

Board and Commission Training 2025

Town of Paradise Valley

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Today's Agenda

Open Meeting Law
Conflicts of Interest
Public Records

Open Meeting Law

What is Open Meeting Law?

- A set of laws designed to:
 - Maximize public access to government processes
 - Open deliberations and proceedings to the public
 - Prevent public entities from making decisions in secret
- All based on the idea that:
 - The public's business must be done in public

When Does Open Meeting Law Apply?

Public Body
+
Meeting

What is a Public Body?

- **"Public Body"** means:
 - The legislature (except caucus)
 - Boards and commissions of this state or political subdivisions
 - Multimember governing bodies
 - Quasi-judicial bodies
 - Standing, special, or advisory committees or subcommittees of, or appointed by, the public body

What is a Meeting?

- “**Meeting**” means a gathering, in person or through technological devices, of a **quorum** of a public body to discuss, propose, or take **legal action**

Quorum

- What is quorum?
 - “**Quorum**” means a majority of the public body, unless otherwise noted in statute or governing documents
- What about vacancies?
 - Vacant positions **do not** reduce the quorum requirement; for example:
 - A 7-person body with 3 vacancies requires 4 for a quorum

Legal Action

- “**Legal action**” means a collective decision, commitment, or promise made by a public body pursuant to state and local law, charter, bylaws, or specified scope of appointment
- All discussions, deliberations, or consultations among a quorum regarding matters that may foreseeably require final action constitute legal action and must take place in an open meeting
- **Safest course of action:** Assume the OML applies whenever a quorum discusses business

Open Meeting Law Pitfalls

Serial Meetings

A series of gatherings of less than a quorum *may* constitute a meeting if business is discussed or proposed.

Discussion among members with less than a quorum present



Later, same discussion had with other members



Enough additional members to constitute a quorum



Possible Serial Meeting

Open Meeting Law Pitfalls Electronic Communications

- Potential violations regarding items that could foreseeably come before a public body include:
 - Emails between less than a quorum that are forwarded to a quorum (e.g., using “reply all”)
 - Emails between less than a quorum that are then communicated to enough other members so that the total number aware constitutes a quorum (serial communications)
 - Emails proposing motions or taking legal action
 - Reminder: a one-way communication can violate the OML even without a response!

Open Meeting Law Pitfalls Electronic Communications

- Allowable Emails
 - Allowable for staff to send an email to the public body
 - Passive receipt of information from staff, without more, does not violate the OML (e.g., receiving agenda packets)
 - However, staff may not send an opinion or substantive communication about business from a member to enough other members to constitute a quorum
- Best Practice
 - Include an OML reminder in emails to members of the public body

Open Meeting Law Pitfalls

Social Media

- Members of a public body may express their opinion or discuss issues with the public personally, through the media, or through technological means, if:
 - The opinion or discussion is not principally directed at or directly given to another member of the public body; and
 - There is no concerted plan to engage in collective deliberation to take legal action

Open Meeting Law Pitfalls Social Media

- Best Practices
 - Be mindful of who you “friend” online
 - Do not post about business if “friends” with other members of the public body
 - Do not comment on posts related to business (legal action)
 - Do not create a group chat that includes a quorum (serial communication)

Open Meeting Law Pitfalls Events and Other Meetings

- Best practice if more than a quorum may be present:
 - Post a “courtesy notice” announcing the event where a quorum may be present
 - Include a statement that no public body business will be discussed and no action will be taken
- Other options include:
 - Not attending
 - Not participating in or making proposals at other public meetings

Agendas and Notices

- A public body cannot meet without giving at least 24 hours' notice unless there is an *actual* emergency
 - Must give additional notice as is reasonable and practicable
 - Actual emergencies are rare; notice must be appropriate to the circumstances
- Staff should prepare the agenda, but members of the public body should check to ensure it includes what the public body wants to discuss

Agendas and Notices

- Agenda Pointers
 - If a matter is not listed on the agenda, the public body cannot discuss it
 - All discussion must be reasonably related to an adequately described agenda item
 - Add new items to the agenda for a future meeting
 - If there is a timed item, the public body may not hear that item before the scheduled time

Call to the Public

- Permitted, but not required
- Must be included as an agenda item
- Public body may limit speaker's time
- Members of the public who speak must provide a name
- The public may only address the public body on issues within its jurisdiction
- At its conclusion, members of the public body may respond to criticism, ask staff to review a matter, or ask that a matter be put on a future agenda

Current Event Summaries

- The chief administrator, presiding officer, or a member of a public body may present a brief summary of current events, without listing in the agenda the specific matters to be summarized, if:
 - The summary is listed on the agenda; and
 - The public body does not propose, discuss, deliberate, or take legal action at that meeting on any matter in the summary not properly noticed for legal action

Current Event Summaries

- Pointers
 - This is a monologue, not a dialogue; no discussion allowed
 - Reports on current events must truly be about current events—no proposals or department reports
 - Reports other than current event summaries must be separately listed agenda items containing information reasonably necessary to inform the public of matters to be discussed or decided

Meeting Minutes

- Must have them
- In writing, or recorded (audio or video)
- Must be available for public inspection within 3 working days after the meeting
- Also required for executive sessions
- Population of more than 2,500
 - Subcommittees and advisory committees must take written minutes or record meetings; and
 - Within 10 working days, post a statement describing any legal action or post any recording of the meeting

Executive Sessions

- Limited exception to the public meeting requirement
- Must vote in open meeting to move into executive session
- The agenda must state the 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
- No voting or informal decision-making in executive session
- Limit executive session to the specific purpose for which it was convened, then return to the public meeting

Executive Sessions

- 9 authorized topics for executive sessions:
 - Personnel (must provide 24 hours' written notice to the employee)
 - Discussion or consideration of confidential records
 - Legal advice (with the public body's own lawyers)
 - Litigation
 - Labor negotiations
 - International, interstate, and tribal negotiations
 - Purchase, sale, or lease of real property
 - School safety operations, plans, or programs
 - Safety and security of the public body's buildings, facilities, and IT

Executive Sessions

- Separate minutes are kept
- Discussion is confidential
 - Confidentiality statement must be read aloud
 - Minutes may be disclosed to designated individuals or entities, *i.e.*, other members of the public body or the Auditor General

Public Participation

- All meetings of any public body must be open to the public, and everyone who wishes to attend must be allowed to listen to the deliberations and proceedings
- Public's Rights
 - Attend meetings
 - Listen to deliberations
 - Record meetings as long as there is no active interference
- Public has no right to speak or disrupt
- Practical Pointer
 - Make a good record of warnings

Open Meeting Law Violations

- Any legal action taken in violation of OML is null and void, unless ratified in accordance with OML
- Penalties
 - \$500/day civil penalty; up to \$2,500 for subsequent violations
 - Equitable relief (e.g., attorneys' fees)
 - Removal from public office
- Sanctions may be imposed upon any person who knowingly aids, agrees to aid, or attempts to aid another person in violating OML
- May not spend public monies for legal counsel

Conflicts of Interest

Conflicts of Interest

- A member of a public body who has, or whose relative has, a substantial interest in any decision of the body must:
 - Disclose the interest on the record
 - Refrain from participating in any manner in the decision, including discussion

Conflicts of Interest

- Members of the public body should:
 - Analyze every matter coming before the public body to determine if they have a conflict of interest
 - Make the determination prior to the meeting
 - Follow the statutory mandates for disclosing the conflict of interest
- If there is **any** question, get the opinion of the public body's attorney; it might help you avoid "reckless" or "negligent" violation of the law
- **Do not** ignore it and think it will go unnoticed

Conflicts of Interest

- Consequences
 - Civil suit to enforce the law
 - Court may award reasonable attorney's fees
 - Class VI felony for intentionally or knowingly violating the law
 - Class I misdemeanor for any reckless or negligent violation of the law
 - Person found guilty may be required to forfeit public office
 - Contracts entered in violation of conflicts of interest laws may be cancelled or voided

Public Records

Public Records

- Generally, public records *must* be produced promptly upon request
 - They are requested through the clerk's office, not directly from staff or from members of the public body
- Each request must be reviewed to determine if the records are exempt from disclosure or in need of redaction

Public Records

- There is no statutory definition of “public records,” but courts have articulated three definitions of what constitutes a public record:
 - A record made by a public officer in pursuance of a duty with the purpose of disseminating information or memorializing official transactions
 - Record required by law or necessary in the discharge of duty
 - Written records of transactions of a public officer in office, which is a convenient and appropriate method of discharging duties (whether required or not)

Public Records

- E-mails, text messages, and other forms of electronic communications of members of a public body are public records if they relate to the member's official duties
- Assume electronic messages are public records, even if they are prepared on a personal computer
 - *See* Attorney General July 7, 2017, Opinion I17-004 (R15-026)
- A document that is wholly personal in nature is not a public record
 - *See Griffis v. Pinal County*, 156 P.3d 418 (Ariz. 2007)