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CITY OF FLAGSTAFF

Board and Commission Members' **RULES AND OPERATIONS MANUAL**

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“Service to Community”

BOARD AND COMMISSION MEMBERS' RULES AND OPERATIONS MANUAL

PREFACE

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

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

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*Appendices are updated periodically as prescribed by the Flagstaff City Council and changes in state law. Those updates are automatically incorporated administratively as the appendices to this Board and Commission Members' Rules and Operations Manual.

INTRODUCTION

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

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

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

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

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

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

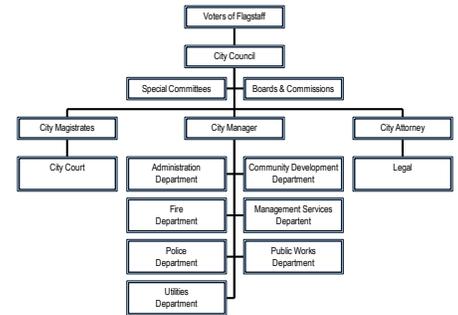
It is important to understand that your personal behavior, both inside and outside public meetings, will be observed and open to criticism by others. Ethics, good judgment, and dignity are the foundation of public service and the credo of City officials. By meeting these expectations, you will enhance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

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

FLAGSTAFF MUNICIPAL GOVERNMENT

ORGANIZATION

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



CITY COUNCIL

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

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

BOARDS AND COMMISSIONS

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

CITY MANAGER

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

CITY ATTORNEY

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

CITY CLERK

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

CITY DIVISIONS

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

MEMBERSHIP ON CITY BOARDS AND COMMISSIONS

GENERAL

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

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

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

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

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

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

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

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

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

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

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

QUASI-JUDICIAL HEARINGS

The Open Meeting Law defines a quasi-judicial body as "a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims." Contested proceedings or quasi-judicial or adjudicatory proceedings conducted by public bodies are subject to all of the requirements of the Open Meeting Law, as well as a number of additional due process requirements. These due process requirements include: no ex-parte communication and an opportunity for the person to present their case through witnesses, cross-examination, and argument. Robert's Rules are difficult to apply to quasi-judicial hearings, and separate rules for such hearings may be necessary. The following boards or commissions are considered quasi-judicial:

- Board of Adjustment
- Building and Fire Code Board of Appeals

ROLES AND RESPONSIBILITIES

Appointed Board and Commission Members

It is the City Council's policy that an individual may serve on only one board or commission at any given time, unless the board or commission member serves as a liaison to another board or commission, or as otherwise required by statute or regulation. A board or commission member may apply to serve on a different board or commission during the last six months of his or her term if he or she does not intend to apply for reappointment to the current board or commission. If the Council appoints that individual to a new board or commission, overlapping service is

permitted to finish the current term and begin the new term. Commissioners serve at the discretion of the City Council and, like any other Council-appointed position, may be removed from office by an official vote.

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

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

In addition, the City's policy provides that board or commission members may continue to serve after term expiration until an appointment is made to replace them. Typically, however, appointments are made as soon as possible when a commissioner becomes ineligible for another term. If your term limit on a commission has expired, you are eligible to serve on any other city board or commission. Once you have been off of a board/commission for one year, you are then eligible to reapply for consideration of appointment to any vacancy on said board/commission.

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

Board and Commission Member Appointment Process

With a few exceptions, the City Council appoints members to the various boards and commissions. To give each Councilmember the opportunity to appoint members of their choosing, a randomly rotating list of Councilmembers has been developed for each board or commission to assign Councilmembers when vacancies arise. Using the list for the board or commission desired, one councilmember is assigned to a single vacancy or appointment. If there is more than one appointment for that particular board or commission the next councilmember on the list will be assigned to the next appointment and so on. The assigned Councilmember will make a motion to appoint their selected individual for the City Council to vote upon for possible approval. Should the motion not pass, the assigned Councilmember may select another applicant for possible approval. This process may continue until an applicant is successfully approved. If the assigned Councilmember chooses not to make another motion, the next Councilmember on the rotating list may make a motion to appoint. In the event that the list of applicants is exhausted, the appointment will be postponed until additional applications are received.

Other Representatives

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

Cross Membership on Boards and Commissions

In some cases, a voting member from one city board or commission will serve on another board or commission. A commissioner whose membership is derived from a parent commission may

not serve in the capacity of an officer on the secondary commission. The primary purpose of this provision is to equalize spheres of influence and maintain a level playing field for commissions who have a joint interest in a matter.

Officers

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

Staff Liaison

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

- Prepare meeting agendas with input from the commission, write and present staff reports and support paperwork to the board or commission prior to meeting time.
- Ensure compliance with Open Meeting Law requirements.
- Assist a commissioner in distributing information to the body of the commission according to proper protocols.
- Respond to commissioner requests for information related to commission business.
- Prepare letters or other missives of the commission and process them for review and approval by the Mayor.
- Facilitate interaction with other boards and commissions.
- Place items on a commission meeting agenda, in response to direction from the City Council or City Manager, a request from a commissioner or chairperson, a request for other boards and commissions, or as deemed necessary by the staff liaison.
- Coordinate requests for legal assistance with the City Attorney.
- Prepare commission recommendations to the City Council and make presentations to the City Council on behalf of the Commission.

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

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

Subcommittees

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

Residency

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

Meeting Attendance

The success of your board or commission depends on your active participation. A commission meeting cannot proceed without a quorum of members in attendance. Often a quorum is one more than half of the full voting membership of a board or commission; however, some commissions have a different quorum requirement based upon the statutory or other language that defines the commission. Please check with your staff liaison to determine the number of commissioners that constitutes a quorum for your particular board or commission. Some establishing ordinances contain attendance requirements, while other commissions have adopted bylaws to clearly define attendance requirements. However, as a general rule, a board or commission may recommend to the City Council the dismissal of any citizen member who is absent for more than two consecutive regular meetings without prior notification. This same rule applies if a commission member is absent for more than thirty percent (30%) of all meetings during a twelve-month period.

Orientation

As a board and commission member, you are required to participate in at least one session of the city's board and commission training within your first three months in office. The city clerk's office has made this training available online at <http://www.flagstaff.az.gov/index.aspx?nid=994> under "Member Training." Additionally, at least one day prior to taking office members must sign an affirmation that they have read the open meeting law materials available online as required by state law. The city clerk's office will also provide, upon request, specific training sessions to boards and commissions to supplement formal orientations.

Qualifications

Occasionally a commission's organizational structure will require a member to have a specific qualification or background.

Membership Roster

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

LAWS, REGULATIONS, AND POLICIES

GENERAL INFORMATION

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

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

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

OPEN MEETING LAW (A.R.S §38-431.09)

Arizona's Open Meeting Law states that:

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

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

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

A minimum of 24-hour public notice to board and commission members and the general public is required for all public meetings unless an actual emergency exists. In addition to notice of the

time, date, and place of each meeting, the Open Meeting Law requires a prepared agenda. Notices and agendas must contain enough information to inform the public of the matters to be discussed or decided. This does not permit the use of agenda items such as "new business" or "old business," unless the specific items of new and old business are listed. Once again, your staff liaison will make sure that your agendas are prepared and posted in accordance with the law as a matter of course.

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

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

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

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

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

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

A board or commission agenda may include a "Call to the Public" to designate a part of the meeting for the public to address the board or commission on items that are not on the prepared agenda. Following an open call to the public, members of a public body may respond to criticism

raised, ask staff to review a matter raised or ask that a matter raised be put on a future agenda. However, neither discussion nor action may occur on issues that are not on the agenda.

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

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

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

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

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

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

E-mail (or electronic) communications can constitute a "meeting". The public does not have access to commissioners' e-mail, so when members of a public body begin having discussions by electronic or telephonic communication, it can result in Open Meeting Law violations. In addition, the staff liaison or other staff member is not allowed to communicate the various positions of commissioners to each other. Once a commissioner commits to written form a communication related to commission business, that record no longer belongs to the commissioner as an individual, but becomes part of the public domain. Anyone involved in sending messages back and forth which even discuss possible action or propose a formal action are breaking the law—the same as if the commissioners had met together in a private meeting.

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

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

CONFLICT OF INTEREST LAW (ARS §38-503)

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

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

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

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

Remote Interest

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

1. A non-salaried officer of a non-profit corporation doing business with or requesting money from the City.
2. The landlord or tenant of a contracting party. (For example, an advisory board member may lease office space to a party with a private interest in a public matter without it resulting in a conflict of interest.)
3. An attorney whose client is a contracting party.
4. A member of a non-profit cooperative marketing association doing business with the City.
5. The owner of less than three percent of the shares of a corporation doing business with the City, provided that:
 - a. the total annual income from dividends, including the value of stock dividends, does not exceed five percent of the officer's or employee's total annual income; and
 - b. any other payments made to the officer or employee by the corporation do not exceed five percent of the officer's or employee's total annual income.

6. Being reimbursed for actual and necessary expenses incurred in performance of official duties.
7. Receiving municipal services on the same terms and conditions as if you were not an officer or employee of the municipality. (For example, when a Councilmember who owns a business within the City votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.)
8. An officer or employee of another political subdivision, a public agency or another political subdivision, or any other public agency voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a Councilmember who is a schoolteacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the Councilmember.
9. A member of a trade, business, occupation, profession, or class of persons who has no greater interest than the other members of similar trades, businesses, occupations, professions, or classes of persons. (For example, a plumber who serves on the City Council may vote to increase or decrease plumbing inspection fees since the effect of this decision will be equal on all plumbers within the City.)

Substantial Interest

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

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

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

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

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

- When a public officer has exercised "administrative discretion" in an issue, that officer or employee cannot receive compensation if representing another person

before an agency of the City on the same issue. This restriction extends to twelve months after termination of office or employment with the city or town.

- A public officer cannot use confidential information obtained during the term of office or employment for personal gain.
- A public officer cannot receive any compensation for performance of services in any case, special proceeding, application, or other matter pending before any agency of the City. This does not apply, however, to ministerial functions such as filing or amending tax forms, applying for permits, licenses, or other documents.
- A public officer cannot use his or her position to obtain anything of value that would normally not be received in the performance of official duties. Something is considered of "value" when it exerts a "substantial and improper" influence on the duties of the public official.

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

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

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

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

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

Public Perception and the Appearance of a Conflict of Interest

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

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

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

have also been known to try to use a “conflict of interest” argument to keep a public official from voting on a matter when that citizen did not agree with the public official’s position or vote.

If you have an appearance of a conflict of interest, or you are not sure whether or not you have a conflict, you may request a finding. The appropriate protocol is to address the matter with your staff liaison, in writing or verbally, who will then forward it to the City Manager for disposition.

Prohibited Acts Within a Year After Leaving Public Office

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

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

Misusing a Declaration of Conflict of Interest

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

CODE OF CONDUCT

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

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

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

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

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

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

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

Some of the values needed to achieve this goal are:

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

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

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

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

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

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

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

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

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

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

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

MEETINGS

AGENDAS

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

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

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

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

SPECIAL RULES

STATE AND LOCAL RULES

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

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

"No member of the Council present at any meeting shall be excused from voting, except in matters involving the consideration of their own official conduct. In all other cases, a failure to vote shall be entered on the minutes as an affirmative vote."

When a refusal to vote occurs, it is entered on the minutes as an affirmative vote with no explanation. The no-vote or abstention clause is intended to provide an incentive to vote. The

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

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

RULES OF PROCEDURE

The Rules of Procedure for the Flagstaff City Council are included as Appendix C. The most recent version of the Rules may also be found on the City of Flagstaff website. Where the Rules refer to the city council, please substitute the appropriate board or commission. Where the Rules refer to the mayor or councilmembers, please substitute the chair of the board or commission and the board or commission members.

ROBERT'S RULES OF ORDER

The City Council has adopted Robert's Rules of Order as its guide to parliamentary authority. Robert's Rules of Order contains within itself a provision that identifies itself as the last in the line of authority and last in the order of precedence. Thus, Robert's Rules should be the last authority, after all other existing authorities have been exhausted. If there is any conflict between Robert's Rules of Order and other laws or adopted rules, the other regulations control. The City Council's Rules of Procedure state, in Rule 11, Section 11.04, that:

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

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

Robert's Rules of Order establishes a fair and impartial process for commissions to conduct their business and it ensures that members get their say.

CONDUCTING A SUCCESSFUL MEETING

When representing and dealing with public concerns, fairness should be everyone's goal. Not everyone will be satisfied with the outcome of every decision your board or commission makes. However, equal treatment during the decision making process will leave most participants satisfied that they were treated fairly. To ensure every citizen receives fair and equitable

treatment, meetings will benefit from the consistent application of the following guidelines for conducting a successful meeting:

GUIDELINES FOR CONDUCTING A SUCCESSFUL MEETING

1. Give adequate and timely notice of all meetings.
2. Start and end each meeting on time.
3. Conduct all meetings in accordance with the Open Meeting Law, the City Charter, Council Rules of Procedure, and refer to "Robert's Rules of Order" as a guide.
4. Follow a published agenda—supply enough copies of the agenda for everyone attending the meeting.
5. Ensure the place that you hold meetings can accommodate all members of the public who wish to attend.
6. Limit the agenda to the number of topics that can be dealt with in the time allotted.
7. Allow time for discussion and comment and notify speakers in advance of the amount of time they will have to speak.
8. Announce the meeting format to the participants at the beginning of each meeting or, in some cases, portions thereof.
9. Cover the most urgent subjects first.
10. Let everyone be heard.
11. All speakers must be asked to identify themselves (name and city of residence) for the record.
12. The Chairperson should facilitate the meeting so that no one person dominates the discussion.
13. Discuss the pros and cons of an issue after everyone has had an opportunity to present his/her point of view.
14. Try to keep your comments and questions neutral, focusing on the facts presented to you.
15. Direct your attention to the speaker, issue, or task at hand--do not be distracted by minor points.
16. Make decisions based on fact.
17. Avoid conflicts of interest (see Page 14).
18. Bring issues to a vote, with each member having the opportunity to explain his/her decision/point of view (if appropriate).
19. For the benefit of the audience and participants, announce the voting results after each vote is taken.
20. Keep records of all actions taken.
21. Adjourn the meeting promptly when all business has been concluded.

REMOVAL FROM APPOINTED OFFICE

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

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