

Seven Things to Know About Colorado's Open Meetings Law

Colorado Freedom of Information Coalition
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I'm Jeff Roberts, executive director of the Colorado Freedom of Information Coalition, and this is a short introduction to the Colorado Open Meetings Law.

Colorado Open Meetings (Sunshine) Law



Legislative declaration:

"It is declared to be ... the policy of this state that the formation of public policy is public business and may not be conducted in secret."



The voters of Colorado initiated the open meetings law about 50 years ago as part of the Sunshine Act of 1972. The law begins with a powerful statement: "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."

Colorado Open Meetings Law

- Open meetings:
 - Any kind of gathering, convened to discuss public business.
 - In person, by telephone, electronically, or by other means of communication.
 - For a local public body, a quorum or three or more members, whichever is fewer.
 - For a state public body, a quorum or two or more members.
- Public bodies:
 - Any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of a political subdivision of the state, a state agency, state authority, governing board of a state institution of higher education, or the General Assembly.
 - A public or private entity to which the government or an official has delegated a governmental decision-making function.



That means public bodies like city councils, school boards, town boards, county commissions and the Colorado General Assembly are required to conduct the public's business in the open. For a local public body, open meetings are required when there is a quorum or at least three members present, whichever is fewer. For a state public body, it's at least two members.

Which meetings?

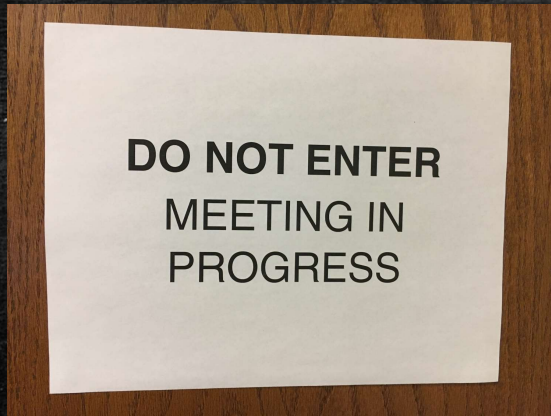


- Applies to "those meetings that concern matters related to the policy-making function of that body." – *Hanover Sch. Dist. No. 28 v. Barbour*
- An open meeting must be held for any discussion having "a meaningful connection ... [to] the policy-making powers of the public body." – *Bd. of Cty. Commissioners, Costilla Cty. v. Costilla Cty. Conservancy Dist.*



For a meeting to be open to the public, it must pertain to public business and there must be a demonstrated link between the content of the meeting and the public body's policy-making responsibilities. So three members of a board getting together to talk about the Broncos or their kids is not an open meeting. But a discussion of the city budget certainly is. Open meetings must be preceded by full and timely notice to the public, with specific agenda information "where possible."

Executive sessions



May be held ONLY after:

- Public announcement of the "particular matter to be discussed in as much detail as possible."
- Public announcement of the statutory provision authorizing closure.
- An affirmative vote of two-thirds of the quorum present for local public bodies, two-thirds of the entire membership for state public bodies.



Public bodies are permitted to close the door for an executive session to discuss only a few authorized topics such as the proposed purchase or sale of property, specialized details of security arrangements, personnel matters, negotiation strategies and legal matters that require legal advice from their attorney. A school board can meet confidentially to discuss individual students.

Before voting to go into an executive session, the public body must announce the "particular matter" to be discussed "in as much detail as possible without compromising the purpose for which the executive session is authorized."

Announcing the "particular matter" with specificity serves three interrelated purposes: 1) It provides the public with

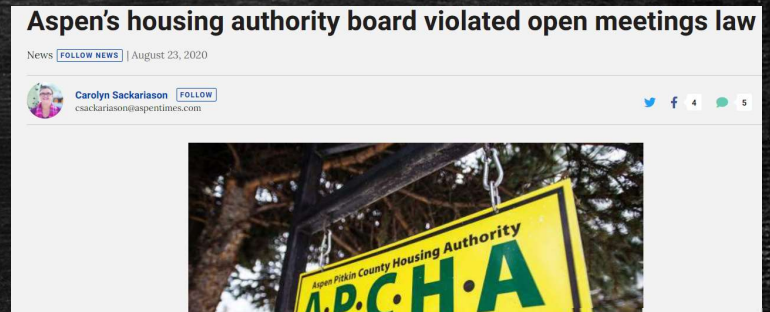
“specific” information as to what their public officials will be discussing behind closed doors; 2) It creates a more effective mechanism for policing whether public bodies have complied with their obligation to vote on discussing specific topics outside of public view; and 3) It helps the public officials avoid straying into topics that are not authorized for executive session discussions.

Executive sessions

During an executive session, a public body may not:

- Adopt any “proposed policy, position, resolution, rule, regulation, or formal action.”
- Engage in “informal” decision-making.
- Discuss a topic that was not announced and voted on in advance.

A public body must electronically record closed sessions, except for attorney-client communications.



Making decisions generally is not permitted in executive sessions. The open meetings law states: “No adoption of any proposed policy, position, resolution, rule, regulation, or formal action (except the approval of executive session minutes) shall occur at any executive session that is not open to the public.” In 2007, the Colorado Supreme Court held that even informal decision-making on important policy questions is not allowed behind closed doors.

Sometimes you see members of a public body come out of an executive session and immediately vote on a matter with little or no public discussion. That can be a pretty strong indication a decision was made during the executive session. But audio recordings of executive sessions are rarely released. A lawsuit filed in district court is really the only way

to make an executive session recording public unless the public body itself decides to do it.

Can you record the meeting?

The Colorado Open Meetings Law is silent on whether the public can record a public meeting. However, multiple couple court cases have set a precedent to allow recording, and other states have recognized the public's right under the First Amendment to record video or audio of public meetings that are on public property and concern a public interest.

FIRST AMENDMENT OPEN MEETINGS LAWS

Park County commissioners barred 9NEWS cameras from a public meeting. Was that legal?

JANUARY 23, 2019

By Lucy Haggard
CFOIC Contributor

Reporting a [story](#) on the Park County sheriff last month, 9NEWS journalists Noel Brennan and Bryan Wendland were told they couldn't bring their cameras into a county commissioners' meeting that was open to the public.



Your right to record a meeting of a public body isn't as absolute as you might think. The open meetings law is silent on whether the public can record a public meeting and there isn't much case law in Colorado on the subject. However, multiple couple court cases in other states have set a precedent to allow recording, and other states have recognized the public's right under the First Amendment to record video or audio of public meetings that are on public property and concern a public interest.

Public bodies are permitted under some of these rulings to place reasonable restrictions on when or how videorecording can occur. But these time, place and manner restrictions must be drawn up narrowly. If a restriction is placed, it must apply equally to everybody and every

meeting, not just to certain individuals or certain meetings. For example, it's reasonable to request that someone record from the side or back of the room instead of the middle, so that the view of audience members isn't blocked.

Many public meetings, especially those of higher-profile councils and commissions, are video recorded by the government body itself and either livestreamed or later uploaded to the internet.

Public comment

Free speech or out of order? As meetings grow wild, officials try to tame public comment.



By Karin Brulliard

January 17, 2023 at 4:57 p.m. EST

The rules cannot be operated in a discriminatory or viewpoint-restricted way. Governments can enforce reasonable restrictions, applied evenly to speakers, such as limiting the time allowed per speaker and removing a speaker who causes a disturbance.



The open meetings law also is silent on whether the public should be given an opportunity to comment on issues during meetings of a public body. Boards, commissions and councils typically set their own ground rules for letting the public speak during designated portions of meetings. But the rules cannot be operated in a discriminatory or viewpoint-restricted way. Governments can enforce reasonable restrictions, applied evenly to speakers, such as limiting the time allowed per speaker and removing a speaker who causes a disturbance.

Noteworthy is a recent ruling in Massachusetts. The state Supreme Court declared unconstitutional a town's public comment policy requiring comments to be "respectful and courteous, free of rude, personal, or slanderous remarks."

Civility, the court held, can't be required in a public comment session of a governmental meeting.

Colorado Open Records Act (CORA)

Statutory scope

- Establishes a public policy of broad, open access to government records

Legislative declaration

- "It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law."



One other important thing to know when you attend meetings of public bodies -- you are entitled to request copies of any materials used by the council or board during the meeting. Under the Colorado Open Records Act, those materials are no longer protected "work product" -- prepared to help elected officials make decisions -- once they are produced and distributed to members of the public body for their use in a public meeting.

Many, but not all, public bodies post agenda materials on their websites prior to meetings so the public can read any proposals under discussion.



coloradofoic.org/open-government-guide/

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For more information on your rights under the Colorado Open Meetings Law and the Colorado Open Records Act, visit CFOIC's free online sunshine laws guide at coloradofoic.org.