business hours, not geographically isolated, no limitations on access or be difficult to find.
- 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.

Notices Generally

A.R.S. § 38-431.02

Contents

- Date, time, and place of meeting (including the street address of the building and room number or any other specific identifying information).



Public Notice of a Meeting

A.R.S. § 38-431.02(C),(G)

**NOTICE
OF
PUBLIC
HEARING**

- Must be posted at least 24 hours before the meeting.
 - Excludes Sundays and holidays;
 - Includes Saturdays **ONLY IF** the public has access to the physical and electronic posted locations.

Public Notice of a Meeting

A.R.S. § 38-431.02(C),(G)

**NOTICE
OF
PUBLIC
HEARING**

- Must include the agenda or where the public can obtain the agenda.
- Post on website and the location(s) identified in the Disclosure Statement.
- Provide “additional notice” of meetings as is “reasonable and practicable.”
 - News releases, e-mailing notices, newsletters, public access TV announcements, publications, etc.
- Three Exceptions to 24-Hour Notice Requirement...

Public Notice

Exception to 24 Hour Notice

A.R.S. § 38-431.02(D)

- Emergency Exception
 - Requires actual emergency.
 - “Notice as is appropriate to the circumstances.”
 - Must post public notice and agenda within 24 hours. May include Saturdays, but not Sundays, if public has access to posted location.

Public Notice

Exception to 24 Hour Notice

A.R.S. § 38-431.02(E)

- May recess and reconvene properly posted meeting within 24 hours.
 - But prior to recess--must announce time and place of resumption, OR
 - Method by which such notice will be given.

Public Notice

Exception to 24 Hour Notice

A.R.S. § 38-431.05(B)

- Ratification of prior legal action.
 - Posting is required 72 hours before meeting.

More about this in Executive Session discussion.

Agendas

A.R.S. § 38-431.02(H)



- Time, Date, Place of Meeting.
- Must list the specific matters to be discussed, considered or decided at the meeting. **Action may only be taken (discussed or considered) on listed items.**
- Agendas must contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.
- **If there is doubt, all questions should be resolved in favor of greater disclosure of information!**

Agendas

A.R.S. § 38-431.02(H)

Contents

- ❖ Specific matters to be discussed, considered or decided at the meeting.
- ❖ Do not use generic agenda items topics such as:
 - ❖ “personnel”
 - ❖ “new business”
 - ❖ “old business”
 - ❖ “other matters”



Agendas: Reports on Current Events

A.R.S. § 38-431.02(K)

- Presiding officer, chief administrator or a member of the public body may present brief “summary of current events.”
- **Provided:**
 - The summary is listed on the agenda.
 - 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.

Consent Agenda Items

- Consent agendas are typically used as a time-saving device when there are certain items on the agenda which are unlikely to generate controversy and are ministerial in nature (i.e. travel requests).
- Public bodies often take one vote to approve or disapprove the consent agenda as a whole.
- Voting on Items in a Consent Agenda is Legal Action!

Agenda Pitfalls



- What if you fail to properly list an item the Board was planning to discuss?
 - Cannot discuss the item.
- What if a Board member begins speaking on a topic not listed on the agenda?
 - Instruct the member to cease discussion on the topic.
 - Ensure all members know how to properly place an item on the agenda.
- What happens if you take legal action on an item not listed on the agenda?
 - The item is null and void.
 - Sanctions by the Attorney General

At the Meeting



- Determine quorum.
- Record members present, absent.
- Parliamentary Rules of Procedure.
- Agenda order/changes.
- After hours meetings: do not lock entrance doors—accessibility required.
- Record motions and the maker.

Public Access

A.R.S. § 38-431.01(A)

The Board must provide the public with access to all meetings.

The Board cannot obstruct or inhibit attendance by:

- Requiring the public to sign-in prior in order to attend (but ok to require sign-in if person is speaking);
- Holding the meeting in a remote location;
- Holding the meeting in a room too small to accommodate the reasonably anticipated number of observers;
- In a place to which the public does not have access (e.g. private club); or
- Holding the meeting at an unreasonable time.

Calls to the Public

A.R.S. § 38-431.01(A),(H)



“All persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.”

A public body **may** make an open call to the public.

- Sign-in sheets (optional) but persons addressing the body should identify themselves—(include name and subject in minutes).
- Subject to reasonable time, place and manner restrictions.
- The public may address issues *within the jurisdiction* of the public body.
- Council members may NOT discuss or take action on matters raised during the call if the matter is not specifically identified on the agenda.
 - Council members may respond to criticism (Caution!)
 - Ask staff to review matter; or
 - Ask that the matter be put on a future agenda.

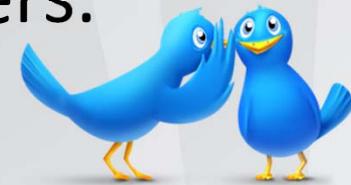
Council Member Attending By Phone



- Allowed? Check city/town ordinance
- Generally, if there is a problem reaching a quorum, participation by telephone is OK, but:
 - The public must be able to hear the person on the phone;
 - The person on the phone must be able to hear everyone at the meeting; and
 - Participation on the phone must be noted on the agenda and reflected in the minutes.

Meeting Pitfalls

- Passing notes.
- Whispering to fellow Council members.
- Privately using modern technology.
- Quorum talking to individuals before the meeting officially starts or after the meeting officially ends.



What is an Executive Session?

A.R.S. §§ 38-431(2), 38-431.02(I), 38-431.03

- A gathering of a quorum of members of a public body that **excludes** the public for one or more of the reasons listed in A.R.S. § 38-431.03.
- ES is a limited exception to the public meeting.
 - Must vote in open meeting for executive session.
- Agenda must state specific provision of law authorizing the session and specify the item.
- Must include a general description of matters to be considered.
 - Listing only the statutory authorization is insufficient.



Executive sessions - Who May Attend?

A.R.S. § 38-431(2)

- Members of the public body.
- Persons subject to a personnel discussion.
- Auditor general.
- Individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities.
 - Clerk to take minutes/run tape.
 - Attorney to give legal advice.
 - Tip: Put on the record why certain staff are reasonably necessary.

Moving into Executive Session

A.R.S. § 38-431.03(A)



- The vote to move into an executive session must be conducted in the public meeting.
- Make sure the room is cleared and only those authorized to be present are in attendance; survey the room and ensure that there are no belongings or recording devices left behind by the public.
- Council members should put away all electronic devices.
- Once in the executive session, remind all those in attendance that all discussions are **confidential**.

Executive Session Purposes

A.R.S. § 38-431.03(A)

- There are seven statutory purposes for a public body to meet in executive session.
- Courts have construed exceptions to the OML very narrowly because of the policies that favor open and public meetings.

See Ariz. Op. Atty. Gen. No. I96-012 (Ariz.A.G.) citing *Fisher v. Maricopa County Stadium District*, 185 Ariz. 116, [912 P.2d 1345 \(App. 1995\)](#)

Executive Session Purposes

1. Personnel Matters: Employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation.
 - Written notice to employee not less than 24 hours before meeting (Confirm receipt of notice).
 - Employee may require the meeting be held in public.
 - You may conduct a personnel evaluation in executive session, but cannot use the session as an opportunity to conduct lengthy information gathering meetings that explore the operation of public programs under the guise of conducting a personnel evaluation.

Executive Session Purposes

2. Records exempt by law from public inspection.
 - These are records made confidential by statute. (i.e. criminal history record information; executive session minutes).
 - Look at rules or regulations that may limit disclosure of certain information and federal law.
 - Public officials and employees should review the confidentiality provisions that affect their areas of responsibility to avoid disclosure of confidential information.

**TOP
SECRET**

Executive Session Purposes

3. Discussion or consultation for *legal advice* with the attorney of the public body.
4. Discussion or consultation with the *attorneys* to consider and instruct regarding contract negotiations, pending or contemplated litigation, or settlement discussions to avoid or resolve litigation.



Legal Advice in Executive Session

- Must be lawyers for the public body.
- Not lawyers for someone else.
- What is allowed:
 - Advice regarding the legal ramifications of facts.
 - Legal propriety, phrasing, drafting and validity of proposed legislation, including meanings, legal scope, and possible legal challenges.
- What is not allowed:
 - Discussion regarding the merits of enacting the legislation or what action to take based upon the attorney's advice.
 - Debate over what action to take (i.e., pros and cons, policy implications).



Executive Session Purposes

5. Discussions or consultations with employee organizations for *negotiating* salaries, salary schedules, or compensation. 

- For example, a public body may discuss related budgetary matters, program issues or other items in executive session that are necessary to its evaluation of an employee, but it is not appropriate to discuss a broad range of budgetary matters under the guise of salary in a personnel evaluation. This is public information. Ariz. Op. Atty. Gen. No. I96-012 (Ariz.A.G.)

Err on the side of caution - keep public discussions in the open meeting.

Executive Session Purposes

6. Discussion, consultation re: interstate, international, or tribal negotiations.
7. Discussion or consultations to consider and instruct on negotiations for purchase, sale, or lease of real property.



Actual “negotiation,” not a discussion or recommendation. Ariz. Att’y Gen. Op. 180-159

Confidentiality of E-session

- Minutes and discussions must be held confidential.
- Except from members of the body and certain other limited exceptions.
- Best Practice Tip: Keep these minutes apart from the public session minutes to avoid accidental disclosure but remember where you keep the confidential minutes!



Executive Session Pitfalls

- Failure to keep executive session discussion confidential.
- Failure to advise persons about the confidentiality requirement.
- Best practices for preserving confidentiality:
 - Do not fax backup materials to members.
 - Members should not take confidential materials home from the meeting.
 - Let staff destroy extra copies.

Post-Meeting - Meeting Minutes

A.R.S. § 38-431.01(B)



- Minutes can be in writing or via recording by a tape recorder or video tape recorder.
- Must be available for public inspection within 3 working days after the meeting (mark as draft or unapproved) – minutes should not be withheld from the public pending approval.
 - If recorded, the public must be able to access the recording.
 - If written in shorthand, must be typed or written in longhand.

Post-Meeting - Meeting Minutes

- Cities and towns with a population of more than 2,500 shall:
 - Post legal actions taken or any recording on its website within 3 working days.
 - Post approved meeting minutes of city or town council meetings on its website within 2 working days following approval.
- Posting must remain on website for 1 year.
- Subcommittees and advisory committees post within 10 working days.

Post-Meeting - Meeting Minutes

A.R.S. § 38-431.01(B)



- Minutes must contain:
 - Date, time and place of the meeting;
 - Members present/absent at the meeting;
 - A general description of the matters discussed or considered;
 - An accurate description of legal actions (including the names of those making statements; if an emergency exists, the nature of the emergency; or if a prior act was ratified, a copy of the disclosure statement required for ratification);
 - The name of each person making statements or presenting material to the public body and a reference to the legal action;
 - If items were discussed at an emergency meeting, a full description of the nature of the emergency.
 - If a prior act was ratified, a copy of the disclosure statement required for ratification.

Post-Meeting - Meeting Minutes

A.R.S. § 38-431.01(E)(2)



- Minutes must remain on website for 1 year.
- Subject to public records law and record retention requirements.
- Executive Session minutes must contain same contents as regular minutes plus:
 - An accurate description of all instructions given to attorneys or designated representatives.
 - If holding an emergency meeting, a statement of the reasons for emergency consideration of any matters not on the agenda;
 - Any other information as appropriate.

What If There Is An OML Violation?



Meeting Held in Violation of OML A.R.S. § 38-431.05(A)

All legal action is null and void.



Ratification

A.R.S. § 38-431.05(B)

When a public body must retroactively validate a prior act in order to preserve the earlier effective date of the action.

- Public meeting within 30 days after discovery of the violation.
- Special Notice Requirements:
 - Written description of the action to be ratified, a clear statement proposing ratification, and where the public can access the information;
 - Public shall be able to access all deliberations, consultations, and decisions by members relating to the action; and
 - Posted at least 72 hours in advance of the public meeting at which the ratification is taken.

Ratification

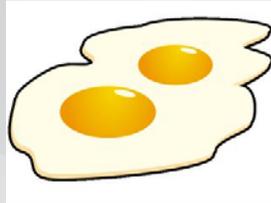
A.R.S. § 38-431.05(B)

Ratification validates a prior action in order to make the legal action valid and enforceable.

Ratification does NOT eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties and attorney's fees.

Complaints and Violations

- The AG has an Open Meeting Law Enforcement Team (OMLET) to handle inquiries, conduct investigations and enforcement proceedings relating to complaints of violations of the Open Meeting Law.



- OMLET was restructured so complaints are assigned to various divisions for investigation.

OML Complaint Form



Office of Arizona Attorney General
Mark Brnovich



Open Meeting Law Complaint Form Continued

Name of public entity that is the subject of this complaint:

Please describe the conduct that you believe violated the open meeting law: (If more space is needed, please attach additional information on a separate sheet.)

List the dates of the meetings at which you believe the violation occurred.

Please identify all members of the public body whom you believe violated the requirements of the Open Meeting Law.

1275 West Washington Street, Phoenix, AZ 85007

Arizona Attorney
General's Office
OML Complaint Form

https://www.azag.gov/sites/default/files/sites/all/docs/complaints/new/open_meeting_law_complaint_form-2015.pdf



Investigations: Attorney General or County Attorney

A.R.S. § 38-431.06(A),(B)

Upon a written, signed complaint the AG or County Attorney may:

- Issue written investigative demands.
- Administer an oath or affirmation to any person for testimony.
- Examine under oath.
- Examine by means of inspecting accounts, books, computers, documents, minutes, papers, recordings, records.

Failure to Comply with AG or County Attorney

A.R.S. § 38-431.06(D)

- Possible filing of action in superior court for an order to enforce the demand.
- Failure to comply could result in:
 - Contempt of court.
 - Injunctive order against conduct.
 - Any other relief the court deems proper.



Consequences of a Violation

A.R.S. § 38-431.07

- Any person affected by alleged violation may commence suit in superior court to force compliance with OML.
- *Each* violation: civil penalty up to \$500.
- Removal from office.
- Generally, no public monies for legal fees incurred by public body or officer as a result of violation.



Best Practices

- Understand your role in the process
 - If an OML issue arises during the meeting, who addresses it? You or the attorney? Discuss beforehand with the attorney.
- Stay up-to-date on the law
 - Trainings (including requesting the League to present OML training to your Board)
- Ask questions
 - Clerk, attorney, League, ombudsman's office, etc.

Arizona Revised Statutes – www.azleg.gov

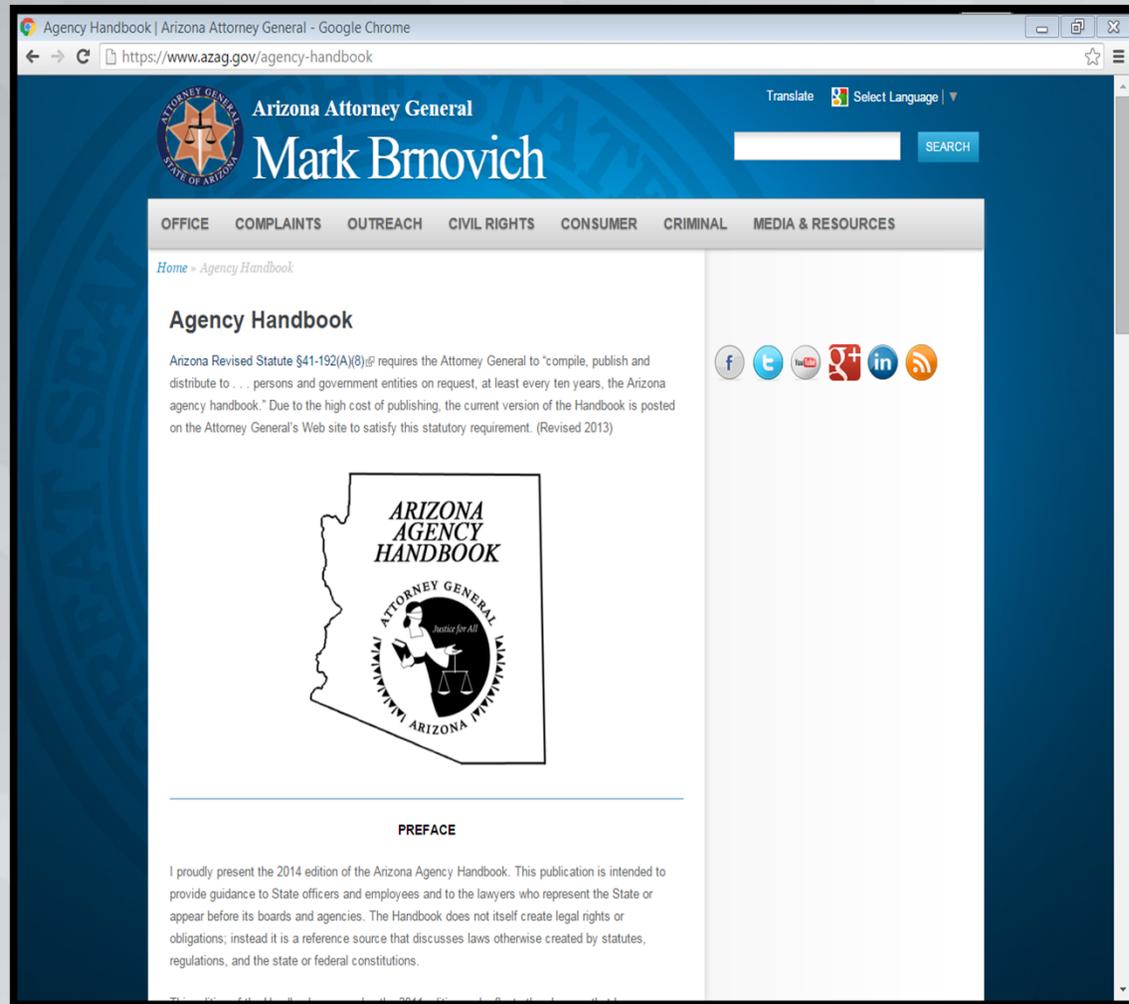
Title 38 Public Officers and Employees - Chapter 3 Conduct of Office - Article 3.1 Public Meetings & Proceedings

- 38-431 Definitions
- 38-431.01 Meetings shall be open to the public
- 38-431.02 Notice of meetings
- 38-431.03 Executive sessions
- 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; removal from office; in camera review
- 38-431.08 Exceptions; limitations
- 38-431.09 Declarations of public policy



Resources

Arizona Agency Handbook – Ch. 7



The screenshot shows the Arizona Attorney General's website. The header includes the Arizona Attorney General logo and the name Mark Brnovich. A navigation menu lists: OFFICE, COMPLAINTS, OUTREACH, CIVIL RIGHTS, CONSUMER, CRIMINAL, and MEDIA & RESOURCES. The main content area is titled "Agency Handbook" and contains the following text:

Arizona Revised Statute §41-192(A)(8) requires the Attorney General to "compile, publish and distribute to . . . persons and government entities on request, at least every ten years, the Arizona agency handbook." Due to the high cost of publishing, the current version of the Handbook is posted on the Attorney General's Web site to satisfy this statutory requirement. (Revised 2013)

Below the text is a graphic of the state of Arizona with the text "ARIZONA AGENCY HANDBOOK" and the Arizona Attorney General logo. The logo features a woman holding scales and the motto "Justice for All".

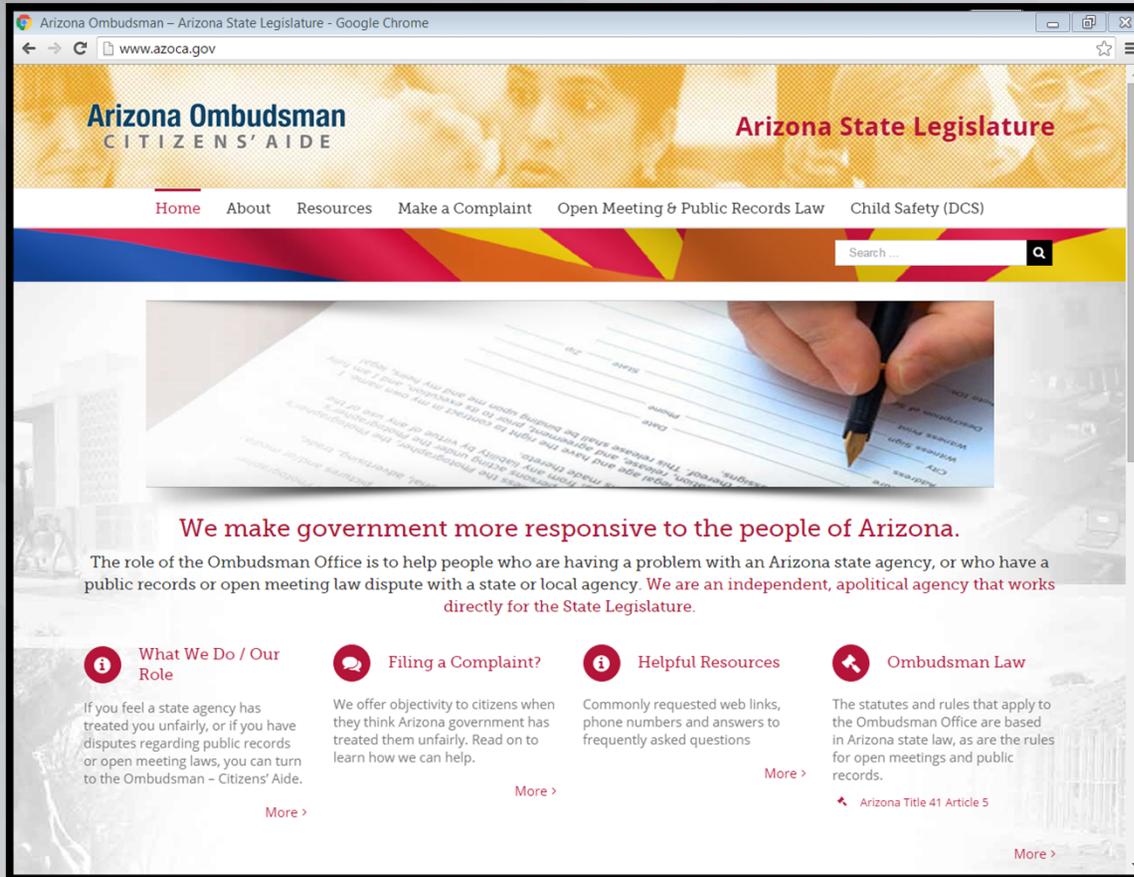
Below the graphic is a section titled "PREFACE" with the following text:

I proudly present the 2014 edition of the Arizona Agency Handbook. This publication is intended to provide guidance to State officers and employees and to the lawyers who represent the State or appear before its boards and agencies. The Handbook does not itself create legal rights or obligations; instead it is a reference source that discusses laws otherwise created by statutes, regulations, and the state or federal constitutions.

http://www.azag.gov/Agency_Handbook/Agency_Handbook.html



Resources



Arizona Ombudsman Citizens' Aide

<http://www.azoca.gov/open-meeting-and-public-records-law/open-meetings/>

Resources

League of Arizona Cities and Towns

<http://www.azleague.org/>

602-258-5786

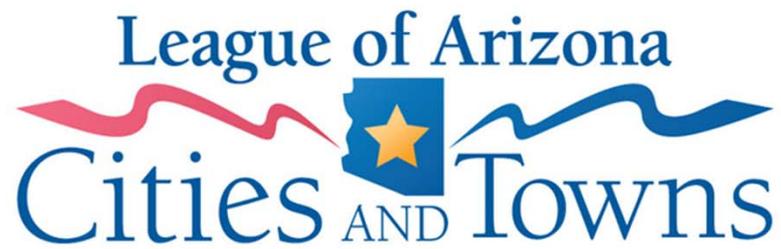
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WWW.AZLEAGUE.ORG



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