

OPEN MEETING LAW

as it relates to the City of Tucson Boards, Committees and Commissions

Presented By:
City Clerk's Office

So what is the Open Meeting Law?

A state law that requires all public bodies that conduct meetings, do so openly and only after a notice for that meeting has been posted a minimum of 24 hours prior to that meeting.

It allows for transparency and trust between government and citizenry.

- Anyone may attend and listen to the proceedings of your meeting:
 - Members of the public
 - Media
 - Other public body members

Why do we have an Open Meeting Law?

- In 1962, Arizona enacted the Open Meeting Law to maximize public access to governmental processes.
- It has been amended over the years but the express intent is still to provide openness in government. This is accomplished by;
 - Conducting all business openly,
 - Providing notices and agendas indicating what will be discussed,
 - Avoiding decision-making in secret.

What constitutes a meeting?

- A meeting is a gathering of a quorum of a public body where you discuss, propose, or take legal action. This includes any deliberations that take place.
- A gathering could be labeled or viewed as;
 - in person, through technological devices, such as, telephones, emails, faxes and even phone texting,
 - a work or study group
 - even a social function

Components of Open Meeting Law

- 1) Agendas
- 2) Quorum
- 3) Call to the Audience
- 4) Executive Sessions
- 5) Legal Action Reports
- 6) Minutes

Agendas

- Agendas for all public meetings must include the following information:
 - Name of the public body
 - i.e. Redistricting Advisory Committee
 - Specific location of the meeting
 - i.e. Main Library, 101 N. Stone Ave, Lower Level, Meeting Room A
 - Date and Start Time
 - March 24, 2010
 - 5:30 p.m.

Agendas con't

Agendas must be specific enough to reasonably inform the public of the matters to be discussed or decided.

Avoid titles such as

- New Business, Current Events, Department Updates

Be more specific

- New business relating to legislation on precinct alignment
- Current Events relative to Senate Bill 0000
- Pima Association of Governments update on population figures.

Quorum

A quorum is a majority (51%) of the authorized membership. The authorized membership is determined at the time the public body is created.

City of Tucson Boards, Committees and Commissions are created by Ordinance or Resolution and those documents will indicate how many authorized members will be on that public body.

Quorum con't

Example #1 -

- Authorized membership =11
- Quorum = 6 (51%)
Must have 6 members present to conduct your meeting.

Example #2 -

- Authorized membership =15
- Quorum = 8 (51%)
- Out of the 15 members, there are 2 vacancies on the commission - **the quorum is still 8.**
Must have 8 members present to conduct your meeting.

Quorum Situations

Members of boards or committees may encounter the following situations during the course of their meetings:

Situation #1 - Day of the Meeting

Two hours before the meeting the Chairperson is advised that he/she will not have enough members present for a quorum.

- Chairperson must cancel the meeting and post the canceled meeting agenda on the front door of the meeting room.
- This advises the public that there was a scheduled meeting, but it has been canceled.

Situation #2 - Day of the Meeting

The chairperson is expecting a minimum number of members at the meeting (6 out of 11 authorized members). The meeting is ready to start, except one of the members has not shown up.

- Chairperson must not start the meeting until a quorum (6 members) is present.
- It is acceptable to wait 15 minutes or whatever time the chair or members deem appropriate, for all of the members to arrive.
- If after the appropriate 'wait-time', a quorum has not been established, **the meeting must be canceled.**

Quorum Situations

Situation #3 - During the Meeting

A quorum has been established by the minimum number of members present (6 out of 11 authorized members are present). One of the 6 members receives an emergency phone call during the meeting and must leave the meeting.

- Chairperson must adjourn the meeting immediately (they have lost a quorum).
- If presentations or out of town visitors are scheduled to present, the meeting must still be adjourned.
- There is no such thing as an “Informational Meeting”.

Situation #4 - During the Meeting

A quorum has been established by the minimum number of members present (6 out of 11 authorized members are present). One of the 6 members receives a phone call during the meeting and wants to speak with that person. The member wants to leave the room for a short time to take the call.

- Chairperson should recess the meeting, and take a short break.
- After the break, ensure the quorum is established (all 6 members present), then resume the meeting.

Call to Audience

- Allows the public an opportunity to express their concerns on matters within the public body’s jurisdiction, although it is not required under the open meeting law.
- During Call to Audience an individual public officer may;
 - Reasonably respond to criticism.
 - Ask staff to review an item and bring it back at a future meeting.
- Individual public officers may not;
 - Discuss matters raised during call to audience.
 - Take action on matters raised during call to audience.

Executive Sessions

City of Tucson Boards, Committees and Commissions generally do not conduct business in executive sessions, as these sessions are reserved for confidential matters, and the public may not attend or listen to the proceedings.

In the event a City of Tucson Board, Committee or Commission require an executive session, the meeting agenda must include an indication there is a scheduled executive session, and a very general description of the matter for discussion.

Prior to the start of the executive session, a majority of the members constituting a quorum must vote to go into executive session.

At the start of the executive session, the Chairperson shall remind all members present that matters discussed in this session are confidential.

Executive Sessions con't

There are 7 authorized categories for executive sessions;

- Personnel matters,
- Discussion or consideration of records exempt by law from public inspection (confidential records)
- Legal advice
- Discussion/consultation with public bodies regarding pending litigation, settlement discussions, negotiated contracts,
- Discuss/instruct the representative regarding labor negotiations
- Discuss international, interstate or tribal negotiations
- Purchase, sale, or lease of real estate

Legal Action Reports (LAR's)

In 2007, State Legislation required all jurisdictions taking legal action at their public meetings, to post that legal action to the jurisdiction's web page for public access.

Legal action is defined as a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.

Legal Action Reports are sent from the individual Board, Committee or Commission to the City Clerk's Office for posting on the City Clerk's web site. The deadline to provide these action reports is:

- For full body commissions - within 3 days after the meeting
- For subcommittees and advisory committees - within 10 days after the meeting

Legal Action Reports will remain posted on the City Clerk's web page for one year from the date posted.

Minutes

In 2007, state legislation also required all public bodies, including subcommittees and advisory committees to take minutes of their proceedings.

Minutes should include:

- Name of public body, location, date and time of meeting.
- Members of the public body recorded as present or absent (including late arrivals and early departures).
- General description of the matters considered.
- Description of all legal actions, including names of motion makers and votes.
- Names of persons making statements and/or presenting materials.

Minutes may be a recording of the meeting or in written format, and must be available to the public within 3 days after the meeting. If minutes in written format have not been officially approved by the public body, a draft or unofficial version of these minutes must be available to the public until the minutes are approved.

Violations of the Open Meeting Law

Arizona has one of the stricter open meeting laws in the country. It is regulated by the Attorney General's Office and is complaint driven.

If you are found in violation of the opening meeting law:

- ⌘ you are personally liable.
- ⌘ you will be fined up to \$500 per violation.
- ⌘ you will be removed from public office if the court determines there was intent to deprive the public of information or of the opportunity to be heard.

Cautionary Actions and Activities

Circumvention of the open meeting law is prohibited. Public bodies may not 'get around' public discussions by splintering the quorum and having separate discussions with less than a majority of the public body.

- Daisy-chaining discussions are not permitted (A to B, B to C, C to D).
- Spoke and wheel is not permitted (A to B, A to C, A to D).
- Consensus building is not permitted.

Discussing/deciding matters not listed on the agenda is prohibited, as is wandering off the agenda topic during discussion of that specific topic. Remember, the agenda is intended to let the members of the public body and the public know what items will be discussed.

Email and telephone communications between meetings regarding items for discussion on the next meeting agenda is prohibited. These are not considered discussions that are open to the public, and therefore would be a violation of the open meeting law.

Conflict of Interest

(regulated by A.R. S 38-501 through 503)

- Any public officer who has or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall declare a conflict of interest and shall refrain from discussing and voting on that agenda item.
- Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision

Declaring a Conflict of Interest

When declaring a conflict of interest in regards to an agenda item, consider the following:

- 1) Determine if you, as a member of the public body, have a substantial interest, which is defined as any pecuniary or proprietary interest, either direct or indirect.
- 2) If you determine there may be a conflict, before the item begins, advise the Chairperson of the board, committee or commission that you are declaring a conflict of interest on this item, and verbally recuse yourself from the item.
- 3) During the item, refrain from participating in any manner including discussing, voting, or in any way attempting to influence the decisions of the other members.

Your declaration of a conflict must be reflected in the official minutes of the discussion of the item.

Open Meeting Law

You may wish to “Test Your Knowledge” of the Open Meeting Law as it related to the City of Tucson’s Boards, Committees and Commissions, by [clicking here](#).

Further questions??

Contact us at [boardsandcommissions](#)

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