

## OVERVIEW OF OPEN MEETING LAWS

The Open Meeting Laws (OML) are set out in *A.R.S. § 38-431 et seq.* The OML requires that Board meetings be conducted openly, and that notices and agendas contain enough information to reasonably inform the public of the matters to be discussed. **If a Board is not certain whether the OML requires that a matter be discussed in private or public, the Board “shall construe ... (the OML) in favor of open and public meetings.”** *A.R.S. § 38-431.09.*

**All discussion and action must occur at a public meeting.** Under the OML, all discussion and legal action, including collective decisions, commitments and promises, must take place in a duly noticed public meeting. *A.R.S. § 38-431(3) & § 38-431.01(A)* A “meeting” is deemed to occur whenever a quorum of the board gets together, in person or through technological devices to discuss, propose, or take legal action. *A.R.S. § 38-431(4).*

**The public must receive prior notice of the meeting.** Except in an actual emergency, no meeting may take place unless the public was given written notice of the meeting at 24 hours in advance. The notice must include the date, time and location of the meeting and an agenda listing the specific matters to be discussed, considered or decided upon. *A.R.S. § 38-431.02.* The board cannot consider or discuss matters not listed on the Agenda! *A.R.S. § 38-431.02.* Once a meeting has been properly convened with proper prior notice to the public, it may be recessed and resumed with less than twenty-four (24) hours’ notice if, prior to recessing, notice is publicly given as to the time and place of resumption. (In the rare case of an actual emergency, a meeting may be held upon such notice as is appropriate but the notice of the agenda and a notice declaring that an emergency session was held must be posted within twenty-four hours after the meeting.)

**The board must receive the agenda and packet in advance of the meeting.** Although not required by the OML, most board policies (and common sense) require that the board receive the agenda and supporting information at least 24 hours before a meeting.

**Superintendent or Board Member reports ok if generally noticed on agenda** The superintendent or a board member may present a brief summary of current events without the specific items being listed on the agenda, as long as the summary is on the agenda and the board does not propose, discuss or take legal action on any matter raised in the summary unless it is specifically noticed on the agenda. *A.R.S. § 38-431.02(K)*

**The board may allow the public to speak at a Call to the Public.** The OML permits (but does not require) boards to allow the public to speak at board meetings. Public input may be limited to items on the agenda or expanded to also include an open Call to the Public on issues that are not on the agenda but are within the Board's jurisdiction. Whatever form of public input is allowed, it should be subject to reasonable time, place and manner restrictions. Board members should avoid arguing or engaging in lengthy discussions with members of the public who address the board on matters that are on the agenda. Response is even more limited with respect to non-agenda issues raised at call to the public. As to those items, the Board must wait until conclusion of the open call, at which time individual board members may respond to

criticism, ask staff to review a matter or ask that a matter be put on a future agenda. However, board members must not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action. *A.R.S. § 38-431.01(G)*.

**The public is entitled to minutes within three working days after a meeting.** The board must make written minutes or a recording of meetings available to the public within three working days after a meeting. Minutes of a public meeting must include:

1. the date, time and place of the meeting;
2. the members present and absent;
3. a general description of the matters considered; and
4. an accurate description of all actions proposed, discussed or taken, including names of members who propose each motion; names of anyone making a statement and presenting material; and a reference to the action to which such statement or material relates. *A.R.S. § 38-431.01(A & 8)*

Minutes of executive sessions shall include the information in 1, 2, and 3 above, plus an accurate description of all Instructions *given* to the board's attorneys or representatives regarding its position on contract negotiations, litigation, settlement discussions, real property transactions and employee benefit negotiations, and such other matters as may be deemed appropriate by the public body. *A.R.S. § 38-431.01(C)*.

**Consequences of Violating the OML:** Any action taken at a meeting held in violation of the OML is null and void (*A.R.S. § 38-431.05(A)*) unless ratified within 30 days after discovery pursuant to *A.R.S. § 38-431.05*. In addition, anyone who knowingly violates the open meeting laws or aids, agrees to aid or attempts to aid another to violate the laws is subject to civil fines of up to \$500.00 for each violation. Public funds may not be used to pay for legal services to defend an action brought under the OML unless the public body has authority to do so pursuant to some other provision of law and approves the expenditure at a properly noticed open meeting prior to incurring the obligation. *A.R.S. § 38-431.07*. If an action is brought and the court determines there was intent to deprive the public of information or opportunity to be heard, the offender may be required to pay the plaintiff's costs and fees personally and, if a board member, may be removed from the board.

**38-431.01. Meetings shall be open to the public**

A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

B. All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, the minutes or recording shall include:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters considered.
4. An accurate description of all legal actions proposed, discussed or taken, including a record of how each member voted. The minutes shall also include the names of the members who propose each motion and the names of the persons, as given, who make statements or present material to the public body and a reference to the legal action about which they made statements or presented material.

C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to section 38-431.03, subsection A, paragraphs 4, 5 and 7 and other matters as may be deemed appropriate by the public body.

D. The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.

E. A public body of a city or town with a population of more than two thousand five hundred persons shall:

1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its website, if applicable, either:
  - (a) A statement describing the legal actions taken by the public body of the city or town during the meeting.
  - (b) Any recording of the meeting.
2. Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its website, if applicable, except as otherwise specifically provided by this article.
3. Within ten working days after a subcommittee or advisory committee meeting, post on its website, if applicable, either:
  - (a) A statement describing legal action, if any.
  - (b) A recording of the meeting.

F. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

G. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall 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.

H. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

I. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

J. Any posting required by subsection E of this section must remain on the applicable website for at least one year after the date of the posting.