

2019

**Board and Commission
Staff Liaison
Resource Guide**

City of Flagstaff
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For purposes of this manual, the term “commission” refers to all boards, commission, or committees which have been established by the City Council.

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PART ONE – Understanding the Board & Commission Process

Board and Commission Creation

How Are Boards and Commissions Formed?

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

Per our Charter, the City Council may, by ordinance, create, change, or abolish a board or commission. When established, boards and commissions are given specific guidelines surrounding their purpose and authority. The purpose and authority of a board or 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 and Duties of Boards and Commissions

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 consider the advice and recommendations offered by numerous sources and then decide. 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 parks and recreational 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 automatically are 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 commission 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 commission are the Planning and Zoning Commission, the Board of Adjustment, and Building and the 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 a number of 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 establish subcommittees and charge these bodies with their powers, duties, and responsibilities. Subcommittees are bound by the same rules and regulations as commissions. The commission may refer matters to a subcommittee for the purpose of collecting information, providing analysis, and making recommendations to the commission. An example of a subcommittee 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.

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.

Staff Liaison Duties for Subcommittees

For staffing purposes, subcommittees should be treated as smaller versions of the commission. General staffing duties are discussed in more detail in the [Roles and Responsibilities Section](#). In addition to your normal duties (which are discussed in detail throughout the rest of the resource guide), here are several things to be aware of when it comes to subcommittees:

- The meeting agenda **must** be posted at least 24 hours in advance of the meeting time, in accordance with the Open Meeting Law.
- Minutes are required for each subcommittee, in accordance with Open Meeting Law.
- You need to file the following items with the City Clerk's Office:
 - A list of all subcommittees;
 - A copy of each subcommittee's membership list, noting the chair and vice;
 - A copy of the subcommittee's charge;
 - Creation of any new subcommittees or dissolution of existing subcommittees.

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.

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 their purpose and authority. With few exceptions, commissions are advisory to the City Council. The purpose and authority of your commission is found in its establishing legislation (ordinance or resolution). 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 (see [Recommendations to City Council](#) Section).

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, a commission member may not use their official title or make any statement as a representative or member of their commission unless they are authorized to do so by a formal action of the commission.

Statements Made to Other Public or Private Bodies

Official versus Personal Capacity

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

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

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

Media Requests

At some point one of your commission members may be contacted by the media to give thoughts on a recent decision made by your commission or by the City Council. It is recommended that the commission member contact you before speaking with the media.

Commission 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. Members may speak as an individual, but it is important that they stress to the reporter that they are speaking on their 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.

Recommendations to City Council

Except as specified by state law or city ordinance, commission recommendations must be submitted to the City Manager through your Division Director. You should prepare a detailed report that includes information on how and why the commission decided to present the recommendation. The City Manager will determine how the 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, you 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.

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 an individual may serve on only one commission at any given time, unless they serve as a liaison to another commission. A commission member may apply to serve on a different commission during the last six months of

their term if they do not intend to apply for reappointment to their current commission. If the City Council appoints that individual to a new commission, overlapping service is permitted to finish the current term and begin the new term.

Under most circumstances, a commission member is eligible to serve two full terms and a partial term if they are filling the remaining term of a vacancy. If the member indicates their desire for reappointment and they are eligible to serve another term, they 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 they may not be selected for reappointment.**

City employees may apply and be considered for appointment on a commission so long as their position does not present a direct or perceived conflict of interest and if their Division Director approves the participation on the commission.

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.

Qualifications

Occasionally a commission's organizational structure will require a member to have a specific qualification or background. It is the City Council's responsibility to determine which applicants, if any, meet those qualifications for appointment; staff does not provide this determination.

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.

Commission appointments are scheduled during the 4:30 PM session of regular City Council meetings. The City Clerk's Office will notify you of the date the appointments will be considered by the City Council. You should attend or view those meetings so you are aware of who was appointed or any current members who may not have been reappointed.

Fourth Step – After Appointments are Made

After appointments are made by the City Council, the City Clerk's Office will provide you with a new roster that includes contact information and term dates. **It is your responsibility to contact the new and outgoing members.**

The City Clerk's Office mails out a packet of information to new members that includes basic information about serving on a commission along with a certificate of appointment, a current commission roster, information about parking, new member training, open meeting law and a copy of the Board and Commission Member Manual. A copy of the welcome letter and updated

roster will be forwarded to you for your records.

Term of Office

Each commission member's term of office can be found in the ordinance or resolution that establishes the commission. The term of ad hoc committee members is equal to the life of the committee itself. 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 city 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: Individuals serve as active commission members until reappointed, removed, or replaced, even if their term has expired. In other words, **if a member's term has expired, please consider them an active member that continues to serve on the commission until a replacement is made.**

Oaths of Office and Training Affirmations

What is the Oath of Office?

The Oath of Office is a written affirmation in which the commission member promises to faithfully and impartially discharge the duties of their commission. The Training and Open Meeting Law affirmations are an acknowledgement that the commission member has 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 new members 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 and file (with the City Clerk's Office) an Oath of Office before participating in a meeting or otherwise exercising the powers of the office they were appointed to hold.

Formal in-person commission member training is held at least one time per year. Rather than waiting until the next in-person training, new commission members can view the member and Open Meeting Law training online. Signing the affirmations indicates that they have reviewed this important information and are prepared to perform their duties as a commission member.

As the staff liaison, it is important for you to explain to your commission members the need to sign their Oaths of Office and review the training materials in a timely fashion upon appointment.

Roles and Responsibilities

Staff Liaisons

The Role of Staff Liaisons

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

Your role is critical to the commission process; the liaison is the link between the commission and the City Council. You are a neutral third-party who advises the commission and ensures they focus their discussion on the properly-posted agenda items. It is important for you to develop a good working relationship with the entire commission.

Responsibilities of the Staff Liaison

In addition to the primary role of serving as the contact and advisor to the commission, you have 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. These duties and others are discussed in more detail throughout this guide. A commission may request your assistance on various projects; however, your Division Director must approve all requests which create a substantial demand for a work product.

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

Releasing Personal Information

Occasionally, you may receive a request from an outside third-party to release personal information (such as mailing addresses) of your commission members. You can direct the requestor to the City's Boards and Commissions website (<https://www.flagstaff.az.gov/994/Boards-Commissions>), where they can obtain a list of members (without any other personal information). If the requestor is insistent on obtaining personal information, please have them contact the City Clerk's Office.

City Council

The Role of City Council

A representative from the City Council may be assigned to your commission. The role of the Council Representative will be to gather information from the 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 duties and work of the commission. Your Council Representative may attend meetings in person, stream meetings on the City website, review agendas and minutes, and/or reach out to meet with you and the Chairperson of your commission. The Council Representative is not a voting member of the commission.

Responsibilities of City Council

The Council Representative is responsible for sharing information and reporting back to the City Council. 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 and commissions on their work over the past year. This is another opportunity for the commission to share recommendations with the Council.

City Clerk

The Role of the City Clerk

The City Clerk will provide ongoing training and serve as a resource for city staff and commission members.

Responsibilities of the City Clerk

The City Clerk serves as the central contact for staff liaisons and 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. 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 and commissions. If a commission member's home or work address, email addresses, or phone number changes, be sure to notify the Clerk's Office as quickly as possible.

Board and Commission Members

The Role of Board and Commission Members

The primary role of most commission members is to advise and make recommendations to the City Council.

Commission members provide a great service to the city in terms of the commitment, interest, and expertise that they bring. The opportunity for citizen participation in the decision-making process is crucial to open and responsive government. It is important to remember that these individuals are not paid for their work and that they are volunteering their time and effort.

Responsibilities of Board and Commission Members

Residency

The City Charter requires all commission members to be residents of the City of Flagstaff at the time of their appointment and for the full duration of their term in office. This means that their primary physical residence must be located within city limits and that they reside at that location. A commission member who moves out of town during a term of office is 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 County appoints two individuals who are county residents but who may or may not be residents of the City.

Code of Conduct

The conduct of commission members is very important. It can strengthen or undermine the credibility of the commission and the decisions or recommendations that it makes. A commission member's 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 commission members.

Members of a commission may not use their official title or make any statement as a representative or member of the commission to influence an election, further a personal position, or for personal benefit. Under City policy, commission members are not allowed to make unauthorized statements as a representative of the commission unless authorized to do so by a formal action of the commission.

A process has been established for commission recommendations to be presented to the City Council. Individual members should not meet jointly or separately with members of the City Council on matters of commission business. This provision is not meant to deprive the commissioner, 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 to the City Council. Discussing commission business outside a public meeting 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 a commissioner conveys information from one

councilmember to another.

Along the way, your commission members may find themselves 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. If you have a question on an ethical issue, contact your Division Director and/or the City Attorney's Office on the issue and take no position until the matter has been resolved.

Gift giving is one of the most common situations that come into play with public officials. If a commission member inquires about a gift, it may be helpful to ask the following questions:

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 intent.

Removal from Public Office

Commission members 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, city 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 their status as a City official for personal purposes, to influence the outcome of an election, or other unsanctioned activities not related to official business.
- Willful non-compliance with the provisions of this guide.
- Fraud, collusion or coercion.
- Inefficiency, neglect of duty, or malfeasance in office.

PART TWO – Preparing for the Meeting

Attendance

It is always preferable to have full attendance as compared to a minimum (see [Quorum Section](#)). The success of a commission depends on the active participation of the members. A meeting cannot proceed without a quorum of members in attendance.

Here are several rationales that you can provide to commission members when explaining the importance of attendance:

1. The City Council appoints commission members for their experience, background, and perspective in a particular policy area and the City Council wants the benefit of those factors when the commission is making a decision.
2. More members in attendance will mean a greater likelihood of diversity of thoughts and opinions and hopefully generate a fruitful discussion.
3. Bare quorums mean a greater likelihood of meetings being cancelled or cut short due to last minute no-shows or members having to declare a conflict of interest. This not only wastes considerable time of the members and staff, delays the important work of the body, and is disappointing to the members and staff who attended the meeting, but it also sends a negative message to any members of the public who may have wished to speak on an item and believe their time was wasted.

Requirements

Commission members are expected to attend all regularly scheduled meetings. **It is important to stress that commission members should contact you as soon as they know they will not be able to attend a meeting.** The sooner you know that a quorum will not be present, the sooner the meeting can be cancelled and rescheduled.

Along with absence, tardiness can also be an issue. If meetings are starting late or being cancelled due to a lack of a quorum, it may be beneficial to have the chair remind the members of the importance of timely attendance or you may want to talk to individual members to see if there is something causing them to be late or absent (such as the meeting is too early or they have a conflicting commitment). After talking to the individual, confer with the chair to see if a solution can be reached (starting the meeting 15-30 minutes later for example). If the individual provides no reason and continues to be habitually late or absent, please contact the City Clerk's Office for follow up.

Some establishing ordinances contain attendance requirements, while other commissions have adopted bylaws to clearly define attendance requirements. As a general rule, a commission may recommend to the City Council the dismissal of any citizen member who is absent for more than two consecutive regular meetings without prior notification. This same rule applies if a commission member is absent for more than thirty percent (30%) of all meetings during a twelve-month period. For this reason, it is important to keep a record of absent or tardy members as well as a record of lost quorums.

Resignations

All resignations should be in written form (e-mail is acceptable) and forwarded to the City Clerk's Office for processing. Upon receipt of a resignation the roster will be updated, a thank you letter and certificate of appreciation from the Mayor will be sent to the outgoing member and the vacancy list will be updated.

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. Quorum is defined as a majority of the members of the public body which includes any vacant seats, unless otherwise provided for by law. Most of Flagstaff's commissions consist of seven members with a quorum requirement of four members in attendance. Please contact the City Clerk's Office with any vacancy or quorum related questions or issues.

Maintaining a Quorum Throughout the Meeting

If a meeting is started with a quorum and the quorum is lost due to a member leaving, a member declaring a conflict of interest (see the [Conflict of Interest Section](#) for more information), or 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 must end with any remaining items considered at the next commission meeting.

In the week leading up to the meeting, you should contact each commission member to determine if they can attend the upcoming meeting. Assuming you can only confirm a minimum quorum, you may want to consider cancelling the meeting because if one of the members does not show, you cannot discuss or act on items. If cancelling the meeting is not an option, call each confirmed member and stress the importance of attending the meeting and explain the quorum requirement. **If a quorum does not exist or is lost and cannot be regained, the meeting should not be held or it must end (in cases where the quorum cannot be regained).**

The Open Meeting Law

What is the Open Meeting Law?

Commission meetings are public meetings which are conducted openly in compliance with the Open Meeting Law. The Open Meeting Law promotes openness in government and ensures the general public has access to government processes. The Open Meeting Law applies anytime a quorum gathers and discusses business at a meeting, retreat, workshop, tour, or social function. For more information about quorums, please see the [Quorum Section](#). 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 commissions and their subcommittees) to conduct their meetings in an open environment. 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. Meeting agendas **must** be posted online and physically on the bulletin board at the southwest corner of the City Hall lobby directly behind Human Resources. For instructions on posting items to the City website see [APPENDIX B](#).

Allowed and Prohibited Communication Methods

The Open Meeting Law opens government to public review and prevents commissions from making decisions in secret. There are risks whenever commission members communicate with each other outside a public meeting. For example, while sending an e-mail to less than a quorum of commission members is not an Open Meeting Law violation, there is a chance that subsequent responses could be. In addition, member #1 could be talking with member #2 about an item, not realizing that member #3 and 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. A final consideration is that any type of communication, including but not limited to e-mails, text messages, and social media posts, generated by commission members and/or staff pertaining to government business are public records. These communications must be preserved according to

the public records retention schedule and be available for inspection.

Here are 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 member and then pass on the results of that discussion to a third 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 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 you for specific information does not violate the Open Meeting Law. You may send e-mails and replies to all commission members without violating the Open Meeting Law as long as the response does not communicate the opinions of the other members. However, if further clarification is needed, the member should only respond to the you 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 members about an upcoming social function.

It is **highly recommended** that the following statement be placed at the bottom of all e-mail correspondence to commission members:

"NOTE TO [BOARD MEMBERS, COMMISSIONERS, OR COMMITTEE MEMBERS]: To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the [Board or Commission name]. Members of the [Board or Commission name] may reply to this message, but they should not send a copy of the reply to other members.

Board and commission members can respond to staff's e-mail but should not discuss or deliberate with other board and commission members through e-mail."

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 individual(s) for each violation. The individual, and not the municipality, must pay the fine. Commission members are also subject to removal from office.

Bottom Line

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 through these methods, it can result in Open Meeting Law violations. Once a commission member commits to a written form communication related to commission business, that record no longer belongs to the member 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 members 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 methods.** If you have any questions about Open Meeting Law or any of the provisions above, please contact the City Clerk's Office at (928) 213-2077.

To avoid pitfalls associated with Arizona's Open Meeting Law, information and materials that a commission member wishes to share with other members of the commission should be provided to you for distribution, or should be distributed by the member at an open meeting with sufficient copies for those in attendance. Discussion is to be limited to public sessions.

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 the City Clerk's Office at (928) 213-2077.

Meeting Agenda Process

Types of Agendas

The meeting agenda is normally set by the commission chair, with input from members and yourself. 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.
- In response to a directive from the 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.

Agendas must include the following information:

1. Date, time, and location of the meeting.
2. Posting statement at the bottom.
3. Enough information to inform the public of the matters to be discussed or decided.

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. The use of agenda items such as "new business" or "old business," is not permitted unless the specific items of new and old business are listed.

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 the event that a previously posted or regularly scheduled meeting is cancelled, you must draft and post a cancellation notice. You must also update the meeting room calendar and notify the IT Help Desk of the cancellation. [APPENDIX C](#) is the template for posting meeting cancellations.

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. Discussion and action on commission-related business may not be discussed at events, retreats/workshops, and tours.

For example, if your division was involved with a city-sponsored luncheon and there was a possibility that a quorum of your commission members may attend this luncheon, you would create and post a Notice of Possible Quorum. The notice must state that no business will be discussed or acted on. [APPENDIX D](#) is a template for possible quorum postings.

If a quorum your commission is going on a tour of a location related to an upcoming agenda item, you would post a tour notice noting that information may be provided, but any discussion and/or action on the agenda item will occur at a publicly posted meeting.

Important note: For a tour, if you provide transportation (for example in a bus or van) for the commission members, you must also make this transportation available to the public.

Creating the Agenda

Commission agendas have been standardized for consistency and will be created and published in Agenda Quick using a standard template. [APPENDIX E](#) is the required template to be used for preparing agendas until Agenda Quick is in use.

Posting the Agenda

Agendas must be posted at least 24 hours in advance of the meeting **online and physically** on the bulletin board at the southwest corner of the City Hall lobby directly behind Human Resources. The posting statement portion of the physical agenda must be filled out and signed. Once signed, the agenda must be copied, and the copy is to be physically posted at the location described above. **The original, signed posting, along with any agenda packet materials must be forwarded to the City Clerk's Office for permanent retention.**

As a follow up, please check the website to ensure that the agenda has been properly uploaded. For instructions on how to post items on the city website please refer to [APPENDIX B](#).

Sending out the Agenda

The agenda should be sent to your commission members by e-mail or other preferred method. Agendas must also be copied to your Division Director, Department Head, the Mayor and City Council, and the Executive Assistant to Mayor and City Council.

Executive Session

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 may be 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 attendees 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 assistance with creating an executive session agenda please contact the City Clerk's Office and your City Attorney.

Getting Ready for the Meeting

Meeting Location

All commission meetings must be held at City Hall in the Council Chambers and live-streamed. Live streaming meetings helps with public access and allows for compliance with Open Meeting Law for the posting of meeting minutes.

When reserving your commission meeting in the Council Chambers, please create a meeting invitation and include "VideoStreaming" and "Council CH" as meeting attendees. Be sure to include the needed equipment for your meeting in the location line of the appointment (i.e. sound, computer, screens, etc.), this will notify Facility Maintenance staff to set up the room accordingly.

When the meeting is ready to start un-mute the microphones by pressing the button at the desk nearest the utility/sound room in Council Chambers.

On occasion, conflicts may arise such as a need for Council Chambers by the City Council or City Manager's Office, or a larger space is needed to accommodate the public. In those instances an alternate location may be used. Arrangements must be made with the IT Help Desk to arrange for video recording at the alternate location.

All persons desiring to attend and listen to meetings must be accommodated to the extent reasonably possible. This may result in accommodations such as listening devices or interpreters. Reasonable requests for accommodation must be made at-least three days in advance of the meeting. Please coordinate with the City Clerk's Office if a request for accommodation is made.

Items to Bring to the Meeting

Here is a list of helpful items to bring to every meeting (please note that these are not required items, only suggestions):

- Copies of the agenda.
- Copies of reports to be presented.
- Sign-in sheet for members of the public and city staff.
- Name tents for commission members and staff.
- If items voted on by the commission will be considered by the City Council, have the date of that City Council Meeting available.
- Board and Commission Staff Liaison Guide.
- Staff contact information (bring business cards to hand out to members of the public).
- Calendar and future meeting schedule.

- Extra pens and notepads.
- Speaker cards for members of the public to fill out (optional).
- Copies of any presentations on flash drive or computer disks.
- Printed copies of presentations in case laptop does not work.

***Remember to arrive early to ensure proper setup and deal with any unanticipated issues.**

Board and Commission Member Parking

Commission members 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. The City Clerk's Office will notify Park Flag of new appointments to commissions and Park Flag will contact the member directly with instructions on how to obtain the appropriate permit. The City Clerk's Office will also notify Park Flag about outgoing members.

***Commission members who have outstanding parking violations will not be issued a permit until the matter is resolved.**

PART THREE – Staffing the Meeting

Meeting Management

Who Runs the Meeting?

The chairperson is the moderator of meetings and speaks on behalf of the commission when authorized by a majority of the members to do so. The vice-chair serves in the absence of the chairperson. There is no formal order of who would take over during the absence of both the chair and vice-chair and the commission can choose a presiding officer for the meeting.

Most commissions elect a chairperson and vice-chair, usually on an annual basis. This is generally accomplished 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 full commission. This process can be repeated for the vice-chair position. When it comes time to appoint the leadership, the nomination process should be listed as an agenda item. Please notify the City Clerk's Office with the chair and vice-chair names.

The chair may, at their discretion, or shall, upon the majority vote of members present, change the order of the agenda. However, caution should be given to not changing the order to circumvent the Open Meeting Law. For example, moving a controversial item that was posted on the agenda as the last item of the meeting to the beginning of the meeting to avoid public attendance or participation would likely violate Open Meeting Law.

Role of Staff Liaison

Your primary role is as an advisor to the chair, vice-chair, and commission. At the meeting, your duties include:

- Greeting members of the public and seeing if they would like to comment on agenda items. If so, have them fill out a speaker card and present it to the chair for use when the item comes up during the meeting.
- Tell the chair when everyone is present and when the meeting should begin.
- Remind the chair of any correspondence to be read at the meeting or any presentations to be made.
- Advise your commission on applicable State laws and City policies, ordinances, resolutions, bylaws, and actions taken at previous meetings.
- Ensure your commission is operating in accordance with the Open Meeting Law, the City Charter, and refer to "Robert's Rules of Order" as a guide.
- Ensure your commission is staying on topic and only discussing items that are on the posted agenda. If the commission discussion moves away from the posted agenda, remind the chair that it is important to stay on the posted agenda due to the Open Meeting Law.
- Keep track of the discussion time for each agenda item. If the discussion is taking significantly longer than anticipated, let the chair know so a decision can be made about the best way to proceed through the rest of the agenda.
- When it is time to plan the future agenda, keep track of activities or decisions that were deferred to upcoming meetings and let the chair know.

You have many significant duties. For this reason, we recommend **that a second staff person take minutes to allow you to fully concentrate on the aforementioned duties, along with**

any commission-specific duties. This second person should not be a commission member.

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 (see the [Agenda Creation Section](#)) 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 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 a Speaker Comment Card ([APPENDIX F](#)). 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.
- You have 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, you should get all cards from the chair after the meeting for use in composing the minutes. You should maintain the comment cards for the appropriate public records retention period.

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 public participation. 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 to speak.

If an individual is commenting on a posted agenda item, the speaker must confine their statements to the agenda item. During these items commission members and/or staff can respond to citizen comments or questions.

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

1. They can respond to personal attacks (someone questions their qualifications, suggests the member has 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.

During public participation, commission members 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. This is why discussion or action cannot take place and why the item can be discussed only at a future meeting with a properly-posted agenda. **As the staff liaison, it is important to remind commission members of this if you see them responding in a way other than one of three previously listed exceptions.**

Decorum

Here are some tips to talk about with your commission members regarding discussion and conduct etiquette:

- Assume that the microphones are always on.
- Members should speak directly into the microphones to ensure that the audience, both present and streaming online, can hear.
- Commission members may speak after recognition by the chair. 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.

Robert's Rules of Order

What are Robert's Rules of Order?

Robert's Rules of Order provide instruction, guidance, and consistency for how meetings are conducted. Robert's Rules are used only as a supplement to city policy. Therefore, in any conflict between Robert's Rules and city policy and procedures, the city's policy takes precedence.

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.

Robert's Rules of Order regarding debate and decorum are further discussed in the Voting Section below.

Voting

Can a Designee or Proxy Vote?

No, this is not allowed. At times, a commission member will be unable to attend a meeting and may ask if a representative (also known as a designee, delegate or proxy) can be sent in their

place. While allowed under Robert's Rules of Order, this practice is **not** allowed under the Arizona Open Meeting Law. Proxy voting is inconsistent with provisions of Arizona's Open Meeting Law and 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 Board and Commission Members Abstain from Voting?

The City Charter provides that, in the absence of a conflict of interest (see the [Conflict of Interest Section](#) for more information on this subject), 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.

Discussion and Voting Procedures

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.

Rules Governing Common Motions

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 an item 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 chairperson 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 commission and 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 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 (5) days prior to the meeting at which the motion to reconsider will be made, unless the motion to reconsider was made and seconded at a 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 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.

Minute Taking

Purpose of Taking 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. Minutes can vary in length depending on the meeting length and the desires of the meeting body, chair, or management.

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.** Should a technical error occur and a meeting is not recorded then legal action of the meeting is required to be documented and posted to the website within three days.

What Must be Included in the Minutes?

Good minutes serve to refresh the minds of the meeting body on points of fact. The agenda items, decision, and actions will provide the outline of the record. Minutes should detail all subjects discussed, decisions reached, and relevant opinions and ideas offered during the discussion. The minutes do not need to be verbatim.

Minutes must include:

- The date, time, and place of the meeting. Include the actual time the meeting was called to order and the actual time the meeting was adjourned.
- The members recorded as either present or absent along with a list of staff in attendance.
- The names of the persons making statements or presenting material and a reference to the item or topic they discussed.
- A general description of all matters discussed or considered.
- An accurate description of all legal actions proposed, discussed, or taken and the voting process.
- The components of the voting process must include the names of the members who made the motion and seconded the motion.
- The numerical breakdown of the vote (for example 4 in favor, 1 opposed) should be noted along the names of those who made dissenting votes.
- If a member declares a conflict of interest, it should be noted in the minutes as that member not voting due to the conflict.
- If a member arrives after a meeting has started, list their name under "Members Present" and then make a notation of the time they arrived.
- If a member leaves during a meeting, make a notation in the minutes at what time that member left. If a quorum is lost (due to members leaving) at any time during the meeting, the meeting must end. For more information on quorum, please see the [Quorum Section](#).
- If a member participates via telephone, minutes should identify those members participating by telephone.

Are Minutes Required if There is no Quorum?

If a quorum is not present, there is no meeting and, therefore, there is no need to take minutes. However, a Notice of Cancellation ([APPENDIX C](#)) should be created and posted on the website with an original forwarded to the City Clerk's Office.

Are Minutes Required for an Executive Session?

Minutes are required for an executive session. However, minutes of an executive session are confidential and may not be disclosed to anyone except members of the commission and certain necessary staff members.

Executive session minutes must include the following:

- The date, time and place of the meeting.
- The members recorded as present or absent.
- A general description of the matters considered.
- The detail of the minutes should be the same as in regular meeting minutes by providing a record of what took place in the executive session.
- No decisions can be made in executive session; therefore, there will be no votes to record.
- An accurate description of all instructions given to attorneys.
- Any other information deemed appropriate. For example, the public body might record that those present were advised that the information discussed and the minutes are confidential.

Approving the Minutes

Minutes are generally 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 member makes a correction to the minutes and no other 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 their form is fixed. Any changes to approved minutes can only be made by a vote of the body that approved those minutes.

* For information on drafting and filing minutes, see [PART FOUR – After the Meeting](#).

Conflict of Interest

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.

Determining if a Conflict Exists

The City of Flagstaff is governed by Arizona's Conflict of Interest Laws (A.R.S. § 38-501 et seq.). It is the responsibility of commission members to be aware of and to identify the circumstances in which the commission's actions might affect them or a relative and to avoid any situation in which a conflict of interest exists or appears to exist. A conflict of interest may result in prosecution of up to a class 6 felony.

You should encourage your commission members to review meeting agendas before each meeting. If a member determines that there may be a potential conflict of interest with an item, they should let you know as soon as possible and then you should address the matter in writing

to your City Attorney for disposition on if an actual conflict exists. **If there is any doubt about whether a conflict exists, the member 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.

Noting a Conflict for the Record

Any member having a conflict of interest (or even a possible conflict) in a commission decision must make that interest known in the official records (minutes) of the body. **Before** discussion on that item begins, the member should declare the conflict. Once the conflict is declared, the member should leave the dais and must refrain from taking part in the discussion, deliberation, or voting on that item. The member's vote would be recorded as an abstention because of the conflict of the interest. Conflicts of interest must be recorded each time they come up. A written disclosure of the conflict is required and must be kept for the public record. Recording the conflict in the minutes meets this requirement.

During this time, the member is not required to leave the meeting but can "step outside" if they so choose. Once the item is over, you should bring back any member who left the meeting due to a conflict before discussion begins on the next item.

As previously discussed in the [Quorum Section](#), any 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 the City Attorney's Office to determine if an actual conflict exists.

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

- The commission member owns 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 member's property.
- A proposed amendment to the City Code seeks to regulate a specific type of business activity. The commission member or a relative has an exclusive franchise or right to conduct the activity in the city.
- A commission member's 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."

PART FOUR – After the Meeting

Minutes

As with agendas, a standard template will be used for consistency and will be created and published using Agenda Quick. [APPENDIX G](#) is the required template to be used for preparing minutes until Agenda Quick is in use.

Tips for Good Minute Writing

- Draft your minutes as soon as possible after the meeting while the proceedings are still fresh in your mind.
- Have a copy of the agenda, attachments, documentation and minutes of the previous meeting available before typing up your minutes.
- Use the agenda items as a format for the minutes.
 - The discussion and action can then be summarized under each item which speeds the indexing of the minutes and assists anyone researching the information.
 - Bold or underline the agenda item to set it off from the summary.
 - Meeting minutes are entered into Agenda Quick.
- The motion and votes should be in a separate paragraph after the discussion paragraphs.
- Minutes are always written in the third person using past tense.
- Minutes should be a clear, accurate and concise record of the proceedings.
- Minutes are summary in nature – focus on the action items and the substance of the meeting. That being said, motions should be typed verbatim.
- Use simple, ordinary words which are commonly understood.
- Avoid personal comments, judgments, adjectives or adverbs that suggest good or bad qualities. Minutes should not be your interpretation of what happened.
- Minutes should follow the order of the meeting. If an item was taken out of order, that should be noted on the minutes by stating “Item Taken Out of Order” before beginning discussion on that agenda item.
- Make sure to spell out any acronyms when used for the first time in your minutes and put the acronym in parentheses after the full name. After that, you can use the acronym. [Example – Development Advisory Board (DAB)].
- Have someone else review your minutes for grammar, punctuation and word choice.

Minute Filing

All approved minutes **must** be filed in the City Clerk’s Office, this includes subcommittee minutes as well.

Once minutes are completed and approved by the commission they must be labeled with the date of approval, posted online, and the original forwarded to the City Clerk’s Office for permanent retention.

Records Retention

E-mail

E-mails 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 your 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.

Agendas and Minutes

All commission agendas and minutes are retained permanently by the City Clerk under the City's Records Management Program and posted online.

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 (See Ariz. Rev. Stat. § 39-121). Although there are exceptions, as a general rule, members of commissions and committees should always assume that their records will be subject to inspection by the public.

What is Due and When is it Due to the City Clerk

Questions or possible revisions or additions to the Staff Liaison Resource Guide. **Due:** As needed.

Updates to commission member contact information. **Due:** As needed.

Changes to staff liaison (either contact information or new person appointed as liaison). **Due:** As needed.

Update to chair and vice-chair appointments, including the start and end dates of their terms of office. **Due:** each time a new chair and/or vice-chair is appointed.

The City Clerk' Office will be in periodic contact with staff liaisons regarding missing Oaths of Office or training affirmations. Please work with your members to ensure that oaths are sent to City Clerk's Office in a timely manner. **Due:** as needed.

Questions with vacancy, reappointment, and attendance issues. **Due:** As needed.

As issues or concerns arise about your commission, you should contact your supervisor and the City Clerk's Office. We are happy to assist in any way possible. **Due:** as needed.

A list of all subcommittees for the commission including:

Each subcommittee's membership list, noting the chair and vice-chair (if applicable);

Any changes to the subcommittee information; and

Creation of any new subcommittees or dissolution of existing subcommittees.

Due: As soon as possible.

Original, signed agenda. **Due:** At time of posting (at least 24 hours in advance of the meeting).

Original, approved meeting minutes. **Due:** When approved.

Concluding Remarks

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 commission members. If it is destroyed, it is hard to reestablish public confidence. Many of the rules and policies discussed in this resource guide were put in place to reinforce the public's trust in the commission process. These rules and policies are used to ensure that the business of commissions is conducted in an open atmosphere where the public can provide input and feedback.

APPENDICES

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

[APPENDIX B](#) – How to Post Agendas and Minutes to the Website

[APPENDIX C](#) – Notice of Cancellation

[APPENDIX D](#) – Notice of Possible Quorum

[APPENDIX E](#) – Agenda Template

[APPENDIX F](#) – Speaker Request Card

[APPENDIX G](#) – Minutes Template

[APPENDIX H](#) – Open Meeting Law

[APPENDIX I](#) – Conflict of Interest 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

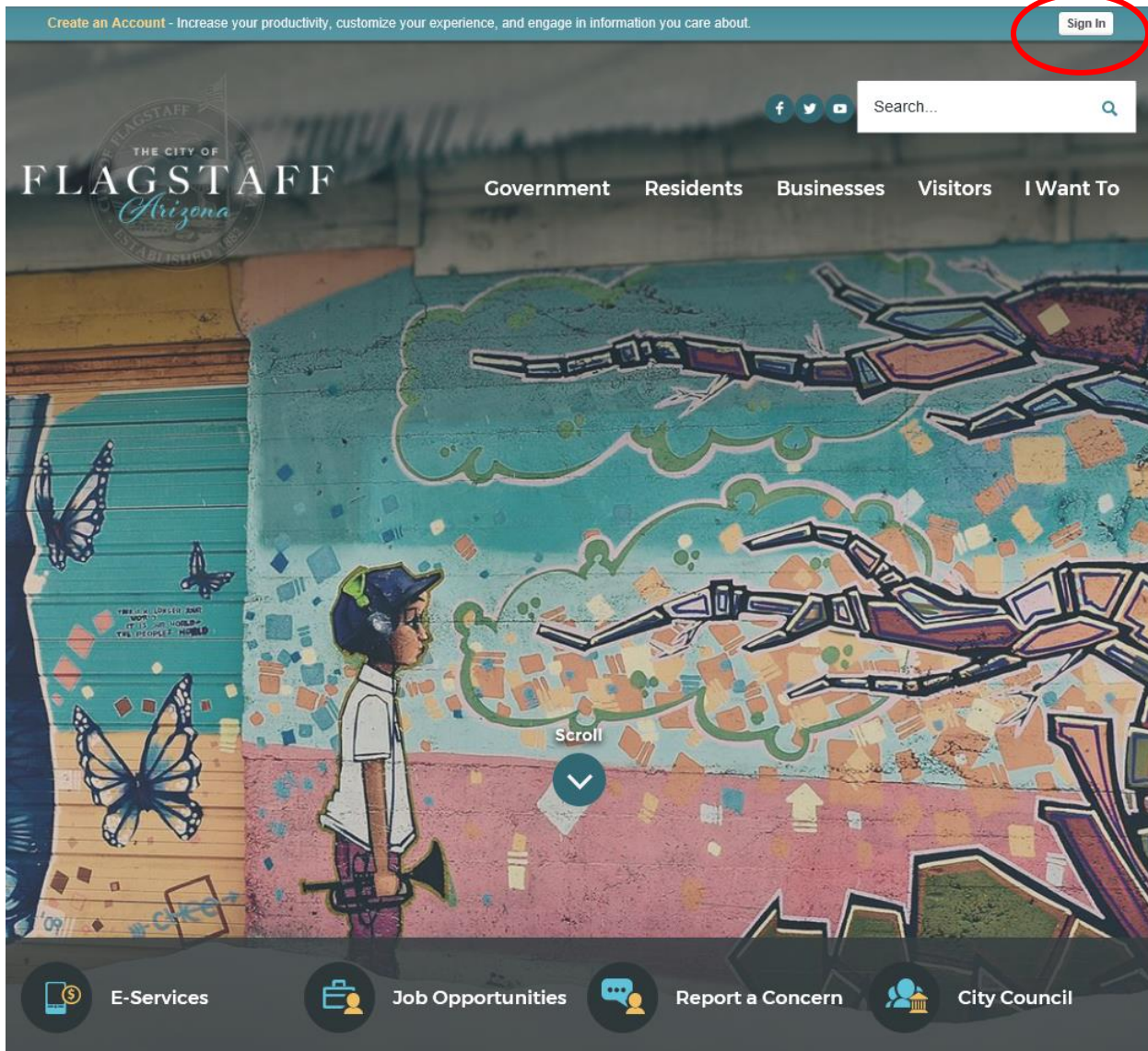
NAME	TERMS	APP'D BY	AUTHORITY	STAFF LIAISON	# OF SEATS
Housing Commission Makes recommendations with respect to housing policies, needs, and programs in Flagstaff.	3 yrs	Council	City Code: Title 2, Chapter 2-25	Sarah Darr	15
Heritage Preservation Advises the City Council on all matters relating to historic 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

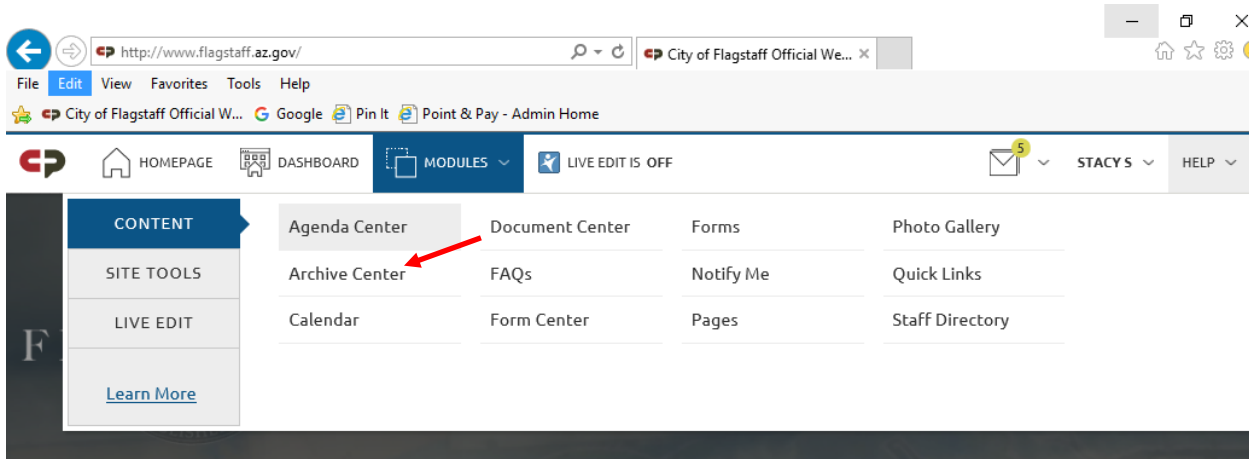
How to Post Minutes and Agendas to Board & Commission Pages

1. Save your document as a PDF and save on the network. If you need help doing this please let me know.
2. Log in to the City's Webpage

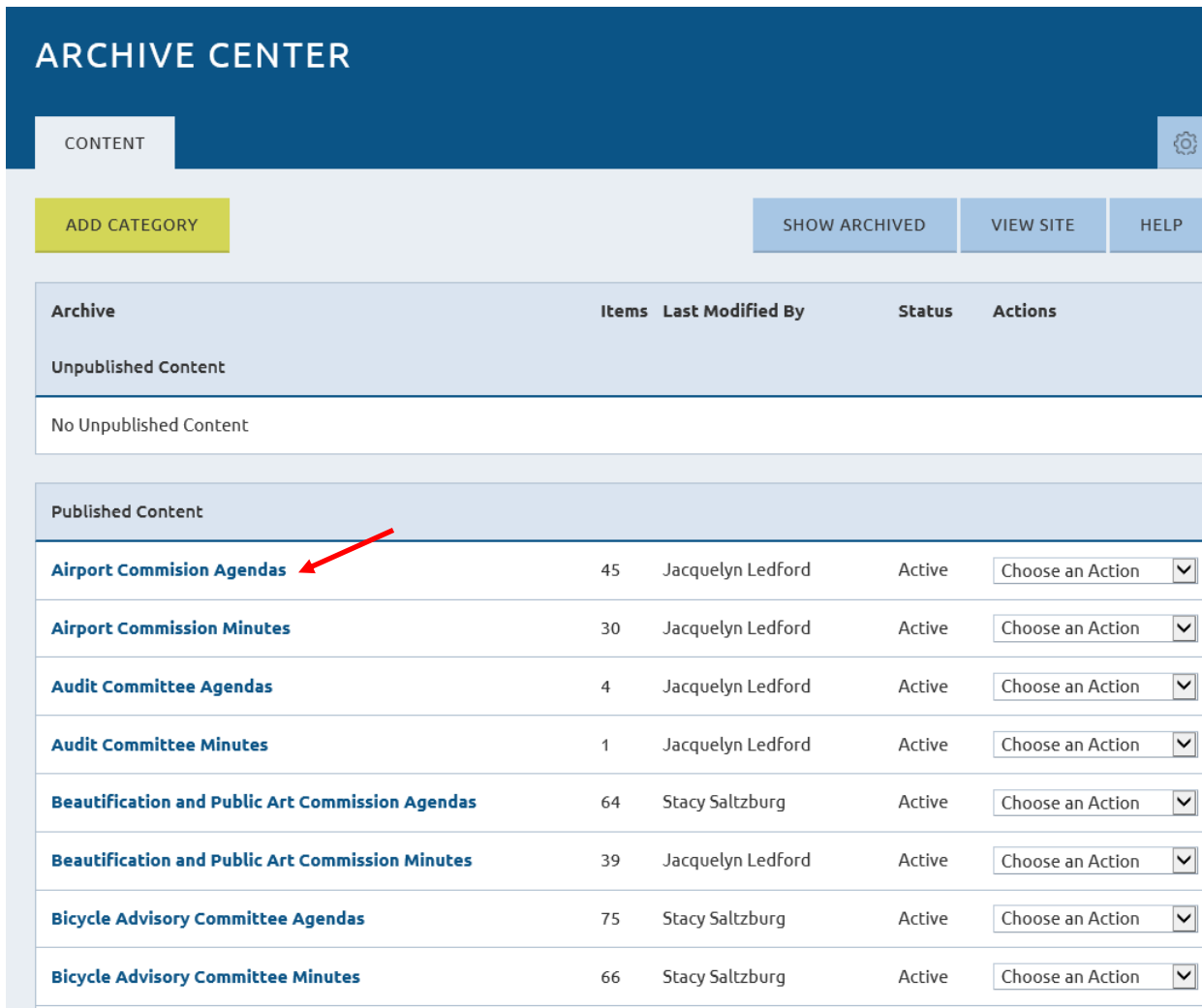


If you do not have a username or password please contact Jessica Drum to have one set up.

3. Click the **Modules** Button and choose **Archive Center**



4. Select the appropriate commission minutes or agendas



5. Click **Add Item**

The screenshot shows the 'ARCHIVE CENTER' interface. At the top, there are tabs for 'CONTENT' and 'PERMISSIONS'. Below the tabs, there is a navigation bar with buttons for 'BACK', 'ADD ITEM' (circled in red), and 'UPLOAD MULTIPLE ITEMS'. To the right of these buttons are 'SHOW ARCHIVED', 'VIEW SITE', and 'HELP'. The main content area is titled 'Airport Commision Agendas' and contains a table with columns: 'Display Name', 'Date', 'Last Modified By', 'Status', 'Actions', and a checkbox. The table is divided into 'Unpublished Items' and 'Published Items' sections. The 'Unpublished Items' section contains one row: 'Airport Commission Agenda 7-14-2016' with a date of 7/12/2016, last modified by CreagZnetko, and a status of Draft. The 'Published Items' section contains three rows: 'Airport Commission Agenda 11-9-2017' (11/6/2017, CreagZnetko, Active), 'Airport Commission Agenda 10-12-2017' (10/6/2017, CreagZnetko, Active), and 'Airport Commission Agenda - Cancellation 9-14-2017' (9/14/2017, DeborahCargill, Active). Each row has a 'Choose an Action' dropdown menu and a checkbox.

6. Fill in Display Name and Archive Date (the archive date should be the date of the meeting) and click **Save** (you must click save before going on to the next step)

The screenshot shows the 'ARCHIVE CENTER' interface in 'Modify Item' mode. At the top, there are tabs for 'CONTENT' and 'PERMISSIONS'. Below the tabs, there is a navigation bar with buttons for 'BACK', 'SHOW ARCHIVED', 'VIEW SITE', and 'HELP'. The main content area is titled 'Airport Commision Agendas - Modify Item' and contains a form. The form has a 'Display Name *' field with the value 'Airport Commission Agenda 11-9-2017' and an 'Archive Date *' field with the value '11/06/2017'. Below the 'Archive Date' field is a placeholder '[mm/dd/yyyy]'. To the right of the form are three buttons: 'ABC' with a green checkmark, 'CANCEL', and 'SAVE' (highlighted in yellow). Red arrows point to the 'Display Name' field, the 'Archive Date' field, and the 'SAVE' button.

7. Attach your document by clicking **Browse** under File Upload to locate your file.



Start Display

[mm/dd/yyyy]

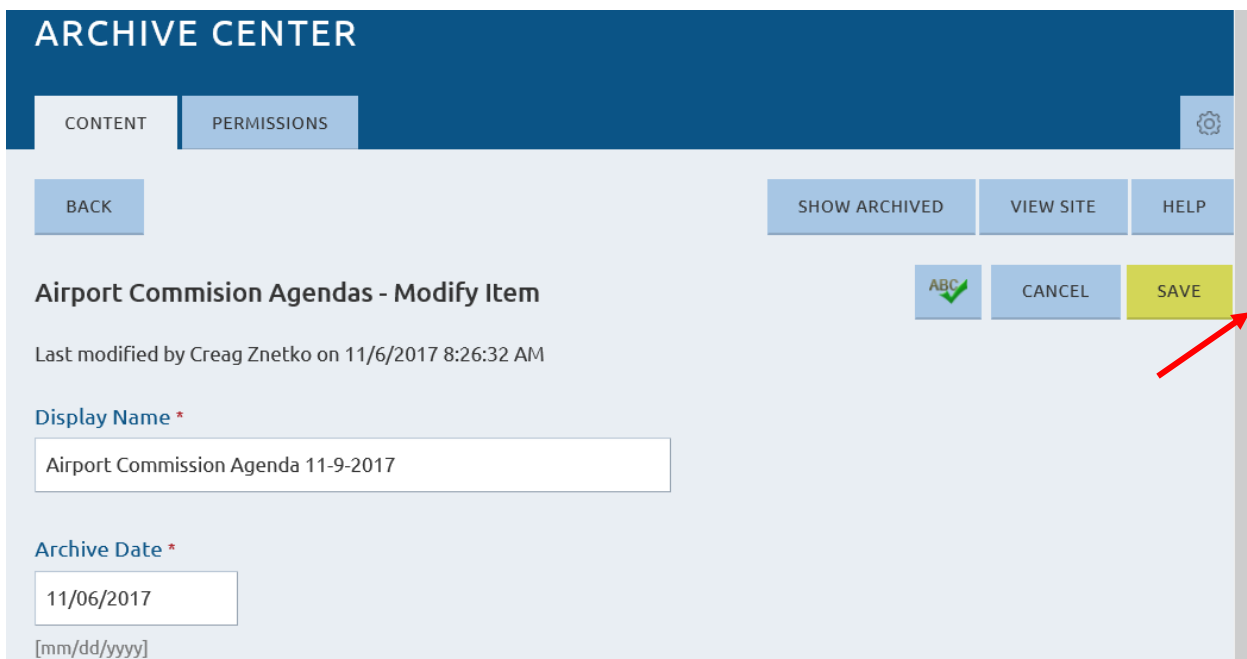
End Display

[mm/dd/yyyy]

Opens In

 ▼

8. Click **Save**



ARCHIVE CENTER

CONTENT PERMISSIONS ⚙️

BACK SHOW ARCHIVED VIEW SITE HELP

Airpport Commision Agendas - Modify Item

ABC ✓ CANCEL SAVE

Last modified by Creag Znetko on 11/6/2017 8:26:32 AM

Display Name *

You're done. Now go and check your work.

APPENDIX C



CITY OF FLAGSTAFF – [COMMISSION NAME]
NOTICE OF CANCELLATION

NOTICE IS HEREBY GIVEN THAT THE CITY OF FLAGSTAFF [COMMISSION NAME] HAS CANCELLED THEIR REGULARLY SCHEDULED MEETING FOR [DATE]. THEIR NEXT REGULARLY SCHEDULED MEETING WILL BE HELD ON [DATE].

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____, at _____ a.m./p.m. in accordance with the statement filed by the Commission with the City Clerk.

Dated this _____ day of _____, 2019.

[YOUR NAME], [YOUR TITLE]

APPENDIX D



CITY OF FLAGSTAFF – [COMMISSION NAME]
NOTICE OF POSSIBLE QUORUM

A QUORUM OF THE [COMMISSION NAME] MAY BE IN ATTENDANCE ON [DATE OF FUNCTION] AT [ADDRESS OF FUNCTION], FLAGSTAFF, AZ 86001. NO FORMAL DISCUSSION/ACTION WILL BE TAKEN BY MEMBERS IN THEIR ROLE AS COMMISSIONERS

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____, at _____ a.m./p.m. in accordance with the statement filed by the Commission with the City Clerk.

Dated this _____ day of _____, 2019.

[YOUR NAME], [YOUR TITLE]

APPENDIX E

NOTICE AND AGENDA

**[COMMISSION NAME]
[DAY OF WEEK]
[DATE]**

**COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
[TIME]**

1. CALL TO ORDER

2. ROLL CALL

NOTE: One or more Commission Members may be in attendance telephonically or by other technological means.

NAME, CHAIRPERSON

NAME

NAME, VICE CHAIRPERSON

NAME

NAME

NAME

NAME

3. GENERAL BUSINESS

A. PUBLIC COMMENT

At this time, any member of the public may address the Commission on any subject within their jurisdiction that is not scheduled before the Commission on that day. Due to Open Meeting Laws, the Commission cannot discuss or act on items presented during this portion of the agenda. To address the Commission on an item that is on the agenda, please wait for the Chair to call for Public Comment at the time the item is heard.

B. Approval of Minutes

C. [Other Business]

4. DISCUSSION ITEM(S)

A.

B.

5. INFORMATIONAL ITEMS TO/FROM COMMISSION AND STAFF, FUTURE AGENDA ITEM REQUESTS

6. ADJOURNMENT

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____, at _____ a.m./p.m. in accordance with the statement filed by the Commission with the City Clerk. This notice has been posted on the City's website and can be downloaded at www.flagstaff.az.gov.

Dated this _____ day of _____, 2019.

[YOUR NAME], [YOUR TITLE]

APPENDIX F



SPEAKER REQUEST Agenda #/Topic: _____

Flagstaff Resident? Yes No

FOR AGAINST

Thank you for participating in your City government. We value your comments. If you wish to speak to the Council at tonight's meeting, complete the form below and submit it to the Recording Clerk. To allow everyone an opportunity to speak, comments will be limited to 3 minutes and speaking time cannot be transferred to another. If you are having your comments translated, you are permitted 5 minutes. If you are with a group, please designate a spokesperson. A spokesperson for TEN OR MORE PEOPLE PRESENT AT TONIGHT'S MEETING may be given up to 15 minutes to speak. Your name will be called when it is your turn to speak.

NAME _____ DATE _____
(Required for the record – PRINT CLEARLY)

THE FOLLOWING INFORMATION IS OPTIONAL AND WILL BECOME PART OF THE RECORD	
ADDRESS _____	PHONE _____

- I am speaking on behalf of myself
- I am speaking on behalf of a group of ten or more who are present at tonight's meeting, whose names are listed below:

I am requesting 5 minutes to allow for translation

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

APPENDIX G

[COMMISSION NAME]
[DAY OF WEEK], [DATE]
CITY HALL COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
[TIME]

MINUTES

1. Call to Order

[NAME] called the Meeting of the meeting of the [COMMISSION NAME] held [DATE], to order at [TIME] p.m.

2. Roll Call

Commission Members present:	Commission Members absent:

Others present: [LIAISON NAME AND ANY OTHER STAFF]

3. Public Participation

Public Participation enables the public to address the Commission on any subject within their jurisdiction that is not scheduled before the Commission on that day. Due to Open Meeting Laws, the Commission cannot discuss or act on items presented during this portion of the agenda. To address the Commission on an item that is on the agenda, please wait for the Chair to call for Public Comment at the time the item is heard.

NOTES

4. Approval of Minutes

Moved by _____, seconded by _____ to...

Vote: 7 – 0 – Unanimously or

Vote: 5 – 2

NAY: Commissioner Smith
Commissioner Doe opposed

5. **Action Items**

[Heading/Title]

NOTES

Moved by _____, **seconded by** _____ to...

Vote: 7 – 0 – Unanimously or

Vote: 5 – 2

NAY: Commissioner Smith
Commissioner Doe opposed

6. **Reports/Discussions Items**

[Heading/Title]

NOTES

7. **Informational Items To/From Commission and Staff, Future Agenda Item Requests**

NOTES

8. **Adjournment**

The meeting of the **[COMMISSION NAME]** of **[DATE]**, adjourned at **[TIME]**.

APPENDIX H

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 I

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.