

Open Meeting Law

Presented by the
City Clerk's Office



Important Handouts

- M&C Rules and Regs – help structure all BCC meetings
- Code of Ethics – It applies to all City employees, including BCC commissioners
- Other material available on BCC webpage

What is the Open Meeting Law?

- State Law (ARS 38-431 thru 38-431.09)
Implemented in 1962

Two core concepts:

- 1) Requires that all meetings of a public body be conducted openly, with notices and agendas that contain information necessary to inform the public about the Committee activities

Purpose of the Open Meeting Law

2) Provides public access to government and ensures that the people's business is conducted openly



Virtual Meetings

Virtual Meetings Guidelines

- All BCC meetings are to be conducted virtually
- Entire membership will meet remotely
- All members will participate using audio
- Chat boxes are a public record and may be used to speak/raise hand only - not for participation
- BCC Chair will have an opening statement regarding holding the meeting remotely

Virtual Meetings

Technological Platforms

- Supporting Dept operates platform
- Has a recording option
- Has video or phone-in option
- Allows BCC members, staff and the public to join meeting remotely

Definition

- A meeting is a gathering, in person or through technological devices, of a quorum of a public body at which legal action is discussed, proposed, deliberated or taken
- Boards and Committees and their subcommittees are public bodies

Open Meeting Law Elements

- Public must be permitted to attend and listen
– call to the audience not required
- All legal action must occur during a public meeting
- Written minutes are required, including for subcommittees

Open Meeting Law Elements -- Cont.

- Public notice is required
- Any member of the public may record the meeting
- The room must be large enough to hold the number of people reasonably expected to attend



More Elements of the OML

- Agenda must contain enough information so that the public is informed about the matters to be discussed
- Quorum established
- Call to the Audience
- Executive Sessions
- Legal Action Report
- Minutes



Meeting Notice Requirements, Cont.

- Posting must take place at least 24 hours before the meeting – we request a minimum of 48 hours
- Agendas must describe specific matters to be discussed, considered or decided
 - Non-specific “Announcements” or “Reports” are allowed for statements only, not for discussion
- Items not usually permitted: “New Business,” “Old Business”

Quorum

- A quorum must be present to conduct the meeting
- 51% of the authorized voting membership



What happens if you lose a quorum?

Meeting Day:

- Must post notice on our webpage
- Why? It advises the public that the meeting was canceled and why, so they are not left wondering
- Do the same if a meeting has to be moved for any reason

What happens if you lose a quorum? (Cont.)

- Starting the meeting: If not enough members show up, wait 15 minutes and then cancel the meeting
- Post notice on the BCC webpage
- During the meeting: Recess the meeting until the quorum is back
- LAR/Minutes still required

Call to the Audience



- Not required under the open meeting law
- Allows the public an opportunity to express concerns on matters within the public body's jurisdiction
- Include language on the agenda on how the public may participate
- Cannot become a discussion; but, in response:
 - A member of the BCC can request that staff review the matter
 - A member can request a future agenda item
 - A member can respond to direct criticism

Executive Sessions

City of Tucson BCC's generally do not undertake matters that qualify for an executive ("closed-door") session.

If they do, there are additional legal requirements for the agenda, minutes, and voting.

Legal Action

Legal Action is defined as a collective decision, commitment or promise made by a public body pursuant to the Arizona Constitution, the Tucson Charter, the Committee's by-laws or the specified scope of the appointment or the laws of the State of Arizona.

Legal Action Report

- List all legal action taken for each agenda item
- The Legal Action report is due within 3 working days of the Committee meeting. Subcommittees have 10 days after the meeting to file the Legal Action report with us.
- Legal Action reports remain posted on our website for one year after the meeting, and are a permanent public record.

Minutes

- Minutes must include the name of the public body, the date, time and location of the meeting.
- Also must list the names of the members present and absent (indicate late arrivals, early departures).
- A general description of the items covered, and actions taken, including motions and votes.
- Names of persons making statements and presenting materials to the Committee.
- Must be in writing (audio recording is optional)

Minutes (Cont.)

- A recording of the meeting or draft minutes must be available to the public within 3 days of the meeting. If minutes in written format have not been officially approved by the public body, a draft or unofficial version of these must be available to the public until they are approved.
- Approved minutes must be posted on our website within 2 days of approval, and are a permanent public record.

Violations

It is a violation of the open meeting law if one member sends an email to a quorum of the members that proposes legal action, even if the other members don't respond to the email or take the exchange any further.

(Watch those technological devices!)

Cautions – to Avoid Violations



- Don't “**Daisy Chain**” with phone calls or emails to other BCC members
- Don't use the “**Spoke and Wheel**” method of communicating

Cautions – to Avoid Violations (Cont.)

- Consensus-building is not permitted outside of the meeting.
- Use caution with emails and telephone calls between meetings to discuss potential agenda items.
- During the meeting – stay on track. Keep to the agenda item as it was posted – no wandering “off topic”.



More on Cautions --

- A SIMPLE RULE:
 - send communications to Support Staff and let them disseminate for you.

Violations / Investigations

- OML is enforced by the State Attorney General and is usually complaint-driven
- One of the stricter laws in the country
- If you are found in violation:
 - You are personally liable
 - The City Attorney cannot defend you
 - You will be fined up to \$500 per violation
 - You will be removed from the Committee

Conflict of Interest

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

Conflict of Interest (Cont.)

- 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.

Conflict of Interest (Cont.)

- “Substantial Interest” means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest

Declaring a Conflict of Interest

1. Determine if you, as a member of the public body have a substantial interest
2. If you determine there may be conflict, before the meeting, advise the chairperson of the Committee that you are declaring a conflict of interest

Declaring a Conflict of Interest (Cont.)

3. Verbally recuse yourself from the item
4. During the item, refrain from participating in any manner, including discussing, voting, or in any way attempting to influence the decision by the rest of the members
5. Your declaration of the conflict must be reflected in the minutes of the meeting

Questions?

- View material online

**[www.tucsonaz.gov/clerks/boards-
committees-commissions](http://www.tucsonaz.gov/clerks/boards-committees-commissions)**

- Call the City Clerk's Office
791-4213