

FLAGSTAFF BOARDS AND COMMISSIONS

Open Meeting Law Refresher





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Today's Agenda

- Review Roles of Commissions
- Refresher in Open Meeting Law
- Review Conflict of Interest Law
- Questions



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New Appointments

- Welcome!
 - Jeanne Stevens
 - Alec Overmann
 - Caitlin Stewart



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Types of Boards and Commissions

- All boards, commissions, and committees of the city are classified as advisory, ad hoc, or quasi-judicial.
- Advisory and Ad hoc
 - Most commissions fall into these category
 - Advisory commissions have the primary responsibility of making recommendations to the City Council.
 - Ad hoc created to study, review, and make recommendations regarding specific issues designated by City Council.
- Quasi-Judicial
 - A public body, other than a court of law, possessing the power to hold hearings and make decisions. The following boards are considered quasi-judicial: Board of Adjustment and Building and Fire Code Board of Appeals.



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Roles

- Board and Commission Primary Role
 - Make recommendations to Council
 - Accept recommendation
 - Change provisions of recommendation
 - Send back for further consideration
 - Not accept recommendation
- Staff Liaison Role
 - Ensure compliance with Open Meeting Law
 - Answer questions related to city policies and procedures
 - Coordinate the involvement of other departments or commissions
 - Reporting commission recommendations to Council
 - A commission may request staff's assistance on various projects; however, their Division Director must approve all requests which create a substantial demand for a work product.



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Subcommittees and Informal Working Groups

- Subcommittees
 - A subcommittee is charged with a specific duty or role, Bicycle Advisory Committee and Pedestrian Advisory Committee.
- Informal Working Groups
 - Informal Working Groups may be created to research, gather information, and provide recommendations back to the commission for specific purposes.
 - Working groups may consist of members of the public and/or less than a quorum of commission members.
 - All information and recommendations from the working group must be provided and presented to the commission in an open meeting for public discussion.
 - No actions, statements, or recommendations can be made or provided by the working group on behalf of the commission. Working groups are not required to have formal agendas or minutes.



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Open Meeting Law

- Two core concepts
 - “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.” A.R.S. § 38- 431.01(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.” A.R.S. § 38-431.09.
- Meetings shall be open to the public and follow requirements
 - When and where the meeting will occur
 - Information to inform the public of the matters to be discussed or decided
 - Minimum 24-Hour public notice is required
- Legal action (motions and votes) must take place in a public meeting
- Only agenda items may be discussed
 - Best practice is to keep conversations about the agenda within the public meeting and during the designated agenda item time. If there are questions beforehand, staff can provide assistance; however, members should avoid discussing agenda items with one another in advance, as this helps prevent any potential influence or perceived bias.
- Executive Sessions (exception to rule)
 - Executive sessions require prior consent of City Attorney and staff liaison



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What constitutes a meeting?

- A meeting is a gathering, in person or through technological devices, of a quorum of a public body at which they discuss, propose, or take legal action, including deliberations. ARS § 38-431(4).
 - This includes telephone and e-mail communications.
 - DO NOT “reply all”
 - Public does not have access
 - E-Mails regarding commission business are a public record
 - Does not matter whose computer is used
- Quorum Requirement
 - Majority of membership
 - Seven members – four members a quorum
 - What if you don’t have a quorum?
 - You don’t have a “meeting” and you adjourn



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Why do we have an Open Meeting Law?

- To protect the public.
 - To avoid decision-making in secret.
 - To promote accountability by encouraging public officials to act responsively and responsibly.
- To protect public officials.
 - To avoid being excluded (notice).
 - To prepare and avoid being blind sided (agenda).
 - To accurately memorialize what happened (minutes).
- Maintain Integrity of government.
- Better informed citizenry.
- Build trust between government and citizenry.



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Open Meeting Law

- Penalties
 - If found guilty of an Open Meeting Law violation, a court may:
 - Levy a fine up to \$500 against the commissioner for each violation
 - The commissioner **personally** must pay the fine
 - The commissioner is subject to removal from office
- Social Events
 - If a quorum may be present
 - Post a “Notice of Possible Quorum”
 - Include a statement that no business of public body will be discussed, and no action taken



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Decorum

- The chair is the presiding officer in all commission proceedings. During the absence of the chair, the vice-chair acts as chair.
- Members may speak after recognition by the chair and the chair shall not unreasonably withhold such recognition.
 - 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.
 - Point of Order vs. Point of 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. i.e. personal statements unrelated to the agenda matter.
- The Commission moves in the collective, if additional information is needed it is best to ask staff so they can gather requested information and share with the whole commission.



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Tips for Meetings

- Refrain from side conversations during the meeting
- Turn off your phone ringer/computer sounds
- Wait for the previous person to finish their comments
- Speak clearly for the audience
- If you are unable to attend a meeting in person, please contact your staff liaison to attend virtually
 - As a general rule, a commission may recommend the removal of any member who is absent for more than two consecutive regular meetings without prior notification.



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Conflict of Interest

- Substantial
 - Generally, any interest that affects your, or your relative's, financial (pecuniary) or property (proprietary) interests
 - Refrain from voting on or participating in the decision (please "leave the room")
 - Make the conflict of interest known in the official record
 - *In some instances, where an HPC Commissioner needs to act as a Consultant they should leave the dais, make a clear statement for the minutes that they are acting in their professional capacity and not a Commissioner and may proceed with their presentation and answer questions. They may sit in the audience during deliberation and voting.
- Remote
 - Remote interests are financial and property interests deemed to be so minor as not to trigger the reporting and non-participation requirements
 - May still vote
 - A commissioner is an architect who, years ago, had a consultation with the applicant on an unrelated project.
- Gifts and Bribes
 - Tickets to concert, dinner gift certificates, etc. considered gifts

Board and Commission Members' Rules and Operations Manual

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