



Colorado Open Meetings Act

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DECLARATION / POLICY

- “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. § 24-6-401.
- “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).


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DEFINITIONS

- Local public body 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).
- A meeting of a LPB is “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 be taken” C.R.S. § 24-6-402(2)(b).


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MEETINGS

- Public meetings **DO NOT** include:
 - A chance meeting of a quorum or three or more members, or a social gathering of a quorum or three or more members, provided that public business is not the central purpose.
- Public meetings **MAY** include **ELECTRONIC COMMUNICATIONS**.
 - When using e-mail, be aware that “reply all” or communications strings involving 3 or more LPBMs to avoid conducting a public meeting.
 - An e-mail between an LPBM and a municipal staff member should not run this risk, especially if not copied to other LPBMs.
 - E-mailed communication between all of the LPBMs, regardless of whether staff is copied, may be a public meeting.


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MEETING REQUIREMENTS

- “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.”


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EXECUTIVE SESSION

- Topic eligible for executive session: property transactions, attorney conferences, other confidential matters, security issues, negotiations, personnel matters, CORA mandatory non-disclosure documents.
- 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.”
- Notice:
 - Public Meeting Notice that LPB will be conducting an executive session.
 - Announcement should include:
 - The topic
 - Specific citation to OML authority
 - “Identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized”
 - Affirmative vote of two-thirds of the quorum present.

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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.

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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.

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TAKE-AWAYS

- LPB meetings are subject to the OML.
- Proper notice is essential.
- Open meetings are the rule, executive sessions are the exception.
- Devil is in the details.
- An ounce of prevention is worth a TON of litigation.

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