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CITY OF FLAGSTAFF

Board and Commission Members' Rules and Operations Manual

Message

Good government is not just the responsibility of city officials and employees, residents also play an important role. Through its boards, commissions, and committees, the city offers numerous opportunities for residents to get involved. Board and commission members provide input to the City Council, City Manager, and Departments on a variety of issues affecting the city. As a board, commission, or committee member, you are an important part of the city process, and the city appreciates your devotion, energy, time, and expertise spent in making Flagstaff a better place for everyone.

This manual is designed to provide you with an easily accessible reference to various issues and questions related to serving on a board or commission. The guide is divided into six parts: 1) Providing information on city government; 2) Understanding the board and commission process; 3) Explaining the roles and responsibilities of members and staff; (4) Guidance on recommendations and public statements; (5) Explaining the Board and Commission process; and (6) Providing information on the laws and regulations associated with boards and commissions. I hope this manual will help to answer any questions you may have about boards, commissions, committees, and their subcommittees.

The City Clerk's Office has been designated by the City Manager to coordinate the city's boards and commissions. The City Clerk is responsible for serving as the central contact for staff liaisons and as the secondary contact for board, commission, and committee members.

Training and resource guides for both staff liaisons and board members are expected to lead to greater effectiveness and more consistency among our city's boards, commissions, and committees.

There are several items to note about this resource guide:

- The term "commission" refers to all boards, commission, or committees which have been established by the City Council.
- There are several "additional resources" mentioned throughout the guide, copies of these policies are included as appendices to this manual. This information is also available on the city's website at <https://www.flagstaff.az.gov/994/Boards-Commissions>
- "A.R.S." stands for Arizona Revised Statutes, which is a collection of all state laws.

Please keep in mind that this manual will be revised as needed. Your feedback will be important in improving the resource. Please contact the City Clerk's Office to let us know what works well, what needs improvement, or if you need additional information.

Thank you.

Stacy Saltzburg, MMC
City Clerk

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PART ONE – City Government

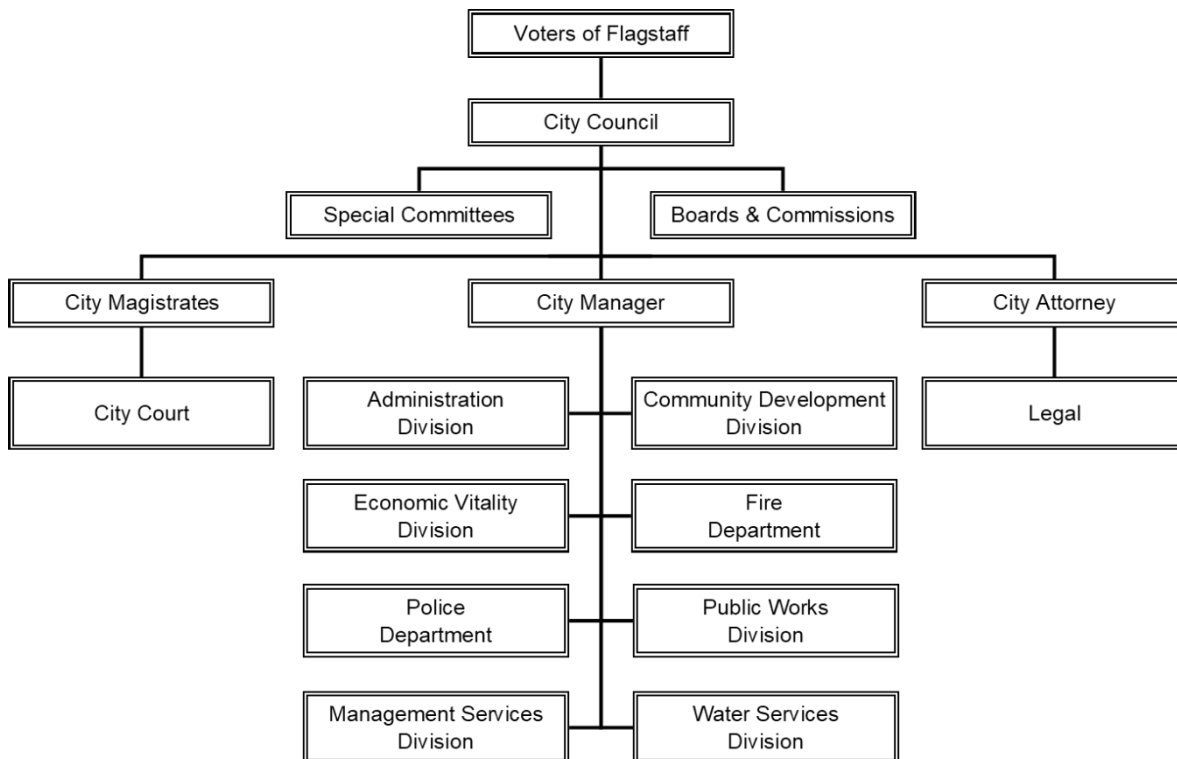
Flagstaff City Government

How the City of Flagstaff Operates

The Flagstaff City Charter was adopted by the voters in 1958 and is the basic governing authority of the City. The City Charter establishes a Council-Manager form of government. The City Council provides leadership and sets policy for the City, which means making decisions about what is and is not allowed in Flagstaff, what services need to be provided to residents and how to solve problems and concerns. The City Manager is hired by the City Council to manage the day-to-day operations of the City and to advise them about these operations as they set policy. With the assistance of the Department and Division Directors, the City Manager directs City divisions and functions. Overseeing more than 900 employees, the City Manager is responsible for the efficient, ongoing operation of all City services as set forth by the City Council.

City Council

The Flagstaff City Council is comprised of a mayor and six councilmembers elected at-large by the people on a nonpartisan ballot. The Mayor is elected every two years and acts as chairperson of the City Council presiding over Council meetings. Councilmembers hold staggered, four-year terms, with three seats decided every two years. Shortly after every City General Election, the City Council chooses a Vice-Mayor to serve in the absence of the Mayor. The Mayor and Councilmembers have equal voting power.



City Manager

The City Manager is the City's administrative head and is appointed by the City Council. The City Charter grants the City Manager a non-voting seat on the City Council. This allows the City Manager to take part in City Council discussions. The City Manager implements City Council policies and directives and makes recommendations to the City Council on measures necessary for the efficient and effective operation of municipal services. It is the City Manager's responsibility to direct the preparation of the City's annual budget and submit it to the City Council for approval. In addition, the City Manager oversees the day-to-day operation of the city and directs the activities of city employees.

City Attorney

The City Council also appoints the City Attorney. The City Attorney's Office represents the city's legal interests and rights, providing legal advice and prosecuting criminal complaints. Among other things, the City Attorney's Office drafts and reviews the city's legal documents and issues legal opinions.

City Clerk

The City Clerk is appointed by the City Manager. The City Clerk conducts City elections, ensures compliance with the Open Meeting Law, and maintains the official records of the City. The City Clerk's Office administers the Board and Commission Program and conducts commission member training.

City Divisions

The primary City Divisions are: Administration, Community Development, Economic Vitality, Fire, Management Services, Police, Public Works, Water Service, the City Attorney's Office, and Municipal Court. You will find that your board or commission works very closely with at least one City Division, if not more.

City Council Meetings

Overview of City Council Meetings

Unless posted differently, all City Council meetings are held in the Council Chambers at Flagstaff City Hall, which is located at 211 W. Aspen Avenue. The public is invited to attend these meetings and to participate. There are several types of meetings which are discussed in more detail further in this guide. Agendas can be obtained online at <https://www.flagstaff.az.gov/991/Agendas-Minutes>

Regular Meetings

Regular meetings of the City Council are held on the first and third Tuesdays of the month at 4:30 p.m. and 6:00 p.m. At these meetings the City Council takes official action, including enacting or rejecting ordinances, resolutions, and formal actions such as contract awards, property zoning and equipment or property purchases, among other things. The 4:30 p.m. portion of the meeting will include routine, non-controversial matters such as the approval of minutes, appointments, liquor license hearings, and consideration of routine contracts.

At the beginning of the regular Council meeting, under "Public Participation", the public may speak out on issues or concerns that are not listed on the regular meeting agenda. Due to the Open Meeting Law (which is discussed in [PART FOUR](#)), Councilmembers may not discuss the issues raised, but may ask staff to follow up or place the issue on a future agenda.

Work Sessions

Work Sessions are held on the second and fourth Tuesdays of the month at 6:00 p.m. Work sessions are public meetings held for the following purposes: (1) briefing Councilmembers on items included on the City Council's regular meeting agenda; (2) discussion of long range plans and programs for which no immediate action is required; (3) detailed discussion of matters which may soon be placed on a regular meeting agenda; and (4) exchange of information between the staff and City Council. No formal vote shall be taken on any matter under discussion.

All City Council meetings are live streamed to the city webpage:
<https://www.flagstaff.az.gov/1461/Streaming-City-Council-Meetings>

Part Two – The Board and Commission Process

Background Information

The Importance of the City’s Boards, Commissions and Committees

Good government is not just the responsibility of city officials and employees, residents also play an important role. Through its boards and commissions, the City offers numerous opportunities for residents to get involved. Commission members provide input to the City Council, City Manager and Departments on a variety of issues affecting the city.

Close to 150 volunteers serve on 24 different boards, commissions, and committees, some of which make direct recommendations to the City Council. Members examine a variety of issues from art projects to rezone requests. You are an important part of the City process, and the City appreciates your devotion, energy, time, and expertise spent in making Flagstaff a better place for everyone.

Creation

How Boards, Commissions and Committees are Formed

The City relies on its citizens to voice their opinions and to provide their expertise to better our government. Commissions provide excellent formats for this expression. As our city grows and develops, these opportunities are expected to increase for our citizenry.

The Flagstaff City Charter, Article 5, Section 1, authorizes the City Council to create commissions and to grant to them duties and powers consistent with the City Charter. Commission members are appointed by and serve solely at the discretion of the City Council. When established, commissions are given specific guidelines surrounding its purpose and authority. The purpose and authority of a commission can be found in its establishing legislation (ordinance or resolution).

Currently, the City has 24 active boards and commissions. [APPENDIX A](#) describes each board and commission and references their enabling legislation.

Types of Boards and Commissions

All boards, commissions, and committees of the city are classified as advisory, *ad hoc*, quasi-judicial, or decision-making.

Advisory

Most commissions fall into this category. Advisory commissions have the primary responsibility of advising and making recommendations to the City Council. It is the City Council’s role to absorb the advice and recommendations offered by numerous sources and then make a decision. Because the recommendations of commissions are advisory, the City Council may not always follow the recommendations offered. An example of an advisory commission is the Parks and Recreation Commission, which was formed to make recommendations to the City Council regarding City parks and recreation programs, the annual budget, and capital improvements for the Parks and Recreation Divisions.

Ad hoc

Ad hoc committees are typically advisory in nature and are created to study, review, and make recommendations regarding specific issues designated by City Council. The major difference between *ad hoc* committees and other advisory bodies is that *ad hoc* committees are established only for a limited, clearly-defined period of time. At the end of the designated time, they are automatically allowed to sunset (or end), unless the term is extended by the City Council. An example of an *ad hoc* committee was the Citizen's Transportation Tax Commission, which was created in August 2017 and disbanded in June 2018. The goal of the committee was to provide input and recommendations regarding the city's future transportation needs.

Decision-making

A decision-making board is a public body that possesses the power to select a course of action from multiple alternatives without having to seek the approval of a higher body, such as the City Council. Examples of decision-making boards are the Planning and Zoning Commission, the Board of Adjustment, and the Building and Fire Code Board of Appeals.

Quasi-Judicial

The Open Meeting Law defines a quasi-judicial body as "a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims." Contested proceedings or quasi-judicial or adjudicatory proceedings conducted by public bodies are subject to all the requirements of the Open Meeting Law, as well as several additional due process requirements. These due process requirements include: no ex-parte communication (outside communication with the involved parties) and an opportunity for the person to present their case through witnesses, cross-examination and argument. Robert's Rules are difficult to apply to quasi-judicial hearings and separate rules for such hearings may be necessary. The following boards are considered quasi-judicial:

- Board of Adjustment
- Building and Fire Code Board of Appeals

Subcommittees

A commission may appoint subcommittees and charge these bodies with their powers, duties, and responsibilities. Normally, a subcommittee is charged with a specific duty or role. The commission may refer matters to the subcommittees for the purpose of providing analysis and making recommendations to the commission. An example of a sub-committee is the Bicycle Advisory Committee which has been established by the Transportation Commission to investigate, consider, and make recommendations to the Transportation Commission on items assigned to them by the Commission regarding their respective areas of interest.

The commission appoints and removes the members and chair for each subcommittee. Subcommittees should have a consistent body of members. The number of members should be set by the commission, and a quorum would be a majority of the total membership; which includes any vacant seats. It is recommended that at least one member of the commission serve on the subcommittee (this member possibly could chair the subcommittee). Other commission members should refrain from attending and participating in subcommittee meetings to avoid potential violations of Open Meeting Law (which is discussed in more detail in its own [Section](#)).

Commissions often use subcommittees as a way to involve individuals who want to serve on the commission but cannot due to a lack of vacancies. The City strives to have a diverse makeup of

its commissions. Likewise, commissions should look for diversity when filling their subcommittee rosters.

Informal Working Groups

Informal working groups may be created to research, gather information, and provide recommendations back to the commission on various matters. **No official appointments are made to a working group by the commission.** Working groups may consist of members of the public and/or less than a quorum of commission members. Unlike subcommittees, working groups are not required to have formal agendas or minutes.

All information and recommendations from the work group must be provided and presented to the commission in an open meeting for public discussion. Informal working groups do not have any powers, duties, or responsibilities of the parent commission. No actions, statements, or recommendations can be made or provided by the working group on behalf of the commission.

Appointment Process

First Step – Apply

With a few exceptions, commission membership appointments are made by the City Council. To apply to an open commission, individuals fill out an application (available online at <https://www.flagstaff.az.gov/994/Boards-Commissions>). By default, applications go to the City Clerk's Office and are entered into a database. Typically, appointments are brought forward for consideration when there is at least one more application than available seats.

With a few exceptions, it is the City Council's policy that you may serve on only one commission at any given time, unless you serve as a liaison to another commission. You may apply to serve on a different commission during the last six months of your term if you do not intend to apply for reappointment to your current commission. If the City Council appoints you to a new commission, overlapping service is permitted to finish the current term and begin the new term.

Under most circumstances, you are eligible to serve two full terms and a partial term if you are filling the remaining term of a vacancy. If you would like to be considered for reappointment and you are eligible to serve another term, you must submit an application to the City Clerk's Office in accordance with applicable deadlines. Commission members seeking another term are considered along with all other applicants for the vacant seat on the commission. **There is no preference given to current commission members and it is possible that you may not be selected for reappointment.**

Second Step – Review

To give each councilmember the opportunity to appoint members of their choosing, a randomly rotating list of councilmembers has been developed for each commission to assign councilmembers when vacancies arise. Using the list for the appropriate commission, one councilmember is assigned to a single vacancy or appointment. If there is more than one appointment for that particular commission the next councilmember on the list will be assigned to the next appointment and so on. The assigned councilmember(s) will review the submitted applications for consideration of appointment.

Third Step – Appointment

The assigned councilmember(s) will make a motion to appoint their selected individual for the City Council to vote upon for possible approval. Should the motion not pass, the assigned

councilmember may select another applicant for possible approval. This process may continue until an applicant is successfully approved. If the assigned councilmember chooses not to make another motion, the next councilmember on the rotating list may make a motion to appoint. In the event that the list of applicants is exhausted, the appointment will be postponed until additional applications are received.

Fourth Step – After Appointments are Made

The appointee will receive a new member packet in the mail that includes basic information about serving on a commission along with a certificate of appointment, a current commission roster, information about parking, new commissioner training, Open Meeting Law, and a copy of the Board and Commission Member Manual.

Oaths of Office and Training Affirmations

What is the Oath of Office?

The Oath of Office is a written affirmation in which you promise to faithfully and impartially discharge the duties of your commission. The Training and Open Meeting Law affirmations are an acknowledgement that you have reviewed the Open Meeting Law and watched the online training video. The Oath of Office and affirmations are included in the new member packet that is sent to you following appointment.

Why Do Board and Commission Members Need to Sign These Forms?

Commission members are required by State law (A.R.S. Title 38, Chapter 2, Article 4) to sign Oaths of Office. State law requires that you sign and file (with the Office of the City Clerk) the Oath prior to participating in a meeting or otherwise exercising the powers of the office you were appointed to hold. Oaths of Office must be signed upon appointment for each commission you serve on.

Orientation

You are required to participate in at least one session of the City's commission training within your first three months in office. Because this training occurs only once or twice a year, the City Clerk's Office has made the training available online at <http://www.flagstaff.az.gov/index.aspx?nid=994> under "Member Training." You can view the training upon appointment rather than waiting until the next in-person training. Signing the affirmations indicates that you have viewed the training and reviewed the Open Meeting Law information and are prepared to perform your duties as a commission member.

PART THREE – ROLES AND RESPONSIBILITIES

Scope of Authority

The strength of commissions lies in their ability to provide detailed review of specific issues and to increase public input and citizen participation in the determination of city policies and procedures. This process provides an opportunity for further public discussion and gives the City Council a broader base of information on which to formulate decisions.

Commissions are established by the City Council and they are given specific guidelines surrounding its purpose and authority. With few exceptions, commissions are advisory to the City Council. The purpose and authority along with duties and responsibilities of each commission are described in its enabling legislation, which could be an ordinance, resolution, or formal action of the City Council. Upon the request of the City Council, a commission shall advise the City Council on a matter. A commission may also submit to the City Council recommendations on matters that fall only within their purpose and authority as established by the City Council.

Only the City Council or a person acting pursuant to the direction of the City Council, may issue a communication (verbal or written) which represents an official position of the city. This includes, but is not limited to, statements of support or opposition to an issue, resolutions on any matter, directives or requests of any kind to external agencies or entities, or anything that remotely purports to be of official city import.

Commissions shall not take independent action to represent a position or opinion, whether or not related to its responsibility pursuant to city ordinance, except by submitting an advisory recommendation to the City Council. In addition, commissions may not make recommendations for elective candidates or take a position on an election issue. Furthermore, you may not use your official title or make any statement as a representative or member of your commission unless authorized to do so by a formal action of your commission.

Board and Commission Members

The opportunity for residents to participate in the decision-making process is crucial to an open and responsive government. The primary role of most commissions is to advise and make recommendations to the City Council.

Except for certain specifically identified exceptions, which are discussed in a later section, all matters to be considered and actions to be taken by a commission must be done in an open meeting. Staff liaisons will provide you with an agenda in advance of the meeting date. Agendas will often include a packet of information related to agenda items. It is vital to review this information before the meeting. Analyzing this information ahead of time allows you to make an informed evaluation of the item, participate actively in the discussion, and aids in preparing questions that you may have for the presenter.

Term of Office

Your term of office can be found on the commission roster. Generally, the terms of each member are staggered to ensure continuity on the commission, with a third of the member terms expiring each year. Most appointments to Flagstaff's commissions are for three-year terms, unless an

appointment is made for the balance of a member's term due to resignation, disqualification, or removal from office.

Important to note: You serve as an active commission member until reappointed, removed, or replaced, even if your term has expired. **In other words, if your membership term has expired, please consider yourself an active member and continue to serve on your commission until notified of your replacement.**

Residency

The City Charter requires all commission members to be residents of the City of Flagstaff at the time of your appointment and for the full duration of your term in office. This means that your primary physical residence must be located within city limits and that you reside at that location. If you move out of the city limits during your term of office, you are no longer eligible to serve on the commission and must resign. The only exception to this rule is the joint City/County Library Board where the Coconino County Board of Supervisors appoints two individuals who are county residents but who may or may not be residents of the city.

Attendance

You are expected to attend all regularly scheduled meetings. If you know you will not be able to attend a meeting, please let your staff liaison know as soon as possible. The sooner the liaison knows that a quorum will not be present, the sooner the meeting can be cancelled and rescheduled.

Having all members in attendance at a meeting, rather than a minimum quorum, is always preferable. You are appointed because of your experience, background, and/or perspective in a particular policy area, and those factors are vital to the commission making a well-reasoned and informed decision. Having more members in attendance generates a healthy discussion because of the diversity of thoughts and opinions among the members.

Although a meeting can be held if a quorum is present, there is a greater possibility of a meeting being cancelled at the last minute because of lack of attendance, members declaring a conflict of interest, or members having to leave early. This can delay the commission's work, is disappointing to the members and staff who did attend, and sends a negative message to any members of the public who may have wished to speak and believe their time was wasted.

As a general rule, a commission may recommend to the City Council the dismissal of any member who is absent for more than two consecutive regular meetings without prior notification. This same rule applies if a member is absent for more than thirty percent (30%) of all meetings during a twelve-month period.

Code of Conduct

Your conduct as a commission member is very important. It can strengthen or undermine the credibility of your commission and the decisions or recommendations that it makes. Your statements and actions assume special significance and, if not responsibly discharged, could be detrimental to the city's best interests. In addition, improprieties of a commission member can have a legal impact on the city. As an official member of the City of Flagstaff team, City policies apply to you.

You may not use your official title or make any statement as a representative or member of a commission to influence an election, further a personal position, or for personal benefit. Under City policy, you are not allowed to make statements as a representative of a commission unless

authorized to do so by a formal action of your commission.

A process has been established for commission recommendations and decisions to be presented to the City Council. You should not meet jointly or separately with members of the City Council on matters of commission business. However, this provision is not meant to deprive you, as a citizen, of the right to meet with any member of the City Council on any other matter. Private meetings with City Councilmembers can be interpreted as attempting to influence the outcome of a vote of the City Council prior to a matter coming before them at an open meeting. Discussing commission business outside a public meeting with City Councilmembers could lead to serial communications potentially causing City Councilmembers to violate Open Meeting Law if the item is forthcoming on a City Council meeting agenda, particularly if you convey information from one Councilmember to another.

Along the way, you may find yourself facing ethical dilemmas. Matters of ethics are often difficult to detect. It is important to preserve the public perception of the ethics and values of the City. Gift giving is one of the most common ethical situations that can come into play with public officials. If you are presented with a gift, it may be helpful to ask the following questions to determine whether or not you should accept the gift:

1. Is the giver associated with an individual or organization involved with a past, present, or future matter that has been considered or will be considered by the commission?
2. Does the giver expect something in return?
3. Is the gift of more than nominal value?
4. Would someone question your integrity and values if they knew about the gift?

If the answer is “yes” to any of these questions, the gift should not be accepted regardless of whether or not it is innocent in intent.

Removal from Public Office

You serve at the discretion of the City Council and, like any other City Council-appointed position, may be removed from office by an official vote of the City Council. The following are examples of activities that can precipitate admonishment or removal from office:

- Violation of the Open Meeting Law.
- Refusal to sign the official Oath of Office.
- More than two consecutive unexcused absences from regularly scheduled meetings.
- A 30% absenteeism rate or more from regularly scheduled meetings.
- Persistent or willful violation of the Conflict of Interest Law.
- Conduct jeopardizing the City’s and community’s best interests.
- Rude, abusive, slanderous, and/or disrespectful behavior directed at the public, staff, or members of the City Council.
- Failure or refusal to participate in commission member training within a year of appointment or when directed by the City Council, City Manager, or City Attorney.
- Violation of City policies.
- Unethical behavior.
- Using your status as a City official (commission member) for personal purposes, to influence the outcome of an election or other unsanctioned activities not related to official commission business.
- Willful non-compliance with the provisions of this guide.
- Fraud, collusion or coercion.
- Inefficiency, neglect of duty or malfeasance in office.

Staff Liaisons

The role of your staff liaison is to facilitate and enhance the commission's operation and effectiveness. Your liaison is responsible for providing technical expertise and research assistance, ensuring that the commission complies with the Open Meeting Law, answering questions related to the city policies and procedures, and coordinating the involvement of other departments or commissions as needed.

The staff liaison role is critical to the commission process; the liaison is the link between the commission and the City Council. The liaison is a neutral third-party who advises your commission and ensures that discussions are focused on the properly-posted agenda items. If you ever have any questions or concerns, feel free to contact your staff liaison or the City Clerk's Office.

In addition to the primary role of serving as the contact and advisor to the commission, the staff liaison has a variety of other duties, including advising the commission, preparing the agenda, reserving and setting up the meeting room, taking minutes (or ensuring minutes are taken), and keeping track of attendance, among other things. A commission may request staff's assistance on various projects; however, their Division Director must approve all requests which create a substantial demand for a work product.

Staff liaisons are responsible for reporting commission recommendations and concerns to their Division Director for proper follow up with the City Manager and/or City Council.

City Council

A Council Representative may be assigned to your commission. The role of the Council Representative will be to gather information from their assigned commission regarding their current work program, projects, and other activities and share that information with the City Council. The Council Representative may also convey information from the City Council to the commission or provide feedback on City Council decisions or direction that may be relevant to the commission's duties and work. The Council Representative may attend meetings in person, stream meetings on the City website, review agendas and minutes, and/or reach out to meet with the chairperson and staff liaison. Information that is collected will be shared with the rest of the City Council during the Council Liaison Reports portion of the Council Meetings.

The City Council will hold quarterly Work Session meetings to hear and discuss updates from commissions on their work over the past year. This is another opportunity for the Commission to share information and recommendations with the Council.

City Clerk

The City Clerk helps oversee the City's commissions by serving as the central contact for staff liaisons and as a secondary contact for commission members on all public body related issues. The City Clerk also conducts training for staff liaisons and commission members on the overall commission process, Open Meeting Law requirements, and Conflict of Interest Law. The City Clerk retains all commission agendas and minutes permanently and tracks meeting agendas and minutes for proper online archiving.

The City Clerk also maintains membership rosters for all the City's official commissions. If your contact information changes, be sure to notify your staff liaison as quickly as possible.

PART FOUR – RECOMMENDATIONS & OFFICIAL STATEMENTS

Recommendations to City Council

Except as specified by state law or city ordinance, commission recommendations must be presented to the City Manager through your staff liaison. Your commission should prepare a detailed report that includes information on how and why they decided to present the recommendation. The City Manager will determine how that recommendation gets delivered to the City Council whether through a formal City Council meeting presentation or a more informal manner. If it is to be presented at a City Council meeting, the staff liaison will prepare a staff summary report that includes information regarding the recommendation and present the recommendation to the City Council. In addition to providing a formal recommendation to the City Manager, if a Council Representative is assigned to your commission, they are able to provide information about the recommendation during their report at a Council Meeting.

Commission recommendations are important to the City Council and they are taken under consideration for possible action. The City Council has several options and may:

- Accept the recommendation and give further direction.
- Change the provisions of a recommendation before giving further direction.
- Send a matter back for further consideration.
- Not accept the recommendation.

Statements Made to Other Public or Private Bodies

Official versus Personal Capacity

It is important to differentiate between your official and personal capacities. As a commission member, you have certain official capacities, which may include hearing presentations, obtaining public input, and making recommendations to a higher body. If you have not been charged with providing input to a higher body, you should not do so.

You cannot attend another commission meeting and provide input in an official capacity unless you have specifically been given that responsibility by your commission. However, you can attend other commission meetings in your personal capacity as a resident. Please keep in mind when attending another public or private body meeting in your personal capacity that it is best to clarify that you do not speak on behalf of your commission (unless you have been authorized to do so), rather that you are speaking in your personal capacity as a resident. This disclosure is even more important when your personal position conflicts with a position or decision of your commission.

Should you ever have any questions about your official or personal capacities, please contact your staff liaison or the City Clerk's Office.

Media Requests

At some point in your commission tenure, you may be contacted by the media to give your thoughts on a recent decision made by your commission or by the City Council. It is essential to follow the advice given in the previous section. It is best if you contact your staff liaison before speaking with the media.

Commissions and their members shall not take independent action to make a statement on behalf of, or as a representative of, the commission unless authorized to do so by a formal action. You may speak as an individual, but it is important that you stress to the reporter that you are speaking on your own behalf, not on behalf of the commission.

Most importantly, only the City Council or a person acting pursuant to the direction of the City Council, may issue a communication (verbal or written) which represents an official position of the city. This includes, but is not limited to, statements of support or opposition to an issue; resolutions on any matter; directives or requests of any kind to external agencies or entities; or anything that remotely purports to be of official city import.

Part Five – Board and Commission Meetings

Board and Commission Member Parking

You are permitted to park free of charge through Park Flag in one of the seven designated spaces on the west side of the Wheeler Park parking lot during commission meetings. The City Clerk's Office will notify Park Flag of your appointment and Park Flag will contact you directly with instructions on how to obtain the appropriate permit. If you do not hear from Park Flag prior to your first meeting, please contact your staff liaison or the City Clerk's Office.

Should you need to conduct commission business outside your normal commission meeting time please contact your staff liaison for temporary parking information.

***If you have outstanding parking violations you will not be issued a permit until the matter is resolved.**

Quorum

What is a Quorum?

A quorum is the number of members of the public body required to be in attendance at meetings in order for the meeting to be held. A quorum consists of a majority of the members of a commission (Ariz. Rev. Stat. § 1-216(B)). For purposes of computing whether a quorum is present, vacancies must be included unless otherwise provided for by law. Most commissions consist of seven members with a quorum requirement of a minimum of four members in attendance.

What happens if there is no Quorum?

If there is no quorum, the meeting must be cancelled and discussions or deliberations cannot occur per Arizona's Open Meeting Law (discussed in the next section). If you know in advance that you cannot attend a meeting you should inform your staff liaison as soon as possible. This will give the staff liaison the opportunity to cancel or reschedule the meeting. However, if members and staff arrive at a meeting and discover that a quorum is not present, it is vital for commission members to refrain from speaking or discussing commission business to avoid violating Arizona's Open Meeting Law.

If a meeting is started with a quorum and the quorum is lost because a member leaves the meeting, declares a conflict of interest (see the [Conflict of Interest Section](#)) or is lost for some other reason, items cannot be discussed or acted on until the quorum is regained. If it is not possible to regain the quorum, the meeting should end with any remaining items considered at the next meeting.

Meeting Agenda Process

Types of Agendas

The meeting agenda is normally set by the commission chair, with input from members and the staff liaison. Items can be placed on agendas in a variety of ways and commissions may establish

their own process for setting their agenda. The following are examples of how agenda items may be placed on agendas:

- In response to direction from the City Council or City Manager.
- As requested by any commission member at a public meeting.
- In response to a request from the chairperson.
- As deemed necessary by the staff liaison.
- As requested by other commissions.

The agenda should be specific enough to allow members of the public to have a general idea of what will be discussed and may be voted on (if the item is set for action). The public is entitled to know what could potentially take place.

A commission agenda may include a "Call to the Public" to designate a part of the meeting for the public to address the commission on items that are not on the agenda. Neither discussion nor action may occur on items raised during public participation because they are not on the agenda. See [Public Comment Section](#) for additional information.

In addition to regular meeting agendas, there are also notices for events, retreats/workshops, and tours. At these types of events, a quorum of the commission may be present. While these events are not meetings and commission business will not be discussed, it is helpful to notify the public that they may see commission members together, but no commission business will be discussed or acted upon. If you are aware of a social gathering in which a quorum of the commission may be in attendance, if possible, notify your staff liaison so they can post a Notice of Possible Quorum.

Discussion and Voting

Who Runs the Meeting?

The chair is the presiding officer in all commission proceedings. During the absence of the chair, the vice-chair acts as chair. If neither the chair nor vice-chair can attend the meeting there is no formal order of who would take over and the members in attendance can choose a presiding officer for the meeting.

Chairs and vice-chairs normally serve for a predetermined period of time (for example, one or two years). Commissions elect their own chair and vice-chair by having a member make a motion to select another member as chair. If seconded by another member, the nomination is voted on by the commission. This process can be repeated for the vice-chair position. When it comes time to elect the leadership, the nomination process must be an agenda item.

Decorum

Members may speak after recognition by the chair and the chair shall not unreasonably withhold such recognition. However, the chair may not recognize similar repetitive discussions or motions which would delay the meeting.

When two or more members wish to speak, the chair shall determine the order of speaking and recognize the first speaker.

While a member is speaking, no other member shall interrupt except to make a point of order or a point of personal privilege. A point of order is made when a member notes an infraction of the rules or improper decorum in speaking. The point of order must be raised immediately after the

error is made. A point of personal privilege pertains to noise, personal comfort, or related items.

The general procedure for discussing and voting on a posted agenda item is:

1. The chair will explain the item is up for discussion and voting (if applicable as certain agenda items are for information or discussion only).
2. A presentation will be made by either staff or possibly an outside group that is making a presentation before the commission.
3. Following the presentation, and if public comments are allowed (see [Public Comment Section](#)), the chair may invite comments from the public on the item being considered.
4. If there is no discussion, or after discussion ends and the item is posted for action, the chair will ask for a motion.
 - A motion is a formal proposal that certain action be taken or that a certain statement express the opinion, desire, or will of the commission.
 - Motions must be made by members, not by guests or the public.
5. In order to vote, all motions require a second to put the issue before the commission. A member does not need to be recognized to second a motion.
 - A member who seconds a motion does not have to vote in favor of that motion.
 - Seconding a motion does not endorse the motion; it simply indicates a desire to have the motion considered.
6. After the motion and second the chair will call for discussion before the item is voted on.
7. Any member, at any time, may request a roll call vote. A roll call vote is a vote where each member notes their position (yes/yea or no/nay) when called by the individual taking minutes or the staff liaison.
8. A motion will pass or fail based on a majority vote.
 - The chair should announce whether the motion passed or failed.
 - For voice votes of ayes and nays that are not unanimous, the chair shall indicate the individual votes.
 - The chair may ask that a member's vote be clarified.
 - Printed or secret ballots are not permitted.
9. In the case of a tie in the vote on any motion, the motion fails.
10. If a motion fails, an alternative motion can be made.

Who Can Vote?

All commission members may vote, including the chair, on all commission proceedings.

Can I send a Designee or Proxy in my Place?

No, this is not allowed. At times, you may be unable to attend a meeting and ask your staff liaison if a representative (also known as a designee, delegate, or proxy) can be sent in your place. Although proxy voting is permitted under Robert's Rules of Order, members of public bodies, which include commissions established by the City Council, may **NOT** vote by proxy. Proxy voting is inconsistent with provisions of Arizona's Open Meeting Law. Proxy voting is also inconsistent with the requirement that members of public bodies be appointed by the City Council and take an Oath of Office before assuming the duties of the office.

Can I Abstain from Voting?

The failure to vote on matters before you is inconsistent with your official responsibilities. The City Charter provides that, in the absence of a conflict of interest (see the [Conflict of Interest Section](#)), an abstention vote is counted as an affirmative vote. When a refusal to vote occurs, it is entered in the minutes as an affirmative vote with no explanation. The abstention clause is intended to

provide an incentive to vote. The provision also protects the public process and ensures that, at a minimum, a majority of members present at a meeting vote on an issue.

Absent a statutory conflict of interest, you are expected to vote on agenda items presented to them. You are excused from voting only when a statutory conflict of interest exists.

Robert's Rules of Order

What are Robert's Rules of Order?

Robert's Rules of Order are a guide for conducting meetings. Robert's Rules of Order may be used for procedural matters not addressed by this handbook.

It is important to remember that Robert's Rules of Order are only a guide for conducting the business of a meeting and it is not the law. The only required actions to make an item legal are a motion, a second, and a vote. Within the motion, intent must be clear and those who vote on the matter must clearly understand the intent. Robert's Rules of Order provide formulas for the sequencing of different kinds of motions and an orderly rule for conducting a meeting. However, if a motion is plainly made, a second to the motion is placed on the record, and the voting participants understand the effect of their vote and support the outcome of the motion, it will stand up on its own even if it does not follow the letter of Robert's Rules of Order.

Rules Governing Common Motions

Motions are formal proposals that certain actions be taken, or certain statements expressing the opinion, recommendations or will of the commission be adopted. Motions and seconds must be made by a member of the commission. By making a motion or seconding a motion, a member is not necessarily endorsing the motion but instead is opening the floor for discussion so that the motion can be considered by the commission. If there is no motion and second to consider an agenda item, the commission shall not consider or discuss the item.

Motion to be Stated by the Chair - Withdrawal

When a motion is made and seconded, it shall be so stated by the chair before debate commences. A motion may not be withdrawn by the mover without the consent of the member seconding it.

Motion to Postpone

A motion to postpone is in order when an item is rescheduled to a time certain, when it is delayed with conditions, or when the matter is intended to be disposed of without action. If the motion prevails, the item shall return for action at the meeting specified or in accordance with the conditions established in the postponement. A motion to postpone may be debated prior to vote, but no other motion, including a motion to amend, may be offered until the vote is taken and only if the motion to postpone fails. A motion to postpone indefinitely, if it receives a majority vote, effectively extinguishes an item.

Motion to Table

A motion to table is used to delay discussion on an item until later in the meeting or until the next meeting. Neither the motion to table nor other business can be discussed, until a vote has been taken on the motion. If the motion is successful, no further discussion can be had without a motion to take off the table. To take a motion off the table at the same or immediately succeeding meeting, a motion and second must be made to take the item off the table, and it must pass by majority vote.

If not revived by the adjournment of the immediately succeeding meeting, the matter is considered to be dead.

Motion to Divide the Question

If the question contains two or more divisionable propositions, the chair may, and upon request of a member shall, divide the same.

Motion to Amend

On a motion to amend or “strike out and insert,” the motion shall be made so that the intent of the amendment is clear to the members, the public and for the record.

Motion to Amend an Amendment

A motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be introduced. An amendment modifying the intention of a motion shall be in order, but an amendment relating to a different matter shall not be in order.

Motion to Reconsider

After the decision on any question, any member who voted with the majority may move for a reconsideration of any action at the same meeting or at the next regular meeting that occurs at least one week after the date the action was taken. In the event of a tie vote on a motion, any commission member may move for reconsideration at the next regular meeting. To ensure that the matter will be included on the posted agenda in conformance with the Open Meeting Law, any member who wishes to have a decision reconsidered must alert the staff liaison in writing at least five days prior to the meeting at which the motion to reconsider will be made, unless the motion to reconsider was made and seconded at the meeting.

A motion to reconsider shall require the affirmative vote of the majority of the members present at the time of reconsideration. After a motion for reconsideration has once been acted on, no other motion for reconsideration of the same subject shall be made without unanimous consent of all commission members.

After the reconsideration time period has expired, the same matter may be placed on a later meeting agenda as requested according to proper protocols.

Public Comment

What is Public Comment?

Public comment provides members of the public the opportunity to address the commission in two ways – on a **published agenda item** or on other issues that are not on the agenda during the **public participation period**. The public participation period is normally its own agenda item and the commission cannot discuss, make any decisions, or take any action on any of the issues raised during this comment period.

The Open Meeting Law does not grant citizens the right to speak at public meetings, and therefore, a public comment period is not legally required. However, it is the policy and practice of the City of Flagstaff to allow individuals to appear before public bodies to express their views on published agenda items and during the public comment period.

Individuals may speak only when recognized by the chair. It is a good idea to have individuals wishing to speak fill out Speaker Comment Cards.

There are several benefits to having individuals fill out Speaker Cards:

- The chair is made aware of how many people wish to speak on a particular item and can implement reasonable time-limit restrictions.
- The chair can call up the speakers in order by name.
- The staff liaison has a record to refer to when drafting minutes.
- Confirmation for those individuals not wishing to speak but wanting to have something on the record (e.g. that they supported or opposed a particular item).

If speaker cards are used, the liaison should get all cards from the chair after the meeting for use in composing the minutes and proper records retention.

What Can the Public Say and How Can Board and Commission Members Respond?

The chair can place reasonable limits on the amount of time for each individual to speak on an agenda item or during the public participation period. For example, the City Council limits each speaker to three minutes to talk. It is important that the chair announces the limits prior to the start of public comment and all speakers be given the same amount of time for comment.

If an individual is commenting on a posted agenda item, the speaker should confine their statements to the agenda item. You can respond to the comments or questions during this time.

The public can comment during public participation on any item that is not on the agenda. There are special restrictions on what you can respond to during public participation. You can respond to statements made during public participation in three ways:

1. You can respond to personal attacks (someone questions your qualifications, suggests you have a conflict of interest that was not disclosed, etc.).
2. The commission can instruct staff to follow up.
3. The commission can instruct staff to place the item brought up (by the member of the public) on a future agenda.

This is all that can be said during public participation. You cannot express agreement or disagreement with a person's comment, discuss it, or take action. The reasoning behind this rule is that items brought up during public participation were not posted in accordance with the Open Meeting Law. The public is not aware of these items and did not have a chance to respond. Therefore, discussion or action cannot take place and the item can be discussed only at a future meeting with a properly-posted agenda.

Minutes

Minutes

Minutes are the official, formal record of what occurred in a meeting and are essential for continuity and information for future commissions. Minutes summarize action taken, action planned, responsibilities, and deadlines.

All commissions, and their subcommittees, are required to take minutes under the Open Meeting Law. Additionally, minutes are public records and draft minutes, or an audio/visual recording, of a public meeting must be posted online for public viewing within three working days after the meeting. All commission meetings are streamed live, recorded, and posted to the City's website which eliminates this three-day requirement.

Approving the Minutes

Minutes generally are sent with the agenda of the next meeting to be reviewed and considered for approval by all members. Any member may make a motion to approve the minutes. Even a member not present during the meeting for which minutes are being approved may make the motion.

If a correction to the minutes is requested and no other commission members object, the minutes are considered approved as corrected when the members vote. Any disputed corrections would need to be formally voted on by the group. Once approved, minutes become official government documents and any changes to approved minutes can only be made by a vote of the body that approved those minutes.

Executive Sessions

What is an Executive Session?

On a rare occasion, a commission may need to convene for an executive session. An executive session is a gathering of a quorum of members of a public body from which the public is excluded for one or more of the subjects prescribed in [A.R.S. Section 38-431.03](#). In addition to the members of the commission, only individuals whose presence is reasonably necessary in order for the commission to carry out its executive session responsibilities may attend the executive session. **Executive sessions may not be held without the prior consent of the City Attorney.**

Subjects that Can be Discussed in an Executive Session

Bodies are allowed to convene in executive session for only seven reasons. The most likely topic of an executive session involving a commission would be for legal advice, property negotiations, or personnel related issues. **A commission may not go into executive session without a City Attorney present.** Executive sessions are not open to the public and no formal action is taken. Legal action involving a final vote or decision **shall not** be taken at an executive session. Rather, a vote on executive session topics must be taken at a publicly posted meeting. It is important to advise those who are present that the information discussed is confidential and may not be discussed with anyone. Additionally, the item(s) to be discussed in executive session must be listed on the agenda. For questions about a possible executive session agenda please contact your Staff Liaison or the City Clerk's Office.

Part Six – Law, Regulations and Policies

Public agencies and public officials are bound by stricter standards than the private sector. Preparation for meetings, meeting decisions, discussion items, agendas and commissioner conduct are all strictly regulated by state law. These statutes require compliance and they affect all government agencies. Non-compliance or willful disregard of these laws can result in painful consequences.

The two most important laws that you will face as a commissioner are Arizona's Open Meeting Law (Arizona Revised Statutes Title 38, Chapter 3, Article 3.1) and the Conflict of Interest Law (Arizona Revised Statutes, Title 38, Chapter 3, Article 8). Protecting the public and safeguarding the public process is at the core of these laws. Because they have a direct bearing on your commission's activities and your behavior as a commissioner, it is important for you to become familiar with them.

Open Meeting Law (A.R.S. §38-431.09)

What is the Open Meeting Law?

The Open Meeting Law is a state law (A.R.S. Title 38, Chapter 3, Article 3.1) that requires all public bodies (which includes all types of commissions, committees and their subcommittees) to conduct their business in a public environment. With very limited exceptions (see "Executive Sessions" Section), as a means of promoting public awareness and participation, Arizona's Open Meeting Law requires commissions to provide advanced notice to the public of discussions and actions that will be considered at a meeting. Proper posting means that an agenda must be made available to the public at least 24 hours before the meeting with the meeting's time, date, location, and items for discussion and/or action indicated on the agenda. To comply with the state's requirements, meeting agendas must be placed on the posting board at City Hall and online.

The Open Meeting Law promotes openness in government and ensures the general public has access to government processes. Arizona's Open Meeting Law applies anytime a quorum of a public body gathers and discusses any matter that may come before the public body for a formal vote, whether the gathering occurs at a meeting, retreat, workshop, tour, or social function.

Allowed and Prohibited Communication Methods

The Open Meeting Law opens government to public review and prevents commissions from making decisions in secret. Communications, such as telephone calls, e-mails, and other electronic methods used to bypass the Open Meeting Law and its purposes exposes you to possible sanctions. (Arizona Attorney General Opinion No. 105-004 (R05-010), available online at: <http://www.azag.gov/opinions/2005/105-004.pdf>.)

Communications can occur among commission members in a variety of ways other than a public setting: face-to-face, in writing, over the telephone, and through the use of e-mail, text messages or social media. These types of communications can constitute a "meeting". The public does not have access to these communication formats, so when members of a public body begin having discussions by these means, it can result in Open Meeting Law violations.

For example, even if the first e-mail does not violate the Open Meeting Law, there is a chance that subsequent responses could. Commission member #1 could be talking with commission

member #2 about an item, not realizing that commission member #3 and commission member #4 are also talking about the same item. This exchange of e-mails might result in a discussion or deliberation that could violate the Open Meeting Law. To avoid the risk of inadvertently violating the Open Meeting Law, it is best that commission members communicate at public meetings about commission business and not by telephone or e-mail.

Some examples of prohibited and allowed communication methods under the Open Meeting Law:

Prohibited: Commission members cannot circumvent public discussion by splintering the quorum and having separate or serial (one after another) discussions. For example, one commission member cannot communicate with another commission member and then pass on the results of that discussion to a third commission member.

Prohibited: An e-mail from a commission member to the entire commission or to a quorum of the commission that proposes action would be considered a meeting and subject to the Open Meeting Law, **even if** no commission member responds to the e-mail. For example, an e-mail sent from a commission member to the commission which states "We should approve the grant to the elementary school" would be considered an action and would violate the Open Meeting Law.

Allowed: An e-mail request by a commission member to the staff liaison for specific information does not violate the Open Meeting Law. The staff liaison may send e-mails and replies to all the commission members without violating the Open Meeting Law as long as the response does not communicate the opinions of the other commission members. However, if further clarification is needed, you should only respond to the staff liaison and not copy the other commission members as this would constitute a discussion or deliberation, which violates the Open Meeting Law.

Allowed: An e-mail, phone call, text message, etc. between commission members about an upcoming social function.

Open Meeting Law Violations

Actions taken at a meeting held in violation of the Open Meeting Law are null and void unless ratified within 30 days of discovery and notice and a detailed description is given at least 72 hours prior to the meeting to ratify the non-complying action(s).

Arizona's Open Meeting Law includes penalty provisions for violations. Anyone affected by an "illegal action" can file suit in Superior Court. If the Court finds that the Open Meeting Law has been violated, it may levy a fine of up to \$500 against the you for each violation. You as an individual, and not the municipality, must pay the fine. You are also subject to removal from office.

Bottom Line

Once a you commit to a written form communication related to commission business, that record no longer belongs to you as an individual but becomes part of the public domain. Anyone involved in sending messages back and forth which even discuss possible action or propose a formal action could be considered serial communications which potentially violates Open Meeting Law; it is the same as if the you had met together in a private meeting. Therefore, based on these reasons, **it is best that commission members communicate at public meetings about business and not through other means.** If you have any questions about Open Meeting Law or any of the provisions above, please contact your staff liaison or the City Clerk's Office.

Avoiding Open Meeting Law Violations

To avoid pitfalls associated with Arizona's Open Meeting Law the City of Flagstaff recommends the following:

- Limit discussions regarding commission business to public sessions.
- Avoid communication through e-mail, text messages, and social media posts regarding commission business.
- Do not poll other commission members on commission business prior to meetings.
- Disband meetings when a quorum is not present.
- Provide information and materials to your staff liaison for distribution to the entire commission or bring sufficient copies and distribute at a public meeting.

Additional Resources

For more information on the Open Meeting Law, please refer to the Arizona Open Meeting Law Handbook found at <https://www.azoca.gov/wp-content/uploads/Open-Meeting-Law-Booklet-September2018.pdf>. Additionally, the City Clerk's Office in partnership with the City Attorney's Office can provide a presentation to commissions on the Open Meeting Law. To schedule a presentation, please contact your staff liaison.

Conflict of Interest Law (A.R.S. §38-503)

The Conflict of Interest Law applies to all public officers, including commission members. Because there are severe penalties for violating the Conflict of Interest Law, you should understand your obligations, liabilities, and rights.

Purpose

The Arizona legislature has enacted conflict of interest laws governing the conduct of public officers who, in their official capacities, become involved in decisions that could affect their personal interests or the interests of their relatives (Ariz. Rev. Stat. § 38-501 et seq.). The purpose of these laws is to remove or limit the possibility of personal influence that might otherwise affect a public officer's decisions. One cannot serve two masters with conflicting interests, and the state's conflict of interest laws are intended to prevent situations in which a public officer's professional or financial concerns conflict with the unbiased performance of the public officer's duties.

What is a Conflict of Interest?

A conflict of interest refers to a situation when someone, such as a commission member, has competing professional or personal obligations or personal or financial interests that would make it difficult to fulfill their duties fairly. It is a conflict between an individual's personal interest and their public duty. This can exist whether or not money is involved, and whether the conflict is actual or only perceived. Public perception is not a sufficient basis alone upon which to determine whether or not a conflict of interest occurs.

Remote and Substantial Interest

The Conflict of Interest Law distinguishes between interests that are "remote" and those that are "substantial". Remote interests are considered so minor that they do not constitute legitimate conflicts of interest. Any pecuniary or proprietary interest that is not remote is a "substantial" interest and does constitute a conflict of interest.

Remote Interest

If you have a remote interest in a matter, then you can still vote and participate in the discussion of your commission. A remote interest is:

1. A non-salaried officer of a non-profit corporation doing business with or requesting money from the City.
2. The landlord or tenant of a contracting party. (For example, you may lease office space to a party with a private interest in a public matter without it resulting in a conflict of interest.)
3. An attorney whose client is a contracting party.
4. A member of a non-profit cooperative marketing association doing business with the City.
5. The owner of less than three percent of the shares of a corporation doing business with the City, provided that:
 - a. the total annual income from dividends, including the value of stock dividends, does not exceed five percent of the officer's or employee's total annual income; and
 - b. any other payments made to the officer or employee by the corporation do not exceed five percent of the officer's or employee's total annual income.
6. Being reimbursed for actual and necessary expenses incurred in performance of official duties.
7. Receiving municipal services on the same terms and conditions as if you were not an officer or employee of the municipality. (For example, when a commissioner who owns a business within the City votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.)
8. An officer of a public agency voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a commissioner who is a schoolteacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase to the commissioner or their family.
9. A member of a trade, business, occupation, profession, or class of persons who has no greater interest than the other members of similar trades, businesses, occupations, professions, or classes of persons. (For example, a plumber who serves on the commission may vote to increase or decrease plumbing inspection fees since the effect of this decision will be equal on all plumbers within the City.)

Substantial Interest

When a substantial conflict of interest exists, you must remove yourself from the commission discussion and decision on the item. A substantial conflict generally involves a monetary or ownership relationship with a private entity doing business with the city. This kind of conflict of interest requires you to identify a conflict of interest publicly on the record and to refrain from discussion, vote, or any attempt to influence the decision.

A substantial conflict of interest is defined as any pecuniary (monetary) or proprietary (ownership) interest that is not remote. In general, a conflict of interest exists when an officer of the City is involved in substantial ownership or salaried employment with a private corporation doing business with the City. For example, if a commission member owns or is employed by a lumberyard selling lumber to the City, a conflict may exist. On the other hand, if the commission member is the lawyer of the lumberyard, or if the commissioner leased land to the lumberyard, a conflict may not exist.

A public officer may sell equipment, material, supplies, or services to the municipality in which

the officer serves if this is done through an award or contract let after public competitive bidding. However, the City officer would not be able to influence the bidding process in any way and must make known such interest in the official records of the City.

The Conflict of Interest Law also contains the following restrictions on the activities of public officers:

- When a public officer has exercised "administrative discretion" in an issue, that officer cannot receive compensation if representing another person before an agency of the City on the same issue. This restriction extends to twelve months after termination of office with the city.
- A public officer cannot use confidential information obtained during the term of office for personal gain.
- A public officer cannot receive any compensation for performance of services in any case, special proceeding, application, or other matter pending before any agency of the City. This does not apply, however, to ministerial functions such as filing or amending tax forms, applying for permits, licenses, or other documents.
- A public officer cannot use their position to obtain anything of value that would normally not be received in the performance of official duties. Something is considered of "value" when it exerts a "substantial and improper" influence on the duties of the public official.

A substantial conflict of interest also occurs when a public officer has the opportunity to perform some act or participate in making a decision in an official capacity that might affect an economic interest of either themselves or their relatives.

Determining if a Conflict Exists

It is your responsibility to be aware of and to identify the circumstances in which the commission's actions might affect you or a relative and to avoid any situation in which a conflict of interest exists or appears to exist. You should review meeting agendas before each meeting to determine if there may be any potential conflict of interest with an item.

To help you decide if you have a conflict, ask yourself three questions:

- Will my decision have a positive or negative impact on an interest of my relative's or mine?
- Do I have a monetary or ownership interest in the matter?
- Is my interest other than one of the designated remote interests?

If you are unsure if you have a conflict of interest, let your staff liaison know as soon as possible and they can address the matter with the City Attorney's Office for disposition about whether an actual conflict exists. If there is any doubt about whether a conflict exists, you should opt not to participate in the discussion, deliberation, and voting process on that item. This is better than taking the risk of inadvertently violating the law.

What if I have a Conflict of Interest?

If you find that you have a conflict of interest, you must:

1. Before discussion on the item begins, make the conflict of interest known in the official records of the City by declaring at the commission meeting that a conflict of

- interest exists so that the declaration can be officially entered into the minutes.
2. Refrain from voting or in any way influencing the decision.
 3. Leave the table or the room until the item is discussed and acted upon.
 4. File a conflict of interest disclosure statement with the City Clerk's Office that describes the nature of the conflict.

If you are the chairperson and you declare a conflict of interest, you must hand the conduct of the meeting over to your vice-chair and leave the podium. It is inappropriate for the chairperson to preside over a matter when they have declared a conflict of interest.

During this time, you are not required to leave the meeting but can "step outside" if you so choose. Once the item is over, the staff liaison should bring you back in before discussion begins on the next item.

As previously discussed in the [Quorum Section](#), any commission member that declares a conflict of interest and does not participate cannot be counted toward the quorum requirement on that particular item.

Examples of a Conflict of Interest

The following examples provide a general understanding of how Arizona's Conflict of Interest Laws would be applied. One thing to keep in mind is that each situation is unique and depends on the specific facts presented. For this reason, it is a good idea to consult with your staff liaison to determine if an actual conflict exists.

NOTE: The situations below assume that the commission on which the you are sitting is deciding the matter in question.

- You own a property close to another property that is the subject of a zoning or license application. The granting or denial of the application could affect the value of the your property.
- A proposed amendment to the City Code seeks to regulate a specific type of business activity. You or a relative has an exclusive franchise or right to conduct the activity in the city.
- Your relative (for example, a sister) has done work in the past for a firm seeking a city contract. She anticipates doing further work for this firm in the future. A potential conflict exists whether or not she is involved in the work that is the subject of the contract.
 - A conflict only exists if the relative has a continuing business relationship with the company under consideration or anticipates a continuing business relationship in the future with this company. A past association does not constitute a conflict of interest. The statute defines "relative" as a "spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse."

Public Records Law (ARS §39-121)

As a commission member, you are required to maintain records that pertain your official activities and of any government-funded activities as prescribed in [A.R.S. § 39-121.01](#). Moreover, these public records are, with limited exceptions, available to the public upon request.

The Arizona legislature has defined records to mean all books, papers, maps or other

documentary materials, regardless of form, made or received by public bodies in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation as evidence of the public bodies functions, policies, decisions, procedures, operations or other activities (See Ariz. Rev. Stat. § 41-151.18).

Arizona courts have interpreted the term public records very broadly. Generally speaking, any documents or materials that are related to or reflect the official duties of the public official or the city are going to be considered public records. Each public official has a statutory duty to preserve public records from deterioration, mutilation, or destruction and may destroy such records only pursuant to statutorily prescribed procedures.

When your term expires or you resign from the commission, all your materials should be given to your staff liaison for proper retention. If you have any questions about what should or should not be kept contact your staff liaison or the City Clerk's Office.

E-mail

E-mail sent to and among commission members are subject to the Public Records Law, as well as the Open Meeting Law. E-mails that members or staff generate pertaining to the business of the commission are public records. Therefore, e-mails must be preserved according to the City's approved records retention schedule and generally must be made available for public inspection if a public records request is made. It is a good idea to maintain a file containing any e-mails sent to and from members.

Public Records Requests

With limited exceptions, Arizona's Public Records Law makes public records and other matters in the custody of a public body open to inspection during office hours by any person. Although there are exceptions, as a general rule, you should always assume that your records will be subject to inspection by the public.

Conclusion

Democratic government can function properly only when the citizenry has confidence in how its government is run. Public trust is built largely upon the perceptions that citizens have regarding their Mayor and City Council, city employees, and members of commissions. Once destroyed, it is hard to reestablish public confidence. The statutes, rules, and policies discussed in this resource book were established to reinforce the public's trust in the commission process, by ensuring that the business of city's commissions and committees is conducted in an open atmosphere where the public can provide input and feedback.

The City of Flagstaff truly appreciates your service. If you have any questions, please contact your staff liaison or the City Clerk. Thank you for making Flagstaff a better place to live.

APPENDICES

[APPENDIX A](#) – Board and Commission Descriptions and Enabling Legislation

[APPENDIX B](#) – Conflict of Interest Law

[APPENDIX C](#) – Open Meeting Law

APPENDIX A

NAME	TERMS	APP'D BY	AUTHORITY	STAFF LIAISON	# OF SEATS
Airport Responsible for reporting to the Council on the development of the Airpark and matters affecting the operation and efficiency of the airport.	3 yrs	Council	City Code: Title 2, Chapter 2-11	Barney Helmick	7
Audit Committee Meets at least once a year, to review the Annual Financial and Single Audit reports.	Indef.	Council	Res Nos. 1320, 2029, 2002-59	Rick Tadder	6
Beautification and Public Art Recommends expenditures from the BBB, community beautification projects, the purchase and installation of public art projects.	3 yrs	Council	City Code: Title 2, Chapter 2-14	Mark DiLucido	7
Bicycle Advisory Committee Report to the City's Transportation Commission on issues related to planning for and accommodation of bicycles.	3 yrs	Transport Comm.	City Code: Title 2, Chapter 2-12	Martin Ince	7
Board of Adjustment Holds hearings on request for variances and appeals of decision by the Zoning Code Administrator.	3 yrs	Council	ARS § 9-462.06 , City Code: Title 2, Chapter 2-10	Daniel Symer	7
Building and Fire Code Board of Appeals Holds hearings on appeals related to the application and interpretation of City building and fire codes.	5 yrs	Council	Res. 1565, 2001-42	Amy Palmer	7
Diversity Awareness Fosters mutual understanding, tolerance, respect, and awareness among all citizens; recognizing the different economic, cultural, social, religious, and ethnic groups within the City; cooperating in the development of educational programs dedicated to improving community relations and enlisting support of various groups to foster diversity awareness.	3 yrs	Council	City Code: Title 2, Chapter 2-08	Shannon Anderson	7
Flagstaff Housing Authority Oversees the functions of the Housing Authority. The Authority implements the public housing programs.	4 yrs	Mayor	ARS § 36-1404.B City Code: Title 1, Chapter 1-13	Sarah Darr	7
Flagstaff Metropolitan Planning Organization Federally mandated organization responsible for planning and programming federal transportation funds in the region	2 yrs	Council	Intergovernmental Agreement	Jeff Meilbeck	6

NAME	TERMS	APP'D BY	AUTHORITY	STAFF LIAISON	# OF SEATS
Housing Commission Makes recommendations with respect to housing policies, needs, and programs in Flagstaff.	3 yrs	Council	City Code: Title 2, Chapter 2-25		
Heritage Preservation Advises the City Council on all matters relating to historic preservation, and reviews development projects in designated historic districts.	3 yrs	Council	City Code: Title 2, Chapter 2-19	Tiffany Antol	7
Inclusion and Adaptive Living Expand educational opportunities; improve access to housing, buildings, and transportation; have greater participation in recreational, social, and cultural activities; encourage greater opportunity for employment and expand/strengthen rehabilitative programs and facilities	3 yrs	Council	City Code: Title 2, Chapter 2-18	Denise Thompson	7
Industrial Development Authority Independent authority established by State law. Issue revenue bonds to projects eligible for financing under State statute.	6 yrs	Council	Resolution No. 1636	Brandon Kavanagh	9
Library Board Serves as a citizen's advisory board to the Library Director.	3 yrs	Council	Intergovernmental Agreement	Mark Cesare	8
Open Spaces Advises the Council on the acquisition, management, use, restoration, enhancement, protection, and conservation of open space land within the City of Flagstaff.	3 yrs	Council	City Code: Title 2, Chapter 2-20	Robert Wallace	7
Parks and Recreation Makes recommendations to the Council regarding City parks and recreational programs, the annual budget and capital improvements for the Parks and Recreation Divisions.	3 yrs	Council	City Code: Title 2, Chapter 2-03	Rebecca Sayers	7
Pedestrian Advisory Committee Report to the City's Transportation Commission on issues related to planning for and accommodation of pedestrians.	3 yrs	Transport Comm.	Code, Title 2, Chapter 2-12	Martin Ince	7
Personnel Board Conducts hearing to ensure due process for regular, classified employees who are dismissed, demoted, or suspended without pay.	4 yrs	Council	Ord. No. 971, 1041, 1116, 1146, 1198	Shannon Anderson	7

NAME	TERMS	APP'D BY	AUTHORITY	STAFF LIAISON	# OF SEATS
Planning and Zoning Serves as an advisory board to the Council on matters relating to the growth and physical development of the City. Conduct hearings on amendments to the Zoning Map, tentative subdivision plats, Conditional Use Permits.	3 yrs	Council	ARS § 9-461.02 City Code: Title 2, Chapter 2-01	Tiffany Antol	7
PSPRS Board Processes membership and retirement applications from the Flagstaff police officers and firefighters.	4 yrs	Mayor	ARS § 38-847	Vivian Fennema Allison Hughes	7
Self-Insurance Trust Fund Board Administers the self-insurance program of the City.	2 yrs	Council	City Code: Title 1, Chapter 1-24	Dean Coughenour	5
Sustainability Recommend and coordinates activities in concert with the Flagstaff Sustainability Program. Promotes sustainable practices in all spheres of life and educating Flagstaff citizens	3 yrs	Council	City Code: Title 2, Chapter 2-17	Nicole Antonopoulos	7
Tourism Develops, promotes, and maintains Flagstaff as a year-round destination with professional visitor services that will benefit the community economically, environmentally, and socially.	3 yrs	Council	City Code: Title 2, Chapter 2-13	Trace Ward	7
Transportation Reviews requests for changes in traffic regulations and recommends traffic-related policies to the Council.	3 yrs	Council	City Code: Title 2, Chapter 2-12	Jeffrey Bauman	7
Water Reviews extensions of the water and sewer collection systems, treatment and use of water furnished by the City, treatment and disposal of the City's sewage system effluent, and water/sewer rates.	3 yrs	Council	City Code: Title 2, Chapter 2-04	Brad Hill	7

APPENDIX B

Title 38. Public Officers and Employees Chapter 3. Conduct of Office Article 3.1. Public Meetings and Proceedings

§ 38-431. Definitions

In this article, unless the context otherwise requires:

1. "Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.
2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in section 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in section 38-431.03 and the auditor general as provided in section 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.
3. "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 specified scope of appointment and the laws of this state.
4. "Meeting":
 - (a) Means the gathering, in person or through technological devices, of a quorum of the members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such that action.
 - (b) Includes:
 - (i) A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action.
 - (ii) An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.
5. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona constitution or by way of ballot initiative, including the independent redistricting commission,

and this article applies except and only to the extent that specific constitutional provisions supersede this article.

6. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

§ 38-431.01. Meetings shall be open to the public

- A. 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. All legal action of public bodies shall occur during a public meeting.
- B. All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, the minutes or recording shall include:
 1. The date, time and place of the meeting.
 2. The members of the public body recorded as either present or absent.
 3. A general description of the matters considered.
 4. An accurate description of all legal actions proposed, discussed or taken, including a record of how each member voted. The minutes shall also include the names of the members who propose each motion and the names of the persons, as given, who make statements or present material to the public body and a reference to the legal action about which they made statements or presented material.
- C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to section 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.
- D. The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.
- E. A public body of a city or town with a population of more than two thousand five hundred persons shall:
 1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its website, if applicable, either:
 - (a) A statement describing the legal actions taken by the public body of the city or town during the meeting.
 - (b) Any recording of the meeting.
 2. Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its website, if applicable, except as otherwise specifically provided by this article.

3. Within ten working days after a subcommittee or advisory committee meeting, post on its website, if applicable, either:
 - (a) A statement describing legal action, if any.
 - (b) A recording of the meeting.
- F. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.
- G. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall conspicuously post open meeting law materials prepared and approved by the attorney general on their website. A person elected or appointed to a public body shall review the open meeting law materials at least one day before the day that person takes office.
- H. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.
- I. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.
- J. Any posting required by subsection E of this section must remain on the applicable website for at least one year after the date of the posting.

§ 38-431.02. Notice of meetings

- A. Public notice of all meetings of public bodies shall be given as follows:
 1. The public bodies of this state, including governing bodies of charter schools, shall:
 - (a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
 - (b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

2. The public bodies of the counties and school districts shall:

- (a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
- (b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

3. Special districts that are formed pursuant to title 48:

- (a) May conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
- (b) May post all public meeting notices on their website and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.
- (c) If a statement or notice is not posted pursuant to subdivision (a) or (b) of this paragraph, shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give additional public notice as is reasonable and practicable as to all meetings.

4. The public bodies of the cities and towns shall:

- (a) Conspicuously post a statement on their website or on a website of an association of cities and towns stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
- (b) Post all public meeting notices on their website or on a website of an association of cities and towns and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

B. If an executive session is scheduled, a notice of the executive session shall state the provision of law authorizing the executive session, and the notice shall be provided to the:

1. Members of the public body.

2. General public.

- C. Except as provided in subsections D and E of this section, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in § 1-301.
- D. In case of an actual emergency, a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. If this subsection is utilized for conduct of an emergency session or the consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I of this section.
- E. A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A of this section, and if, before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.
- F. A public body that intends to meet for a specified calendar period, on a regular day, date or event during the calendar period, and at a regular place and time, may post public notice of the meetings at the beginning of the period. The notice shall specify the period for which notice is applicable.
- G. Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours before the meeting, except in the case of an actual emergency under subsection D of this section. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in § 1-301.
- H. Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.
- I. Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. The agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege.
- J. Notwithstanding subsections H and I of this section, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, if the matter was not listed on the agenda and a statement setting forth the reasons necessitating the discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately before the executive session.

- K. Notwithstanding subsection H of this section, the chief administrator, presiding officer or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, if:
1. The summary is listed on the agenda.
 2. The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

§ 38-431.03. Executive sessions

- A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:
1. Discussion or consideration of employment, assignment, appointment, pro-motion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
 2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
 3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.
 4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.
 5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.
 6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.
 7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.
- B. Minutes of and discussions made at executive sessions shall be kept confidential except from:
1. Members of the public body which met in executive session.

2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.
 3. The auditor general on a request made in connection with an audit authorized as provided by law.
 4. A county attorney or the attorney general when investigating alleged violations of this article.
- C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.
- D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.
- E. Except as provided in section 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.
- F. Disclosure of executive session information pursuant to this section or section 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or section 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

§ 38-431.04. Writ of mandamus

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

§ 38-431.05. Meeting held in violation of article; business transacted null and void; ratification

- A. All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.
- B. A public body may ratify legal action taken in violation of this article in accordance with the following requirements:
1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
 2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.
 3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours

in advance of the public meeting at which the ratification is taken.

§ 38-431.06. Investigations; written investigative demands

- A. On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.
- B. In addition to other powers conferred by this article, in order to carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:
 - 1. Issue written investigative demands to any person.
 - 2. Administer an oath or affirmation to any person for testimony.
 - 3. Examine under oath any person in connection with the investigation of the alleged violation of this article.
 - 4. Examine by means of inspecting, studying or copying any account, book, computer, document, minutes, paper, recording or record.
 - 5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.
- C. The written investigative demand shall:
 - 1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.
 - 2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.
 - 3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.
 - 4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.
- D. If a person objects to or otherwise fails to comply with the written investigation demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa county or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona rules of civil procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been

a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court's order, the court may issue any of the following orders until the person complies with the order:

1. Adjudging the person in contempt of court.
2. Granting injunctive relief against the person to whom the demand is issued to restrain the conduct that is the subject of the investigation.
3. Granting other relief the court deems proper.

§ 38-431.07. Violations; enforcement; removal from office; in camera review

- A. Any person affected by an alleged violation of this article, the attorney general or the county attorney for the county in which an alleged violation of this article occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of, this article, by the public body as a whole, or to determine the applicability of this article to matters or legal actions of the public body. The attorney general may also commence a suit in the superior court in the county in which the public body ordinarily meets against an individual member of a public body for a knowing violation of this article, and in such a suit the court may impose a civil penalty against each person who knowingly violates this article or who knowingly aids, agrees to aid or attempts to aid in violating this article and order equitable relief as the court deems appropriate in the circumstances. The court may impose a civil penalty not to exceed five hundred dollars for the second offense and not to exceed two thousand five hundred dollars for the third and subsequent offenses. If the court imposes a civil penalty against an individual member of the public body who knowingly violates this article, the public body may not pay the civil penalty on behalf of, or otherwise reimburse, the individual against whom the civil penalty has been imposed. If the court finds that a person who might otherwise be liable under this subsection objected to the action of the public body and the objection is noted on a public record, the court may choose not to impose a civil penalty on that person. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff's reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information knowingly violated any provision of this article, the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.
- B. A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make the expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving the expenditure before incurring any obligation or indebtedness.
- C. In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

§ 38-431.08. Exceptions; limitation

A. This article does not apply to:

1. Any judicial proceeding of any court or any political caucus of the legislature.
2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
4. Good cause exception and central registry exception determinations and hearings conducted by the board of fingerprinting pursuant to sections 41-619.55 and 41-619.57.

B. A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.
2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification that verifies the person's signature.
3. Prevent and prohibit any articles from being taken into a hearing except recording devices, and if the person who attends a hearing is a member of the media, cameras.
4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

C. The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation of this section shall be those remedies available in section 38-431.07, as against the director only.

D. Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

§ 38-431.09. Declaration of public policy

A. It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe this article in favor of open and public meetings.

B. Notwithstanding subsection A, 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 either at a venue other than at a meeting that is subject

to this article, personally, through the media or other form of public broadcast communication or through technological means if:

1. The opinion or discussion is not principally directed at or directly given to another member of the public body.
2. There is no concerted plan to engage in collective deliberation to take legal action.

APPENDIX C

Title 38. Public Officers and Employees

Chapter 3. Conduct of Office

Article 8. Conflict of Interest of Officers and Employees

§ 38-501. Application of article

- A. This article shall apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards.
- B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.
- C. Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

§ 38-502. Definitions

In this article, unless the context otherwise requires:

- 1. "Compensation" means money, a tangible thing of value or a financial benefit.
- 2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.
- 3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to section 38-509.
- 4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
- 5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
- 6. "Public agency" means:
 - (a) All courts.
 - (b) Any department, agency, board, commission, institution, instrumentality or legislative or

administrative body of the state, a county, an incorporated town or city and any other political subdivision.

- (c) The state, county and incorporated cities or towns and any other political subdivisions.
7. "Public competitive bidding" means the method of purchasing prescribed by title 41, chapter 23, or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.
 8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
 9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.
 10. "Remote interest" means:
 - (a) That of a nonsalaried officer of a nonprofit corporation.
 - (b) That of a landlord or tenant of the contracting party.
 - (c) That of an attorney of a contracting party.
 - (d) That of a member of a nonprofit cooperative marketing association.
 - (e) The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five percent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five percent of his total annual income.
 - (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
 - (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
 - (h) That of a public school board member when the relative involved is not a dependent, as defined in section 43-1001, or a spouse.
 - (i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment on the officer, the employee or his relative, of any of the following:
 - (i) Another political subdivision.
 - (ii) A public agency of another political subdivision.

(iii) A public agency except if it is the same governmental entity.

(j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.

(k) That of a relative who is an employee of any business entity or governmental entity that employs at least twenty-five employees within this state and who, in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.

(l) The ownership of any publicly traded investments that are held in an account or fund, including a mutual fund, that is managed by one or more qualified investment professionals who are not employed or controlled by the officer or employee and that the officer or employee owns shares or interest together with other investors.

11. "Substantial interest" means any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

§ 38-503. Conflict of interest; exemptions; employment prohibition

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.
- C. Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:
 - 1. A school district governing board may purchase, as provided in sections 15-213 and 15-323, supplies, materials and equipment from a school board member.
 - 2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.
- D. Notwithstanding subsections A and B of this section and as provided in sections 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

§ 38-504. Prohibited acts

- A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.
- B. During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.
- C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

§ 38-505. Additional income prohibited for services

- A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.
- B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

§ 38-506. Remedies

- A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.
- B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.
- C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

§ 38-507. Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

§ 38-508. Authority of public officers and employees to act

- A. If the provisions of section 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.
- B. If the provisions of section 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

§ 38-509. Filing of disclosures

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.

§ 38-510. Penalties

- C. A person who:
 - 1. Intentionally or knowingly violates any provision of sections 38-503 through 38-505 is guilty of a class 6 felony.
 - 2. Recklessly or negligently violates any provision of sections 38-503 through 38-505 is guilty of a class 1 misdemeanor.
- D. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.
- E. It is no defense to a prosecution for a violation of sections 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.
- F. It is a defense to a prosecution for a violation of sections 38-503 through 38-505 that the interest charged to be substantial was a remote interest.