

**Let the Sun Shine In**  
A Primer on Colorado's Sunshine Law  
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A Checklist for Local Public Bodies To Conduct an  
"Executive Session"  
Under the Colorado Open Meetings Law

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The Colorado Open Meetings Law ("COML"), § 24-6-402(4), C.R.S. (2007), mandates that a local public body observe **all** of the following requirements with respect to **any** meeting from which the public is excluded and during which there is a discussion of the board's business:

Is the executive session called during a properly noticed public meeting?

Did the notice for the public meeting contain an indication that an executive session might be called?

Has the topic of the closed discussion been announced in public, at the meeting?

Has the statutory citation of the specific provision of the COML authorizing a closed meeting been announced in advance?

Has the "particular matter to be discussed" been identified in public, at the meeting, "in as much detail as possible with compromising the purpose for which the executive session is authorized"?

If the executive session is to involve a "personnel matter" discussion, has the employee(s) involved been given an opportunity to require that the discussion be conducted in public?

Does the proposed topic fit within the limited scope of one or more of the seven exclusive bases for a closed meeting:

- Purchase, sale or lease of property,
- Conference with the board's attorney,
- Matters required to be kept confidential by some other statute,
- Specialized details of security arrangements or law enforcement investigations,
- Determining positions relative to matters in negotiation,
- Personnel matters involving "employees,"
- Consideration of documents required by law to be kept confidential, and
- Discussions of individual students.

Has the board voted by two-thirds majority to conduct a closed discussion of the particular matter that was identified in as much detail as possible?

In addition to the procedural requirements for convening a permissible executive session listed above, the COML also imposes the following additional prohibitions on what a board may do during the closed session:

- The board may not discuss a non-exempt topic, such as, for example, an elected official or a sitting board member or a candidate for a vacancy on the board.
- The board may not discuss a matter that has not been announced and voted upon in advance. (If a closed discussion strays onto a topic that has not been announced and voted upon, the board must reconvene in public, announce the new topic, and then vote on whether to discuss that new topic behind closed doors before it continues with the new topic.)
- The board may not discontinue the electronic recording of an executive session except, and only, if the board’s legal counsel certifies that the discussion involves a matter of attorney-client privilege.
- The board may not “adopt” any “proposed policy, position, resolution, rule, regulation, or formal action,” except the approval of the minutes of a prior executive session.
- The board may not reach any informal decision on a matter that is then rubber-stamped during the subsequent public session.

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The following is a sample of text for a motion by a local public body to conduct a proper executive session:

I move, pursuant to Colorado Revised Statutes, Title 24, Article 6, Section 402, at subsection 4(\_\_\_\_) *[insert the subsection for the applicable COML exemption]* to go into executive session to discuss a \_\_\_\_\_ *[insert an identification of the topic]* matter. The particular matter that is to be discussed behind closed doors is \_\_\_\_\_  
\_\_\_\_\_ *[insert a specific identification of the particular matter, i.e., the identity or job category of an employee in a personnel matter, the specific lawsuit or claim in a legal matter, or the specific contract or agreement in a negotiation matter].*

*[If the discussion involves an employee and the “personnel matters” exemption has been cited, add the following text:]*

As this executive session involves a personnel matter, the employee involved has been given an opportunity to require that this discussion be conducted in public, and the employee has indicated that he/she wishes for this discussion to occur in private.