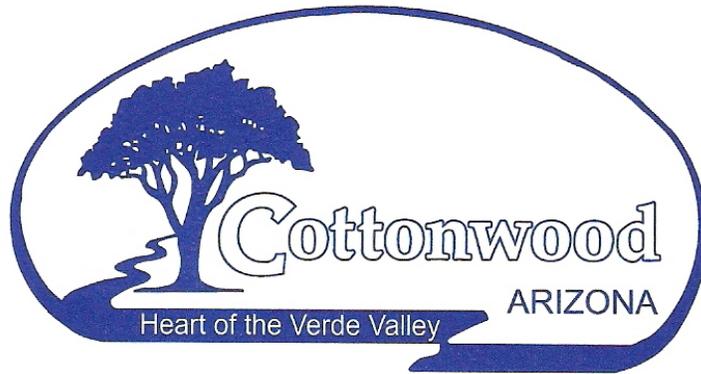


City of Cottonwood



Board and Commission Member HANDBOOK

**Created: July 2008
Updated: March 2011**

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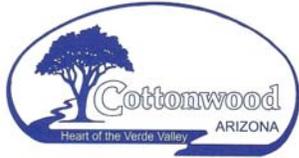
BOARD AND COMMISSION MEMBER HANDBOOK

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City of Cottonwood



**Board and Commission
Member
HANDBOOK**

1. INTRODUCTION

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Introduction

Welcome to the City of Cottonwood

As a citizen volunteer serving on a board or commission of Cottonwood, you are a member of a very select group. You have been appointed by the City Council to study and recommend policy direction on a variety of issues vital to the City's future. This work will be like no other volunteer effort you've ever undertaken. To prepare you for this experience, we've developed this manual. Our objective in creating this manual is to assist you in making the transition from citizen to board and/or commission member.

Before we go any further, let's be clear about several points. First, it takes time and work to be a good board or commission member. You will be expected to read and study materials in advance of meetings. You will have to listen to hours of discussion and testimony at public meetings from Cottonwood's citizens, including your friends and neighbors.

Second, you will participate in a variety of discussions that will help the City Council do its job. Sometimes Council decisions will directly incorporate your recommendation into their decision, while at other times your input will be only one of many factors that must be weighed by the Council in its final decision. Your job is to support the democratic process by considering the broadest set of perspectives on issues. You will no longer just consider your own perspective, but must consider the perspectives of all the stakeholders involved in any particular issue.

Third, your group has official status and must abide by a number of rules and laws. For instance, the Open Meeting Law requires all official meetings to be conducted in open and advertised forums. Expect that all decisions made by your group will be reviewed and scrutinized by the public, the City Council, media and other interested parties. You will be working very closely with all kinds of City staff, policy makers, citizens, other government representatives, lobbyists and grass-roots organizations. You must understand the rules and regulations under which your board or commission works, and stay focused on your assigned mission.

Finally, you are a part of the City of Cottonwood's official family. Your personal behavior, both inside and outside public meetings, will be observed and open to criticism by others. Ethical behavior, good judgment, dignity and respect are expected. If you meet these expectations you will enhance our citizens' perception of the City of Cottonwood government.

Being a board or commission member is not an easy job but if you do it well, it will be rewarding and you can help shape the future of Cottonwood.

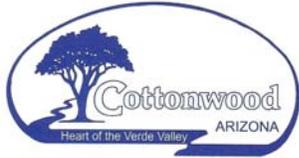
Introduction

Questions To Consider

Here are some questions that you should keep in mind as you read this handbook. These are some of the more typical questions that, when answered, can help you with the deliberation and evaluation of the issues before your board or commission.

1. What is my role as a board or commission member?
2. What authority do I have to act?
3. What do others (staff, fellow board members, City Council, residents) expect of me?
4. How do I know if a recommendation is in the best interest of the community?
5. What effect will my actions have on the City Council, the community and the applicant?

City of Cottonwood



**Board and Commission
Member
HANDBOOK**

**2. CITY OF COTTONWOOD
OVERVIEW**

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City of Cottonwood Overview

The City Council

The City established a council/manager form of government at the time of its incorporation in 1960. All powers of the City are vested in the elected City Council. All City Council members and the Mayor represent the “community at large”, i.e. there are no district boundaries within Cottonwood. The City Council, comprised of the Mayor, who serves as the chair, and six council members enact local legislation, adopt budgets, determine policies and priority programming based on citizen feedback, and appoints key staff. Council appointed positions in Cottonwood are the City Manager, City Magistrate, City Attorney and Administration Hearing Officer.

The City Council is committed to active citizen involvement in their decision making process:

- Through the appointment of ongoing advisory boards and commissions
- Through special assignments of citizens to issue-oriented work groups
- By hosting or attending neighborhood and community meetings and events

The Mayor and Council of the City of Cottonwood are proud of the high quality services the city employees provide residents and visitors. The City of Cottonwood Vision and Mission Statement reads:

Vision – The City of Cottonwood strives to maintain a uniquely desirable and sustainable community. We are unique because of our people, our grand natural resources, public amenities, leadership, diversity and home town atmosphere. We will continue to conserve, preserve and manage our precious resources, including the Verde River and its unique riparian habitat. We will enhance our position as the economic center for the Verde Valley, providing retail, medical, education, transportation, recreation and tourism. The City of Cottonwood provides leadership and solutions to ensure a prosperous community where a diversity of people and nature thrive.

Mission – The City of Cottonwood, through ethical, accountable, professional leadership and collaboration, enhances quality of life for our diverse community while preserving our unique environment and character.

Mayor and Council member terms expire:

Mayor Joens	May 2015
Vice Mayor Pfeifer	May 2014
Councilmember Norman	May 2014
Councilmember Elinski	May 2014
Councilmember Jauregui	May 2015
Councilmember Kirby	May 2011
Councilmember Pratt	May 2011

City of Cottonwood Overview

The Mayor

The Mayor serves a four (4) year term and is elected at-large, meaning that the Mayor is elected by the majority vote of all residents voting in the election. By law and practice, the Mayor has a variety of responsibilities:

- Convenes all public meetings of the Cottonwood City Council
- Is the chair of the City Council meetings, i.e., is the individual through which all Council, staff and citizen communication is channeled during public meetings
- Takes testimony
- Votes on all issues presented to the City Council
- Viewed as the leader of the Cottonwood City Council throughout the Verde Valley and the United States
- Serves on various regional subcommittees which are listed on the following page.

Mayor Diane Joens can be reached at:

928-634-5526 City Hall

928-300-2873 Cell

mayor@dianejoens.com

827 N Main Street

Cottonwood Arizona 86326

City of Cottonwood Overview

The Vice Mayor

The Vice Mayor assumes all duties of the Mayor in the event the Mayor is unable to attend or preside over a City Council meeting. He or she serves at the pleasure of the City Council. The Vice Mayor also performs the duties of Mayor during his/her absence or disability. The Vice-Mayor is appointed by Council annually.

Councilmember Karen Pfeifer will serve as the Vice Mayor until May 2009.

The Vice Mayor may be reached at 928-634-3030.

City of Cottonwood Overview

The City Council Members

The six (6) City Council members (including the Vice Mayor) also serve the community at large for four-year terms. Council members analyze, deliberate, discuss and act on various issues presented to them by their citizenry, staff or by other regional officials. They provide direction to the City Manager to analyze and report on various issues for their consideration. They also participate in and represent the City of Cottonwood on a wide variety of local, regional and state subcommittees.

Current local, regional and state subcommittees

- Northern Arizona Council of Governments
- Northern Municipal Water Users Assoc
- Yavapai County Water Advisory Committee
- Verde Valley Transportation Planning Organization
- Coconino/Yavapai County Resource Conversation
- Verde River Basin Partnership
- Cottonwood Personnel Board
- Verde Valley Land Preservation Institute
- Recreation Center Committee
- Alternate Pension & Benefit Trust
- Public Safety Personnel Retirement Board

All City Council members may be reached by e-mail or by calling them at the following numbers:

Karen Pfeifer	rokapie@aspect1.net	634-7151 or 634-3030
Tim Elinski	tim@verdebuilder.com	649-2296 or 300-8148
Linda Norman	lnorman@netzero.net	634-9096 or 634-5346
Ruben Jauregui	rjuaregui@cottonwoodaz.gov	
Duane Kirby	duanekirby@live.com	649-9268
Terence Pratt	quixote51@hotmail.com	634-3315 or 254-9406

City of Cottonwood Overview

City Administration

The City is comprised of numerous departments, all of which implement the City Council's direction and serve the citizen's of Cottonwood. An organizational chart is in the appendix.

City of Cottonwood Overview

The City Manager

The City Manager is appointed by the City Council and is responsible for the implementation of the City Council's Mission and Goals and the overall administration of all City staff, services and programs. The Manager also ensures ordinances are enforced, conducts and/or delegates the hiring, appointing or removing of staff, prepares the annual budget, keeps the City Council advised of affairs and needs of the City and its citizens, and supervises City related purchases. All department heads in the City of Cottonwood serve at the pleasure of the City Manager and report directly to him/her.

City Manager Doug Bartosh may be reached at:
928-634-5526
dbartosh@ci.cottonwood.az.us
827 N Main Street
Cottonwood Arizona 86326

City of Cottonwood Overview

Other Appointed Positions

Magistrate
Honorable Judge Doug LaSota
928-634-7537
824 N Main St
Cottonwood AZ 86326

City Attorney
Steve Horton
827 N Main Street
Cottonwood AZ 86326

Administrative Hearing Officer
Cottonwood AZ 86326
928-634-5505

City of Cottonwood Overview

Mayor and City Council Biographies

Diane Smith Joens

Mayor Diane Joens has been the Mayor for the City of Cottonwood beginning in May 2007. Previously she served a term as a City Councilmember from June 2003 to May 2007.

Diane Joens is the co-chair of the Yavapai County Water Advisory Committee, a member of the Verde River Basin Partnership, and cofounder of the Stewards of Public Lands. She is an enthusiastic proponent of volunteerism, intergenerational programs and trails and bicycle pathways. Diane attends Yavapai College and plans to seek a degree from ASU in interdisciplinary studies. She is a graduate of Project CENTRL, a two year state-wide leadership program supported through the University of Arizona and the Center for Rural Leadership. Diane was editor and publisher of a community project, the *Verde River Almanac*.



Preservation of the Verde River is one of Diane's primary interests. Diane is highly supportive of businesses—large and small—in the upper Verde Valley, and believes the river is among the area's most attractive and substantial resources for quality of life, economic development and tourism.

In the past she worked as a news reporter, in the field of banking, and determined HUD and Rural Development housing program eligibility for the elderly and disabled. Previous to being elected Mayor in the March, 2007 primary, Diane served as a Cottonwood City Council Member four years. She also worked for the Yavapai County Board of Supervisors four years.

Diane was raised in Sierra Vista, Ariz. When she was 15 her parents moved to Iowa where she finished high school and then married. Diane and husband Paul farmed in Iowa 15 years, raising corn, soybeans and hogs. They sold their farming operation and moved to Cottonwood 22 years ago. They have been married 37 years.

Dedicated to the many volunteers who make a community strong, Diane writes a monthly column, *Spotlight on Volunteers*, for the Cottonwood City Page. Diane's mayoral Web site is www.dianejoens.com.

The people of Cottonwood and the upper Verde Valley provide Diane's inspiration for leadership.

Vice Mayor Karen Pfeifer

Vice Mayor Pfeifer is a 35 year resident of the Verde Valley coming from St. Petersburg, Florida in 1972. She was raised on Sunset Beach, Treasure Island, Florida. She and her husband Roger have seven children, fifteen grandchildren and four great grand children. All of the children went through the local school systems and six of them joined the military after school, with one son still in the U.S. Army Special Operations Unit out of Fort Bragg, NC. She has been fortunate enough to have four of the seven children raising their families in this area



Her hobbies are spending time with her family and boating on Lake Powell. She was a bookkeeper before going into the insurance business. Now a licensed property and casualty insurance agent she works full time in Kelly Cathcart's office of American National Insurance in Cottonwood.

Karen was first elected to the Cottonwood City Council in 1991 to 1995 and again in 1995. In 1997 she resigned to run for Mayor, but did not win that election. In 1999 she ran again and was elected to serve another four years, as a council member. In 2003 she was appointed to a term that was vacated by a council member resigning and was elected again in 2005 to her present term of office. She was appointed by the current council as Vice Mayor on 06/05/07. She has enjoyed the position that she was elected and appointed to serve.

Karen has served on several committees and boards and has been very involved with the region on many issues. Before being elected to any office she was on the Cottonwood Christmas Parade Committee for about eight years. After being elected to the Cottonwood City Council she served as the Chair on the Verde Valley / Regional Solid Waste Coalition for several years, the Design Review Board and the Personnel Board for the City. She currently serves on the Verde Valley MATForce steering committee.

Karen has also been involved with the Cottonwood Chamber of Commerce since 1979 and a board member since 1999, serving as President for two terms, 2004 and 2005. The Chamber of Commerce and the City of Cottonwood work closely together, in the effort to make the area the great place to live and work, that we all enjoy so much.

“I will continue to work in the best interest of the City of Cottonwood and the region and be open to all of the issues that come before me.”

Councilmember Ruben Jauregui

Ruben has been a resident of Cottonwood for 33 years. Together with his wife, Veronica, he has been a business owner in Cottonwood for 32 years. Thirty-three years ago he committed to become involved with my community in any way he could. He started by becoming a member of the school PTA. Additionally, he was a coach with the Verde Valley Girls Softball Association for 7 years, culminating in a state championship title in 1986. He also coached neighborhood teens in weightlifting in order to prepare them for freshman football tryouts.



Service related to the City of Cottonwood includes serving as a member of the Parks & Recreation Commission from 1984-1987, and assisting with the early planning stages of Riverfront Park. He was elected to the City Council in 1995, and elected as Mayor in 1997 and was re-elected for two additional terms, serving as Mayor until June of 2007. He then served as a member of the Industrial Development Authority and the Municipal Property Corporation until being elected to the City Council in March of 2011.

Ruben firmly believes that each one of us has a responsibility to do all we can with the abilities we are given to make our community the best place to live and work.

Council Member Tim Elinski

Tim Elinski is a native Arizonan. Born in Payson, Arizona he spent his summers swimming and fishing in the Verde River. After several years in Oregon, he eagerly returned to the Verde Valley, buying a home in Old Town Cottonwood where he resides with his three dogs.

He has been in the building trades for many years, the last three as a licensed general contractor doing restoration and new home construction.

He spends free time camping in his vintage Happy Home Trailer. His aspirations remain, as always, to be kind to his fellow man, to eat canned tuna at least once a month, and to never sit in a La-Z-Boy recliner.



Council Member Jesse Dowling

Jesse Dowling was born and raised in Jerome and attended school in Clarkdale and Cottonwood, then graduated from Mingus Union High School in 1989. He worked local jobs until going to school for Drafting in 1991/1992. Since then he has been here in the Valley working in the Engineering and Information Technology industry.



His interests are:

Family time, never enough of that.

Guitars and drums, My father is a luthier (builds and repairs stringed instruments) and I am working on apprenticing in that skill. I also play some simple hand drums here and there as well as construct my own wooden drums.

Volkswagen's, I have owned VW's on and off since I was 14 or so. I have never quite kicked the habit. There is just something about them that makes driving one an interactive process rather than just cruising on autopilot.

Black Powder cannon shooting, for the local football team and cross country team.

Community Involvement-

Jesse has been volunteering his time with the Mingus Marauder Football Team for many years. When you hear the loud rumble of the cannon on kickoffs and touchdowns... that is Jesse. He has also been the starting gun for the Annual Mingus Cross Country Invitational Meet for several years. Aside from making lots of noise he offers technical/computer services and has been doing all the game filming and producing for the team. He is also honored to be allowed to become part of the pregame football ritual by composing/reading a pregame motivational speech each week for our one and only Big Red.

Through his position in the engineering field he has also been able to assist in the master planning of the River Front Park Sports Complex and its continued evolution.

He looks forward to joining the council to increase my community involvement and hope to lend his life experience to improving the City we all call home.

Council Member Linda Norman

Council Member Norman was born and raised in Texas. She moved to Cottonwood in 1985 and helped open a family business. Linda worked in the local school system for 13 years as a bookkeeper and secretary. She then went to work for Yavapai County as secretary for Supervisor Chip Davis for 5 years. In November, 2004, Linda retired.

She was elected to City Council in May, 2005.

One of her grown sons lives in Clarkdale.

She has 4 grandchildren, 3 grand-daughters and one grandson. Her grandson is currently serving in the U.S. Air Force. She enjoys reading, golfing and spending time with her grandkids.



Council Member Terence Pratt

Terence Pratt was born in Massachusetts, and raised and educated in Connecticut. His family, including grandparents, could only be described as “working class folks” with strong social consciences. Even though no one in his family had attended college, his parents and grandparents passed on to him a love of learning and a strong sense of justice and humanitarianism. He remembers his paternal grandfather, with only a 6th grade education, teaching him at a very young age how to use a slide rule, how to construct a rain gauge, how important rights for the working man were and how reading Shakespeare could give one valuable insights into what it means to be a human being. He remembers boycotting lettuce and grapes with his family to show support for Caesar Chavez and the migrant farm workers, and at the same time reading John Steinbeck’s *In Dubious Battle* and *The Grapes of Wrath*.



With this background, then, it’s no surprise that he has always been interested in how politics affects the least privileged in our society; it’s also no surprise that he became an English major. He earned his Bachelor’s Degree from Lyndon State College in Vermont and a Master’s from Mississippi State University in English, and then taught there for two years before moving to Arizona almost 14 years ago. He has been employed at Yavapai College for 14 years and from 2001 until August 2007 was the Assistant Dean and then Dean of the Liberals Arts and Social Sciences Division. He is now, once again, a full time English Instructor, having resigned from the Dean’s position last August. Teaching is his love, and his decision to return full time was one of the best he’s made. In his spare time, he reads just about anything he can, research politics, literature and esoteric subjects like Quantum Mechanics, collects junk metal and constructs “primitive” metal sculptures and writes poetry and short fiction.

He is very excited about Cottonwood and serving on the City Council and has much respect for our Mayor, colleagues, the city’s employees and all of our fine citizens. Oh, and his literary hero is Don Quixote, whom he sees as the quintessential optimist, hence his e-mail address. Quixote51@hotmail.com

City of Cottonwood Overview

City Manager

Doug Bartosh, City Manager

Doug Bartosh has been City Manager of the City of Cottonwood since February of 2008. Prior to his appointment as City Manager, he served there four years as the Chief of Police.

Mr. Bartosh served in public safety for over 30 years with 22 of those years spent in public safety management. He has served as a Chief of Police in a large urban department (Scottsdale, AZ) and in a university setting (Arizona State University). He holds a Masters Degree in Organizational Management and a Bachelors Degree in Social Ecology. He has attended several of the most prestigious law enforcement leadership schools in the nation that include the FBI National Academy, the FBI Law Enforcement Executive Development Seminar, the Harvard University John F. Kennedy School of Government Senior Management Institute for Police, and the University of Southern California Delinquency Control Institute.



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City of Cottonwood



Board and Commission Member HANDBOOK

3. ROLES and RESPONSIBILITIES

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Roles & Responsibilities

Board and Commission Overview

The City Council relies on citizen-based boards and commissions to research issues, reach out to the community, to make recommendations that are in alignment with the Council's Mission and Goals and that serve the Cottonwood Community. This citizen-based information and perspective serves as a tool for the City Council during their own research and deliberation.

Board and commission members are not elected officials but rather are appointed officials who serve on recommending and advisory bodies to the City Council. Most board and commission recommendations are subject to the review and approval of the City Council.

Board and commission members are appointed by the City Council, typically serving four (4) year terms. There are currently twelve (12) different boards or commissions.

Typically, citizens serve on only one board or commission at a time. This allows an opportunity for more citizens to participate.

More specific information about roles, responsibilities and City of Cottonwood staff representatives for each board or commission follows in this section.

Roles & Responsibilities

Advisory to the City Council

As you might already expect, City Council members are incredibly busy and active individuals in our community. As hard as they might try, they may not always have time to study every issue as thoroughly as they would prefer. Thus they rely on boards and commissions – as representatives of our citizenry – to conduct some of this research and to form recommendations on proposed decision and/or policies that you believe are in the best interest of the community.

Board and commission members are not elected officials, and as such, are purely advisory bodies. Board and commission members do not establish, but rather recommend, public policy. You are asked to recommend action based on your own expertise, what you hear from other community members and based on the information and analysis of specific issues. Although all board and commission actions and recommendations are subject to the approval of the City Council, the Council has nominated you to this position because they trust that you will exercise sound, independent judgment and do your best to form advice for them. The City Council will consider your recommendations within the parameters of their own deliberations. As a result, the City Council can:

- Follow the recommendation of the board(s) or commission(s)
- Request further study
- Decide to take a different action that has been recommended (usually based on unique circumstances) or
- Decide not to act at all

Roles & Responsibilities

Board and Commission Service

“Pros” and “Cons”

Although becoming a board or commission member can be very rewarding, serving the community within our “perfectly messy” system of democracy is not always easy. Listed below are some of the pros and cons when fulfilling these responsibilities.

Pros

- Make a substantial difference in Cottonwood, potentially the region
- Learning about municipal government, Cottonwood’s government in particular and the processes and procedures used to make decisions and deliver service.
- Making recommendations that preserve and enhance our community for future generations
- Meeting new, interesting and dynamic community members
- Having the opportunity to have some “face time” with the City Council members
- Improving your public speaking skills and confidence

Cons

- Sometimes difficult to find enough time to do the job well
- Receiving telephone calls at work and/or home during inconvenient hours
- Making tough decisions on complex and/or emotional issues
- City Council members are busy and not always easily reached or accessible

Roles & Responsibilities

Characteristics for Success

While every Cottonwood board or commission tends to have its own “personality” and methods for working together to form recommendations, some of the characteristics that successful board and commission members have in common seem to include:

- Interest in City issues and a true willingness to learn about them
- Time enough to prepare for meetings and hearings
- Attendance is steady, consistent and members show up on time for the meetings
- A sense of open-mindedness, patience and fairness
- An ability to envision and consider the long-term effects of a proposed project/issue and to balance those effects with short-term considerations
- The ability to come to a conclusion, making an informed recommendation
- Good “people” skills, i.e., respect one another and/or differing opinions, communicate questions or reasoning in a concise and clear manner and work well with staff and community members.

Roles & Responsibilities

Representing the City

As a volunteer board or commission member, you represent the City of Cottonwood. You may be the only contact individuals may have with the City. Therefore, board or commission members should conduct themselves in an appropriate manner at all times, not just when serving in an official capacity for the City.

Serve your fellow citizens with respect

You often only get one chance to make a good impression and that is especially true for public officials and representatives. When interacting in a public setting, perceptions many times become a reality. Your actions before and after a meeting, your body language, the tone of your voice and many other behaviors will affect how the public views your decisions as a board or commission member.

If citizens perceive that you have listened to them and considered their issues, then they may feel they have received a fair hearing. As a public representative, members should strive to:

- Be honest and straightforward
- Keep your perspective and do not take the discussion or decision personally
- Avoid unacceptable activities prior to a meeting, which may impair your judgment
- Avoid swearing or comments of a racial, religious, sexual or ethnic nature
- Dress properly
- Avoid the appearance of favoritism for friends, applicants or others in the audience who may be associated with an agenda item by not mingling or conversing with them prior to or after a meeting, as possible.

Roles & Responsibilities

Frequently Asked Questions

Who appoints board members? Are board members paid for their service? All members are appointed by and serve without compensation, at the pleasure of the City Council.

What is my term of office? Appointment to a board or commission is generally for a term of four years, or until a successor is appointed by the City Council. Notable exceptions are terms on the Personnel Board, the Public Safety Retirement System Board, the Alternate Benefits and Pension Plan Board, which all serve 2 years; and the Industrial Development Commission which typically serves 4 year terms. Terms begin on the date of appointment when the appointment is to fill an expired term, or when there is a vacancy due to resignation or removal from office. The City Clerk's Office maintains a listing of all City boards and their terms of office.

How long may I serve? There is not currently a limit on the successive number of terms one may serve.

Can I be removed from office? Yes. All board members serve at the pleasure of the City Council. A member of the board or commission may be removed by the City Council at any time with or without cause.

What if I move from the City? In some City of Cottonwood commissions and boards, loss of residence shall be deemed resignation of the office. The City Code requires that members of the majority of appointive boards and commissions be residents of the City and maintain this residency for the duration of their term in office. Please contact the City Clerk to clarify your commission/board residency requirements.

Do I have to resign to seek public office? Yes. Appointed members must resign as a member of the board or commission prior to offering himself or herself for nomination or election to any salaried public office, including city, state or federal offices. Offering yourself means that you have either made a public declaration or candidacy or filed a nomination paper pursuant to A.R.S. 16-311. Resignations are to be made in writing and filed with the City Clerk. The resignation will become effective upon filing with the Clerk's Office.

Do I have to take any oaths for this appointment? Following appointment, board members are required by State law to sign an oath of office. This law requires you to sign and file your oath of office at least 24 hours prior to the time you participate in a meeting or otherwise exercise the powers of the office you were appointed to hold.

If I miss a regularly scheduled meeting, what should I do? Always try to notify the board or commission chair and staff representative ahead of time about any meetings you will not be able to attend. Make sure and review minutes and/or recordings to stay on top of issues and topics.

Roles & Responsibilities

Characteristics for Success (continued...)

Who do I represent? You represent the City of Cottonwood and its citizens when conducting official business and it is best to restrain any personal opinions you might have on a particular issue. Try to avoid making public statements about the board or commission, without the approval of the board or commission, unless you qualify it by stating that it is your personal opinion. If you must state your personal opinion, it is important to differentiate it from the official position of the board or commission.

What should I do if I disagree with the other board or commission members? Occasionally, you will find yourself in disagreement with the vote or direction of your fellow board and commission members. If you find yourself in such a predicament, avoid being negative. Simply state that you disagree with the approach or result and avoid confrontation. Remember that the final decision on what your board or commission recommends will be made by the City Council.

What is the role of the chairperson? In general, the chair ensures that meetings are run in an orderly fashion, that a quorum exists and that all open meeting laws are followed. All questions, whether from the floor or from a board or commission member should be addressed directly to the chair. The chair should work with the staff representative to prepare the agenda. The chair should make sure board or commission members are contacted when there has been a change in the meeting location, date or time.

What if I need to resign from my position? Please submit a letter of resignation in writing to the Mayor, and copy your board chair, your staff representative and the City Clerk.

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City of Cottonwood



Board and Commission Member HANDBOOK

4. PUBLIC RECORDS

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PUBLIC RECORDS

General Information and E-mail

In general, records created or received by board or commission members (regardless of their form) concerning City business or City related issues, are public records and must be available to the public for review. Please provide these documents, or copies, to your board or commission liaison who will forward them to the City Clerk

E-Mail

Board or Commission members may communicate with each other via e-mail concerning City business using the following guidelines:

These communications are City records. Board members and/or commissioners are to e-mail a copy to the City Clerk who will preserve the communication and make it available for public inspection. **Please keep this in mind when responding to others on sometime volatile subjects. The public can, at any time, request complete copies of your e-mail.**

E-mail can not be used as a means of discussion of City business between all or a quorum of board members.

E-mail can not be used to facilitate or form a “hub and spoke” form of communication whereby one member acts as a go-between disseminating communications between other members.

E-mail can not be used as a means of taking “straw polls” on City issues.

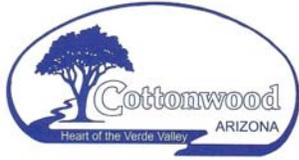
In summary, communications by e-mail can not be used as a means of circumventing the open meeting laws.

A member may use e-mail to distribute information and materials to all other members, however such distribution should not be made with the intent to initiate response from the other members. Any discussion of such communications should be preserved for public meetings. E-mail or information material should be preserved in the manner provided above.

Confidential messages should never be sent electronically, for two reasons. 1) Messages may be sent to the wrong addressee and 2) e-mail should always be used with the assumption that messages will be read by someone other than the intended recipient. Should e-mail communication to or from the City Attorney concerning pending litigation, or legal advice, occur they should contain a warning in the subject heading stating, “Confidential Attorney-Client privileged”. A corresponding copy of the e-mail should also be sent to the City Clerk. The City Clerk will make a hard copy of the e-mail and maintain it in a confidential non-public file.

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City of Cottonwood



Board and Commission Member HANDBOOK

5. TIPS, TOOLS & TECHNIQUES

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Tips, Tools & Techniques

Getting Ready for a Meeting

Be Prepared

- Review and read your agenda packet and staff reports.
- Know the facts of the case or issue and what you are talking about.
- Consider whether or not you may have a conflict of interest on any of the agenda items.
- For high-profile and/or complex and multi-dimensional issues, you may want to contact City staff for a personal briefing or to set up a time to personally inspect the case file. Staff is always willing to help you, as needed.
- If you have questions, call your staff representative as early as possible. This will give him/her an opportunity to thoroughly research your questions and provide information back to you.
- Sometimes site visits may be necessary to completely understand a proposal.
- It is okay to ask neighbors, council members, residents and other board and commission members for their opinions. Note: Be careful not to misuse the e-mail system, for example, inadvertently initiating an on-line meeting with several fellow commission members or Council members. The open meeting laws apply to these kinds of communications.
- Make arrangements so that you can be at the meeting on time.

Tips, Tools & Techniques

The Staff Representative

Each board or commission created by the City Council will have City staff member(s) assigned to serve as the staff representative and coordinator. If a board or commission member needs to contact City personnel for information concerning official business, he or she should always make the request through the staff representative.

It is not the responsibility of board and commission members to decide or direct the priority of work for the department or the individual staff representative that has been assigned to the board or commission.

The board or commission sets priorities for their own agendas. City staff then uses its time to gather the information necessary for the board or commission to make a recommendation or decision in regards to agenda items.

In general, the staff representative will:

- Establish and maintain a positive working relationship with the board or commission member.
- Assist with the establishment of basic board or commission bylaws, structure and operating procedures.
- Work with the chair to provide information and logistical support to board or commission members. Provide board or commission members with the information necessary for making an informed decision.
- Offer advice and counsel to board or commission members, as appropriate and when requested.
- Report the boards or commissions concerns and progress to the City Manager.
- Provide advice regarding the most effective way of presenting board and commission recommendations to the City Council.
- Facilitate interaction between boards and commissions if necessary.
- Make meeting arrangements and prepare and distribute agenda packets to board and commission members.
- Prepare and ensure that legal postings and public notices are completed as requested via the revised Arizona Open Meeting Law and statutes.
- Take notes during the meeting and prepare meeting minutes for approval by the board or commission.
- Provide access to orientation and training for new members.

Tips, Tools & Techniques

Successful Meetings

The business of the board or commission is conducted during a public meeting or hearing. Therefore, it is important that the meeting is conducted in a professional and efficient manner. Meetings, whether one-on-one, in small groups or in public events are the dominant methods used to engage citizens in discussions about the issues they face. Therefore, people charged with engaging communities in problem solving and planning for the future need to have good meeting and planning skills, good facilitation skills and a knowledge about action planning.

Tips for Success

1. Keep the meeting under control
 - It is the chair's responsibility to ensure that the meeting is conducted in an orderly manner.
 - Have a set meeting procedure to follow. Explain it to the public at the beginning of the meeting.
2. *Act promptly*
 - Schedule topics on the agenda in order to avoid inconvenience or delays to applicants, special interests and interested citizens.
 - Follow a published agenda.
 - Ensure that the applicant and/or other interested parties receive due process by rendering a decision in a timely manner.
3. *Bring issues to vote*
 - Avoid becoming bogged down in details or endless requests for additional information.
 - Meet with staff prior to regular meetings to review complex cases, technical reports and to analyze issues.
4. *Ask Yourself*
 - Were the issues clearly defined and fully addressed?
 - Do I have sufficient factual information to reach a decision?
 - Were there meaningful ways for citizens to be involved in this issue/project?
 - Is the request or proposed project consistent with the goals and objective of the community?

Tips, Tools & Techniques

Successful Meetings (continued...)

5. *Make informed decisions*
 - Keep an open mind.
 - Listen carefully to citizen and fellow commission member comments prior to making or announcing your decision.
 - Don't discuss the pros and cons of an agenda item before all testimony and information has been presented.
 - Focus your discussion and comments around the facts of a particular case, issue proposal, rather than making the issue personal, about staff members, other officials, the applicant or citizens.

6. *State the board or commission's findings*
 - Vote on specific actions in the form of a motion and include pertinent findings.

Review the small booklet(s) in the front pocket of this document, which will provide additional information.

Tips, Tools & Techniques

Effective Conflict Management

Public hearings or citizen input meetings can be challenging. However, a public meeting is an important part of the democratic process, especially at the local level, and it should be the goal of all boards and commissions to make their meetings as effective as possible.

Participants can be highly motivated and often nervous, creating the possibility of conflict or contentious exchanges. A board or commission member's role is to guide conflict to positive results, not to eliminate it. When this is done effectively, all participants tend to feel that they have been heard and their issues were considered before decisions were made.

The following are some suggestions that should help in managing conflict and confrontation effectively.

1. Do your homework so you can concentrate on the dynamics of the meeting rather than learning about the topic at hand. Be prepared to ask pertinent questions.
2. Carefully explain the purpose of the public hearing and what action is expected at the conclusion of the hearing. Insistence on playing by the rules is your best tool for conflict management in public hearings.
3. Treat all sides fairly. Set the rules of the hearing early and make sure everyone abides by them.
4. As often as possible, as a sign of respect, address the speaker by Mr./Mrs. and their last name.
5. Impassioned comments most often do not require answers. Try to diffuse the situation by asking specific, neutral questions.
6. Repetitious debates should be avoided with speakers and other commissioners.
7. Board and commission members should refrain from expressing their views on a proposal until testimony has been completed. Comments and questions should be neutral.
8. Following testimony, the chairperson should invite (but not force) board and commission members to discuss their views on the proposal.

Tips, Tools & Techniques

Other Types of Meetings

Some boards and commissions may have workshops, retreats, subcommittees or other types of meetings in addition to the regular public meetings. Check with the staff representative to determine if your board or commission has any additional meetings and the protocols for those meetings. If your board or commission holds executive sessions, be sure to read how the open meeting law applies to executive sessions.

Tips, Tools & Techniques

Basic Parliamentary Procedures

Parliamentary procedure is a set of rules for conducting business at public meetings. Parliamentary procedure is important because it allows everyone an opportunity to be heard and assist in making decisions without confusion. Because implementation of the Robert's Rules of Order can be cumbersome, the rules are often adapted to fit the needs of the organizations.

The following is the adaptation of the rules that should be used:

The Meeting Notice/Agenda

Each board or commission will produce a meeting notice and agenda for posting and distribution at least ten (10) days prior to each meeting. The agenda may include the following:

- Call to Order
- Minutes
- Staff Reports
- Specific Business Items (with general description)
- Announcements
- Adjournment

The method of preparing the agenda is a City staff representative who works with the Chair of the commission to create the agenda. When it is finalized, the representative will work with the City Clerk's office to make sure the final agendas are posted at least 24-hours in advance of the meeting.

Tips, Tools & Techniques

Basic Parliamentary Procedures

Making Motions

- a. A board or commission member uses a motion to propose a resolution or action on an item on the meeting agenda. The process for making motions follows.
- b. A member makes a motion – “I move that...” Speak clearly. State your motion affirmatively – “I move we do...” – do not say “I move we do not...”
- c. The chair asks for a second to the motion – “Second”
- d. The chair states the motion on the floor – “It has been moved and seconded that we...”
- e. After the motion is seconded, the member making the motion may speak to their motion first.
- f. After discussion, the chair asks for a vote on the motion – “All those in favor; all those opposing.”
- g. Votes may be taken by show of hands, by roll call – however the Board and Commission is comfortable taking a vote.
- h. The chair announces the results of the vote.

Other Types of Motions

1. *Motion to lay on the table*
This motion is used to temporarily postpone discussion on an issue so that a more urgent matter can be discussed. Tabling an issue should not be used to prevent discussion or action.
2. *Motion to postpone indefinitely*
This motion is sometimes used to kill a motion without having to discuss or vote on the issue. It is useful when either a yes or no vote on the original motion will have undesirable consequences.
3. *Adjournment and intermission*
Motions should be made, seconded and voted on to take a break and to adjourn a meeting.

Tips, Tools & Techniques

Frequently Asked Questions

When is a motion “in order”? The motion must be relevant to the current agenda item.

Do all motions need a second? Yes, if a motion is not seconded, it dies and the chair asks for another motion or moves on to the next agenda item.

May you debate the motion? Yes, however the debate must be relevant to the motion. The chair may limit the debate to keep the meeting moving.

Can a motion be amended? Yes. All amendments must be relevant to the original motion. Amendments must have a second and are debated and voted on before the original motion is voted upon.

Can a motion be reconsidered? Yes. A member of the majority vote may ask to have a motion reconsidered. The board or commission would vote on the motion to reconsider a previous motion. The motion would be reconsidered if a majority agrees.

What is a “call for a vote” or “move to the previous question”? A member may ask for debate to end on a motion by calling for a vote or move the previous question. A second to the motion is not required. The chair may then immediately ask members to vote on the motion on the floor.

What are some of the common terms used in parliamentary procedure?

Chair – The Chairperson in charge of the meeting.

House – A group of people meeting to conduct business

Floor – The right to speak without interruption.

Table – To set aside a motion and suspend further discussion.

Business – The issue under discussion.

Quorum – The designated number necessary to do business. For a seven-member Board or Commission, a quorum would be four members.

Agenda – Order of business

Second – Back up for proposal on motion

Amendment – Change in the motion

Call For The Question – Declaration of your desire to vote

Majority vote – One more than half or 50%

Unanimous – All must agree

Motion – Proposal for action

Discussion – Debate on the motion

Vote – Final decision on the motion

Previous question – Motion to end debate

2/3rds vote – 66%

City of Cottonwood



Board and Commission Member HANDBOOK

6. ON CAMERA TIPS

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ON CAMERA TIPS

On Camera Tips For Meetings That Are Recorded and/ or Video Taped

Using The Microphones

Only one of the City's meeting rooms has a dedicated recording system, which is the Council Chambers. Even in this room, it is important that board and commission members pay particular attention to the use of microphones (mic for short). The four main requests using the microphones in the Council Chambers are:

1. Make sure you place the mic appropriately on your collar, lapel, etc.
2. Turn your mic on
3. Speak up
4. Turn your mic off

If placed incorrectly, the microphone will pick up your breathing, masking any conversation that is occurring, making minutes nearly impossible to transcribe. It is essential you place it 4-7 inches from your mouth. Try to avoid moving your head from side to side as you speak. Avoid mumbling. Do not shout while wearing a microphone as it can damage the system. When coughing, remember to turn your head away from the mic and cover your mouth. Remember to turn your mic on when you are seated so that you are recorded and that you speak clearly. Remember to turn your mic off at the conclusion of the meeting.

If your meetings are being recorded by a mobile system it is imperative that you speak clearly and towards the recorder.

Dressing for Video

Avoid rich and primary colors. Mid-range colors work best. Examples are medium blue, green, rose, lavender, brown, pink, purple, peach and rust. Other good options: light to medium grey, medium to dark yellow, soft red and dark cream.

Avoid small patterns, stripes and plaids. They can "vibrate" on recordings!

Avoid very light or very dark clothing and do not wear white suits, shirts or blouses without a coat. Pure white tends to wash out your face on camera.

If possible, choose jackets, blouses, shirts and sweaters with strong shoulder lines.

Avoid jewelry that might reflect light into the camera or bump the microphone. Try not to wear anything that would be overly distracting.

ON CAMERA TIPS

On Camera Tips For Meetings That Are Recorded and/ or Video Taped (continued)

Makeup

It may be advisable to use some powder to keep your face from shining.

The most effective eye shadow colors for camera are grey taupe, bronze and apricot. Use an ivory colored shadow for highlighting. White is too harsh. Avoid iridescent shadows.

Lipstick colors should be clear. Frosted lipsticks tend to make the mouth look “muddy” and the teeth yellow. The best choices are clear, rust, rose or soft red. These colors will give the mouth the best definition on video.

General

Remember that “on camera” means “ON CAMERA”. You never know when the lens may be on you. Always be aware of your facial expressions.

Control your movements and keep gestures and motion natural. Be aware of your posture but be relaxed.

If your coat tends to bunch up on your shoulders, tuck it under you before you sit down.

City of Cottonwood



Board and Commission Member HANDBOOK

7. ETHICS

ETHICS

It is the policy of the City of Cottonwood to uphold, promote, expect and demand the highest standards from all of its officials, whether elected to the City Council or appointed to advisory boards. Accordingly, all members of the City Council and City boards, commissions, committees (“elected officials and advisory board members”) shall maintain the highest 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.

The City of Cottonwood and its elected officials and advisory board members all share a commitment to ethical conduct in service to their community. This Handbook has been created to ensure that all elected and appointed officials and advisory board members have clear guidance for carrying out their responsibilities.

LAWS AND POLICIES

General Character

Elected officials and advisory board members are often called upon to make decisions and recommendations that have a profound effect on individuals, groups and the city in general. Balancing diverse constituent interests is a difficult task. The public trust is critical for the preservation of democracy. City officials and representatives shall maintain a level of conduct that reaches for the highest standard and is always beyond reproach. Treating others as you would have them treat you is always a good ethical test.

Honesty and Integrity

Honesty and integrity shall be primary values in all issues. The public trust in the function of local government, including citizen boards and commissions, requires public officials to be consistent, open and truthful with all matters.

Fairness and Respect

Fairness, impartiality and respect shall be given to all citizens and with every issue. Elected officials and advisory board members have an obligation to treat all citizens fairly, such as by dividing time reasonably among potential speakers on an issue at a public hearing or meeting. In reviewing, discussing and deciding issues, City Council members and citizen advisory board members have an obligation to be accessible, open and direct, not only with the other members of the Council or board, but also to the community members, business representatives, neighbors and all members of the public who appear before them. The public is entitled to communicate with their public servants and to understand the position of the Council and board members on all issues.

ETHICS (continued)

Effort

Elected officials and advisory board members have an obligation to attend meetings and to be prepared. It is expected that these officials will review the materials, participate in discussions and make an informed decision on the merits of the issue.

Discrimination and Harassment

Public decision-making must be fair and impartial and shall not be discriminatory on the basis of those protected classes, such as racial and religious groups, outlined in federal, state, and city laws and ordinances. It is the policy of the City of Cottonwood that its elected officials and advisory board members conduct business and operate in a manner that is free from illegal discrimination on the basis of age, sex, color, race, disability, national origin, or religious persuasion, both internally and in the relationships of the elected officials and advisory board members with their constituencies.

In addition, it is the policy of the City of Cottonwood that the elected officials and advisory board members strive to create an operating environment internally and in the relationships of the elected officials and advisory board members with their constituencies, that is productive and free from intimidation, hostility or other adversity. Harassment of any sort, including verbal, physical, or visual, by any elected official or advisory board member, is prohibited and is considered a violation of this Code of Ethics.

Official Representation

Mayor and City Council: It is a normal and expected for the Mayor and City Council members to be able to interact with residents, constituents, visitors and anybody else with interests in the City of Cottonwood so they may hear their concerns, learn their perspectives and generally stay in touch with the public on all matters of interest. This open interaction allows elected officials to stay informed to better perform their duties as council members. It is always hoped that elected officials in any capacity will represent a balanced approach that is in the best long-term interests of their constituency; however, where Council Members feel differently about a particular issue, they are allowed under the basic principles of democracy to take an advocacy position on that issue. Indeed, there are some who would say that elected officials have a responsibility to speak out and represent a minority position if they feel differently about an issue. It is inherent in the function of being on the City Council that council members are able to represent themselves and their positions to the public and to their constituents at any time. However, when speaking at public meetings and events, other than City Council meetings, Council members should also be careful to clarify that they are speaking for themselves when they are not officially appearing as a representative of the Council or officially representing positions of the Council.

ETHICS (continued)

Board and Commission Members: Unless specifically authorized by the City Council and through the specific authority of their board or commission, members of City boards and commissions shall not present themselves as official representatives of their board or commission in forums outside of the meetings of their board or commission. This includes public meetings, meetings of other groups and organizations, in written forums, including newspaper articles or letters to the editor, as well as various electronic formats found on the internet. Presenting one self as a member of an advisory board in other meetings may give the erroneous impression that any statements or opinions offered by that person are official policy of that board or the City, when, in fact, they are operating independent of the public process and outside of the advisory function of that board or commission. There may be unique circumstances where board or commission members are authorized to represent the City in some other forum, such as attending training conferences; however, board and commission members have a more limited scope in terms of the advisory function of the boards and commissions.

Ex Parte Communications

In legal terms, ex parte communication occurs where one party confers with a judge without the other's presence. The inherent problem of such one sided conversations is the loss of due process. In the political process, ex parte communication is often used to refer to situations where people may communicate with officials outside of an open meeting. In judicial and quasi-judicial matters it is strictly forbidden for anyone who may have to make such judicial or quasi-judicial decisions to discuss such matters with defendants, attorneys, applicants, neighbors or others outside of the official public meeting. If such discussions have occurred prior to a meeting, the official should make known the existence of any such discussion immediately at the beginning of the agenda item. A summary of any points discussed should also be made known. It would be better to avoid this type of ex parte communication; however, if it has occurred, the official needs to report it.

There are some distinct differences with the manner in which council members may interact with the public as opposed to advisory board members. Elected officials have the right to meet with anyone to discuss legislative issues facing the City. In addition, elected officials can take an advocacy position on any matter and there is nothing inherently unethical about doing so. Meeting privately prior to a meeting to discuss matters or listen to input from constituents or applicants is an option that elected officials have to consider using their own judgment. It is not inherently illegal or necessarily unethical to do so. Still, the difference between interaction that supports self-serving interests and those that reflect legitimate political interaction needs to be clearly understood. The question of whether such position is self-serving in financial terms is an entirely different matter that has to be

ETHICS (continued)

carefully considered in both ethical and legal terms. An advisory board member, on the other hand, does not set policy or enact legislation, and must understand their primary responsibility is to serve the public in an advisory capacity to the city council. The advisory board member does not have the option to engage in private discussions with applicants or others prior to a meeting and should avoid such activity as a violation of the public trust that meetings will be conducted fairly and openly.

Conflict of Interest

Elected officials and advisory board members shall not be involved in any activity which conflicts with their responsibilities to the City and its residents. The people of Cottonwood have a right to expect independence and fairness without any sense of personal gain behind board member's actions. It is important to recognize that perceived conflict of interest is just as important to avoid as a specific example of conflict.

Financial Disclosure and Self-Interest

Arizona conflict-of-interest laws apply to all elected officials and advisory board members, who must be consistently aware of any potential issues which may appear to be self-dealing or based on self-interest. Officials must not be involved in discussing or deciding any issue over which they have jurisdiction as a Council or board member which may impact the member, or the member's family, financially.

Council members must also comply annually with the Financial Disclosure Act, as outlined in A.R.S. §§ 38-541-545. Each member of the council shall file by January 31st of each year, on a form prescribed by the clerk, a financial disclosure statement, setting forth such information as determined by resolution of the council

Gifts and Favors

Arizona law prohibits elected officials and advisory board members from receiving anything of value or any compensation other than normal salary and/or any expenses related to that person's official duties with the City. (Arizona Revised Statutes § 38-505 (A).) Besides meeting people through official duties with the City, elected officials and advisory board members are likely to have friends, business associates or neighbors who may appear before them in their official capacity. Before accepting what may seem like minor personal gifts, such as meals, entertainment or event tickets, from anyone, including friends and associates, the ethical principles and the appearance of impropriety need to be considered. Under no circumstances shall a council or board member accept a gift or favor that is a bribe, or reflects, to a reasonable person, an effort to improperly influence the member contrary to that member's responsibility to the public to act impartially and on the merits of a matter.

ETHICS (continued)

Gifts, such as seasonal food items, that may be provided shall be considered as gifts to the City in general and must be turned over to the City Manager or his/her designee, such as department heads, to be made generally available to everyone. Gifts of other types of property, event tickets, monetary gifts or any other gifts shall be considered as gifts to the City in general and such gifts shall be promptly turned over to the City Manager for public display or other appropriate handling. These types of property gifts should be generally discouraged. Any instance of offering of any gift or service which constitutes a bribe must be promptly reported to the City Manager and City Attorney for appropriate action. When in doubt about these requirements, elected officials and advisory board members shall contact the City Clerk for further information.

People or businesses that wish to provide gifts, goods or services to any elected official, board member or staff should instead be encouraged to consider donating goods, services or volunteer help through the appropriate City program or to the many community groups and charitable organizations working to improve the community.

Nepotism

As provided in the Cottonwood Municipal Code, no relative of a sitting Council member may be hired by the City, and no relative of a sitting advisory board member may be hired in the City department for which that advisory board member provides guidance.

OPEN MEETING LAW

The majority of information referring to open meeting law is contained in the green “open meeting law” attachment located in the front cover of this handbook. Below are some more common items briefly summarized.

Meetings

Arizona and City laws require that meetings of public bodies be open to the public and that public records be available for inspection. If a situation arises where a quorum of the Council or board or commission members happens to exist outside of a scheduled meeting, discussion of any issues which may come up before that board or any related discussions shall be prohibited. It would be advised for any members who inadvertently find themselves in a quorum to take action among themselves immediately to remove such condition. Open Meeting Laws are found in A.R.S. §§ 38-431 through 431.09 and Public Records Laws are found in A.R.S. §§ 39-121 through 121.03.

Attendance

Mayor and City Council: The Mayor and City Council members are expected to attend all meetings except where there are special circumstances due to illness or required attendance at other official functions. Meetings of the City Council include regular council meetings,

ETHICS (continued)

special council meetings, joint sessions, work sessions, executive sessions, budget review meetings, and other meetings to which a council member is assigned. In cases of personal illness, family emergencies, or other unexpected situations, there may be no option but to miss a meeting; however, for other reasons, such as business meetings, vacations, weddings, graduations, or other personal or family events, the Council member should exercise good judgment in deciding to miss any official meeting and should inform the Council as soon as possible. As per Municipal Code § 2.04.040., Absence, the Mayor shall not absent him or herself from the city for a greater period than fifteen days without the consent of the Council. The City Clerk needs to be contacted at the earliest possible time concerning any meeting in which the Mayor or Council member expect to be absent, so as to ensure a quorum will be present.

Board and Commission Members: Members of City boards and commissions, are expected to attend all regularly scheduled meetings and should make every effort to do so. The specific attendance policy for each board, commission and committee is set out in the Municipal Code, other City ordinance or by Resolution of the Council. In most cases, it is stated that failure to attend three (3) meetings within a year may be cause for removal. The City Council appoints members for their experience, background and perspective in a particular policy area, and desires the benefit of knowledgeable consideration and judgment. In addition, boards, commissions and committees cannot conduct any business unless a quorum is present. Members should notify the staff liaison well in advance regarding any meeting expected to be missed. It should be clearly recognized that such service is first and foremost for the benefit of the community and agreeing to serve in this capacity carries with it a responsibility to provide this service to the community. Members who in good faith realize they cannot attend all or almost all meetings within a year should voluntarily resign and reapply at such time when their schedule permits full attendance.

Disclosure of Confidential Information

Arizona law provides that, during a person's employment or service with the City and for two years thereafter, no member of a City board, commission, committee or the City Council may disclose or use confidential information without appropriate authorization. The information is outlined A.R.S. § 38-504(B). For example, confidential information includes discussions during executive sessions and certain economic development information, such as prospect leads or other proprietary information that may come up in preliminary meetings with prospective applicants prior to the filing of formal applications.

POLITICAL ACTIVITIES

Public Resources

Elected officials and advisory board members shall not use their political or appointed office to advance private interests. Elected officials, advisory board members and candidates shall not

ETHICS (continued)

engage in political campaigning at City meetings or within city buildings. They shall also not use public resources for political campaigning.

Campaigning

Candidates or supporters of candidates shall refrain from circulating petitions during a City meeting and refrain from soliciting City employees to support their specific cause. Council and board members are free to express their opinions about the public issues on the agenda before them, but they must not make campaign speeches at council or board meetings regarding their, or another's, candidacy nor may they urge residents to vote for them or another, through words, signs, buttons or other means, during duly noticed meetings of the City Council or its citizen advisory boards.

Endorsements

City Council members should not seek or accept a campaign contribution or election endorsement from a City employee or association of City employees. City employees who reside within the city limits may sign candidate nomination petitions, but they cannot endorse, contribute money or campaign for candidates for the City Council. In the interest of ensuring the long range goal of everyone working together productively on the same team for the benefit of the citizens, any employee organizations are strongly encouraged to consider their obligations to all the citizens of Cottonwood before taking official positions on campaigns, candidates or political issues.

FACILITIES AND RESOURCES

Expense Reports and Travel

When traveling on City business, elected officials and advisory board members shall conduct themselves professionally as representatives of the City of Cottonwood. Travel guidelines for officials are outlined in the City's Travel Policy. Officials are entitled to be reimbursed for actual and necessary expenses during travel. Expenses must be documented completely and accurately. Officials are asked to contact the appropriate City staff for assistance in setting up travel plans and expense reports.

Use of City Vehicles

Use of City vehicles by Council members and advisory board members to attend meetings, conferences, workshops and similar official events shall be limited to events located at least 10 miles outside of Cottonwood and within the state of Arizona. Such use shall be limited to events in which the Council member or advisory board member is attending as an official authorized of

ETHICS (continued)

the City. The limited number of vehicles within the City fleet shall further limit the use of City vehicles. Coordination of vehicle use shall be through the City Clerk's office, which should be contacted at least two weeks in advance of the event but no less than 48 hours, except in the case of emergency duties.

Use of Equipment and Facilities

Elected officials and advisory board members shall not use City equipment or City facilities for private purposes, except to the extent that they are available to the public. (A.R.S. § 13-1802.)

Software Management

Elected officials and advisory board members shall not make, use, accept, install or download any legal or illegal copies of computer software, programs, documentation, or templates on any City computers or related equipment without first contacting the appropriate City staff assigned to information technologies management, so as to ensure the system is maintained in a safe, legal and integrated manner.

Electronic Mail

City-assigned electronic mail accounts (email) shall be used for City business only. General correspondence for research, fact-finding, constituent information, event notification, citizen input and similar uses is acceptable, as long as the primary purpose is related to official City duties. City-assigned electronic mail accounts may not be used for personal correspondence or for any campaign purpose. All City-assigned electronic mail is considered official City business and must be retained in accordance with the City's records management program. In general, all electronic mail communications are considered public records and subject to disclosure under the public records law in A.R.S. § 39-101 et. seq.

Use of Staff

City Council Members: Under the Council-Manager form of government, the City Council appoints a City Manager, who directs the day-to-day operations of all employees. Council members need to be sensitive to the role of the City Manager and City staff. Council members shall work through the City Manager or the City Manager's staff. Council members may contact staff members about the status of a matter and may ask for information and seek clarification on matters of interest, but Council members shall not expressly or implicitly give orders or direction to staff, except through the decisions of the City Council. They shall not try to privately influence the decisions or recommendations of staff members, but they may share information with staff. Council shall not intervene directly with staff

ETHICS (continued)

on behalf of a particular constituent or organization on a pending matter, but shall participate with the City Council in discussing and deciding policy matters for staff to carry out.

Board and Commission Members: The function and purpose for each advisory board, commission and committee is set by the City Council through approved City codes, ordinances and/or resolutions. In general, the purpose of the boards and commissions is to serve in an advisory capacity to the City Council. In certain circumstances this includes administrative duties that may involve program implementation or making decisions on related matters included in the carrying out of policy and legislation set by Council. Appointed board members shall work through the staff liaisons of their board to seek clarification on official matters or for additional information or other documentation, as necessary, for the board members to be able to adequately perform their advisory functions. In no case shall an advisory board member seek to direct the work duties, work program, priorities or functions of the City Manager or staff members.

PROCEDURES

Conflict of Interest

Legal Advice and Opinions: General questions about conflict of interest issues, or other ethical questions discussed in this Handbook can be directed to the City Attorney's Office (928) 634-_____. There may be cases where the conflict of interest issues are less clear and in those cases written requests regarding conflict of interest can be submitted to the City Attorney. Such inquiries should be submitted well in advance of the meeting and should include all necessary information regarding financial issues and other information necessary to determine if a conflict of interest exists. Requests related to conflicts of interest, A.R.S. §38-507 must be kept confidential; however, official opinions of the City Attorney are required by this law to become a public record.

Uncertain Status: The question of conflict of interest may not arise until a meeting is underway. If a council member or advisory board member thinks there may be a conflict of interest due to specific business relations or financial impacts, and they are unable to obtain sufficient information at that time, then the safest course of action would be to declare that a conflict may exist and for that member to step down for that agenda item. The underlying issue is whether the official or an immediate close relative will have a direct financial gain from a decision.

ETHICS (continued)

Declaring a Possible Conflict: If an official believes that a conflict of interest (or even a possible conflict) exists, then he or she should disclose the fact as soon as possible. As soon as an elected official or advisory board member realizes that a conflict exists on a given matter, they must disclose the conflicting interest on the record for the minutes. From that point on, the official shall not participate in any manner (by discussing, questioning or voting) in that matter.

Declaring a conflict and not participating should be recognized as a necessary part of preserving public trust and should not be avoided simply because of inconvenience. Officials should declare possible conflicts to avoid any appearance of impropriety. This does not typically involve situations where the official is merely a friend or neighbor of someone coming before the council or board. In those cases it should be understood that first and foremost the council member or advisory board member has an obligation to serve the public interest even if that means having to make a decision that they are uncomfortable with. Declaring “conflict of interest” should not be considered an optional exercise where the member may be uncomfortable with a controversial issue. Abuse of the conflict of interest position is also a problem from an ethical standpoint. Conflict of interest is limited to specific conditions of financial involvement.

Violations and Penalties

City Council Members: The public holds the most important tools in enforcing ethical standards from elected officials when it comes time to vote.

Advisory Board Members: The City Council has the option to remove any advisory board member based on legal or ethical violations.

City of Cottonwood



Board and Commission Member HANDBOOK

8. APPENDIX

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Appendix

City of Cottonwood “Quick Facts”

Founded:	1879
Incorporation:	1960
Population (2007):	11,200
Size:	15+ Square Miles
Elevation:	Average 3,320 feet above sea level
Longitude & Latitude:	34° 43' 56"N 112° 1' 7"W
Climate:	Average low: 45.2 Average high: 78.2 Average precipitation is 11.8" per year
Median Age:	41 years
City Budget:	\$14,673,910 in 2007
Tax Rates:	City Property Tax: 0% City Sales Tax: 3.0

Slogan: *“The Heart of the Verde Valley”*

Appendix

Elected Officials Contact Information

Title/Name	Mailing Address E-Mail Address	Home #	Office / Cel #
<u>MAYOR</u>			
Diane Joens	827 N Main St 86326 mayor@dianejoens.com	928-634-4112	451-4907/300-2873

CITY COUNCIL

Tim Elinski	827 N Main St 86326 tim@verdebuilder.com	928-649-2296	
Linda Norman	827 N Main St 86326 linjono@cableone.net	928-634-9096	
Karen Pfeifer	827 N Main St 86326 rokapie@q.com	928-634-7151	928-634-3030
Terence Pratt	827 N Main St 86326 Quixote51@hotmail.com	928-645-4426	
Jesse Dowling	827 N Main St 86326 jdowling@cottonwoodaz.gov	928-634-300-3743	
Ruben Jauregui	827 N Main St 86326 rjauregui@copttonwoodaz.gov	928-634-5526 (msg)	

Appendix

Leadership Team Contact Information

TITLE	NAME	MAILING ADDRESS	OFFICE / CEL	PHONE
City Manager	Doug Bartosh	827 N Main St	928-634-5526	821-2269
Executive Assistant To the City Manager	Kyla Allen	827 N Main St	928-634-5526	300-0299
Development Svcs Manager	Dan Lueder	111 N Main Street	928-634-0186	
Administrative Svcs Manager	Rudy Rodriguez	826 N Main St	928-634-0060 x 202	
Public Services Manager	Richard Faust	150 S 6 th St	928-639-3200	
Natural Resources Director		827 N Main St	928-634-5526	
City Attorney	Steve Horton	827 N Main St	928-634-5526	
City Clerk	Marianne Jiménez	827 N Main St	928-634-5526	
City Judge	Doug LaSota	665 E Mingus Ave	928-634-7537	
Community Development Director	George Gehlert	111 N Main St	928-634-5505	
Economic Development Director	Casey Rooney	821 N Main St	928-634-5505	
Fire Chief	W. Mike Casson	191 S 6 th St	928-634-2741	
Human Resource Manager	Iris Dobler	826 N Main St	928-634-0060 x 217	
Library Manager	Vanessa Ward	100 N 6 th St	928-634-7559	
Police Chief	Jody Fanning	199 S 6 th St	928-634-4246	

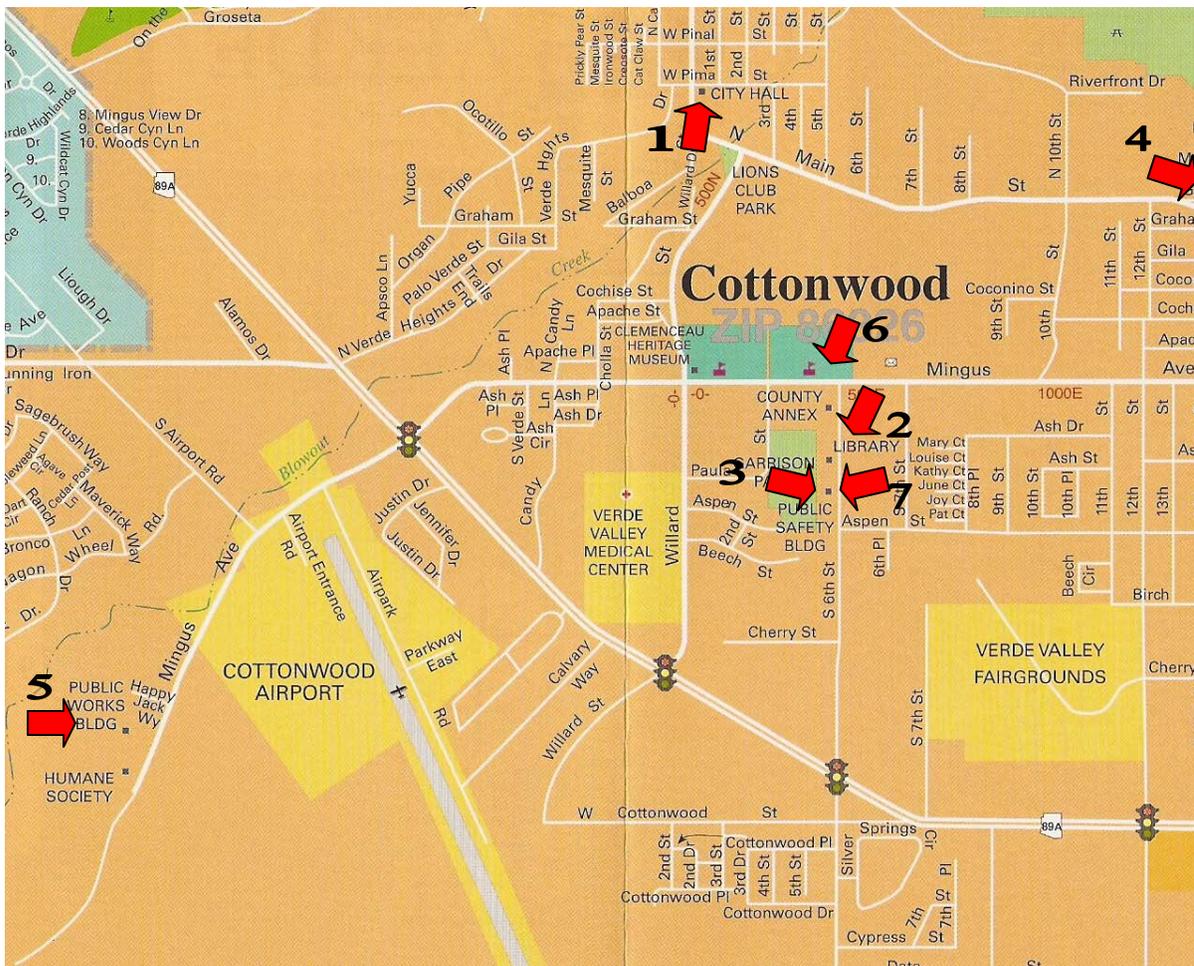
Appendix

Leadership Team Contact Information (Continued...)

TITLE	NAME	MAILING ADDRESS	OFFICE / CEL PHONE
Public Works Director	Morgan Scott	1490 E Mingus Ave	928-634-8033
Wastewater Superintendent	Debra Breitreutz	1480 W Mingus Ave	928-634-3413

Appendix

Map of City Offices



1. City Hall – 827 N Main Street
Economic Development – 825 N Main Street
HR/Finance Department – 816 N Main Street
2. Library – 100 S 6th Street
3. Public Safety – 191 S 6th St (Fire) & 199 S 6th St (Police)
4. Community Development and Utilities – 111 N Main Street
5. Public Works Department – 1490 West Mingus Avenue
6. Municipal Court – 824 N Main Street
7. Parks & Recreation Department – 150 S 6th Street

Appendix

Employee Vision, Mission Statement and Values

City of Cottonwood

Employee Vision, Mission Statement and Values

Our Vision:

Our Vision is to be recognized by the community and our peers as a model city dedicated to progressive leadership, employee development, innovation, technology and economic, social and environmental sustainability as well as the successful provider of efficient and effective public services.

Our Mission Statement:

Cottonwood employees are committed to providing responsive, innovative, respectful and sustainable services to our community members and visitors in an effort to effectively improve the quality of life in our community.

Our Values:

- Treat everyone with dignity and respect
- Ensure for Uncompromising Integrity
- Communicate and Actively Listen
- Be Responsive and accountable
- Be Innovative
- Be a professional in Attitude, Conduct, and Appearance
- Strive to provide effective and efficient services

Appendix

Boards and Commissions

Planning and Zoning Commission	(2.56.020 Powers and duties)
Development Review Board	(2.60.020 Powers and duties)
Parks & Recreation Commission	(2.68.070 Powers and duties) Advisory Commission
Self Insurance Trust Board	(2.72.070 Powers and duties)
Library board	(2.52.040 Board of Trustees—Powers) Recommends
Youth Commission	(2.92.030 Powers and duties) Recommends
Industrial Development Authority	(Resolution Number 902 – 10/22/85)
Municipal Property Corporation	(Resolution Number 1343 – 9/1/92)
Alternate Benefits & Pension Plan Board	
Airport Commission	(2.96.070 Duties)
Senior Commission	(2.104.020 Advisory Capacity)
Board of Adjustments	(Resolution Number 2396 – 10/07/08)
Personnel Manual	(Employee Manual)

Appendix

Board and Commission Members, Terms and Contact Numbers

Please note, the various lists of commissions are kept as complete and up-to-date as possible but will often have missing data. For the most complete information, please contact the City Clerk at City Hall 634-5526.

AIRPORT COMMISSIONERS			
TERM		NAME	PHONE
6/08/19 – 7/1/11	2 years	Doug Palquist	634-2478
7/1/09 - 7/1/11	2 years	Billy Tinnin	646-6919
7/1/10 - 7/1/13	3 years	Jim Moeny	649-2255
7/1/11-7/1/14	3 years	Rex Williams	
7/1/11 - 7/1/21	3 years	Harold Cope	

Appendix

Board and Commission Members, Terms and Contact Numbers

COTTONWOOD ECONOMIC DEVELOPMENT COUNCIL / CHAMBER OF COMMERCE REPRESENTATIVES	
NAME	PHONE
Doug Bartosh	634-5526
Dave Beach	649-6864
Margie Beach	639-8060
Richard Dehnert*	634-2236
George Gehlert	634-5505
Colleen Gilboy*	646-7437
Mark Hobson	634-7319
Ken Jones	
Sheri Lee	
Leonard Miller*	
Casey Rooney	634-5505
Tom Schumacher	
Lori Simmons	
Phil Terbell	634-9086
Debbie Wilden	634-7593

* Not a CEDC Member

Appendix

Board and Commission Members, Terms and Contact Numbers

This Board has been combined with the Planning and Zoning Commission.

DESIGN REVIEW BOARD		
TERM	NAME	PHONE
N/A		

Appendix

Board and Commission Members, Terms and Contact Numbers

ADMINISTRATIVE HEARING OFFICERS		
TERM	NAME	PHONE
	Awaiting Review of Qualified Applicants 7-15-10	

Appointed by the P&Z Commission

Appendix

Board and Commission Members, Terms and Contact Numbers

INDUSTRIAL DEVELOPMENT AUTHORITY

NAME	PHONE	WORK
Patricia Bonomo	634-1910	694-7710
Mark Hobson	634-7319	637-7319
Michael Warren	649-6312	634-4128
Ruben Jauregui	634-5388	
Shiloh Hoggard		649-6400

Appendix

Board and Commission Members, Terms and Contact Numbers

JUDICIAL REVIEW COMMISSION			
TERM		NAME	PHONE
7/20/11-1/22/14	2.5	Mary Eichmann	

Appendix
Board of Commission Members, Terms and Contact Numbers

LIBRARY BOARD			
TERM		NAME	PHONE
1/04/09 – 1/4/12	3 years	DeDe Ewald	
1/1/07 - 1/4/10	3 years	Thelma Fisher	
1/4/09 – 1/4/12	3 years	Jay Fleischman	
1/1/07 - 1/4/10	3 years	Tyler Harding	
1/04/09 - 1/4/12	3 years	Susan Hawley	
1/04/09 - 1/4/12	3 years	Elizabeth Fuller	649-0000
1/1/07 - 1/4/10	3 years	Joan Lambard	

Appendix

Board and Commission Members, Terms and Contact Numbers

MAGISTRATE			
TERM		NAME	PHONE
4/13/09 – 4/13/11	2 years	A. Douglas LaSota	634-7537

ASSOCIATE MAGISTRATE			
TERM		NAME	PHONE
9/7/09 – 9/6/11	2 years	Joan Dwyer	
3/3/10 - 3/3/12	2 years	Anna Young	928-445-7137
3/3/10 – 3/3/12	2 years	C.Kenneth Ray II	928-441-1653

Appendix

Board and Commission Members, Terms and Contact Numbers

PARKS & RECREATION COMMISSION			
TERM		NAME	PHONE
9/17/09 – 12/7/10	3 years	Ron Hollis	274-4405
8/16/11 – 8/16/14	3 years	William Bowden	649-0380
8/16/11 - 8/16/14	3 years	Doug Hulse	649-0278
8/16/11-8/16/14	3 years	Tim McKeever, Sr.	
12/7/07 - 12/7/10	3 years	Carol A. Nielsen	634-4860
8/16/11-8/16/12	1 year	Bob Richards	
9/17/09 – 8/16/11	3 years	Dennis Burke	639-1863

Appendix

Board and Commission Members, Terms and Contact Numbers

PLANNING & ZONING COMMISSION			
TERM		NAME	PHONE
7/8/10 – 12/31/12	3 years	Jean Ellen Wilder	760-505-3088
1/1/08 – 12/31/10	3 years	Jake Gonzales	649-0113
2/17/09 – 12/31/11	3 years	Raymond Cox	649-6009
1/5/10 – 12/31/12	3 years	Robert Williams	634-5898
1/1/08 - 12/31/10	3 years	Ed Kiyler	649-3994
1/5/10 - 12/31/12	3 years	Diane Lovett	634-2767
6/2/09 - 12/31/10	1.5 years	Judd Wasden	649-1808

Appendix

Board and Commission Members, Terms and Contact Numbers

VOLUNTEER PENSION PLAN BOARD TRUSTEES				
TERM		NAME	POSITION	PHONE
Required Staff		Diane Joens	President	
Required Staff		Mike Casson	Ex Officio	
Required Staff		Rudy Rodriguez	Ex Officio	
1/1/08 - 12/31/09	2 years	Pete Bailey		
1/1/08 - 12/31/09	2 years	Brady Casson		
1/1/08 - 12/31/11	3 years	Ian James		
1/1/08 - 12/31/11	3 years	Dave Vogel		

Appendix

Board and Commission Members, Terms and Contact Numbers

PERSONNEL BOARD			
TERM		NAME	PHONE
1/1/09 – 12/31/10		Karen Pfeifer	634-3030
1/6/09 – 12/31/10	2 years	Ed Kiyler	649-3994
1/6/09 – 12/31/10	2 years	Elaine Far5	639-2040
1/1/09 – 12/31/10		Richard Contreras	634-2741
1/1/09 – 12/31/10		Brent Kinney	634-0060 x 242
1/1/09 – 12/31/10		Morgan Scott	634-8033
1/1/09 – 12/31/10		Iris Dobler	634-0060 x 217

Appendix

Board and Commission Members, Terms and Contact Numbers

SELF INSURANCE TRUST BOARD			
TERM		NAME	PHONE
9/16/09 – 9/15/10	2 years	Linda Norman	
9/16/09 – 9/15/10	2 years	Danna Quinn	
9/16/09 – 9/15/10	2 years	Joan Cerny	
9/16/09 – 9/15/10	2 years	Craig Hoffbauer	
9/16/09 – 9/15/10	2 years	Jesus Rodriguez	

Appendix

Board and Commission Members, Terms and Contact Numbers

SENIOR COMMISSION		
TERM	NAME	PHONE
Five (5) members with (4) at least 55 years of age who shall be Cottonwood residents; terms of three (3) years (after initial staggering of terms)		
1/6/09 – 12/18/11	Max D Brown	639-2840
2/19/08-12/18/08	Evelyn Couturier	634-0366
2/19/08-12/18/08	James Strande	634-3374
2/19/08-12/18/08	Janice Mongtomery	634-7172
VACANT		
Two (2) members which provide services; no residency requirements; terms of three (3) years (after initial staggering of terms)		
2/19/08-12/18/08	Dave Puzas	639-2607
2/19/08-12/18/08	Elaine Bremner	634-7256

The Cottonwood Senior Commission was formed by the City of Cottonwood to promote services and information resources for the maturing population. This is an advisory board to the Cottonwood City Council on senior issues. The role of the Commission is to study, review, evaluate and make recommendations to the City Council regarding matters affecting senior citizens.

Appendix

Board and Commission Members, Terms and Contact Numbers

YOUTH COMMISSION		
TERM	NAME	PHONE
10/6/09 – 8/1/10	Payton Cooke	634-4646
10/6/09 – 8/1/10	Mayra Garcia	202-6553
10/6/09 – 8/1/10	Staci Hewitson	202-8594
10/6/09 – 8/1/10	Andrew Hickey	
10/6/09 – 8/1/10	Alexis Knowles	639-3702
10/6/09 – 8/1/10	Chloe Kramer	
10/6/09 – 8/1/10	Britney Lawler	649-2107
10/6/09 – 8/1/10	John Cory Lawler	649-2107
10/6/09 – 8/1/10	Spencer Midkiff	
10/6/09 – 8/1/10	Rachel Olsen	634-9579
10/6/09 – 8/1/10	Jill Peterson	
10/6/09 – 8/1/10	Tera Ponce	639-1057
10/6/09 – 8/1/10	Zachery Romfo	649-9646
10/6/09 – 8/1/10	Brady Casson (adult)	202-8896
	Jason Little – P&Rec Mgr and Special Events Coordinator	

Appendix

Board and Commission Members, Terms and Contact Numbers

Board of Adjustments		Phone #
Walt Good		852-0263
Millard Meccia		634-5137
Kent Hellman		634-1459
Robert Richards		639-2611
Jean Ellen Wilder		760-505-3088

Appendix

City of Cottonwood Website

The City of Cottonwood's website: www.ci.cottonwood.az.us lists dates, times and locations of upcoming board and commission meetings.



Cottonwood, AZ

83 °F

Clear

at 1:46 PM



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City of Cottonwood, 827 N. Main St, Cottonwood, Arizona 86326 | 928-634-5526

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**Thank you for serving
your community!**

The Riggins Rules

Suggested Do's and Don'ts for the Conduct of Public Hearings and the Department of Members of Boards, Commissions & Other Bodies.

By Fred Riggins

Former Chairman of the Phoenix, Arizona Planning Commission

1. Don't accept an appointment or nomination to a Board, Commission, or Council unless you expect to attend 99.9999 percent of the regular and special meetings, including inspection trips, briefings and public functions where your presence is expected.

If your participation fails below 85 percent during any 6 month period, you should tender your resignation. You aren't doing your job. You aren't keeping well enough informed to make intelligent decisions, and you are making other people do your work for you and assume your not inconsiderable responsibility. Your effectiveness and the regard given to your opinions by other members will be in direct ratio to your attendance.

2. Do create a good impression of city government. Remember that this is the first important contact that many of the people in the audience have had with the administration of their city and for some, this is the most important matter in which they have ever been involved. Many will never be back again and many will never have another such contact and experience. Your performance will create in their minds the picture, which they will always carry with them of "the way the city is run." Make it as pleasant and comforting a picture as possible.

3. Do be on time. If the hearing scheduled at 7:30, the gavel should descend at the exact hour, and the bearing begun, if there is a quorum. If you have to wait ten minutes for a quorum and there are 100 people in the room, the straggler has wasted two full working days of someone's time besides creating a very bad beginning for what is a very important occasion for most of those present

4. Don't dress like a bum. Shave, wear a tie and remember that a coat is never out of place. The people in the audience think you are a very important person. Don't disappoint them by your appearance, conduct, and attitude.

5. Don't mingle with friends, acquaintances, unknown applicants or objectors in the audience before the meeting & during a recess period, if it can be politely avoided. You will invariably create the impression with the uninformed that there is something crooked going on, especially when you vote favorably on the case of the applicant you were seen conversing with. When the other fellow's case comes up and you deny it, he says, "Well, it's easy enough to see that you've gotta know the right people if you ever expect to get anywhere around here." Save your socializing for some other time and place.

6. Don't discuss a case privately and as a single member of a body with an applicant or objector prior to the filing and prior to the hearing if it can be politely avoided. In the event that it is not avoidable, and many times it is not, be very non-committal, don't be too free with advice and by all means explain that you are only one member of the body. That you have not had an opportunity to study the matter thoroughly, that you have not seen the staff recommendation, and that you have no way of knowing what opposition there may develop or what will occur at the public hearing.

Be certain that the person concerned understands that you cannot commit yourself in any manner, except to assure him that he may expect a fair and impartial hearing. Even if the case looks pretty good to you it is wise to be pessimistic about the chances of securing approval. If you give him encouragement and any advice and he is then denied, he will hate you until your dying day and tell everyone in town that he did just exactly what you told him to do and then, like a dirty dog, you voted against him.

7. Do your homework. Spend any amount of time necessary to become thoroughly familiar with each matter which is to come before you. It is grossly unfair to the applicant and to the City for you to act on a matter with which you have no previous knowledge or with which you are only vaguely familiar. And you will make some horrible and disturbing decisions.

8. Don't indicate by word or action how you intend to vote during the portion of the hearing devoted to presentations by the applicant, presentations by any persons appearing in objection, and comments by members of the staff.

During this period your body is the judge and the jury and it is no more appropriate for you to express an opinion as to the proper decision, prior to hearing *all* of the testimony, than it would be for a judge or any member to announce his firm conviction in the middle of a court trial regarding the guilt or innocence of the defendant. This is not clearly understood by a majority of persons sitting on hearing bodies.

It is not too difficult to phrase one's questions or comments in a manner that implies that you are seeking information rather than stating an irrefutable fact and that your mind is closed to further argument

One does not say, "I happen to know that the applicant has no intention of placing an apartment building on this site. In fact, it has been sold subject to zoning and the purchaser intends to put a mobile home park here if he can get a special permit." Rather than this, one could say, "We have been furnished with some information which indicates that perhaps your plans are not too firm regarding the development you propose. In fact, there are some who are concerned about a rumor that the property is being sold and that the new owner planned to put a mobile home park at this location, if he can secure the necessary permit. Would you care to comment on this concern of the neighborhood and tell us if there is any truth in this rumor?" The same result is accomplished, the information is brought

out and made part of the public record and you don't look as if you are leading the attack to secure the defeat of the applicant's request.

9. Don't fail to disqualify yourself if either directly or indirectly you have any financial interest in the outcome of the hearing, *and* let your conscience be your guide where it could be said that moral, ethical, political, or other considerations, such as personal animosity, would not permit you to make a fair and impartial decision.

In disqualifying yourself, *do not* state your reasons inasmuch as the mere statement of your reasons can be construed as exerting influence on your fellow members. To avoid all accusations of undue influence, it is generally wise to leave the room and ask that the record show that you did so and that you did not indicate by word or action whether you were in favor of, or opposed to, the matter under discussion.

10. Do rotate the seating in some regular manner each successive meeting to prevent a "strong" member from gradually dominating a "weak" and indecisive member always seated next to him. This will also prevent the forming of little cliques or a not infrequent grouping of members to the left of the Chair who always oppose those to the right of the Chair, regardless of the merits of the case, to the great detriment of the applicant, the City and other interested parties.

11. Do be polite and impartial. Be as helpful as possible to the nervous, the frightened and the uneducated, and patient with the confused.

12. Do be attentive. Those appearing before you have probably spent hours and hours rehearsing their arguments. The least you can do is *listen* and make them think that you are as interested as you should be. Refrain from talking to other members, passing notes and studying unrelated papers.

13. Don't interrupt a presentation until the question period, except for very short and *necessary* clarifying remarks or queries. Most applicants have arranged their remarks in a logical sequence and the thing about which you are so concerned will probably be covered if you force yourself to be quiet for a few minutes. You can wreck his whole case by a long series of unnecessary questions at the wrong time. He will be your enemy forever.

14. Don't permit more than one person at the podium or microphone at any one time.

15. Don't permit a person to directly question or interrogate other persons in the audience. All questions should be addressed to the Chair and to the hearing body. When this person has finished his discussion and stated the questions to which he would like to have answers, then the Chair will permit those who care to make an answer to come forward and do so, but only voluntarily. Do not permit anyone to *demand* answers to all and sundry questions, especially if it is obviously done for the purpose of harassment

16. Don't use first names in addressing *anyone at all* during the course of the hearing. This includes audience, applicants, members of your particular body, even if the person concerned is your brother or your best friend.

Nothing, repeat nothing creates a more unfavorable impression on the public than this practice. It is poor "hearing manners," destroys the formality of the occasion, and makes the uninformed certain that some sort of "buddy-buddy deal" is about to be consummated. If you just can't bring yourself to call someone Mr. or Mrs., use the third person form and call him "the applicant," or "the person who is objecting," or "the gentleman (or lady)," who is appearing here in connection with this case.

17. Do show great respect for the Chair, always addressing the Chairman as "Mr. Chairman," "The Chairman," or "Chairman Jones," and always wait to be recognized before continuing. This will set an example for applicants and others wishing to be heard and will contribute a great deal toward the orderliness of the proceedings.

18. Don't be critical of attorneys who sometimes feel impelled to give unnecessarily lengthy presentations on behalf of their clients. Avoid the strong temptation to make matters as difficult as possible for them. They are just trying to make a living and must convince their clients that they are really earning the rather substantial fee which they feel their service merits.

19. Don't indulge in personalities and don't permit anyone else to do so.

20. Don't try to make the applicant or any other person appearing before you look like a fool by the nature of your questions or remarks. This is often a temptation, especially when it is apparent that someone is being slightly devious and less than forthright in his testimony. But don't do it. If you must "expose" someone, do it as gently and kindly as possible.

21. Don't become involved in altercations. Some persons seem to come to hearings with the express purpose of "telling them guys down there how the cow ate the cabbage." If you answer their irrelevant rantings, you are immediately involved in a *fight*.

Don't answer or try to defend yourself. You are there to hear testimony and make decisions based thereon, not to head up a debating society. Remember, you are the judge and jury. In most cases, it is sufficient to say, "thank you for coming here and giving us the benefit of your thinking. I am sure that the members of this body will give your remarks serious consideration when they are making their individual determinations on the merits of this case. Is there anyone else who wishes to be heard?"

22. Do invite interested parties to come forward where they can see when an applicant is discussing or talking from a diagram, site plan, or exhibit which is not visible to the audience.

23. Do not permit people to speak from the audience. If it is important enough for them to speak at all, it is important for them to be recognized, come forward, give their name and address, and say what they care to, if their remarks are pertinent.

24. Do not permit people to leave the podium or the microphone and approach closer to the hearing body except in unusual circumstances, usually to show a small exhibit or to explain some detail. This ordinarily breaks down into a small mumbling session at one end of the dais with one or two members of the hearing body, the others are uncertain about what is going on. The conversation usually does not get recorded, cannot be heard by the audience, and is almost impossible to control from the Chair.

25. Don't become involved in neighborhood quarrels or wind up as the referee even if you are a veritable Solomon. No matter how fair or impartial you should be, both sides will be mad at you. Stick to the merits of the case and rule out-of-order testimony which is irrelevant, personal hearsay, and not pertinent to the matter being heard.

26. Don't be vindictive and "punish" the applicant for some real or imagined affront to you or your Body on some previous occasion, perhaps bearing no relation to the present hearing. It must be assumed that he is there legally, he has a right to be heard, and he has a right to a fair and impartial hearing on the merits of his present case without reference to something which he might or might not have done in the past or will perhaps do in the future.

27. Don't try to be a hero to beautiful women, little old ladies, widowed mothers with tiny infants in their arms, and the financially and socially distressed. Be sympathetic, but objective, and don't get carried away with such a strong desire to help that you throw the rule book out the window. Ninety-nine times out of a hundred you will do them some kind of questionable service at the expense of their neighbors or the City and your kind-hearted action will come back to haunt you much sooner than anyone could have imagined. Stick to the rules.

28. Don't assume the role of fairy godfather to those who have become involved in bad business deals or other self-imposed difficulties.

29. Do not fail to give a reason when making a motion for approval or denial of an applicant's request. If you fail to do this, the applicant, any objectors, a reviewing body of higher authority, or the courts may well assume that your decision was an arbitrary one not supported by the facts and should be reversed. Always mention the staff recommendation.

30. Do not take staff recommendations lightly. These recommendations are made after much study by professional people with years of experience in their field and are based on pertinent laws, ordinances, regulations, policies, and practices developed by you and your predecessors. The recommendations of a good staff in

possession of all the facts will almost always produce a *technically correct* recommendation.

Your job is to temper this recommendation with information developed during the hearings, which was not available to the staff. It is not unusually for the staff to voluntarily reverse or change the details of its recommendation during the course of a hearing. Always announce the staff recommendations prior to hearing any testimony and always make appropriate mention of it in the final decision.

31. Don't forget that the staff is there to help you in any way possible. It is composed of very capable professional people with vast experience. Lean on them heavily. They can pull you out of many a bad spot if you give them a chance. Or they may just sit and let you stew, if you do not give them the respect, which is their due. Remember that their usual practice is to remain silent unless they are specifically asked to comment. Most of them consider it presumptuous and unprofessional to inject any unsolicited comments into the hearings. Always ask them to comment prior to the final vote.

32. Don't try to answer technical questions even if you are sure that you know the answer. You probably *don't* and will wind up looking like a fool. Refer these matters to the staff. That is one of the things they are there for. They have intimate day-by-day working experience with all the pertinent ordinances and can nearly always give a timely, up-to-the-minute, professional dissertation on any subject in their field. And besides, it makes them feel more important and helps create an image of competency, which is most helpful in assuring the public that their case has received more than a cursory glance and an arbitrary decision.

Lay members of a hearing body who "explain" ordinances to the audience usually wind up their less than accurate remarks with the pretty lame comment, "That's the way I understand it and if I am wrong, I would appreciate it if the staff would correct me." The staff usually does correct them, and ordinarily at some length. *Don't* try to show how smart you are because you're not.

33. Don't try to ease your conscience and toss the applicant a bone by granting him something less than he asked for, something he doesn't want, and something he can't use. In all cases where it is appropriate, *give him what he asked for or deny it*. To do otherwise will only encourage applicants to ask for the "moon and the stars" in the hope that they will, at the worst, get the minimum requirements. A reputation for approving or denying applications as filed will result in much more realistic requests and make your job much easier.

34. Do vote by roll call, except for routine administrative matters. This is wonderful character training for each member of the body and emphasizes the "moment of truth" when he must look the applicant in the eye, make his own individual decision, and say "*aye*" or "*nay*" in a loud clear voice, all alone, with no one to hide behind. The alternate voting method is difficult for the Secretary to record, doesn't mean anything on a tape recording, is many times quite confusing

and gives cowards an opportunity to change their minds and vote twice when they are caught in the minority.

35. Don't show any displeasure or elation, by word or action, over the outcome of a vote. This is very bad hearing manners and won't lead to the maintenance of a friendly cooperative spirit among members of the Body. It will lead to the creation of little cliques whose members vote in a block and become more interested in clobbering each other than in making fair and equitable decisions.

36. Do discourage any post-mortem remarks by applicants, objectors, or members after the final vote and decision are announced, especially those afterthoughts designed to reopen the case. It will invariably result an unpleasant wrangle. Just say, "I'm sorry, but the final decision has been made. If you wish to submit additional testimony, it will be necessary for you to state your reasons by letter and the Body will decide at a subsequent meeting whether or not they wish to reopen the case. The next case on the agenda will be _____."

37. Do not hesitate to continue a case or take it under advisement if more information or greater deliberation is truly necessary, but do not use these administrative actions merely to avoid or delay making a decision before a hostile applicant or audience.

38. Do sit down and have a long soul searching session with yourself if you find you are consistently "out in left field," that no one seems inclined to second your profound motions, and that you are quite often a minority of one. You might be theoretically right, and probably are, but give some thought to what is practical, and just. Don't be "stiff-necked" in your opinions. Give a little.

39. Don't select chairmen on a seniority basis alone and *don't* pass the office along from member to member as a reward and honor. The nicest guy in the world, the hardest working, the most interesting and your most valuable member can be indescribably horrible in the Chair. This is just one of those facts of life which is hard to explain, but unfortunately, all too true.

As occasion presents itself, give prospective Chairmen a chance to preside, head up a sub-committee, report on special projects, and otherwise prepare themselves and demonstrate their abilities and leadership under pressure.

THE ARIZONA OPEN MEETING LAW



This information is compiled and provided by:

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Message from the Arizona Ombudsman

“Let the people know the facts and the country will be safe.”

– Abraham Lincoln, 1861

The operation and activities of government and of government officials are issues of interest to the general public. The Open Meeting Law is in place to ensure that the people’s business is conducted publicly. The law also helps public officials do their jobs more efficiently and effectively.

Effective January 1, 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, new legislation expanded the Ombudsman-Citizens’ Aide Office to provide free services to citizens and public officials to help untangle the public access web. The duties of the Ombudsman include: preparing materials on public access laws, providing training, coaching and assisting citizens, investigating complaints, requesting testimony or evidence, conducting hearings, making recommendations, reporting misconduct, and referring violations to the Office of the Attorney General for enforcement.

This pamphlet contains information relating to the Arizona Open Meeting Law and is provided to serve as a quick reference for you. Part I of the pamphlet contains a copy of the text of the Open Meeting Law Statutes. Part II of the pamphlet contains Chapter 6 of the Arizona Agency Handbook, which explains the Open Meeting Laws.¹ Part III of the pamphlet provides a summary of recent statutory changes, recent case law, and recent Attorney General Opinions.² Part IV provides the Ombudsman’s statutory authority to educate and investigate matters relating to public access laws.

For more information, or to schedule training, please call the Ombudsman’s Office at 602-277-7292 or 800-872-2879. You can also send a letter to Arizona Ombudsman-Citizens’ Aide 3737 N. 7th St. Suite 209 Phoenix, AZ 85014, fax a letter to 602-277-7312, send an e-mail to ombuds@azoca.gov, or come into the office. Of course, you can always visit the Ombudsman’s website at www.azoca.gov.

Patrick Shannahan
Arizona Ombudsman – Citizens’ Aide

¹ Please note that the Arizona Agency Handbook was last revised in May 2001. For a summary of recent activity, please see Part III.

² Part III is not an exhaustive list of recent activity.

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Article 3.1. Public Meetings and Proceedings

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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 internet 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 internet 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 internet 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 distribute open meeting law materials prepared and approved by the attorney general to a person elected or appointed to a public body prior to 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.

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 the state shall file a statement with the secretary of state stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.
 2. The public bodies of the counties, school districts and other special districts 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 such additional public notice as is reasonable and practicable as to all meetings.
 3. The public bodies of the cities and towns shall file a statement with the city clerk or mayor's office stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.
 4. The public bodies of the cities and towns that have an internet web site shall post all public notices of their meetings on their internet web site 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 city or town web site or that temporarily or permanently prevents the usage of all or part of the web site does not preclude the holding of the meeting for which the notice was posted if all other public notice requirements required by this section are complied with.
- B. If an executive session will be held, the notice shall be given to the members of the public body, and to the general public, stating the specific provision of law authorizing the executive session.
- C. Except as provided in subsections D and E, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public.
- 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.
- 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, and if, prior to 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 such calendar period, and at a regular place and time, may post public notice of such meetings at the beginning of such period. Such 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 prior to the meeting, except in the case of an actual emergency under subsection D.
- 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. Such 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, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, where the matter was not listed on the agenda provided that a statement setting forth the reasons necessitating such 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 prior to the executive session.
- K. Notwithstanding subsection H, 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, provided that:
 - 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 sub-

ject 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

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 any provision of this article in favor of open and public meetings.

Part II

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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 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 amended in 1974, 1975, 1977, 1978, 1982, 1983, 1985, 1990, and extensively in 2000. 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. 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, such 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.

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 Community Hosp. Ass'n*, 163 Ariz. 33, 785 P.2d 1221 (App. 1989).

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 *Arizona Press Club, Inc. v. 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. 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, except the minute-taking requirements. A.R.S. § 38-431.01(A), (B). An advisory committee is defined as any group
officially established, upon 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. A staff committee consisting exclusively of employees of the public body is not an advisory committee.

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, although subcommittees are not required to keep minutes. A.R.S. § 38-431.01(A), (B). 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. 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 facsimile machines, telephones, and electronic 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). 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.

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.

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 of the matters under consideration. So informed, the public can enjoy meaningful participation. 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 the filing by the public body of a disclosure statement identifying where public notices of its meetings will be posted. Public bodies of the state must file this statement with the Secretary of State. A.R.S. § 38-431.02(A)(1). *See* Form 7.1. Public bodies of counties, school districts, and

other special districts must file this statement with the Clerk of the Board of Supervisors. *Id.* § (A)(2). Public bodies of cities and towns must file the statement with the City Clerk or Mayor’s office. *Id.* § (A)(3). The location identified 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, the public body must give notice of each of its meetings by posting a copy of the notice in the public place identified in the disclosure statement and by giving “such additional public notice as is reasonable and practicable as to all meetings.” A.R.S. § 38-431.02(A). *See* Forms 7.2, 7.3, 7.4. Various public bodies fulfill this obligation to provide “additional notice” by providing news releases to the news media 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 providing information on the Internet or on public access television.

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 notice it issues: “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). 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 under the circumstances.” *Id.* § (D). An actual emer-

gency 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.

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)." A.R.S. § 38-431.02(B). 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. 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 any matter listed on the agenda 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. Board 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.

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(G) 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. A.R.S. § 38-431.01(G). 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(G), 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 or presiding officer 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, except that minutes need not be taken of meetings conducted by subcommittees and advisory committees. A.R.S. § 38-431.01(B).

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 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. 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 id.* 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.

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.* § (B)(4). 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 v. Board of Educ. Trustees*, 122 Ariz. 95, 593 P.2d 649 (1979).
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.

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). 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. I79-130.
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. 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 has voted to hold an executive session, the chairman of the public body should ask the public to leave and remove 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 seven 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.

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).

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 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 Employee Salary Discussions. 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 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. This provision permits the public body to instruct its representatives regarding the purchase, sale or lease. 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. 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).

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 7.7.2 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, such as 6:00 A.M. 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* Sections 15.25.2 - 15.25.5. The public body may want to include a statement such as the following in any notice it issues: “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.”

7.10.2 Telephone Conferences. 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 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. 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 or video 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 conference call.”
2. The public meeting place where the public body normally meets should have facilities that permit the public to observe and hear all telephone or video communications.
3. The public body should develop procedures for clearly identifying all members participating by telephonic or video communications.
4. The minutes of the meeting should identify the members participating by tele-

phonic or video communications and describe the procedures followed to provide the public access to all communications during the meeting.

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

7.11 Ratification.

7.11.1 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 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.

7.11.2 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. The decision to ratify must be taken within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence. A complaint from the public or the press that a public body has violated the Open Meeting Law should be investigated promptly, as a court may view this communication as the “discovery” from which the thirty day period runs.
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.

7.12 Sanctions for Violations of the Open Meeting Law.

7.12.1 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. 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 v. Board of Educ. Trustees*, 122 Ariz. 95, 97, 593 P.2d 649, 651 (1979). 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, 617 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.

7.12.2 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. 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.

7.12.3 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.*

7.12.4 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 or of the opportunity to be heard,” 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.*

7.12.5 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).

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

Form 7.1

Disclosure Statement

Section 7.6.3.1

STATEMENT OF LOCATIONS WHERE ALL NOTICES OF THE MEETINGS OF THE [NAME OF PUBLIC BODY] WILL BE POSTED

TO: THE HONORABLE SECRETARY OF STATE and THE CITIZENS OF ARIZONA

Pursuant to A.R.S. § 38-431.02, the [name of public body] hereby states that all notices of the meetings of the [name of public body] and any of its committees and subcommittees will be posted [identify the location where notices will be posted and include the hours during which such locations are open to the public, for example, “in the lobby of the State Capitol located at 1700 West Washington, Phoenix, Arizona, and at the press room of the State Senate Building, 1700 West Washington, Phoenix, Arizona. Both locations are open to the public Monday through Friday from 8:00 a.m. to 5:00 p.m. except legal holidays.”] Such notices will indicate the date, time, and place of the meeting and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting.

Dated this ____ day of _____, 20____.

[name of public body]

By [authorized signature]

Form 7.2

Notice of Public Meeting of a Public Body

Sections 7.6.3, 7.7.4, 7.10.1

NOTICE OF PUBLIC MEETING OF THE [NAME OF PUBLIC BODY]

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location].

The agenda for the meeting is as follows:

[List the specific matters to be discussed, considered, or decided.
See Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20 ____.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.3

Notice of Public Meeting of a Subcommittee or Advisory Committee of a Public Body

Sections 7.6.3, 7.10.1

NOTICE OF MEETING OF THE [NAME OF SUBCOMMITTEE OR ADVISORY COMMITTEE] OF THE [NAME OF PUBLIC BODY]

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of committee] of the [name of public body] and to the general public that the [name of committee] of the [name of public body] will hold a meeting open to the public on the [date, time, and exact location].

The agenda for the meeting is as follows:

[List the specific matters to be discussed, considered or decided.
See Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20____.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.4

Notice of Regular Meetings of a Public Body

Sections 7.6.3, 7.6.6, 7.7.4, and 7.10.1

NOTICE OF REGULAR MEETINGS OF THE [NAME OF PUBLIC BODY]

Pursuant to A.R.S. § 38-431.02(F), notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold regular meetings on the [specific day of month] of each month during the year [year]. The meetings will begin at [time] and will be held at [exact location].

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20 ____.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.5

Notice of Meeting and Possible Executive Session of a Public Body

Sections 7.6.8 and 7.10.1

NOTICE OF MEETING AND POSSIBLE EXECUTIVE SESSION OF THE [NAME OF PUBLIC BODY]

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location] for the purpose of deciding whether to go into executive session. If authorized by a majority vote of the [name of public body], the executive session will be held immediately after the vote and will not be open to the public.

The agenda for the meeting is as follows:

[Include a general description of the matters to be discussed or considered, but exclude information that would defeat the purpose of the executive session. *See* Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

This executive session is authorized under A.R.S. § 38-431.03, Subsection (A), paragraph [list applicable provision].

Dated this ____ day of _____, 20____.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.6

Notice of Combined Public Meeting and Executive Session

Sections 7.6.8, 7.7.4, and 7.10.1

**NOTICE OF COMBINED PUBLIC MEETING AND EXECUTIVE
SESSION OF [NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location]. As indicated in the agenda, pursuant to A.R.S. § 38-431.03(A)(X), the [name of public body] may vote to go into executive session, which will not be open to the public, to discuss certain matters.

The agenda for the meeting is as follows:

[List the specific matter to be discussed, considered, or decided. See Form 7.7 (Sample Notice and Agenda). Identify those matters that may be discussed or considered in executive session and identify the paragraph of A.R.S. § 38-431.03(A) authorizing the executive session, but exclude information that would defeat the purpose of the executive session.]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20 ____.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.7

Sample Notice and Agenda of Public Meeting and Executive Session

Sections 7.6.4, 7.6.8, 7.7.2, 7.7.4, and 7.10.1

NOTICE AND AGENDA OF MEETING OF THE ARIZONA COMMISSION ON THE ENVIRONMENT

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Arizona Commission on the Environment and to the general public that the Arizona Commission on the Environment will hold a meeting open to the public on January 21, 2000, beginning at 8:30 a.m. in Room 201, Health Building, 1740 West Adams, Phoenix, Arizona. As indicated in the following agenda, the Arizona Commission on the Environment may vote to go into executive session, which will not be open to the public, to discuss certain matters.

The agenda for the meeting is as follows:

- I. Call to Order. (Chairman Smith)
- II. Approval of Minutes of October 19, 1999 Meeting.
- III. Committee Reports. (Oral reports of the following committees and discussion thereon.)
 1. Computer Committee. Report by the chair of the Commission's Advisory Committee on proposals for acquiring a new computer system for the Commission.
- IV. Personnel.
 1. Consideration of applicants for Director of the Commission. The Commission may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(1). The names of the applicants may be obtained by contacting the Commission's Executive Secretary.
 2. Selection of Director of the Commission. The Commission may defer a decision on this matter to a later date.
- V. Litigation.
 1. *State v. Acme Polluters*. Discussion and decision concerning possible settlement. The Commission may vote to discuss this matter with the Commission's attorneys in executive session pursuant to A.R.S. § 38-431.03(A)(3) and (4). The Commission may decide the matter in the public meeting or defer decision to a later date.
 2. Instituting Litigation. Discussion with and instruction to the Com-

mission's attorneys concerning the filing of an enforcement action against The Brown Corporation. The Commission may discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(2), (3), and (4). The Commission may decide the matter in the public meeting or defer decision to a later date.

VI. Consent Agenda.

Approval of routine warrants, purchase orders, travel claims, employee leave and transfer requests, and employee resignations. (Documentation concerning the matters on the consent agenda may be reviewed at the Commission's office.) Any matter on the Consent Agenda will be removed from the Consent Agenda and discussed as a regular agenda item upon the request of any Commission member.

1. Approval of purchase order numbers 1204, 1205, and 1206 for purchase of computer equipment.
2. Approval of travel claims for employees John Q. Smith and Mary M. McGee.
3. Approval of resignation of Daniel Warren and resolution to thank Daniel Warren for ten years of service.

VII. Call to the Public.

This is the time for the public to comment. Members of the Board may not discuss items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to directing staff to study the matter or scheduling the matter for further consideration and decision at a later date.

VIII. Announcements.

Announcements of future meeting dates and other information concerning the Commission.

A copy of the agenda background material provided to Commission members (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, Room 402, Health Building, 1740 West Adams, Phoenix, Arizona.

Dated this 7th day of January, 2000.

ARIZONA COMMISSION ON THE ENVIRONMENT

Chris Jones
Executive Secretary

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.8

Certification of Posting of Notice

Section 7.6.9

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the attached notice was duly posted at [place] on [date and time] in accordance with the statement filed by the [name of public body] with the [name of public officer with whom the statement was filed].

Dated this ____ day of _____, 20____.

[name and title of person signing the certificate]

Form 7.9

Special Notice of Emergency Meeting

Section 7.7.9

**SPECIAL NOTICE OF AN EMERGENCY MEETING
OF [NAME OF PUBLIC BODY] HELD [DATE]**

Pursuant to A.R.S. § 38-431.02(D), notice is hereby given that an emergency session of the [name of public body] was held on [date, time, and exact location].

At the emergency session the [name of public body] [describe the specific matters discussed, considered, or decided, or in the case of matters considered in an emergency executive session, a general description of the matters considered, provided that no information is included that would defeat the purpose of the executive session].

Dated this ____ day of _____, 20____.

[name of public body]

By [authorized signature]

Form 7.10

Minutes of Public Meeting

Sections 7.8.1 and 7.8.2

**MINUTES OF PUBLIC MEETING OF THE [NAME OF PUBLIC BODY]
OF MEETING HELD [DATE]**

A public meeting of the [name of public body] was convened on [date, time, and exact location]. Present at the meeting were the following members of the [name of public body]: [names of members present]. Absent were: [names of members absent]. The following matters were discussed, considered, and decided at the meeting:

1. [Generally describe all matters discussed or considered by the public body.]
2. [Describe accurately all legal actions proposed, discussed, or taken and the names of persons who proposed each motion].
3. [Identify each person making statements or presenting material to the public body, making specific reference to the legal action about which they made statements or presented material.]
4. [Other required information. *See* Section 7.8.2(6), (7), (8).]

Dated this ____ day of _____, 20____.

[name of public body]

By [authorized signature]

Form 7.11

Minutes of Executive Session

Sections 7.8.1, 7.8.3

**MINUTES OF EXECUTIVE SESSION
OF THE [NAME OF PUBLIC BODY] HELD [DATE]**

An executive session of the [name of public body] was convened on [date, time, and exact location]. The [name of public body] voted to go into executive session at a public meeting on [date, time, and exact location]. Present at the executive session were the following members of the [name of public body]: [names of members present]. Absent were: [names of members absent]. Also attending the executive session were: [names of those present including the reasons for their presence, for example, attorney for the public body, etc.]

The following matters were discussed and considered at the meeting:

1. [Generally describe the matters discussed or considered by the public body.]
2. [Describe all instructions given to attorneys or designated representatives pursuant to A.R.S. § 38-431.03(A)(4), (5) and (7).]
3. [If the executive session is held as an emergency session, include the statement of reasons for the emergency consideration. *See* Section 7.8.2(7).]
4. [Include such other information as the public body deems appropriate, including information necessary to establish that executive session was proper and appropriate. *See* Section 7.8.3(5).]

Dated this ____ day of _____, 20 ____.

[name of public body]

By [authorized signature]

Form 7.12

Notice of Action to be Ratified

Sections 7.6.4, 7.10.1, and 7.11.2

**NOTICE OF PUBLIC MEETING OF THE [NAME OF PUBLIC BODY]
FOR THE PURPOSE OF RATIFYING PAST ACTION TAKEN
IN VIOLATION OF OPEN MEETING LAW**

Pursuant to A.R.S. § 38-431.05, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location].

The purpose of the meeting is to ratify an action of the [name of public body] that may have been taken in violation of the Open Meeting Law. This action involved:

[Describe the action.]

The public may obtain 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 relate to this action to be ratified at [identify the location and include hours] at least 72 hours in advance of the meeting.

Dated this ____ day of _____, 20____.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.13

Employee Notice of Executive Session

Section 7.9.4

[DATE]

[Name and Address of Officer
or Employee who is the subject
of discussion at the executive session]

Dear [Name of employee]:

This is to advise you that the [name of public body] will meet in executive session at its next meeting on [date, time, and exact location] to discuss [describe nature of matters to be discussed or considered]. You may request that the discussion take place during the [name of public body's] public meeting rather than in executive session, by contacting the undersigned not later than [date and time by which notification must be given*].

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Very truly yours,

[authorized signature]

* Since the public body must post its notice of either a public meeting or an executive session at least twenty-four hours before the meeting, the deadline for the employee to exercise his or her right to demand a public meeting must be more than twenty-four hours before the meeting.

Part III

Recent Changes to Arizona's Open Meeting Law

Statutory Changes	54
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STATUTORY CHANGES

A.R.S. § 38-431 amended by *Laws 2007, Ch. 71, § 1*:

- ◆ Defines advisory committee or subcommittee as any entity, however designated, that is officially established on motion or order of a public body or 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. § 38-431.01 amended by:

Laws 2006, Ch. 294, § 1

- ◆ Requires cities and towns with websites and a population of more than 2,500 persons to post a statement showing the legal actions taken during the meetings or any recordings of the meeting on their website within three working days after the meeting.
- ◆ Requires cities and towns with a population of more than 2,500 persons and with internet websites to post the approved minutes of all city and town council meetings on the internet website within two working days after the approval of the minutes.
- ◆ Provides that a technological problem or failure that prevents the posting of public notices or other usage of the website does not preclude the holding of the meeting, if all other public notice requirements are complied with.
- ◆ Section 38-431.01(E) was also amended to read, “[a]ll or any part of a public meeting of a public body may be recorded by any persons 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.” (emphasis added.)

Laws 2007, Ch. 71, §2

- ◆ Requires subcommittees and advisory committees to take meeting minutes or record all of their meetings, including executive sessions.
- ◆ Requires subcommittees and advisory committees of cities and towns with websites and a population of more than 2,500 persons to post a statement describing legal actions taken during a meeting or any recording of a meeting on its website within ten working days of the meeting.

A.R.S. § 38-431.02 amended by *Laws 2002, Ch. 247, §1* and *Laws 2006, Ch. 294, §2*:

- ◆ Allows a member of a public body, during a public meeting, 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 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.

- ◆ Requires cities and towns with websites and a population of more than 2,500 persons to post notices of their public meetings on their websites and give additional public notice as is reasonable and practical as to all meetings.
- ◆ Provides that technological problem or failure that prevents the posting of public notices or the usage of the website does not preclude the holding of a meeting, if all other public notice requirements are complied with.

RECENT CASE LAW

Tanque Verde Unified School District No. 13 of Pima County v. Bernini, 206 Ariz. 200, 76 P.3d 874 (App. Div.2 2003)

- ◆ The Arizona Court of Appeals determined that the term “negotiations” found in A.R.S. § 38-431.01(A)(7), which provides an exception to the Arizona Open Meeting Laws for discussion 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, should be read narrowly and that the District violated the open meeting law by conducting site selection process for proposed high school in executive session.
- ◆ The court of appeals also held, however, that the District timely ratified selection of site for new school by holding public meeting and conducting single vote on issue, even though vote was held more than a year after decision was made in executive sessions which violated open meeting laws. The District had no basis for knowing that executive sessions had violated open meeting laws and only site selection process, not vote, was done in violation of open meeting laws.
- ◆ When a party claims a public body held an illegal executive session, the public body must prove that the session was properly conducted.
- ◆ A party who asserts that a public body has violated the open meeting law has the burden of proving that assertion.

Long v. City of Glendale, 208 Ariz. 319, 93 P.3d 519 (App. Div.1 2004)

- ◆ The open meeting law does not compel the general public to know the content of every public meeting or search public records pertaining to those meetings.
- ◆ The policy supporting the open meeting law is to open the conduct of the business of government to the scrutiny of the public and to ban decision making in secret.
- ◆ The policy behind the open meetings law did not include attributing knowledge to every citizen of every action taken at every public meeting.
- ◆ Legal action taken by the city had to occur at a public meeting.

State ex. rel. Thomas v. Schneider, 212 Ariz. 292, 130 P.3d 991 (App. Div. 1, 2006)(review denied September 26, 2006)

- ◆ The Arizona Court of Appeals concluded that the attorney-client privilege applies to all qualifying communications between an attorney and a client. City officers may claim their privilege in conversations with the city attorney for matters relating to their official powers and duties.
- ◆ Attorney-client privilege applies to communications between a government official and a government attorney in a grand jury proceeding against the government official.
- ◆ Communications that occur with governmental bodies in executive session can be subject to the attorney-client privilege even though there are a number of persons present during the communication.
- ◆ Statements made in executive session are confidential whether or not they are otherwise privileged, subject to only a few exceptions.
- ◆ Attorney cannot testify about communications made during executive session even pursuant to a grand jury subpoena.

ATTORNEY GENERAL OPINIONS ISSUED SINCE 2001

Opinion I04-001: As a public body created by statute, the Joint Underwriting Association is subject to all the public process laws applicable to the Department of Insurance, including state procurement, public records, open meeting, personnel code, fiscal controls, and governmental immunity provisions.

Opinion I05-004: 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 open meeting law, a board member may not propose legal action in an e-mail as a device to circumvent the requirements in the open meeting law.

Opinion I07-001: The Board of Trustees appointed by the political subdivisions under A.R.S. section 11-952.01 constitutes a public body under A.R.S. section 38-431(6). In administering an employee benefits program on behalf of the political subdivisions that created it, the Board constitutes an instrumentality of those political subdivisions. Moreover, one or more of the participating political subdivisions appoints each trustee on the Board. Therefore, the Board falls within the definition of “public body” in A.R.S. section 38-431(6) and must comply with the Arizona Open Meeting Law.

Opinion I07-013: The open meeting law (OML) does not prohibit a member of a

public body from speaking to the media regarding matters that may come before the public body. A meeting subject to the OML requires a gathering of a quorum of members of the public body, and a gathering does not occur when members merely hear or read a comment, including a proposal for legal action, made by another member in the media.

Opinion 108-001: When a public body violates the OML by discussing, proposing, or taking legal action on a matter not properly noticed on the agenda, that violation does not nullify all other legal action taken at the meeting when the violation has no demonstrated prejudicial effect on the complaining parties.

Part IV

**Arizona Revised Statutes
Title 41. State Government
Chapter 8. Agencies of the Legislative Department,**

Article 5. Office of Ombudsman–Citizens’ Aide

41-1376.01. Additional powers and duties; definitions 60

41-1376.01. Additional powers and duties; definitions

- A. In addition to the powers and duties prescribed in section 41-1376, the ombudsman-citizens aide shall appoint two assistants, one of whom shall be an attorney, to help the ombudsman-citizens aide investigate complaints relating to public access laws involving an agency. The assistants shall train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. The assistants shall prepare interpretive and educational materials and programs in cooperation with the ombudsman-citizens aide and shall distribute to elected or appointed public officials the public access laws and educational materials concerning the public access laws.
- B. The annual report of the ombudsman-citizens aide shall include the following information about public access:
 - 1. The number of inquiries that are received from the public, the media and government agencies.
 - 2. The number of inquiries that are received about state agencies, county agencies, city or town agencies, school districts and other local jurisdictions.
 - 3. The number of requests that are received concerning public records and public meetings.
 - 4. The number of investigations that are conducted and the results of the investigations.
- C. For investigations made pursuant to this section, the ombudsman-citizens aide may:
 - 1. Make inquiries and obtain information considered necessary subject to the restrictions in section 41-1377.
 - 2. Enter without notice to inspect agency premises with agency staff on the premises.
 - 3. Hold hearings.
 - 4. Notwithstanding any other law, have access to all agency records, including confidential records, except:
 - (a) Sealed court records without a subpoena.
 - (b) Active criminal investigation records.
 - (c) Records that could lead to the identity of confidential police informants.
 - (d) Attorney work product and communications that are protected under attorney-client privilege.
 - (e) Confidential information as defined in section 42-2001, except as provided in section 42-2003, subsection M.
 - (f) Information protected by section 6103(d), 6103(p) or 7213 of the internal revenue code.
 - (g) Confidential information relating to section 36-2903, subsection I, section 36-2917, section 36-2932, subsection F or section 36-2972.
 - (h) Confidential information relating to sections 36-507, 36-509 and 36-2220.
 - (i) Documents that are protected by section 214 of the critical infrastructure information act of 2002 (6 United States Code section 133a) or by 49

Code of Federal Regulations Part 1520.

- (j) Information that is protected by section 214 of the critical infrastructure information act of 2002 (6 United States Code section 133a) or 49 Code of Federal Regulations part 1520 or critical infrastructure information as defined by section 41-1801 on government owned facilities that are classified as critical infrastructure by the federal government or as defined by section 41-1801.
- 5. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence to which the ombudsman-citizens aide may have access pursuant to paragraph 4 of this subsection. The ombudsman-citizens aide may only issue a subpoena if the ombudsman-citizens aide has previously requested testimony or evidence and the person or agency to which the request was made has failed to comply with the request in a reasonable amount of time.
- D. It is contrary to the public policy of this state for any agency or any individual acting for an agency to take any adverse action against an individual in retaliation because the individual cooperated with or provided information to the ombudsman-citizens aide or the ombudsman-citizens aide's staff.
- E. For the purposes of this section:
 - 1. "Agency" has the same meaning prescribed in section 41-1371 but includes a public body as defined in section 39-121.01, subsection A, paragraph 2.
 - 2. "Public access laws" means:
 - (a) Title 39, chapter 1.
 - (b) Title 38, chapter 3, article 3.1.
 - (c) Any other state statute or rule governing access to public meetings or public records.

