



Avondale

The meeting will begin at 6:00 p.m.

Arizona Open Meeting Law

September 21, 2020

Avondale

City Attorney's Office

Advising. Advocating. Assisting.

History of Arizona Open Meeting Law

Ariz. Rev. Stat. §§ 38-431-38-431.09

- Adopted in 1962
- Amended in 1982 to authorize Arizona Attorney General and County Attorneys to enforce the statute and pursue legal action against violators
- Amended in 2017 to clarify what constitutes a “meeting,” and to increase penalties for subsequent violations
- Various AG Opinions on the application of the OML
- Remote meetings – Arizona Attorney General Opinion I08-008 and AG Informal Opinion, dated March 13, 2020

Purpose of Arizona Open Meeting Law

- Purpose:
 - Maximize public access to the government process
 - Open deliberation and proceedings to the public
 - Prevent public bodies from secret decision-making
Arizona Attorney General Opinion 75-7



Declaration of public policy

Ariz. Rev. Stat. § 38-431.09

- Meetings of public bodies will be conducted openly
- Notices and agendas must inform public of all matters covered
- Interpret laws in favor of open and public meetings



Meetings shall be open to the public

Ariz. Rev. Stat. § 38-431.01(A)

- Meetings of public bodies must be public
- Anyone can attend and listen
- All legal action must occur in a public meeting



What is a Public Body?

“Public body” includes:

- City and town councils
- Boards and commissions of the city or town
- All corporations and other instrumentalities whose boards of directors are appointed or elected by the city or town council
- All quasi-judicial bodies of the city or town
- Standing, special or advisory committees or subcommittees of the city or town



What is a Meeting?

“**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.

- Ariz. Rev. Stat. § 38-431(4)



What is a Meeting? (Cont'd)

Ariz. Rev. Stat. § 38-431.04(B)

Meeting includes:

A one-way electronic communication by one member of the public body that is sent to a quorum of the members of the public body and that **proposes** legal action.



What is a Meeting? (Cont'd)

Ariz. Rev. Stat. § 38-431.04(B)

Meeting includes:

An exchange of electronic communications among a quorum of the public body that involves a **discussion**, **deliberation** or the **taking** of legal action by the public body concerning a matter likely to come before the public body for action.



Serial Meetings

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

This means that if a councilmember talks to two other councilmembers about City business and then one of those talks to another councilmember about the same thing, a meeting has taken place.



Avoiding Open Meeting Law Violations

Agenda and Notice Requirements

- Post all meeting notices and agendas on the City website
- Post notice of the meeting at least 24 hours before the meeting, including Saturdays if the public has access to the notice. It excludes Sundays and holidays.
- Exception: Emergency meetings – rare. Usually not justified under the Open Meeting Law.



Avoiding Open Meeting Law Violations

Agenda Requirements

Ariz. Rev. Stat. § 38-431.02(H)

- Date, time and place of meeting.
- Agendas must list the specific matters to be discussed, considered or decided at the meeting.
- Executive session agenda can not just recite the statute language.
- Contain information reasonably necessary to inform the public and members of what will be considered.
- Council may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.



Avoiding Open Meeting Law Violations

Agenda Pitfalls

- Incomprehensible:
 - Legalese
 - Acronyms
 - Technical Terms
- General “non-descriptive” categories
 - New business
 - Old business
 - Personnel
 - Announcements
 - Reports
 - Open Discussion



Avoiding Open Meeting Law Violations

Summary on Current Events

Ariz. Rev. Stat. 38-431.02(K)

Councilmembers or City Manager may present a brief **summary of current events** without listing on the agenda the specific matters to be summarized, if:

1. The agenda includes that there will be a summary (report) of current events.
2. The Council does not **propose, discuss, deliberate or take legal action** at that meeting on any matter in the summary.



Executive Sessions

Ariz. Rev. Stat. § 38-431.03

Limited exceptions when business may be discussed outside of public view.

- Personnel
- Confidential Records
- Legal Advice
- Contract Negotiations, Litigation, Settlements
- Negotiations with Employee Organizations
- Negotiations with Tribal Councils
- Real Property Transactions
- School Safety Plans or Programs
- Security Plans



Executive Sessions (Cont'd)

Ariz. Rev. Stat. § 38-431.03

- Executive Session Agenda
 - Must include detail of item to be discussed
 - Must provide more than just a recital of the statutory provision
 - Need not contain information that would:
 - Defeat the purpose of the executive session
 - Compromise the legitimate privacy concern
 - Compromise the attorney-client privilege



Executive Sessions (Cont'd)

- No legal action or final vote shall be taken in the execution session.
- Council may direct staff and attorney as provided in the statutes. Reaching a consensus is appropriate per Attorney General.
- Final vote must take place in the public meeting.
- Admonition that the business conducted in executive sessions is confidential.



Avoiding Open Meeting Law Violations

Call to the Public

- **Public has a right to attend and listen but not to participate.**
- Ariz. Rev. Stat. § 38-431.01 H permits a “**call to the public**” on the agenda on matters within the public body’s jurisdiction. Councilmembers are limited to:
 - Responding to personal criticism.
 - Asking staff to review a matter.
 - Asking that a matter be put on a future agenda.

The Council **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.



Potential Violations

Circumventing the Open Meeting Law

Ariz. Rev. Stat. §§ 38-431.01(H), 38-431.07(A)

- A member of a public body may not knowingly instruct staff to communicate in violation of the open meeting law
- Sanctions may be imposed upon any person who knowingly aids, agrees to aid or attempts to aid another person in violating the open meeting laws



Potential Violations

Proposing Legal Action

- “Propose” – means “to put forward for consideration, discussion, or adoption.”
- “Discussion” is not necessary to create a violation
- Only need one-way communication to violate



Potential Violations

Proposing “Legal Action” (Cont’d)

- A single board member may violate the OML if they propose legal action among a quorum outside a properly noticed meeting
- Cannot propose legal actions outside of a noticed meeting



“Propose” Examples

- “We should discuss safety at Avondale Blvd and Van Buren St.”
 - Does NOT propose legal action – not a violation of OML
- “We should install a crosswalk at Avondale Blvd and Van Buren St.”
 - Does propose legal action and if discussed among a quorum of the council would violation the OML



“Propose” Examples

An email to the Finance Director by one councilmember which states, “We should include funding for X in next year’s budget.”

- Does propose legal action and if it includes a quorum of the council – A violation of OML.



Potential Violations

E-Mails

When you use e-mails to discuss city business, care must be taken not to violate the Open Meeting Law. E-mails can easily create a meeting.

- An e-mail to a quorum of the Council proposing legal action. (2017 amendment to the open meeting law).
- An e-mail exchange of facts and/or opinions if it is foreseeable that the topic may come before the Council for action. (2017 amendment to the open meeting law)
- Forwarding or responding to e-mails involving a majority of the Council — *be careful of chain e-mails.*



Potential Violations

E-Mail Examples

E-mail discussions about City business between less than a quorum of the members that are forwarded to a quorum by a Councilmember.

Yes, would violate the Open Meeting Law.



Potential Violations

E-Mail Examples (Cont'd)

A staff member or a member of the public e-mails a quorum of councilmembers and there are no further e-mails among the members.

There is no Open Meeting Law violation, because no further discussion or action has occurred.



Potential Violations

E-Mail Examples (Cont'd)

A councilmember copies other councilmembers on an e-mailed response to a constituent inquiry.

This does not violate the Open Meeting Law because this unilateral communication would not constitute discussions, deliberations, or taking legal action by a quorum.



Potential Violations

E-Mail Examples (Cont'd)

An e-mail request by a councilmember to staff for specific information.

This does not violate the Open Meeting Law, even if other members are copied on the e-mail.

Staff may reply to all as long as that response does not communicate **opinions** of other councilmembers.

However, if members reply with their opinions in a communication that includes a quorum, that would violate the Open Meeting Law.



Potential Violations

E-Mail Examples (Cont'd)

A councilmember sends an article, report or other factual information to the other members or staff with a request to include it in the Council's agenda packet. The agenda packet may be distributed by e-mail.

This does not violate the Open Meeting Law

However, councilmembers may not discuss the factual information with a quorum through e-mail.

Potential Violations

Facts vs. Opinions

There is no distinction between discussing facts vs opinions among a quorum

Deliberation = “collective acquisition and exchange of facts preliminary to a final decision”

Therefore, 2-way discussion of facts (among quorum) regarding potential city business is a violation of the Open Meeting Law

Potential Violations

Social Media

- Facebook
- Twitter
- Instagram
- YouTube
- LinkedIn



Potential Violations

Social Media

Not a violation if a councilmember expresses an opinion/discusses an issue with the public, 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 councilmember; and
2. There is no concerted plan to engage in collective deliberation to take legal action.

Ariz. Rev. Stat. § 38-431.09(B)



Potential Violations

Social Media

NEVERTHELESS: Councilmembers should not post/comment on each other's website, or the City website, or social media pages where those comments could be interpreted as proposing legal action or discussion or deliberation/decisions on Council issues.

These types of postings would violate the Open Meeting Law because they would be “meetings.”



Potential Violations

Quorum of Council Present; Not Discussing Business

It is **not** a violation of the Open Meeting Law when there is a gathering of a quorum of the Council to discuss matters not related to City business:

- A son's wedding
- Your vacation
- A birthday party or social dinner
- City social or signature event

BUT DON'T TALK ABOUT CITY BUSINESS

City may post “courtesy agenda” to announce quorum will be present at the event. Note that no business will be discussed and no legal action will be taken.



Violations of the Open Meeting Law

Ariz. Rev. Stat. § 38-431.05

What happens if there is a violation of the Open Meeting Law?

- Any actions taken are null and void
- Ratification
- The Attorney General's Office or the County Attorney launches an investigation upon receipt of a complaint.



Penalties for Violation of the Open Meeting Law

- If a violation is found, possible penalties are: (i) civil penalties (ii) removal of the officer who violated the law; (iii) officer assessed with all costs awarded to the plaintiff
- The City may not spend public monies for legal counsel to defend the officer, unless the body has authority to make the expenditure due to other provisions of law and takes legal action at a noticed meeting approving the expenditure



Enforcement Authority of Open Meeting Law

- Arizona Attorney General's Open Meeting Law Enforcement Team (OMLET)
 - Investigate complaints
 - Enforcement authority
 - Arizona Agency Handbook, Chapter 7 (Revised 2013)
 - Available online www.azag.gov.
 - Only entity that can commence suit against individual for open meeting law violations.
- County Attorney
- The Courts



Resources

- Attorney General Agency Handbook, Chapter 7
<https://www.azag.gov/outreach/publications/agency-handbook>
- Arizona Ombudsman website –
www.azoca.gov
- Ombudsman Publications
- City Attorney's Office



Questions?



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Avondale

Adaptive Reuse of Resource Center Building

Background

- Care1st Avondale Resource Center currently operates out of city owned facility located at 328 W. Western Avenue
- New resource center is currently under construction
- Anticipated transition of services into the new facility early 2021

Goals

- Competitive proposal process
- Make good use of the space after relocation
- Identify a non-profit partner to use the current resource center building
 - Expand health and human services in Avondale
 - Identify a partner with a record of success
 - Identify an organization with financial capacity
 - Make necessary tenant improvements
 - Support ongoing maintenance/operations costs
 - Enter into lease agreement with the City

The Process

- **Request for Proposal Solicitation – July 8, 2020**
 - Published on city website, City’s Vendor Registry site, AZ Business Gazette, Arizona Republic
 - Email announcements sent out to 27 organizations
- **Pre-submittal Meeting – July 22, 2020**
 - 6 organizations in attendance
 - 1 site tour requested
- **Proposals Due – August 5, 2020**
- **Evaluation Process – August 20, 2020**
 - Evaluation Committee – NFS, ED and Facilities
 - Proposal evaluated on criteria set

Proposals

- One proposal received - The Opportunity Tree
 - Non-profit agency established in 1963 with demonstrated history of success
 - Provide support/programming for individuals with Intellectual and Developmental Disabilities (IDD)
 - Currently operate three locations: Phoenix, Maricopa and Casa Grande
 - Services for IDD currently limited in Southwest Valley
 - Budget of \$14 million with operating reserves of \$2 million

Proposed Programming/Services

- Services for individuals with IDD and their families including:
 - Adult Day Programs (increase independence)
 - Vocational and Employment Services (skill building)
 - Youth Transitional Services
 - Youth moving to adulthood and transitioning from school to employment, future pathway development
 - Partnerships include
 - AZ Division of Developmental Disabilities
 - Behavioral Health Specialists and Therapists
 - Federal and State Benefit Specialists

Lease Structure

- 3 year lease agreement
- Discounted lease rate based on a percentage of Fair Market Rent (FMR)
- Rate would be evaluated annually
- Rate could be reevaluated at the end of year three

Year 1	Year 2	Year 3
10% of FMR	30% of FMR	30% of FMR
\$650/mo.	\$1,950/mo.	\$1,950/mo.

Considerations

- The proposal received high scores from all panel members
- The organization appears to be fiscally sound and has a history of success
- Evidence of partnerships and collaboration
- Capacity to adapt and maintain a city asset
- Commitment to outreach, marketing and stakeholder engagement
- Services fill a vital need in the community



Discussion





Avondale