



OPEN MEETING LAW REFRESHER TRAINING

TUBAC FIRE DISTRICT

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LEGAL DISCLAIMER (SORRY)

This presentation is for general information purposes only, and should not be construed as legal advice or a legal opinion regarding any particular facts or circumstances. Please consult with us directly for advice and information concerning fact-specific situations and any specific legal questions you may have.

DISTRICT BOARD IS A “PUBLIC BODY”

- Members are public officials, run for election, subject to election and campaign finance law
- District (and Board) subject to state Conflict of Interest and Public Records statutes
- Must follow Open Meeting Law
- Having a quorum of the District Board on another board/committee – or at an unrelated event – could be a public meeting

OPEN MEETING LAW: TWO CORE CONCEPTS, PLUS ONE MORE

- ARS §38-431.01(A): *All meetings open to the public*
 - Public may attend, listen, and record
 - Public has no right to speak or to disrupt meeting
- ARS §38-431.09: *≥24-hour advance notice of meeting and agenda*
 - Can change order or table items if time runs out, but can't add or remove items from agenda
- ARS §38-431.01(H): *May choose to have a call to public, or not*
 - At end of call to public, individual directors can respond to criticism, or Board may ask to study further, or directed to add to a future agenda – but can't act

OPEN MEETING LAW

- Deliberations in public – cannot hash things out in advance, then ratify decision in public
- Advance notice of meeting and agenda, ≥ 24 hours (take screenshot)
 - Emergency meetings possible – but must be reasonable
- Agenda must reasonably inform public
 - Don't use legalese, acronyms, or slang
 - Don't use general categories without details
 - Can have a “current events” agenda item

OPEN MEETING LAW

- Minutes available to public, who may record meetings (video and audio)
- Open call to public permitted, but not required; can set ground rules
- Executive sessions permitted (and sometimes required) but cannot take final action or poll members
 - Must remain confidential

WHAT IS A MEETING?

- If a quorum is present – may be a meeting
 - Meeting is a gathering, in person or through technology
 - Better practice to post events where a majority of directors will be present, even if no Board action will occur (“courtesy agenda”)
- If no quorum, cannot act
- Informational sessions may drop the call to the public

FIXING MISTAKES

- Can ratify mistakes at another (properly noticed) meeting within 30 days
 - Otherwise, action is null and void unless ratified
 - 72 hours notice of ratification, with details
- Actions properly noticed on same agenda aren't automatically invalid (Ariz. Att'y Gen. Op. 108-001)
- May post on website but must remain up for at least 1 year after the meeting

ENFORCEMENT

- AG Open Meeting Law Enforcement Team (OMLET)
- Arizona Ombudsman/Citizen's Aide
- County Attorney
- Individual complaints
- Penalties for violation include fines (\$500/violation), attorneys' fees, or removal of officer if he/she acted with intent to deprive public of information
- Includes any person who knowingly assists in violating OML



EMAIL AND THE OPEN MEETING LAW

- Cannot use email, fax, or phones to conduct business outside of a public meeting (“splintering the quorum”)
- “Meeting” includes “one-way electronic communication by one member...sent to a quorum...that proposes legal action,” or “exchange of electronic communication among a quorum...that involves a discussion, deliberation or the taking of legal action,” ARS §38-431(4)(b)
- Includes any matter that may foreseeably come before the board for action, Op. Ariz. Att’y Gen. I05-004 (R05-010) (2005)

EMAIL AND THE OML

- OK to reply to staff, but don't forward or copy other members
- ***Never “Reply All”*** (or hardly ever)
- Don't forward or reply to emails from members
- Can propose topic for agenda – but ***not*** legal action
- Can't direct staff to communicate in violation of Open Meeting Law (ARS §38-431.01(I))
- Comments to media OK; would reach other members of the body indirectly, if at all, and are made publicly. Op. Ariz. Att'y Gen. I07-013 (R07-028) (2007)

EXECUTIVE SESSIONS

- Public can't attend, Board can't take action or poll members
- Chair must remind members of confidentiality
- Seven authorized topics:
 - ***Personnel (24 hours written notice to employee)***
 - Records exempt by law from public inspection
 - ***Legal advice***
 - ***Pending or contemplated litigation, settlement discussions, negotiated contracts***
 - Labor negotiations
 - International, interstate, and tribal negotiations
 - ***Purchase, sale, or lease of real property***

MINUTES – REGULAR MEETINGS

- Required for all meetings, including executive sessions
- May record or be written, but permanent records must be on paper; retain recordings ≥ 3 months
- Regular meeting draft minutes open for public inspection (and copying) within 3 business days after meeting
 - Can't wait until approved at next meeting, mark "DRAFT" and make available to public

MINUTES – REGULAR MEETINGS

- Minutes must include:
 - Date, time, place of meeting
 - Names of directors present and those absent
 - General description of matters considered
 - “Accurate description” of all legal actions proposed, discussed, or taken; names of members who proposed each motion; names of persons making statements or presenting material

MINUTES – EXECUTIVE SESSIONS

- Executive session minutes:
 - Date, time, place of meeting
 - Names of directors present and those absent
 - General description of matters considered
 - “Accurate description” of all instructions given
 - Any other matters as Board deems appropriate
- Executive session minutes are confidential
 - Can only be approved at a subsequent executive session (which may be months later)
 - File separately, and securely

OTHER RESOURCES

- Arizona Ombudsman/Citizens' Aide, www.azoca.gov (click on “Open Meeting & Public Records Law”)
- Arizona Attorney General Agency Handbook, chapter 7, www.azag.gov (also found in AZOCA Open Meeting Law Booklet)
- Department of Library, Archives, and Public Records, www.azlibrary.gov

IF YOU REMEMBER NOTHING ELSE:

- All actions (motions, decisions, votes, agreements, consensus, understandings, acknowledgments, etc.) must occur in an open, public meeting
- Can only act on items noticed on an agenda, posted in advance
- Anything that allows a public body to circumvent those two principles – to reach agreement in private, or to take action not announced in advance on an agenda – may violate the OML

QUESTIONS?



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