

*The*  
**ARIZONA**  
**OPEN**  
**Meeting**  
*Law*

FURNISHED BY  
CITY CLERK DEPARTMENT  
AND LAW DEPARTMENT  
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PHOENIX, ARIZONA  
602.256.3186



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**City of Phoenix**

## MESSAGE

This booklet provides information relating to City of Phoenix compliance with the Arizona Open Meeting Law.

Part I contains Open Meeting Law (OML) guidelines for staff and citizens, as well as samples of the OML templates and forms used by the City of Phoenix. Although some of the language has been modified/simplified for ease of reading and to reference City requirements, a majority of the information contained in Part I was obtained directly from Chapter 7 of the Arizona Agency Handbook.

The Arizona Agency Handbook is prepared and updated every ten (10) years by the State Attorney General's Office and contains a detailed explanation of the Open Meeting Law and forms used in complying with the law. For more detailed information on the Arizona Open Meeting Law, the complete Arizona Agency Handbook can be accessed online at the State's website ([http://www.azag.gov/Agency\\_Handbook](http://www.azag.gov/Agency_Handbook)). Chapter 7 pertains to the Arizona Open Meeting Law.

Part II contains a complete reprint of the Arizona Revised Statutes (A.R.S.) § 38-431 et seq. defining the legal requirements of the Arizona Open Meeting Law.

This booklet is provided, in accordance with A.R.S. § 38-431.01(F), to all members of City of Phoenix public bodies prior to the commencement of their terms. I hope this information will help answer any questions you may have about the Arizona Open Meeting Law.

The City Clerk Department has been designated by the City Manager to administer the Open Meeting Law for the City of Phoenix. All meeting notices must be received in the City Clerk Department with sufficient time so notices may be posted on the City's official posting board at least twenty-four (24) hours prior to the meeting. If you have any questions, please call the City Clerk Department at (602) 256-3186. Thank you for your attention in this matter.



Mario Paniagua  
City Clerk

## INTRODUCTION

**T**he abiding premise of the Arizona Open Meeting Law is that the business of the public should be conducted in public. This booklet is intended to help board, commission, and committee members, and City of Phoenix officials conduct their business in a manner that fully complies with the intent and spirit of the law.

A public official's life is not an easy one. Compliance with State laws such as the Open Meeting Law is mandated with stiff penalties for violations. Officials are responsible individually for knowledge of the law's provisions and requirements.

On the positive side, the law also acts as a shield to protect officials who are properly conducting the public's business.

Therefore it is extremely important that this guide is understood and followed by officials of the City and its boards, commissions, and committees as it will help tremendously in our efforts to maintain compliance with the Open Meeting Law.

I hope you will take time to read this booklet and retain it for future reference. If you have questions regarding the application of this law, please feel free to call the Law Department or the City Clerk Department for assistance.

A handwritten signature in black ink, reading "Gary Verburg". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Gary Verburg  
City Attorney

Upon request the City Clerk Department will make this publication available through appropriate auxiliary aids or services to accommodate an individual with a disability by calling (602) 262-4442; faxing a request to (602) 495-5847; or calling TTY number (602) 534-2737.

# OPEN MEETINGS

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# PART I

## GUIDELINES FOR COMPLIANCE WITH THE ARIZONA OPEN MEETING LAW

**Section 1. Scope of the Publication.** This booklet discusses the Arizona Open Meeting Law (OML) with particular emphasis on its application in day-to-day operations at the City of Phoenix. The information contained on the following pages is provided for use by public officials, City staff, and citizens as a quick reference for those experienced with the OML and as a useful training tool for recently appointed board and commission members and staff liaisons who may be new to this process.

Much of this information was obtained from the Arizona Revised Statutes (A.R.S.) and the Arizona Agency Handbook. While much of the language is taken directly from the Arizona Agency Handbook, it has been modified for ease of understanding and for specific procedures related to the City of Phoenix. In the event of conflicting information between these resources, the Arizona Revised Statutes shall always take precedence, with the Arizona Agency Handbook prepared by the Attorney General's Office being the next authority. This publication does not resolve all issues that may arise under the Open Meeting Law, but rather is intended to serve as a reference for public officials who must comply with the law. Anyone faced with a situation not specifically addressed in this booklet should consult their public body legal counsel before proceeding.

### **Section 2. Arizona's Open Meeting Law.**

**Section 2.1. History of Arizona's Open Meeting Law.** All fifty states have enacted some type of legislation providing the public with a statutory right to openness in government. In addition, the United States Congress in 1976 enacted the Federal Open Meeting Act. Arizona's Open Meeting Law was first adopted in 1962 and has been amended several times since.

**Section 2.2. Legislative Intent.** The State Legislature has repeatedly expressed its intent that the Open Meeting Law be construed to maximize public access to the governmental process. In first enacting the Open Meeting Law in 1962, the Legislature declared that:

It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly.

In 1978, after a series of court opinions narrowly construing the Open Meeting Law, the Legislature reiterated its policy by adding A.R.S. § 38-431.09. That statute now provides:

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such

meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings.

In keeping with this expressed intent, any uncertainty under the Open Meeting Law should be resolved in favor of openness in government. Any question of whether the Open Meeting Law applies to a certain public body likewise should be resolved in favor of applying the law.

### **Section 3. Government Bodies Covered by the Open Meeting Law.**

**Section 3.1. Generally.** The provisions of the Open Meeting Law apply to all public bodies. A public body is defined in A.R.S. § 38-431(6) as follows:

“Public body” means the legislature, all boards and commissions of this 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.

This definition specifically includes public bodies of all “political subdivisions”. A political subdivision includes “all counties, cities and towns, school districts and special districts”.

The definition of public body encompasses five basic categories:

- 1) boards, commissions, committees, and other multi-member governing bodies;
- 2) quasi-governmental corporations;
- 3) quasi-judicial bodies;
- 4) advisory committees; and
- 5) standing and special committees and subcommittees of any of the above.

**Section 3.2. Boards and Commissions.** All boards and commissions and other multi-member governing bodies of the state or its political subdivisions are covered by the Open Meeting Law. The Open Meeting Law applies only to multi-member bodies and does not apply to the deliberations and meetings conducted by the single head of an agency. For example, the director of a department is not subject to the Open Meeting Law when meeting with staff members to discuss the operations of the department.  
*A.R.S. § 38-431(6)*

**Section 3.3. Quasi-Governmental Corporations.** The boards of directors of corporations and instrumentalities of the state or its political subdivisions are subject to the Open Meeting Law when the members of the board are appointed or elected by the state or its political subdivisions. For example, the Board of Directors of the Phoenix Civic Improvement Corporation falls into this category. The Open Meeting Law does not apply, however, to a *private* non-profit hospital association that has a board of directors elected by the body of voters of the hospital district. *A.R.S. § 38-431(5), (6)*

**Section 3.4. Quasi-Judicial Bodies.** The Open Meeting Law defines a quasi-judicial body as “a public body, 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”. Contested case proceedings or quasi-judicial or adjudicatory proceedings conducted by public bodies are subject to all of the requirements of the Open Meeting Law. *A.R.S. § 38-431(7)*

**Section 3.5. Advisory Committees.** Advisory committees are subject to all of the requirements of the Open Meeting Law. An advisory committee is defined as any group, officially established by a public body or by the presiding officer of the public body, whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or a course of conduct to be taken by the public body. A staff committee consisting exclusively of employees of the public body is not an advisory committee. *A.R.S. § 38-431.01(A), (B)*

**Section 3.6. Special and Standing Committees and Subcommittees.** Special and standing committees and subcommittees of, or appointed by, any of the public bodies described above are also covered by the Open Meeting Law. A special or standing committee may consist of members of the public body who have been appointed by or authorized to act for the public body. The fact that a committee consists, in whole or in part, of persons who are not members of the public body does not affect its status as a public body subject to the Open Meeting Law. For example, a Village Planning Committee of the City may create a subcommittee and appoint two members of the Committee (to serve as a chair and vice chair) and five members of the general public. This subcommittee would be subject to the Open Meeting Law, even though some of its members were not part of the originally appointed public body. *A.R.S. § 38-431.01(A), (B) and Atty. Gen. Op. 180-202*

**Section 4. Government Bodies and Proceedings Not Covered by the Open Meeting Law.** The Legislature has determined that certain public bodies need not comply with all or portions of the Open Meeting Law in particular circumstances. This section identifies some of those limited exceptions.

**Section 4.1. Judicial Appointment Commissions.** The Commissions on Appellate and Trial Court Appointments and the Commission on Judicial Qualifications are expressly exempt from the Open Meeting Law. *A.R.S. § 38-431.08(A)(3)*

**Section 4.2. Proceedings Before Courts.** The Open Meeting Law does not apply to judicial proceedings of courts within the judicial branch of government. *A.R.S. §38-431.08(A)(1)*

**Section 4.3. The Legislature.** Meetings of legislative conference committees must be open to the public; however, the committees are exempted from all other requirements of the Open Meeting Law. The Open Meeting Law does not apply to the activities of a political caucus of the Legislature. The Open Meeting Law permits either house of the Legislature to adopt a rule or procedure exempting itself from the notice and agenda requirements of the Open Meeting Law or to allow standing or conference committees to meet through technological devices rather than in person. *A.R.S. § 38-431.08(A)(2) and § 38-431.08(D)*

**Section 4.4. Student Disciplinary Proceedings.** Actions concerning the “discipline, suspension or expulsion of a pupil” are not subject to the Open Meeting Law. The state statute, A.R.S. § 15-843, however, prescribes the procedures that the school board must follow in handling these matters.

**Section 4.5. Insurance Guaranty Fund Boards.** Special meetings of the property and casualty insurance guaranty fund in which the financial condition of any member insurer is discussed are exempt from the Open Meeting Law. *A.R.S. § 20-671*

**Section 4.6. Hearings Held in Prison Facilities.** Hearings held by the Board of Pardons and Paroles in a prison facility are subject to the Open Meeting Law, but the Director of the State Department of Corrections may prohibit certain individuals from attending such hearings because they pose a serious threat to the safety and security of others or the prison. Other conditions on attendance, such as signing an attendance log and submitting to a reasonable search, may be imposed as well. *A.R.S. § 38-431.08(B)*

**Section 4.7. Board of Fingerprinting.** Good cause exception hearings conducted by the Board of Fingerprinting pursuant to A.R.S. § 41-619.55 are exempt from the Open Meeting Law. *A.R.S. § 38-431.08(A)(4)*

**Section 4.8. Homeowners Associations.** Because they are not governmental “public bodies,” homeowners associations are not covered by the Open Meeting Law. They do, however, have to comply with separate notification requirements which must be enforced privately because the Attorney General and County Attorneys have no jurisdiction over such matters. For more information on the requirements of homeowners associations, see A.R.S. § 33-1801 et seq.

**Section 5. The Actions and Activities Covered by the Open Meeting Law.**

**Section 5.1. Generally.** All meetings of a public body shall be open to the public, and all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

A meeting is defined as “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”. This definition 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.

All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may “foreseeably” require final action or a final decision by the governing body, constitute “legal action” and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law.

The safest course of action is to comply with the Open Meeting Law whenever a majority of the body discusses the business of the public body. It may be called a “work” or “study” session, or discussion may occur at a social function. It does not matter what label is placed on a gathering, discussion of the public body’s business may take place only in a public meeting or an executive session in accordance with the requirements of the Open Meeting Law. *A.R.S. § 38-431.01(A)*

**Section 5.2. Circumvention of the Open Meeting Law.** Discussions and deliberations between less than a majority of the members of a governing body, or other devices used to circumvent the purposes of the Open Meeting Law violate that law.

Public officials may not evade public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that currently is or could potentially be presented to the public body for a decision.

A member of a public body may individually express an opinion or discuss an issue with the public, through public broadcast or at a venue other than a public meeting. The member will not be considered in violation of the Open Meeting Law if the opinion is not directed at another public official and if there is no concerted plan to engage in collective deliberation or take legal action.

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 actions that may appear to remove discussions and decisions from public view. *Atty. Gen. Op. 75-8*

**Section 5.3. Applicability to Staff Members and Others.** The Open Meeting Law further provides that members of public bodies shall not knowingly direct any staff member to communicate in violation of the Open Meeting Law. People knowingly aiding, agreeing to aid, or attempting to aid another person in violating the Open

Meeting Law can be held liable for civil penalties, attorneys' fees, and costs pursuant to the Arizona Revised Statutes. *A.R.S. § 38-431.01(H) and A.R.S. § 38-431.07(A)*

**Section 6. Notice of Meetings.**

**Section 6.1. Generally.** The Open Meeting Law requires at least twenty-four (24) hours advance notice of all meetings to the public body and the general public. Notice makes it possible for the public to attend meetings by informing them of when and where to go, and of the matters under consideration. So informed, the public can enjoy meaningful participation. Arizona courts have emphasized the importance of sufficient notice of meetings. *A.R.S. § 38-431.01(A) and A.R.S. § 38-431.09*

**Section 6.2. Notice to Members of the Public Body.** Notice of all meetings, including executive sessions, must be given to the members of the public body. Generally, this requirement is met by mailing, hand-delivering, or transmitting via electronic mail a copy of the notice and agenda to each member of the public body. *A.R.S. § 38-431.02(C)*

**Section 6.3. Notice to the Public.** Notice of all meetings, including executive sessions, must be given to the public. *A.R.S. § 38-431.02*. Giving public notice is a two step process.

**Section 6.3.1. Disclosure Statement.** The first step is the filing by the public body of a disclosure statement identifying where public notices of all meetings will be posted. Public bodies of the state must file this statement with the Secretary of State. Public bodies of counties, school districts, and other special districts must file this statement with the Clerk of the Board of Supervisors. Public bodies of cities and towns must file the statement with the City Clerk or Mayor's office. A copy of the disclosure statement identifying the official posting site for all City of Phoenix public bodies, as filed with the City Clerk Department, is included in the sample forms section of this booklet.

State law requires the location identified must be a place to which the public has reasonable access. The location should have normal business hours, not be geographically isolated, not have limited access, and not be too difficult to find. The Official Posting Board for the City of Phoenix is located on the ground floor of Phoenix City Hall and can be viewed by the public with unlimited access through glass windows located on the west side of the building. *A.R.S. § 38-431.02(A)(3)*

**Section 6.3.2. Public Notice of Meetings.** Once the disclosure statement has been filed, the public body must give notice of each of its meetings by posting a copy of the notice in the public place identified in the disclosure statement and by giving "such additional public notice as is reasonable and practicable as to all meetings". Various public bodies fulfill this obligation to provide "additional notice" by providing news releases to the news media concerning proposed meetings, mailing notices to those asking to be informed of meetings, including the date and time of such meetings in their newsletters and other publications and providing information on the Internet or on public access television. The Open Meeting Law further requires the public bodies of cities and towns with an internet web site must post all public notices of their meetings on their

web site. It is noted, however, that a technological problem or failure that prevents such posting of public notices does not preclude the holding of the meeting if all other public notice requirements are met. *A.R.S. § 38-431.02(A)*

In addition to complying with the requirements of the Open Meeting Law, the notice should conform to the provisions of the Americans with Disabilities Act. Public bodies should include a statement, such as the following, in any notice it issues: "Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name of designated agency contact person] at [telephone number and TTY telephone number]. Requests should be made as early as possible to allow time to arrange the accommodation."

**Section 6.4. Contents of the Notice.** The notice must include information identifying the public body and the date, time, and place of the meeting. See the City of Phoenix sample templates included in this booklet. In identifying the place of the meeting, the notice should specify the street address of the building and the room number or other information identifying the specific room in which the meeting will be held. The notices of public meetings and notices of executive sessions must contain an agenda of the matters to be considered by the public body at the meeting or information on how the public may obtain a copy of such an agenda. *A.R.S. § 38-431.02(G)*

**Section 6.5. Time for Giving Notice.** As a general rule, a meeting may not be held without giving the required notice at least twenty-four (24) hours before the meeting. The best practice is for public bodies to give as much notice as possible. *A.R.S. § 38-431.02(C)*

There are three exceptions to the twenty-four (24) hour notice requirement:

1. In the case of an "actual emergency," the meeting may be held upon such shorter notice as is "appropriate under the circumstances." An actual emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequence that would result from waiting until the required notice could be given. The existence of an actual emergency does not dispense with the need to give twenty-four hours' written notice to an employee to be discussed in executive session. *A.R.S. § 38-431.03(A)(1)*
2. Notice of a meeting at which the public body is to consider the ratification of a prior act taken in violation of the Open Meeting Law must be given seventy-two (72) hours in advance of the meeting. *A.R.S. § 38-431.05(B)(4)*
3. Less than twenty-four hours' notice may be given when a properly noticed meeting is recessed to a later date. A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given, and if, before 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. *A.R.S. § 38-431.02(E)*

**Section 6.6. Notice of Regular Meetings.** A public body that intends to meet for a specified calendar period on a regular day or date during the calendar period, and at a regular place and time, may post public notice of such meetings at the beginning of such period and need not post additional notices for each meeting. The notice must specify the period for which the notice is applicable. However, this method of posting will not satisfy agenda requirements unless the notice also contains a clear statement that the agenda for any such meeting 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. *A.R.S. § 38-431.02(F) and (G).*

**Section 6.7. Notice of Executive Sessions.** When an executive session is to be held, the notice must state the specific provision of law authorizing the executive session. This provision requires that the notice specify the numbered paragraph of subsection (A) of A.R.S. § 38-431.03 that authorizes the executive session. A general citation to the A.R.S. or subsection (A) is insufficient. For example, a public body intending to meet in executive session for purposes of discussing the purchase or lease of real property must cite in its notice "A.R.S. § 38-431.03(A)(7)." In addition, an agenda is required for an executive session.

In the case of an executive session concerning personnel matters, the public body must give written notice to the affected officer, appointee, or employee in addition to the public notice described above. Such written notice must be provided not less than twenty-four (24) hours before the scheduled meeting. *A.R.S. § 38-431.03(A)(1)*

Many public bodies do not know whether they will have any legal questions on matters on the agenda until the discussion occurs. The Attorney General has opined that public bodies may provide with their notices and agendas a statement that matters on the public meeting agenda may be discussed in executive session for the purpose of obtaining legal advice thereon. An example of such a statement is "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3)." Similar statements are not sufficient for other types of executive sessions. Section 7 provides further discussion regarding Executive Sessions.

**Section 6.8. Combined Notice of Public Meeting and Executive Session.** In many cases the public body may want to have the option to retire into executive session during the course of a public meeting. Although separate notices of the public meeting and executive session may be given, the public body may choose to combine the notice of the public meeting and possible executive session in one document. A sample of this type of notice and agenda is included in this booklet for reference.

**Section 6.9. Maintaining Records of Notice Given.** Each public body should keep a record of its notices, including a copy of each notice that was posted and information regarding the date, time, and place of posting. All meeting notices and agendas for the City of Phoenix are retained by the City Clerk Department in accordance with the City's State-approved retention schedule for a period of three years. The City Clerk Department additionally maintains a log indicating the date and time of each posting.

## **Section 7. Agendas.**

**Section 7.1. Generally.** In addition to notice of the time, date, and place of the meeting, the public body must provide an agenda of the matters to be discussed, considered, or decided at the meeting. Although this Section provides guidelines for the preparation of agendas, it does not answer every question that will arise. Specific questions/issues should be discussed with the public body's legal counsel. A public body should not have problems if it follows the Legislature's declaration of policy that agendas "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided". If there is a doubt, all questions should be resolved in favor of greater disclosure of information. *A.R.S. § 38-431.09*

**Section 7.2. Contents of the Agenda - Public Meeting.** The agenda for a public meeting must contain a listing of the "specific matters to be discussed, considered or decided at the meeting". This requirement does not permit the use of generic agenda items such as "new business" or "other matters" unless the specific matters or items to be discussed are separately identified. The degree of specificity of the agenda depends on the circumstances. For example, if an environmental board is going to consider the approval of pesticides for application within 1/4 mile of a school, a listing such as "Approval of pesticides for application within 1/4 mile of a school" is sufficient. However, if the board is going to consider removing a pesticide from the approved list, the agency should specify the pesticide being considered for removal. *A.R.S. § 38-431.02(H)*

If it is likely that the public body will find it necessary to discuss any particular agenda item in executive session with the public body's attorney, this should be plainly indicated on the agenda. *A.R.S. § 38-431.03(A)(3)*

**Section 7.3. Contents of the Agenda - Executive Session.** The agenda for an executive session must contain a "general description of the matters to be considered" and the description must amount to more than just a recital of the statutory provisions authorizing the session. However, the description should not contain any information that "would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege".

In preparing executive session agenda items, the public body must weigh the legislative policy favoring public disclosure and the legitimate confidentiality concerns underlying the executive session provision. For example, if a board desires to consider the possible dismissal of its executive director, the board may list on the agenda "Personnel matter — consideration of continued employment of the board's executive director." However, when the public disclosure of the board's consideration of charges against an employee might needlessly harm the employee's reputation or compromise privacy interests, the board may eliminate from the agenda description the identity of the employee being considered. If it is already publicly known that the board is considering charges against

the employee, disclosure of the employee's identity in the agenda would not defeat the purpose of the executive session. *A.R.S. § 38-431.02(I)*

**Section 7.4. Distribution of the Agenda.** The agenda may be made available to the public by including it as part of the public notice or by stating in the public notice how the public may obtain a copy of the agenda and then distributing the agenda in the manner prescribed. Because both the public notice and the agenda must be available at least twenty-four (24) hours in advance of a meeting, the simplest procedure is to include the agenda with the public notice. The City of Phoenix Notice and Agenda Templates are included in this booklet for reference. However, when a public notice is issued well in advance of a meeting, as in the case of regularly scheduled meetings, it may be more appropriate to state how the public may obtain a copy of the agenda and distribute it accordingly. *A.R.S. § 38-431.02(G)*

**Section 7.5. Consent Agendas.** Public bodies may use "consent agendas" so long as certain requirements are met. Consent agendas are typically used as a time-saving device when there are certain items on the agenda which are unlikely to generate controversy and are administrative in nature. An example would be approval of minutes. Public bodies often take one vote to approve or disapprove the consent agenda as a whole. When using a consent agenda format for some of the items on a meeting agenda, public bodies should fully describe the matters on the agenda and inform the public where more information can be obtained. A good practice is to require that an item be removed from the consent agenda upon the request of any public body member.

However, public bodies must be cautious when using consent agendas. The Arizona Supreme Court has held that taking legal action, including that taken after an executive session, must be preceded by a disclosure of "that amount of information sufficient to apprise the public in attendance of the basic subject matter of the action so that the public may scrutinize the action taken during the meeting . . . ." The court also specifically condemned the practice of voting on matters designated only by number, thereby effectively hiding actions from public examination.

**Section 7.6. Discussing and Deciding Matters Not Listed on the Agenda.** The public body may discuss, consider, or decide only those matters listed on the agenda and "other matters related thereto". The "other matters" clause provides some flexibility to a public body but should be used cautiously. The "other matters" must, in some reasonable manner, be "related" to an item specifically listed on the agenda. *A.R.S. § 38-431.02(H)*

If a matter not specifically listed on the agenda is brought up during a meeting, the better practice, and the one that will minimize subsequent litigation, is to defer discussion and decision on the matter until a later meeting so that the item can be "specifically" listed on the agenda.

**Section 7.7. Calls to the Public.** In 2000, the Legislature clarified the limitations on open calls to the public during public meetings and provided that a public body may make an open call to allow individuals to address an issue within the jurisdiction of the public body. Members of the public body may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. Public body members may, however, respond to criticism made by those who have addressed the public body, ask staff to review a matter, or ask that a matter be put on a future agenda. *A.R.S. § 38-431.01(G)*

The best practice is to include language similar to the following on the agenda to explain in advance the reason members of the public body cannot respond to topics brought up:

“Call to the Public: This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.”

**Section 7.8. Current Event Summaries.** The Open Meeting Law allows the 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:

1. The agenda includes an item indicating a summary will occur; and
2. The public body does not propose, discuss, deliberate, or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

Public bodies should limit the use of this provision to appropriate situations and should strive to provide as much advance information as possible to the public. *A.R.S. § 38-431.02(K)*

**Section 7.9. Emergencies.** A public body may discuss, consider, and decide a matter not on the agenda when an actual emergency exists requiring that the body dispense with the advance notice and agenda requirements. See Section 6.5 for a discussion of what constitutes an actual emergency. *A.R.S. § 38-431.02(D)*

To use the emergency exception, the public body must do several things:

1. The public body must provide “such notice as is appropriate to the circumstances” and must “post a notice within twenty-four (24) hours declaring that an emergency session has been held” which sets forth the same information as is required in an agenda for a regular meeting.
2. Prior to the emergency discussion, consideration, or decision, the public body must

announce in a public meeting the reasons necessitating the emergency action. If the emergency discussion or consideration is to take place in an executive session, this public announcement must occur at a public meeting prior to the executive session. *A.R.S. § 38-431.02(I)*

3. The public body must place in the minutes of the meeting a statement explaining the emergency. In the case of an executive session, this statement will appear twice, once in the minutes of the public meeting where the reasons were publicly announced, and again in the minutes of the executive session where the emergency discussion or consideration took place.

**Section 7.10. Changes to the Agenda.** If a public body finds it necessary to change an agenda by modifying the listed matters or adding new ones, a new agenda must be prepared and distributed in the same manner as the original agenda, at least twenty-four (24) hours in advance of the meeting. *Atty. Gen. Op. 179-45*

City of Phoenix policy further requires the new agenda be submitted with the word “\*Revised” clearly noted in the subject line. An asterisk (\*) should also be placed next to portion of the agenda which changed. When the revised agenda is posted (within the 24-hour required time frame), the asterisk (\*) will clearly identify where the revision occurred for any members of the public who may have already reviewed the original notice and agenda.

**Section 8. Minutes.** Minutes must be taken of all public meetings, including all subcommittee meetings and executive sessions. *A.R.S. § 38-431.01(B)*

**Section 8.1. Form of and Access to the Minutes.** Minutes may be taken in writing or may be audio recorded and the minutes of a public meeting must be available for public inspection within three working days after the meeting (*A.R.S. § 38-431.01(D)*). Public bodies concerned about distributing minutes before they have been officially approved at a subsequent meeting should mark the minutes “draft” or “unapproved” and make them available within the deadline. In no event should minutes be withheld from the public pending approval.

In 2007, the legislature amended the Open Meeting Law further by requiring that the minutes of all full City Council meetings must be posted to the City's website within two working days of approval by the public body.

Minutes must be reduced to a form that is readily accessible to the public. If the minutes have been audio recorded, allowing the public to have access to that recording is sufficient. However, if the minutes were taken in shorthand, those minutes must be typed or written out in longhand in order to comply with this requirement.

The minutes of an executive session are confidential and may not be disclosed to anyone

except certain authorized persons. To ensure confidentiality, minutes of executive sessions should be stored separately from regular session minutes to avoid inadvertent disclosure. *A.R.S. § 38-431.03(B)*

**Section 8.2. Contents of the Minutes of Public Meetings.** The minutes of a public meeting must contain the following information: *A.R.S. § 38-431.01(B)*

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. Minutes must contain information regarding matters considered or discussed at the meeting even if 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 persons who proposed each motion. This does not require that the name of each person who votes on a motion be indicated, only that the member who proposed the action and the results of the vote be shown in the minutes. Generally, minutes should include the names of the members who made and seconded the motion and those who voted in favor of or against the motion as this will clearly indicate the will of the public body and the presence of a quorum at the time of the vote. It is recommended for the minutes to reflect how the body voted with a numerical breakdown of the vote (i.e., Motion carried, 3-1 with Member Smith voting in opposition).
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 should contain sufficient information to permit the public to investigate further the background or specific facts of the decision.
7. If matters not on the agenda were discussed or decided at a meeting because of an actual emergency, the minutes must contain a full description of the nature of the emergency.
8. If a prior act was ratified, the minutes must contain a copy of the disclosure statement required for ratification.

**Section 8.3. Contents of the Minutes of Executive Sessions.** The minutes of executive sessions must contain the following information: *A.R.S. § 38-431.01(C)*

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 considered.
4. An accurate description of all instructions given to attorneys or designated representatives pursuant to A.R.S. § 38-431.03(A)(4), (5), and (7).
5. A statement of the reasons for emergency consideration of any matters not on the agenda.
6. Such other information as the public body deems appropriate. For example, the public body might record in its minutes that those present were advised that the information discussed in the session and the session minutes are confidential.

Arizona courts have held that once a complaint is made alleging facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation, the burden of proof immediately shifts to the public body. For example, an allegation may be made that an item should have been discussed in an open meeting rather than executive session. Hence, the best practice is for public bodies to keep detailed minutes of executive sessions in order to ensure they are prepared to meet their burden of proof in the event of a lawsuit.

**Section 8.4. Confidentiality of Executive Session Minutes.** The minutes of an executive session and all discussions that take place at an executive session are confidential and may not be disclosed to anyone, except the following people: *A.R.S. § 38-431.03(B)*

1. Any member of the public body, whether or not present at the session.
2. Any officer, appointee, or employee who was the subject of discussion at an executive session may see those portions of the minutes directly pertaining to them.
3. Staff personnel, to the extent necessary for them to prepare and maintain the minutes of the executive session.
4. The attorney for the public body, to the extent necessary for the attorney to represent the public body.
5. The Auditor General in connection with the lawful performance of its duty to audit the finances or performance of the public body.

6. The Attorney General or County Attorney when investigating alleged violations of the Open Meeting Law.

7. The court, for purposes of a confidential inspection.

The Open Meeting Law requires that a public body advise all persons attending an executive session or obtaining access to executive session minutes or information that such minutes and information are confidential. Public bodies should maintain executive session minutes in a secure file separate from the public meeting minutes to guard against accidental disclosure.

**Section 9. Executive Sessions.** A.R.S. § 38-431.03 contains an exception to the general requirement of the Open Meeting Law that all meetings must be open to the public. That Section provides seven (7) specific instances in which a public body may discuss matters in an executive session. An executive session is defined as “a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03]”. An executive session may be convened solely for the purpose of discussing matters and, in limited instances, giving instructions to attorneys and designated representatives. No legal action may be taken in the executive session.

Arizona courts have strictly construed the seven authorized executive session topics because their legislative charge is to “promote openness in government, not to expand exceptions which could be used to obviate the rule”. Thus, unless the proposed discussion plainly falls within one of the Open Meeting Law executive session topics or is specifically authorized by the public body’s enabling legislation, discussion should take place only in a public meeting.

**Section 9.1. Deciding to Go Into Executive Session.** Before a public body may go into executive session, a quorum must vote in a public meeting to hold the executive session. Generally, the vote will be taken immediately before going into executive session. However, in some cases an agency may know that at a future date it will need to meet in executive session, in which case it can then vote at the public meeting to meet on the later date in executive session. On that future date, the agency does not have to first meet again in a public session. *A.R.S. § 38-431.03(A)*

**Section 9.2. Executive Session Requirements.** Once the majority of members of a public body has voted to hold an executive session, the chairman of the public body should ask the public to leave and remove all materials, such as briefcases and backpacks, to ensure that no recording devices have been left in the room. All persons must leave the meeting except the members of the public body and those individuals whose presence is reasonably necessary for the public body to carry out its executive session responsibilities. The chairman should remind all present that the business conducted in executive sessions is confidential pursuant to State law. *A.R.S. § 38-431.03(C)*

**Section 9.3. Authorized Executive Sessions.** The Open Meeting Law permits only seven (7) categories of topics to be discussed in executive session. These seven (7) categories are discussed in Sections 9.4 - 9.10. Because courts are likely to strictly construe these provisions, unless the proposed discussion plainly falls within an executive session category it should take place only in a public meeting. Finally, the Open Meeting Law does not require that these discussions take place in executive session. If public disclosure of the public body's discussion is not prohibited by any other statutory provision and government interests are not threatened, a public body may choose to conduct its discussions in a public setting. *A.R.S. § 38-431.03(A)*

**Section 9.4. Personnel Matters.** The discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, discipline, resignation, or dismissal of a public officer, appointee, or employee of a public body may take place in an executive session. This authorization for an executive session applies only to discussions concerning specific officers, appointees, and employees. This provision permits discussion in executive session of applicants for employment or appointment even though the applicants may not be currently employed by the public body. *A.R.S. § 38-431.03(A)(1)*

If requested by the affected officer, appointee, or employee, these discussions must be conducted in a public meeting and not in an executive session. Accordingly, the Open Meeting Law requires that an officer, appointee, or employee who is the subject of the discussion in executive session must be given advance written notice of the proposed executive session. The notice must describe the matters to be considered by the public body in a manner sufficient to enable the employee to make the initial decision whether to have the matters discussed in a public meeting. In addition, the written notice must be given sufficiently in advance of the proposed meeting, and not less than twenty-four (24) hours prior to the meeting, to enable the employee to make the foregoing determination and to prepare an appropriate request for a public meeting. There is no emergency exception to the requirement that an affected officer, appointee, or employee receive at least twenty-four (24) hours' notice. However, the public body can discuss personnel matters in a public meeting with less than twenty-four (24) hours' notice if an actual emergency exists.

Although the public body may permit the public officer, appointee, or employee being discussed to attend the executive session, the Open Meeting Law is unclear whether the individual has the right to attend. Whether attending or not, the public body must make the minutes of the executive session available to the individual who was the subject of discussion.

A public body may consider several persons for possible appointment to a position or consider several employees for possible disciplinary action. In such cases, the public body may consider the matter in executive session provided all those being considered are given the required notice. If some, but not all of those given notice request a public meeting, the public body has two options: the public body may limit the public

discussion to those persons filing the request and discuss the remaining persons in an executive session; or, because the Open Meeting Law does not require the public body to discuss personnel matters in executive session, the public body may discuss the entire matter in a public meeting.

Public bodies should take care to ensure that the scope of executive sessions for personnel discussions is limited to true personnel matters. The Attorney General has opined that public bodies are prohibited from conducting lengthy information gathering meetings in executive sessions that explore the operation of public programs under the guise of conducting a personnel evaluation. Only the actual evaluation (discussion or consideration of the performance of the employee) may take place in an executive session. A public body that wishes to discuss or consider an employee's evaluation in executive session, pursuant to A.R.S. § 38-431.03(A)(1), should adopt a two-step process that would permit the public body to gather information about public programs at a public meeting, while allowing the public body to enter into executive session to discuss or consider the actual evaluation.

**Section 9.5. Confidential Records.** An executive session may be held when the public body is considering or discussing "records exempt by law from public inspection". This specifically includes situations in which the public body is receiving and discussing "information or testimony that is specifically required to be maintained as confidential by state or federal law". However, when confidential matters can be adequately safeguarded, the discussion may take place during a public meeting. The record being considered need not be expressly made confidential by statute, but rather may fall within the category of confidential records discussed in Chapter 6 of the Arizona Agency Handbook. For example, to preserve confidentiality, preliminary audit reports of state agencies prepared by the Auditor General are confidential and should be discussed by the public body in executive session. Similarly, complaints against licensees that are investigated by a public body may be discussed in executive session. *A.R.S. § 38-431.03(A)(2)*

**Section 9.6. Legal Advice.** A public body may go into executive session for the purposes of "discussion or consultation for legal advice with the attorney or attorneys of the public body". For this exemption to apply, the attorney giving the legal advice must be the attorney for the public body. For purposes of this discussion, the "attorney for the public body" means a licensed attorney representing the public body, whether that attorney is a full-time employee of the body, the attorney general or county, city, or town attorney responsible for representing the public body, an attorney hired on contract, or an attorney provided by an insurance carrier to represent the public body. *A.R.S. § 38-431.03(A)(3)*

This provision authorizes consultations between a public body and its attorney. Accordingly, the only persons allowed to attend this executive session are the members of the public body, the public body's attorney, and those employees and agents of both whose presence is necessary to obtain the legal advice. The mere presence of an

attorney of the public body in the meeting room is not sufficient to justify the use of this executive session provision. This provision can only be used for the purpose of obtaining “legal advice”, which involves the exchange of communications between lawyer and client. Once the legal advice has been obtained, the public body must go back into public session unless some other executive session provision applies and has been identified in the notice. Discussion between the members of the public body about what action should be taken is beyond the realm of legal advice, and such discussions must be held in public session.

**Section 9.7. Litigation, Contract Negotiations, and Settlement Discussions.** A public body may hold an executive session for the purpose of “discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body’s position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation”. This provision allows consideration and instruction only - it does not allow a public body to conduct contract negotiations or settlement discussions in an executive session. *A.R.S. § 38-431.03(A)(4)*

This provision allows a public body to give its attorneys instructions on how they should proceed in contract negotiations, pending or contemplated litigation involving the public body, and settlement discussions. For example, the public body might authorize its attorney to settle a lawsuit on the most favorable terms possible up to a certain amount. Of course, if the attorney were to obtain an agreed settlement, the public body must formally approve it at a public meeting.

This provision is unique in that it permits public bodies to “instruct” their attorneys. In these limited situations, the public body must be able to discuss and arrive at some consensus on its position before it instructs its legal counsel. Executive session minutes must contain an accurate description of all instructions given. *A.R.S. § 38-431.01(C)*

**Section 9.8. Employee Salary Discussions.** A public body may hold an executive session for the purpose of “discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body”. This provision permits a public body, in executive session, to consult and discuss with its representatives its position on negotiating salaries or compensation paid in the form of fringe benefits and instruct representatives on how they should deal with the employee organizations. It does not authorize an executive session for purposes of meeting with the employees’ representative. The actual negotiations with the employees’ representative must be public. Therefore, if the public body or any standing, special, or advisory committee or subcommittee of the public body conducts the negotiations, those negotiations must be conducted in a public meeting and not in an executive session. *A.R.S. § 38-431.03(A)(5)*

This provision also allows the public body to “instruct” its representatives. The discussion in Section 9.7 of the practice of confirming instructions in public session and the minute-taking requirements applies with equal force to this Section.

**Section 9.9. International, Interstate, and Tribal Negotiations.** A public body may go into executive session for the purpose of “discussion, consultation, or consideration for international and interstate negotiations”. This provision does not apply to meetings at which the public body receives recommendations from representatives of federal agencies. *A.R.S. § 38-431.03(A)(6)*

This provision also permits a city or town, or its designated representatives, to enter into executive session with “members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town”. This is the only type of executive session in which negotiations with another party can take place.

**Section 9.10. Purchase, Sale, or Lease of Real Property.** A public body may meet in executive session to discuss, consult with, and instruct its representatives concerning negotiations for the purchase, sale, or lease of real property. This provision does not authorize an executive session for the purpose of meeting with representatives of the party with whom the public body is negotiating. For example, the public body can authorize its representative to negotiate up to a certain amount. Of course, the final contract must be approved by the public body in a public meeting. *A.R.S. § 38-431.03(A)(7)*

**Section 9.11. Taking Legal Action.** In an executive session, the public body may discuss and consider only the specific matters authorized by the statute. Furthermore, the public body may not take a vote or make a final decision in the executive session, but rather must reconvene in a public meeting for purposes of taking the binding vote or making final decisions. Taking a straw poll (surveying the members of the public body) or taking an informal or preliminary vote in executive session is unlawful under the Open Meeting Law. *A.R.S. § 38-431.03(D)*

## **Section 10. Public Access to Meetings.**

**Section 10.1. Public Participation and Access.** The public must be allowed to attend and listen to deliberations and proceedings taking place in all public meetings. However, the Open Meeting Law does not establish a right for the public to participate in the discussion or in the ultimate decision of the public body. Other statutes may, however, require public participation or public hearings. For example, before promulgating rules, state agencies must permit public participation in the rule making process, including the opportunity to present oral or written statements on the proposed rule. See also Section 7.2 for a discussion of the authorization (but not requirement) for public bodies to use an open call to the public. *A.R.S. § 38-431.01(A)*

The public body must provide the public with access to all public meetings. This requirement is not met if the public body invokes any procedure or device that obstructs or inhibits public attendance at public meetings, such as:

- Requiring persons to sign in before they are permitted to attend the meeting;
- Holding the meeting in a remote location or in a room too small to accommodate the reasonably anticipated number of observers;
- Holding the meeting in a place to which the public does not have access, such as private clubs; or
- Holding the meeting at an unreasonable time, such as 6:00 a.m.

The Open Meeting Law, however, does not prevent a public body from requiring persons who intend to speak at the meeting to sign a register which allows the public body to comply with minute-taking requirements. *A.R.S. § 38-431.01(A)*

**Section 10.2. Telephone Conferences.** If one or more members of a public body are unable to be present in person at a public meeting, they may participate by telephone or video conference if the practice is approved by the public body and is not prohibited by statutes applicable to meetings of the public body. This practice presents several practical and legal problems and should be used only where there are no reasonable alternatives to being present at the meeting. *Atty. Gen. Op. 191-033 and 183-135*

A public body must comply with the following guidelines to avoid violations of the Open Meeting Law:

1. The notice and the agenda should state that one or more members of the public body will participate by telephonic or video communications. In the appropriate notice, insert the following: "Members of the [name of public body] will attend either in person or by telephone conference call." or "One or more members may participate via teleconference."
2. The public meeting place where the public body normally meets should have facilities that permit the public to observe and hear all telephone or video communications.
3. The public body should develop procedures for clearly identifying all members participating by telephonic or video communications.
4. The minutes of the meeting should identify the members participating by telephonic or video communications and describe the procedures followed to provide the public access to all communications during the meeting.

**Section 10.3. Recording the Proceedings.** "All or any part of a public meeting . . . may be recorded by any person in attendance by means of a tape recorder, camera or other means of sonic reproduction." A public body may prohibit or restrict such recordings only if they actively interfere with the conduct of the meeting. *A.R.S. § 38-431.01(E)*

## **Section 11. Ratification.**

**Section 11.1. Generally.** A public body may ratify action previously taken in violation of the Open Meeting Law. Ratification is appropriate when the public body needs to retroactively validate a prior act in order to preserve the earlier effective date of the action. For example, a public body may be required by law to approve its budget by a certain date. If the public body discovered after the statutory deadline that its earlier approval violated the Open Meeting Law, it could face serious legal consequences. Even if the body met quickly to properly approve the budget, the approval would not have been made prior to the statutory deadline. Accordingly, the Open Meeting Law permits the public body to meet and approve retroactively the action previously taken.

Ratification merely validates the prior action; it does not eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties and attorney's fees. *A.R.S. § 38-431.05(B)*

**Section 11.2. Procedure for Ratification.** The Open Meeting Law provides a detailed procedure for ratification as follows:

1. The decision to ratify must take place at a public meeting held in accordance with the Open Meeting Law.
2. The decision to ratify must be taken within thirty (30) days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence. A complaint from the public or the press that a public body has violated the Open Meeting Law should be investigated promptly, as a court may view this communication as the "discovery" from which the thirty (30) day period begins.
3. The public notice of the meeting at which ratification is to take place, in addition to complying with the other requirements of the Open Meeting Law (see Sections 6 and 7) must include: (a) a description of the action to be ratified; (b) a clear statement that the public body proposes to ratify a prior action; and (c) information on how the public may obtain a written description of the action to be ratified.
4. In addition to the notice and agenda of the meeting, the public body must make available to the public a detailed written description of the action to be ratified and a description of all prior deliberations, consultations, and decisions by members of the public body related to the action to be ratified.
5. The description required under paragraph four (4) above must be included as part of the minutes of the meeting at which the decision to ratify was made.
6. The public notice, agenda, and written description discussed in paragraphs three (3) and four (4) must be made available to the public at least seventy-two (72) hours prior to the public meeting.

**Section 12. Sanctions for Violations of the Open Meeting Law.**

**Section 12.1. Nullification.** All legal action transacted by any public body during a meeting held in violation of any provision of the Open Meeting Law is null and void unless subsequently ratified. The procedures for ratification are described in Section 11.2.

The Arizona Supreme Court, however, has held that legal actions taken in violation of the Open Meeting Law are voidable at the discretion of the court. The serious consequences that flow from having an action of a public body declared void reminds the public body that it must take every precaution to avoid even technical violations of the Open Meeting Law.

In some cases, the public body may have discussed a matter at an unlawful meeting, but thereafter met in a lawful open meeting at which it took a formal vote as its “final action”. The Arizona Court of Appeals has held that the subsequent “final action” taken at a lawful meeting is not void. The public body taking the final action at the subsequent lawful meeting should make available at that time the substance of all discussions that took place at the earlier unlawful meeting. See Section 11 regarding ratification of prior actions taken for possible options to avoid having a decision of the public body voided in the event of an unlawful meeting. *A.R.S. § 38-431.05*

**Section 12.2. Investigation and Enforcement.** The 2000 Legislature enacted substantial revisions to the Open Meeting Law, including extensive changes to the investigation and enforcement provisions of the law. The Attorney General and County Attorneys are authorized to investigate alleged Open Meeting Law violations. *A.R.S. § 38-431.06*

The Open Meeting Law now specifically provides that the Attorney General and County Attorneys shall have access to executive session minutes when they are investigating alleged violations of the Open Meeting Law. The Open Meeting Law also provides that disclosure of executive session information (such as disclosure to the Attorney General) does not constitute a waiver of the attorney-client privilege and directs courts reviewing executive session information to protect privileged information. *A.R.S. § 38-431.03(B)(4)*

The investigative authority of the Attorney General and County Attorneys was strengthened by the 2000 Legislature. The Attorney General and County Attorneys may issue written investigative demands to any person, administer oaths or affirmations to any person for the purpose of taking testimony, conduct examinations under oath, examine accounts, books, computers, documents, minutes, papers and recordings, and require people to file written statements, under oath, of all the facts and circumstances requested by the Attorney General or County Attorney. If a person fails to comply with a civil investigative demand, the Attorney General or County Attorney may seek enforcement of the demand in Superior Court. *A.R.S. § 38-431.06(B)*

Any person affected by “legal action” of a public body, the Attorney General, or the County Attorney for the county in which the alleged violation occurred, may file suit in Superior Court to require compliance with or prevent violations of the Open Meeting Law or to determine whether the law is applicable to certain matters or legal actions of the public body. *A.R.S. § 38-431.07*

Additionally, when the provisions of the Open Meeting Law have not been complied with, a court of competent jurisdiction may issue a writ of mandamus requiring a meeting be open to the public. A writ of mandamus is an order of the court compelling a public officer to comply with certain mandatory responsibilities imposed by law. *A.R.S. § 38-431.04*

**Section 12.3. Civil Penalties.** The court may impose a civil penalty not exceeding five hundred dollars 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 who 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 individual. *A.R.S. § 38-431.07(A)*

**Section 12.4. Attorney’s Fees.** The court may also order payment of reasonable attorney’s fees to a successful plaintiff in an enforcement action brought under the Open Meeting Law. Normally those fees will be paid by the state or political subdivision of which the public body is a part, or to which it reports. However, if the court determines that a public officer violated the Open Meeting Law “with intent to deprive the public of information or of the opportunity to be heard”, the court must assess all of the costs and attorney’s fees awarded to the plaintiff. As in the case of an award of civil penalties, the public body may not pay such an award of attorney’s fees assessed against the public officer individually. *A.R.S. § 38-431.07(A)*

**Section 12.5. Expenditure for Legal Services by Public Body Relating to the Open Meeting Law.** A public body may not retain counsel or expend monies for legal services to defend an action brought under the Open Meeting Law unless the public body has legal authority to make such an expenditure pursuant to other provisions of law and it approves the expenditure at a properly noticed open meeting prior to incurring the obligation. *A.R.S. §38-431.07(B)*

**Section 12.6. Removal From Office.** If the court determines that a public officer violated the Open Meeting Law “with intent to deprive the public of information or of the opportunity to be heard”, the court may remove the public officer from office. *A.R.S. § 38-431.07(A)*

**PART II**  
**SAMPLE OPEN MEETING LAW FORMS AND TEMPLATES**

**SAMPLE 1**  
**DISCLOSURE STATEMENT**

**Referenced in Section 6.3.1, Statement of location where all notices of the meetings of City of Phoenix Public Bodies will be posted**

TO: Mayor, City Council and the Citizens of Phoenix

Pursuant to A.R.S. § 38-431.02, the City Clerk Department hereby states that all notices of the meetings of the Phoenix City Council, Phoenix Boards and Commissions and any of its committees and subcommittees will be posted on the first floor of Phoenix City Hall, 200 West Washington, Phoenix, Arizona, viewable to the public outside through glass windows on the west side of the building along Third Avenue twenty-four (24) hours a day, seven (7) days a week. Such notices will indicate the date, time, and place of the meeting and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting.

Dated this 23rd day of January, 2008.

Office of the City Clerk  
City of Phoenix

## SAMPLE 2

### NOTICE OF PUBLIC MEETING OF A PUBLIC BODY

#### NOTICE OF PUBLIC MEETING

NAME OF PUBLIC BODY

NAME OF PUBLIC BODY LINE 2

NAME OF PUBLIC BODY LINE 3

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **NAME OF PUBLIC BODY** and to the general public, that the **NAME OF PUBLIC BODY** will hold a meeting open to the public on **Date of Meeting**, at **Time of Meeting** located at **Address of Meeting (including City and State)**.

One or more board members may participate via teleconference. *(To be used only when telephone conference call is anticipated)*

The agenda for the meeting is as follows:

*(Sample Agenda in Table Format)*

1.	Call to Order	Jane Doe
2.	Introduction of new members	Joe Brown
3.	Discussion of -----	Board
	a.	
	b.	
4.	Adjournment	

For further information, please call **Name, Title, Department and Telephone Number**.

**Persons paid to lobby on behalf of persons or organizations other than themselves shall register with the City Clerk prior to lobbying or within five business days thereafter, and must register annually to continue lobbying. If you have any questions about registration or whether or not you must register, please contact the City Clerk's Office at 602-262-6811.** *(This is only to be used for City Council Subcommittee meetings or if Council Members are attending the meeting.)*

For reasonable accommodations, call **Name** at Voice/602-Telephone Number or TTY/602- Telephone Number as early as possible to coordinate needed arrangements.

Date Meeting Notice Submitted for Posting

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**Note: Customized templates have also been created for Notices of Events, Retreats, and Tours.**

## SAMPLE 2 (ALTERNATIVE)

### NOTICE OF PUBLIC MEETING OF A PUBLIC BODY

#### NOTICE OF PUBLIC MEETING

NAME OF PUBLIC BODY

NAME OF PUBLIC BODY LINE 2

NAME OF PUBLIC BODY LINE 3

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **NAME OF PUBLIC BODY** and to the general public, that the **NAME OF PUBLIC BODY** will hold a meeting open to the public on **Date of Meeting**, at **Time of Meeting** located at **Address of Meeting (including City and State)**.

One or more board members may participate via teleconference. *(To be used only when telephone conference call is anticipated)*

A copy of the agenda for the meeting will be available at **Location Where the Agenda Will be Available** at least twenty-four (24) hours in advance of the meeting.

For further information, please call **Name, Title, Department and Telephone Number**.

**Persons paid to lobby on behalf of persons or organizations other than themselves shall register with the City Clerk prior to lobbying or within five business days thereafter, and must register annually to continue lobbying. If you have any questions about registration or whether or not you must register, please contact the City Clerk's Office at 602-262-6811.** *(This is only to be used for City Council Subcommittee meetings or if Council Members are attending the meeting.)*

For reasonable accommodations, call **Name** at Voice/602- **Telephone Number** or TTY/602- **Telephone Number** as early as possible to coordinate needed arrangements.

**Date Meeting Notice Submitted for Posting**

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## SAMPLE 3

### NOTICE OF MEETING CANCELLATION

NOTICE OF CANCELLATION

NAME OF PUBLIC BODY

NAME OF PUBLIC BODY LINE 2

NAME OF PUBLIC BODY LINE 3

The **NAME OF PUBLIC BODY** meeting scheduled for **Date of Meeting, at Time of Meeting has been cancelled.**

For further information, please call **Name, Title, Department and Telephone Number** or **TTY/602-Telephone Number**

**Date Meeting Notice Submitted for Posting**

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# SAMPLE 4

## NOTICE OF RESULTS OF MEETING ATTENDED BY A PUBLIC BODY

NOTICE OF RESULTS  
NAME OF PUBLIC BODY  
NAME OF PUBLIC BODY LINE 2  
NAME OF PUBLIC BODY LINE 3

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the NAME OF PUBLIC BODY and to the general public, that the NAME OF PUBLIC BODY held a meeting open to the public on Date of Meeting, at Time of Meeting located at Address of Meeting (including City and State).

The results of the meeting were as follows:

*(Sample Agenda in Table Format)*

RESULTS			
	1.	Call to Order	Jane Doe
	2.	Introduction of new members	Joe Brown
	3.	Discussion of -----	Board
		a.	
		b.	
	4.	Adjournment	

For further information, please call Name, Title, Department and Telephone Number.

For reasonable accommodations, call Name at Voice/602- Telephone Number or TTY/602- Telephone Number as early as possible to coordinate needed arrangements.

Date Meeting Notice Submitted for Posting

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## SAMPLE 5

### NOTICE OF EXECUTIVE SESSION OF A PUBLIC BODY

NOTICE OF MEETING  
NAME OF PUBLIC BODY  
POSSIBLE EXECUTIVE SESSION

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the NAME OF PUBLIC BODY, and to the general public, that the NAME OF PUBLIC BODY will meet in Executive Session on Date of Meeting, at Time of Meeting located at Address of Meeting (including City and State

Pursuant to A.R.S. § 38-431.03(A)(Code Citation), the Name of Public Body may vote to go into executive session, which will not be open to the public, to discuss certain matters.

The agenda for the meeting is as follows: **Note:** List the specific matter to be discussed, considered, or decided. Identify those matters that may be discussed or considered in executive session and identify the paragraph of A.R.S. § 38-431.03(A) authorizing the executive session, but exclude information that would defeat the purpose of the executive session.

- 1.
- 2.

For further information, please call Name, Title, Department and Telephone Number.

For reasonable accommodations, call Name at Voice/602- Telephone Number or TTY/602- Telephone Number as early as possible to coordinate needed arrangements.

Date Meeting Notice Submitted for Posting

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## SAMPLE 6

### MINUTES OF PUBLIC MEETING

#### MINUTES OF PUBLIC MEETING

NAME OF PUBLIC BODY

DATE OF MEETING

A public meeting of the **Name of Public Body** was convened on **date, time, and exact location**.

*Include an attendance list of Members Present, Members Absent, and Staff/Guests Present.*

The following matters were discussed, considered, and decided at the meeting:

- 1. Generally describe all matters discussed or considered by the public body. The agenda may be used as a base.*
- 2. Describe accurately all legal actions proposed, discussed, or taken and the names of persons who made and seconded each motion. Note the results of any vote taken listing members in favor and opposition.*
- 3. Identify each person making statements or presenting material to the public body, making specific reference to the legal action about which they made statements or presented material.*

**NOTE: Minutes are public record and must be filed in the City Clerk Department.**

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**PART III**  
**A REPRINT OF ARIZONA REVISED STATUTE § 38-431. et seq.**

**ARIZONA OPEN MEETING LAW**

**§ 38-431. Definitions**

In this article, unless the context otherwise requires:

1. "Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on 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.
2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in Section 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in Section 38-431.03 and the auditor general as provided in Section 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.
3. "Legal action" means 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.
4. "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.
5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.
6. "Public body" means the legislature, all boards and commissions of this 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, the public body.
7. "Quasi-judicial body" means a public body, 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.

**§ 38-431.01. Meetings shall be open to the public**

- A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.
  
- B. All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:
  - 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 considered.
  - 4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.
  
- C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to Section 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.
  
- D. The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.
  
- E. A public body of a city or town with a population of more than two thousand five hundred persons shall:
  - 1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its internet website, if applicable, either:
    - (a) A statement describing the legal actions taken by the public body of the city or town during the meeting.
    - (b) Any recording of the meeting.
  - 2. Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its internet website, if applicable, except as otherwise specifically provided by this article.
  - 3. Within ten working days after a subcommittee or advisory committee meeting, post on its internet website, if applicable, either:
    - (a) A statement describing legal action, if any.
    - (b) A recording of the meeting.

- F. 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 or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.
- G. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall distribute open meeting law materials prepared and approved by the attorney general to a person elected or appointed to a public body prior to the day that person takes office.
- H. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.
- I. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

**§ 38-431.02. Notice of meetings**

- A. Public notice of all meetings of public bodies shall be given as follows:
  - 1. The public bodies of the state shall file a statement with the secretary of state stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.
  - 2. The public bodies of the counties, school districts and other special districts shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.
  - 3. The public bodies of the cities and towns shall file a statement with the city clerk or mayor's office stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.
  - 4. The public bodies of the cities and towns that have an internet web site shall post all public notices of their meetings on their internet web site and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a city or town web site or that temporarily or permanently prevents the usage of all or part of the web site does not preclude the holding of the meeting for which the notice was posted if all other public notice requirements required by this section are complied with.

- B. If an executive session will be held, the notice shall be given to the members of the public body, and to the general public, stating the specific provision of law authorizing the executive session.
- C. Except as provided in subsections D and E, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public.
- D. In case of an actual emergency, a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. If this subsection is utilized for conduct of an emergency session or the consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I.
- E. A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A, 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.
- F. A public body that intends to meet for a specified calendar period, on a regular day, date or event during such calendar period, and at a regular place and time, may post public notice of such meetings at the beginning of such period. Such notice shall specify the period for which notice is applicable.
- G. Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours prior to the meeting, except in the case of an actual emergency under subsection D.
- H. Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.
- I. Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. Such agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee, or compromise the attorney-client privilege.
- J. Notwithstanding subsections H and I, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, where the matter was not listed on the agenda provided that a statement setting forth the reasons necessitating such discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately prior to the executive session.

K. Notwithstanding subsection H, 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, provided that:

1. The summary is listed on the agenda.
2. 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.

**§ 38-431.03. Executive sessions**

A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.
4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.
5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.
  7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.
- B. Minutes of and discussions made at executive sessions shall be kept confidential except from:
1. Members of the public body which met in executive session.
  2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.
  3. The auditor general on a request made in connection with an audit authorized as provided by law.
  4. A county attorney or the attorney general when investigating alleged violations of this article.
- C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.
- D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.
- E. Except as provided in Section 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.
- F. Disclosure of executive session information pursuant to this section or Section 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or Section 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

**§ 38-431.04. Writ of mandamus**

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

**§ 38-431.05. Meeting held in violation of article; business transacted null and void; ratification**

A. All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.

B. A public body may ratify legal action taken in violation of this article in accordance with the following requirements:

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.
3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.
4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

**§ 38-431.06. Investigations; written investigative demands**

A. On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.

B. In addition to other powers conferred by this article, in order to carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:

1. Issue written investigative demands to any person.
2. Administer an oath or affirmation to any person for testimony.

3. Examine under oath any person in connection with the investigation of the alleged violation of this article.
4. Examine by means of inspecting, studying or copying any account, book, computer, document, minutes, paper, recording or record.
5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.

C. The written investigative demand shall:

1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.
2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.
3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.
4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.

D. If a person objects to or otherwise fails to comply with the written investigation demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa County or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona Rules of Civil Procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court's order, the court may issue any of the following orders until the person complies with the order:

1. Adjudging the person in contempt of court.
2. Granting injunctive relief against the person to whom the demand is issued to restrain the conduct that is the subject of the investigation.
3. Granting other relief the court deems proper.

**§ 38-431.07.      Violations; enforcement; removal from office; in camera review**

- A. Any person affected by an alleged violation of this article, the attorney general or the county attorney for the county in which an alleged violation of this article occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of, this article, by members of the public body, or to determine the applicability of this article to matters or legal actions of the public body. For each violation the court may impose a civil penalty not to exceed five hundred dollars against a person who violates this article or who knowingly aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as it deems appropriate in the circumstances. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff's reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information violated any provision of this article the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.
- B. A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to incurring any such obligation or indebtedness.
- C. In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

**§ 38-431.08.      Exceptions; limitation**

- A. This article does not apply to:
  - 1. Any judicial proceeding of any court or any political caucus of the legislature.
  - 2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
  - 3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
  - 4. Good cause exception determinations and hearings conducted by the board of fingerprinting pursuant to Section 41-619.55.

B. A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.
2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification which verifies the person's signature.
3. Prevent and prohibit any articles from being taken into a hearing except recording devices, and if the person who attends a hearing is a member of the media, cameras.
4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

C. The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation of this section shall be those remedies available in Section 38-431.07, as against the director only.

D. Either house of the legislature may adopt a rule or procedure pursuant to Article IV, part 2, section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

### **§ 38-431.09. Declaration of public policy**

A. It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe of this article in favor of open and public meetings.

B. Notwithstanding Subsection A, it is not a violation of this article if a member of a public body expresses an opinion or discusses an issue with the public either at a venue other than at a meeting that is subject to this article, personally, through the media or other form of public broadcast communication 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.

## PART IV OPEN MEETING LAW AND ELECTRONIC MAIL

Arizona Attorney General Opinion I05-004 (R05-010) discusses Open Meeting Law Requirements and Electronic Mail to and from Members of a Public Body. This Opinion helps to clarify what may constitute an Open Meeting Law (OML) violation and how easily it can happen. The Opinion was written in response to a question from a school district governing board, but is intended to provide guidance to public bodies throughout the State that are subject to the OML. Included in the Opinion were the following hypothetical scenarios that are helpful in illustrating various situations that might constitute violations of the the OML.

### **Hypotheticals Illustrating the Use of E-Mail**

*The analysis of the OML and e-mail is theoretically no different than analyzing other types of communications. To provide additional guidance, this Opinion will address OML applications to specific factual scenarios. (These hypothetical's assume that the e-mails are not sent by board members or at a board member's direction with the purpose of circumventing the OML and that any unilateral communications do not propose legal action.)*

- a. *E-mail discussions between less than a quorum of the members that are forwarded to a quorum by a board member or at the direction of a board member would violate the OML.*
- b. *If a staff member or a member of the public e-mails a quorum of members of the public body, and there are no further e-mails among board members, there is no OML violation.*
- c. *Board member A on a five-member board may not e-mail board members B and C on a particular subject within the scope of the board's responsibilities and include what other board members D and E have previously communicated to board member A. This e-mail would be part of a chain of improper serial communications between a quorum on a subject for potential legal action.*
- d. *A board member may e-mail staff and a quorum of the board proposing that a matter be placed on a future agenda. Proposing that the board have the opportunity to consider a subject at a future public meeting, without more, does not propose legal action, and, therefore, would not violate the OML.*
- e. *An e-mail from the superintendent of the school district to a quorum of the board members would not violate the OML. However, if board members reply to the superintendent, they must not send copies to enough other members to constitute a quorum. Similarly, the superintendent must not forward replies to the other board members.*

- f. One board member on a three-member board may e-mail a unilateral communication to another board member concerning facts or opinions relating to board business, but board members may not respond to the e-mail because an exchange between two members would be a discussion by a quorum.*
- g. A board member may copy other board members on an e-mailed response to a constituent inquiry without violating the OML because this unilateral communication would not constitute discussions, deliberations or taking legal action by a quorum of the board members.*
- h. An e-mail request by a board member to staff for specific information does not violate the OML, even if the other board members are copied on the e-mail. The superintendent may reply to all without violating the OML as long as that response does not communicate opinions of other board members. However, if board members reply in a communication that includes a quorum, that would constitute a discussion or deliberation and therefore violate the OML.*
- i. A board member may use e-mail to send an article, report or other factual information to the other board members or to the superintendent or staff member with a request to include this type of document in the board's agenda packet. The agenda packet may be distributed to board members via e-mail. Board members may not discuss the factual information with a quorum of the board through email.*

The Arizona Attorney General Opinion provides the following conclusion:

#### Conclusion

*E-mail communications among a quorum of the board are subject to the same restrictions that apply to all other forms of communications among a quorum of the board. E-mails exchanged among a quorum of a board that involve discussions, deliberations or taking legal action on matters that may reasonably be expected to come before the board constitute a meeting through technological means. While some unilateral e-mail communications from a board member to a quorum would not violate the OML, a board member may not propose legal action in an e-mail. Finally, a quorum of the board cannot use e-mail as a device to circumvent the requirements in the OML.*

The full text of the Attorney General's Opinion is available at <http://www.azag.gov/opinions/2005/105-004.pdf> or by contacting the City Clerk Department at 602-262-6811.