

Colorado Open Meetings Law: Let the Sunshine In



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COLORADO
MUNICIPAL
LEAGUE

LEGISLATIVE DECLARATION

“It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.”

C.R.S. § 6-4-401



POLICY

“All meetings of a quorum, or three or more members of a local public body, whichever is fewer, at which any public business is discussed or at which any formal action may taken are declared to be public meetings open to the public at all times.” C.R.S. § 24-6-402(2)(b).



DEFINITIONS

- Local public body (“LPB”) includes “any board, commission, taskforce, authority or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state . . . to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.” C.R.S. § 24-6-402(1)(a).
- A meeting is “any kind of gathering, convened to discuss public business, in person, by telephone, or by other means of communication.” C.R.S. § 24-6-402(1)(b).



OML COMPLIANCE

- “Full and timely notice to the public” is required for any meeting “at which the adoption of any proposed policy, position, resolution, rule, regulation or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance”
- Notice shall be “posted in a designated public place no less than 24 hours prior to the holding of the meeting.”
- Notice shall include “specific agenda information where possible.”



MEETINGS

Public meetings **DO** include:

- A meeting of a quorum or 3+ members of the LPB, whichever is fewer, at which any public business is discussed or at which any formal action may be taken”

Public meetings **DO NOT** include:

- A *chance meeting* of a quorum or 3+ members of the LPB or a *social gathering* of a quorum or three or more members, provided that public business is not the central purpose.
- A meeting or gathering of 2 or fewer members of the LPB and 2 or fewer members of different LPBs.



MEETINGS

Public meetings MAY include ELECTRONIC COMMUNICATIONS!

- When using e-mail, be aware that “reply all” or communications strings involving 3 or more members may create an electronic meeting.
- An e-mail between you and a staff member of the City will not run this risk, especially if not copied to other members of the local public body.
- E-mailed communication between all of the LPB members, regardless of whether staff is copied, is at risk of being a public meeting.



MEETINGS

Public meetings DEFINITELY include ONLINE, ELECTRONIC, OR TELEPHONIC MEETINGS

- Be clear on how the public can participate.
- Be prepared for:
 - Technical Difficulties
 - User Error
 - An Unclear Record
 - Procedural Issues



EXECUTIVE SESSION

- Certain matters may be discussed by the local public body in executive session.
- No “adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur at any executive session which is not open to the public.”
- Public notice of the meeting should include notice of the proposed executive session.
- Prior to the beginning of the closed executive session, the general topic should be announced.
- The body must vote to go into executive session.



EXECUTIVE SESSION

- Discussions in executive session must be electronically recorded.
- Recording must reflect authority under which the LPB met in executive session.
- Recording may be stopped for portion of the discussion involving privileged attorney-client communications.
- No part of the executive session recording shall be open for public inspection, except with consent of the LPB or in a legal challenge to OML compliance.



GETTING INTO EXECUTIVE SESSION

- C.R.S. § 24-6-402(4): Requires announcement of the topic for discussion in the executive session, including specific citation to the provision of the Act authorizing the executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for the executive session.
- C.R.S. § 24-6-402(4): Affirmative vote of two-thirds of the quorum present, only at a regular or special meeting.



CONSEQUENCES

- Failure to comply with the OML may render the action invalid.
- Any person denied or threatened with denial of the rights/interests conferred on the public by the OML has standing to challenge the violation.
- Court may issue injunctions to enforce the purposes of the OML.
- If a court finds a violation of the OML, the court **shall** award costs and reasonable attorney fees to the prevailing citizen bringing the challenge.
- If a court does not find a violation, and that the citizen's allegations were frivolous, vexatious, or groundless, the court **shall** award costs and reasonable attorney fees to the prevailing party.



REMEMBER

- LPBs are required to comply with the Open Meetings Law.
- Notice of the possibility of an executive session should be part of the posted notice for the meeting.
- Have a procedure in place to ensure compliance with the announcement of the purpose of the executive session.
- If you have questions, contact your assigned City staff or the City Attorney.

