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CITY OF FLAGSTAFF

Board and Commission Members'

RULES AND OPERATIONS MANUAL

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"Service to Community"

ADOPTED BY RESOLUTION NO. 2014-37

BOARD AND COMMISSION MEMBERS' RULES AND OPERATIONS MANUAL

PREFACE

This Board and Commission Members' manual provides guidelines for City board* or commission* members. This information is designed to closely follow the rules and regulations that apply to the City Council and to delineate their roles and responsibilities in order to create a uniform public process for the City of Flagstaff's public bodies. Most of the information contained in the manual will apply to your board and commission; however, your board or commission may have additional special provisions that are specific to its function. If you are unsure whether or not a specific rule applies to your board or commission, or, if you have further questions concerning any aspect of your duties and responsibilities, you should ask your staff liaison for clarification or contact the City Clerk's Office.

**For the purpose of this manual, the terms "board" and/or "commission" include those boards, commissions, authorities, or committees which have been established by the City Council to perform functions in accordance with City and State law.*

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INTRODUCTION

Welcome to the official City of Flagstaff family and the challenging and rewarding arena of public service! The Flagstaff City Council and staff thank you for your active participation in the governing process of our community.

The board and commission process is essential to the successful function of City government; and your contributions are invaluable. As a City board or commission member, your role is to help shape the future of the City of Flagstaff. You will be studying and recommending policy direction on a variety of issues vital to the City's future. This manual has been developed to help you meet the challenges you will face along the way.

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

Your deliberations help the City Council to do its job. Sometimes Council decisions will directly incorporate your recommendations into their decisions, while other times your input will be one of many factors to be weighed by the Council prior to a final decision.

As a board and commission member, you are now a City official and you are bound by ethical standards, State laws, and City policies. You will work closely with City staff, policymakers, citizens, other government representatives, lobbyists, and grass-roots organizations. This manual is intended to guide you through these areas and assist you in your service as a board and commission member.

Your decisions will be reviewed and scrutinized by the public, the City Council, media, and other interested parties.

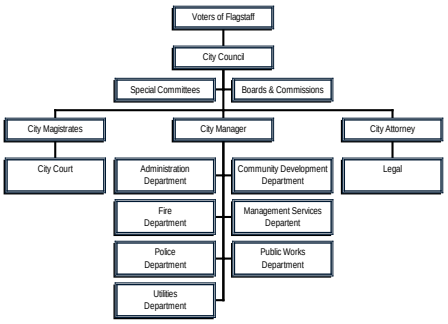
It is important to understand that your personal behavior, both inside and outside public meetings, will be observed and open to criticism by others. Ethics, good judgment, and dignity are the foundation of public service and the credo of City officials. By meeting these expectations, you will enhance our community's perception of city government.

Being a commission member is often challenging, but if you do it well, it will be an exciting and rewarding experience as you help shape the future of our community. We hope that this Board and Commission manual will help prepare you for serving as a member of the City of Flagstaff's boards and commissions program.

FLAGSTAFF MUNICIPAL GOVERNMENT

ORGANIZATION

The Flagstaff City Charter (included with this manual) was adopted by the city voters in 1958 and is the basic governing authority of the City. The City Charter establishes a Council-Manager form of government. This means that the City Council provides leadership and formulates the laws and general policies of the City which are then administered by the City Manager. The Charter also outlines the duties and responsibilities of each area of City government.



CITY COUNCIL

The City Council consists of a Mayor and six Councilmembers who are elected at large to serve as the legislative body of the City. The Mayor is elected every two years and acts as Chairperson of the Council presiding over Council meetings. Councilmembers hold staggered, four-year terms, with three seats decided every two years. Shortly after every City General Election, the Council chooses a Vice-Mayor to serve in the absence of the Mayor.

Consistent with applicable laws and regulations enacted by the Federal and State Governments, the City Council bears sole responsibility and exercises sole authority in establishing the policies governing the operation of the City of Flagstaff. The City Council enacts local legislation, adopts budgets, and establishes public policy. To do this, the Council sets goals and objectives based on strategic planning; recommendations from the City Manager, City Attorney, boards and commissions; public input; and through the budgeting process.

BOARDS AND COMMISSIONS

Article 5, Section 1, the Flagstaff City Charter authorizes the City Council to create boards or commissions and to grant to them duties and powers consistent with the Charter. Boards and commissions lie at the heart of citizen involvement in local government. The strength of the board and commission process is its ability to conduct detailed analysis and involve our community at the grassroots level. Board and commission members are appointed by and serve solely at the discretion of the City Council.

CITY MANAGER

The City Manager is the City's administrative head and is directly responsible to the City Council. The City Charter grants the City Manager a non-voting seat on the Council. This allows the City Manager to take part in Council discussions. The City Manager implements Council policies and directives and makes recommendations to the Council on measures necessary for the efficient and effective operation of municipal services. It is the Manager's responsibility to direct the preparation of the City's annual budget and submit it to the Council

for approval. In addition, the City Manager oversees the day-to-day operation of the City and directs the activities of City employees.

CITY ATTORNEY

The City Council also appoints the City Attorney. The City Attorney's Office serves as the legal branch of the City, representing the City's legal interests and rights, providing legal advice, and prosecuting criminal complaints. Among other things, the City Attorney’s office drafts and reviews the City's legal documents and issues legal opinions.

CITY CLERK

The City Clerk is appointed by the City Manager with the approval of the Council. The Clerk conducts City elections, ensures compliance with the Open Meeting Law, and maintains the official records of the City. The City Clerk administers the City’s board and commission program and conducts board and commission member training, as well as maintaining membership rosters for the City’s boards and commissions and processing board and commission applications. Be sure to provide any changes in your contact information as soon as possible to the Clerk’s Office so that your record is accurate.

CITY DIVISIONS

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

MEMBERSHIP ON CITY BOARDS AND COMMISSIONS

GENERAL

The strength of the boards and commissions lies in their ability to provide detailed review of specific issues and to increase public input and citizen participation in the determination of City policies and procedures. This process provides an opportunity for further public discussion and gives the City Council a broader base of information on which to formulate decisions. As a result, boards and commissions are an important governmental structure for generating broad public input and recommendations to the City Council.

Boards and commissions are established and may be dissolved by the City Council. With few exceptions specified herein, boards and commissions are advisory to the City Council. All actions taken by a board or commission are advisory to the City Council, except as specified by State law or City ordinance.

As an advisory body, a board or commission shall not take independent action to represent a position or opinion, whether or not related to its responsibility pursuant to City ordinance, except by submitting an advisory recommendation to the City Council or as otherwise specified by State law or City ordinance. A board or commission member may express a personal opinion outside his or her role as a board or commission member, but he or she shall not represent himself/herself as a board or commission member or use the title of board or commission member in doing so.

The boards and commissions with authority to take non-advisory action consistent with State law or City ordinance are: Board of Adjustment, Building and Fire Code Board of Appeals, Planning and Zoning Commission, and Traffic Commission. Board and commission members on these bodies need to be careful to act only within the authority assigned to them by City ordinance.

Most board and commission actions will be advisory and based on staff report, public input, and group discussion. Board and commission members shall take care to ensure the public's business is conducted openly and that public input is expressed in public meeting or in writing and recorded as part of the record of deliberation. It is not appropriate for citizens who are the principal parties in interest or who have a financial stake in a forthcoming agenda item to meet in private, undisclosed meetings with commissioners. These discussions should occur at public meetings. Commissioners may, however, engage in information gathering outside the public meeting framework.

Board and commission recommendations are presented to the City Council by report prepared by staff including minutes of meetings or by request as approved by the full commission. The City Council reviews and considers the board or commission recommendation before making decisions; however, the final decision rests with the City Council.

Boards and commissions are accountable to the City Council on issues delegated to them by the Council, and the City Council may direct the method and time of its accomplishment.

Board and commission recommendations are important to the City Council; they are given substantial weight. Your work is fundamental to the Council's decision making process. The City Council has several options and may:

- Approve the recommendation.
- Change the provisions of a recommendation.
- Send a matter back for further consideration.
- Not accept the recommendation.

Only the City Council, or a person acting pursuant to the direction of the City Council, may issue a communication (verbal or written) which represents an official position of the City. This includes, but is not limited to, statements of support of or opposition to an issue, resolutions on any matter, directives or requests of any kind to external agencies or entities; or anything that remotely purports to be of official city import. In addition, boards and commissions may not make recommendations for elective candidates, or take a position on an election issue. Upon the request of the City Council, a board or commission shall advise the City Council on a matter. A board or commission may also submit to the City Council recommendations on matters within the scope of its mission as established by the City Council.

The mission of your board or commission is found in its establishing legislation (ordinance or resolution). Your commission should focus on issues that fall squarely within the umbrella of activities created for you by the City Council.

ROLES AND RESPONSIBILITIES

Appointed Board and Commission Members

It is the City Council's policy that an individual may serve on only one board or commission at any given time, although there are some limited exceptions to this rule. Commissioners serve at the discretion of the City Council and, like any other Council-appointed position, may be removed from office by an official vote.

Membership on the city's boards and commissions consists of seven (7) members unless otherwise required by state statute.

Most appointments to Flagstaff's boards, commissions, and committees are for three-year terms, unless an appointment is made for the balance of a member's term due to resignation, disqualification from office, or removal, or a different term length is set by state law. Under most circumstances, a board and commission member is eligible to serve two full terms. If the commissioner indicates his or her desire for reappointment at the expiration of the first term, the commissioner will be given consideration for reappointment.

In addition, the City's policy provides that board or commission members may continue to serve after term expiration until an appointment is made to replace them. Typically, however,

appointments are made as soon as possible when a commissioner becomes ineligible for another term. If your term limit on a commission has expired, you are eligible to serve on any other city board or commission. Once you have been off of a board/commission for one year, you are then eligible to reapply for consideration of appointment to any vacancy on said board/commission.

If eligible to serve a second term, a board or commission member may be considered for reappointment to a second term by notifying the staff liaison or City Clerk prior to the expiration of his/her term. Board and commission members seeking a second term are considered along with all other applicants for the vacant seat on the board or commission.

Other Representatives

A few boards and commissions have additional members who are not appointed by Council.

Cross Membership on Boards and Commissions

In some cases, a voting member from one city board or commission will serve on another board or commission. A commissioner whose membership is derived from a parent commission may not serve in the capacity of an officer on the secondary commission. The primary purpose of this provision is to equalize spheres of influence and maintain a level playing field for commissions who have a joint interest in a matter.

Officers

Most boards or commissions elect a Chairperson and Vice-Chair, usually on an annual basis. The Chairperson is the moderator of meetings and speaks on behalf of the commission when authorized by a majority of the members to do so. The chairperson may also review meeting agendas prior to their distribution and posting. The Vice-Chair serves in the absence of the Chairperson. Chairpersons and Vice-Chairpersons also have authority to call special meetings, as do a majority of the membership, when it is deemed necessary due to time constraints. Other than the above, officers have no additional duties than any other commission member.

Staff Liaison

The City Manager assigns a City staff member to work with each board or commission. Your staff liaison wears many hats and one of those is to provide support for your commission. Among other things, the staff liaison's role is to:

- Prepare meeting agendas with input from the commission, write and present staff reports and support paperwork to the board or commission prior to meeting time.
- Ensure compliance with Open Meeting Law requirements.
- Assist a commissioner in distributing information to the body of the commission according to proper protocols.
- Respond to commissioner requests for information related to commission business.

- Prepare letters or other missives of the commission and process them for review and approval by the Mayor.
- Facilitate interaction with other boards and commissions.
- Place items on a commission meeting agenda, in response to direction from the City Council or City Manager, a request from a commissioner or chairperson, a request for other boards and commissions, or as deemed necessary by the staff liaison.
- Coordinate requests for legal assistance with the City Attorney.
- Prepare commission recommendations to the City Council and make presentations to the City Council on behalf of the Commission.

The staff liaison also has authority to call special meetings, when necessary, to meet program directives for the board or commission.

Commissioners do not have authority over the work program of city staff. Rather, the liaison acts as an information resource and provides technical assistance. Board and commission members may not direct city staff in the performance of their commission-related activities, nor can they assign projects or direct the work of staff. A board or commission may request staff's assistance on various projects; however, the City Manager must approve all requests which create a substantial demand for a work product.

Subcommittees

Boards and Commissions may appoint subcommittees or advisory committees to work on various matters. Subcommittee or advisory committees cannot contain a quorum or more of parent commissioners. If a quorum or more of the parent commissioners attend a subcommittee or advisory committee meeting, it becomes a full-blown commission meeting and an appropriate agenda and minutes would be required. If the subcommittee or advisory committee is not limited to commission-only membership, the remaining members must be appointed by the City Council. Subcommittees and advisory committees are bound by the Arizona Open Meeting Law requirements, which means that agendas must duly be prepared and posted and minutes must be prepared. The sole purpose of subcommittees and advisory committees is to make recommendations to the main commission and they have no authority of their own.

Residency

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

Meeting Attendance

The success of your board or commission depends on your active participation. A commission meeting cannot proceed without a quorum of members in attendance. Often a quorum is one

more than half of the full voting membership of a board or commission; however, some commissions have a different quorum requirement based upon the statutory or other language that defines the commission. Please check with your staff liaison to determine the number of commissioners that constitutes a quorum for your particular board or commission. Some establishing ordinances contain attendance requirements, while other commissions have adopted bylaws to clearly define attendance requirements. However, as a general rule, a board or commission may recommend to the City Council the dismissal of any citizen member who is absent for more than two consecutive regular meetings without prior notification. This same rule applies if a commission member is absent for more than thirty percent (30%) of all meetings during a twelve-month period.

Orientation

As a board and commission member, you are required to participate in at least one session of the city's board and commission training within your first three months in office. The city clerk's office will notify you as these sessions are scheduled. Additionally, at least one day prior to taking office members must sign an affirmation that they have read the open meeting law materials available online as required by state law. The city clerk's office will also provide, upon request, specific training sessions to boards and commissions to supplement formal orientations.

Qualifications

Occasionally a commission's organizational structure will require a member to have a specific qualification or background. For example, the Tourism Commission must have a specified number of members from the tourism industry; the members of the Audit Committee are usually Certified Public Accountants or have a strong accounting background, and the Youth Commission is comprised of middle and high school level students.

Membership Roster

The City Clerk maintains current membership rosters for all the City's official boards and commissions. If your home or work address or phone number changes, be sure to notify the Clerk's office as quickly as possible.

LAWS, REGULATIONS, AND POLICIES

GENERAL INFORMATION

This portion of the manual is devoted to helping you navigate the difficult waters that come with being a public official. Public agencies and public officials are bound by stricter standards than the private sector. Preparation for meetings, meeting decisions, discussion items, agendas, and commissioner conduct are all strictly regulated by state law. These statutes require compliance and they affect all government agencies. Non-compliance or willful disregard of these laws can result in painful consequences.

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

With few exceptions, all boards and commissions meet on a regular basis. If a quorum is not in attendance, by definition, a meeting cannot be conducted. It is important that all, or a majority of, commissioners receive information and engage in discussion at the same time. This ensures a level playing field for commissioner members and the members of the public interested in the issue. In cases where a quorum is present at the beginning of the meeting but is lost due to attrition during the meeting, the meeting shall be concluded at the time of the departure of the commissioner whose absence results in the lack of a quorum.

OPEN MEETING LAW (A.R.S §38-431.09)

Arizona's Open Meeting Law states that:

"…It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided…."

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

Boards and commissions must designate, in writing to the City Clerk, the place where meeting notices will be posted. Notices must state when and where the meeting will be held and list the items of business to be discussed. In most cases, a copy of the agenda can serve as the meeting notice so long as it contains all of the elements required in this section. These notices are prepared by your staff liaison and kept on file in the Clerk's Office for public inspection.

A minimum of 24-hour public notice to board and commission members and the general public is required for all public meetings unless an actual emergency exists. In addition to notice of the time, date, and place of each meeting, the Open Meeting Law requires a prepared agenda. Notices and agendas must contain enough information to inform the public of the matters to be discussed or decided. This does not permit the use of agenda items such as "new business" or "old business," unless the specific items of new and old business are listed. Once again, your staff liaison will make sure that your agendas are prepared and posted in accordance with the law as a matter of course.

All persons desiring to attend and listen to meetings must be accommodated. This may result in the need to move a meeting to a larger facility when an issue causes a large amount of public concern and many citizens wish to attend a meeting. Your staff liaison should be advised if you suspect that different accommodations will be required for a meeting because of larger than normal public interest.

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

The Open Meeting Law requires minutes for all meetings**.** At a minimum, minutes must contain the date, time, and location of the meeting; a list of governing board members in attendance and those members who are not in attendance; a description of the topic(s) under discussion and/or consideration; the name of each person “making statements or presenting material to the public body;” all first and second motions, along with the person’s name who made the motion; and a numerical breakdown of the vote. Either written minutes or an audio recording of a public meeting must be available for the public within three working days after the meeting, and must be posted on the City’s website within this same period of time. Written minutes that have not yet been approved should be marked “draft” before being made available for public inspection.

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

Whether oral, written or e-mail, discussion and deliberation between less than a quorum of members for the purposes of circumventing the Open Meeting Law is a violation of the law. The City of Flagstaff recommends that two or more commissioners may not engage in discussion for the purpose of influencing the outcome of a decision of a board or commission. The effect of one vote curried in a private setting may alter the course of a commission’s ultimate decision and this violates the spirit of the Open Meeting Law. Observance of this recommendation will remove commissioners from dangerous environs and protect them from censure.

To avoid pitfalls associated with Arizona’s Open Meeting Law, information and materials that a commissioner wishes to share with members of his/her commission should be provided to the staff liaison for distribution to the commission at open meeting or should be distributed by the commissioner at an open meeting with sufficient copies for those in attendance. Discussion is to be limited to public sessions in keeping with the spirit of the Open Meeting Law. This means that the public’s business is to be conducted in public.

A board or commission agenda may include a "Call to the Public" to designate a part of the meeting for the public to address the board or commission on items that are not on the prepared agenda. Following an open call to the public, members of a public body may respond to criticism raised, ask staff to review a matter raised or ask that a matter raised be put on a future agenda. However, neither discussion nor action may occur on issues that are not on the agenda.

On a rare occasion, a board or commission may convene for an executive session. Executive sessions shall not be held without the prior consent of the City Attorney. Executive sessions must meet the minimum 24-hour posting requirement and agendas, again, must inform the public of the matters under consideration. Bodies are allowed to convene in executive session only under seven auspices. The most likely topic of an executive session involving a board or commission would be to consult with the City's attorneys. Occasionally, the City Council will request a joint executive session with a board or commission. Executive sessions are not open to the public and no formal action is taken. In addition, the particulars of executive sessions matters are confidential and may not be discussed with anyone.

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

The Arizona Attorney General has published an "Agency Handbook" on its website. Chapter 7 is devoted to public agency duties and responsibilities under the Open Meeting Law. If you would like to view this information, you can visit the Attorney General's website at: https://www.azag.gov/sites/default/files/sites/all/docs/agency-handbook/ch07.pdf. This document is fully linked for your convenience and is also available on the City's website under City Hall/Agendas & Minutes/City Council/Meetings.

If violations of the Open Meeting Law continue to occur after admonishments to a commission, any of its members, or the staff liaison in conjunction with the commission or its members, a formal complaint may be filed with the Arizona Attorney General's office to seek compliance in order to protect the best interests of the community and the City of Flagstaff.

E-MAIL AND OTHER COMMUNICATIONS AMONG COMMISSIONERS OUTSIDE A PUBLIC MEETING

Communications can occur among commission members in a variety of ways in other than a public setting: face-to-face, in writing, over the telephone and through the use of e-mail. The Attorney General's Office is enforcing the Open Meeting Law to prohibit the use of e-mail between a quorum of the members of a public body where public matters are discussed, considering such e-mail discussion to be a "meeting" held in violation of the Open Meeting Law.

E-mail (or electronic) communications can constitute a "meeting". The public does not have access to commissioners' e-mail, so when members of a public body begin having discussions by electronic or telephonic communication, it can result in Open Meeting Law violations. In addition, the staff liaison or other staff member is not allowed to communicate

the various positions of commissioners to each other. Once a commissioner commits to written form a communication related to commission business, that record no longer belongs to the commissioner as an individual, but becomes part of the public domain. Anyone involved in sending messages back and forth which even discuss possible action or propose a formal action are breaking the law—the same as if the commissioners had met together in a private meeting.

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

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

CONFLICT OF INTEREST LAW (ARS §38-503)

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

It is a felony if you knowingly or intentionally violate the Conflict of Interest Law. A negligent or reckless violation is a misdemeanor. You can also be prosecuted for failing to disclose a conflict that you did not know about but should have. You have to be alert to this possibility and make all reasonable efforts to identify potential conflicts.

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

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

Remote Interest

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

1. A non-salaried officer of a non-profit corporation doing business with or requesting money from the City.
2. The landlord or tenant of a contracting party. (For example, an advisory board member may lease office space to a party with a private interest in a public matter without it resulting in a conflict of interest.)
3. An attorney whose client is a contracting party.

4. A member of a non-profit cooperative marketing association doing business with the City.
5. The owner of less than three percent of the shares of a corporation doing business with the City, provided that:
   a. the total annual income from dividends, including the value of stock dividends, does not exceed five percent of the officer's or employee's total annual income; and
   b. any other payments made to the officer or employee by the corporation do not exceed five percent of the officer's or employee's total annual income.
6. Being reimbursed for actual and necessary expenses incurred in performance of official duties.
7. Receiving municipal services on the same terms and conditions as if you were not an officer or employee of the municipality. (For example, when a Councilmember who owns a business within the City votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.)
8. An officer or employee of another political subdivision, a public agency or another political subdivision, or any other public agency voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a Councilmember who is a schoolteacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the Councilmember.
9. A member of a trade, business, occupation, profession, or class of persons who has no greater interest than the other members of similar trades, businesses, occupations, professions, or classes of persons. (For example, a plumber who serves on the City Council may vote to increase or decrease plumbing inspection fees since the effect of this decision will be equal on all plumbers within the City.)

Substantial Interest

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

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

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

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

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

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

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

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

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

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

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

Public Perception and the Appearance of a Conflict of Interest

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

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

Public perception is not a sufficient basis alone upon which to determine whether or not a conflict of interest occurs. Citizens, by and large, are not familiar with conflict of interest laws. Citizens have also been known to try to use a "conflict of interest" argument to keep a public official from voting on a matter when that citizen did not agree with the public official's position or vote.

If you have an appearance of a conflict of interest, or you are not sure whether nor not you have a conflict, you may request a finding. The appropriate protocol is to address the matter with your staff liaison, in writing or verbally, who will then forward it to the City Manager for disposition.

Prohibited Acts Within a Year After Leaving Public Office

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

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

Misusing a Declaration of Conflict of Interest

The conflict of interest argument can be misused, as well. It should never be raised as a way to escape accountability for a vote, to avoid taking a stand on a controversial issue, or to appease an unfounded public perception. You are appointed to do much of the homework for the City Council and to make informed and unbiased recommendations to the City Council. It is important that you fulfill this obligation. It cannot be emphasized enough that the success of your board or commission depends on your active participation. Regular and frequent "conflicting out" of your board or commission's business may limit your effectiveness as a commissioner.

CODE OF CONDUCT

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

For these reasons, all board and commission members are required to attend an orientation workshop as a condition of appointment. In addition, each board and commission member is asked to observe the following guidelines.

As an official member of the City of Flagstaff team, City policies apply to board and commission members.

A public process has been established for commission recommendations and decisions to be presented to the City Council in public meetings. Individual commission members should not meet jointly or separately with members of the City Council on matters of commission business. However, this provision is not meant to deprive the commissioner, as a citizen, of the right to meet with any member of the City Council on any other matter. Private meetings with City Councilmembers can be interpreted as attempting to influence the outcome of a vote of the City Council prior to a matter coming to the Council at an open meeting. Not only is it illegal for commissioners to discuss commission business with each other behind the scenes, but discussing commission business behind the scenes with City Councilmembers could also lead City Councilmembers into violations of the Open Meeting Law if the item is forthcoming on a Council meeting agenda, particularly if a commissioner conveys information from one Councilmember to another, as the Open Meeting Law prohibits Councilmembers and commissioners from communicating through an intermediary.

As a member of a board or commission, you do not lose your rights as a private citizen. However, you may not use your official title or make any statement as a representative or member of your commission to influence an election, further a personal position, or for personal benefit. Under City policy, you are not allowed to make unauthorized statements as a representative of your commission. Your title belongs to the City and is to be used when you are engaged in official business of the City such as at public meetings.

The City of Flagstaff has adopted a mission and values statement that pertains to all of its municipal officers, officials, and employees. It states that:

"The mission of the City of Flagstaff is to protect and enhance the quality of life of its citizens."

Some of the values needed to achieve this goal are:

- Accountability
- Honesty
- Responsibility
- Cost consciousness
- Teamwork in partnership with citizens
- Problem solving.

As a public official of the City of Flagstaff, these ideals apply to you.

Along the way, commissioners may find themselves facing ethical dilemmas. Matters of ethics are often difficult to detect. It is important that you make every possible step to preserve the public perception of your ethics and values. What you do in any given situation is a reflection upon the organization as a whole. The values you hold will greatly influence your behavior when you are confronted with an ethical question.

People are quick to judge by appearance. During meetings and at official public functions, your words and actions will come under intense public scrutiny. Your public behavior is a statement about the democratic process in the City of Flagstaff. It is also a reflection on the way the City of Flagstaff conducts its business. Consequently, you should consider ethical questions through the "filter" of public perception.

If you have a question on an ethical issue, contact your staff liaison before the meeting and take no position on the issue until you have resolved the dilemma. It is very important to act in an appropriate manner at all times.

Gift giving is one of the most common ethical situations that come into play with public officials. Some gifts are harmless and have no hidden meaning while others are subtly, or even overtly, meant to influence your behavior and vote. If a citizen or some other entity tenders you a gift, it may be helpful to ask the following questions in whether or not you should accept the gift:

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

If your answer is "yes" to even one of these questions, then you should not accept the item regardless of whether or not it is innocent in intent.

Create a good impression of city government. Your conduct and performance is a picture in the eyes of the public of the way the city is run. It should be as pleasant and comforting a picture as possible.

- Be knowledgeable about the process and procedures of municipal government and the specific responsibilities associated with being a member of your board or commission.
- Avoid making recommendations or expressing views that have not been approved by a majority of the members of the board or commission you represent without clearly indicating that you are speaking as a private citizen.
- Public statements should contain no promises to the public that may be construed to be binding on the board or commission, staff, or City Council.
- When making a public statement, stress that the commission actions are recommendations and that final action will be taken by the City Council. Or, in the

case of the few boards and commissions with decision-making authority, are subject to appeal to the City Council.

- Attend the meetings of your board or commission. Be sure to arrive promptly and stay until all business has been concluded.
- Conduct official business in a fair, objective, and professional manner.
- Be respectful of others.
- Listen to what others have to say, including those with whom you disagree.
- Place the public welfare ahead of your own.
- Conduct the public's business in public.
- Make recommendations and/or decisions in the best, long-term interest of Flagstaff citizens as a whole.
- Be informed about issues having a direct relation to the board or commission you represent.
- Maintain a good relationship with the public, City Council, City staff, and other commission members.
- City of Flagstaff elections are non-partisan. Do not use your appointed office or title to conduct political activities.
- Act lawfully, as well as within the spirit of the law, including those laws that apply directly to your role as a board or commission member.

MEETINGS

AGENDAS

As discussed in the section on Arizona's Open Meeting Law, boards and commissions are required to prepare and post agendas for their meetings. Boards and commissions may establish deadlines within which to place items on an agenda in order to allow sufficient time for the agenda to be prepared, posted, and distributed to the commissioners. Items are placed on agendas in a variety of ways:

- In response to direction from the City Council.
- In response to a directive from the City Manager.
- As requested by any commissioner at a public meeting.
- In response to a request from the chairperson.
- As deemed necessary by the staff liaison.
- As requested by other boards and commissions.

Requested agenda items will be placed on an agenda as the associated work can be completed by the staff liaison.

Agendas are necessary to the conduct of a meeting and they inform the commission and the public of items that will be discussed. Items must be stated in a sufficiently clear way as to identify the subject matter and potential action(s) that can be taken. Placing an item on an agenda allows a commission to discuss and possibly act on an item.

SPECIAL RULES

STATE AND LOCAL RULES

Established guidelines and rules are essential to a productive and successful meeting. The City Council has established a successful format for conducting business at Council meetings and boards and commissions should follow those guidelines in conducting their own meetings. The City Council is bound first by the Arizona Revised Statutes, in particular the Open Meeting Law. The Flagstaff City Charter also establishes rules regarding the conduct and meetings of the City Council and is the local legal authority on several aspects of meeting activity.

The Charter of the City of Flagstaff provides that, in the absence of a conflict of interest, an abstention is counted as an affirmative vote:

"No member of the Council present at any meeting shall be excused from voting, except in matters involving the consideration of their own official conduct. In all other cases, a failure to vote shall be entered on the minutes as an affirmative vote."
When a refusal to vote occurs, it is entered on the minutes as an affirmative vote with no explanation. The no-vote or abstention clause is intended to provide an incentive to vote. The

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

Following the form outlined in the Charter, the chairperson role is similar to that of the Mayor. A chairperson is a regular voting member of the commission. The chairperson may call a special meeting when deemed necessary. The chairperson also presides over meetings and acts as spokesperson for the commission when appropriate. As with the City Council, citizens may petition a commission to have an item placed on an agenda and the item is to be placed on the next available agenda, if possible.

RULES OF PROCEDURE

The provisions in this manual are designed to follow closely the rules and regulations established by the City Council and apply to all boards and commissions.

Of particular interest and application to Flagstaff's boards and commissions are the following rules regarding Meeting Decorum and Order, Right of Appeal from the Chair, Public Participation in Commission Discussions, and Rules Governing Motions by the Council. Adopted from the City Council's Rules of Procedure, wherever necessary, the language has been revised to fit boards and commissions.

MEETING DECORUM AND ORDER

Decorum and Order among Commissioners

The Chair shall preserve decorum and decide all questions of order, subject to appeal to the commission. During commission meetings, commissioners shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the order of the Chair or the rules of the Commission. Every commissioner desiring to speak shall address the Chair, and upon recognition by the Chair, shall confine himself or herself to the question under debate and shall avoid all personal attacks and indecorous language. A commissioner once recognized shall not be interrupted while speaking unless called to order by the Chair or unless a point of order is raised by another commissioner. If a commissioner is called to order while he or she is speaking, he or she shall cease speaking immediately until the question of order is determined. If ruled to be out of order, he or she shall remain silent or shall alter his or her remarks so as to comply with the rules of the commission. Commissioners shall confine their questions to the particular issues before the commission. If the Chair fails to act, any member may move to require him or her to enforce the rules and the affirmative vote of the majority of the commission shall require the Chair to act.

Decorum and Order among Citizen Participants

Citizens attending commission meetings shall also observe the same rules of propriety, decorum, and good conduct applicable to members of the commission. Any person who causes a disturbance while attending a commission meeting, may be removed from the room if so directed by the Chair. Unauthorized remarks from the audience, stamping of feet, whistles, yells, and similar demonstrations that cause a disturbance shall not be permitted by the Chair, who may direct the sergeant-at-arms to remove such offenders from the room. Should the Chair fail to act, any member of the commission may move to require the Chair to enforce the rules, and the affirmative vote of the majority of the commission shall require the

Chair to act. Any member of the public desiring to address the commission shall be recognized by the Chair, shall state his or her name and address in an audible tone for the record, and shall limit his or her remarks to the questions under discussion. Any remarks shall be addressed to the Chair and to any or all members of the commission.

CIVILITY AT MEETINGS

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

The Chairperson should not allow outbursts from the audience. Members of the audience should be reminded that, when it is their time to speak, they must address the board or commission, and not the city employee, consultant working on a project, or other citizens. When a member of the audience or the speaker at the podium displays hostile behavior toward the commission, city staff, paid consultant, or other citizens, it should be corrected in order to maintain control of the meeting.

Should the commission find itself in a meeting where emotions run high, the Chairperson is encouraged to, and has the authority to, take any of the following actions:

- Remind the speaker that comments are to be confined to the issue at hand and there are to be no attacks on any participant in the meeting.
- Cut off the speaker's remaining time.
- Revoke the speaker's speaking privilege.
- Remove a speaker from who is causing a disturbance at the meeting.
- Remind the audience that outbursts from the audience will not be allowed.
- Advise the audience that a 10-minute recess will be called if audience members do not refrain from catcalls and outbursts.
- Call a 10-minute recess and advise the audience that, when the meeting reconvenes, if hostilities and displays do not cease, the meeting will be continued to another date and time.
- Reconvene the meeting or continue the meeting to another night.

The audience should clearly understand that it is their behavior that dictates whether or not the meeting will proceed or be continued to another date.

RIGHT OF APPEAL FROM THE CHAIR

Process for Appeal

Any member may appeal to the commission from a ruling of the Chair. If the appeal is seconded, the member making the appeal may briefly state his or her reason for the same, and the Chair may briefly explain the Chair's ruling. There shall be no debate on the appeal, and no other member shall participate in the discussion. The Chair shall then put the question,

“Shall the decision of the Chair be sustained?” If a majority of the members present vote “aye”, the ruling of the Chair is sustained; otherwise, it is overruled.

PUBLIC PARTICIPATION IN COMMISSION DISCUSSIONS

Call to the Public

Commissions may make an open call to the public to allow individuals to speak up on any issue within its jurisdiction, however, commission members may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. Commission members may respond to criticism and/or ask that the matter be taken under review or placed on a future agenda.

Agendas should contain language that explains why commission members cannot respond and what the options are so that the public knows in advance what to expect.

Regular Agenda Items

Public participants may address the commission on agenda items. The Chair must recognize the person before that person may address the public body and the speaker must identify his or her name and city of residence for the record. He or she shall limit his or her remarks to the matter under discussion and shall address his or her remarks to the Chair. The Chair shall limit the period of speaking to a reasonable period of time as specified by, and at the discretion of, the Chair.

Public Hearings

In the case of a public hearing, the Chair shall announce prior to such hearing the total time limit to be allowed for public debate, depending upon the circumstances and public attendance. The Chair shall also announce the time limits for each speaker (normally no more than five minutes), and the number of times each speaker will be heard from during the public hearing (generally no more than twice, although the Chair may limit each speaker to one time where time constraints or the number of persons desiring to speak on an issue dictate otherwise). These rules will be announced with majority consent of the commission present. This rule will not preclude questions from members of the commission to the speaker where it is deemed necessary for purposes of clarification or understanding, but not for purposes of debate or argument.

Quasi-Judicial Hearings

The Open Meeting Law defines a quasi-judicial body as "a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims." Contested proceedings or quasi-judicial or adjudicatory proceedings conducted by public bodies are subject to all of the requirements of the Open Meeting Law, as well as a number of additional due process requirements. These due process requirements include: no ex-parte communication and an opportunity for the person to present their case

through witnesses, cross-examination, and argument. Robert's Rules are difficult to apply to quasi-judicial hearings, and separate rules for such hearings may be necessary.

Limits on Public Participation

Members of the public are limited to addressing the public body once on each item. They may not approach the chair multiple times. If an individual's issue cannot be addressed within the allotted time, the individual may submit additional written comments. If a commission member engages the speaker in discussion, the clock will be stopped and the speaker will not be penalized for the time spent answering the commissioner or for the commissioner's time in talking to the speaker.

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

RULES GOVERNING MOTIONS BY THE COMMISSION

Motion to be Stated by the Chair – Withdrawal

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

Motion to Suspend Rules

Suspension of these rules requires a majority consent of the commissioners present. A motion to suspend may not be made while another motion is pending unless it directly applies to the pending motion.

Motion to Change Order of Agenda

The Chair may, at his or her discretion, or shall, upon the majority vote of commissioners present, change the order of the agenda. However, caution should be given to not changing the order to circumvent the Open Meeting Law.

Motion to Postpone

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

A motion to postpone indefinitely, if it receives a majority vote, effectively extinguishes an item.

Motion to Table

A motion to lay on the table shall preclude all amendments or debate on the subject under consideration and is used to delay discussion on an item until later in the meeting or until the

next meeting. Neither the motion on the table or other business can be discussed, until a vote has been taken on the motion. If the motion prevails, the consideration of the subject may be resumed only upon motion of a member voting with the majority of the members present. To take a motion off the table at the same or immediately succeeding meeting, a motion and second must be made to take the item off the table, and it must pass by majority vote. If not revived by the adjournment of the immediately succeeding meeting, the matter is considered to be dead.

Motion to Divide the Question

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

Motion to Amend

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

Motion to Amend an Amendment

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

Motion to Reconsider

After the decision on any question, any member who voted with the majority may move a reconsideration of any action at the same or the next succeeding meeting, provided, however, that a resolution authorizing or relating to any contract may be reconsidered at any time before the final execution thereof. A motion to reconsider shall require the same number of votes as is required to adopt an ordinance or resolution. After a motion for reconsideration has once been acted on, no other motion for a reconsideration thereof shall be made without unanimous consent.

Motion for Roll Call Vote

Any commissioner may request a roll call vote, or the Chair may ask for a roll call vote for purposes of clarifying a vote for the record. The roll may be called for yeas and nays upon any questions before the commission. Unless allowed by the Chair, it shall be out of order for members to explain their vote during the roll call, or to engage in additional debate or discussion on the subject after the vote is taken.

ROBERT’S RULES OF ORDER

The City Council has adopted Robert’s Rules of Order as its parliamentary authority. Robert Rules of Order contains within itself a provision that identifies itself as the last in the line of

authority and last in the order of precedence. Thus, Robert's Rules should be the last authority, after all other existing authorities have been exhausted. If there is any conflict between Robert's Rules of Order and other laws or adopted rules, the other regulations control. The City Council's Rules of Procedure state, in Rule 11, Section 11.04, that:

"Robert's Rules of Order, latest edition, shall govern the [commission] in all cases to which they are applicable, provided they are not in conflict with these rules or with the Charter of the City of Flagstaff or the laws of the State of Arizona."

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

Roberts Rules of Order establishes a fair and impartial process for commissions to conduct their business and it ensures that members get their say. A condensed version of Robert's Rules is included with this manual for your reference.

CONDUCTING A SUCCESSFUL MEETING

When representing and dealing with public concerns, fairness should be everyone's goal. Not everyone will be satisfied with the outcome of every decision your board or commission makes. However, equal treatment during the decision making process will leave most participants satisfied that they were treated fairly. To ensure every citizen receives fair and equitable treatment, meetings will benefit from the consistent application of the following guidelines for conducting a successful meeting:

GUIDELINES FOR CONDUCTING A SUCCESSFUL MEETING

1. Give adequate and timely notice of all meetings.
2. Start and end each meeting on time.
3. Conduct all meetings in accordance with the Open Meeting Law, the City Charter, Council Rules of Procedure, and "Robert's Rules of Order."
4. Follow a published agenda—supply enough copies of the agenda for everyone attending the meeting.
5. Ensure the place that you hold meetings can accommodate all members of the public who wish to attend.
6. Limit the agenda to the number of topics that can be dealt with in the time allotted.
7. Allow time for discussion and comment and notify speakers in advance of the amount of time they will have to speak.
8. Announce the meeting format to the participants at the beginning of each meeting or, in some cases, portions thereof.
9. Cover the most urgent subjects first.
10. Let everyone be heard.

11. All speakers must be asked to identify themselves (name and city of residence) for the record.
12. The Chairperson should facilitate the meeting so that no one person dominates the discussion.
13. Discuss the pros and cons of an issue after everyone has had an opportunity to present his/her point of view.
14. Try to keep your comments and questions neutral, focusing on the facts presented to you.
15. Direct your attention to the speaker, issue, or task at hand--do not be distracted by minor points.
16. Make decisions based on fact.
17. Avoid conflicts of interest (see Page 14).
18. Bring issues to a vote, with each member having the opportunity to explain his/her decision/point of view (if appropriate).
19. For the benefit of the audience and participants, announce the voting results after each vote is taken.
20. Keep records of all actions taken.
21. Adjourn the meeting promptly when all business has been concluded.

REMOVAL FROM APPOINTED OFFICE

Commissioners serve at the discretion of the City Council and, like any other Council-appointed position, may be removed from office by an official vote of the City Council. On a rare occasion, circumstances surrounding the conduct of a commissioner may necessitate disciplinary action. Following are examples of activities that can precipitate admonishment or removal from office:

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

APPENDIX A

ARIZONA OPEN MEETING LAW
ARS 38-431
As of 03/04/2013

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 this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of

ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

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. <u>Meetings shall be open to the public</u>

A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

B. All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:

1. The date, time and place of the meeting.

2. The members of the public body recorded as either present or absent.

3. A general description of the matters considered.

4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.

C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to section 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.

D. The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.

E. A public body of a city or town with a population of more than two thousand five hundred persons shall:

1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its website, if applicable, either:

   (a) A statement describing the legal actions taken by the public body of the city or town during the meeting.

   (b) Any recording of the meeting.

2. Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its website, if applicable, except as otherwise specifically provided by this article.

3. Within ten working days after a subcommittee or advisory committee meeting, post on its website, if applicable, either:

   (a) A statement describing legal action, if any.

   (b) A recording of the meeting.

F. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

G. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall conspicuously post open meeting law materials prepared and approved by the attorney general on their website. A person elected or appointed to a public body shall review the open meeting law materials at least one day before the day that person takes office.

H. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

I. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

J. Any posting required by subsection E of this section must remain on the applicable website for at least one year after the date of the posting.

38-431.02. <u>Notice of meetings</u>

A. Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of this state, including governing bodies of charter schools, shall:

   (a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

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

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

   (a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

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

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

   (a) May conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

   (b) May post all public meeting notices on their website and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either

prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

(c) If a statement or notice is not posted pursuant to subdivision (a) or (b) of this paragraph, shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give additional public notice as is reasonable and practicable as to all meetings.

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

(a) Conspicuously post a statement on their website or on a website of an association of cities and towns stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

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

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

1. Members of the public body.

2. General public.

C. Except as provided in subsections D and E of this section, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in section 1-301.

D. In case of an actual emergency, a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. If this subsection is utilized for conduct of an emergency session or the

consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I of this section.

E. A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A of this section, and if, before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.

F. A public body that intends to meet for a specified calendar period, on a regular day, date or event during the calendar period, and at a regular place and time, may post public notice of the meetings at the beginning of the period. The notice shall specify the period for which notice is applicable.

G. Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours before the meeting, except in the case of an actual emergency under subsection D of this section. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in section 1-301.

H. Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.

I. Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. The agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege.

J. Notwithstanding subsections H and I of this section, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, if the matter was not listed on the agenda and a statement setting forth the reasons necessitating the discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately before the executive session.

K. Notwithstanding subsection H of this section, the chief administrator, presiding officer or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, if:

1. The summary is listed on the agenda.

2. The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

38-431.03. <u>Executive sessions</u>

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, promotion, 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. <u>Violations; enforcement; removal from office; in camera review</u>

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. <u>Exceptions; limitation</u>

A. This article does not apply to:

1. Any judicial proceeding of any court or any political caucus of the legislature.

2. Any conference committee of the legislature, except that all such meetings shall be open to the public.

3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.

4. Good cause exception and central registry exception determinations and hearings conducted by the board of fingerprinting pursuant to sections 41-619.55 and 41-619.57.

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

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.

2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification that verifies the person's signature.

3. Prevent and prohibit any articles from being taken into a hearing except recording devices and, if the person who attends a hearing is a member of the media, cameras.

4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

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

D. Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, section 8, Constitution of Arizona, to provide an exemption

to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

38-431.09. <u>Declaration of public policy</u>

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

B. Notwithstanding subsection A, it is not a violation of this article if a member of a public body expresses an opinion or discusses an issue with the public either at a venue other than at a meeting that is subject to this article, personally, through the media or other form of public broadcast communication or through technological means if:

1. The opinion or discussion is not principally directed at or directly given to another member of the public body.

2. There is no concerted plan to engage in collective deliberation to take legal action.

APPENDIX B

ARIZONA CONFLICT OF INTEREST
ARS 38-501
As of 03/04/2013

38-501. Application of article

A. This article shall apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards.

B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.

C. Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

38-502. Definitions

In this article, unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.

2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.

3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to section 38-509.

4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.

5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.

6. "Public agency" means:

   (a) All courts.

   (b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.

   (c) The state, county and incorporated cities or towns and any other political subdivisions.

7. "Public competitive bidding" means the method of purchasing defined in title 41, chapter 4, article 3, or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.

8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.

9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

10. "Remote interest" means:

   (a) That of a nonsalaried officer of a nonprofit corporation.

   (b) That of a landlord or tenant of the contracting party.

   (b) That of an attorney of a contracting party.

   (d) That of a member of a nonprofit cooperative marketing association.

   (e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.

   (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

   (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department,

commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.

(h) That of a public school board member when the relative involved is not a dependent, as defined in section 43-1001, or a spouse.

(i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:

(i) Another political subdivision.

(ii) A public agency of another political subdivision.

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

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

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

38-503. <u>Conflict of interest; exemptions; employment prohibition</u>

A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

C. Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:

1. A school district governing board may purchase, as provided in sections 15-213 and 15-323, supplies, materials and equipment from a school board member.

2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.

D. Notwithstanding subsections A and B of this section and as provided in sections 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

38-504. <u>Prohibited acts</u>

A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.

B. During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.

C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

38-505. Additional income prohibited for services

A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.

B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

38-506. Remedies

A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.

B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.

C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

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

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

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

A. If the provisions of section 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting

interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.

B. If the provisions of section 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

38-509. Filing of disclosures

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

38-510. Penalties

A. A person who:

1. Intentionally or knowingly violates any provision of sections 38-503 through 38-505 is guilty of a class 6 felony.

2. Recklessly or negligently violates any provision of sections 38-503 through 38-505 is guilty of a class 1 misdemeanor.

B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.

C. It is no defense to a prosecution for a violation of sections 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.

D. It is a defense to a prosecution for a violation of sections 38-503 through 38-505 that the interest charged to be substantial was a remote interest.

38-511. Cancellation of political subdivision and state contracts; definition

A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the

contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by section 37-289 and other lawful provisions of the lease.

C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.

D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.

G. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22.