



## Office of the City Clerk BOARDS, COMMITTEES & COMMISSIONS

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### OPEN PUBLIC MEETING LAW (A.R.S. SEC. 38-431, ET SEQ.)

#### IMPACT UPON MEETINGS OF BOARDS, COMMITTEES AND COMMISSIONS OF THE CITY OF TUCSON, ARIZONA

It is the policy of the State of Arizona that meetings of public bodies be conducted openly. Notices and agendas are to be provided for such meetings and must contain information necessary to inform the public of the matters to be discussed or decided. 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, camera or other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting. A "Meeting" means 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. The definition of a meeting was modified by the Arizona Legislature in 2000 to prohibit a quorum of a public body from secretly communicating through technological devices, including facsimile machines, telephones and electronic mail. Please see the attached Attorney General Opinion regarding email communications.

#### A. Public Bodies Defined

"Public body means the legislature, all boards and commissions of the state or political subdivisions, all multi-member governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body."

1. Governing bodies (i.e., the Mayor and Council).
2. Boards, commissions and committees of the City created by law or an official act pursuant to some legal authority.
3. Boards of Directors of "quasi-governmental corporations" and "instrumentalities" of the City when the members of the board are appointed or elected by the Mayor and Council.

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4. Quasi-judicial Bodies, that is, public bodies other than a court of law possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.
5. Advisory committees are defined as any group "officially established upon 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." Advisory Committees are subject to all of the requirements of the Law, except the minute taking requirements.
6. Special and Standing Committees, and Subcommittees. Generally, a special or standing committee is a group consisting of members of the public body, which has been appointed by or authorized to act for the public body. In addition to members of the public body, persons who are not members of the public body may also serve on these committees. (If there are no members of the public body on the committee, then a special or standing committee must fall within the definition of an "advisory committee" before it is subject to the Law.) Subcommittees are subgroups of committees and are subject to all of the requirements of the Law. Usually, these bodies are not required to keep minutes.

### **B. Public Notice Requirements**

Notice of all meetings, including executive sessions, must be given to members of the public body and to the public. Generally, notice of meetings must be posted in a public manner no less than twenty-four (24) hours prior to the time of the meeting. Additionally, every year the public body must file with the City Clerk a disclosure statement indicating where all public notices of meetings will be posted. If preferred, the City Clerk will post notices for the public body in the locations established by the City Clerk for that purpose.

The notice should include the following information:

1. The full name of the public body. (In general, acronyms or other abbreviations should not be used alone. When a subcommittee of a public body is meeting, include the name of the public body as well as the name of the subcommittee.)
2. The date and time of the meeting.
3. The place of the meeting. (Include the name of the building and floor or suite number [if applicable], street address and City).

A public body that intends to meet for a specified calendar period on a regular day or date during the period, and at a regular place and time, may post public notice of meetings at the beginning of the period and need not post additional notices for each meeting unless there are changes to the schedule. The notice must specify the period for which the notice is applicable. The City Clerk prepares such a notice at the beginning of each calendar year based upon the contents of the annual disclosure statement filed by each public body. (This

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method of posting does not satisfy the agenda requirements unless the notice also contains a clear statement that the agenda for meetings will be available at least twenty-four [24] hours in advance of the meeting and a statement as to where and how the public may obtain a copy of the agenda.)

In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances. Contact the City Clerk for further information.

A meeting may be recessed and resumed with less than twenty-four (24) hours notice if public notice of the initial session of the meeting is given as required, and if, prior to recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.

### C. Agendas

In addition to the public notice requirements, each public body must provide an agenda of the matters to be discussed, considered or decided at each meeting which must be available to the public a minimum of twenty-four (24) hours prior to the time of the meeting. The agenda must contain a listing of the "specific matters to be discussed, considered or decided at the meeting". General terms such as "personnel," "new business," "old business", etc. may not be used unless the specific matters or items to be discussed are identified. Agendas should "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided."

A public body may include items such as "future agenda items" to schedule items for future agendas, or "call to the audience" to designate that part of the meeting at which members of the public may address the public body. Any discussions or decisions regarding a matter brought up under "future agenda items" or "call to the audience" should be rescheduled for a later meeting in order to properly agendaize the item.

The Open Meeting law allows the chief administrator or presiding officer 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.

The agenda may be made available to the public by including it as part of the notice of the meeting or by stating in the notice how the public may obtain a copy of the agenda. Changes in the agenda must be prepared and distributed in the same manner as the original agenda at least twenty-four (24) hours prior to the time of the meeting.

Questions regarding content of the agenda should be discussed with the City Clerk.

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### D. Record of Meetings

Public bodies other than "Advisory committees" and "Subcommittees" must maintain minutes of all meetings held either in the form of a taped recording (with supplemental notes, if necessary) or a written record. The record of the meeting must be available for public inspection within three (3) working days after the meeting. The minutes of a public meeting must include the following information:

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 discussed or considered. The Law requires that minutes contain information regarding matters considered or discussed at the meeting even though no formal action or vote was taken with respect to the matter;
4. An accurate description of all legal actions proposed, discussed or taken and the names of members who proposed each motion. This does not require that the name of each member who votes on a motion be indicated but only that the member who proposed it be shown in the minutes. Generally, however, the body, for its own benefit, will include the names of the member who seconded the motion and those who voted in favor of or against the motion. In any case, the minutes must reflect how the body voted and the numerical breakdown of the vote (for example: 3 in favor, 1 against, 1 abstention);

"Legal action" means a collective decision, commitment or promise made by a majority of the members of a public body pursuant to the constitution, their charter or laws or specified scope of appointment or authority, and the laws of this state.

5. The name of each person making statements or presenting material to the public body and a specific reference to the legal action to which the statement or presentation relates;
6. If the discussion in the public session did not adequately disclose the subject matter and specifics of the action taken, the minutes of the public meeting at which such action was taken should contain sufficient information so that the public may investigate further the background or specific facts of the decisions.

### E. Executive Sessions

Executive sessions may only be held for specific purposes. A public body which qualifies to hold an executive session should consult with the City Clerk prior to holding any executive session. Notice of the executive session must be given to the members of the public body, and to the general public in the same manner as all other meetings and must include the specific provision of the law authorizing the executive session.

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Once proper notice has been given, the executive session may only be held following a public majority vote of the members constituting a quorum and a public announcement by the public body identifying the specific section of the law authorizing the executive session. The purposes for which an executive session may be called are narrowly defined in the law. Questions regarding holding an executive session should be discussed with the City Clerk.

### **F. Circumvention of the Open Meeting Law**

Discussions and deliberations between less than a majority of the members of a public body, when used to circumvent the purposes of the Open Meeting Law violate that law. 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, whether in person or through technological devices. 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 any actions that may appear to remove discussion and decision from the public view.

The Attorney General and County Attorneys are authorized to investigate alleged Open Meeting Law violations. Civil penalties, not exceeding five hundred dollars, may be assessed against any person for each violation of the Open Meeting Law. This penalty can be assessed against a person who violates the Open Meeting law or knowingly aids, agrees to aid or attempts to aid another person in violating the Open Meeting Law. This penalty is assessed against the individual and not the public body, and the public body may not pay the penalty on behalf of the person assessed.