



**CHANDLER**  
arizona  
Community of Innovation



# Boards and Commissions Member Training

Presented By:  
The City Attorney's Office and  
City Clerk's Office

# Open Meeting Law

A.R.S. 38-431 et. seq.



- A.R.S. 38-431.09 - Public's business must be done in public
- Properly noticed meetings
- Posted agenda

- Quorum must be present for a meeting to be held
- 24 hours notice except for an actual emergency



# Public Bodies

All Public Bodies must comply with the Open Meeting Law



## "Public Body" includes:

- City Council
- Boards and commissions of the City
- All corporations and other instrumentalities whose boards of directors are appointed or elected by the City Council (i.e., Municipal Property Corp.)
- All quasi-judicial bodies of the City (i.e. Board of Adjustment)
- Standing, special or advisory committees or subcommittees of the City (i.e. Council subcommittees)

## Public Bodies do not include:

- Staff meetings
- Staff appointed committees that advise staff
- Single department head

# What is a Meeting?

A meeting occurs ANY TIME a quorum of the public body discusses, proposes, or takes legal action.

Can be a traditional meeting or an electronic meeting.



# How Do We Have a Legal Meeting?

Post an agenda in the official posting places and website at least 24 hours in advance.

## Agenda **MUST** include:

- Date, time and place
- Description of matters to be discussed or decided (or where an agenda can be obtained)

## Agenda **MAY** include:

- Unscheduled public appearances
- Report on current events from chair members and staff person in charge





# Unscheduled Public Appearances

- Citizens may only address the public body on issues in its jurisdiction
- No discussion
- Members of the public body may respond to criticism, ask staff to review a matter, or request a future agenda item

# When Can a Public Body Meet in Private?

Executive Sessions - A.R.S. 38-431.03



Employment, discipline or resignation of public officer, appointee or employee



Obtain legal advice



Contract negotiations or litigation



Discussion regarding security and critical infrastructure



Negotiations for purchase, sale or lease of real property



Discuss records exempt by law from public inspection



Employee organization negotiations

# Executive Sessions

- Minutes must be kept but are confidential from inspection (except in the case of an investigation)
- No legal action may be taken in executive session
- May instruct attorneys regarding contracts, litigation, and settlement discussions
- May instruct representatives regarding purchase of real property
- May instruct representatives regarding negotiations with employee organizations





# Can we discuss matters not on the agenda?



- A. No
- B. Seriously, No
- C. Not if we do not want trouble
- D. Maybe, if it is an actual emergency
- E. All the above

# Minutes

The official record of meetings.

Draft minutes must be available within 3 working days and must include:



# Open Meeting Pitfalls

Serial meeting—a series of gatherings of less than a quorum

Forwarding or reply all to emails

Social Media and A.R.S. § 38-431.09

Attending other meetings

Not providing sufficient detail on an agenda

Discuss and/or take action on items not listed on agenda

# Serial Meetings or Splintering the Quorum

It is not necessary for a public body to communicate simultaneously in order for a meeting to occur. A series of gatherings of less than a quorum MAY constitute a meeting if City business is discussed.

This means that if a councilmember talks to two other councilmembers about City business and then one of those councilmembers talks to another councilmember about the same thing, a meeting has taken place but no notice or agenda so OML violation.

Under A.R.S. § 38-431.09, you may express your opinion or discuss an issue with the public personally, through the media, or through technological means, IF...

**1** The opinion or discussion is not principally directed at or directly given to another member of the public body

**2** There is no concerted plan to engage in collective deliberation to take legal action

# Emails

When you use e-mails to discuss City business, care must be taken not to violate the Open Meeting Law as e-mails can easily create a meeting inadvertently by:

- An e-mail to a quorum of the public body proposing legal action
- An e-mail exchange of facts and/or opinions if it is foreseeable that the topic may come before the public body for action
- Forwarding or responding to e-mails involving a majority of the council — be careful of chain e-mails
- **REMEMBER DO NOT REPLY ALL!**





## Social Media and Social Events

Members of public bodies should not post or comment on each other's website or municipal websites where those comments could be interpreted as proposing legal action or discussion or deliberation/decisions on City issues. These types of postings would violate the Open Meeting Law because they would be "meetings".

It is NOT a violation of the Open Meeting Law when there is a gathering of a quorum of the public body, i.e., a wedding, but DO NOT talk about City business.

# What Happens if We Violate the Open Meeting Law?

A.R.S. 38.431.07



- Actions taken are null and void
- The Attorney General may investigate
- A public official may be removed from office
- \$500/day civil penalty
- Costs for enforcement may be assessed
- Public monies can not be used for legal counsel



# Conflict of Interest



# How Do You Know if You Have a Conflict of Interest?

Pecuniary Interest—will you gain or lose something of value from your decision?

If so, is your pecuniary interest remote or substantial?

If it is substantial, then you have a conflict!



# How Do You Know if You Have a Conflict of Interest?

Common Remote Interests A.R.S. 38-502(10)

- The interest of a non-salaried officer of a non-profit corporation
- The interest of an attorney of a contracting party
- The ownership of less than three percent of the shares of a corporation for profit
- The interest of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty
- The interest of a recipient of public services generally provided by the City
- The interest of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of the trade, business, occupation or profession or class of persons

# What To Do if You Have a Conflict of Interest?



Fill out a disclosure form



No discussion or action



Make conflict known



Avoid any appearance of influence

# Conflict of Interest Law Violations

A.R.S. 38-510

- Civil suit may be filed
- Court may award attorney's fees
- Class VI Felony—intentional or knowingly
- Class I Misdemeanor—reckless or negligent
- Forfeiture of office
- Cancellation of contract – A.R.S. §38-511





# Public Records

## What is a Record?

- Evidence of the organization and all of its decisions, procedures, functions, and operations
- Made or received by any governmental agency
- Informational or historical data
- Any medium or format

## What is not a Record?

- Library or museum material solely for reference or exhibition
- Extra copies for convenience or reference
- Stocks of publications for sale or distribution

# Who Has to Comply with Public Records Laws?

City Council

Boards and Commissions,  
including Subcommittees

Employees of Public  
Officers and Public Bodies



# Boards and Commissions Records

## Member Records

- Applications to Serve
- Oaths of Office
- Policy Acknowledgements

## Meeting Records

- Agendas
- Supporting Documentation for Items
- Minutes
- Meeting Audio/Video Recordings
- Speaker and Comment Cards





# Email is a Public Record

It is important to understand that electronic communications are public record and may be provided in response to a public records request or a subpoena.

Records are categorized by their content and not the format or medium in which they are created.





# Meeting Procedures

# Types of Meetings

Regular Meeting

Special Meeting

Study Session

Work Session

Executive Session

Subcommittees

# The Start of the Meeting



## Call to Order

The Chairperson calls the meeting to order.

## Roll Call

The Secretary reads the names of the Boards and Commissions members and determines if quorum is present.

## Pledge of Allegiance

Some Boards and Commissions begin the meeting with the Pledge.

# Scheduled vs. Unscheduled Public Appearances

## Scheduled Public Appearances

These are scheduled appearances by members of the public who wish to address the Board and Commission and the topic is placed on the agenda. These requests should be directed to the Staff Liaison. The Board and Commission members may discuss the topic but cannot take formal action during the meeting.

## Unscheduled Public Appearances

These are members of the public who wish to speak before the Board and Commission about an item not on the agenda. The Board and Commission members may sit in silence, respond to criticism, request the topic be placed on the next agenda, or ask staff to follow up.

# Consent Agenda

All items on the Consent Agenda may be acted upon in one motion and vote. Any Board and Commission member may move any of the Consent Agenda items to the Action Agenda to be considered separately at the meeting. A member may vote no on an item but yes to all other items. The Staff Liaison will record the vote in the minutes.

## Motion

"I move to approve the Consent Agenda of the May 25, 2022, Regular Planning and Zoning Commission Meeting."



# Action Agenda



Items on the Action Agenda are discussed and considered individually with a separate motion and vote. Staff and members of the public may present information for or against an item and discussion is held before a vote is taken.

## Motion

"I move to approve Action Agenda Item 16 of the May 25, 2022, Regular Planning and Zoning Commission Meeting, with stipulation number 8 to add two electric vehicle charging stations. "

# Briefing and Discussion

## Briefing Item

A presentation with little to no discussion.

## Discussion

A presentation that may result in lengthy discussion to provide staff direction regarding the topic.

## Member Comments

Comments or announcements such as upcoming events or items of interest.





# The End of the Meeting



## Calendar

States the next meeting date and upcoming events.

## Informational

Items for informational or administrative purposes with no discussion or action.

## Adjourn

The Chairperson will adjourn the meeting. A motion and vote does not need to be taken unless specifically listed in the rules of procedure or bylaws. A meeting can continue as long as the reconvening time and place is announced before adjournment and additional notice is provided.

# Acting on Agenda Items

- The only required actions to make an item legal are a motion, a second, and a vote.
- Intent must be clear.
- A motion to adopt or approve an item, unless otherwise specified, includes adoption of all proposed findings and execution of all actions recommended in the staff report.
- No more than one amendment to a main motion is permitted and the amendment must be voted on first before the main motion.
- A motion to table is to temporarily bypass the subject

## Other Motions Include:

- To adjourn
- To fix the hour of adjournment
- To lay on the table
- For previous question
- To refer
- To postpone indefinitely
- To divide the question
- To postpone to a certain day

**Questions?**