

Town of Clarkdale Public Service Handbook

Date: October 1, 2018

Table of Contents

	Page
Introduction.....	3
Public Officials	4
A. The Town Council	
B. Commissions and Boards	
C. Types of Boards/Commissions	
D. Town Staff	
Public Official Conduct	12
A. Public Official Protocols	
B. Conduct with One Another	
C. Conduct during Public Meetings	
Policies.....	15
A. Conflicts of Interest Policy	
B. Public Records	
C. Computer, Email, Internet and Social Media Policy	
D. Travel and Training Policy	
E. Electioneering Policy	
F. Distribution of Fliers Policy	
Meetings	32
A. Controlling A Meeting	
B. Role of Mayor/Chair	
C. Suggestions for Speakers	
D. Parliamentary Procedure	
E. Public Hearing Procedures	
F. Open Meeting Law	
Appendix.....	62

INTRODUCTION

Welcome to Public Service in Clarkdale!

While you will find that your role requires time, effort, and some long day time and evening hours, it also provides an opportunity for genuine public service. You will be able to help shape the future of Clarkdale and to make decisions affecting every citizen's satisfaction with the Town. The Town of Clarkdale needs your personal resources and enthusiasm in order to maintain the qualities of the Town that are enjoyed by its residents.

The performance of public service brings with it the feeling of contribution and you will most likely develop a close relationship with other volunteers and employees, all working toward a common goal of providing for our community, its citizens and its future.

As representatives of Clarkdale, the Town Council, boards, commissions, volunteers and employees are essential to the Town's commitment to developing policies and services which reflect the needs and values of the community. While carrying out your responsibilities, you will work closely with your fellow Town Council members, commissioners, and staff - all of whom play a critical role in the Town's organization. The Town Council or Town Manager may also appoint citizen committees on an "ad hoc" basis to study particular, short-term issues.

Purpose:

The purpose of this handbook is to provide you with background information on the Town and its government and to introduce you to your role in that structure. It includes a description of its government and administration. The term "Public Officials" includes the Town Council, boards, commissions, volunteers, and Town employees. The majority of this handbook provides standard methods and general policy guidelines for public officials to use when conducting business. The handbook also reviews conflict of interest laws, open meeting laws and other laws and policies that apply to all public officials.

Words of the masculine gender in this document include the feminine. Where the term Mayor is used throughout this document, it shall be deemed to include, when appropriate, the Vice Mayor or other designated persons acting in the capacity of Mayor. This handbook should be read and interpreted to be in harmony with the provisions of the Clarkdale Town Code and State and Federal law. However, in every case where a conflict of interpretation may arise, the Town Code and State and Federal law will control. This handbook shall be in effect upon adoption by the Town Council until such time as it may be amended.

We think that you will enjoy your role as a public official and that you will find that you have played an important part in shaping Clarkdale's future.

Gayle Mabery,
Town Manager

PUBLIC OFFICIALS Section One

The term “Public Officials” includes the Town Council, boards, commissions, volunteers, and employees. The majority of this handbook provides standard methods and general policy guidelines for public officials to use when conducting business.

The Town of Clarkdale operates under a Town Council-Manager form of government, an organizational framework which has grown widely in popularity since its inception in the 1910's. It provides town governments with policy direction from the Town Council and professional administration through the Town Manager.

The organizational chart provided shows the relationship between the elected officials, appointed officials, and Town departments.

A. The Town Council

The Town Council acts as the governing body of the Town, with all the regulatory and corporate powers of a municipal corporation provided under the Arizona law. In general, the Town Council sets policy for the Town government by establishing Town ordinances and programs and appropriating funds for each Town department.

The Town Council consists of four Councilmembers and one Mayor, all elected to serve staggered four-year terms. The Mayor is elected, however the Vice Mayor is chosen by the Town Council. Newly elected Councilmembers take office during the first regular meeting in December.

The Town Council is the policy-making body of the Town. The Town Council approves all ordinances, resolutions and contracts. The Town Council reviews proposals for community needs, initiates actions for new programs and determines the ability to provide financing. The Town Council approves and modifies the budget as prepared by the Town Manager and staff. Councilmembers in the Town of Clarkdale receive a \$200 per month stipend and the Mayor receives a \$400 per month stipend.

Regular Town Council meetings are normally held at 6:00 p.m. on the second Tuesday of each month in the Men’s Lounge of the Clark Memorial Clubhouse. Special meetings are generally held on the fourth Tuesday of each month at 3:00 p.m. and at other times as necessary.

In addition to scheduled Town Council meetings, councilmembers may represent the Town as members of various regional boards and commissions, and as representatives to organizations, such as the Cottonwood Area Transit/Verde Valley Transportation Planning Organization, the Northern Arizona Council of Governments, and Northern Arizona Municipal Water Users’ Association.

1. After appointment by the Town Council to a regional board or committee, the representative may submit a report to the Town Council, Town Manager, or appropriate department, identifying significant matters.
2. Town Council representatives may ask to have an issue agendaized for Town Council consideration before the next regional meeting so that the representative can receive direction from the Town Council and accurately reflect the Town's position in their meetings.
3. Important issues that require a Town Council representative report the Town's official position before any federal, state, regional, county, or other governing body, board or committee should be brought to the Town Council, if there is time, so that the Town Council can give directions and to ensure that the representative is accurately stating Town Council positions.
4. If a councilmember appears before any federal, state, regional, county or other governing body, board or committee and has not received any direction from the Town Council as a whole concerning matters which are being discussed, the councilmember must explicitly state that he/she is speaking only as an individual and that his or her comments should not be construed as representing the views of the Town of Clarkdale or the Clarkdale Town Council.
5. Where time constraints require immediate input on behalf of the Town, and where the Town Council representative has a substantial good-faith basis for assuming that there would be strong Town Council support for the position, the Town Council representative may state a Town position and shall notify the Town Council of the position taken at the earliest opportunity.

B. Commissions and Boards

Commissions and boards (hereinafter the term "Commission" will refer to any appointed board or committee) are standing bodies established by Town ordinance and appointed by the Town Council to provide ongoing citizen input on major policy areas. Commissioners find themselves uniquely situated in the government organization. They are an integral part of the Town Government structure, working with Town Council, staff, and the public. In keeping with the Town's philosophy of citizen involvement, the Town Council appoints citizens to commissions and boards to assist in the formulation of Town policy. They focus attention on specific issues, weigh community values in making recommendations to the Town Council, and thoroughly research and review alternatives to accompany formal recommendations to the Town Council. Some commissions are not simply advisory to the Town Council. The Design Review Board has the authority to make binding decisions without Town Council input or direction. The Board of Adjustment has a quasi-judicial role in which they possess the power to hold hearings and make final decisions on disputed matters between a private person and the Town in the general manner of a court. In addition, commissioners are sometimes asked to participate in a volunteer capacity for a departmental program. The strength and the success of Clarkdale Town government are to

a large degree reflective of the quality of service performed by these volunteers who serve without pay.

In order to qualify for appointment to commissions of the Town, an applicant must be a resident of the Town. Commission terms begin on October 1st of each year and each commission has five to seven representatives appointed by the Town Council for two year staggered terms. The selection of commission representatives starts in July of each year with advertisements to the public along with checking with incumbent commissioners to see if they wish to be considered for reappointment. All interested parties, whether new or an incumbent must apply for the positions.

Application forms for seats on all commissions are available from the Town Clerks' Office or on the Town's website (www.clarkdale.az.gov) and may be completed at any time. The Town Council will normally avoid appointing more than one member of a family to the same commission, or one person to more than one commission.

From time to time a vacancy occurs on a commission during a term. When this occurs, Town staff will advertise that a seat is available and ask for applications. The applications are reviewed by the Town Council who appoint a person to complete the vacated term.

One of the first responsibilities of a new representative is to understand the commission's scope of responsibility and operating procedures. Along with the information listed below, additional information may be obtained by referring to the Town Code, Zoning Code, and the individual Board or Commission's Policy and Goals Statement.

1. A commission's role is to advise the Town Council about policies and programs. In the course of business, the commission:
 - a. Should define a situation;
 - b. Establish a plan to investigate, research and gather data;
 - c. Analyze the results of the investigation that staff has prepared;
 - d. Develop some conclusion based on the results;
 - e. Develop a recommendation or set of alternatives to present to the Town Council.
2. There should be reciprocal communication between the Town Council and commissions. The commissions should be aware of the long and short term goals and policies of the Town Council. In turn, the Town Council should remain receptive to new ideas which are presented by the commissions.
3. An important role of the commissions is to provide opportunities for increased citizen participation in the development of Town policies and operating procedures by holding public hearings to solicit community input on current issues.
4. At times the Town Council may not accept the recommendation of a commission. If a recommendation is rejected, the Town Council most likely will let the commission know

why. Depending on the reason(s) for the rejection, the commission may re-address the issue and bring an alternative suggestion to the Town Council, or go on with other business. Commission input will be weighed carefully with other information the Town Council may receive. The Town Council may not be rejecting the quality of work or basic idea, but may have additional information or need to balance the commission's recommendation against other Town priorities.

5. Commissions hold regular meetings each month, with the exception of certain commissions that meet on an "as needed" basis. Special meetings and work sessions are held when the commission deems necessary. The chair and vice chair are elected from among the representatives for a one year term by commissions at their first meeting in October.
6. Commissioners are expected to attend all meetings. A board, committee, or commission member who is absent four (4) or more regular board, committee, or commission meetings from October 1 to September 30 shall be deemed to have vacated his or her appointment without further action being taken by either board, committee, commission or Town Council. It shall be the duty of the chairperson to so notify the Town Clerk immediately upon the creation of a vacancy pursuant to this section and the Mayor and Town Council shall fill such vacancy for the unexpired term. If commissioners are unable to continue service due to health, business requirements, personal reasons, or moving out of Town, they should submit a formal letter of resignation to the Town Council. Advance notice is appreciated so that advertising can be done to obtain a replacement.
7. There is one staff person assigned to each commission to serve as liaison between the commission and the other staff. The liaison is the parliamentarian for their assigned board or commission, is responsible for preparing agendas and minutes, helps regulate meetings regarding laws pertaining to Conflict of Interest laws and Open Meeting laws. The liaison will be responsible for letting the commission know what is happening in the Town organization, what issues need direction, and suggest alternatives that the commission may consider. Liaisons investigate questions raised by the commission, recognize commissioner contributions, encourage involvement, and promote team spirit, so that all commissioners can participate in a manner which will maximize their satisfaction in the organization. It is important that good relationships exist between the commission and liaison, so that together a reasonable solution can be derived. The following are some ways to avoid misunderstandings and to keep the channels of communication open:
 - a. Commissioners should communicate with the liaison assigned to the commission rather than to other staff and their discussions should be related to the commission's policies and goals.
 - b. Commissioners should not ask for individual reports, favors, or special considerations. In order to prevent the liaison from being diverted from priority projects,

if a commission desires information or a report which will require a significant amount of staff time, the commission should request Town Council permission to pursue the project.

c. Commissioners should realize that the liaison reports directly to a supervisor and may not be able to carry out every recommendation that the commission may have.

8. Purchases relating to the policy and goals of the commission may be made using the commission's budgeted funds or donation accounts. Once a majority of the commissioners at a meeting votes in favor of an expenditure, the purchase must be approved by town staff. This assures that the funds, which are public funds, are expended in accordance with applicable laws and town financial procedures.

C. **Types of Boards/Commissions**

1. **Design Review Board**

The Design Review Board reviews the landscaping and exterior design of some proposed new buildings, commercial signage, proposed alterations to buildings, excluding single family residences, and major development or redevelopment projects to assure that they are compatible with the surrounding environment and to preserve and protect the integrity and character of the Town. The Design Review Board also reviews applications under the Town's Zoning Code, Chapter 11 – Design Review and Site Plan Review Ordinance. The Design Review Board has the power to approve, conditionally approve, or disapprove all of the above requests. The Design Review Board has five representatives and meets on an as-needed basis.

2. **Parks and Recreation Commission**

The Parks and Recreation Commission is an advisory body to the Town Council in matters pertaining to and in the advancement of sound parks and recreation planning and programming. This Commission currently meets on the second Wednesday of each month.

3. **Planning Commission**

The Planning Commission reviews all long-range plans for the Town, including the General Plan, specific plans, and rezoning. It also bears the primary responsibility for the initial review of larger developments, including applications for preliminary plats. Furthermore the Commission makes formal recommendations to the Town Council on planning policies. The Planning Commission has five representatives.

4. **Board of Adjustment**

The Board of Adjustment is a quasi-judicial body which has powers and duties prescribed by law and ordinance including:

- 1) To hear and decide appeals of administrative decisions;
- 2) To interpret the boundaries of zoning districts as depicted on the Zoning Map;
- 3) To hear and decide variances;
- 4) To consider the extension of nonconforming uses.

This 5 member Board meets only as needed. Town Council cannot reverse the decision of the Board of Adjustment, only the Civil Courts can interpret their findings.

5. Public Safety Personnel Retirement Board

The Public Safety Personnel Retirement Board oversees the retirement pension fund for the Town's police officers. This Board consists of the Mayor or Mayor's designee, two citizens and two police personnel. The PSPRS meets at least twice a year.

6. Municipal Property Corporation

The Town of Clarkdale Municipal Property Corporation (MPC) is a non-profit organization that is an "affiliate of the governmental unit". The Clarkdale MPC was formed by the Clarkdale Town Council with the adoption of Resolution #835 on December 19, 1996. The MPC was originally formed to finance the construction of wastewater collection system improvements in the Centerville neighborhood in the Town of Clarkdale. The debt associated with that original financing was retired in 2016. The MPC conducts no business other than with the Town of Clarkdale. Its sole charge is to finance the cost of acquisition, construction and equipping of certain facilities when asked to do so by the Clarkdale Town Council.

Board members are appointed by the Clarkdale Town Council, and meet once per year for a required Annual Business Meeting. Additional special meetings may be called if the Town of Clarkdale is obtaining financing through the MPC.

D. Town Staff

1. Town Manager

The Town Manager is appointed by the Town Council and serves under the terms of an employment contract. The manager is the administrative head of the Town government and is subject to the direction of the Town Council. The manager is responsible for the efficient administration of all the affairs of the Town which are under his/her control. The Town Manager's responsibilities include the following: enforcement of ordinances; responsibility and direction over all employees except the Magistrate; preparation and submittal of the annual budget, and chief advisor to the Town Council. The manager is also responsible for projecting future program needs and services and determines the financial, personnel and social impacts of these decisions. The Town Manager serves at the pleasure of the Town Council and is a non-elected, salaried position.

The Town staff, under the direction of the Town Manager, is responsible for carrying out the policies of the Town Council and implementing programs and services. The Town Manager, Town Attorney, and Magistrate are appointed by, and report to, the Town Council. All other department heads and staff members ultimately report to the Town Manager.

The Town Manager oversees responsibilities for the day-to-day administrative affairs of the Town. The Town Council, commissions and boards work closely with the staff

liaisons; however, they do not have the authority to supervise or direct the work of staff. Special assignments to staff are made through the Town Manager.

2. Human Resources Manager

This position is point-of-contact for the Town's Human Resources, responsible for efficient and effective personnel management. This position performs a variety of complex administrative and management functions in the planning, development, coordination, implementation, tracking and enforcement of the Town's personnel policies and programs. Functions involve recruitment, selection, orientation, performance evaluation and management, employee relations, discipline, training, classification, compensation, benefits administration and budget monitoring.

3. Town Clerk

This is the oldest public service position in municipal government in our country. The Town Clerk performs all of the responsibilities designated in the Town Code and Arizona Revised Statutes. The Town Clerk provides staff liaisons to certain boards and commissions, is charged with managing all of Clarkdale's public records, creates many of the Town's permanent records (meeting minutes, resolutions, ordinances, contracts and agreements), and serves as the Elections Official for the Town. The Town Clerk works closely with the Town Council and the Town Attorney to ensure compliance with Arizona's Open Meeting Law and other laws, and provides on-going training and education to the Town Council, Boards, Commissions, and staff relating to those laws.

4. Police Department

The function of the Police Department is to protect and serve the public and protect property within the Town. This responsibility is carried out by preventive patrol, traffic enforcement, criminal investigation, and public relations programs. It is also responsible for crime prevention and educational programs.

5. Magistrate Court

The presiding officer of the magistrate's court is the Town Magistrate. The Town Magistrate is appointed every two years by the Town Council and serves under the terms of an employment contract. The purpose of this department is to process and hear cases in accordance with applicable laws of the Town of Clarkdale and the State of Arizona.

6. Community/Economic Development Department

This department is charged with administration and enforcement of building and development issues in the Town of Clarkdale. The Department is responsible for zoning, permitted uses, conditional use permits, zoning changes, planned area developments, planned unit developments, variances, parking standards, landscaping standards, signage, subdivisions, other related planning issues, and issues licenses on behalf of the Town. It also handles building permit applications, building inspections, plan review, and code enforcement.

7. Public Works/Utilities Department

This department oversees much of the Town's infrastructure, including parks and public facilities, public streets, alleys and other right-of-ways, and drainage ways, and oversees the operation of the Town's water, wastewater, reclaimed water and sanitation systems . The department coordinates the issuance of permits, deals with engineering issues and performs inspections and project management of the construction of public facilities. Other operational responsibilities include fleet management and the management of the Valley View Cemetery. Representatives of this department are staff liaisons to the Verde Valley Transportation Planning Organization and Northern Arizona Council of Government, the Northern Arizona Municipal Water Users Association and other State and Regional transportation and water governing bodies and associations.

8. Finance Department

This department directs the Town's budget process, payroll and accounts payable, utility billing, internal audits, risk management, , annual tax levies and procurement of goods and services.

9. Town Attorney

The Town Attorney is contracted by the Town Council to provide legal services for the Town. The Attorney's services are coordinated through the Town Manager, on behalf of the Town Council. The Town Attorney also provides day-to-day information to the Town staff on legal matters and acts as the Town's representative in most legal actions.

PUBLIC OFFICIAL CONDUCT
Section Two

A. Public Official Protocols

Public officials should:

- Demonstrate honesty and integrity in every action and statement.
- Serve as a model of leadership and civility to the community.
- Inspire public confidence in Clarkdale government.
- Work for the common good, not personal interest.
- Prepare in advance of meetings and be familiar with issues on the agenda.
- Fully participate in meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others.
- Participate in scheduled activities to increase effectiveness.
- Be responsible for the highest standards of respect, civility and honesty in ensuring the effective maintenance of intergovernmental relations.
- Respect the proper roles of elected and appointed officials and Town staff in ensuring open and effective government.
- Provide contact information to the Town Clerk, your staff liaison or your immediate supervisor in case an emergency or urgent situation arises while you are out of town.

B. Conduct with One Another

Public Officials include individuals with a wide variety of backgrounds, personalities, values, opinions, perspectives, and goals. Recognizing this diversity, all have chosen to serve the public in order to improve the quality of life in the community. In all cases, this common goal should be acknowledged even as representatives may “agree to disagree” on contentious issues.

1. **Treat Others as You Would Like to be Treated:** Ask yourself how you would like to be treated in similar circumstances, and then treat the other person that way. Governance of a town relies on the cooperative efforts of elected officials and volunteers, who set policy, and Town staff, who analyze problems and issues, make recommendations, and implement and administer the Town Council’s policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.
2. **Treat Each Other as Professionals:** Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected.

3. **Channel Communications Through the Appropriate Town Staff:** Questions or concerns about staff recommendations, Town operations, and business items before the Town Council or commissions should be directed only to the Town Manager, Assistant Town Manager, Town Attorney, Department Heads, or staff liaison. The office of the Town Manager should be copied on any request to Department Heads made by Councilmembers. Representatives should not meet with department staff directly, but work through Department Heads, who will determine if they, too, need to attend any meetings with representatives.

Following this communication practice helps insure that issues are addressed most appropriately and expeditiously, and upholds the tenets of the Council/Manager form of government. When in doubt about appropriate staff contact, ask the Town Manager for direction.

4. **Concerns Regarding Individuals:** All critical concerns about staff performance by a Councilmember or commission member should be expressed in private to the Town Manager. If a Town Council or commission representative has a concern with the effectiveness of a colleague on the Town Council or their commission, and is comfortable talking with that individual privately, the representative should do so. If the problem is not resolved, the representative should consult with the chair or liaison of the Town Council or commission.
5. **Depend Upon the Staff to Respond to Citizen Concerns and Complaints:** Elected and appointed officials are often contacted directly by citizens with regard to specific concerns about the Town. While it is not the role of the elected or appointed official to resolve those concerns personally, it is important that you pass on concerns and complaints to the Town Manager or appropriate Department Head. The staff should respond according to the procedure for responding to customer concerns, along with informing the representative how the concern was resolved.
6. **Respect the Role Of Council/Commissions Representatives As Policy Makers For The Town:** Staff is expected to provide its best professional recommendations on issues. Staff should not try to determine Town Council or commission support for particular positions or recommendations in order to craft recommendations. The Town Council/commission must be able to depend upon the staff to make independent recommendations. Staff should provide information regarding alternatives and their pros and cons as part of the staff recommendation.

Town Council/commissions must weigh many factors in making their decisions. This includes factors that may outweigh the technical and professional advice of a Councilmember, commission member, or staff. Once a decision is made, it should be respected as the final position of the Town.

B. Conduct During Public Meetings

1. **Use Formal Titles:** In the interest of conducting an orderly meeting, the chairperson, at their discretion, may choose to address all present by their formal titles, such as when there is an audience or controversial issues are being discussed and/or being reported on by the media.
2. **Practice Civility and Decorum In Discussions and Debate:** Difficult questions, tough challenges to a particular point of view, and disagreement with ideas and information are legitimate elements of a free democracy in action. Be respectful of diverse opinions.
3. **Honor the Role of the Presiding Officer in Maintaining Order and Equity:** Respect the Chair's efforts to focus discussion on current agenda items. Objections to the Chair's actions should be voiced politely and reasonably, following parliamentary procedure.
4. **Demonstrate Effective Problem-Solving Approaches:** Representatives have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole. Representatives are role models for residents and other stakeholders involved in public debate.
5. **Be Respectful of Other People's Time:** Stay focused and act efficiently during public meetings.
6. **Agenda Questions:** Representatives are encouraged to submit their questions on agenda items to the appropriate department as far in advance of the meeting as possible so that staff can be prepared to respond at the meeting.
7. **Regular and Special Meetings:** Regular meetings are held according to the Clarkdale Town Code or the Council/Commission's adopted schedule. A special meeting may be called when needed for the transaction of business. The calling of all meetings must satisfy the requirements of the Open Meeting Law. Riggins Rules and Robert's Rules of Order shall be used as references while conducting meetings. Business may only take place at special or regular meetings if a quorum of the public body is present.

POLICIES
Section Three

A. Conflicts of Interest Policy

One of the most misunderstood phrases in the media today is “conflict of interest.” While the phrase is often interpreted to carry a negative connotation, declaring a conflict of interest simply allows for us to be more transparent, and meet the legal obligations in our system of governance. It is not “bad” to have a conflict of interest, but it is illegal to fail to declare a conflict of interest under Arizona law or to participate or otherwise be involved in decisions where such a conflict exists.

Public officials are prohibited from using or attempting to use their official position to secure valuable things or benefits to themselves, pursuant to State Law. When a representative recognizes a conflict of interest, the representative shall announce the conflict and refrain from discussion and voting on the matter, and shall leave the dais. Though non-voting members of a public body, employees must also comply with the Conflict of Interest laws, and must refrain from participating in the discussion of, or influencing, any issue on which they have a conflict. Any elected or appointed official or Town staff member with a Conflict of Interest must complete and return a Conflict of Interest Disclosure Memorandum form to the Town Clerk.

1. **Applicability.** The conflict of interest law covers all public officers and employees of incorporated cities and towns. This includes the mayor, councilmembers and representatives of all appointed boards; the Town Manager, her appointees, and all consultants; and full-time, part-time and contractual employees. The law is also applicable when the private interests of a public official’s or employee’s relative are under consideration. The law defines a relative to be a husband or wife, child, grandchild, parent, grandparent, brother or sister, (and their spouses). In addition, the provisions apply to the following in laws: brothers, sisters, parents, and the child of a spouse.
2. **Defined.** The conflict of interest law distinguishes between interests that are “remote” and those that are “substantial”. Essentially it says that remote interests are so minor that they do not constitute illegal conflicts of interest, and that any interest which is not remote, as detailed in state law, is a substantial interest. Here is what the law defines as a remote interest.

a. REMOTE INTERESTS exist when the public officer or employee or a relative is:

- A non-salaried officer or member of a nonprofit corporation.
- The landlord or tenant of a contracting party.

- An attorney of a contracting party.
- A member of a nonprofit cooperative marketing association.
- The owner of less than 3% of the shares of a corporation with an interest in a matter with the town, provided that:
 - Total annual income from dividends, including the value of stock dividends, does not exceed 5% of the officer's or employee's total annual income; and
 - Any other payments made to the officer or employee by the corporation which do not exceed five percent of the officer's or employee's total annual income.
- Being reimbursed only for actual and necessary expenses incurred in performance of official duties.
- Receiving town services on the same terms and conditions as if the person were not an employee.
- A member of a trade, business, occupation, profession, or class of persons and has no greater interest than that of the other members. A class must consist of at least ten members to qualify the interest as remote.

- b. SUBSTANTIAL INTEREST is defined in this law as any pecuniary or proprietary interest, either direct or indirect, other than those that are remote. In general, a conflict of interest will most often result when a public official of the town is involved in substantial ownership or salaried employment with a private corporation doing business with the town. For example, if a public official's spouse owns or is employed by a lumberyard selling to the town, a conflict may exist. On the other hand, if the spouse is the lawyer for that lumberyard, then it is possible that no conflict exists.

A public official may sell equipment, material, supplies or services to the town if this is done through an award or contract let after public competitive bidding. An exception to this law allows towns to purchase supplies, materials, and equipment without going to public competitive bid as long as the single transaction does not exceed three hundred dollars and the annual total does not exceed one thousand dollars. The public official is not allowed to influence the bidding process in any way and must make known such interest in the official records of the town.

3. **Additional Provisions.** The conflict of interest law also has the following restrictions:

- a. When a public official has been directly concerned or has exercised "administrative discretion" in an issue, that official may not represent another person before an agency of the town on the same issue and receive compensation for such representation. This restriction extends

to twelve months after termination of office or employment with the town.

- b. A public official cannot disclose or use confidential information obtained during employment.
 - c. A public official cannot receive any compensation for performance of services in any case, special proceeding, application, or other matter pending before any agency of the town.
 - d. A public official cannot use or even attempt to use his or her position to obtain anything of value that normally would not be received in the performance of official duties. Something is considered to have “value” when it exerts a “substantial and improper” influence on the duties of the official.
4. **Declaration of a Conflict.** When a public official (or their relative) has a substantial interest in any decision of a contract, sale, purchase, or service to the Town, the official must:
- a. Refrain from participating in any manner (discussing or in any way attempt to influence) a decision of the Town Council or agency of the town.
 - b. Declare that a substantial interest exists and make it known in the official records of the town. Public officials should file a letter with the Town Clerk declaring in writing that a conflict exists and refrain from participating in any manner in the decision or issue.
5. **Penalties.** A public official who intentionally or knowingly conceals or fails to disclose any substantial interest or engages in any of the activities violates State Law and is subject to penalties current at the time of infraction. Any person affected by a decision of a public agency where a conflict of interest is alleged may bring a civil suit in superior court.

If you have any question whether your proposed activity amounts to a conflict of interest, you should check with the Town Manager, Town Clerk or your Liaison before you engage in such activity, for your own protection, and for the protection of the Town.

B. Public Records

Statutes ensure accountability to the public by stating that all officers and public bodies shall maintain all records...to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from the state or any political subdivision of the state. [A.R.S. 39-121.01(B)] By definition, the employees of public officers and public bodies are also bound by public records laws.

Records, as defined in the Statutes, are all books, papers, maps, photographs and other documentary materials, regardless of physical form or characteristics...made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved... by the agency as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government, or because the information and historical value of the data contained therein.... [A.R.S. 41-1350] In short, with some exceptions, almost everything we have is a record, for some length of time. In general, records created or received by Commissioners (regardless of their form) concerning town business or town related issues are public records and must be available to the public for review.

Violations of public records laws come in two forms: “governmental” violations and “personal” violations. “Governmental” violations occur when the government (operating through public officials and employees) fails to comply with the public records law by refusing to produce public records, purposefully delaying the release of public records, refusing to release records based on speculation that they may contain information that does not need to be produced, or overcharging for copies of public records.

“Personal” violations occur when a public officer or employee releases confidential information that is protected from disclosure by statute, steals or in an unauthorized way removes, secretes, mutilates, or defaces a public record, or otherwise “tampers with a public record” by destroying, altering, or falsifying a public record.

To avoid problems, you might want to keep the following tips in mind:
Whenever creating documents, presume they will be public records available for inspection, copying, and printing on the front page of the local newspaper. Therefore, be as careful with the tone and language of the document as you are with the substantive accuracy of your writing.

Don't “tamper” with a public record – by destroying it, backdating it, hiding it, altering it, or otherwise falsifying it.

In order to relieve the responsibility of knowing the confidentiality laws and retention schedules of records, please provide any records, or copies, to your commission liaison who will forward them to the Town Clerk. The Town's records rooms and records retention schedules are maintained by the Town Clerk. The retention schedules must be referenced by all employees when working with records retention and maintenance. Records are delivered to the Town Clerk when ready for storage. See the Clerk for further details.

If you receive a request for a public record, immediately seek help from staff.

C. Computer, Email, Internet and Social Media Policy

As noted above, the Town of Clarkdale is required by law to maintain public records. This is often most challenging when records are in the form of email, instant messages, text messages, voice mail messages, voice-over IP messages, blogs, wikis, Twitter, Facebook and other related applications. For this reason, and because of Open Meeting Laws, Clarkdale has developed a Computer, Email, Internet and Social Media Policy which includes the additional electronic communication records. To make sure that public officials have read and understood this policy, they are asked to sign a Computer, Email, Internet and Social Media Policy when they are appointed.

1.0 Introduction

Social media is content created by people using highly accessible Internet based publishing technologies. Social media software tools allow groups to generate content and engage in peer-to-peer conversations and exchange of content (examples are Blogger, Twitter, Wikispaces, YouTube, Flickr, Facebook, etc.). The Town of Clarkdale's approved social media outreach is used to enhance communication, collaboration, and information exchange in support of the Town's Vision and Mission. By openly sharing knowledge, best practices, and lessons learned within the Town, with and from the public and with and from other federal, state, and local partners, we can provide more effective solutions and efficiencies to enhance excellence in the business of government.

The decision to authorize use of social media websites is a business decision. The purpose of this document is to provide guidelines for use of social media for the Town of Clarkdale. Employees may utilize these guidelines in conjunction with the Town of Clarkdale Email, Internet and Social Media Policy. If you are a Town employee or contractor creating or contributing to blogs, microblogs, wikis, social networks, virtual worlds, or any other kind of social media both on and off the clarkdale.az.gov domain, the Town Policy and these guidelines are applicable. The Town expects all who participate in social media on behalf of the Town to understand and to follow the Policy and these guidelines.

The Town of Clarkdale is actively reviewing social media, Web 2.0 and social networking technologies and its ability to empower town departments and employees to more effectively communicate. As the technology evolves, this guideline will evolve, and will continue to work in conjunction with the Town's Email, Internet and Social Media Policy. The use of social media technology follows the same standards of professional practice and conduct associated with everything else we do. Common sense and sound judgment help avoid the most vexing issues.

2.0 Professional Use

Emerging platforms for online collaboration are changing the way we work, and offer new ways to engage with customers, colleagues, and the world at large. It is a new model for interaction and social computing that can help employees to build stronger, more successful citizen and agency business relationships.

All official Town-related communication through social media, Web 2.0 and social networking outlets should remain professional in nature and should always be conducted in accordance with the Town's Email, Internet and Social Media Policy. The Town's website, www.clarkdale.az.gov, will remain the official location for content regarding Town business, services and events. Whenever possible, links within social media formats should direct users back to the Town's Web site for more information, forms, documents or online services necessary to conduct business with the Town of Clarkdale.

If social media, Web 2.0 and social networking sites are used for official Town business, the entire site, regardless of any personal views, is subject to best practices guidelines, and standards. What an employee writes is ultimately their responsibility. Participation in social computing on behalf of the Town is not a right but an opportunity. It should be treated seriously and with respect.

Only individuals authorized by the Town Manager may publish content to a Town web site or town social computing technologies. The Town of Clarkdale has established means to communicate official information. This communication comes from those designated to speak publicly on behalf of the Town or a department. Only these authorized persons, may publish content to an official town Web site or social media, Web 2.0 or social networking site.

3.0 Guidelines For Participation in Social Media on Behalf of the Town

If you participate in social media on behalf of the Town, follow the Town's Email, Internet and Social Media Policy, and follow these guidelines:

Be respectful. Post meaningful, respectful comments, no spam, and no remarks that are off-topic or offensive. Respect your audience, the public and your co-workers. Our audience covers a broad base with a diverse set of customs, values and points of view. Show proper consideration for others' privacy and for topics that may be considered objectionable or inflammatory.

Stay cool. One of the hallmarks of social computing is creating dialogue. Obviously, people won't always agree on an issue. When confronted with a difference of opinion, express the Town's points in a clear, logical way. Don't pick fights. When making a correction, be sure to make it clear that you have done so. Sometimes, it's best to ignore a comment and not give it credibility by acknowledging it with a response. When disagreeing with others' opinions, keep it appropriate and polite.

Moderating comments. In some social media formats such as Facebook, Blogs, Twitter responses, etc., you may encounter comments which cause you concern as a moderator or responsible party. In general, user comments should be allowed to remain, regardless of whether they are favorable or unfavorable to the Town. If the content is ugly, offensive, denigrating and completely out of context, then the content should be rejected and removed.

There can be a fine line between healthy debate and incendiary reaction. Do not denigrate others or the Town. It is not necessary to respond to every criticism or barb. Frame what you write to invite differing points of view without inflaming others. Some topics, like politics, slide easily into sensitive territory. Be careful and considerate. Once the words are out there, you cannot get them back. Once an inflammatory discussion gets going, it is hard to stop.

Mistakes. If you make a mistake, admit it. Be upfront and be quick with your correction. If you are posting to a blog, you may choose to modify an earlier post. Make it clear that you have done so.

Timeliness. Reply to comments in a timely manner, when a response is appropriate.

Knowledgeable. Make sure you write and post about your areas of expertise, especially as related to the Town and your assignments. If you are writing about a topic that the Town is involved with but you are not the Town expert on the topic, you should make this clear to your readers and/or consult with the appropriate individuals about content. Always speak the truth. Don't make unsubstantiated claims. If you need to respond or make a comment on something specific, verify the facts and provide references or sources of information that are current.

Responsibility. What you write is ultimately your responsibility. Participation in social computing on behalf of the Town is not a right but an opportunity. Treat it seriously and with respect. Follow the terms and conditions for any third-party sites.

Pause. If you are about to publish something that makes you even the slightest bit uncomfortable, do not post the statement. Take a minute to review these guidelines and try to figure out what is bothering you, then fix it. If you are still unsure, you might want to discuss it with your manager or department head. Ultimately, what you publish is yours, as is the responsibility, and any possible repercussions.

Judicious. Make sure your efforts to be transparent do not violate the Town's privacy, confidentiality, and any applicable legal guidelines for external communication. Get permission to publish or report on conversations that are meant to be private or internal to the Town. All statements must be true and not misleading and all claims must be substantiated and approved. Never comment on anything related to legal matters, litigation, or any parties the Town may be in litigation with without the appropriate approval. If you want to write about other government entities, make sure you know what you are talking about and that you have any needed permissions.

Protect Yourself. Be smart about protecting yourself, your privacy, and any sensitive or restricted confidential and sensitive information. What is published is widely accessible, not easily retractable, and will be around for a long time, so consider the content carefully.

Perception. In online social networks, the lines between public and private, personal and professional are blurred. By identifying yourself as a Town employee, you are creating perceptions about your expertise and about the Town by the general public, legislative stakeholders, customers, and business partners, and perceptions about you by your colleagues and managers. Be sure that all content associated with you is consistent with your work and with the Town's values and professional standards.

Conversational. Talk to your readers like you would talk to people in professional situations. Avoid overly "composed" language. Bring in your own personality and say what is on your mind. Consider content that is open-ended and invites response. Encourage comments. Broaden the conversation by citing others who are commenting about the same topic and allowing your content to be shared or syndicated.

Excitement. The Town of Clarkdale is making important contributions to Arizona and the nation, to the future of government, and to public dialogue on a broad range of issues. Our activities are focused on providing services and on government innovation that benefits citizens and stakeholders. Share with the participants the things we are learning and doing, and open up social media channels to learn from others.

Value. There is a lot of written content in the social media environment. The best way to get yours read is to write things that people will value. Social communication from the Town should help citizens, partners, and co-workers. It should be thought-provoking and/or build a sense of community. If it helps people improve knowledge or skills, build their businesses, do their jobs, solve problems, or understand the Town better, then it is adding value.

Respect copyright, logo and fair use laws. Be sure to show respect for the laws governing copyright and fair use of copyrighted material owned by others, including those of the Town of Clarkdale and town department brands. Do not quote more than short excerpts of someone else's work and always provide attribution. It is a better practice to link to others' work, when possible. Be sensitive when providing links to content. Redirecting to another site may imply an endorsement of its content.

Transparency. Your honesty will be quickly noticed in the social media environment. If you are blogging about your work at the Town, use your real name, identify that you work for the Town of Clarkdale, and be clear about your role. If you have a vested interest in something you are discussing, be the first to point it out.

Separate Personal and Professional Accounts. Employees should be mindful of blurring their personal and professional lives when administering social media, Web 2.0 and social networking sites. Town employees and elected officials must never use their Town e-mail account or password in conjunction with a personal social networking, Web 2.0 or social media site.

Section 22 - Computer, Email, Internet and Social Media Policy

22.1 Purpose and Applicability

This policy applies to the use of all of the Town of Clarkdale's ("Town") electronic devices, including computer, email, internet and social media applications ("Electronic Devices") by any person and is intended to make all users aware of what is deemed to be acceptable and unacceptable use. As a condition of using any of the electronic equipment owned, leased or operated by the Town, Electronic Device users expressly waive any right of privacy in anything they create, store, send or receive through the Town's Electronic Devices, including both business and personal information. As a result, no users of the Town Electronic Devices should have any expectation of privacy regarding any information created, stored, sent or received through the Town's Electronic Devices. The Town reserves the right to monitor, inspect and/or copy any information relating to any person's use of its Electronic Devices at any time, with or without notice. If there is evidence of violation of any part of this policy or any other Town policy or law, the Town reserves the right to take appropriate action, including disciplinary action, up to and including termination and/or revoking a person's ability to continue using the Town's for employees of the Town.

Further, this policy sets forth the parameters for the proper preservation, disclosure and disposition of email and social media. The policy also provides the necessary framework for use of social media, Web 2.0 and social networking technologies on behalf of the Town.

22.2 Scope

This policy applies to (1) all users of the Town's Electronic Devices and (2) elected officials, appointed board and commission members, Town employees and contractors who access any of the Town's social media or websites for business purposes.

22.3 Philosophy

Computers, email, the internet and the use of social media are business communication tools and users are obliged to use these tools in a professional, responsible, effective and lawful manner. Access to email and the internet is provided to Town employees for the purpose of conducting official Town business. Personal use of email, the internet, phones or other technology for limited family or personal communications is acceptable as long as those communications meet tests of reasonableness, such as:

- There is no cost to the Town associated with the use.
- Use is moderate in time.
- Use does not interfere with an employee's or co-worker's productivity at work or normal business activities.
- Use is primarily during non-working hours such as lunch periods and breaks.
- Use does not violated any Town policy or any applicable federal, state or local law.

22.4 General Policies

Town representatives and employees shall not use the Town's internet, email, online service or social media applications:

- for operating a business for personal gain;
- for sending chain letters, junk mail, jokes;
- for soliciting money for religious and/or political causes;
- for any gambling, betting or gaming activity;
- to transmit or download material that is offensive, obscene, or pornographic;
- to create or send a communication that might constitute discriminatory, harassing, intimidating, hostile or offensive communications on the basis of gender, race, color, national origin, sexual orientation, disability, or other grounds;
- for unethical, illegal, unprofessional or disruptive activities;
- for any activity that would jeopardize the legitimate interests of the Town or the citizens of the Town;
- to disseminate or print copyrighted materials (including articles and software) in violation of copyright laws;
- to provide access to confidential information or to provide access to public information without following the existing rules and procedures of the Town for dissemination.
- Town representatives and employees shall not use an Internet, email or online service account or signature line other than their own.
- Town representatives and employees shall take all reasonable precautions to prevent the inadvertent dissemination of anyone else's information via the Internet, email, online services or social media applications.
- Internet, email or online services usage are subject to limitations as imposed by supervisors to prevent excessive or improper use. All messages distributed via the Town email system are the Town's property.

Access to and use of the Internet, including communication by email, is not confidential and no person using the Town's Electronic Devices should have any expectation of privacy with respect to such use. Internet access on the Town's system can and will be monitored for use consistent with this policy.

22.5 Email

The purpose of email is to provide expeditious communication similar to oral conversation and voice mail. This section addresses the use of electronic mail with a special emphasis on records-related issues and covers the use of computers owned or controlled by the Town. It also applies to any official Town email correspondence by an employee, elected official or appointed Board or Commission member when conducted from computers not owned or controlled by the Town. Upon appointment, new employees, elected officials and appointed officials (including Board and Commission members) are required to read this policy and sign and return the Policy Consent Form to the Town.

22.5.1 Email Security, Privacy and Ownership

A. Email is not secure. Email users expressly waive any right of privacy in anything they create, store, send or receive on behalf of the Town or anything they create, store, send or receive on Town owned equipment.

B. Email is generally considered to be a public record subject to disclosure under the Arizona Public Records Law (ARS 39-121). Confidential messages should never be sent electronically.

C. Employees shall not read the email of another employee without a legitimate business purpose consistent with the Town's policies and business communications practice.

D. No employee or Town representative shall send an email under another person's name without that person's authorization, and the sender shall indicate their identity in the message.

22.5.2 Email Records Retention and Disposition

A. Email communications may be records. Any email communication that meets the following definition of a record pursuant to ARS 41-1350, shall be preserved in accordance with this policy.

“A record means all books, paper, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to 41-1348, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein.”

B. Employees who transmit email shall determine whether to preserve or delete the email communication. As a guideline, consider what you would do if the message was standard/paper correspondence. The content of the message, not the medium, determines whether and how long you save it. Refer to the Town's Records Retention Plan, which is on file in the Town Clerk's office for further guidance.

C. Routine Email - communications of a transitory value, may be deleted after being read and after the required action is taken. Examples of routine email include:

- Messages or notes made about phone calls

- “Post-its” from colleagues
- Bulletins about Town social or recreational events.
- Routine information requests
- Invitation to a business meeting
- Messages between the email user and a supervisor concerning a memo drafted for his/her signature and various drafts of the memo itself. (However the final signed memo should be saved.)

D. Email that is Considered a Record - Communications that meets the definition of a record under ARS 41-1350, transmitted inside the Town offices or received from outside the Town, through the email system, shall be forwarded or copied to the Town’s records email account: records@clarkdale.az.gov The sender shall, if the email system allows, ensure that the message contains:

- The time and date the message was sent and received
- The complete sender and receiver identification, and;
- The message is complete.

22.6 Internet Use Policy

The Town’s connection to the Internet primarily exists to facilitate the official work of the Town and the efficient exchange of information.

Use of the Town’s internet connections is a privilege and not a right. Users should be aware that monitoring of internet usage, including sites visited, occurs without user consent or prior notice on a regular basis. If inappropriate use is determined, the Town may deny, revoke, or suspend internet access to any user at any time, and, for employee’s, may take any other disciplinary actions as outlined in the Town’s Personnel Policies and Procedures Manual.

A. Downloading Software

Employees who wish to download software or browser plug-ins must obtain authorization from their Department Head.

B. Personal Responsibility

Some internet sites routinely keep logs of who visits their website. Individual users must be aware of and at all times attempt to, prevent potential Town liability in their use of the internet.

Employees should be aware that there is a wide variety of information on the internet. Some individuals may find some information on the internet offensive or otherwise objectionable. Individual users should be aware that the Town has no control over, and can therefore not be responsible for, the content of information available on the internet.

C. Records Retention

The same policy for retention of records, set forth in the email use policy, shall apply to all records obtained or received via the internet.

D. Copyrighted Material

All communications and information accessible via the internet should be assumed to be private property. Internet users shall honor copyright laws including those protecting software and intellectual property.

- Duplicating, transmitting, or using software not in compliance with software license agreements is considered copyright infringement.
- Users shall not make copies of software or literature without authorization and full legal right to do so.
- Internet users shall not transmit copyrighted materials belonging to others over the internet without permission.
- Users may download copyrighted material from the internet, but its use must conform with restrictions posted by the author or current copyright law.

22.7 Social Networking and Social Media

Social media is content created by people using highly accessible Internet based publishing technologies. Social media software tools allow groups to generate content and engage in peer-to-peer conversations and exchange of content (examples are Blogger, Twitter, Wikispaces, YouTube, Flickr, Facebook, etc.). The Town's goal is to encourage the business use of social media technologies to enhance communication, collaboration, and information exchange in support of the Town's Vision and Mission. By openly sharing knowledge, best practices, and lessons learned within the Town, with and from the public and with and from other federal, state, and local partners, we can provide more effective solutions and efficiencies to enhance excellence in the business of government. However, any user must be careful not to use, post or transmit any confidential Town information and/or any private information about any individual.

22.7.1 Permission to Publish Official Social Media Content on Behalf of the Town

- A. Only individuals with written authorization from the Town Manager may publish official social media content on behalf of the Town.
- B. Individuals who are granted authorization to publish official social media content on behalf of the Town are ultimately responsible for what they post.
- C. Individuals who are granted authorization to publish official social media content on behalf of the Town must also follow the Town's "Social Networking and Social Media Guidelines".

22.7.2 Social Media Security, Privacy and Ownership

- A. Social Media is not secure. Social Media users expressly waive any right of privacy in anything they create, store, send or receive on behalf of the Town or anything they create, store, send or receive on or through Town owned equipment.

- B. Social Media content may be considered to be a public record subject to disclosure under the Arizona Public Records Law (ARS 39-121). Confidential messages or information should never be conveyed through Social Media and users should follow the Town's privacy, confidentiality and any applicable legal guidelines for external communications.
- C. No employee or Town representative shall post in a Social Media application under another person's name without that person's authorization. Always get permission to publish or report on conversations that are meant to be private or internal to the Town.

22.7.3 Social Media Records Retention and Disposition

- A. Social Media content may be records. Any social media content that meets the following definition of a record pursuant to ARS 41-1350, shall be preserved in accordance with this policy.

“A record means all books, paper, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to 41-1348, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein.”

- B. Duplicate/Copies of Records – Duplicate/copies of records posted in social media content may be deleted after their reference value has been served. Examples of duplicate/copies include:
 - A non-record office copy that is substantially a duplicate in nature (i.e. a notice about an event where the actual record is an event flier or meeting notice);
- C. Transitory Materials – Transitory materials posted in Social Media content may be deleted after the administrative or reference value has been served. Examples of transitory materials include:
 - General postings and comments
 - General correspondence
 - Walls, feedback and related records
 - Non-Historic Public Information records (including press releases, photographs, public service announcements, notices of upcoming events and other related records)

- D. Employees who transmit social media on behalf of the Town shall determine whether to preserve or delete the Social Media communication. Refer to the Town Records Retention Plan, which is on file in the Town Clerk's office, for further guidance.

22.7.3 Personal Use of Social Media

- A. The Town acknowledges that many elected officials, board and commission members and employees have personal social networking, Web 2.0 and Social Media sites. Because there are public records disclosure issues and possible other implications in the workplace when Town business is referenced on personal sites, it is in the best interests of the individual and of the Town that these sites should be used to share personal opinions or non-Town related information only. Following this principle helps ensure a distinction between sharing personal and agency views.
- B. Executives, managers, Elected Officials and Town Board and Commission Members should take additional caution when posting to personal Social Media, Web 2.0 or social networking sites. By virtue of their position, they must consider whether published personal content may be misunderstood as expressing an official Town position, even when the subject is not directly related to the Town.
- C. The following guidance is for town employees, elected and appointed officials who decide to comment on posts on the Town's official Social Media, Web 2.0 or social networking sites, from their personal Social Media, Web 2.0 or social networking site:
- State your name and, if relevant, role, when discussing Town business;
 - Use a disclaimer such as: "The postings on this site are my own and don't reflect or represent the opinions of the Town (or the Clarkdale Town Council) or the department (or Board or Commission) for which I work."
 - Elected officials and appointed officials such as board and commission members should take great care to consider the comments they post on the Town's official Social Media, Web 2.0 or social networking sites. Consideration should be given to ensure compliance with the Arizona Open Meeting Law. Policy issues should not be debated by decision makers in the Social Media arena.
 - Only those authorized by the Town or a department may use brand marks or logos in communications. Do not include the Town, individual department logos or program logos in personal blogs or postings.

22.8 Regulation and Enforcement

- 22.8.1 Any person who uses the Town's Electronic Devices shall comply with all provisions of this Computer, Email, Internet and Social Media Policy. The Town

Manager and Department Heads (or their designee) shall be responsible for managing situations arising from the lack of compliance with the provisions of this policy and for investigating suspected non-compliance. Violation of this policy by Town employees may result in any of the disciplinary actions outlined under the Town's Personnel Policies and Procedures Manual, including and up to termination of employment.

22.8.2 Regulation and enforcement of violations by elected and appointed officials will be dictated by Arizona law, local ordinances and Town procedures. In addition, any person who violates this policy may be denied further use of the Town's Electronic Devices.

D. Travel and Training Policy

The policy of the Town of Clarkdale is to encourage training opportunities for employees, and supervisors along with members of boards, commissions, authorities, and Town Council. The Department Head and the Finance Director, consistent with the budget, and this policy, shall authorize attendance at conferences, seminars, meetings and conventions that directly benefit the Town of Clarkdale.

Please refer to your most current Travel Expense Reimbursement Form for the most current rates for lodging, per diems and other travel and training related expenses.

E. Electioneering Policy

A public official of the Town may not use their authority to influence an election or nomination for office and may not directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes.

Councilmembers and commissioners may not solicit nor use the services of Town employees for political purposes, or to influence an election. Likewise, employees may not use their authority or influence to affect an election or nomination. In addition, some professionals (e.g., members of the ACMA, ICMA or IIMC) have professional codes of ethics, which preclude politically partisan activities that give the appearance of political partisanship in any form.

Clarkdale Public Officials may engage in political activities outside of office hours, on their own time, but not as a representative of the Town of Clarkdale.

F. Distribution of Flier Policy

There are many occasions when the Town distributes information to citizens through fliers. The Town usually uses fliers, in conjunction with other media, to provide information to a specified area or target group.

Regardless of the reason for distribution, there are a few important things to remember when distributing fliers as a representative of the Town of Clarkdale. First and foremost, the fliers should always contain information that

identifies that the flier was distributed by the Town of Clarkdale (or any branch thereof) and a phone number (and preferably a name of a person) to contact for additional information.

The Department Head or Commission's staff liaison is to review fliers (or other media materials) prior to their distribution.

Copies of any fliers distributed should be filed with the Town Clerk's office in order to comply with public records laws. Fliers should contain factual information and be presented in a professional manner. Fliers that are left at homes should be secured in some manner so that they do not blow away and litter the area. Federal regulations prohibit the distribution of fliers in post office receptacles (unless they have been mailed.)

MEETINGS
Section Four

A. Controlling a Meeting

Make sure that meetings are not unnecessarily scheduled and discussions not unduly long-winded. Everyone has something valuable to contribute, but knowing when and how to control discussions can make the difference between a side-tracked dialogue, and an insightful observation. Public meetings are the place where most Town Council members and commissioners spend the majority of their working time and where their public reputations are made. All too often, the impressions the public get are negative because of committing one or more of the four (4) “cardinal sins” of running a public meeting. They are:

1. **Not Controlling the Meeting.** If many people want to speak in a limited time, speaking time should be rationed so all may be heard. A helpful method is requesting a show of hands of those who wish to speak on a particular subject, then making a time allocation and holding to it. It is not necessary to permit individuals second and third opportunities. However, a statement concerning this should be made at the onset.
2. **Appearing to Seem Unfair.** Do not bring up the pros and cons of an agenda item before all testimony and evidence have been presented. Then the discussion should stay on the facts presented, not on the presenters.
3. **Failing to Bring Issues to a Vote.** Do not get so bogged down in petty details, endless searches for new data and procedural distractions that matters brought before the Council/commission never seem to get resolved. Some have taken so long to make a decision that by the time a decision reaches the next level of government, conditions have changed the affected proposal and, therefore, the recommendations are obsolete.
4. **Wasting People’s Time.** People who come to meetings should not have to wait hours to be heard or, worse yet, made to return because there was not time. Try to stick to the schedule listed on the agenda. Schedule an extra meeting now and then to clear any backlog of items that need to be considered. This is far better than trying to make everyone stay up until late to watch the Council/commission heroically fight off sleep as it tries to finish an overlong list of agenda items.

B. Role of the Mayor/Chair

The mayor is the key to the proper functioning of the Town Council, as is the chair of a commission. The mayor/chair has the important responsibility of ensuring that meetings operate efficiently and that decorum is maintained. Consequently, the election of the chair should be viewed as an important task. Although any representative of the Town Council or commission may request an agenda item, it is the mayor’s/chair’s responsibility to work closely with the staff liaison to develop the meeting agendas and review the requested agenda items from the other

representatives of the Town Council or commission. There are some general rules for an effective mayor/chair:

1. The mayor/chair shall ensure that the meetings are run as closely as practical by Robert's Rules of Order and that they move along without delay, but be open enough to allow individuals to speak without being unfairly restricted.
2. The mayor/chair should make sure that items which are not on the agenda are not discussed. If an item is not on the agenda, but the Chair senses that the Board/Commission wants to discuss the item, it should be put on the next available agenda.
3. The mayor/chair should see that the Council/commission considers the major issues and does not become sidetracked by insignificant concerns.
4. The mayor/chair should attempt to educate the public as to the process and policies of the Town.
5. The mayor/chair should attempt to bridge the differences that may exist among the opinions of the Council/commissioners in order to reach a consensus; however, non-consensus should not be allowed to delay voting on items indefinitely.
6. The mayor/chair should be the last representative to give his/her opinion after all others have spoken.
7. The mayor/chair should be capable of representing the Council/commission effectively to other groups. It is also important that the vice mayor/chair be an effective leader, since he/she will run the meetings in the mayor's/chair's absence.

C. Suggestions for Speakers

1. Names. All speakers will be expected to state their name and whether they are citizens of Clarkdale for the record. If a number of speakers are present, each speaker may be asked to file a written statement of their concerns with the Town Staff.
2. Questions. Questions for Council/commission representatives, other people in the audience, and the staff should be directed through the chair.
2. Brief Presentations. As much as possible, speakers should express their comments concisely and briefly. The mayor/chair may designate a specific amount of time for each speaker, such as 3 minutes. Organized groups may be asked to designate a spokesperson for the group.

D. Parliamentary Procedure

The Town Council and the Town's boards and commissions use parliamentary procedure to run meetings effectively.

1. **Calling the Question.** People are often confused about what “calling the question” means. They suppose that it means simply “let’s get this over with and vote!” But “calling the question” when done properly should be a rare occurrence. If debate has dragged on longer than is really warranted, a representative can “call the question”, at which time the chair must immediately ask the Council/commission to vote to determine whether or not debate should be cut off or continue. The motion to call the question is itself not debatable. If two-thirds of those voting agree that the discussion should end, or a general consensus is reached, the discussion will cease and the main motion will be put to a vote.
2. **Tie Votes.** In a five-member Town Council or commission, ties are only possible if one or more person is absent or abstains from a vote. In all cases of tie votes the motion fails.
3. **Abstentions.** An abstention from a vote has the effect of eliminating that person as a legal voter for that question. No member of a board, committee, or commission shall be excused from voting, except if a conflict of interest exists as defined by the laws of the State of Arizona pertaining to conflict of interest of governmental officials and if the member has filed with the Town Clerk a written statement identifying the conflict of interest pursuant to A.R.S. § 38-502 prior to the vote. In all other cases a failure to vote shall be entered on the minutes as an affirmative vote.

As a practical matter a representative should only abstain for a very good reason, such as a conflict of interest. In the case of a conflict of interest the representative should declare the conflict and the basis of the conflict, then excuse him or herself from the proceeding for the remainder of that question. Abstentions should not be used to avoid an unpleasant or unpopular vote. Town Council and commission representatives are elected or appointed to make tough decisions, not to avoid them.

4. **Point of Order.** A “Point of Order” or “Point of Procedure” can be made by any representative of the Council/commission if they feel that proper procedure is not being followed in the conduct of the meeting. The chair can rule on the point of order and that decision can be appealed if two or more representatives so desire. If the chair’s decision is appealed, it must be voted on before further discussion or vote can take place.
5. **Discussing and Voting on Your Own Motion.** If you make a motion you cannot speak against that motion. You can, however, vote against your own motion. This rule recognizes the fact that you might be convinced during discussion that your motion should fail.

E. Public Hearing Procedures

Public hearings may be held at any commission meeting, but most commonly take place at Planning Commission meetings. The rules for public hearings listed below have been prepared to give you guidance in conducting a Public Hearing.

The Town Council recommends that if a councilmember/commissioner misses all or part of a public hearing, the commissioner should abstain from voting on the matter unless he/she has become familiar with all the evidence presented at the hearing. It is suggested that the representative listen to a recording of the hearing (if available), examine all written materials, and state at the meeting that he/she has done so and feels competent to vote on the item.

Running a Public Hearing

1. The chair states the purpose of the Public Hearing.
2. The staff gives an oral report explaining the action requested, the facts and issues, and the staff report.
3. If applicable, the applicant gives a presentation on the issue.
4. The chair acknowledges any correspondence about the application which has been received.
5. The public hearing is opened.
6. Members of the public are heard. All those wishing to speak shall do prior to a member of the public speaking for a second time.
7. Applicants and members of the public are given the opportunity to rebut earlier comments.
8. The public hearing is closed.

Action is not taken during public hearings. A separate action item will either be listed on that same agenda, or on a later agenda for consideration. Since the Council/commission usually has the time to make decisions after the public hearing, don't fear holding the Council/commission discussion over until the next meeting.

F. Arizona Open Meeting Law – Arizona Agency Handbook Chapter 7 – Updated 2013

7.1 Scope of this Chapter.

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

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

7.2 Arizona's Open Meeting Law.

7.2.1 History of Arizona's Open Meeting Law.

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

7.2.2 Legislative Intent.

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

In 1978, after a series of court opinions narrowly construing the Open Meeting Law, the Legislature reiterated its policy by adding A.R.S. § 38-431.09(A). That statute now provides: It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings. A.R.S. § 38-431.09(A). In keeping with this expressed intent, any uncertainty under the Open Meeting Law should be resolved in favor of openness in government. Any question whether the Open Meeting Law applies to a certain public body likewise should be resolved in favor of applying the law.

7.3 Government Bodies Covered by the Open Meeting Law.

7.3.1 Generally.

The provisions of the Open Meeting Law apply to all public bodies. A public body is defined in A.R.S. § 38-431(6) as follows: "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. 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.

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

The definition encompasses five basic categories of public bodies: 1) boards, commissions, and other multimember governing bodies, including those "established by the Arizona Constitution or by way of ballot initiative;" 2) quasi-governmental corporations; 3) quasi-judicial bodies; 4) advisory committees; and 5) standing and special committees and subcommittees of any of the above. See A.R.S. § 38-431(6).

7.3.2 Boards and Commissions.

The Open Meeting Law covers all boards and commissions and other multimember governing bodies of the state or its political subdivisions or of the departments, agencies, institutions, and instrumentalities of the state or its political subdivisions. See A.R.S. § 38-431(6). The multimember governing body must be created by law or by an official act pursuant to some legal authority. See *id.* Examples of public bodies created by law include the Arizona Legislature, county boards of supervisors, city and town councils, school boards, the governing boards of special districts, and all state, county, and municipal licensing and regulatory boards. See, e.g., Ariz. Att'y Gen. Op. I07-001 (Open Meeting Law applies to board appointed by governing bodies of various political subdivisions to administer employee benefits program). Ariz. Att'y Gen. Op. I04-001 (Open Meeting Law applies to joint underwriting association because it's a multimember governing body created by statute). In addition, the Legislature amended the definition of public body specifically to include "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." A.R.S. § 38-431(6).

The Open Meeting Law applies only to multimember bodies and does not apply to the deliberations and meetings conducted by the single head of an agency. See Ariz. Att'y Gen. Ops. I92-007, 75-7. Accordingly, the director of a department is not subject to the Open Meeting Law when meeting with staff members to discuss the operations of the department.

7.3.3 Quasi-Governmental Corporations.

The boards of directors of corporations and instrumentalities of the state or its political subdivisions are subject to the Open Meeting Law when the members of the board are appointed or elected by the state or its political subdivisions. See A.R.S. § 38-431(5), (6). In order to determine whether a quasi-governmental corporation or other entity is an "instrumentality," and thus a "public body," under the Open Meeting Law, one should consider the following factors that indicate the degree to which governmental interests dominate the nature of the entity. See Ariz. Att'y Gen. Op. I07-001. 1. The entity's origin (whether it was created by the government or independently of the government). For example, the Board of Directors of the Phoenix Civic Improvement Corporation falls into the category of an entity "created by the government." The Open Meeting Law does not apply, however, to a private non-profit hospital association that has a board of directors elected by the electorate of the hospital district. *Prescott Newspapers, Inc. v. Yavapai Cmty. Hosp. Ass'n*, 163 Ariz. 33, 785 P.2d 1221 (App. 1989). See Ariz. Att'y Gen. Op. I07-001. 2) The nature of the function assigned to and performed by the entity, i.e., whether that function is one traditionally associated with government or is one commonly performed by private entities. For example, the board of trustees of a trust formed by several public bodies to administer employee benefit programs on their behalf would have a governmental function that supports a finding that the board is a public body. 3) The scope of authority granted to and exercised by the entity, i.e., whether the entity has authority

to make binding governmental decisions or is it limited to making nonbinding recommendations. 4) The nature and level of government financial involvement with the entity. 5) The nature and scope of government control over the entity's operation. 6) The status of the entity's officers and employees, i.e., whether the officers and employees are government officials or government employees.

7.3.4 Quasi-Judicial Bodies.

The Open Meeting Law defines a quasi-judicial body as "a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims." A.R.S. § 38-431(7). The Legislature added this definition 1978 to reverse the Arizona Supreme Court's decision in *Ariz. Press Club, Inc. v. Ariz. Bd. of Tax Appeals*, 113 Ariz. 545, 558 P.2d 697 (1976), which held that the Open Meeting Law did not apply to bodies conducting quasi-judicial functions, such as license revocation proceedings. See *Ariz. Att'y Gen. Op. 78-245*. The Arizona Board of Tax Appeals and similar quasi-judicial bodies are now expressly covered by the Open Meeting Law. A.R.S. § 38-431(6), (7).

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

7.3.5 Advisory Committees.

Advisory committees are subject to all of the requirements of the Open Meeting Law. A.R.S. § 38-431.01(A), (B). An advisory committee is defined as any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body. A.R.S. § 38-431(1). This definition does not include advisory groups established by the single head of an agency unless they are created pursuant to a statute, city charter, or other provision of law or by an official act pursuant to some legal authority. See *Ariz. Att'y Gen. Op. I92-007*; Section 7.3.2.

7.3.6 Special and Standing Committees and Subcommittees.

Special and standing committees and subcommittees of, or appointed by, any of the public bodies described above are also covered by the Open Meeting Law.

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

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

Certain public bodies need not comply with all or portions of the Open Meeting Law in particular circumstances. This section identifies some of those limited exceptions.

7.4.1 Judicial Appointment Commissions.

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

7.4.2 Proceedings Before Courts.

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

7.4.3 The Legislature.

Meetings of legislative conference committees must be open to the public; however, the committees are exempted from all other requirements of the Open Meeting Law. A.R.S. § 38-431.08(A)(2). The Open Meeting Law does not apply to the activities of a political caucus of the Legislature. Id. § (A)(1); cf. Ariz. Att'y Gen. Op. 183-128. The Open Meeting Law permits either house of the Legislature to adopt a rule or procedure exempting itself from the notice and agenda requirements of the Open Meeting Law or to allow standing or conference committees to meet through technological devices rather than in person. A.R.S. § 38-431.08(D).

7.4.4 Student Disciplinary Proceedings.

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

7.4.5 Insurance Guaranty Fund Boards.

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

7.4.6 Hearings Held in Prison Facilities.

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

7.4.7 Board of Fingerprinting.

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

7.4.8 Homeowners Associations.

Because they are not governmental "public bodies," homeowners associations are not covered by the Open Meeting Law. Ariz. Att'y Gen. Op. 97-012. They do, however, have to comply with separate notification requirements. Id. Those requirements must be enforced privately because the Attorney General and County

Attorneys have no jurisdiction over such matters. For more information on the requirements of homeowners associations, see A.R.S. § 33-1801 et seq.

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

7.5.1 Generally.

All meetings of a public body shall be public, and all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings.

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

All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body, constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law. Ariz. Att'y Gen. Ops. 75-8, I79-4. See also A.R.S. §§ 38-431.01(A), -431(3) and Ariz. Att'y Gen. Op. I05-004. Whether the matter to be discussed may foreseeably require final action is the key to this inquiry. It is difficult to say precisely when this foreseeability test has been met. Each case should be viewed on its own merits with doubts resolved in favor of compliance with the Open Meeting Law. The safest course of action is to assume the Open Meeting Law applies whenever a majority of the body discusses the business of the public body. It does not matter what label is placed on a gathering. It may be called a "work" or "study" session, or the discussion may occur at a social function. Ariz. Att'y Gen. Op. I79-4. Discussion of the public body's business may take place only in a public meeting or an executive session in accordance with the requirements of the Open Meeting Law.

The Open Meeting Law, however, does not prohibit a member of a public body from voicing an opinion or discussing an issue with the public either at a venue other than a public meeting of the body, or through media outlets or other public broadcast communications or technological means, so long as the "opinion or discussion is not principally directed at or directly given to another member of the public body," and "there is no concerted plan to engage in collective deliberation to take legal action." A.R.S. § 38-431.09(B); Ariz. Att'y Gen. Op I07-013.

7.5.2 Circumvention of the Open Meeting Law.

Discussions and deliberations (in person or otherwise) between less than a majority of the members of a governing body, violate the Open Meeting Law when used to circumvent the purposes of the Open Meeting Law. See Ariz. Att'y Gen. Op. 75-8; *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that has been or later may be presented to the public body for a decision. Public officials should refrain from any activities that may undermine public confidence in the public decision making process established in the Open Meeting Law, including actions that may appear to remove discussions and decisions from public view.

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

7.5.3 Applicability to Staff Members and Others.

The Open Meeting Law further provides that members of public bodies shall not knowingly direct any staff member to communicate in violation of the Open Meeting Law. A.R.S. § 38-431.01(H). People knowingly aiding, agreeing to aid or attempting to aid another person in violating the Open Meeting Law can be liable for civil penalties, attorneys' fees, and costs pursuant to A.R.S. § 38- 431.07(A). *See* Sections 7.12.3 and 7.12.4. Splintering a quorum may also occur when members of a public body share their positions and proposals with other public body members through staff members or other non-members. For example, a staff member who meets with each member individually regarding official business and then shares the comments made by other members would violate the Open Meeting Law. Although a staff member may provide information to members separately (*see* Ariz. Att’y Gen. Op. I05-004 at 9), that person must be careful not to facilitate a discussion or deliberation by a quorum through sharing information with other members in subsequent meetings. Hence, staff members, representatives, citizens and others should take steps to ensure they are not acting in a manner to commit a violation or subject themselves to liability.

7.6 Notice of Meetings.

7.6.1 Generally.

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

7.6.2 Notice to Members of the Public Body.

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

7.6.3 Notice to the Public.

Notice of all meetings, including executive sessions, must be given to the public.

A.R.S. § 38-431.02. Giving public notice is a two step process. *Id.*

7.6.3.1 Disclosure Statement.

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

7.6.3.2 Public Notice of Meetings.

Once the disclosure statement has been filed or posted, the second step is for the public body to give notice of each of its meetings by posting a copy of the notice on its website as well as at the location identified in the disclosure statement.

A.R.S. § 38-431.02(A). *See* Forms 7.2, 7.3, 7.4. Public bodies shall also give "additional public notice as is reasonable and practicable as to all meetings." *Id.*

§ (A)(1)(a). Various public bodies fulfill this obligation to provide "additional notice" by providing news releases concerning proposed meetings, mailing notices to those asking to be informed of meetings, including the date and time of such meetings in their newsletters and other publications, and making announcements on public access television. If there is 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", and all other public notice requirements are met, then the meeting can convene as scheduled. *Id.* § (A)(1)(b). In anticipation of litigation or complaints arising from the lack of notice, the public body should document the nature and duration of the technological problem or failure along with an explanation of how it affected the ability of the public body to post proper notice of the public meeting.

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

7.6.4 Contents of the Notice.

Generally, the notice should include information identifying the public body and the date, time, and place of the meeting. *See* Forms 7.2, 7.3. In identifying the place of the meeting, the notice should specify the street address of the building and the room number or other information identifying the specific room in which the meeting will be held. *See* Form 7.7 (Sample Notice and Agenda).

In addition, the notices of public meetings and notices of executive sessions must contain an agenda of the matters to be considered by the public body at the meeting or information on how the public may obtain a copy of such an agenda. A.R.S. § 38-431.02(G). For a complete discussion of the agenda requirements, see Section 7.7. Notice of a public meeting at which the public body intends to ratify a prior act must contain additional specific information. *See* Section 7.11; Form 7.12.

7.6.5 Time for Giving Notice.

As a general rule, a meeting may not be held without giving the required notice at least twenty-four hours before the meeting. A.R.S. § 38-431.02(C). For purposes of the statute, the twenty-four hour period excludes Sundays and holidays. *Id.* Saturdays are included in the period if the public has access to the physical and electronic posted locations. *Id.* Of course, the best practice is for public bodies to give as much notice as possible. The public body should include a certification by the person responsible for posting the notice that states the time and location that the notice was posted. *See* Form 7.8 below.

There are three exceptions to the twenty-four hour notice requirement.

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

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

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

7.6.6 Notice of Regular Meetings.

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

7.6.7 Notice of Executive Sessions.

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

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

Many public bodies do not know whether they will have any legal questions on matters on the agenda until the discussion occurs. The Attorney General previously opined that public bodies may provide with their notices and agendas a statement that matters on the public meeting agenda may be discussed in executive session for the purpose of obtaining legal advice thereon, pursuant to A.R.S. § 38-431.03(A)(3). Ariz. Att'y Gen. Op. 190-19. An example of such a statement is "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3)." Similar statements are not sufficient for other types of executive sessions. *See* Section 7.7 for further discussion.

7.6.8 Combined Notice of Public Meeting and Executive Session.

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

7.6.9 Maintaining Records of Notice Given.

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

7.7 Agendas.

7.7.1 Generally.

In addition to notice of the time, date, and place of the meeting, the public body must provide an agenda of the matters to be discussed, considered, or decided at the meeting. A.R.S. § 38-431.02(G).

Although this Section provides guidelines for the preparation of agendas, it does not answer every question that may arise. Specific problems should be discussed with the public body's legal counsel. As a general rule, public bodies should always be mindful of the Legislature's declaration of policy that agendas "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.09(A). When in doubt, resolve questions in favor of greater disclosure of information.

7.7.2 Contents of the Agenda -- Public Meeting.

The agenda for a public meeting must contain a listing of the "specific matters to be discussed, considered or decided at the meeting." A.R.S. § 38-431.02(H). This requirement does not permit the use of generic agenda items such as "personnel," "new business," "old business," or "other matters" unless the specific matters or items to be discussed are separately identified. *See Thurston v. City of Phoenix*, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). The degree of specificity depends on the circumstances. *See Form 7.7 (Sample Notice and Agenda)*. Consider the following examples:

- "Discussion and possible action to approve the application of pesticides within 1/4 mile of a school" if an environmental board is going to consider whether to approve the application of pesticides within 1/4 mile of a school;
- "Discussion and possible action to remove Pesticide-A from list of approved pesticides" if the environmental board is going to consider removing a specific pesticide from an approved list;
- "Discussion and possible action regarding budget priorities and revisions for upcoming fiscal year" if a board intends to generate and discuss a number of different options for managing its budget;
- "Discussion and possible action regarding elimination of funding from budget for travel reimbursements, computer upgrades, and laptops for board members" if a board intends to adopt specific options to revise a budget.

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

7.7.3 Contents of the Agenda--Executive Session.

The agenda for an executive session must contain a "general description of the matters to be considered." A.R.S. § 38-431.02(I). The description must amount to more than just a recital of the statutory provisions authorizing the executive session, but should not contain any information that "would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege." *Id.*

In preparing executive session agenda items, the public body must weigh the legislative policy favoring public disclosure and the legitimate confidentiality concerns underlying the executive session provision. For example, if a board desires to consider the possible dismissal of its executive director, the board may list on the agenda "Personnel matter -- consideration of continued employment of the board's executive director." However, when the public disclosure of the board's consideration of charges against an employee might needlessly harm the employee's reputation or compromise the employee's privacy interests, the board may eliminate from the agenda description the identity of the employee being considered. If it is already publicly known that the board is considering charges against the employee, disclosure of the employee's identity in the agenda would not defeat the purpose of the executive session.

7.7.4 Distribution of the Agenda.

The agenda may be made available to the public by including it as part of the public notice or by stating in the public notice how the public may obtain a copy of the agenda and then distributing the agenda in the manner prescribed.

A.R.S. § 38-431.02(G); *see* Forms 7.2 - 7.4, 7.6, 7.7. Because both the public notice and the agenda must be available at least twenty-four hours in advance of a meeting, the simplest procedure is to include the agenda with the public notice. *See* Form 7.7 (Sample Notice and Agenda). However, when issuing public notice well in advance of a meeting, as in the case of notice of regularly scheduled meetings, *see* Section 7.6.6, it may be more appropriate to state how the public may obtain a copy of the agenda and distribute it accordingly.

7.7.5 Consent Agendas.

Public bodies may use "consent agendas" so long as they meet certain requirements. Consent agendas are typically used as a time-saving device when there are certain items on the agenda which are unlikely to generate controversy and are ministerial in nature. Some examples are approval of travel requests and approval of minutes. Public bodies often take one vote to approve or disapprove the consent agenda as a whole. When using a consent agenda format for some of the items on a meeting agenda, public bodies should fully describe the matters on the agenda and inform the public where more information can be obtained. A good practice is to require the removal of an item from the consent agenda upon the request of any member of the public body. *See* Form 7.7 (Sample Notice and Agenda).

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

7.7.6 Discussing and Deciding Matters Not Listed on the Agenda.

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

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

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

7.7.7 Calls to the Public.

In 2000, the Legislature clarified the limitations on open calls to the public during public meetings. A.R.S. § 38-431.01(H) now provides that a public body may make an open call to the public to allow individuals to address the public body on any issue within the jurisdiction of the public body. Members of the public body may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. *Id.* Public body members may, however, respond to criticism made by those who have addressed the public body, ask staff to review a matter, or ask that a matter be put on a future agenda. *Id.* See also Ariz. Att'y Gen. Op. I99-006.

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

7.7.8 Current Event Summaries.

The Open Meeting Law allows the chief administrator, presiding officer or a member of a public body to present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that the summary is listed on the agenda and that the public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action. A.R.S. § 38-431.02(K). Thus, the summary of current events consists merely of one of the above-referenced people summarizing recent occurrences without any discussion or feedback from the remainder of

the public body. The agenda should specifically list "Summary of Current Events" as an agenda item and identify who will present the summary.

Reports that address matters other than a summary of current events or that are delivered by someone other than a proper official with the public body do not come within the provision authorizing current events summaries and must comply with the agenda requirements of the Open Meeting Law. The only report that can be given without listing the contents of the presentation is the brief summary of current events by the chief administrator, the presiding officer of the Council, or a member under A.R.S. § 38431.02(K). As to other reports presented to a public body, the agenda must list descriptions of the topics that will be presented and state whether the public body will discuss or take action on such matters. A generic agenda item, such as "Police Department" report or "Fire Department" report does not satisfy the requirement that the agenda provide information that is "reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38- 431.02(H). Public bodies should limit use of the current events summary provision to appropriate situations and should strive to provide as much advance information as possible to the public.

7.7.9 Emergencies.

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

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

Next, prior to the emergency discussion, consideration, or decision, the public body must announce in a public meeting the reasons necessitating the emergency action. A.R.S. § 38-431.02(J). If the emergency discussion or consideration is to take place in an executive session, this public announcement must occur at a public meeting prior to the executive session. *Id.*

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

7.7.10 Changes to the Agenda.

If a public body finds it necessary to change an agenda by modifying the listed matters or adding new ones, a new agenda must be prepared and distributed in the same manner as the original agenda, at least twenty-four hours in advance of the meeting. Ariz. Att'y Gen. Op. I79-45. Changes in the agenda within twenty-four hours of the meeting may be made only in case of emergency. Ariz. Att'y Gen. Op. I79-192; *see* Section 7.7.9. However, the public body does not need to discuss or act on an item that appears on the agenda for the meeting and can vote at the meeting to remove agenda items from consideration without violating the Open Meeting Law.

7.8 Minutes.

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

7.8.1 Form of and Access to the Minutes.

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

The approved minutes of all city or town council meetings must be posted on the city's website within two working days of their approval, A.R.S. § 38- 431.01(E)(2). In no event should minutes be withheld from the public pending approval. Minutes must be reduced to a form that is readily accessible to the public. *See* A.R.S. § 38-431.01(D). A public body of a city or a town with a population exceeding 2,500 people shall, within three working days after any meeting, post on its website a statement showing legal actions taken by the public body or any recordings made during the meeting. A.R.S. § 38- 431.01(E)(1). Posted statements and recordings shall remain accessible on the website for at least one year after the meeting. *Id.* § (J). In addition, any recordings and minutes are public records subject to record retention requirements.

7.8.2 Contents of the Minutes of Public Meetings.

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

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

7. If matters not on the agenda were discussed or decided at a meeting because of an actual emergency, the minutes must contain a full description of the nature of the emergency. A.R.S. § 38-431.02(J); see Sections 7.6.5 and 7.7.9.
8. If a prior act was ratified, the minutes must contain a copy of the disclosure statement required for ratification.

A.R.S. § 38-431.05(B)(3); see Section 7.11.2; Form 7.10.

7.8.3 Contents of the Minutes of Executive Sessions.

The minutes of executive sessions must contain the following information:

1. "The date, time and place of the meeting." A.R.S. § 38-431.01(B)(1), (C).
2. "The members of the public body recorded as either present or absent." Id. § (B)(2), (C).
3. "A general description of the matters considered." Id. § (B)(3), (C); see Section 7.8.2(3).
4. An accurate description of all instructions given to attorneys or designated representatives pursuant to A.R.S. § 38-431.03(A)(4), (5) and (7). See Sections 7.9.7, 7.9.8 and 7.9.10.
5. A statement of the reasons for emergency consideration of any matters not on the agenda. See A.R.S. § 38-431.02(J); Section 7.8.2(7).
6. Such other information as the public body deems appropriate. For example, the public body might record in its minutes that those present were advised that the information discussed in the session and the session minutes are confidential. See Form 7.11.

"A party who asserts that a public body violated the open meeting laws has the burden of proving that assertion." *Tanque Verde Unified Sch. Dist. No. 13 of Pima County v. Bernini*, 206 Ariz. 200, 205, 76 P.3d 874, 879 (App. 2003).

However, Arizona courts have held that once a complainant alleges facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation, the burden of proof immediately shifts to a public body to prove that an affirmative defense or exception to the Open Meeting Law authorized an allegedly inappropriate executive session. *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz. 116, 122, 912 P.2d 1345, 1351 (App. 1995). See also *Tanque*, 206 Ariz. 200 at 205, 76 P.3d 874 at 881. The best practice is for public bodies to keep an audio or video recording of the executive session or to transcribe the executive session to ensure that they are prepared to meet their burden of proof in the event a lawsuit is filed.

7.8.4 Confidentiality of Executive Session Minutes.

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

1. Any member of the public body that met in the executive session and members who did not attend the executive session. A.R.S. § 38-431.03(B)(1); *Picture Rocks Fire Dist. v. Updike*, 145 Ariz. 79, 699 P.2d 1310 (App. 1985).
2. Any officer, appointee, or employee who was the subject of discussion at an executive session authorized by A.R.S. § 38-431.03(A)(1) may see those portions of the minutes directly pertaining to them. A.R.S. § 38-431.03(B)(2); see Section 7.9.4.
3. Staff personnel, to the extent necessary for them to prepare and maintain the minutes of the executive session.
4. The attorney for the public body, to the extent necessary for the attorney to represent the public body.
5. The Auditor General in connection with the lawful performance of its duty to audit the finances or

performance of the public body. A.R.S. § 38- 431.03(B)(3); Ariz. Att'y Gen. Op. I79-130.

6. The Attorney General or County Attorney when investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4).
7. The court, for purposes of a confidential inspection where an open meeting violation has been alleged. A.R.S. § 38-431.07(C).

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

Members of a public body and others attending the executive session must ensure that the information remains confidential. In addition to violating the Open Meeting Law, criminal charges may arise from a release of confidential information from executive session. "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." A.R.S. § 38-504(B). The law designates a knowing or intentional violation of this provision as a Class 6 felony and a reckless or negligent violation as a Class 1 misdemeanor.

A.R.S. § 38-510(A). Either type of violation could lead to criminal penalties in addition to forfeiture of office or employment. A.R.S. § 38-510(B).

7.9 Executive Sessions.

A.R.S. Section 38-431.03 contains an exception to the general requirement that all meetings must be open to the public. That Section identifies seven specific instances in which a public body may discuss matters in an executive session. *See* Sections 7.9.4 - 7.9.10. An executive session is defined as "a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03]." A.R.S. § 38- 431(2). An executive session may be convened solely for the purpose of discussing matters and, in limited instances, giving instructions to attorneys and designated representatives. A.R.S. § 38-431.03(D). No legal action may be taken in the executive session. *Id.*

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

7.9.1 Deciding to Go Into Executive Session.

Before a public body may go into executive session, a majority of the members constituting a quorum must vote in a public meeting to hold the executive session. A.R.S. § 38-431.03(A). The motion must state the ground(s) for the executive session so that the public understands why the public body is entering executive session. For example, a member of the public body may make the following motion: "I move to enter executive session for the purpose of receiving legal advice." Generally, the vote will be taken immediately before going into executive session. However, in some cases an agency may know that at a future date it will need to meet in executive session, in which case it can then vote at the public meeting to meet on the later date in executive session. On that future date, the agency does not have to first meet again in a public session.

7.9.2 Executive Session Requirements.

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

7.9.3 Authorized Executive Sessions.

The Open Meeting Law permits only seven categories of topics to be discussed in executive session. A.R.S. § 38-431.03(A). These categories are discussed in Sections 7.9.4 - 7.9.10. In addition, the Legislature may create specific authority for executive sessions in other statutes. *See* A.R.S. § 38-797.03(B) (authorizing the Arizona State Retirement System Board to hold hearings or to consider administrative law judge decisions involving long term disability benefits in executive session). Because courts are likely to construe these provisions strictly, unless the proposed discussion plainly falls within an executive session category it should take place only in a public meeting. Finally, the Open Meeting Law does not require that these discussions take place in executive session. If public disclosure of the public body's discussion is not prohibited by any other statutory provision and government interests are not threatened, a public body may choose to conduct all of its discussions in a public setting.

7.9.4 Personnel Matters.

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

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

to the affected officer, appointee, or employee when the public body proposes to discuss a personnel matter in a public session and not in an executive session.

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

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

Public bodies should take care to ensure they limit the scope of executive sessions for personnel discussions to true personnel matters. The Attorney General opined that the Open Meeting Law prohibits public bodies from conducting in executive sessions lengthy information gathering meetings that explore the operation of public programs under the guise of conducting a personnel evaluation. Only the actual evaluation - discussion or consideration of the performance of the employee - may take place in an executive session. *See* Ariz. Att'y Gen. Op. I96-012. A public body wishing to discuss or consider an employee's evaluation in executive session, pursuant to A.R.S. § 38-431.03(A)(1), should adopt a bifurcated process permitting the public body to gather information about public programs at a public meeting, while allowing the public body to enter executive session to discuss or consider the actual evaluation. Ariz. Att'y Gen. Op. I96-012.

Similarly, a public body may not discuss a class of persons in executive session under the Personnel Matters provision. For instance, a public body may not use this executive session provision to discuss a potential reduction in force. Each employee who will be discussed in executive session must get the notice as required by A.R.S. § 38-431.03(A)(1).

7.9.5 Confidential Records.

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

confidentiality of the information it receives before convening an executive session under A.R.S. § 38-431.03(A)(2). Written materials, however, do not become confidential merely because they are discussed in executive session.

7.9.6 Legal Advice.

A public body may also go into executive session for the purposes of "discussion or consultation for legal advice with the attorney or attorneys of the public body." A.R.S. § 38-431.03(A)(3). For this exemption to apply, the attorney giving the legal advice must be the attorney for the public body. *Id.* For purposes of this discussion, the "attorney for the public body" means a licensed attorney representing the public body, whether that attorney is a full time employee of the body, the attorney general or county, city, or town attorney responsible for representing the public body, an attorney hired on contract, or an attorney provided by an insurance carrier to represent the public body.

This provision authorizes consultations between a public body and its attorney. Accordingly, the only persons allowed to attend this executive session are the members of the public body, the public body's attorney, and those employees and agents of both whose presence is necessary to obtain the legal advice. The mere presence of an attorney of the public body in the meeting room is not sufficient to justify the use of this executive session provision. This provision can only be used for the purpose of obtaining "legal advice," which involves the exchange of communications between lawyer and client. Once the public body obtains the legal advice, the public body must go back into public session unless another executive session provision applies and has been identified in the notice. *See City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 803 P.2d 891 (1990). Discussion between the members of the public body about what action should be taken is beyond the realm of legal advice, and such discussions must be held in public session.

7.9.7 Litigation, Contract Negotiations, and Settlement Discussions.

A public body may hold an executive session for the purpose of "[d]iscussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation." A.R.S. § 38-431.03(A)(4). This provision allows consideration and instruction only - it does *not* allow a public body to conduct contract negotiations or settlement discussions in an executive session.

This provision allows a public body to give its attorneys instructions on how they should proceed in contract negotiations, pending or contemplated litigation involving the public body, and settlement discussions. For example, the public body might authorize its attorney to settle a lawsuit on the most favorable terms possible up to a certain amount. Of course, if the attorney were to obtain an agreed settlement, the public body must formally approve it at a public meeting.

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

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

7.9.8 Discussions with Designated Representatives Regarding Salary Negotiations.

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

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

7.9.9 International, Interstate, and Tribal Negotiations.

A public body may go into executive session for the purpose of "[d]iscussion, consultation, or consideration for international and interstate negotiations."

A.R.S. § 38-431.03(A)(6). This provision does not apply to meetings at which the public body receives recommendations from representatives of federal agencies. Ariz. Att'y Gen. Op. I80-159.

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

7.9.10 Purchase, Sale or Lease of Real Property.

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

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

7.9.11 Taking Legal Action.

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

7.10 Public Access to Meetings.

7.10.1 Public Participation and Access.

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

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

"All or any part of a public meeting . . . may be recorded by any person in attendance by means of a tape recorder or camera or other means of sonic reproduction." A.R.S. § 38431.01(F). A public body may prohibit or restrict such recordings only if they actively interfere with the conduct of the meeting. *Id.*

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

7.10.2 Remote Conferencing.

If any members of a public body are unable to be present in person at a public meeting, they may participate by telephone or video or internet conference if the practice is approved by the public body and is not prohibited by statutes applicable to meetings of the public body. Ariz. Att'y Gen. Ops. I08-

008, I91- 033, I83-135. This practice presents some practical problems and should be used only where there are no reasonable alternatives to presence at the meeting.

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

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

7.10.3 Record of the Proceedings.

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

7.11 Quorum

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

7.11.1 Effect of Disqualification on the Quorum Requirement.

Board members may be disqualified from voting on a particular matter for a variety of reasons, most commonly because they have a conflict of interest. The disqualification of a board member may make it difficult for the public body to obtain a quorum. The general rule on disqualification is that a disqualified member, even though present at a meeting of the public body, may not be counted for purposes of convening the quorum to discuss or decide the particular matter for which the member is disqualified. *See Croaff v. Evans*, 130 Ariz. 353, 358, 636 P.2d 131, 136 (App. 1981).

For example, if four members of a seven member board are required for a quorum and only four members are present at a board meeting to discuss several matters, the board could not discuss a particular matter in which one of the four members has been disqualified, because for purposes of discussing or deciding that matter, the necessary quorum of four members is not present. If one or more of the other three positions on the board is filled by a duly qualified and serving member,

the board must defer action on the proceeding until the absent member or members can be present. If the other three positions in the above hypothetical are vacant, the board cannot proceed until the appointing authority has filled at least one of the vacant positions.

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

7.12 Ratification.

7.12.1 Generally.

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

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

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

7.12.2 Procedure for Ratification.

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

1. The decision to ratify must take place at a public meeting held in accordance with the Open Meeting Law.
2. Ratification must take place within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
3. The public notice of the meeting at which ratification is to take place, in addition to complying with the other requirements of the Open Meeting Law, see Sections 7.6 and 7.7, must include (a) a description of the action to be ratified, (b) a clear statement that the public body proposes to ratify a prior action, and (c) information on how the public may obtain a written description

of the action to be ratified. See Form 7.12.

4. In addition to the notice and agenda of the meeting, the public body must make available to the public a detailed written description of the action to be ratified and a description of all prior deliberations, consultations, and decisions by members of the public body related to the action to be ratified.
5. The description required under paragraph 4 must be included as part of the minutes of the meeting at which the decision to ratify was made.
6. The public notice, agenda, and written description discussed in paragraphs 3 and 4 must be made available to the public at least seventy-two hours prior to the public meeting.

7.13 Sanctions for Violations of the Open Meeting Law.

In litigation, the burden of proof is initially on the complainant to "allege facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation." *Id.*, 185 Ariz. at 122, 912 P.2d at 1351. The burden then immediately shifts to the public body to prove that an affirmative defense or exception to the Open Meeting Law authorized the executive session. *Id.*

7.13.1 Nullification.

All legal action transacted by any public body during a meeting held in violation of any provision of the Open Meeting Law is null and void unless subsequently ratified. A.R.S. § 38-431.05(A). The procedures for ratification are described in Section 7.11.2. However, the Open Meeting Law does not render null and void all legal action taken at a meeting at which a violation occurs with respect to a single improperly noticed agenda item. Ariz. Att'y Gen. Op. I08-001.

The Arizona Supreme Court, however, has held that legal actions taken in violation of the Open Meeting Law are voidable at the discretion of the court. *Karol*, 122 Ariz. at 97, 593 P.2d at 651. In *Karol*, the court held that "a technical violation having no demonstrated prejudicial effect on the complaining party does not nullify all the business in a public meeting when to conclude otherwise would be inequitable, so long as the meeting complies with the intent of the legislature." *Id.*, 122 Ariz. at 98, 593 P.2d at 652. This decision imposes a substantial compliance test and requires a weighing of the equities before a court will declare an action void. The decision, however, preceded the 1982 amendment to the Open Meeting Law which specifically authorized a procedure for ratification. It remains to be seen whether this change will cause the court to follow the literal language of the Open Meeting Law. Nevertheless, serious consequences flow from having an action of a public body declared, and the public body should take every precaution to avoid even technical violations of the Open Meeting Law. In some cases, the public body may have discussed a matter at an unlawful meeting, but thereafter met in a lawful open meeting at which it took a formal vote as its "final action." The Arizona Court of Appeals has held that the subsequent "final action" taken at a lawful meeting is not void. *Valencia v. Cota*, 126 Ariz. 555, 617 P.2d 63 (App. 1980). The public body taking the final action at the subsequent lawful meeting should make available at that time the substance of all discussions that took place at the earlier unlawful meeting. If the public body wishes to preserve the effective date of the earlier action rather than simply redecide the matter, it must go through the ratification process. See Section 7.11.

7.13.2 Investigation and Enforcement.

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

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

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

Any person affected by "legal action" of a public body, the Attorney General, or the County Attorney for the county in which the alleged violation occurred, may file suit in superior court to require compliance with or prevent violations of the Open Meeting Law or to determine whether the law is applicable to certain matters or legal actions of the public body. A.R.S. § 38-431.07.

Additionally, when the provisions of the Open Meeting Law have not been complied with, a court of competent jurisdiction may issue a writ of mandamus requiring a meeting to be open to the public. A.R.S. § 38-431.04. A writ of mandamus is an order of the court compelling a public officer to comply with certain mandatory responsibilities imposed by law.

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

7.13.3 Civil Penalties.

The court may impose a civil penalty not exceeding five hundred dollars against any person for each violation of the Open Meeting Law. A.R.S. § 38- 431.07(A). This penalty can be assessed against

a person who violates the Open Meeting Law or who knowingly aids, agrees to aid or attempts to aid another person in violating the Open Meeting Law. *Id.* This penalty is assessed against the individual and not the public body, and the public body may not pay the penalty on behalf of the person assessed, *see id.*

7.13.4 Attorney's Fees.

The court may also order payment of reasonable attorney's fees to a successful plaintiff in an enforcement action brought under the Open Meeting Law.

A.R.S. § 38-431.07(A). Normally those fees will be paid by the state or political subdivision of which the public body is a part or to which it reports. *Id.* However, if the court determines that a public officer violated the Open Meeting Law "with intent to deprive the public of information," the court must assess against that public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating the Open Meeting Law all of the costs and attorney's fees awarded to the plaintiff. *Id.* As in the case of an award of civil penalties, the public body may not pay such an award of attorney's fees assessed against the public officer individually. *See id.*

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

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

7.13.6 Removal From Office.

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

APPENDIX

Article 17-1 GENERAL (Recreated 8/16/11by Ordinance #338, Effective 9/16/11)

- 17-1-1 Creation
- 17-1-2 Membership and Terms of Office
- 17-1-3 Vacancies and Removal of Members
- 17-1-4 Quorums and Voting
- 17-1-5 Powers and Duties
- 17-1-6 Staff Liaison
- 17-1-7 Meetings

Section 17-1-1 Creation

- A. The Council may create such boards, committees, and commissions, standing or special, as it deems necessary. In addition, the Council may budget to provide any aid and assistance from the administrative staff of the town to any committee, board, or commission as may be necessary or appropriate.
- B. Any board, committee, or commission created by the Council shall be responsible to the Council and shall function in an advisory capacity to the Council unless otherwise provided by state law, town ordinance or resolution.
- C. For the purposes of this chapter, the terms board, committee, and commission shall be defined as follows:
 - 1. **BOARD.** A standing group that meets as needed, whose functions are determined by the Town Council and/or state law.
 - 2. **COMMISSION.** A standing group with continuing regularly scheduled meetings, whose functions are determined by the Town Council and/or state law.
 - 3. **COMMITTEE.** A temporary group appointed by the Town Council for a particular matter, task, or duty.

Section 17-1-2 Membership and Term of Office

- A. All boards, committees, and commissions shall be composed of members who shall be residents of the Town.

- B. Every member of a board, committee, or commission shall be appointed by the Mayor and Town Council.
- C. The term of office for members of any board, committee, or commission shall be two years, commencing October 1 and ending September 30 of the year so designated unless otherwise provided by state law, town ordinance or resolution. Members shall have staggered terms so that the terms of no more than three members shall expire in any one year to provide for the orderly and consistent replacement or reappointment of each regular member.

Section 17-1-3 Vacancies and Removal of Members

- A. A vacancy occurring during a term shall be appointed by the Mayor and Town Council for the unexpired term.
- B. The Mayor and Town Council shall have the right and power to remove any board, committee, or commission member, with or without cause. A board, committee, or commission member who is absent four (4) regular board, committee, or commission meetings from October 1 to September 30 shall be deemed to have vacated his or her appointment without further action being taken by either the board, committee, commission or Town Council. It shall be the responsibility of the Chairperson to so notify the Town Clerk immediately upon the creation of a vacancy pursuant to this section and the Mayor and Town Council shall fill such vacancy for the unexpired term. **(Revised by Ord #389 which was amended by Ord #390, App 03/27/18, Eff 04/27/18)**

Section 17-1-4 Quorums and Voting

- A. A majority of the total members of any board, committee, or commission shall constitute a quorum.
- B. Board, committee, or commission members may appear for a meeting telephonically or by other verbal electronic communication and may cast votes during such proceeding under the following circumstances:
 - 1. The public must be able to hear the person.
 - 2. The person must be able to hear everyone at the meeting.
 - 3. Participation telephonically or by other verbal electronic communication must be noted on the agenda.
- C. No member of a board, committee, or commission shall be excused from voting, except if a conflict of interest exists as defined by the laws of the State of Arizona pertaining to conflict of interest of governmental officials and if the member has filed with the Town Clerk a written statement identifying the conflict of interest pursuant to A.R.S. § 38-502 prior to the vote. In all other cases a failure to vote shall be entered on the minutes as an affirmative vote.

Section 17-1-5 Powers and Duties

- A. The functions of each board, committee, or commission shall be determined by the Council, or when appropriate, by state law. Each board, committee or commission shall be responsible for such matters as may be referred to it by the Council and shall meet at such times as may be necessary to perform its duties.
- B. Each board, committee or commission shall cause minutes to be kept of the proceedings, showing the vote of each member upon every question, or if absent and failing to vote, indicating that fact, and shall keep records of the board, committee, or commission's examinations or other official actions. The minutes of the board, committee or commission and all other records of actions taken shall be filed, upon approval by the board, committee, or commission, in the office of the Clerk, in compliance with A.R.S. 38-431 et seq., and the same shall be public record.
- C. Board, committee or commission members shall serve without compensation; provided that the board, committee or commission members may be reimbursed for actual and necessary expense for board, committee or commission duties, as provided by the Council.
- D. No board, committee, or commission shall incur debts, make any purchases or enter into any contracts binding the Town. All matters coming before any board, committee, or commission involving the expenditure of funds or the making of agreements or contracts shall be referred to the Council and/or the Town Manager with the recommendation of the board, committee, or commission.
- E. All funds received by any board, committee, or commission shall be deposited with the Finance Department of the Town.

Section 17-1-6 Staff Liaison

- A. With budget approval by the Town Council, the Town Manager will designate a staff liaison for each standing board, committee, and commission. The staff liaison shall aid and assist the board, committee, or commission as needed, including, but not limited to, all actions required by Arizona's Open Meeting Law.

Section 17-1-7 Meetings

- A. Special meetings may be called by the Chair or, in his or her absence, the Vice-Chair. In addition, any quorum of a board, committee or commission may make written request to the chairman for a special meeting, and, in the event such meeting is not called, such members may call such special meeting.

- B. Each board, committee, or commission shall nominate a chair and a vice-chair at its first meeting of each year.

Article 17-2 BOARD OF ADJUSTMENT

- 17-2-1 Establishment and Purpose
- 17-2-2 Appeals to the Board of Adjustment
- 17-2-3 Date of Hearing and Notice
- 17-2-4 Meetings
- 17-2-5 Appeals From the Board of Adjustment

Section 17-2-1 Establishment and Purpose

The Board of Adjustment shall serve at the appointment of the Town Council. Upon application, the Board of Adjustment shall have the powers and duties as prescribed by A.R.S. 9-462.06 and ordinances including those more specifically set forth as follows:

- A. To hear and decide appeals in which it is alleged, by the applicant, there is an error in an order, requirement or decision made by an administrative official based on the enforcement of the Zoning Code or Building - Chapter 7 of the Town Code.

- B. To interpret the boundaries of the zoning districts as depicted on the Zoning Map.

- C. To hear and decide on requests for variances from the strict application of the Zoning Code as adopted by the Town of Clarkdale where by reason of exceptional narrowness, shallowness, shape, or topography, or a property’s location and surroundings the strict application of said standards will deprive the subject property of privileges lawfully permitted other properties in the same zone district or immediate vicinity. Decisions shall be based upon a review of the application in conformance with the following criteria:
 - 1. **SPECIAL CIRCUMSTANCES:** There are special circumstances attributable to the property which are not applicable to other properties in the area or within the same zone district. The special circumstances must be related to the physical characteristics of the property including its shape, size, topography, location or surroundings and may not be related to the personal circumstances of the property owner or applicant.

 - 2. **UNDUE HARDSHIP:** If special circumstances attributable to the property exist, they must be of such a nature that the strict application of the development standards will result in an undue hardship. An undue hardship exists when the strict application of the Zoning Code is so unreasonable that it renders the property unusable without the granting of

a variance. Hardship relates to the physical characteristics of the property, not the personal circumstances of the property owner or applicant.

3. **PUBLIC HEALTH, SAFETY AND WELFARE:** A variance may be granted only if it can be done without substantial detriment to public health, safety or welfare and without substantial departure from the intent of the standard from which relief is requested.
4. **ADEQUATE FINANCIAL RETURN:** The applicant's need for an adequate financial return on investment shall not be considered justification for the granting of a variance.
5. **SELF-IMPOSED SPECIAL CIRCUMSTANCES:** A variance shall not be granted when the special circumstances, from which relief is requested, have been self-imposed by a current or former property owner or applicant.
6. **USE VARIANCE:** A use variance may not be granted. (A use variance is one which would allow, as an example, a retail commercial establishment in a single family residential zone district.)

D. To permit the extension of a nonconforming use throughout an existing structure or parcel subject to such conditions as the Board of Adjustment shall deem just and proper. Any extension of a nonconforming use shall comply with all bulk standards of the Zoning Ordinance and all development standards of other codes adopted by the Town of Clarkdale.

Section 17-2-2 Appeals to the Board of Adjustment

- A. Appeals to the Board of Adjustment may be taken by any owner of property, any person having a contract or an option to purchase the subject property, or any agent of the above persons who may be aggrieved by a decision of any administrative officer made in the enforcement of the Zoning Ordinance, Building- Chapter 7 or Article 12-4, Subdivision Regulations – Minor Land Division and lot line adjustments of the Town Code as adopted by the Town of Clarkdale.
- B. Appeals to the Board of Adjustment may also be taken by any administrative officer, department, commission or board of the Town of Clarkdale affected by the granting, or refusal, of a permit or other decision of an administrative officer in the course of administration or enforcement of the Zoning Code or Building – Chapter 7 of the Town Code as adopted by the Town of Clarkdale.
- C. Appeals to the Board of Adjustment must be made in writing, on forms approved by the Board of Adjustment, and filed with the Town Clerk within 60 days of the

date of the act, or failure to act, or decision which is the cause of appeal.

1. Every application for appeal, or variance, shall refer to the specific provision of the Ordinance from which an appeal is requested, and shall specifically set forth the interpretation which is claimed; or in the case of a variance request how and why the review criteria set forth in Section 17-2-2 above justifies the granting of a variance.
2. An appeal stays all enforcement proceedings until a final decision is reached by the Board of Adjustment. Decisions of the Board shall be filed by case number, under one of the following headings, appeals or variances; and case files shall be kept in the Office of the Town Clerk.

Section 17-2-3 Date of Hearing and Notice

All hearings of the Board of Adjustment upon any appeal shall be held no sooner than 20 days from the date of application for appeal. Notification of the hearing shall be published once in a newspaper of general circulation in the area not less than fifteen (15) days prior to the date of hearing. In addition, notice shall be posted on the property affected, when applicable, in a manner readily visible to the general public.

Section 17-2-4 Meetings

Meetings of the Board of Adjustment shall be conducted in the manner prescribed in the most current "Bylaws-Board of Adjustment" as adopted by the Board of Adjustment and approved by the Common Council of the Town of Clarkdale which are on file with the Town Clerk.

Section 17-2-5 Appeals From the Board of Adjustment

Any person aggrieved by a decision of the Board of Adjustment may, at any time within thirty (30) days after the Board has rendered a final decision, file a complaint with the Superior Court, Yavapai County, State of Arizona, to review the decision of the Board of Adjustment. Filing a complaint does not stay any proceedings on the decision sought to be reviewed, but the court may, upon petition by the applicant, grant a stay. On final decision, the Superior Court may approve or reverse, whether in whole or in part, or may modify the decision of the Board.

Article 17-3 PARKS AND RECREATION COMMISSION

(Created by Ord #369; Approved 10-13-15; eff 12-31-15; P&R

Commission Deleted)

(Modified by Ord #388; Approved 2-27-18; eff 3-27-18

Section 17-3-1 Establishment and Purpose

The Parks and Recreation Commission shall serve at the appointment of the Town Council. It shall act in an advisory capacity to the Town Council in matters pertaining to and in the advancement of sound planning and programming as follows:

- A. Assist, counsel and aid the Town Council in the purchase, sale, lease or other method of acquiring or disposing of lands, structures and facilities (anything designed, built or installed to provide function or service) for current or future use for parks or recreation.
- B. Assist the Town Council in establishing general priorities and continuing plans relating to parks and recreation.
- C. Assist the Town Council on policies, rules and regulations relating to the operation, use, care and maintenance of areas and structures owned, leased or otherwise acquired by the Town for use as parks and recreation.
- D. Assist the Town Council in developing fees and revenues in support of parks and recreation.
- E. Make recommendations to the Town Council regarding receipt, acceptance or acquisition by gift, bequest or device any real and personal property for parks and recreation.

Article 17-4 DESIGN REVIEW

17-4-1 Establishment and Purpose of Design Review Board

Section 17-4-1 Establishment and Purpose of Design Review Board

The Design Review Board shall serve at the appointment of the Town Council. The purpose of the Design Review Board is to review the landscaping and exterior design of proposed new buildings, commercial signage, proposed alterations to buildings, excluding single family residences, and major development or redevelopment projects to assure that they are compatible with the surrounding environment and to preserve and protect the integrity and character of the Town. The Design Review Board also reviews applications under the Town’s Zoning Code – Design Review and Site Plan Review. The Design Review Board has the power to approve, conditionally approve, or deny requests.

Article 17-5 PLANNING COMMISSION

17-5-1 Establishment and Purpose of the Planning Commission
17-5-2 Fees
17-5-3 Public Hearings

Section 17-5-1 Establishment and Purpose of the Planning Commission

The Planning Commission of the Town of Clarkdale is hereby established to carry out the purpose of A.R.S. Section 9-461 et. seq. It is the duty of the Commission to formulate, create and administer any lawful plan duly adopted by the governing body for the present and future growth of the Town pertaining to the use of land and buildings for any purpose, together with all incidental activities usually associated therewith and commonly known as “Planning and Zoning”; to make or cause to be made a continuous study of the best present and future use to which land and buildings shall be put within the Town and in cooperation with adjacent areas; to recommend to the governing body revisions in such plans which, in the opinion of the Commission, are for the best interest of the citizens of the Town; to promulgate rules of procedure if such rules are approved by the governing body.

Section 17-5-2 Fees

The Commission may be authorized to recommend a uniform schedule of fees for the services with all receipts to be paid into the general fund of the Town. Such fee schedules shall become effective upon approval by the Council.

Section 17-5-3 Public Hearings

The Planning Commission shall hold zoning ordinance public hearings and give notice of said public hearing as provided by A.R.S. Section 9-462.04 along with other public hearings and notice of such as required. After the hearing, the Planning Commission shall render its decision in the form of a written recommendation to the Council and shall include the reasons for the recommendation.

Article 17-6 LIBRARY ADVISORY BOARD
(Deleted by Ord #369; Approved 10-13-15; eff 12-31-15)

Article 17-7 PUBLIC SAFETY PERSONNEL RETIREMENT BOARD

The Public Safety Personnel Retirement Board of the Town of Clarkdale is hereby established to carry out A.R.S. Section 38-841 et seq., in order to provide a uniform, consistent and equitable statewide program for public safety personnel who are regularly assigned hazardous duty in the state of Arizona, of which the administration of the system and responsibility for making the provisions of the system effective for each employer are vested in the local board.

Article 17-8 MUNICIPAL PROPERTY CORPORATION

The Town of Clarkdale Municipal Property Corporation, an Arizona Nonprofit Corporation, was incorporated in 1996 and operates under the Bylaws of the Town of Clarkdale Municipal Property Corporation, which are on file with in the office of the Town Clerk. The “Corporation” was formed to transact any or all lawful business for which nonprofit corporations may be

incorporated under the laws of the State of Arizona, including, without limiting the generality of the foregoing, any civic or charitable purpose such as financing or refinancing the cost of acquiring, constructing, reconstructing or improving buildings, equipment or other real and personal properties suitable for use by and for leasing to the Town of Clarkdale, Arizona, a municipal corporation incorporated and existing pursuant to the laws of the State of Arizona.