CITY OF MARICOPA

PROUD HISTORY • PROSPEROUS FUTURE

BOARDS, COMMITTEES AND COMMISSIONS HANDBOOK

2014 EDITION

OFFICE OF THE CITY CLERK

39700 W. Civic Center Plaza
Maricopa, AZ 85138
Ph: 520.316.6971
Fx: 520.568.9120

www.maricopa-az.gov

Table of Contents

I. Introduction

Welcome to the official City of Maricopa team and the rewarding, but sometimes challenging arena of public service. As a member of a Committee* you are in the unique position of serving as a liaison between the City and the general public in helping to reconcile contradictory viewpoints and build a consensus around common goals and objectives. Additionally, you are an integral part of the City's commitment to develop policies, programs and services, which reflect the needs and values of the community. The City Council and staff thank you for your active participation in the governing process of our community.

If you are a new Committee member, you may have many questions about your role and responsibilities. This Handbook is intended to help you, as a Committee member, meet the challenges you may face along the way and introduce you to your role and responsibilities, applicable operating rules and procedures, and legal requirements.

As this Handbook demonstrates, you are bound by ethical standards, state laws and City Code. It is important to understand that your personal behavior, both inside and outside public meetings, will also be observed and open to criticism by others. Ethics, good judgment, and commitment are the foundation of public service and the principles of effective City officials.

It takes a substantial commitment to be a good Committee member. Your work and recommendations can have a direct impact on the quality and level of services the City offers to its citizens, so it is important to keep in mind the needs of all citizens. You will be required to read and study materials in advance of meetings. You may be required to listen to hours of discussion and testimony at public meetings. Often you will be asked to make difficult recommendations. You may even be asked to make recommendations that may have significant impacts on your friends and neighbors. In your role as a Committee member, you are asked to no longer consider solely your own perspective or that of your peer group, but to consider the perspectives of all members of the community who have a stake in any particular issue. Your role is to support the democratic process by considering the broadest set of perspectives on issues.

We hope you will enjoy your tenure and that, at the end of your term, you will find you have played an important part in shaping the future of Maricopa.

**Note:*

The word "Committee" will be used throughout this handbook to represent all appointed boards, committees, commissions and task forces, unless a specified board, committee, commission or task force is referenced in this handbook.

II. Municipal Government Organization

A. Maricopa City Structure

The City of Maricopa is a general law city operating under a Council-Manager form of government. This form of government provides for both policy-making direction from the City Council and professional administration through the City Manager. As a general law city, Maricopa's City Council structure, planning procedures and many other aspects, are controlled by State law. Maricopa's City Code contains local laws enacted by the City Council.

City Council

As an incorporated city, certain powers are placed in the hands of the elected City Council (Council). The job of Council is to use these powers granted by state law and local ordinances for the good of the community and its residents. The legislative tasks of Council are accomplished through its collective power to pass laws and make decisions regarding the City. However, it is important to remember that the powers of local government are restricted. Local laws must conform to the United States and Arizona Constitutions, Federal laws and the laws of the State of Arizona.

Council consists of seven members of the community, elected at large. The Mayor is elected to a two-year term while the remaining six Council members serve four-year staggered terms. The powers and duties of the Mayor are outlined in chapter 2 of the Maricopa City Code.

Council is the policy-making body of the City and is ultimately held responsible for implementation of all programs and services provided by the City. Council approves ordinances, resolutions, and contracts. Council reviews proposals for community needs and initiates actions for new programs. Council approves and modifies the budget, as prepared by the City Manager.

Regularly scheduled Council meetings are held at 7:00 p.m. on the first and third Tuesday of each month. When necessary, a work session is held on the first and third Tuesday of the month at 6:00 p.m.

Staff

City staff, under the direction of the City Manager, is responsible for carrying out the policy of the Council and implementing programs and services. The City Manager, City Attorney and City Magistrate are appointed by and report directly to Council. All other department heads and staff members are responsible to the City Manager. The City Manager oversees responsibilities for the day-to-day administrative affairs of the City.

B. City Organization

City Manager

The City Manager is hired by Council and serves at the pleasure of Council. The City Manager is the administrative head of the City's government and is subject to the direction of the Council. The City Manager is responsible for the efficient administration of all affairs of the City, under his control. The City Manager's responsibilities are typical of those in a general law form of government and include enforcement of laws, responsibility and control over all employees, preparation and submittal of the annual budget, chief advisor to Council, and is generally responsible for the daily activities of the City. The City Manager has the further responsibility to predict future program needs and services and to determine the financial, personnel and social impacts of these decisions. The duties and powers of the City Manager are delineated in chapter 3 of the Maricopa City Code.

City Attorney

The City Attorney is hired by Council and is directly responsible to Council, but acts in concert with the City Manager. The City Attorney represents the City's legal interests and rights, providing legal services to the City. As chief legal advisor, the City Attorney drafts deeds, contracts, conveyances, ordinances, resolutions, and other legal instruments as required by the City. The City Attorney defends and prosecutes all suits, actions or causes, where the City is a party. The City Attorney also provides day-to-day information to City staff on legal matters. The City Attorney's duties are outlined in chapter 3 of the Maricopa City Code.

City Clerk

The City Clerk is hired by the City Manager. The City Clerk conducts City elections, ensures compliance with open meeting law requirements, and maintains official records of the City. The City Clerk keeps all public documents, which are available for public inspection, as provided according to state statute. The City Clerk prepares, or causes to be prepared, minutes of Council proceedings, and ensures their correctness and accuracy. The City Clerk processes, records, files, publishes, and posts, if required by state statute, all ordinances, resolutions, budgets, and notices passed by Council. The City Clerk also maintains the membership rosters for the City's Committees. It is important that Committee's provide any changes to contact information as soon as possible to the Clerk's office so that this roster is always current. The duties of the City Clerk are outlined in chapter 3 of the Maricopa City Code.

City Departments

The primary City departments include the City Manager's Office, City Attorney's Office, City Clerk's Office, City Magistrate, Community Services, Development Services, Economic Development, Financial Services, Human Resources, Information Technology, Intergovernmental Affairs, Public Works, Police Department and Fire Department.

C. Boards, Committees and Commissions Overview

The following is an overview of the boards, committees and commissions authorized by the Maricopa City Council.

Age-Friendly Maricopa Advisory Committee

The Age-Friendly Maricopa Advisory Committee is a seven (7) member Committee with members from different age groups (20 to 80+), income levels, and racial/ethnic backgrounds. They represent business, faith, veteran, nonprofit and government communities and provide insightful and innovative advice relative to vision, strategy and implementation. The goal of Age-Friendly Maricopa is to connect people 60 years plus with people of all ages in order to decrease social isolation and to increase access to services, social opportunities and recreation.

Meetings: Meetings are held on an as-needed basis.

Board of Adjustment

The City of Maricopa Board of Adjustment (BOA) is a quasi-judicial, seven (7) member board whose function is to review and approve or deny variances from zoning ordinance requirements and administrative decisions which create hardships in the development of property due to exceptional or extraordinary conditions. The BOA shall interpret the Zoning Ordinance when: the meaning of any word, phrase, or section is in doubt; when there is dispute as to such meaning between the appellant and the Zoning Administrator or their designee; or when the location of a zone boundary is in doubt. BOA decisions are final; unlike other boards or Committees, variances are not passed on to Council for approval. Any person aggrieved or affected by a decision of the BOA may appeal the Board's decision to the Superior Court.

Meetings: Meetings are held on an as-needed basis.

Heritage District Citizen Advisory Committee

The City of Maricopa Heritage District Citizen Advisory Committee is a seven (7) member committee comprised of individuals dedicated to the success of the Heritage District, and the continued involvement of community stakeholders in all decision-making.

Meetings: Meetings are held on an as-needed basis.

Industrial Development Authority Board

The City of Maricopa Industrial Development Authority (IDA) Board is a seven (7) member Board. The IDA works when Private Activity Bonds are issued by an IDA to provide financing for qualified projects. Interest on private activity bonds in most cases are not subject to federal income taxes. An eligible applicant submits a proposal to the IDA. After review by the IDA Board for consistency with the State Statutes and goals of the City of Maricopa, approval or disapproval is given. The primary focus of the IDA is anticipated to be the creation of jobs for the City and assisting in the financing of projects of benefit to the community. The proposal is then submitted to the Mayor and Council for final approval.

Meetings: Meetings are held on an as-needed basis.

Merit Board

The City of Maricopa Merit Board is a three (3) member Board that is expected to protect the Merit System and in turn protect employee and applicant rights guaranteed under that system. This protection includes protection against arbitrary and capricious recruitment and supervisory actions, support for recruitment and supervisory actions that are demonstrated to be in accordance with the Personnel Policies and Procedures Manual for the City of Maricopa, and approach these matters without any bias to either supervisors or subordinates. The Board may comment on any proposed changes to the Merit System as well as all Personnel Policies and Procedures and provide recommendations for improvements. The Board shall establish procedures consistent with law for the conduct of its hearings.

Meetings: Meetings are held on an as-needed basis.

Non Profit Funding Evaluation Committee

The City of Maricopa Non-Profit Funding Evaluation Committee is a seven member committee whose function is to be part of the City's internal grant evaluation process. Members will be trained on the objective scoring criteria, will hear presentations by the applicants for the Maricopa Non Profit Funding Program and provide recommendations to the Mayor and City Council on funding awards. Members shall not serve on a board or work for an organization submitting an application to the program. If a member of the Citizen Evaluation committee accepts a board appointment or becomes employed or works in a volunteer capacity by an organization submitting an application for the program, they must resign and a new member will be appointed. The committee will be required to hold a minimum of two meetings annually.

Meetings: Meetings are held on an as-needed basis.

Parks, Recreation & Library (PRL) Advisory Committee

The City of Maricopa Parks, Recreation and Library Advisory Committee is a seven (7) member committee that serves as an advisory group to the City of Maricopa Community Services Department. The group is responsible for aiding in the development of quality programs, identifying community recreational needs, special event planning, and assisting in general park design. Recommendations are made to staff and Council for items considered.

Meetings: Fourth (4^{th}) Wednesday of the month at 6:00 p.m.

Planning & Zoning Commission (P&Z)

The City of Maricopa Planning and Zoning Commission is a seven (7) member commission that hears and approves or makes recommendations regarding planning and zoning cases to the City Council. They are responsible for holding public hearings when necessary or when required by law, reviewing, approving and, if applicable, making recommendations to City Council regarding: (i) applications for amendment to the General Plan or Area Specific Plans; (ii) all matters concerning or related to the creation of zoning ordinances; (iii)applications for site plan review, conditional use permits, protected development rights, and other permit/review

processes, and (iv) subdivision preliminary plats, in accordance with the provisions of the City's Subdivision Ordinance.

Meetings: Meetings are held on the Second (2nd) and Fourth (4th) Monday on an as-needed basis.

Public Safety Personnel Retirement System Board

Members on the Public Safety Personnel Retirement System (PSPRS) Board represent Maricopa's Police and Fire Department personnel. They are to ensure that there is a uniform, consistent and equitable state wide program for public safety personnel. This board reviews all new or transferred Police and Fire Department employees into the Public Safety Personnel Retirement system and reports terminations from the system as required by State Statute.

Meetings: Meetings are held on an as-needed basis.

Transportation Advisory Committee

The City of Maricopa Transportation Advisory Committee is a seven (7) member Committee that advises the Maricopa City Council and City management regarding matters of streets, public infrastructure, engineering, transportation, transit services, regional studies and related development.

Meetings: Meetings are held on an as-needed basis.

Eligibility of Members

Members must be a current City of Maricopa resident in good standing, property owner or business owner for a minimum of one (1) year. Members must be at least 18 years of age and registered to vote in Pinal County. Members must complete the City of Maricopa Citizens Academy within two (2) years of appointment. Members shall not be a current member of any standing board, committee or commission, City of Maricopa Council, or staff. Members appointed to boards, committees or commissions shall not be a direct family member (Parent, Spouse, Sibling or Child) of a sitting member of Council unless there are not sufficient applicants for the position.

Terms of Members

A. A member's tenure shall be coterminous with the term of office of the nominating member of Council.
B. Members shall continue to serve until their successor is approved by a vote of Council.
C. A member shall continue their tenure if the nominating member of Council leaves Council, until that seat is replaced by a vote of the people.

Resignations or Removal of Members

A. Members will notify the City staff liaison, committee chair, or nominating member of Council, of their intent to resign their appointed position prior to the end of their term.
B. Any member may be removed by a majority vote of Council.
C. Any member who is absent for three (3) consecutive meetings without contacting the chairperson or staff liaison, has not completed the Citizen's Academy, or is absent to any four (4) meetings over a six (6) month period shall be considered as having resigned his/her position.
D. Resignations shall be confirmed by a majority vote of the remaining members of the board, committee or commission.

Vacancies

A. In the event of death, resignation, removal of a member, a vacancy will be declared and will be reported to the Chair, staff liaison, and City Clerk's Office.
B. The nominating member of Council shall be informed of the vacancy and allowed to begin the selection process for a new member.
C. The nominating member(s) of Council may request that any vacancy be announced at the next regular meeting of Council.

Member Responsibility

A. Members shall advise the Council related to policy matters relevant to the scope of the given board, committee or commission.
B. Members shall act on behalf of the best interest of the City and shall maintain ongoing communication throughout their membership term.
C. Members shall select one (1) of its members to serve as chairman for no more than two (2), one year terms.

Staff Responsibility

A City of Maricopa staff member shall be designated as a staff liaison to each board, committee and commission.

Meeting Schedule

A. Members will meet as determined by Staff Liaison
B. Members will meet a minimum of once a year for training with the staff liaison.

Agenda Process

A. Agenda topics should reflect the needs of Council to gain greater knowledge and understanding on a topic or to receive public input on a topic in support of possible Council action.
B. Agenda topics may originate as a request by an individual Council member to the Mayor, by Council direction in an open meeting setting, or as a recommendation from the staff liaison.
C. Agenda topics will be communicated to the committee by the staff liaisons.
D. The staff liaison will prepare the agenda language, maintain topical relevance of each individual agenda item; transmit the finished agenda to the Chair and then to the City Clerk in order to be posted in compliance with City procedures and Arizona Open Meeting Law.

Reporting Process

A. Meeting notes in the form of minutes shall be prepared by staff for approval by the Board, Committee or Commission, and forwarded to the Office of the City Clerk. Actions will be posted on the City Web Site.
B. A single board, committee or commission member who is designated by the Chair may present a two (2) minute report to Council on behalf of their respective board, committee or commission, on topics previously considered by the board, committee or commission and which are included on the Council Work Session agenda and limited to one report per meeting. The two (2) minute report shall include a summary of the scope of discussion, major questions or outcomes discussed and formal action taken by the respective board, committee or commission.

D. Task Force Committees

In addition to the established Boards, Committees and Commissions, the City Council may create a Task Force Committee to study and review specific issues and to make recommendations to the City Council in an open City Council meeting.

Definition of a Task Force Committee

A Task Force Committee is a type of ad hoc committee created by Council, made up of interested parties with a specialized interest or background, for a limited period of time to address one general topic and produce specific outcome(s) that can be achieved and reported to council within Council prescribed time limits. A Council created Task Force Committee will end on a date determined by Council.

The Mayor will determine the number of members, eligibility, terms, selection and removal of members.

Criteria for Creation of a Task Force Committee

A. Council may create a Task Force Committee to study and review specific issues and to make recommendations to Council in an open Council meeting.
B. A Task Force Committee is best suited when the following conditions are met:
    1. There is one clearly definable topic to be addressed.
    2. There is a measurable outcome that can be achieved.
    3. Council will benefit from in-depth and extended citizen input.
    4. Council will be requested to act in the future regards to this issue.
    5. The issue is of significant importance to a significant segment of residents.

Vacancies

Members will notify the Mayor, committee chair, or staff liaison of intent to vacate their position on any task force prior to completion of their activities. Vacancies may be filled at the discretion of the Mayor.

Member Responsibility

Mayor shall serve as Chairperson of all Task Force Committee for the duration of the Task Force Committee or until such time the Mayor delegates this responsibility to an appointed member. Members shall act on behalf of the best interest of the City.

Staff Responsibility

At least one City of Maricopa staff member shall be assigned as a staff liaison to each Task Force Committee.

Meeting Schedule

Members will meet as needed to complete their goal.

Agenda Process

A. The Chairperson will maintain the agenda.
B. Agenda topics will reflect the intent in which the Task Force was created.
C. The Chairperson or staff liaison will prepare the individual agenda language, maintain topical relevance of each individual agenda item and transmit the agenda to the City Clerk and Mayor in order to be posted in compliance with City procedures and open meeting law.

Reporting Process

Meeting notes in the form of action items, shall be prepared by staff liaison or Chairperson, reviewed by City Manager, and forwarded to the Office of the City Clerk to be distributed to Council members.

E. Council Committees

Maricopa City Code authorizes Council to create Committees and to grant them duties and powers consistent with their role to provide ongoing citizen input for major policy areas. Committee members are appointed by and serve at the discretion of Council.

Council Standing Subcommittees

The City Council may create a Council Standing Subcommittee to study and review multiple dynamic issues of a common topic and to make recommendations to the full Council in an open Council meeting.

A Council Standing Subcommittee is formed by the Mayor and made up of Council members with a special interest, in order to advise the full Council on topics destined for Council consideration.

Established Standing Subcommittees

- Personnel & Benefits Council Subcommittee
- Marketing & Communications Council Subcommittee
- Budget, Finance & Operations Council Subcommittee

All Council Standing Subcommittees shall consist of the Mayor or his delegate and two (2) Council members. The Mayor or his /her delegate shall serve as Chairperson.

Council Task Force Subcommittees

The Mayor may create a Council Task Force to study and review specific issues and to make recommendations to Council in an open Council meeting. It is comprised of interested Council members along with the Mayor for a limited period of time to address one general topic and produce a specific outcome that can be achieved and reported to Council within the Council prescribed time limit. A Mayor created Council task force will end on a date determined by the Mayor.

All Council Task Forces shall consist of the Mayor or his delegate and two (2) Council members. The Mayor or his/her delegate shall serve as Chairperson.

III. Roles and Responsibilities

A. Committee Roles and Responsibilities

Typically, the responsibilities of a Committee include:

- Providing ongoing recommendations to Council and staff regarding special program areas and/or issues.
- Holding public meetings and/or public hearings to solicit community input on current issues.
- Identifying issues, which the Committee believes should be addressed by Council or staff.

There are two basic types of decision-making roles a Committee may engage in:

- Legislative decisions - recommending actions to Council regarding specific items assigned to the Committee such as policy issues, special programs, adopting or amending plans, ordinances or other implementation actions.
- Quasi-judicial decisions - application of City ordinances where Council has delegated decision-making authority to a Committee.

Committee's Role with Council

In general, the role of most Committees is advisory to Council. Committees are accountable for issues delegated to them by Council, or by the City Manager prior to presentation to Council, and Council may direct the method and/or timeframe for their work program. Committees should focus on issues that fall squarely within the umbrella of activities assigned by Council. Committees with some authority to take action consistent with State law or City ordinance are the Planning and Zoning Commission and the Board of Adjustment. Members of these Committees need to be careful to act only within the authority granted to them.

When a Committee considers an issue, it is important to consider and objectively evaluate all related data, staff reports, public input and group discussion prior to making a recommendation. Committee recommendations are important to Council and are given substantial weight. A Committee's input is important and will be weighed carefully with other information Council may receive; however, Council may not always accept the recommendation of a Committee. Council is not rejecting the quality of a Committee's work, but oftentimes, Council may have additional information or need to balance a Committee's recommendation against other City priorities or considerations.

The following are some guidelines of a Committee's role with Council:

- The Committee should assist Council in developing public insight on important issues.
- As a Committee member you should respect the recommendations of the Committee as a whole.
- Should a split opinion exist on a Committee action, the majority report should be sent as the recommendation to Council with some attached explanation relating reasons for any dissent.

- Contact with Council members should always be open and never used to circumvent staff or the Committee or persuade Council members to assume a position, which may be in opposition to the Committee's position, as a whole.

Staff Liaisons

All committees have a City staff member assigned by the City Manager. The staff liaison wears many hats and one of those is to provide support to the committee. In addition to general support, the staff liaison is responsible for keeping the committee informed about what is happening in the organization, what issues need committee consideration, and what suggestions or alternatives might be appropriate for committee review. Should controversy arise within a committee, counsel and guidance are available from staff. The staff liaison also has the authority to call special meetings, when necessary, to meet program directives for the committee. The staff liaison also:

- Acts as an information resource and provides technical assistance.
- Prepares and forwards meeting agendas and public notices to City Clerk for posting.
- Writes and presents staff reports and supporting paperwork prior to a meeting.
- Ensures compliance with Open Meeting Law requirements.
- Assists in distributing information to the committee according to proper protocols and Open Meeting Law requirements.
- Researches and investigates questions raised by the committee.
- Responds to committee's requests for information related to committee business.
- Provides suggestions to the committee on how to obtain information on an issue or concern.
- Facilitates interaction with other committees, as necessary.
- Coordinates requests for assistance from other departments (e.g. City Manager, City Attorney).
- Prepares committee recommendations to Council and presents to Council on behalf of the committee.
- Share with Council relevant information that was considered by the Committee as part of the Committee deliberations.
- Assist in the development of a consensus position between Committee and staff.

Although committees work closely with staff, committees do not have the authority to supervise or direct the work of staff. In the framework of working with a committee's staff liaison, it is important to remember the following:

- Contacts should generally be with the committee's assigned staff liaison. When a committee wants to make contact with another staff member or department head, the committee members should, if possible, coordinate with the committee Chair, who should then notify the staff liaison.
- Contact with staff members should clearly be within the framework of the committee's assignment.
- Committee members should not ask for individual reports, favors, or special considerations.

- Citizen complaints heard by committee members should be referred to the committee's staff liaison.

Chair and Vice-Chair

Generally, each committee elects a Chair and Vice-Chair. The Chair is the moderator of meetings and speaks on behalf of the committee when authorized by a majority of the members to do so. The Chair may also review meeting agendas prior to their distribution and posting, and work with staff to ensure continuity of the meeting. The Vice-Chair serves in the absence of the Chair.

B. Code of Ethics

Definitions

For the purposes of interpretation of this Article, the following words and phrases shall mean:

A. Board, Committee and Commission Members - An appointed member of a City Board, Committee, Commission or Task Force.
B. *Ethics Code* - the provisions set forth in this Article.

Except as otherwise provided herein, the words, terms, and phrases used in this Article shall have the meanings ascribed to them in Title 38 of the Arizona Revised Statutes and the City Code, except where the context clearly indicates a different meaning.

Policy

A. It is the policy of the City of Maricopa to uphold, promote and demand the highest standards of ethics from its Boards, Committees and Commissions. The Boards, Committees and Commissions shall maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, comply with all applicable laws and never use their city position or powers improperly or for personal gain. By operating with these values, the City shall build, maintain, and enhance the trust of the public, staff, fellow Board, Committee and Commission Members, and the Mayor and City Council Members. This Code of Ethics has been created to ensure that all appointed Board, Committee and Commission Members have clear guidance for carrying out their responsibilities.

B. All Board, Committee and Commission Members shall obey and observe the letter and spirit of the constitution and laws of the United States of America, the constitution and laws of the State of Arizona, and the code, laws and policies of the City of Maricopa applicable to Board, Committee and Commission Members, including this Code of Ethics.

C. As a prerequisite for exercising any power of their appointed position, each Board, Committee and Commission Member is required to read and agree in writing to comply with the provisions of these laws, regulations, policies and this Ethics Code.

Code of Ethical Conduct

A. Operate in an Open, Accessible, and Transparent Manner and Adhere to All Applicable Laws At All Times
    1. The citizens of Maricopa expect and deserve open government. Board, Committee and Commission Members shall comply with all open meeting and public record laws as set forth in A.R.S. §§ 38-431 through 431.09 and §§ 39-121 through 121.03.
    2. Board, Committee and Commission Members shall conduct city business with transparency, seeking public input as advisable or appropriate, in a manner that fully

adheres to and preferably exceeds state law regarding open meetings and transparency of actions and shall not circumvent the open meeting law, or the spirit of the law, by using technology, a "hub and spoke" scheme, or any technique involving less than a quorum yet designed to communicate with a quorum of the public body.

3. Board, Committee and Commission Members shall be accessible, open and conduct city business with transparency.

B. Conflicts of Interest
   1. Board, Committee and Commission Members shall not be involved in any activity which creates a conflict of interest with their responsibilities to the City and its residents as defined by Arizona law.
   2. Board, Committee and Commission Members shall disclose and make known actual or perceived conflicts of interest as required by Arizona law.
   3. When a known conflict of interest arises, the Board, Committee or Commission Members involved shall disclose the conflict as soon as reasonably practical and shall refrain from participating in any manner in the city's decision-making processes on the matter as a Board, Committee and Commission Member, including voting on the matter or attending meetings with, having written or verbal communications with, or offering advice to any member of the City Council, contractor, agent, other members of a city board, commission, committee, task force, other appointed advisory group or agency (other than the city attorney when the Board, Committee or Commission Member is seeking legal advice regarding a possible conflict).
   4. During a public meeting when an agenda item in which a Board, Committee or Commission Member has a conflict of interest comes up for consideration, the Board, Committee or Commission Member shall state publicly that he or she has a conflict, recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

C. Serve Public Interests Over a Member's Personal Interests
   1. Board, Committee and Commission Members have the obligation to put the interests of the City of Maricopa over all personal considerations.
   2. The goal should be to balance what is in the best interest for the broadest public good of the City, consistent with constitutional and other legal protection for minority, property and other interests.
   3. Board, Committee and Commission Members shall avoid favoritism and retribution.

D. Undue Influence and Appearance of Impropriety
   1. No Board, Committee or Commission Member shall use or attempt to use his or her official position to influence Board, Committee or Commission decisions, Council decisions or City staff actions in favor of individuals, organizations or companies that may directly benefit the individual Board, Committee or Commission Member.
   2. Ask "Does this pass the headline test?"
   3. Board, Committee and Commission Members shall follow applicable gift policies and laws regarding disclosure and acceptance of gifts, including, but not limited to, gifts of travel, entertainment and sports/athletic activities and events.

4. No Board, Committee or Commission Member shall use or attempt to use his or her personal relationships with staff, businesses or others for inappropriate or personal benefit.
5. Board, Committee and Commission Members shall avoid the appearance or reality of monetary gain or "quid pro quo".
6. No Board, Committee or Commission Member shall use or attempt to use his or her official position to gain personal, professional, or financial advantage for the individual Board, Committee or Commission Member or his or her direct family member or business. (As "direct family member" is defined in the City Code.)

E. Professionalism and Courtesy
   1. During meetings and all public appearances, Board, Committee and Commission Members shall treat each other, speakers, invited guests, residents, businesses, staff and general public with professionalism, courtesy, respect and dignity, and shall:
      • Be attentive, respectful and polite
      • Avoid personal disparaging comments or references
      • Focus on the action, not the individual
      • Respect differences
      • Be cognitive of demeanor and appearance
      • Be respectful of schedules and agendas and responsive to all communications
      • Be on time, prepared and ready to execute the duties and tasks of the position
      • Avoid inappropriate actions and behavior that could reflect poorly upon the City or fellow Board, Committee or Commission Members
   2. At the City workplace, at any City event and at all times while representing the City, including traveling on City business, Board, Committee and Commission Members shall treat each other, staff and the general public with professionalism, courtesy, respect and dignity, and shall:
      • Respect and embrace the Golden Rule (treat others as you would like to be treated)
      • Be sensitive to differences in race, age, gender, disabilities, religious beliefs, political affiliation and national origin
      • Strive to create an environment that is productive and free from gossip, rumors, intimidation, harassment, threats, retaliation, violence, hostility, and other adversity
      • Avoid behavior and comments considered unacceptable in the workplace, such as inappropriate and demeaning comments, stories, humor and jokes
      • Avoid sexual harassment, such as sexual conversations, sexual innuendos, and other comments that may be perceived as sexual in nature
      • Keep personal and professional relationships separate

F. Respect and Abide by the Council-Manager Form of Government
   1. Under the council-manager form of government, the City Council appoints a City Manager, who directs the day-to-day operations of all employees. Board, Committee and Commission Members should be sensitive to the role of the City Manager and shall utilize the designated staff liaison for all communications.
   2. Board, Committee and Commission Members shall not interfere with the hiring, promotion, transfer, discipline, compensation or termination of any employee.
   3. Board, Committee and Commission Members shall not interfere with or exert

influence over the City's procurement process.

G. Use of City Equipment, Property and Resources
   1. Board, Committee and Commission Members shall adhere to City rules and policies on the use of City property, City logo, and City letterhead or other approved City communication tools, materials or publications.
   2. Board, Committee and Commission Members shall use City issued equipment in accordance with City policies and shall not use City equipment or facilities for private purposes, unless such use is generally available to the public.
   3. Any personal emails, faxes or use of other communications generated by the use of City equipment should be considered public information. As such, Board, Committee and Commission Members who have City-assigned electronic mail accounts shall use them for City business only and not for personal business or for campaign purposes.
   4. Board, Committee and Commission Members shall not disclose or use executive session information or other information deemed confidential under state law without proper authorization.

H. Communications
   1. In the event of media requests or contacts, Board, Committee and Commission Members should, when appropriate or advisable, notify and seek guidance from the appropriate City staff. Board, Committee and Commission Members are never "off the record" and should be mindful of communication actions that create a public record.
   2. Board, Committee and Commission Members shall qualify public comments as either the official position of the Board, Committee or Commission or as a personal opinion and clarify whether the Board, Committee or Commission have or have not acted on the topic (i.e., state "My Board, Committee or Commission has not voted on this matter yet, however, I believe we should go in direction xyz").
   3. Board, Committee and Commission Members shall not make public statements or take individual actions on behalf of the Board, Committee or Commission unless expressly authorized by the Board, Committee or Commission.
   4. Board, Committee and Commission Members shall use all communication platforms, including social media, to constructively benefit the City.
   5. Board, Committee and Commission Members shall communicate to fellow Board, Committee or Commission Members, the City Manager and/or the City Attorney any information that could negatively affect the operation or image of the Board, Committee or Commission, City Council or the City.

Reporting Ethics Violations

Board, Committee and Commission Members have a duty to report violations of the Code of Ethics or any misconduct that raises a substantial question as to a Member's integrity or fitness as an appointed representative. Council shall serve as a committee of the whole for purposes of Code of Ethics enforcement, which includes a reasonable process for investigating complaints that affords the subject of a complaint a full and fair opportunity to be heard. The City benefits from formal and informal reporting procedures that encourage prompt resolution of grievances and concerns.

A. Informal Reporting Procedures

Before initiating the formal complaint process, a grievant should make every reasonable effort to resolve issues constructively in an informal manner, unless such efforts would be futile or inadequate to address the nature and severity of the alleged violation.

1. Whenever possible, a grievant should first discuss concerns with the alleged violator, staff liaison and nominating Council member.
2. It is highly recommended that either party request the assistance of staff to facilitate discussions about the complaint. Both parties must agree to speak with staff.

B. Formal Reporting Procedures

A grievant may initiate the formal complaint process when informal efforts are futile, unsuccessful, or inadequate to address the nature and severity of the alleged violation. A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint may be subject to criminal prosecution for perjury and civil liability.

1. The grievant shall inform the alleged violator of the intent to initiate the formal complaint process.
2. The grievant shall submit a formal complaint to the City Manager, City Attorney, or designee within sixty (60) days from the date the grievant first became aware of the alleged violation
3. The complaint shall provide:
    i. The name of the grievant;
    ii. The name of the alleged violator;
    iii. The nature of the alleged violation, including the specific provision of the Code of Ethics or law allegedly violated;
    iv. A statement of facts describing relevant conduct and dates;
    v. Copies of relevant documents or materials and/or a list of unavailable, relevant documents or materials;
    vi. A list of relevant witnesses; and
    vii. An affidavit stating that the information contained in the complaint is true and correct, and stating the grievant has good reason to believe and does believe that the facts alleged constitute a violation of the Code of Ethics.
4. The City Manager, City Attorney or designee shall gather relevant facts, documents, witness statements, interview the alleged violator, and gather other information relevant to the complaint.
5. The City Attorney or designee shall prepare a recommendation to Council.
6. The complaint and recommendation shall be submitted to the entire Council for review at a duly convened executive session. All laws pertaining to executive sessions shall apply, including the right of the alleged violator to an open hearing.
    i. Council shall review the complaint and recommendation, and consult with the City Attorney or designee to determine whether there is reasonable cause to believe a violation occurred and whether sanctions are warranted
    ii. If there is reasonable cause to believe a violation occurred, the matter may be placed on a Regular Council Meeting agenda for action or direction.

Sanctions

Any Board, Committee and Commission Member found in violation of this Code of Ethics may face the following sanctions:

(a) Warning
(b) Letter of reprimand
(c) A demand for non-monetary restitution (e.g., a public apology, the return of gifts)
(d) Removal by Council based on a majority vote;

Serious infractions of the Code of Ethics or other intentional and repeated conduct in violation of this Article IX may result in other sanctions as deemed appropriate by Council. Violations of state law provisions described herein shall be punished as provided for in state law. The language used in imposing sanctions will be consistent and follow a specific format as established by the Council.

IV. Meetings

A. Meetings

All Committee meetings are open to the public, except executive sessions. All public meetings are governed by Open Meeting law requirements. Although the public is often allowed to participate in public meetings, state law does not require public participation; however, the meeting must be publicly noticed and the public must be allowed to attend.

A Committee may use several different types of meetings in order to conduct its business. These include regular meetings, special meetings, and work sessions.

Regular Meetings

Regular meetings are typically the decision-making meetings and often are public hearings. The regular meeting date is usually established in the ordinance governing the Committee.

Special Meetings

Special meetings may be held under unique conditions.

Work Sessions

Work sessions are valuable formats as they are typically less formal than regular Committee meetings and allow Committee members to receive information and discuss matters in a relaxed manner. They are often used for initially dealing with more complex or lengthy matters.

Public Hearings

Public bodies, such as City Council, Board of Adjustment and Planning and Zoning Commission, are sometimes required by state law or City ordinance to hold public hearings. Although a public hearing is also a public meeting, the main purpose of most public hearings is to obtain public testimony or comment. A public hearing may occur as part of a regular or special meeting or it may be the sole purpose of a special meeting, with no other matters addressed.

The following generally describes the typical procedures for public hearings:

- The Chair states the title of the application or issue to be reviewed.
- The staff gives a verbal presentation, explaining the action requested, the facts and issues, and staff recommendations.
- Staff acknowledges any correspondence received about the application or issue and responds to questions raised by the Committee. Committee members should not express opinions or comments until after the public's comments are heard.
- The applicants and/or their representatives present their case. The Committee then asks questions of the applicant or about the issue. Again, Committee members should not express opinions or comments at this time.
- Public hearing is opened for public comment and all interested members of the public are given the opportunity to speak and be heard by the Committee.

- At the conclusion of the public comments, the public comment portion of the meeting is closed.
- The Committee discusses the matter amongst themselves, then acts by motion and votes on the matter before them.

B. Meeting Quorum

A quorum of the Committee is required to take official action at a public meeting. A quorum is considered a majority of the entire membership of the Committee. If there are vacancies, that fact is not considered. Thus, a quorum of a Committee that has seven seats would be four (more than half of seven) even if some seats are vacant.

C. Agendas

Agendas are required for all Committee meetings. Agendas must be prepared and posted at least 24 hours prior to the meeting. The City of Maricopa currently posts agendas to public sites located in the City limits and on the City's website. Agendas are intended to inform the Committee and the public of items that will be discussed. Agenda items must be stated in a sufficiently clear way as to identify the subject matter and potential action(s) that may be taken. Placing an item on an agenda allows a Committee to discuss and possibly act on an item. Neither discussion nor action may occur on issues that are not on the agenda.

Items are placed on agendas in a variety of ways:

- In response to direction from Council.
- In response to a directive from the City Manager.
- As deemed necessary by the staff liaison.

The following is an example of what a Committee agenda might look like:

- Call to order
- Roll Call
- Minutes
- Call to the Public
- Agenda Items
- Adjournment

D. Public Participation

The Importance of Public Input

Providing meaningful opportunities for public involvement in the creation, adoption and in the implementation of policies and programs is an important role of a Committee. For items that are more controversial, it is recommended that the Committee ensure that there is plenty of opportunity for citizens to understand the issue and to get answers to questions. Additionally, it can be helpful to conduct a public participation process in advance of any public meetings. Public meetings often occur later in the process and may leave citizens with the impression that

local officials do not want to hear their ideas or comments. A good public participation process can be time-consuming; however, this process can help to increase the potential to arrive at solutions that have stronger community support.

Members of the public are limited to addressing the Committee one time per agenda item, for a specified length of time. If an individual's comments cannot be provided within the allotted time, the individual may submit additional written comments. If a Committee member engages the speaker in discussion, the clock will be stopped and the speaker will not be penalized for the time spent answering the Committee member or for the Committee member's time in talking to the speaker.

The public is expected to display courteous behavior. Inappropriate behavior is subject to forfeiture of allotted time to speak and may result in removal from the meeting.

The following guidelines outline the processes by which a person is allowed to speak at a public meeting:

- In order to speak during the "call to the public" portion of the meeting or on a specific agenda item, a speaker must first fill out a "Speaker Card."
- During the "call to the public" portion of the agenda, anyone may address the Committee on any subject that is not on the agenda, when recognized by the Chair.
- All speakers, when called upon by the Chair, should step up to the microphone and state their full name and the city of residence.
- Generally, remarks are limited to five minutes, unless the Chair and the Committee grant more or less time.
- It is recommended that the persons wishing to speak write their remarks in advance, so they can present them concisely and make maximum use of the allotted time. These written statements should be left with the recording secretary for entry into the minutes.
- All remarks shall be addressed to the Committee, not other members of the public.
- If the speaker wisher to provide handouts, they must provide them to the entire Committee and the staff liaison.

Civility at Meetings

It is the Chair's responsibility to maintain meeting civility, whether or not it is at the Committee member's level, staff level, or audience level. Meetings should be conducted in a professional manner so that a Committee's business is accomplished in a fair, impartial, and orderly manner. Appropriate meeting conduct by the Committee will help set the example and tone for how the rest of the meeting will take place. Occasionally, a Chair will be required to take steps to maintain control of the meeting by intervening in a controversial discussion and to bring control of the meeting back to the podium.

Decorum and Order Among Committee Members

During Committee meetings, Committee members must preserve order and decorum and cannot delay or interrupt the proceedings or refuse to obey the order of the Chair or the rules of the Committee. Every Committee member desiring to speak must address the Chair, and upon recognition by the Chair, must stay on topic with the matter under consideration. Personal attacks and rude language are not tolerated.

Once recognized to speak, another Committee member cannot interrupt a Committee member, unless called to order by the Chair or unless a point of order is raised. If a Committee member is called to order while speaking, he shall cease speaking immediately until the question of order is determined. If ruled to be out of order, he shall remain silent or shall alter his remarks so as to comply with the rules of the Committee. Committee members shall limit their questions to the particular issues before the Committee. If the Chair fails to act, any member may move to require him to enforce the rules and the affirmative vote of the majority of the Committee shall require the Chair to act.

Decorum and Order Among Citizen Participants

Citizens attending Committee meetings must also observe the same rules of propriety, decorum, and good conduct applicable to Committee members. Any person making personal, impertinent, and slanderous remarks, or who becomes boisterous while addressing the Committee while attending a Committee meeting, may be removed from the room if so directed by the Chair. Unauthorized remarks from the audience, clapping, stamping of feet, whistles, yells, and similar demonstrations shall not be permitted by the Chair, who may direct staff to remove such offenders from the room. Should the Chair fail to act, any member of the Committee may move to require the Chair to enforce the rules, and the affirmative vote of the majority of the Committee shall require the Chair to act. Any member of the public desiring to address the Committee shall be recognized by the Chair, shall state his name and city of residence for the record, and shall limit his remarks to the issues under discussion. Any remarks shall be addressed to the Chair and to any or all members of the Committee.

E. Conducting a Successful Meeting

Important Tips for the Chair:

- The Chair should facilitate the meeting so that no one person dominates the discussion.
- The Chair should announce the voting results after each vote is taken for the benefit of the audience, participants, and staff.
- The Chair should not allow outbursts from the audience. When a member of the audience or the speaker at the podium displays hostile behavior toward the Committee, City staff, consultant, or other citizens, it should be corrected in order to maintain control of the meeting.
- Should the Committee find itself in a meeting where emotions run high, the Chair is encouraged to, and has the authority to, take any of the following actions:
  - Remind the speaker that comments are to be confined to the issue at hand and there are to be no attacks on any participant in the meeting.
  - Remind the audience that outbursts from the audience will not be allowed.
  - If necessary, cut off the speaker's remaining time.
  - Revoke the speaker's speaking privilege.
  - Remove a speaker from the meeting.
- If there are a large number of people who wish to speak on an agenda item, in a limited amount of time, speaking time can be rationed, so everyone has the opportunity to be heard. A quick count of the "Speaker Cards" received on a particular item can assist the

Chair in making a reasonable assessment of the time available for each person to speak. If there are a number of speakers, the Chair may line speakers up "on-deck".
- Don't cause people who have come to a meeting, to wait hours to be heard, or to be made to return because there was not enough time.
- Schedule an extra meeting if necessary to clear any backlog of items that need to be considered. This is far better than having everyone stay up until the wee hours of the night to finish a list of agenda items.
- Adjourn the meeting promptly when all business has been concluded.

Important Tips for the Committee:

In order to ensure every citizen receives fair and equitable treatment, meetings will benefit from the consistent application of the following tips for conducting a successful meeting:

- Arrive early and start each meeting on time.
- Conduct all meetings in accordance with the Open Meeting Law, City ordinances, and Robert's Rules of Order.
- Follow the published agenda.
- Limit the agenda to the number of topics that can be dealt with in the time allotted.
- Allow time for discussion and comment.
- Notify speakers in advance of the amount of time they will have to speak.
- Announce the meeting format to the participants at the beginning of each meeting or, in some cases, portions thereof.
- Let everyone be heard.
- Discuss the pros and cons of an issue after everyone, including the public, has had an opportunity to present his point of view.
- Try to keep your comments and questions neutral, focusing on the facts presented.
- Direct your attention to the speaker, issue, or task at hand--do not be distracted by minor points.
- Make decisions based on fact.
- Avoid conflicts of interest.
- Bring issues to a vote, with each member having the opportunity to explain his decision/point of view.
- Use formal titles, in formal settings.
- Honor the role of the Chair in maintaining order.
- Remember all statements are part of the public record.
- Actively listen when others speak.
- Avoid debate and argument with the public.
- Be respectful of other people's time.
- Turn off all cell phones and other electronic devices during the meeting.
- If an imminent emergency or serious family matter is anticipated, set phone on vibrate. Please step out of the room if call must be taken.
- Be aware that private conversations may find their way into public domain.
- Make no promises on behalf of the City or Committee.
- Being a Committee member is an important responsibility, which must be taken seriously.

V. Motions and Votes

A. Motions

The following are sample motions to bring business before the Committee.

Main Motion

To make a main motion say, "I motion to . . ." in exact language. The motion must be seconded to be considered by the Committee, but it does not necessarily mean that the "seconder" agrees with the motion. If there is no second, the motion is not put before the Committee for discussion or decision.

When a motion is made and seconded, it shall be so stated by the Chair before debate commences. If the motion is unclear, the Chair should help the mover reword it. A motion may not be withdrawn by the maker of the motion without the consent of the member seconding it.

Motion to Amend

Amendments should say exactly where in the main motion the change is to be made and precisely what words to use. The Chair can require amendments, like main motions, to be in writing.

There are three types of amendments:

- Insert or add words
- Strike out words
- Strike out and insert words

Any amendment must in some way involve the same question raised by the motion it amends. If seconded, the Chair states the amendment and gives the main motion as it would read if the amendment were adopted.

The maker of a motion to amend shall clearly state the amendment to the motion followed by a reading of the motion as proposed to be amended. Only one amendment to a motion may be considered at a time. Succeeding, unrelated amendments may be considered after the original motion to amend has been resolved. There is no limit on the number of amendments; however, if there are a number of amendments to the original motion, it may be well to withdraw the motion and begin over again.

Motion to Table

A motion to "table" is used when the Committee wishes to lay the main motion aside temporarily without setting a time for resuming its consideration, but with the provision that it can be taken up again whenever a majority so decides. These motions are "undebatable" and "cannot be amended."

Motion to Adjourn

When the agendized items to be addressed have been completed, the Chair may ask, "Is there any further business?" Then, hearing no further business state, "Since there is no further business, the meeting is adjourned." Or, a motion to adjourn is used to close the meeting entirely. The motion can be made and the Committee can adjourn even while business is pending, provided the time for the next meeting is established.

B. Votes

Unanimous consent enables a motion to be adopted or some action to be taken, particularly on routine matters, without the necessity of having to put the motion to a vote. It even permits taking action without the formality of a motion being made at all. The Chair simply asks the Committee if there is any objection to taking the desired action, and if no Committee member then objects, the Chair declares that the action has been agreed to. A still more streamlined procedure, if the Chair feels there is little chance of objection, is for the Chair to merely say, "Without objection, . . .". For example, "Without objection, the meeting is adjourned."

Any Committee member may request a roll call vote, or the Chair may ask for a roll call vote for purposes of clarifying a vote for the record. If the vote is other than unanimous, the Chair shall state for the record all yea and nay votes. In the case of a tie vote on any motion, the motion shall be considered lost. Once announced, the vote total is final.

C. Robert's Rules of Order

It is important to remember that Robert's Rules of Order is a guide for conducting the business of a meeting. Copies of *Robert's Rules of Order Newly Revised and Robert's Rules of Order Newly Revised – In Brief* are available for review in the City Clerk's Office.

VI. Law, Regulations & Policies

A. The Arizona Open Meeting Law

Arizona's Open Meeting Law states that:

"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 . . ."

In other words, Committee meetings shall be open to the public and all legal action, as well as the proposing and discussing of all such action, must take place during the public meeting, since Committees are public bodies as defined below. Further, only items on the agenda may be discussed. Regular or special meetings, work or study sessions, or other gatherings at which a quorum of the Committee is present to discuss or decide the Committee's business, must comply with the notice, agenda, and minutes requirements and must be open to the public.

Legal Requirements

The law has two essential components. First, public notice and an agenda of all meetings of a Committee must be posted at least 24 hours prior to the meeting. City staff will handle the notice that must be provided for meetings and will assist in developing the appropriate agenda for the meeting. Secondly, with a few exceptions, all meetings of a Committee must be open for any member of the public to attend.

The law defines a "public body" as any group of elected or appointed members, and subcommittees thereof, which conducts the business of the public. The law defines a "meeting" as a gathering of a quorum of members of a public body for the purpose of discussing, proposing or taking legal action, including deliberations with respect to any action. If a quorum is present, either personally or via technology, it is a meeting under the Arizona Open Meeting Law and must be open to the public.

Additionally, members might communicate with each other using the telephone or e-mail. If these communications directly or indirectly involve a quorum of the Committee, a meeting will have occurred. Because private telephone conversations and e-mail do not involve the public, members of a Committee must avoid communicating privately about public business.

Meeting agendas that become the public notice must state when and where the meeting will be held and list the items of business to be discussed. A minimum of 24-hour public notice to Committee members and the general public is required for all public meetings unless an actual emergency exists. In addition to notice of the time, date, and place of each meeting, the Open Meeting Law requires a prepared agenda. Agendas must contain enough information to inform the public of the matters to be discussed or decided. This does not permit the use of agenda items such as "new business" or "old business", unless the specific items of new and old business are listed.

The Open Meeting Law requires minutes for all public meetings. At a minimum, minutes must contain the date, time, and location of the meeting; a list of Committee members in attendance

and those members who are not in attendance; a description of the topic(s) under discussion and/or consideration; the name of each person "making statements or presenting material to the Committee;" all first and second motions, along with the person's name who made the motion; and a numerical breakdown of the vote. Either written minutes or an audio recording of a public meeting must be available for the public within three (3) working days after the meeting.

For Subcommittees and Advisory Committees, the Arizona law states, "Within ten working days after a subcommittee or advisory committee meeting, post on its internet website, if applicable, either: (a) A statement describing legal action, if any. (b) A recording of the meeting."

Practices such as polling individual members to reach a decision prior to the meeting are prohibited. If the Committee or its presiding officer appoints a Committee or Subcommittee to study a particular issue, the law also governs the meetings of the Committee or Subcommittee. This is true regardless of the composition of the Committee or Subcommittee.

On a rare occasion, a Committee may convene for an executive session. Executive sessions must meet the minimum 24-hour posting requirement and agendas, again, must inform the public of the matters under consideration. Public bodies are allowed to convene in executive session only in seven particular situations. The most likely topic of an executive session involving a Committee would be to consult with the City's attorneys. Executive sessions are not open to the public and no formal action is taken. In addition, the particulars of executive session matters are confidential and may not be discussed with anyone.

B. E-Mail and Other Communications

E-mail and Other Communications among Committees outside a Public Meeting and During Public Meetings

E-mail (or electronic) communications can constitute a "meeting." The public does not have access to Committees' e-mail, so when members of a Committee begin having discussions by electronic or telephonic communication, it can result in Open Meeting Law violations. In addition, the staff liaison or other staff member is not allowed to communicate the various positions of a Committee member to each other. Once a Committee member commits to written form a communication related to Committee business, that record no longer belongs to the Committee 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 is breaking the law - the same as if the Committee member had met together in a private meeting.

Technology and communication media are rapidly changing, but the intent of the Open Meeting Law remains the same. If Committee members engage in the use of technological devices during a public meeting, the public does not have access to those communications. All communications should occur publicly during a public meeting in an auditory or visual manner that is recognizable and understandable to meeting participants and the public. As restated below, any written communication on an electronic device is a public record and thus belongs to the public and not the Committee member. It must be produced if requested regardless of whether or not

the electronic device belongs to you personally. Once City business is committed to writing, it becomes the property of the public.

Finally, anything you commit to in writing pertaining to Committee business is a public record and must be produced in response to a public information request.

It is important to emphasize the City's policy that communications among Committee members outside of the public meeting setting should first be forwarded to the staff liaison who will distribute the information according to proper protocols.

C. Enforcement of the Open Meeting Law

The Open Meeting Law grants authority to the County Attorney or the State Attorney General's Office to investigate violations of the Open Meeting Law ("Law"). As a matter of practice, the Attorney General is the primary authority that enforces the Law in Arizona. The Attorney General's Office has formed the Open Meeting Law Enforcement Team, commonly referred to as OMLET. OMLET is the first point of contact when a violation is alleged. This Team will generally work with the person alleging the violation and the Committee to resolve or correct the situation.

Additionally, the City Attorney is responsible for interpreting and assuring compliance with the Law. The statute specifically states that the City Attorney must interpret and implement the law in favor of open and public meetings. The City Attorney will address any alleged violation of the Law. If a member of a Committee is alleged to have violated the Law, the individual should immediately contact the City Attorney.

To assure compliance, the Law imposes sanctions for violations. If a Committee conducts a meeting in violation of the provisions of the Law, the actions taken at the meeting are null and void. Any person, who is affected by the alleged violation, or the State Attorney General, may file an action and obtain civil penalties, attorney fees and court imposed injunctions against the Committee or a member of the Committee for violations of the Law.

If a public officer is found to have intentionally violated the Law, a court may order that the official be removed from office. A court could also assess a civil penalty against the public official and award the attorney's fees incurred by the complainant. Civil penalties up to $500 may be imposed against the public official for each violation. This penalty is the direct responsibility of the official. The City cannot pay the penalty on behalf of a person found in violation.

D. Conflict of Interest Law

Conflict of interest laws are written to protect the public's interests, primarily, but they also provide protections for the public agency and for you.

It is a felony if you knowingly or intentionally violate the Conflict of Interest Law. A negligent or reckless violation is a misdemeanor. You have to be alert to this possibility and make all reasonable efforts to identify potential conflicts.

The Conflict of Interest Law applies to all public officers, including Committee members and employees of incorporated cities and towns. It can also apply to relatives of public officers and employees. Generally, all City employees and elected and appointed officials must be constantly on guard against conflicts of interest. Because there are severe penalties for violating the Conflict of Interest Law, you should understand your obligations, liabilities, and rights.

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

E. Remote Interest

If you have a remote interest in a matter, then you can still vote and participate in the discussion of your Committee. For a public officer or employee, or a relative of a public officer or employee, a remote interest is:

1. A non-salaried officer of a non-profit corporation doing business with or requesting money from the City.
2. The landlord or tenant of a contracting party. (For example, a Committee member may lease office space to a party with a private interest in a public matter without it resulting in a conflict of interest.)
3. An attorney whose client is a contracting party.
4. A member of a non-profit cooperative marketing association doing business with the City.
5. The owner of less than three percent of the shares of a corporation doing business with the City, provided that:
    a. The total annual income from dividends, including the value of stock dividends, does not exceed five percent of the officer's or employee's total annual income; and
    b. Any other payments made to the officer or employee by the corporation does not exceed five percent of the officer's or employee's total annual income
6. Being reimbursed for actual and necessary expenses incurred in performance of official duties
7. Receiving municipal services on the same terms and conditions as if you were not an officer or employee of the municipality. (For example, when a Council member who owns a business within the City votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the City limits.)
8. An officer or employee of another political subdivision, a public agency of another political subdivision, or any other public agency voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a Council member who is a schoolteacher may vote to enter into an intergovernmental

agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the Council member.

9. A member of a trade, business, occupation, profession, or class of persons who has no greater interest than the other members of similar trades, businesses, occupations, professions, or classes of persons. (For example, a plumber who serves on the City Council may vote to increase or decrease plumbing inspection fees since the effect of this decision will be equal on all plumbers within the City.)

F. Substantial Interest

When a substantial conflict of interest exists, you must remove yourself from participating in any manner in discussing and deciding on the item. This means both during and outside a meeting where the matter is being considered. A substantial conflict generally involves a monetary (salaried) or ownership relationship with a private entity doing business with the City. This kind of conflict of interest requires you to identify a conflict of interest publicly on the record and to refrain from discussion, vote, or any attempt to influence the decision.

If you are the Chair and you declare a conflict of interest, you must hand the conduct of the meeting over to your Vice-Chair and leave the podium. It is inappropriate for the Chair to preside over a matter when the Chair has declared a conflict of interest.

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

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

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

- When a public officer has exercised "administrative discretion" in an issue, that officer or employee cannot receive compensation if representing another person before an agency of the City on the same issue. This restriction extends to twelve months after termination of office or employment with the city or town.
- A public officer cannot use confidential information obtained during the term of office or employment for personal gain.
- A public officer cannot receive any compensation for performance of services in any case, special proceeding, application, or other matter pending before any agency of the

City. This does not apply, however, to ministerial functions such as filing or amending tax forms, applying for permits, licenses, or other documents.

- A public officer cannot use his or her position to obtain anything of value that would normally not be received in the performance of official duties. Something is considered of "value" when it exerts a "substantial and improper" influence on the duties of the public official.
- A conflict of interest also occurs when a public officer or employee has the opportunity to perform some act or participate in making a decision in an official capacity that might affect an economic interest of either themselves or their relatives.

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

1. Will my decision have a positive or negative impact on an interest of my relatives or mine?
2. Do I have a monetary or ownership interest in the matter?
3. Is my interest other than one of the designated remote interests?

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

1. File a written statement with the City Clerk's office that describes the nature of the conflict.
2. Refrain from voting or in any way influencing the decision.
3. Make the conflict of interest known in the official records of the City by declaring at the Committee meeting that a conflict of interest exists so that the declaration can be officially entered into the minutes.
4. Leave the table or the room until the item is discussed and acted upon.

G. Public Perception and the Appearance of a Conflict of Interest

On occasion, a member of the public, or even a fellow Committee member may believe that you have a conflict of interest, when you do not. These are some additional filters to help you determine if you do, indeed, have a conflict of interest:

1. Is there sufficient appearance of a connection between you and the subject matter that your continued participation in the issue would harm your ongoing credibility, that of your Committee and/or the ongoing credibility of the City?
2. Is the accusation reasonably grounded in fact, or is it mere conjecture?
3. Does the accuser stand to gain something by your withdrawal from the discussion?

Public perception is not a sufficient basis alone upon which to determine whether or not a conflict of interest occurs. Citizens, by and large, are not familiar with conflict of interest laws.

If you have an appearance of a conflict of interest, or you are not sure whether or not you have a conflict, you may request a finding. The appropriate protocol is to contact the City Attorney's office and request a formal opinion concerning whether a legal conflict of interest exists.

Even if it is ultimately determined that no legal conflict of interest exists, it is your prerogative to abstain from participation on a matter in order to avoid even the appearance of impropriety.

H. Prohibited Acts within a Year after Leaving Public Office

It is possible to violate the Conflict of Interest Law even after leaving public office. Within a year after leaving office, former public officials may not:

- Receive or accept compensation when representing any private person or entity before the City on an issue that was discussed during the term of office.
- Use confidential information obtained during the term of office for personal gain.
- Receive any compensation in any special matter pending before any agency of the City (with the exception of administrative actions such as filing routine forms, routine applications for permits, licenses, etc.)

I. Public Records Law

Arizona law provides that public records and other matters shall be open to inspection by any person at all times during office hours. This means that any document produced by you as a Committee member that concerns City business is a public record. It includes everything created or received by you, regardless of physical form or characteristics, that relates to the City's business even, if it is on a personal computer. Therefore, for example, any e-mail that you receive or send that concern City business is considered public record. Examples of public records include calendars, reports, photographs, data bases, e-mails, correspondence to/from, agendas, minutes, exhibits, budgets, phone bills, police reports, etc.

In recent years, e-mails generated or received by public officials and employees have become of particular interest to the press and members of the public. Therefore, it is imperative that you as a Committee member retain all e-mails that relate to City business. A simple way of ensuring this is to copy the staff member that works with your Committee on any City-related e-mail you send or receive.

VII. Tips For Success

Active participation and commitment will dictate the success of Committee meetings. Established guidelines and rules are essential to a productive and successful meeting. When representing and dealing with public concerns, fairness should be everyone's goal. Not everyone will be satisfied with the outcome of every decision a Committee makes. However, equal treatment during the decision-making process will leave most participants satisfied that they were treated fairly.

Be Prepared - Do Your Homework

It is important to be prepared for your Committee meeting. Read the meeting material provided for you and take it with you to your meeting. Some items take hours of research and study beforehand, in order to be prepared for public input. Committee members should be familiar with the portion of the General Plan, the City Code or anything else applicable to their area of responsibility. Whenever possible, Committee members should tour and inspect specific properties before voting on any particular issue. Observations made during individual field trips should be reported at a public meeting of the Committee for the benefit of other Committee members. As you prepare for upcoming meetings and find that you need additional information, contact your staff liaison.

Don't worry about being an expert or an authority on the issues before your Committee.

Be Careful to Not Seem Unfair

Committee members should never bring up the pros and cons of an agenda item before all testimony, including public input, and evidence has been presented. Even then, the discussion should stay with the facts presented, and not be based on the presenters or personal opinions.

Be Mindful to Represent the Entire Committee

Individual Committee members should refrain from representing their views or recommendations as those of the Committee, unless the Committee has officially voted to approve the recommendation. When making statements, members should indicate when actions are only recommendations and when Council will take final action.

Be Representative of the Whole City

Although in some cases, Committee members may be selected, in part, because they represent clearly defined groups, once selected, each Committee member should represent the entire public interest of the City and not just his/her respective group or interest. The question, "What is best for the entire community?" should take precedence over, "What is best for my interest group?"

Keep the Lines of Communication Open

As an influential member of the community, a Committee is in the unique position of serving as a liaison between the City and the general public in helping to reconcile contradictory viewpoints and build a consensus around common goals and objectives. A Committee member should serve as a link between the community, the staff, and the City, by presenting City programs and

recommendations and also providing a channel for citizen expression. A primary role of the Committee is to determine the attitudes of the citizens concerning City programs and policies.

Appendix

- Arizona Ombudsman's Office "The Arizona Open Meeting Law"

THE ARIZONA OPEN MEETING LAW

This Information is compiled and provided by:

The Arizona Ombudsman- Citizens' Aide
3737 N. 7th Street, Suite 209
Phoenix, Arizona 85014

(602) 277-7292
1-800-872-2879
Fax: (602)277-7312

e-mail: ombuds@azoca.gov
website: www.azoca.gov

April 2013

Table of Contents

Part I

Arizona Revised Statutes

Title 38. Public Officers and Employees
Chapter 3. Conduct of Office

Article 3.1. Public Meetings and Proceedings

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" means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.
5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.
6. "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 the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the 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.
7. "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, such minutes or recording shall include, but not be limited to:
   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, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting 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.
    4. 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 members of the public body, or to determine the applicability of this article to matters or legal actions of the public body. For each violation the court may impose a civil penalty not to exceed five hundred dollars against a person who violates this article or who knowingly aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as it deems appropriate in the circumstances. 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 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 such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to incurring any such 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 determinations and hearings conducted by the board of fingerprinting pursuant to section 41-619.55.

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 which 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.

Part II

Arizona Agency Handbook
Chapter 7
Open Meetings

CHAPTER 7
OPEN MEETINGS

7.1 Scope of this Chapter.

This Chapter discusses Arizona's Open Meeting Law, A.R.S. §§ 38-431 to -431.09, with particular emphasis on the application of the Open Meeting Law to the day-to-day operations of state officers, bodies, and agencies. This Chapter shall be conspicuously posted on the Secretary of State's website for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies. A.R.S. § 38-431.01(G). Individuals elected or appointed to public office shall review this Chapter at least one day before taking office. Id.

This Chapter does not resolve all issues that may arise under the Open Meeting Law, but rather is intended to serve as a reference for public officials who must comply with the law. Anyone faced with a situation not specifically addressed in this Chapter should consult their legal counsel before proceeding.

7.2 Arizona's Open Meeting Law.

7.2.1 History of Arizona's Open Meeting Law.

All fifty states have enacted some type of legislation providing the public with a statutory right to openness in government. In addition, the United States Congress in 1976 enacted the Federal Open Meeting Act, 5 U.S.C. § 552b. Arizona's Open Meeting Law was first adopted in 1962 and has been amended several times since its enactment. For a detailed discussion of the early history of the Open Meeting Law through 1975, see Ariz. Att'y Gen. Op. 75-7.

7.2.2 Legislative Intent.

The Legislature has repeatedly expressed its intent that the Open Meeting Law be construed to maximize public access to the governmental process. In first enacting the Open Meeting Law in 1962, the Legislature declared that: "It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly."

In 1978, after a series of court opinions narrowly construing the Open Meeting Law, the Legislature reiterated its policy by adding A.R.S. § 38-431.09. That statute now provides: 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 interpretation of this article shall construe any provision of this article in favor of open and public meetings. A.R.S.§ 38-431.09(A). In keeping with this expressed intent, any uncertainty under the Open Meeting Law should be resolved in favor of openness in government. Any question whether the Open Meeting Law applies to a certain public body likewise should be resolved in favor of applying the law.

7.3 Government Bodies Covered by the Open Meeting Law.

7.3.1 Generally.

The provisions of the Open Meeting Law apply to all public bodies. A public body is defined in A.R.S.§ 38-431(6) as follows: "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 the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the 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.

This definition specifically includes public bodies of all political subdivisions. A political subdivision is defined in A.R.S.§ 38-431(5) to include "all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts."

The definition of public body encompasses five basic categories of public bodies: 1) boards, commissions, and other multimember governing bodies; 2) quasi-governmental corporations; 3) quasi-judicial bodies; 4) advisory committees; and 5) standing and special committees and subcommittees of any of the above. See A.R.S.§ 38-431(6).

7.3.2 Boards and Commissions.

All boards and commissions and other multimember governing bodies of the state or its political subdivisions or of the departments, agencies, institutions, and instrumentalities of the state or its political subdivisions are covered by the Open Meeting Law. See A.R.S.§ 38-431(6). The multimember governing body must be created by law or by an official act pursuant to some legal authority. See id. Examples of public bodies created by law include the Arizona Legislature, county boards of supervisors, city and town councils, school boards, the governing boards of special districts, and all state, county, and municipal licensing and regulatory boards. See. e.g, Ariz. Att'y Gen. Op. I07-001 (Open Meeting Law applies to board appointed by governing bodies of various

political subdivisions to administer employee benefits program). Ariz. Att'y Gen. Op. I04-001 (Open Meeting Law applies to joint underwriting association because it's a multimember governing body created by statute). The Open Meeting Law applies only to multimember bodies and does not apply to the deliberations and meetings conducted by the single head of an agency. See Ariz. Att'y Gen. Ops. I92-007, 75-7. Accordingly, the director of a department is not subject to the Open Meeting Law when meeting with staff members to discuss the operations of the department.

7.3.3 Quasi-Governmental Corporations.

The boards of directors of corporations and instrumentalities of the state or its political subdivisions are subject to the Open Meeting Law when the members of the board are appointed or elected by the state or its political subdivisions. See A.R.S.§ 38-431(5), (6). For example, the Board of Directors of the Phoenix Civic Improvement Corporation falls into this category. The Open Meeting Law does not apply, however, to a private non-profit hospital association that has a board of directors elected by the electorate of the hospital district. Prescott Newspapers, Inc. v. Yavapai Cmty. Hosp. Ass'n, 163 Ariz. 33, 785 P.2d 1221 (App. 1989). See Ariz. Att'y Gen. Op. I07-001.

7.3.4 Quasi-Judicial Bodies.

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." A.R.S.§ 38-431(7). This definition was added by the Legislature in 1978 to reverse the Arizona Supreme Court's decision in Ariz. Press Club, Inc. v. Ariz. Bd. of Tax Appeals, 113 Ariz. 545, 558 P.2d 697 (1976), which held that the Open Meeting Law did not apply to bodies conducting quasi-judicial functions, such as license revocation proceedings. See Ariz. Att'y Gen. Op. 78-245. The Arizona Board of Tax Appeals and similar quasi-judicial bodies are now expressly covered by the Open Meeting Law. A.R.S.§ 38-431(6), (7).

Contested case proceedings or quasi-judicial or adjudicatory proceedings conducted by public bodies are subject to all of the requirements of the Open Meeting Law. Rosenberg v. Ariz. Bd. of Regents, 118 Ariz. 489, 578 P.2d 168 (1978); City of Flagstaff v. Bleeker, 123 Ariz. 436, 600 P.2d 49 (App. 1979); Ariz. Att'y Gen. Op. 75-7.

7.3.5 Advisory Committees.

Advisory committees are subject to all of the requirements of the Open Meeting Law. A.R.S. § 38-431.01(A), (B). An advisory committee is defined as any

group 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. A.R.S. § 38-431(1). This definition does not include advisory groups established by the single head of an agency unless they are created pursuant to a statute, city charter, or other provision of law or by an official act pursuant to some legal authority. See Ariz. Att'y Gen. Op. I92-007; Section 7.3.2.

7.3.6 Special and Standing Committees and Subcommittees.

Special and standing committees and subcommittees of, or appointed by, any of the public bodies described above are also covered by the Open Meeting Law. A.R.S. § 38-431.01(A). A special or standing committee may consist of members of the public body who have been appointed by or authorized to act for the public body. A.R.S. § 38-431(6). The fact that a committee consists, in whole or in part, of persons who are not members of the public body does not affect its status as a public body subject to the Open Meeting Law. See Ariz. Att'y Gen. Op. I80-202.

7.4 Government Bodies and Proceedings Not Covered by the Open Meeting Law.

The Legislature has determined that certain public bodies need not comply with all or portions of the Open Meeting Law in particular circumstances. This section identifies some of those limited exceptions.

7.4.1 Judicial Appointment Commissions.

The Commissions on Appellate and Trial Court Appointments and the Commission on Judicial Qualifications are expressly exempt from the Open Meeting Law. A.R.S. § 38-431.08(A)(3).

7.4.2 Proceedings Before Courts.

The Open Meeting Law does not apply to judicial proceedings of courts within the judicial branch of government. A.R.S. §§ 38-431(7), -431.08(A)(1).

7.4.3 The Legislature.

Meetings of legislative conference committees must be open to the public; however, the committees are exempted from all other requirements of the Open Meeting Law. A.R.S. § 38-431.08(A)(2). The Open Meeting Law does not apply to the activities of a political caucus of the Legislature. Id. § (A)(1); cf. Ariz.

Att'y Gen. Op. I83-128. The Open Meeting Law permits either house of the Legislature to adopt a rule or procedure exempting itself from the notice and agenda requirements of the Open Meeting Law or to allow standing or conference committees to meet through technological devices rather than in person. A.R.S. § 38-431.08(D).

7.4.4 Student Disciplinary Proceedings.

Actions concerning the "discipline, suspension or expulsion of a pupil" are not subject to the Open Meeting Law. A.R.S. § 15-843(A). This same statute, however, prescribes the procedures that the school board must follow in handling these matters.

7.4.5 Insurance Guaranty Fund Boards.

Special meetings of the property and casualty insurance guaranty fund in which the financial condition of any member insurer is discussed are exempt from the Open Meeting Law. A.R.S. § 20-671.

7.4.6 Hearings Held in Prison Facilities.

Hearings held by the Board of Pardons and Paroles in a prison facility are subject to the Open Meeting Law, but the Director of the State Department of Corrections may prohibit certain individuals from attending such hearings because they pose a serious threat to the safety and security of others or the prison. Other conditions on attendance, such as signing an attendance log and submitting to a reasonable search, may be imposed as well. A.R.S. § 38-431.08(B).

7.4.7 Board of Fingerprinting.

Good cause exception hearings conducted by the Board of Fingerprinting pursuant to A.R.S. § 41-619.55 are exempt from the Open Meeting Law. A.R.S. § 38-431.08(A)(4).

7.4.8 Homeowners Associations.

Because they are not governmental "public bodies," homeowners associations are not covered by the Open Meeting Law. Ariz. Att'y Gen. Op. 97-012. They do, however, have to comply with separate notification requirements. Id. Those requirements must be enforced privately because the Attorney General and County Attorneys have no jurisdiction over such matters. For more information on the requirements of homeowners associations, see A.R.S. § 33-1801 et seq.

7.5 The Actions and Activities Covered by the Open Meeting Law.

7.5.1 Generally.

All meetings of a public body shall be public, and all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings. A.R.S. § 38-431.01(A). All legal action of public bodies shall occur during a public meeting. Id. A meeting is defined as "the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action." A.R.S. § 38-431(4). The definition of meeting was modified by the Arizona Legislature in 2000 to prohibit a quorum of a public body from secretly communicating through technological devices, including, for example, facsimile machines, telephones, texting, and e-mail.

All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body, constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law. Ariz. Att'y Gen. Ops. 75-8, I79-4. See also A.R.S. §§ 38-431.01(A), -431(3) and Ariz. Att'y Gen. Op. I05-004. Whether the matter to be discussed may foreseeably require final action is the key to this inquiry. It is nearly impossible to establish a precise guideline as to when this foreseeability test has been met, and each case should be viewed on its own merits and all doubts resolved in favor of compliance with the Open Meeting Law. The safest course of action is to comply with the Open Meeting Law whenever a majority of the body discusses the business of the public body. It does not matter what label is placed on a gathering. It may be called a "work" or "study" session, or the discussion may occur at a social function. Ariz. Att'y Gen. Op. I79-4. Discussion of the public body's business may take place only in a public meeting or an executive session in accordance with the requirements of the Open Meeting Law. The Open Meeting Law, however, does not prohibit a member of a public body from voicing an opinion or discussing an issue with the public either at a venue other than a public meeting of the body, or through media outlets or other public broadcast communications or technological means, so long as the "opinion or discussion is not principally directed at or directly given to another member of the public body," and "there is no concerted plan to engage in collective deliberation to take legal action." A.R.S. § 38-431.09(B); Ariz. Att'y Gen. Op I07-013.

7.5.2 Circumvention of the Open Meeting Law.

Discussions and deliberations between less than a majority of the members of a governing body, or other devices, when used to circumvent the purposes of the Open Meeting Law violate that law. See Ariz. Att'y Gen. Op. 75-8; Town of

Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974). Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that is or may be presented to the public body for a decision. Public officials should refrain from any activities that may undermine public confidence in the public decision making process established in the Open Meeting Law, including actions that may appear to remove discussions and decisions from public view.

For example, Board members cannot use email to circumvent the Open Meeting Law requirements. See Ariz. Att'y Gen. Op. I05-004 at 2. "[E]ven if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a 'meeting.'" See Del Papa v. Bd. of Regents of Univ. and Cmty. Coll. Sys. Of Nev., 114 Nev. 388, 393, 956 P.2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place.) Additionally, "[w]hen members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations, or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technical devices under the [Open Meeting Law]." See Ariz. Att'y Gen. Op. I05-004 at 1. This may be true even if none of the members of the public body respond to the email. Id. at 2-3. If the one-way communication proposes legal action, then it would violate the Open Meeting Law. Id. However, other one-way communications, with no further exchanges, are not per se violations, and further examination of the facts and circumstances is necessary to determine if there is a violation. Id. at 3.

7.5.3 Applicability to Staff Members and Others.

The Open Meeting Law further provides that members of public bodies shall not knowingly direct any staff member to communicate in violation of the Open Meeting Law. A.R.S. § 38-431.01(H). People knowingly aiding, agreeing to aid or attempting to aid another person in violating the Open Meeting Law can be held liable for civil penalties, attorneys' fees, and costs pursuant to A.R.S. § 38-431.07(A). See Sections 7.12.3 and 7.12.4. Hence, staff members, representatives, citizens and others should take steps to ensure they are not acting in a manner to commit a violation or subject themselves to liability.

7.6 Notice of Meetings.

7.6.1 Generally.

The Open Meeting Law requires at least 24 hours advance notice of all meetings to the public body and to the general public. Notice makes it possible for the public to attend public meetings by informing them of when and where to go, and how to get information regarding the matters under consideration. Arizona courts have emphasized the importance of sufficient notice of meetings. The Arizona Court of Appeals explained, "The notice provisions in the open meeting law are obviously designed to give meaningful effect to provisions such as A.R.S. §§ 38-431.01(A) and 38-431.09. The goal of exposing the public decision-making process to the public itself could be significantly, if not totally thwarted, in the absence of mandatory notice provisions and their enforcement." Carefree Improvement Ass'n v. City of Scottsdale, 133 Ariz. 106, 649 P.2d 985 (Ariz. App. 1982).

7.6.2 Notice to Members of the Public Body.

Notice of all meetings, including executive sessions, must be given to the members of the public body. A.R.S. § 38-431.02(C). Generally, this requirement is met by mailing or hand-delivering a copy of the notice to each member of the public body.

7.6.3 Notice to the Public.

Notice of all meetings, including executive sessions, must be given to the public. A.R.S. § 38-431.02. Giving public notice is a two step process. Id.

7.6.3.1 Disclosure Statement.

The first step is for the public body to conspicuously post a disclosure statement identifying the physical and electronic locations where public notices of meetings will be displayed. A.R.S. § 38-431.02(A). See Form 7.1. Public bodies of the State, counties, school districts, and governing bodies of charter schools must post the disclosure statement on their websites. Id. § (A)(1)-(2). Special districts governed by Title 48, A.R.S., must post the required disclosure statement on their own website or may file it with the Clerk of the Board of Supervisors.. Id. § (A)(3). Public bodies of cities and towns must post the required information on their own websites or on the website of an association of towns and cities. Id. § (4). The notification location identified in the statement must be a place to which the public has reasonable access. The location should have normal business hours, should not be geographically isolated, should not have limited access and should not be too difficult to find.

7.6.3.2 Public Notice of Meetings.

Once the disclosure statement has been filed or posted, the public body must give notice of each of its meetings by posting a copy of the notice on its website

as well as at the location identified in the disclosure statement. A.R.S. § 38-431.02(A). See Forms 7.2, 7.3, 7.4. Public bodies shall also give "additional public notice as is reasonable and practicable as to all meetings." Id. § (A)(1)(a). Various public bodies fulfill this obligation to provide "additional notice" by providing news releases concerning proposed meetings, mailing notices to those asking to be informed of meetings, including the date and time of such meetings in their newsletters and other publications, and making announcements on public access television. If there are technical problems that temporarily affect the online meeting notifications, and all other public notice requirements are met, then the meeting can convene as scheduled. Id. § (A)(1)(b).

In addition to complying with the requirements of the Open Meeting Law, the notice should conform with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 - 12213 (Supp. 1992). See Sections 15.25.2 - 15.25.5. Public bodies should include a statement such as the following in any notices that they issue: "Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name of designated agency contact person] at [telephone number and TDD telephone number]. Requests should be made as early as possible to allow time to arrange the accommodation."

7.6.4 Contents of the Notice.

Generally, the notice should include information identifying the public body and the date, time, and place of the meeting. See Forms 7.2, 7.3. In identifying the place of the meeting, the notice should specify the street address of the building and the room number or other information identifying the specific room in which the meeting will be held. See Form 7.7 (Sample Notice and Agenda). In addition, the notices of public meetings and notices of executive sessions must contain an agenda of the matters to be considered by the public body at the meeting or information on how the public may obtain a copy of such an agenda. A.R.S. § 38-431.02(G). For a complete discussion of the agenda requirements, see Section 7.7. Notice of a public meeting at which the public body intends to ratify a prior act must contain additional specific information. See Section 7.11; Form 7.12.

7.6.5 Time for Giving Notice.

As a general rule, a meeting may not be held without giving the required notice at least twenty-four hours before the meeting. A.R.S. § 38-431.02(C). For purposes of the statute, the twenty-four period excludes Sundays and holidays. Id. Saturdays are included in the period if the public has access to the physical and electronic posted locations. Id. Of course, the best practice is for public bodies to give as much notice as possible. There are three exceptions to the twenty-four hour notice requirement.

First, in the case of an "actual emergency," the meeting may be held upon such shorter notice as is "appropriate to the circumstances." Id. § (D). An actual emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequence that would result from waiting until the required notice could be given. The existence of an actual emergency does not dispense with the need to give twenty-four hours' written notice to an employee to be discussed in executive session. A.R.S. § 38-431.03(A)(1); see Sections 7.7.9 and 7.9.4.

Second, notice of a meeting at which the public body is to consider the ratification of a prior act taken in violation of the Open Meeting Law must be given seventy-two hours in advance of the meeting. A.R.S. § 38-431.05(B)(4); see Section 7.11.

Finally, less than twenty-four hours notice may be given when a properly noticed meeting is recessed to a later date. A.R.S. § 38-431.02(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, 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. Id. Notice of the resumption of a meeting must comply with the agenda requirements respecting the matters to be addressed when resumed. Id. § (G). This may be accomplished by the presiding officer of the public body either stating at the meeting the time, place, and agenda of the resumed meeting or stating where a written notice and agenda of the resumed meeting will be posted. If an executive session is to be recessed and resumed with less than twenty-four hours notice, the time, place, and agenda of the resumed meeting should be communicated to the members of the public body and to the public by reconvening in public session and following one of the two steps described above. If the meeting will not reconvene for more than 24 hours, a new meeting notice and agenda is recommended.

7.6.6 Notice of Regular Meetings.

A public body that intends to meet for a specified calendar period on a regular day or date during the calendar period, and at a regular place and time, may post public notice of such meetings at the beginning of such period and need not post additional notices for each meeting. A.R.S. § 38-431.02(F); see Form 7.4. The notice must specify the period for which the notice is applicable. Id. However, this method of posting notice will not satisfy the agenda requirements unless the notice also contains a clear statement that the agenda for any such meeting will be available at least twenty-four hours in advance of the meeting and a statement as to where and how the public may obtain a copy of the agenda. A.R.S. § 38-431.02(G).

7.6.7 Notice of Executive Sessions.

When an executive session is to be held, the notice must state the specific provision of law authorizing the executive session. A.R.S. § 38-431.02(B); see Form 7.5. This provision requires that the notice specify the numbered paragraph of subsection (A) of A.R.S. § 38-431.03 that authorizes the executive session. A general citation to A.R.S. § 38-431.03 or subsection (A) of that section is insufficient. For example, a public body intending to meet in executive session for purposes of discussing the purchase or lease of real property must cite in its notice "A.R.S. § 38-431.03(A)(7)." The public body must cite only the paragraphs applicable to the matters to be discussed and should not issue a standardized form notice that cites all executive session provisions. In addition, an agenda is required for an executive session. A.R.S. § 38-431.02(G); see Section 7.7.3.

In the case of an executive session concerning personnel matters, the public body must give written notice to the affected officer, appointee, or employee in addition to the public notice described above. A.R.S. § 38-431.03(A)(1); see Section 7.9.4; Form 7.13. Such written notice must be provided not less than 24 hours before the scheduled meeting.

Many public bodies do not know whether they will have any legal questions on matters on the agenda until the discussion occurs. The Attorney General has opined that public bodies may provide with their notices and agendas a statement that matters on the public meeting agenda may be discussed in executive session for the purpose of obtaining legal advice thereon, pursuant to A.R.S. § 38-431.03(A)(3). Ariz. Att'y Gen. Op. I90-19. An example of such a statement is "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board’s attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3)." Similar statements are not sufficient for other types of executive sessions. See Section 7.7 for further discussion.

7.6.8 Combined Notice of Public Meeting and Executive Session.

In many cases the public body may want to have the option to retire into executive session during the course of a public meeting. Although separate notices of the public meeting and executive session may be given pursuant to Sections 7.6.6 and 7.6.7, the public body may choose to combine the notice of the public meeting and of the possible executive session in one document. An example for doing so is set forth in Form 7.6 and the sample notice and agenda, Form 7.7.

7.6.9 Maintaining Records of Notice Given.

Each public body should keep a record of its notices, including a copy of each notice that was posted and information regarding the date, time, and place of posting. A suggested procedure is to file in the records of the public body a copy of the notice and a certification in a form similar to Form 7.8.

7.7 Agendas.

7.7.1 Generally.

In addition to notice of the time, date, and place of the meeting, the public body must provide an agenda of the matters to be discussed, considered, or decided at the meeting. A.R.S. § 38-431.02(G). Although this Section provides guidelines for the preparation of agendas, it does not answer every question that will arise. Specific problems should be discussed with the public body's legal counsel. A public body should not have problems if it in good faith follows the Legislature's declaration of policy that agendas "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(A). If there is a doubt, all questions should be resolved in favor of greater disclosure of information.

7.7.2 Contents of the Agenda -- Public Meeting.

The agenda for a public meeting must contain a listing of the "specific matters to be discussed, considered or decided at the meeting." A.R.S. § 38-431.02(H). This requirement does not permit the use of generic agenda items such as "personnel," "new business," "old business," or "other matters" unless the specific matters or items to be discussed are separately identified. See Thurston v. City of Phoenix, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). The degree of specificity of the agenda depends on the circumstances. For example, if an environmental board is going to consider the approval of pesticides for application within 1/4 mile of a school, a listing such as "Approval of pesticides for application within 1/4 mile of a school" is sufficient. However, if the board is going to consider removing a pesticide from the approved list, the agency should specify the pesticide being considered for removal. See Form 7.7 (Sample Notice and Agenda).

If it is likely that the public body will find it necessary to discuss any particular agenda item in executive session with the public body's attorney, the agenda should plainly say so. For example, the agenda might include a provision stating "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board’s attorney on the approval of pesticides for application within ¼ mile of a school pursuant to A.R.S. § 38-431.03(A)(3)."

7.7.3 Contents of the Agenda--Executive Session.

The agenda for an executive session must contain a "general description of the matters to be considered." A.R.S. § 38-431.02(I). The description must amount to more than just a recital of the statutory provisions authorizing the executive session, but should not contain any 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." Id. In preparing executive session agenda items, the public body must weigh the legislative policy favoring public disclosure and the legitimate confidentiality concerns underlying the executive session provision. For example, if a board desires to consider the possible dismissal of its executive director, the board may list on the agenda "Personnel matter -- consideration of continued employment of the board's executive director." However, when the public disclosure of the board's consideration of charges against an employee might needlessly harm the employee's reputation or compromise the employee's privacy interests, the board may eliminate from the agenda description the identity of the employee being considered. If it is already publicly known that the board is considering charges against the employee, disclosure of the employee's identity in the agenda would not defeat the purpose of the executive session.

7.7.4 Distribution of the Agenda.

The agenda may be made available to the public by including it as part of the public notice or by stating in the public notice how the public may obtain a copy of the agenda and then distributing the agenda in the manner prescribed. A.R.S. § 38-431.02(G); see Forms 7.2 - 7.4, 7.6, 7.7. Because both the public notice and the agenda must be available at least twenty-four hours in advance of a meeting, the simplest procedure is to include the agenda with the public notice. See Form 7.7 (Sample Notice and Agenda).

However, when the public notice is issued well in advance of a meeting, as in the case of notice of regularly scheduled meetings, see Section 7.6.6, it may be more appropriate to state how the public may obtain a copy of the agenda and distribute it accordingly.

7.7.5 Consent Agendas.

Public bodies may use "consent agendas" so long as certain requirements are met. Consent agendas are typically used as a time-saving device when there are certain items on the agenda which are unlikely to generate controversy and are ministerial in nature. Some examples are approval of travel requests and approval of minutes. Public bodies often take one vote to approve or disapprove the consent agenda as a whole. When using a consent agenda format for some of the items on a meeting agenda, public bodies should fully describe the matters on the agenda and inform the public where more information can be obtained. A good practice is to require that an item be removed from the consent agenda

upon the request of any member of the public body. See Form 7.7 (Sample Notice and Agenda).

Public bodies should take caution when using consent agendas. The Arizona Supreme Court has held that taking legal action, including that taken after an executive session, must be preceded by a disclosure of "that amount of information sufficient to apprise the public in attendance of the basic subject matter of the action so that the public may scrutinize the action taken during the meeting." Karol v. Bd. of Educ. Trustees, 122 Ariz. 95, 98, 593 P.2d 649, 652 (1979). The court also specifically condemned the practice of voting on matters designated only by number, thereby effectively hiding actions from public examination. Id.

7.7.6 Discussing and Deciding Matters Not Listed on the Agenda.

The public body may discuss, consider, or decide only those matters listed on the agenda and "other matters related thereto." A.R.S. § 38-431.02(H). The "other matters" clause provides some flexibility to a public body but should be used cautiously. The "other matters" must in some reasonable manner be "related" to an item specifically listed on the agenda. Thurston v. City of Phoenix, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988).

If a matter not specifically listed on the agenda is brought up during a meeting, the better practice, and the one that will minimize subsequent litigation, is to defer discussion and decision on the matter until a later meeting so that the item can be "specifically" listed on the agenda. If the matter demands immediate attention and is a true emergency, the public body should consider using the emergency exception described in Section 7.6.9.

However, if action is taken at a meeting on an item not properly noticed, then that particular action violates the Open Meeting Law and is null and void. Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd., 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2001); A.R.S. § 38-431.05(A). The public body may ratify the action pursuant to A.R.S. § 38-431.05(B), although the violation may still subject the public body to the penalties described in A.R.S. § 38-431.07(A). Any other actions that were taken at the meeting and were properly noticed are not void. Karol, 122 Ariz. at 98, 593 P.2d at 652; Ariz. Att'y Gen. Op. I08-001.

7.7.7 Calls to the Public.

In 2000, the Legislature clarified the limitations on open calls to the public during public meetings. A.R.S. § 38-431.01(H) now provides that a public body may make an open call to the public to allow individuals to address the public body on any issue within the jurisdiction of the public body. Members of the

public body may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. Id. Public body members may, however, respond to criticism made by those who have addressed the public body, ask staff to review a matter, or ask that a matter be put on a future agenda. Id. See also Ariz. Att'y Gen. Op. I99-006.

The best practice is to include language similar to the following on the agenda to explain in advance the reason members of the public body cannot respond to topics brought up during the call to the public that are not on the agenda: "Call to the Public: This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date."

7.7.8 Current Event Summaries.

The Open Meeting Law allows the chief administrator, presiding officer or a member of a public body to present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that the summary is listed on the agenda and that 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. A.R.S. § 38-431.02(K). Public bodies should limit the use of this provision to appropriate situations and should strive to provide as much advance information as possible to the public.

7.7.9 Emergencies.

A public body may discuss, consider, and decide a matter not on the agenda when an actual emergency exists requiring that the body dispense with the advance notice and agenda requirements. A.R.S. § 38-431.02(D). See Section 7.6.5 for a discussion of what constitutes an actual emergency.

To use the emergency exception, the public body must do several things. First, the public body must give "such notice as is appropriate to the circumstances" and must "post a notice within twenty-four hours declaring that an emergency session has been held" and setting forth the same information as is required in an agenda for a regular meeting. A.R.S. § 38-431.02(D); see Form 7.9.

Next, prior to the emergency discussion, consideration, or decision, the public body must announce in a public meeting the reasons necessitating the emergency action. A.R.S. § 38-431.02(J). If the emergency discussion or

consideration is to take place in an executive session, this public announcement must occur at a public meeting prior to the executive session. Id.

Finally, the public body must place in the minutes of the meeting a statement of the reasons for the emergency. Id. In the case of an executive session, this statement will appear twice, once in the minutes of the public meeting where the reasons were publicly announced, and again in the minutes of the executive session where the emergency discussion or consideration took place. See Section 7.8.2(7).

7.7.10 Changes to the Agenda.

If a public body finds it necessary to change an agenda by modifying the listed matters or adding new ones, a new agenda must be prepared and distributed in the same manner as the original agenda, at least twenty-four hours in advance of the meeting. Ariz. Att'y Gen. Op. I79-45. Changes in the agenda within twenty-four hours of the meeting may be made only in case of emergency. Ariz. Att'y Gen. Op. I79-192; see Section 7.7.9.

7.8 Minutes.

Minutes must be taken of all public meetings and executive sessions.

7.8.1 Form of and Access to the Minutes.

Minutes may be taken in writing or may be recorded by a tape recorder or video tape recorder. A.R.S. § 38-431.01(B); see Forms 7.10, 7.11. The minutes or a recording of a public meeting must be available for public inspection within three working days after the meeting. A.R.S. § 38-431.01(D). Public bodies concerned about distributing minutes before they have been officially approved at a subsequent meeting should mark the minutes "draft" or "unapproved" and make them available within three working days of the meeting. If the minutes have been recorded by a mechanical recorder, allowing the public to have access to that recording is sufficient. However, if the minutes were taken in shorthand, those minutes must be typed or written out in longhand in order to comply with this requirement. See Form 7.10. The minutes of an executive session are confidential and may not be disclosed to anyone except certain authorized persons. A.R.S. § 38-431.03(B); see Section 7.8.4. To ensure confidentiality, minutes of executive sessions should be stored separately from regular session minutes to avoid inadvertent disclosure.

The approved minutes of all city or town council meetings must be posted on the city’s website within two working days of their approval, A.R.S. § 38-431.01(E)(2) . In no event should minutes be withheld from the public pending approval. Minutes must be reduced to a form that is readily accessible to the

public. See A.R.S. § 38-431.01(D). A public body of a city or a town with a population exceeding 2,500 people shall, within three working days after any meeting, post on their website a statement showing legal actions taken by the public body or any recordings made during the meeting. A.R.S. § 38-431.01(E)(1). Posted statements and recordings shall remain accessible on the website for at least one year after the meeting. Id.§ (J). In addition, any recordings and minutes are public records subject to record retention requirements.

7.8.2 Contents of the Minutes of Public Meetings.

The minutes of a public meeting must contain the following information:

1. "The date, time and place of the meeting." A.R.S. § 38-431.01(B)(1).
2. "The members of the public body recorded as either present or absent." Id. § (B)(2).
3. "A general description of the matters [discussed or] considered." Id. § (B)(3). Minutes must contain information regarding matters considered or discussed at the meeting even though no formal action or vote was taken with respect to the matter. See id. § (B)(4).
4. "An accurate description of all legal actions proposed, discussed or taken, and the names of persons who proposed each motion." Id. This does not require that the name of each person who votes on a motion be indicated, but only that the member who proposed it be shown in the minutes. Generally, however, the agency, for its own benefit, will include the names of the member who seconded and those who voted in favor of or against the motion. In any case, it is wise for the minutes to reflect how the body voted and the numerical breakdown of the vote, e.g., 3 in favor, 1 against, 1 abstention.
5. The name of each person "making statements or presenting material to the public body and a [specific] reference to the legal action," (see item 4) to which the statement or presentation relates. Id.
6. If the discussion in the public session did not adequately disclose the subject matter and specifics of the action taken, the minutes of the public meeting at which such action was taken should contain sufficient information to permit the public to investigate further the background or specific facts of the decision. See Section 7.7.5; Karol, 122 Ariz. 95, 593 P.2d 649.
7. If matters not on the agenda were discussed or decided at a meeting because of an actual emergency, the minutes must contain a full description of the nature of the emergency. A.R.S. § 38-431.02(J); see Sections 7.6.5 and 7.7.9.
8. If a prior act was ratified, the minutes must contain a copy of the disclosure statement required for ratification. A.R.S. § 38-431.05(B)(3); see Section 7.11.2; Form 7.10.

7.8.3 Contents of the Minutes of Executive Sessions.

The minutes of executive sessions must contain the following information:

1. "The date, time and place of the meeting." A.R.S. § 38-431.01(B)(1), (C).
2. "The members of the public body recorded as either present or absent." Id. § (B)(2), (C).
3. "A general description of the matters considered." Id. § (B)(3), (C); see Section 7.8.2(3).
4. An accurate description of all instructions given to attorneys or designated representatives pursuant to A.R.S. § 38-431.03(A)(4), (5) and (7). See Sections 7.9.7, 7.9.8 and 7.9.10.
5. A statement of the reasons for emergency consideration of any matters not on the agenda. See A.R.S. § 38-431.02(J); Section 7.8.2(7).
6. Such other information as the public body deems appropriate. For example, the public body might record in its minutes that those present were advised that the information discussed in the session and the session minutes are confidential. See Form 7.11.
   "A party who asserts that a public body violated the open meeting laws has the burden of proving that assertion." Tanque Verde Unified Sch. Dist. No. 13 of Pima County v. Bernini, 206 Ariz. 200, 205, 76 P.3d 874, 879 (App. 2003). However, Arizona courts have held that once a complainant alleges facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation, the burden of proof immediately shifts to a public body to prove that an affirmative defense or exception to the Open Meeting Law authorized an allegedly inappropriate executive session. Fisher v. Maricopa County Stadium Dist., 185 Ariz. 116, 122, 912 P.2d 1345, 1351 (App. 1995). See also Tanque, 206 Ariz. 200 at 205, 76 P.3d 874 at 881. Hence, the best practice is for public bodies to tape record or keep detailed minutes of executive sessions in order to ensure that they are prepared to meet their burden of proof in the event a lawsuit is filed.

7.8.4 Confidentiality of Executive Session Minutes.

The minutes of an executive session and all discussions that take place at an executive session are confidential and may not be disclosed to anyone, A.R.S. § 38-431.03(B), except that they may be disclosed to the following people:

1. Any member of the public body that met in the executive session and members who did not attend the executive session. A.R.S. § 38-431.03(B)(1); Picture Rocks Fire Dist. v. Updike, 145 Ariz. 79, 699 P.2d 1310 (App. 1985).
2. Any officer, appointee, or employee who was the subject of discussion at an executive session authorized by A.R.S. § 38-431.03(A)(1) may see those portions of the minutes directly pertaining to them. A.R.S. § 38-431.03(B)(2); see Section 7.9.4.

3. Staff personnel, to the extent necessary for them to prepare and maintain the minutes of the executive session.
4. The attorney for the public body, to the extent necessary for the attorney to represent the public body.
5. The Auditor General in connection with the lawful performance of its duty to audit the finances or performance of the public body. A.R.S. § 38-431.03(B)(3); Ariz. Att'y Gen. Op. I79-l30.
6. The Attorney General or County Attorney when investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4).
7. The court, for purposes of a confidential inspection where an open meeting violation has been alleged. A.R.S. § 38-431.07(C).

The Open Meeting Law requires that a public body advise all persons attending an executive session or obtaining access to executive session minutes or information that such minutes and information are confidential. A.R.S. § 38-431.03(C). Public bodies should maintain executive session minutes in a secure file separate from the public meeting minutes to guard against accidental disclosure.

7.9 Executive Sessions.

Section 38-431.03, A.R.S., contains an exception to the general requirement of the Open Meeting Law that all meetings must be open to the public. That Section provides seven specific instances in which a public body may discuss matters in an executive session. An executive session is defined as "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 [A.R.S. § 38-431.03]." A.R.S. § 38-431(2). An executive session may be convened solely for the purpose of discussing matters and, in limited instances, giving instructions to attorneys and designated representatives. A.R.S. § 38-431.03(D). No legal action may be taken in the executive session. Id.

Arizona courts have strictly construed the seven authorized executive session topics because their legislative charge is to "promote openness in government, not to expand exceptions which could be used to obviate the rule." See Fisher v. Maricopa County Stadium Dist., 185 Ariz. 116, 124, 912 P.2d 1345, 1353 (App. 1995). Thus, unless the proposed discussion plainly falls within one of the Open Meeting Law executive session topics or is specifically authorized by the public body’s enabling legislation, discussion should take place only in a public meeting.

In litigation, the burden of proof is initially on the complainant to "allege facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation." Id., 185 Ariz. at 122, 912 P.2d at 1351. The burden then

immediately shifts to the public body to prove that an affirmative defense or exception to the Open Meeting Law authorized the executive session. Id.

7.9.1 Deciding to Go Into Executive Session.

Before a public body may go into executive session, a majority of the members constituting a quorum must vote in a public meeting to hold the executive session. A.R.S. § 38-431.03(A). Generally, the vote will be taken immediately before going into executive session. However, in some cases an agency may know that at a future date it will need to meet in executive session, in which case it can then vote at the public meeting to meet on the later date in executive session. On that future date, the agency does not have to first meet again in a public session.

7.9.2 Executive Session Requirements.

Once the majority of members of a public body have voted to hold an executive session, the chairman of the public body should ask the public to leave and to take with them all materials such as briefcases and backpacks to ensure that no recording devices have been left in the room. All persons must leave the meeting except the members of the public body and those individuals whose presence is reasonably necessary for the public body to carry out its executive session responsibilities. A.R.S. § 38-431(2). The chairman should remind all present that the business conducted in executive sessions is confidential pursuant to A.R.S. § 38-431.03(C).

7.9.3 Authorized Executive Sessions.

The Open Meeting Law permits only seven categories of topics to be discussed in executive session. A.R.S. § 38-431.03(A). These categories are discussed in Sections 7.9.4 - 7.9.10. Because courts are likely to strictly construe these provisions, unless the proposed discussion plainly falls within an executive session category it should take place only in a public meeting. Finally, the Open Meeting Law does not require that these discussions take place in executive session. If public disclosure of the public body's discussion is not prohibited by any other statutory provision and government interests are not threatened, a public body may choose to conduct its discussions in a public setting.

7.9.4 Personnel Matters.

The discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, discipline, resignation, or dismissal of a public officer, appointee, or employee of a public body may take place in an executive session. A.R.S. § 38-431.03(A)(1); City of Flagstaff v. Bleeker, 123 Ariz. 436, 600 P.2d 49 (App. 1979). This authorization for an executive session applies only to discussions concerning specific officers, appointees, and employees. This provision permits discussion in executive session of applicants for employment or appointment even though the applicants may not be currently employed by the public body.

If the affected officer, appointee, or employee requests, these discussions must be conducted in a public meeting and not in an executive session. A.R.S. § 38-431.03(A)(1). Accordingly, the Open Meeting Law requires that an officer, appointee, or employee who is the subject of the discussion in executive session must be given advance written notice of the proposed executive session. Id. The notice given to the officer, appointee, or employee must describe the matters to be considered by the public body in a manner sufficient to enable the employee to make the initial decision whether to have the matters discussed in a public meeting. Id. In addition, the written notice must be given sufficiently in advance of the proposed meeting, and in no event less than twenty-four hours prior to the meeting, to enable the employee to make the foregoing determination and to prepare an appropriate request for a public meeting. Id.; see Ariz. Att'y Gen. Op. I79-49. See also Form 7.13. There is no emergency exception to the requirement that an affected officer, appointee, or employee receive at least twenty-four hours' notice. However, the public body can discuss personnel matters in a public meeting with less than twenty-four hours' notice if an actual emergency exists. A.R.S. § 38-431.02(D). See Sections 7.6.5 and 7.7.9.

Although the public body may permit the public officer, appointee, or employee being discussed to attend the executive session, the Open Meeting Law is unclear whether he has the right to attend. Whether he attends or not, the public body must make the minutes of the executive session available to the public officer, appointee, or employee who was the subject of discussion in the executive session. A.R.S. § 38-431.03(B)(2).

A public body may consider several persons for possible appointment to a position or consider several employees for possible disciplinary action. In such cases, the public body may consider the matter in executive session provided all those being considered are given the required notice. If some, but not all of those given notice request a public meeting, the public body has two options: the public body may limit the public discussion to those persons filing the request and discuss the remaining persons in an executive session; or, because the Open Meeting Law does not require the public body to discuss personnel matters in

executive session, the public body may discuss the entire matter in a public meeting.

Public bodies should take care to ensure that the scope of executive sessions for personnel discussions is limited to true personnel matters. The Attorney General has opined that the Open Meeting Law prohibits public bodies from conducting in executive sessions lengthy information gathering meetings that explore the operation of public programs under the guise of conducting a personnel evaluation. Only the actual evaluation - discussion or consideration of the performance of the employee - may take place in an executive session. Ariz. Att'y Gen. Op. I96-012. A public body that wishes to discuss or consider an employee's evaluation in executive session, pursuant to A.R.S. § 38-431.03(A)(1), should adopt a bifurcated process that would permit the public body to gather information about public programs at a public meeting, while allowing the public body to enter executive session to discuss or consider the actual evaluation. Ariz. Att'y Gen. Op. I96-012. Similarly, a public body may not discuss a class of persons in executive session under the Personnel Matters provision. For instance, a public body may not use this executive session provision to discuss a potential reduction in force. Each employee who will be discussed in executive session must get the notice as required by A.R.S. § 38-431.03(A)(1).

7.9.5 Confidential Records.

An executive session may be held when the public body is considering or discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A)(2). This specifically includes situations in which the public body is receiving and discussing "information or testimony that is specifically required to be maintained as confidential by state or federal law." Id. This provision allows the use of an executive session whenever the public body intends to discuss or consider matters contained in records that are confidential by law. See Ariz. Att'y Gen. Ops. I90-058, I87-131. However, when confidential matters can be adequately safeguarded, the discussion may take place during a public meeting. Cf. Ariz. Att'y Gen. Op. I87-038 (medical records). The record being considered need not be expressly made confidential by statute, but rather may fall within the category of confidential records discussed in Chapter 6 of this handbook. For example, to preserve confidentiality, preliminary audit reports of state agencies prepared by the Auditor General are confidential and should be discussed by the public body in executive session. Ariz. Att'y Gen. Op. I80-035. Similarly, complaints against licensees that are investigated by a public body may be discussed in executive session. Ariz. Att'y Gen. Op. I83-006. In 2000, the Legislature revised the statute to allow public bodies to take testimony in executive sessions in certain situations. Public bodies should ensure that state or federal law requires that the public body maintain confidentiality of the information it receives before convening an executive session under A.R.S. §

38-431.03(A)(2). Written materials, however, do not become confidential merely because they are discussed in executive session.

7.9.6 Legal Advice.

A public body may also go into executive session for the purposes of "discussion or consultation for legal advice with the attorney or attorneys of the public body." A.R.S. § 38-431.03(A)(3). For this exemption to apply, the attorney giving the legal advice must be the attorney for the public body. Id. For purposes of this discussion, the "attorney for the public body" means a licensed attorney representing the public body, whether that attorney is a full time employee of the body, the attorney general or county, city, or town attorney responsible for representing the public body, an attorney hired on contract, or an attorney provided by an insurance carrier to represent the public body.
This provision authorizes consultations between a public body and its attorney. Accordingly, the only persons allowed to attend this executive session are the members of the public body, the public body's attorney, and those employees and agents of both whose presence is necessary to obtain the legal advice. The mere presence of an attorney of the public body in the meeting room is not sufficient to justify the use of this executive session provision. This provision can only be used for the purpose of obtaining "legal advice," which involves the exchange of communications between lawyer and client. Once the legal advice has been obtained, the public body must go back into public session unless some other executive session provision applies and has been identified in the notice. See City of Prescott v. Town of Chino Valley, 166 Ariz. 480, 803 P.2d 891 (1990). Discussion between the members of the public body about what action should be taken is beyond the realm of legal advice, and such discussions must be held in public session.

7.9.7 Litigation, Contract Negotiations, and Settlement Discussions.

A public body may hold an executive session for the purpose of "[d]iscussion 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." A.R.S. § 38-431.03(A)(4). This provision allows consideration and instruction only - it does not allow a public body to conduct contract negotiations or settlement discussions in an executive session.

This provision allows a public body to give its attorneys instructions on how they should proceed in contract negotiations, pending or contemplated litigation involving the public body, and settlement discussions. For example, the public body might authorize its attorney to settle a lawsuit on the most favorable terms

possible up to a certain amount. Of course, if the attorney were to obtain an agreed settlement, the public body must formally approve it at a public meeting.

This provision is unique in that it permits public bodies to "instruct" their attorneys. In these limited situations, the public body must be able to discuss and arrive at some consensus on its position before it instructs its legal counsel. Executive session minutes must contain an accurate description of all instructions given. A.R.S. § 38-431.01(C). The best practice is for a public body, upon return to the open session, to vote to authorize its attorney to act “as instructed in the executive session.” After the attorney takes the action authorized and the need for confidentiality has passes, the public body must formally approve of the action in open session.

Like the provision that allows legal advice to be given in executive session, this provision requires that the attorney of the public body be present at the executive session. Similarly, the discussion in Section 7.9.6 of the definition of “attorney for the public body” applies with equal force to this Section.

7.9.8 Discussions with Designated Representatives Regarding Salary Negotiations.

A public body may hold an executive session for the purpose of "[d]iscussions 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." A.R.S. § 38-431.03(A)(5). This provision permits a public body, in executive session, to consult and discuss with its representatives its position on negotiating salaries or compensation paid in the form of fringe benefits and to instruct representatives on how they should deal with the employee organizations. It does not authorize an executive session for purposes of meeting with the employees' representative. If the public body or any standing, special, or advisory committee or subcommittee of the public body conducts the negotiations, those negotiations must be conducted in a public meeting.

This provision also allows the public body to "instruct" its representatives. The discussion in Section 7.9.7 of the practice of confirming instructions in public session and the minute-taking requirements applies with equal force to this Section.

7.9.9 International, Interstate, and Tribal Negotiations.

A public body may go into executive session for the purpose of "[d]iscussion, consultation, or consideration for international and interstate negotiations." A.R.S. § 38-431.03(A)(6). This provision does not apply to meetings at which

the public body receives recommendations from representatives of federal agencies. Ariz. Att'y Gen. Op. I80-159.

This provision also permits a city or town, or its designated representatives, to enter into executive session with "members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town." A.R.S. § 38-431.03(A)(6). This is the only type of executive session in which negotiations with another party can take place.

7.9.10 Purchase, Sale or Lease of Real Property.

A public body may meet in executive session to discuss and consult with its representatives concerning negotiations for the purchase, sale, or lease of real property. A.R.S. § 38-431.03(A)(7). This provision does not authorize an executive session for the purpose of meeting with representatives of the party with whom the public body is negotiating. For example, a school district violates open meeting laws by choosing a site for a proposed high school in executive session. Tanque, 206 Ariz. At 204-5, 76 P.3d at 878-9. This provision permits the public body to instruct its representatives regarding the purchase, sale or lease of real property. For example, the public body can authorize its representative to negotiate up to a certain amount.

Of course, the final contract must be approved by the public body in a public meeting. This provision also allows the public body to "instruct" its representatives. The discussion in Section 7.9.7 of the practice of confirming instructions in public session and the minute-taking requirements applies with equal force to this Section.

7.9.11 Taking Legal Action.

In an executive session, the public body may discuss and consider only the specific matters authorized by the statute. Furthermore, the public body may not take a vote or make a final decision in the executive session, but rather must reconvene in a public meeting for purposes of taking the binding vote or making final decisions. For example, “[a] decision to appeal transcends ‘discussions or consultation’ and entails a ‘commitment’ of public funds. Therefore, once [a] Board [has] finished taking privately discussing the merits of appealing, the open meeting statutes require that the board members meet in public for the final decision to appeal.” Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd., 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2001). Taking a straw poll or informal or preliminary vote in executive session is unlawful under the Open Meeting Law. See A.R.S. § 38-431.03(D). No motion or vote is taken to adjourn the executive session; the chair is responsible for adjourning the executive session and reconvening the public session.

7.10 Public Access to Meetings.

7.10.1 Public Participation and Access.

The public must be allowed to attend and listen to deliberations and proceedings taking place in all public meetings, A.R.S. § 38-431.01(A); however, the Open Meeting Law does not establish a right for the public to participate in the discussion or in the ultimate decision of the public body, Ariz. Att'y Gen. Op. 78-1. Other statutes may, however, require public participation or public hearings. For example, before promulgating rules, state agencies must permit public participation in the rule making process, including the opportunity to present oral or written statements on the proposed rule. See Chapter 11. See also Section 7.7.7 for a discussion of the authorization (but not requirement) for public bodies to use an open call to the public.

The public body must provide the public with access to all public meetings. See A.R.S. § 38-431.01(A). This requirement is not met if the public body invokes any procedure or device that obstructs or inhibits public attendance at public meetings, such as requiring persons to sign in before they are permitted to attend the meeting or holding the meeting in a remote location, in a room too small to accommodate the reasonably anticipated number of observers, in a place to which the public does not have access, such as private clubs, or at an unreasonable time. The Open Meeting Law, however, does not prevent a public body from requiring persons who intend to speak at the meeting to sign a register so as to permit the public body to comply with the minute-taking requirements. See Section 7.8.2(5).

In addition to complying with the Open Meeting Law, the notice and accommodations should conform with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 - 12213 (Supp. 1992). See Section 15.22; see also § 7.6.3.2 (notice requirements relating to reasonable accommodations).

7.10.2 Remote Conferencing.

If one or more members of a public body are unable to be present in person at a public meeting, they may nevertheless participate by telephone or video or internet conference if the practice is approved by the public body and is not prohibited by statutes applicable to meetings of the public body. Ariz. Att'y Gen. Ops. I08-008, I91-033, I83-135. This practice presents several practical and legal problems and should be used only where there are no reasonable alternatives to presence at the meeting.

A public body must comply with the following guidelines to avoid violations of the Open Meeting Law.

1. The notice and the agenda should state that one or more members of the public body will participate by telephonic, video or internet communications. In the appropriate notice, insert the following after the first sentence: "Members of the [name of public body] will attend either in person or by telephone, video or internet conferencing."
2. The public meeting place where the public body normally meets should have facilities that permit the public to observe and hear all telephone, video or online communications.
3. The public body should develop procedures for clearly identifying all members participating by telephonic, video or internet communications.
4. The minutes of the meeting should identify the members participating by telephonic or video communications and describe the procedures followed to provide the public access to all communications during the meeting.

7.10.3 Record of the Proceedings.

A public body of a city or town with a population of more than 2,500 people must post on its website either a recording of the meeting or a statement of the legal actions taken during the meeting. A.R.S. § 38-431.01(E)(1). This statement must be posted within three working days of the meeting and must remain accessible on the website for at least one year thereafter. Id., (J). Subcommittees and advisory committees have ten working days after the meeting to post the recording or statement. Id., (E)(3).

"All or any part of a public meeting . . . may be recorded by any person in attendance by means of a tape recorder or camera or other means of sonic reproduction." A.R.S. § 38-431.01(F). A public body may prohibit or restrict such recordings only if they actively interfere with the conduct of the meeting. Id.

7.11 Quorum

Public bodies frequently struggle with questions about quorum. Arizona statutes generally define a quorum as a majority of the members of a board of commission. A.R.S. § 1-216. This definition applies in the absence of a more specific definition. Vacant positions do not reduce the quorum requirement.

7.11.1 Effect of Disqualification on the Quorum Requirement.

Board members may be disqualified from voting on a particular matter for a variety of reasons, most commonly because they have a conflict of interest. The disqualification of a board member may make it difficult for the public body to obtain quorum. The general rule on disqualification is that a disqualified member, even though present at a meeting of the public body, may not be counted for purposes of convening the quorum to discuss or decide the particular

matter for which the member is disqualified. See Croaff v. Evans, 130 Ariz. 353, 358, 636 P.2d 131, 136 (App. 1981).

For example, if four members of a seven member board are required for a quorum and only four members are present at a board meeting to discuss several matters, the board could not discuss a particular matter in which one of the four members has been disqualified, because for purposes of discussing or deciding that matter, the necessary quorum of four members is not present. If one or more of the other three positions on the board is filled by a duly qualified and serving member, the board must defer action on the proceeding until the absent member or members can be present. If the other three positions in the above hypothetical are vacant, the board cannot proceed until the appointing authority has filled at least one of the vacant positions.

If a majority of the total membership of a public body is disqualified, thereby making it impossible for the public body to convene a quorum to discuss or decide the matter, the disqualified members may disclose in the public record their reasons for disqualification and proceed to act as if they were not disqualified. A.R.S. § 38-508(B); Nider v. Homan, 89 P.2d 136, 140 (Cal. App. 1939).

7.12 Ratification.

7.12.1 Generally.

A public body may ratify action previously taken in violation of the Open Meeting Law. See A.R.S. § 38-431.05(B). Ratification is appropriate when the public body needs to retroactively validate a prior act in order to preserve the earlier effective date of the action. For example, a public body may be required by law to approve its budget by a certain date. If the public body discovered after the statutory deadline that its earlier approval violated the Open Meeting Law, it could face serious legal problems. Even if the body met quickly to properly approve the budget, the approval would not have been made prior to the statutory deadline. Accordingly, the 1982 amendments permit the public body to meet and approve retroactively the action previously taken -- that is, to ratify its prior action.

Ratification must take place “within 30 days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.” A.R.S.§ 38-431.05(B)(1). A judicial determination that the public body took legal action in violation of public meeting laws triggers the thirty-day period. Tanque, 206 Ariz. at 208-210, 76 P.3d at 882-884. However, it is not triggered by letters from attorneys notifying the board of their intent to challenge the legal action or by filing a lawsuit. Id. at 883.

Ratification merely validates the prior action; it does not eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties and attorney's fees.

7.12.2 Procedure for Ratification.

The Open Meeting Law provides a detailed procedure for ratification. A.R.S. § 38-431.05(B). That procedure is as follows:

1. The decision to ratify must take place at a public meeting held in accordance with the Open Meeting Law.
2. Ratification must take place within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
3. The public notice of the meeting at which ratification is to take place, in addition to complying with the other requirements of the Open Meeting Law, see Sections 7.6 and 7.7, must include (a) a description of the action to be ratified, (b) a clear statement that the public body proposes to ratify a prior action, and (c) information on how the public may obtain a written description of the action to be ratified. See Form 7.12.
4. In addition to the notice and agenda of the meeting, the public body must make available to the public a detailed written description of the action to be ratified and a description of all prior deliberations, consultations, and decisions by members of the public body related to the action to be ratified.
5. The description required under paragraph 4 must be included as part of the minutes of the meeting at which the decision to ratify was made.
6. The public notice, agenda, and written description discussed in paragraphs 3 and 4 must be made available to the public at least seventy-two hours prior to the public meeting.

7.13 Sanctions for Violations of the Open Meeting Law.

7.13.1 Nullification.

All legal action transacted by any public body during a meeting held in violation of any provision of the Open Meeting Law is null and void unless subsequently ratified. A.R.S. § 38-431.05(A). The procedures for ratification are described in Section 7.11.2.

The Arizona Supreme Court, however, has held that legal actions taken in violation of the Open Meeting Law are voidable at the discretion of the court. Karol, 122 Ariz. at 97, 593 P.2d at 651 In the Karol case, the court held that: "[A] technical violation having no demonstrated prejudicial effect on the complaining party does not nullify all the business in a public meeting when to conclude otherwise would be inequitable, so long as the meeting complies with the intent of the legislature." Id., 122 Ariz. at 98, 593 P.2d at 652. This decision

imposes a substantial compliance test and requires a weighing of the equities before a court will declare an action void. The decision, however, preceded the 1982 amendment to the Open Meeting Law which specifically authorizes a procedure for ratification. It remains to be seen whether this change will cause the court to follow the literal language of the Open Meeting Law. Nevertheless, the serious consequences that flow from having an action of a public body declared void should serve to remind the public body that it should take every precaution to avoid even technical violations of the Open Meeting Law.

In some cases, the public body may have discussed a matter at an unlawful meeting, but thereafter met in a lawful open meeting at which it took a formal vote as its "final action." The Arizona Court of Appeals has held that the subsequent "final action" taken at a lawful meeting is not void. Valencia v. Cota, 126 Ariz. 555, 6l7 P.2d 63 (App. 1980). The public body taking the final action at the subsequent lawful meeting should make available at that time the substance of all discussions that took place at the earlier unlawful meeting. If the public body wishes to preserve the effective date of the earlier action rather than simply redecide the matter, it must go through the ratification process. See Section 7.11.

7.13.2 Investigation and Enforcement.

The 2000 Legislature enacted substantial revisions to the Open Meeting Law, including extensive changes to the investigation and enforcement provisions of the law. The Attorney General and County Attorneys are authorized to investigate alleged Open Meeting Law violations and enforce the Open Meeting Law. A.R.S. § 38-431.06.

The Open Meeting Law now specifically provides that the Attorney General and County Attorneys shall have access to executive session minutes when they are investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4). The Open Meeting Law also provides that disclosure of executive session information (such as disclosure to the Attorney General) does not constitute a waiver of the attorney-client privilege and directs courts reviewing executive session information to protect privileged information. Id. ' (F).

The investigative authority of the Attorney General and County Attorneys was strengthened by the 2000 Legislature. The Attorney General and County Attorneys may issue written investigative demands to any person, administer oaths or affirmations to any person for the purpose of taking testimony, conduct examinations under oath, examine accounts, books, computers, documents, minutes, papers and recordings, and require people to file written statements, under oath, of all the facts and circumstances requested by the Attorney General or County Attorney. A.R.S. § 38-431.06(B). If a person fails to comply with a

civil investigative demand, the Attorney General or County Attorney may seek enforcement of the demand in Superior Court.

Any person affected by "legal action" of a public body, the Attorney General, or the County Attorney for the county in which the alleged violation occurred, may file suit in superior court to require compliance with or prevent violations of the Open Meeting Law or to determine whether the law is applicable to certain matters or legal actions of the public body. A.R.S. § 38-431.07. Additionally, when the provisions of the Open Meeting Law have not been complied with, a court of competent jurisdiction may issue a writ of mandamus requiring a meeting to be open to the public. A.R.S. § 38-431.04. A writ of mandamus is an order of the court compelling a public officer to comply with certain mandatory responsibilities imposed by law.

In 2007, in an effort to increase government awareness and provide the citizens of Arizona an effective and efficient means to get answers and resolve public access disputes, legislation expanded the Arizona Ombudsman-Citizens' Aide Office to provide free services to citizens and public officials regarding public access issues. The duties of the Ombudsman include: preparing materials on public access laws, training public officials, coaching, assisting and educating citizens, investigating complaints, requesting testimony or evidence, conducting hearings, making recommendations, and reporting misconduct. A.R.S. § 41-1376.01.

7.13.3 Civil Penalties.

The court may impose a civil penalty not exceeding five hundred dollars against any person for each violation of the Open Meeting Law. A.R.S. § 38-431.07(A). This penalty can be assessed against a person who violates the Open Meeting Law or who knowingly aids, agrees to aid or attempts to aid another person in violating the Open Meeting Law. Id. This penalty is assessed against the individual and not the public body, and the public body may not pay the penalty on behalf of the person assessed, see id.

7.13.4 Attorney's Fees.

The court may also order payment of reasonable attorney's fees to a successful plaintiff in an enforcement action brought under the Open Meeting Law. A.R.S. § 38-431.07(A). Normally those fees will be paid by the state or political subdivision of which the public body is a part or to which it reports. Id. However, if the court determines that a public officer violated the Open Meeting Law "with intent to deprive the public of information," the court must assess against that public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating the Open Meeting Law all of the costs and attorney's fees awarded to the plaintiff. Id. As in the case of an award

of civil penalties, the public body may not pay such an award of attorney's fees assessed against the public officer individually. See id.

7.13.5 Expenditure for Legal Services by Public Body Relating to the Open Meeting Law.

A public body may not retain counsel or expend monies for legal services to defend an action brought under the Open Meeting Law unless the public body has legal authority to make such an expenditure pursuant to other provisions of law and it approves the expenditure at a properly noticed open meeting prior to incurring the obligation. A.R.S. § 38-431.07(B).

7.13.6 Removal From Office.

If the court determines that a public officer violated the Open Meeting Law "with intent to deprive the public of information," the court may remove the public officer from office. A.R.S. § 38-431.07(A)

Part III

Frequently Asked Questions

Frequently Asked Questions

1. What action is required to occur in an open meeting?

All legal action of a public body is required to occur at an open meeting. A.R.S. § 38-431.01(A). Legal action is 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. A.R.S. § 38-431(3).

2. What is a subcommittee?

A subcommittee is 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. A.R.S. § 38-431(2).

3. When is it appropriate for a public body to hold an emergency meeting?

A public body may hold an emergency meeting when due to unforeseen circumstances, immediate action is necessary to avoid some serious consequence that would result from waiting until the required notice could be given. The existence of an actual emergency does not dispense with the need to give twenty-four hours' written notice to an employee to be discussed in executive session. A.R.S. § 38-431.03(A)(1); see Sections 7.7.9 and 7.9.4.

4. What must be included on an agenda?

An agenda must include the date, time, and place of the open meeting and all specific matters to be discussed, considered or decided at the open meeting. The description of each agenda item must include information reasonably necessary to inform the public.

The agenda must include the statutory citation for any executive sessions as well as a general description of the matters to be considered in executive session.

5. Where should a public body post an agenda?

The public body is required to post all agendas at the physical and electronic locations listed on their disclosure statement. A.R.S. § 38-431.02.

6. Does the public have a right to speak during a meeting?

The public does not have a right to speak or disrupt the meeting. However, the public body may allow comment from the public.

7. Is the public body required to answer questions from the public during an open meeting?

The public body may answer questions from the public, if the item is properly listed on the agenda.

8. Is the public body required to have a call to the public?

A call to the public is not mandatory but the public body may put a call to the public on their agenda.

9. What is required to be included in the minutes of an open session?

The minutes of an open session must include the date, time and place of the meeting, members present and absent, a general description of the matters to be considered, an accurate description of the legal action, the names of members who propose each motion, the names of people making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.

10. Is the public body required to approve the minutes?

No. The open meeting law does not require a public body to approve their minutes.

11. Can board members discuss their views with the public outside of an open meeting?

Yes. Members of the public body may discuss their views with members of the public so long as the communication is not principally directed at or directly given to other board members and there is no plan to engage in collective deliberation to take legal action. Attorney General Opinion I07-013.

12. If a public body violates the open meeting law, how does the public body fix the error?

If the public body violates the open meeting law, they are required to ratify that legal action by following the procedure in A.R.S. § 38-431.05.

13. What are the penalties for violating the open meeting law?

Violation of the open meeting law may result in a civil penalty of up to $500 for each violation, such equitable relief as the court deems appropriate, reasonable attorney's fees, and removal of a public officer from office.

Part IV

Legal Authority

Public Bodies

The Open Meeting Law applies to all public bodies in the state of Arizona.

For purposes of open meeting law, community hospital association was not "institution of the state or a political subdivision" thereof; association was not creation of law itself, but rather creation of group of private individuals acting together as authorized by statutes governing creation of private nonprofit corporations. Prescott Newspapers, Inc. v. Yavapai Community Hosp. Ass'n (App. Div.1 1989) 163 Ariz. 33, 785 P.2d 1221, review denied.

Under the definition set forth in A.R.S. § 38-431(6), the Board of Trustees appointed to administer the Northern Arizona Public Employees Benefit Trust constitutes a multimember governing body of an instrumentality of one or more political subdivisions and must comply with the requirements of the Arizona Open Meeting Law. Op.Atty.Gen. No. I07-001.

Corporate boards of charter school operators generally are not "public bodies" subject to Arizona's Open Meeting Law. However, because the Open Meeting Law applies to charter school governing boards, if a quorum of the charter school governing board discusses charter school business at a meeting of the corporate board of the charter school operator, the Open Meeting Law applies to that discussion. Op.Atty.Gen. No. I00-009.

Advisory committees created by the Governor pursuant to executive order are not public bodies and are not subject to the open meeting law. A.R.S. §§ 38-431, 41-106. Op.Atty.Gen. No. I92-007.

Community hospital association was not subject to the Open Meeting Law, § 38-431 et seq., where association's board was elected, rather than appointed by the county hospital district, a political subdivision; word "appointed", in provision of § 38-431 defining "public body" to include boards and commissions of state or political subdivisions whose boards of directors are "appointed" by the state or political subdivision, did not encompass the election, rather than appointment, of the board members. Op.Atty.Gen. No. I84-091.

Where tenured faculty member has a hearing pursuant to personnel grievance proceedings in the state university system, the Open Meeting Law, § 38-431 et seq., would apply because, if the university president's recommendation is appealed, the staff grievance and appeals committee could be construed as an advisory committee to the board of regents, a multi-member public body subject to the Open Meeting Law. Op.Atty.Gen. No. I84-077.

The employees benefit trust which is governed by a board of trustees appointed by the governing board of the Mammoth/San Manuel Unified School District, is a public body within the meaning of this section, and therefore is subject to provisions of the Open Meeting Law. Op.Atty.Gen. No. I83-018.

Any scheme or device designed to circumvent the purposes of the Open Meeting Law would be subject to close scrutiny, and would constitute a violation subjecting the governing body and participating members to the sanctions provided for in the Open Meeting Law. Op.Atty.Gen. No. I83-025.

Provision of this section dealing with discussion or consideration of personnel matters, including salaries, with respect to a public officer, appointee, or employee of any public body is limited to discussions relating to individual employees, not with respect to all or a class of employees, and, therefore, is not applicable to budget discussions. Op.Atty.Gen. No. I81-058.

Whether a meeting is in violation of the Open Meeting Law, § 38-431 et seq., depends upon the substance of the matters discussed, not the label given to the meeting or the location of the meeting. Op.Atty.Gen. No. I79-4.

The Open Meeting Law, § 38-431 et seq., requires that all proceedings before the tribunals, including their deliberations, must be conducted in an open meeting and that any member of the public, including “interested parties” may attend. Op.Atty.Gen. No. I78-245.

Open Meeting Act, § 38-431 et seq. applies only to multi-member bodies; i.e., bodies containing three or more members, and therefore, single heads of agencies, during course of conducting their official business in such capacity, are not “governing bodies” capable of taking “legal action” and are not, therefore, subject to the act, but agency which is under direction of a single person is not exempt from the act, and it is likely that the agencies will contain advisory councils or other bodies which fall within the act. Op.Atty.Gen. No. 75-7, p. 44, 1975-76.

Agencies which are supported solely by fees, are not subject to the Open Meeting Act, § 38-431 et seq. Op.Atty.Gen. No. 75-7, p. 44, 1975-76.

The policy supporting the Open Meetings Law is to open the conduct of the business of government to the scrutiny of the public and to ban decision-making in secret. Long v. City of Glendale (App. Div.1 2004) 208 Ariz. 319, 93 P.3d 519, review denied.

Executive Sessions

In executive sessions, board of regents is permitted to deal with personnel matters, hear reports from its staff, firm up its agenda, receive communications from its legal advisers, discuss contemplated actions, and debate policy. Op.Atty.Gen. No. 73-9.

Merit system council of state highway department is not a “governing body” and is not governed by this article, and, since it was established exclusively to consider “information regarding the employment or dismissal” of employees, it may hold executive sessions which are not open to the general public, and its recommendations to director of highways or to the commissions may remain confidential until the commission, which is the “governing body” meets to act upon such recommendations. Op.Atty.Gen. No. 63-40.

Evaluation and review of the superintendent's job performance was a personnel matter which school board could elect to discuss in executive session unless the superintendent requested the discussion occur at an open meeting; the decision to hold an executive session must be made on a case-by-case basis by means of a majority vote. Op.Atty.Gen. No. I81-090.

Arizona Open Meeting Law, § 38-431 et seq., is applicable to school board committees regardless of whether such committees are composed of school board members, and executive sessions of such committees are permissible only for the limited purposes enumerated in § 38-431.03. Op.Atty.Gen. No. I80-202.

Legal Action

School board violated open meeting law when, in executive session, it decided to appeal trial court's ruling in an employment case, as decision to appeal was a “legal action,” in that it transcended discussion or consultation and entailed a commitment of public funds. Johnson v. Tempe Elementary School Dist. No. 3 Governing Bd. (App. Div.1 2000) 199 Ariz. 567, 20 P.3d 1148, as amended, review denied.

Deliberations by a majority of a public body in respect to a matter that foreseeably could come to a vote by that body constitutes “legal action” for purposes of the open meeting law. Valencia v. Cota (App. Div.1 1980) 126 Ariz. 555, 617 P.2d 63.

Open meeting law does not permit governing board of public body to take legal action while in executive session, whether or not session was called for purpose of taking such legal action. Cooper v. Arizona Western College Dist. Governing Bd. (App. Div.1 1980) 125 Ariz. 463, 610 P.2d 465.

Formulation of a board of education's intention not to offer a contract to probationary teachers is a “legal action” within meaning of open-meeting law, §

38-431 et seq., and must be taken during a public meeting in conformance with that law. Karol v. Board of Ed. Trustees, Florence Unified School Dist. Number One of Pinal County (1979) 122 Ariz. 95, 593 P.2d 649.

Election of officers for the state retirement system investment advisory council constitutes legal action and must take place in a public session for which proper public notice has been given pursuant to the Open Meeting Law, § 38-431 et seq., and violation of the Open Meeting Law may constitute grounds for removal of a public officer from his official position. Op.Atty.Gen. No. 78-97.

Legal action, as defined in this section extends beyond mere formal act of voting; discussions and deliberations by governing body members prior to final decision are an integral and necessary part of any “decision, commitment or promise” and are included within the definition of “legal action”. Op.Atty.Gen. No. 75-8, p. 55, 1975-76.

Meetings

The definition of "meeting" under A.R.S. § 38-431 includes the gathering of a quorum of a public body through technological devices and would encompass serial communications of a quorum of the public body through the Internet or other online medium. Measures must be taken, however, to provide clear notice to the public about when the Board will be deliberating in its online meeting and to facilitate the public's access to the meeting. Op.Atty.Gen. No. I08-008, 2008 WL 4509818.

The “political caucus” exception to the Open Meeting Law, § 38-431 et seq., applies to partisan-elected public bodies in the exercise of their purely legislative functions; scope of permissible caucus activity is limited to considering party policy, with respect to a particular legislative issue, and the discussion must be limited to considering matters of party policy and cannot be used to reach a collective decision, commitment, or promise by members of the caucus when that membership constitutes a quorum of the public body. Op.Atty.Gen. No. I83-128.

Substantial Compliance

Court must determine whether there has been substantial compliance with open meeting law by reviewing the whole of the proceeding, rather than its several parts. Carefree Imp. Ass'n v. City of Scottsdale (App. Div.1 1982) 133 Ariz. 106, 649 P.2d 985.

Substantial compliance with provisions of open meeting law, § 38-431 et seq., with respect to termination proceedings before personnel board will satisfy requirements of those provisions when a technical violation has no demonstrated effect on a complaining party. City of Flagstaff v. Bleeker (App. Div.1 1979) 123 Ariz. 436, 600 P.2d 49.

Instrumentality

An accommodation school is not a separate political entity with the power to tax; when a county school superintendent acts in a solo capacity as the governing board for an accommodation school, the superintendent is exempt from complying with the open meeting requirement, but when a county board of supervisors convenes a quorum to discuss accommodation schools and other matters, is subject to requirement as a multi-member public body; also, the superintendent has the power to establish and operate an accommodation school, whereas the county board has the power to budget funds for the superintendent to operate the school. Op.Atty.Gen. No.I98-006, July 28, 1998.

Electronic Communications

E-mail communications among a quorum of the board are subject to the same restrictions that apply to all other forms of communications among a quorum of the board. E-mails exchanged among a quorum of a board that involve discussions, deliberations or taking legal action on matters that may reasonably be expected to come before the board constitute a meeting through technological means. While some unilateral e-mail communications from a board member to a quorum would not violate the OML [Open Meeting Law], a board member may not propose legal action in an e-mail. Finally, a quorum of the board cannot use e-mail as a device to circumvent the requirements in the OML. Op.Atty.Gen. No. I05-004.