

OPEN MEETING

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This Open Meeting training is prepared by William R. Whittington and Donna Aversa. It is intended to assist fire board members upon election or appointment who will sit on Arizona Fire District Boards, and to assist Fire Chief's after they have entered into a contract with the fire district. This presentation was prepared by William R. Whittington, General Counsel for the Arizona Fire District's Association, and Donna Aversa, Private Counsel for Fire District's throughout the state of Arizona. If you have questions, Mr. Whittington can be contacted at **928-445-0122**, and Donna Aversa can be contacted at **520-742-0440**.

DISCLAIMER

- ▶ The contents of this presentation does not constitute legal advice. It is, by design, a general discussion of topics relevant to the fire service, and is intended to provide a general overview of the law that applies to fire districts, and to address issues often confronted by governing boards and fire chiefs. This information may not be relied on in relation to any particular set of facts or circumstances. You should seek the assistance of legal counsel, where appropriate.

PURPOSE

- ❑ The Legislature enacted the Open Meeting Law “to open the conduct of the business of the government to the scrutiny of the public and to ban decision making in secret.”



OPEN MEETING

- ❑ Application- the Open Meeting Law applies to fire district boards, as well as their advisory committees, sub-committees and boards or committees sitting in a quasi-judicial capacity. The Open Meeting Law also applies to fire district pension boards.

ADVISORY COMMITTEES OR SUBCOMMITTEES

- ▶ . . . means any entity, that is officially established, upon motion or order of a public body or by the presiding officer of the public body . . . appointed for the specific purpose of **making a recommendation** concerning a decision to be made . . . by the public body.



LEGAL ACTION

All legal action must take place in public session. 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 specific scope of appointment and the laws of this state.



MEETING

meeting of the governing board (or committee) means
gathering, IN PERSON OR THROUGH TECHNOLOGICAL
VICES, of a **quorum of members** of a public body at
which they discuss, propose or take legal action,
including any deliberations.



PUBLIC COMMENT

- ❑ Generally, members of the governing board may make statements to members of the press without worry that they are violating the Open Meeting Law.
- ❑ 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 AT A VENUE OTHER THAN AT A MEETING IF:
 - ❑ Not directly given to another member of the public body
 - ❑ No concerted plan to take legal action



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NEW STATUTORY REQUIREMENTS

- ❑ New governing board members, whether elected or appointed, must complete certain Open Meeting Law training at least one day before being seated in their office.
- ❑ The Clerk of the County Board of Supervisors **must** conspicuously post open meeting law materials prepared and approved by the Attorney General on its website.
 - ❑ A person elected or appointed to a public body shall review the open meeting law materials at least **one** day before taking office.



NOTICE AND/OR AGENDA POSTING

- ❑ Every board meeting, whether special or general, must be preceded by a 24 hour written notice of the meeting. This can be a separate notice or combined with an agenda. However:
- ❑ That 24 hours may include Saturdays **IF** the public has access to the **physical** posting location;
- ❑ And may not include Sundays or other legal holidays.
- ❑ The exception to the 24 hour notice includes Notice of Emergency Meetings (which have their own requirements), or recesses of a current meeting. In the event of a recess, the minutes must include an announcement as to the date, time, and place of when the recess meeting will resume.



POSTINGS

- ❑ The District MAY post a statement on its website stating where all notices are posted (including physical and electronic locations).
- ❑ The District MAY post agendas on its website and give additional notice as reasonable and practicable.

NOTICES

Unless notice is posted on the District website, a District shall file a statement with the Clerk of the Board of Supervisors where public notices of their meetings will be posted”

- ❑ The notice posted with the County Board of Supervisors is a statement indicating when and where a fire district’s meeting notices will be posted. While it is not unlawful to post additional information, care must be taken to assure the information does not become stale.

RECESS AND RESUME

- ❑ A public body may recess and resume a properly noticed meeting to a later time or date by making an announcement at the meeting what agenda items will be covered.



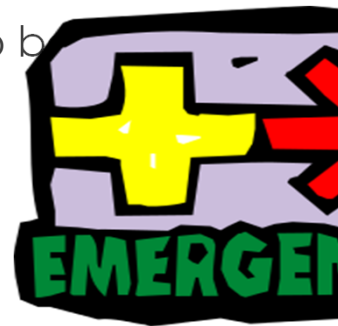
EMERGENCIES

- ❑ As mentioned above, fire district boards (and committees) are generally required to give 24 prior written notice of a meeting (whether that board meeting is a general or special meeting). However, the most significant exception is a meeting generally known as “emergency meetings”.
- ❑ In the case of an “actual emergency,” the law permits the board to meet, discuss and decide matters with less than 24 hours notice.
- ❑ The Test: “Due to unforeseen circumstances, immediate board action is necessary to avoid a serious consequence that would result from waiting until the proper notice could be provided.”



EMERGENCIES, cont'd

- ❑ If an emergency meeting is held, the following requirements will need to be met:
 - ❑ A notice needs to be posted as soon as possible, once the need for an emergency meeting is determined.
 - ❑ A written explanation in the minutes about the emergency meeting needs to be given.
 - ❑ Within 24 hours after the emergency meeting, a written explanation needs to be made available to the public.



FOR RATIFICATION

- ❑ On occasion, a board will conduct business in violation of the Open Meeting Law. When that happens, the board can ratify its action within 30 days of discovery. This is done by posting prior notice of a special meeting for purposes of ratification, 72 hours before the ratification meeting.
- ❑ In addition, notice must be posted explaining to the public the need and purpose of the ratification.

POSTING INFORMATION

Below you will find a sample notice of posting for any agenda. This provides that the posting occurred timely, even if someone thereafter removes the agenda even after it is posted.

SAMPLE:

This Agenda was posted at _____(location) by _____ (person posting) on _____ (date) at _____ (time).



WHAT MUST BE ON AGENDA

- ❑ Location, time and date of meeting
- ❑ Where the public can get a copy of other materials
- ❑ Call to order, roll call
- ❑ Adjournment
- ❑ Description of any matter to be discussed or action taken.
- ❑ A disability notice telling individuals with a disability how to obtain information, or giving instruction as to how they may maintain an accommodation in order to attend the meeting.
- ❑ A board may include a summary of events so as to permit either the fire chief or the board chairman to provide an update of their activities for the prior month.
 - ❑ If the board wishes to discuss any item raised during the summary of current events, those particular items must be listed on the agenda with particularity.
- ❑ Legal action cannot be proposed, discussed, or deliberated on an item for which information is provided during the summary of current events.
- ❑ Call to the public's are not required, although generally encouraged. The governing board may omit the public's response, direct staff to study the matter, or ask that the matter be placed on a future agenda.
- ❑ In addition, a governing board member may at the close of the call to public, permit a board member to respond to criticism directed at them individually.



POSSIBLE ADDITIONAL ITEMS

- ▶ Consent Agenda- these are matters which can be approved all under one motion. They each must be identified in the consent agenda, and a board member must be permitted to remove them from the consent agenda if they wish to discuss them individually.
- ▶ Telephone attendance- this is intended to permit board members or legal counsel to attend by phone when convenient.
- ▶ Executive sessions- see the discussion below as to what type of executive sessions may be included on the agenda. (Generally there are 7 reasons for going into executive session).
- ▶ Summary of Chief Executive Officer
- ▶ Staff Recommendations – detail
- ▶ Future Agenda items



ADDITIONAL DETAILS

Agenda items must be listed in sufficient detail to give the general public notice of what the public body will discuss.

If you aren't sure, add more description and ask someone who doesn't know what your public body does to review.



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CONSENT AGENDAS

As mentioned above, consent agendas are a time saving device which allows the board to vote on several items at once. Typically, a board will use a consent agenda to approve its minutes, certain financial reports, written correspondence received from the public, etc.



PROPOSING AN AGENDA ITEM

- ❑ Board members may propose that an item be placed on a future agenda. Proposing an item for a future agenda is not considered legal action. However, a board member must communicate the topic only- not develop a discussion on that item (until the item is actually placed on the agenda for discussion.)

- ❑ Example: “I think we should consider firing the Fire Chief at our next meeting”

vs.

“I would like to discuss the Fire Chief’s performance at our next meeting.”



SOCIAL EVENTS & SEMINARS

- ❑ You might consider positing a “courtesy notice” announcing events and explain that a quorum might be present.
- ❑ Identify date, time and purpose
- ❑ State that no district business will be discussed and no legal action will be proposed or taken
- ❑ Members must be careful to avoid improper discussion.



GUESTS AND PUBLIC COMMENT

- ❑ It is not necessary to permit the public to sign in to comment at a board meeting, however you may decide to do so. A member of the public may not be required to sign in, in order to speak. However, when a member of the public is permitted to speak, then you may require them to identify themselves for the record.
- ❑ The board can restrict the amount of time given for members of the public to speak on any item.
- ❑ A call to public may be placed either at the beginning of the meeting or at the end. In addition, members of the public may be permitted to speak on individual items already on the agenda.



BOARD PACKET

- ❑ It is generally recommended that boards be provided a board packet before each meeting. Generally, the board packet consists of background materials, recommended motions and financial justifications. Try presenting “pros” and “cons”.



MINUTES or RECORDINGS

The Governing Board and any subcommittees or advisory committees, must keep minutes or a recording of each meeting. This includes both public and executive session meetings.



WHAT MUST BE PLACED ON THE MINUTES?

- ❑ Date, time, place
- ❑ Members present or absent
- ❑ A general description of matters considered
- ❑ An accurate description of legal actions proposed & who did it
- ❑ An accurate description of all instructions given (Executive Sessions)
- ❑ Minutes (or a tape) must be available within three (3) working days
- ❑ Public v. Executive minutes



AGENDAS- EXECUTIVE SESSIONS

- ❑ The agenda must include the statutory citation authorizing the executive session.
(Remember there are 7 reasons for going into executive session (see discussion below).
- ❑ The agenda must give a general description of the matters to be discussed, however, it need not contain information that would defeat the purpose of the executive session or compromise the legitimate privacy interests of a public officer, appointee or employee.
- ❑ After the executive session, if the governing board intends to take action, that matter should be placed on the agenda as a public item as well.
- ❑ List everyone in attendance and describe what generally happened in the minutes.
- ❑ If taped, make sure to keep a separate tape of the executive session. Only those authorized can listen to the tape or see the minutes.
- ❑ The public is excluded from all executive sessions.



ITEMS THAT CAN BE CONSIDERED IN EXECUTIVE SESSION

- ❑ Items of Executive Session
 - ❑ Employment
 - ❑ Exempt records
 - ❑ Meeting/discussion with attorney – instruction (legal advice)
 - ❑ Labor negotiations
 - ❑ Interstate negotiations/contract negotiations
 - ❑ Purchase, sale or lease of real property



WHO MAY ATTEND EXECUTIVE SESSIONS

- ❑ Members of the governing board
- ❑ Persons subject to a personnel discussion
- ❑ Individuals whose presence is reasonably necessary in order for the board to carry out its executive session responsibilities
 - ❑ E.g. A secretary to take minutes/run tape and the attorney to give legal advice

SUGGESTION: PUT ON RECORD WHY INDIVIDUALS ATTENDING ARE REASONABLY NECESSARY

PUBLIC PARTICIPATION

- ❑ Only the board is required to participate. The public may not participate, but may be permitted to speak. The public is always entitled to attend.
- ❑ Electronic- members of the public may record a public session.
- ❑ Open call to public- while not required, it is quite common.
 - ❑ Members of the governing board may respond to individual criticism directed at them (but only after the call to the public is closed).
 - ❑ Members of the board may not discuss or take legal action on items raised during the call to public, unless it is a matter that is already on the agenda.

LEADERSHIP
How you respond
will define your
Leaders will be criticized
faith questioned, my p



THE PUBLIC

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.



ATTORNEY GENERAL and COUNTY ATTORNEY may:

- ❑ Issue written investigative demands
- ❑ Examine a person under oath
- ❑ Examine by inspection of documents.
- ❑ Require a member of the board to submit a written statement.



OPEN MEETING VIOLATIONS

- ❑ Any decision made in violation of the Open Meeting Law may be voidable.
- ❑ Violations can be remedied by way of ratification
 - ❑ 72 hour notice posted to let the public know why the special meeting is necessary for ratification.
 - ❑ Provide a statement during the special meeting stating why the ratification is needed.
 - ❑ Within 24 hours after the ratification meeting, the public notice must be posted, describing the reason for the ratification
- ❑ Careful- each member of the governing board can be fined \$500.00 for each Open Meeting Law violation.

