

# **Town of Clarkdale Public Service Handbook**

## **Town Council 2010**

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# 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 general history of the Town and 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

# HISTORY OF CLARKDALE

## **The Early Days**

The first mining claims in Jerome were filed in 1876 by several Irish men and women. In 1880, a consultant for Phelps Dodge Corporation came through Jerome and inspected the claims and decided it was not a good investment at that time. Seven years later, in 1887, the consultant revisited the mines and realized their great potential. When Phelps Dodge clients gave up the option to invest in the Jerome mines, William A. Clark of Montana stepped forward and picked it up.

Mr. Clark had the money to develop the United Verde Copper Company into one of the largest copper mines in the world. The ore was rich and the market was ripe. But, the unique ore body led to problems with the mine and forced changes in the plant facilities. Clark decided to mine the ore by the open pit method, which necessitated relocation of the smelter and mine buildings.

Early planning for land acquisition and the site selection of the smelter and Town was done quietly. Many properties near the Verde River and in the immediate foothills surrounding Jerome were to come under the control of the United Verde Copper Company or one of its subsidiaries. In 1913, United Verde transferred almost 1200 acres of land to the Clarkdale Improvement Company.

## **Development of a Planned Community**

William Andrews Clark was a man with three great ambitions in his lifetime. One of those ambitions was to own a town that would be one of the most modern mining towns in the world. Clarkdale, a town which bore his name, would be such a town.

The town was designed to have every possible convenience. There were telephones, telegraph, sewer and electrical services and fine spring water. There were wide streets, buildings for all types of businesses and professionals, and subsidized homes.

Construction on the smelter began in 1912, and simultaneously the building of temporary structures began to house a store and a post office. Later, three streets of homes were built for the accommodation of those who sought low-cost living quarters. This area was known as Patio Town (much later as Patio Park Subdivision). The rest of the Town was divided into two sections that were designated as Clarkdale East and Clarkdale West, but are now known only as Lower and Upper Town. The first single dwellings for employees were built along the streets close to Bitter Creek.

In laying out the streets of the Town, names were sought which would aid newcomers or visitors in finding places. Main Street divides the Town, running west from the river. In naming the parallel streets, the Salt Lake City method was adopted. Examples are First North Street, First South Street, Second North Street, and so on.

Certain sections of the town were set aside for those who preferred to build their own residences. No lots were sold, but were leased. One such section was known as "Standard Oil Town"

because it was near Standard Oil's storage plant. The community of Centerville, south of Clarkdale, but really a suburb of that time, was on ground not owned by the United Verde. Another small group of houses was called "Butcherville" because employees of the Town's meat market lived there.

The first construction in the main section of lower town was a two-story hotel that was built to accommodate employees; then dwellings were built.

In 1914, construction began in upper town. A business block was built, with accommodations including two-story buildings, for businesses and offices. This is between Ninth and Tenth Streets on the south side of Main Street. The building of residences in upper town also began in 1914. Placement of the homes was alternated; each block has three smaller homes between two larger homes. Almost ninety years later, these houses sit solid and firm.

On October 19, 1927, the Clark Memorial Clubhouse and Memorial Library were formally opened. The original cost of the Clark Memorial Clubhouse, designed by Fitzhugh & Byron, was \$90,000. The Clark Memorial Clubhouse is now listed on the National Register of Historic Places and is the official meeting place of the Town Council. The entire original town site, including "upper" and "lower" Clarkdale is on the National Register as the Clarkdale Historic District.

### **Incorporation**

In the mid-1930's, after the death of several members of the Clark family, Phelps Dodge Mining Corporation had the opportunity to buy the United Verde operation. Phelps Dodge operated the business from 1935 through 1953. Both the company and the town were run differently than they had been before. After 1953, Clarkdale was bought and sold by several different companies. The citizens of Clarkdale became dissatisfied with the various companies' management of the Town and set about to incorporate in mid-1957. The Clarkdale Community Betterment Association was formed to promote incorporation. The Yavapai County Board of Supervisors approved incorporation on July 1, 1957 when 86% of the real property owners requested it.

On July 1, 2007, the Town of Clarkdale celebrated its 50<sup>th</sup> Anniversary of Incorporation! A special 50<sup>th</sup> Anniversary Committee was formed to coordinate events throughout 2007, with the main celebration occurring in conjunction with the July 4, 2007 celebration in the Clarkdale Park.

The 50<sup>th</sup> Anniversary Committee will evolve into a committee that is focused on celebrating the 100<sup>th</sup> anniversary of Clarkdale's founding in 2012. Clarkdale's 100<sup>th</sup> anniversary celebration coincides with Arizona's Centennial Celebration!

### **Growth**

After incorporation in 1957, the new government encouraged industry and population growth. In the Fall of 1959, the Phoenix Cement Company began operation west of Clarkdale. People moved into Clarkdale, buying the practically abandoned houses in Lower Town and remodeling them. Long-time residents were invited to purchase their homes, for as little \$2,500. Others bought houses for investment purposes.

Since the construction of the historic areas of Town, Clarkdale has expanded to the south, east and west. The 89A bypass was constructed and connects many areas of the oldest areas of Town with the newer developments. Subdivisions such as Black Hills I and II, Verde Palisades, Foothills Terrace, Mingus View Estates, Haskell Springs, Mingus Shadows, Mountain Gate and numerous individual home sites in unsubdivided areas have added to the population of the Town.

On January 26, 2006, the Town added another significant event to its history with the purchase of the portion of the Cottonwood Water Works system that was in Clarkdale. The acquisition of the water company allows Clarkdale to better address the water quality, water rights and water resource issues facing the community. We are also in a much better position than a private water company to make much needed capital improvements the system, including increased storage for fire protection and the development of alternate water supply sources. Clarkdale's new tiered water rate structure is one of the most effective ways to encourage water conservation, and the Town is committed to pursuing additional water resource management and conservation programs at both a local and regional level.

The Town Council, boards, commissions and staff consider development issues on a daily basis, and planning for our future needs is a constant challenge. Input from our community is of vital importance and will continue to shape the history and the future of Clarkdale.

### **Special Thanks**

Herb Young, Clarkdale resident and long-time employee of the United Verde Copper Company and Phelps Dodge Corporation, for providing the information contained in the "Development of a Planned Community" section.

Ryden Architects and the State of Arizona Historic Preservation Office for the information provided in the "Historic Resource Survey of Clarkdale, Arizona." This information was used throughout the History of Clarkdale chapter of this handbook.

# **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 June.

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 Verde Valley Transportation Planning Organization, the Yavapai County Water Advisory Committee, the Northern Arizona Municipal Water User’s Association, the Northern Arizona Council of Governments, Coconino Yavapai Resource Conservation District, Verde Valley Regional Economic Organization, Verde Valley Land Preservation Institute, and the Cottonwood Area Transit System, Verde Valley Regional Economic Development Organization, and Yavapai College Liaison .

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 1<sup>st</sup> 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 Community Services Department or on the Town's website ([www.clarkdale.az.us](http://www.clarkdale.az.us)) 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. If any representative misses three consecutive regular meetings or a cumulative total of seven meetings throughout the fiscal year, he or she shall automatically cease to hold membership without further action being taken by either the commission or the Town Council. It is the duty of the chairperson to notify the staff liaison when this occurs. 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, and 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. Heritage Conservancy Board**

The Heritage Conservancy Board advises the Town Council and staff regarding the preservation, conservation, and promotion of natural, cultural and historical resources. The Heritage Conservancy Board has five representatives.

### **3. Library Advisory Board**

The Library Advisory Board advises the Town Council and staff regarding the Clark Memorial Library operations and decisions. The Board consists of five representatives.

### **4. Parks and Recreation Commission**

The Parks and Recreation Commission advises the Town Council on park development, recreational activities, programming, and other community services. The Commission consists of five representatives.

### **5. 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.

6. **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.

7. **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, two citizens and two police personnel.

8. **Municipal Property Corporation**

The Municipal Property Corporation is a non-profit organization that is an "affiliate of the governmental unit". The charge of the MPC is to finance the cost of acquisition, construction and equipping of certain facilities by the Town of Clarkdale. The MPC normally meets once a year, however if the Town is obtaining financing through the MPC additional meetings would be scheduled.

**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 & Community Services Director**

The Community Services Department is comprised of Parks & Recreation, the Clark Memorial Library and the Town's Volunteer Program. This department provides staff liaisons to the Parks & Recreation Commission, the Heritage Conservancy Board and the Library Board. Currently the Department Head for Community Services also serves as the Director of Human Resources, and liaison to the Town's Magistrate Court and IT service provider.

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**

Under the direction of the Chief of Police, 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 Development Department**

Under the direction of the Community Development Director, 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. As of this writing, the *2006 International Building Codes* as amended by the Town, are the current standard. Representatives of this department are staff liaisons to the Planning Commission, Design Review Board, Board of Adjustment and to those involved with updates to the General Plan.

**7. Public Works Department**

Under the direction of the Public Works Director, 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. Additionally, the Public Works 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 along with other State and Regional transportation governing bodies.

**8. Utility Department**

Under the direction of the Utilities Director, this department oversees the operation of the Town's water, wastewater, and reclaimed water systems. This department works closely with the Public Works Department and the Fire District to provide and maintain critical public services. Representatives from the Utilities Department are staff liaisons to the Northern Arizona Municipal Water Users Association (NAMWUA) and other regional water associations.

**9. Finance Department**

Under the direction of the Finance Director, this department directs the Town's budget process, payroll and accounts payable, utility billing, internal audits, risk management, workers compensation, annual tax levies and procurement of goods and services.

**10. Parks and Recreation**

Under direction of the Human Resources & Community Services Director, the Parks and Recreation Supervisor works with the Parks and Recreation Commission, the Public Works Department, and others, to provide and maintain attractive parks and special recreational facilities for leisure time activities along with various recreation programs which provide a creative and responsive service to the community. There is a continued focus to develop events and activities to meet Clarkdale's ever changing needs and desires by providing opportunities for recreational participation.

**11. Library**

The Library Manager manages and operates the library and its staff under direction of the Human Resources & Community Services Director with advice from the Library Board.

Clarkdale strives to continually evaluate the efforts of the Library to meet the needs and wishes of our community.

**12. Human Resources**

While the Town Council sets some human resource policies, such as the adoption of specific benefits and salary ranges, the Town Manager is ultimately responsible for all employee decisions in the Town. The Human Resources & Community Services Director has been charged with responsibility as the Human Resource Director, and oversees the Town's Human Resource operations with regard to employee selection, training and development, performance evaluations, promotions & dismissals, employee relations, and record keeping of personnel data. The Human Resources & Community Services Director works closely with all department heads to assist with day-to-day personnel issues and works with employees to guide career development and provides advice in relation to problems at work.

**13. 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.

**14. Town Engineer**

The Town currently contracts for the services of an engineering firm as the Town Engineer. Utilization of the service is dependent upon need. Periodically, additional services are required and they, too, are provided on a contract basis. Engineering services are available to all functions within the Town organization.

# 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.

### **C. 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 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.” The phrase carries such negative connotations, and yet it is only natural in our system. 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 A.R.S. §38-504(C). Violation of this prohibition is a Class 4 felony. In addition, a public official who engages in a conflict of interest, upon conviction, forfeits his or her office, pursuant to A.R.S. §38-510(B). 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 prohibited in ARS 38-503 through 505, is guilty of a class 6 felony, which carries a penalty of one and one-half years imprisonment or a maximum fine of \$150,000. A public official who negligently or recklessly violates the conflict of interest law by failing to disclose a substantial interest or engaging in the activities prohibited is guilty of a class 1 misdemeanor, which is punishable by imprisonment for up to six months or a fine of not more than \$2,500. AND, 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 “tamper 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.

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

### **C. E-Mail 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 an email policy which will be updated to include the additional electronic communication records. To make sure that public officials have read and understood this policy, they are asked to sign an email policy when they are appointed.

1. **E-mail Guidelines:** Representatives may communicate with each other via e-mail concerning Town business using the following guidelines:
  - a. E-mail communications should also be copied to your staff liaison so that they are kept appropriately informed.
  - b. E-mail cannot be used as a means of discussion of town business between all, or a quorum, of council/commissioners.

- c. E-mail cannot be used to facilitate or form a “hub and spoke” communication whereby one representative acts as a go-between disseminating communications between other representatives.
- d. E-mail cannot be used as a means of taking straw polls on town issues.
- e. A representative may use e-mail to distribute informational material to all other representatives. However, such distributions should not be made with the intent to initiate responses from other council/commissioners. Any discussion of such informational communications should be reserved for public meetings. E-mail of informational material should be preserved in the manner provided above. In summary, communications by e-mail cannot be used as a means of circumventing the open meeting laws.
- f. Confidential messages should never be sent electronically for two reasons, 1) messages may be sent to the wrong addressee, and 2) e-mail should always be used with the assumption that messages will be read by someone other than the intended recipient.
- g. E- mail communication to or from the Town Attorney concerning pending litigation or legal advice should contain a warning in the subject heading stating: “Confidential attorney-client privileged”. A corresponding copy of the e-mails should also be sent to the Town records e-mail box. Such communications should also contain the following boilerplate at the end of the communication: “The information contained in this message is attorney/client privileged and/or confidential information intended only for the use of the individual or individuals named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or printing of this communication is strictly prohibited. If you have received this message in error, please notify us immediately by telephone at 928-639-2400 (or by reply e-mail) and delete this message. Thank you.”
- h. Another good general guideline for e-mails concerning Town business is: “Don’t send anything in an e-mail that you wouldn’t want your mother to read in the newspaper.”

2. **E-Mail Records Retention And Disposition**

Public Record, for purposes of this policy, means any e-mail communication made or received by any public officer in pursuance of law or in connection with the transaction of public business including, but not limited to, communications that concern the Town’s organization, functions, policies, decisions, procedures, operations or other activities or which are of informational or historical value. Few records in the possession or control of an employee or public officer will not be considered “Public Records.” Exceptions

include routine e-mail communications of a personal nature, spam, or communications containing information that is not related in any way to Town business.

- a. E-mail communications between council/commission representatives concerning Town business or Town related issues are considered public records even though they take place on a personal computer. In order to preserve the communication, the originating party is to email a copy to the town records e-mail box, [records@clarkdale.az.gov](mailto:records@clarkdale.az.gov). The Town Clerk will preserve the communication and make it available for public inspection.
- b. Communications that meet the definition of a “public record” transmitted on the Town’s electronic mail system, or received from outside the Town, through the Town’s electronic mail system, shall either be printed and preserved in the appropriate file, in permanent paper format or, shall be preserved, unedited, in the employee’s or public official’s e-mail system without printing in a manner that will enable it to be easily retrieved upon request. With every communication that qualifies as a “public record”, the sender shall ensure that the following information is included and preserved
  - The time and date the message was sent and received.
  - The complete sender and receiver identification.
  - An accurate description of the subject matter of the e-mail and whether or not the e-mail is attorney-client privileged or confidential in the “Subject” section of the e-mail message.
  - The complete message, and any and all attachments to the message.
  - The electronic version may be deleted after the record is transferred to a proper recordkeeping system. Retention or disposition of electronic mail messages must be related to the information they contain or the purpose they serve.
- c. Routine e-mail communications include communications of transitory value, that are routine in nature such as those used to schedule meetings or conference calls, notices of vacations, times away from the office etc., and which have little relevance in terms of recording official actions or decisions made by Town staff or public officials. Routine E-mail may be deleted after being read and after the required action is taken, subject to the limitations.
- d. You are responsible for saving the e-mail record and any attachments if you are the sender of the message or the person receiving an e-mail record from a source outside the Town. The sender includes the person who sent the original message, the sender of a response and the person forwarding a message with comment. Public Officials who transmit e-mail shall determine whether to preserve or delete the e-mail communication.

## **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.

### 1. Lodging and Meal Per-Diem

A. Lodging - the following policy is to be utilized by eligible individuals who are contemplating traveling.

#### 1. Eligibility

- a. Employee must be on authorized travel status.
- b. Travel must be outside a 100-mile radius of the corporate Town limits and a multi-day event.
- c. Lodging must be at a commercial establishment.
- d. Employee is required to submit three quotes for lodging in the general area if the recommended block of reserved rooms costs over \$150.
- e. Employee is required to request the lowest available rate, traditionally being governmental.

#### 2. Documentation

- a. The commercial establishment's original receipt is required.
- b. Lodging receipts must be itemized.
- c. If original lodging receipt is lost or destroyed:
  - 1) A photocopy may be submitted with the statement Treat as the Original.
  - 2) The employee and the department head must sign the photocopy.
  - 3) If a photocopy is not available and cannot be obtained from the commercial establishment, then a canceled check or credit card receipt showing the payment of the lodging may be used.

B. Meals and Incidental Expenses (MIE) - Per Diem

#### 1. Eligibility

- a. Employee must be on authorized travel status.
- b. Travel must be outside a 20-mile radius of the corporate Town limits.
- c. Meals must be at a commercial establishment.

2. Documentation - Compensation is based on the schedule listed and no receipts are required.

#### 3. Meal allowances

- a. Breakfast - Is reimbursable when travel commences on or before 6:00 a.m. and the traveler's normal workday is extended by two hours.
- b. Lunch - Is reimbursable if the traveler is in travel status for a period of 6 hours or more and travel commences on or before 11:00 a.m. and ends at or after 2:00 p.m. and the travel is outside the 20-mile radius

from the corporate Town limits. Traveler must indicate the time and place travel begins and ends.

- c. Dinner - Is reimbursable when travel extends to 7:00 p.m. or beyond and the traveler extended his/her normal workday by three hours or when the traveler leaves for overnight travel on or before 6:00 p.m.
- 4. Meals Provided
  - a. The traveler is not entitled to a meal allowance for meals provided at the conference, seminar or lodging site.
  - b. If a special meal is required due to dietary restrictions, notice must given in writing at the time of compensation request.

C. Rates	In State	Out of State
Breakfast Meal	\$ 6.00	\$ 8.00
Luncheon Meal	\$ 8.00	\$10.00
Dinner Meal	\$14.00	\$16.00

Travel (Overnight Stay)

Depart Clarkdale on or prior to 6:00 a.m.	\$28.00
Depart Clarkdale prior to 11:00 a.m.	\$22.00
Depart Clarkdale after 11:30 a.m.	\$14.00
Daily rate thereafter	\$28.00
Lodging - As approved by the Department Head and Finance Director in accordance to the lodging policy	

When returning to Clarkdale, the day travel rates (per diem) will be in effect.

- 2. Transportation - Compensation will be made only for the method of transportation, which is in the best interest of the Town considering travel expense, vehicle condition as well as the employee's time. When more than one employee uses the same motor vehicle, only one claim for mileage compensation will be allowed.
  - A. Requirement for using Town owned vehicle:
    - 1. Authorization - by the Department Head prior to use of Town owned vehicle.
    - 2. Driver's license - a valid Arizona driver's license (with no major violations) is required if the employee is driving a Town unit on Town business.
    - 3. Vehicle reservation - each department shall reserve a pool vehicle with the Town Clerk or receptionist at least 24 hours before needed.

4. Reporting - pool vehicles require that all pertinent information be provided in the vehicle log, including name of user, beginning and ending mileage, total miles traveled, and fuel level.
  5. Returning of pool vehicle - fuel level must be full upon return from an out of town trip and any problems or incidents with the vehicle must be reported to the Town Clerk or receptionist. The vehicle shall be returned in a clean state (all soda cans, paper & trash shall be removed).
  6. NO SMOKING in Town vehicles.
  7. Only Town Staff, Town Council, Board & Commission members or another municipality staff may ride in a Town Vehicle.
  8. Rental Vehicles - reservations must be placed with a vehicle rental establishment, according to their reservation requirements. Vehicle to be used for Town travel must be a compact vehicle.
- B. Requirement for using personal vehicle:
1. Authorization - by the Department Head prior to use of personal vehicle.
  2. Driver's license - a valid Arizona driver's license (with no major violations) is required if the employee is driving a personal vehicle on Town business.
  3. Current Vehicle Insurance - liability insurance coverage with a minimum coverage of \$15,000 per person and \$30,000 per accident.
    - a. If a traveler using a privately owned vehicle is involved in an accident and found to be at fault, his/her liability insurance carrier is responsible to the limits of the policy. If the amount exceeds that coverage, the Town's insurance may, at the time, cover the amount over the policy limits if the traveler was acting within the course and scope of their employment.
    - b. If a traveler driving a privately owned vehicle on Town business is involved in an accident, regardless of fault, the Town will not reimburse for any physical damage to the motor vehicle.
  4. Compensation Basis
    - a. Compensation is based on Map Mileage using official state highway maps or mapping programs which must be attached to the Travel Expense Form.
    - b. Beginning address and ending location address must be submitted for compensation.
    - c. Compensation will be using the most direct route.
    - d. Mileage compensation shall be at the Federal GSA rate per map mile. This rate includes all travel and maintenance expenses of the vehicle.
      - If **NO** Town vehicle was available, reimbursement is at 58.5c per mile, or the current approved Federal GSA rate.
      - If a Town vehicle was available, but used a personal vehicle instead, reimbursement is at 28.5c per mile, or the current approved Federal GSA rate.

C. Miscellaneous Travel Issues

1. Communication Expense

- a. Business communication charges, including faxes and copies, are reimbursable if documented by receipts.
- b. Business calls are reimbursable and should be noted as such on the hotel receipt. The number called should be visible.
- c. No personal calls will be reimbursed.

2. Extending Business Trips with Vacation Time

- a. With the Department Head and Finance Director's approval traveler may extend a business trip using vacation time.
- b. The Town will cover the lodging, map mileage and per-diem for the period the traveler is conducting Town business.
- c. Lodging will be covered at the single room rate.
- d. Additional costs will be borne by the traveler.

3. Local Transportation, Tolls and Parking

- a. Taxi, bus, and street car use is classified as local transportation and can be claimed with receipts.
- b. Claims for local transportation will not be allowed where the Town provides for other transportation (Town, personal or rental vehicle).
- c. Bridge and road tolls are reimbursable with receipts.
- d. Travelers must use the free or discounted parking when traveling on Town business.
- e. Receipts are required for reimbursement of allowable parking fees.

3. **Accident Forms:**

In the event of an accident, you are required to complete an Accident Form. Accident Forms are located in each Town vehicle. Damage to a traveler's personal vehicle that was used while on Town business, is a non-reimbursable Town expense.

4. **Travel Expense Form:**

This form is used to report reimbursable expenses such as mileage, meals, lodging, and any other expenses paid out of pocket. To obtain funds prior to travel, the expense form must be submitted to the Finance Department, not later than ten working days prior to the date of travel. Receipts must be attached to the Travel Expense Form or provided to the Finance Department after the trip.

**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. Arizona Open Meeting Law – Arizona Agency Handbook – Updated July 2010

#### CHAPTER 7

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

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

#### **7.2 Arizona's Open Meeting Law.**

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

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

In 1978, after a series of court opinions narrowly construing the Open Meeting Law, the Legislature reiterated its policy by adding A.R.S. § 38-431.09. That statute now provides:

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

### **7.3 Government Bodies Covered by the Open Meeting Law.**

**7.3.1 Generally.** The provisions of the Open Meeting Law apply to all public bodies. A public body is defined in A.R.S. § 38-431(6) as follows:

"Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

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

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

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

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

**7.3.3 Quasi-Governmental Corporations.** The boards of directors of corporations and instrumentalities of the state or its political subdivisions are subject to the Open Meeting Law when the members of the board are appointed or elected by the state or its political subdivisions. *See* A.R.S. § 38-431(5), (6). For example, the Board of Directors of the Phoenix Civic Improvement Corporation falls into this category. The Open Meeting Law does not apply, however, to a private non-profit hospital association that has a board of directors elected by the electorate of the hospital district. *Prescott Newspapers, Inc. v. Yavapai Community Hosp. Ass'n*, 163 Ariz. 33, 785 P.2d 1221 (App. 1989). *See* Ariz. Att'y Gen. Op. 07-001.

**7.3.4 Quasi-Judicial Bodies.** The Open Meeting Law defines a quasi-judicial body as "a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims." A.R.S. § 38-431(7). This definition was added by the Legislature in 1978 to reverse the Arizona Supreme Court's decision in *Arizona Press Club, Inc.*

*v. Bd. of Tax Appeals*, 113 Ariz. 545, 558 P.2d 697 (1976), which held that the Open Meeting Law did not apply to bodies conducting quasi-judicial functions, such as license revocation proceedings. *See* Ariz. Att'y Gen. Op. 78-245. The Arizona Board of Tax Appeals and similar quasi-judicial bodies are now expressly covered by the Open Meeting Law. A.R.S. § 38-431(6), (7).

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

**7.3.5 Advisory Committees.** Advisory committees are subject to all of the requirements of the Open Meeting Law. A.R.S. § 38-431.01(A), (B). An advisory committee is defined as any group officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

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

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

**7.4 Government Bodies and Proceedings Not Covered by the Open Meeting Law.** The Legislature has determined that certain public bodies need not comply with all or portions of the Open Meeting Law in particular circumstances. This section identifies some of those limited exceptions.

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

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

**7.4.3 The Legislature.** Meetings of legislative conference committees must be open to the public; however, the committees are exempted from all other requirements of the Open Meeting Law. A.R.S. § 38-431.08(A)(2). The Open Meeting Law does not apply to the activities of a political caucus of the Legislature. *Id.* § (A)(1); *cf.* Ariz. Att'y Gen. Op. I83-128. The Open Meeting Law permits either house of the Legislature to adopt a rule or procedure exempting itself from the notice and agenda requirements of the Open Meeting Law or to allow standing or conference committees to meet through technological devices rather than in person. A.R.S. § 38-431.08(D).

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

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

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

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

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

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

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

All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body, constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law. Ariz. Att'y Gen. Ops. 75-8, I79-4. *See also* A.R.S. §§ 38-431.01(A), -431(3) and Ariz. Att'y Gen. Op. I05-005. Whether the matter to be discussed may foreseeably require final action is the key to this inquiry. It is nearly impossible to establish a precise guideline as to when this foreseeability test has been met, and each case should be viewed on its own merits and all doubts resolved in favor of compliance with the Open Meeting Law. The safest course of action is to comply with the Open Meeting Law whenever a majority of the body discusses the business of the public body. It does not matter what label is placed on a gathering. It may be called a "work" or "study" session, or the discussion may occur at a social function. Ariz. Att'y Gen. Op. I79-4. Discussion of the public body's business may take place only in a public meeting or an executive session in

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

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

For example, Board members cannot use email to circumvent the Open Meeting Law requirements. *See* Ariz. Att’y Gen. Op. I05-004. “[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. Board 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, “when 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 2. This may true even if none of the members of the public body respond to the email. *Id.* at 5-6. If the one-way communication proposes legal action, then it would violate the Open Meeting Law. *Id.* However, other one-way communications, with no further exchanges, are not *per se* violations, and further examination of the facts and circumstances is necessary to determine if there is a violation. *Id.* at 7.

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

## **7.6 Notice of Meetings.**

**7.6.1 Generally.** The Open Meeting Law requires at least 24 hours advance notice of all meetings to the public body and to the general public. Notice makes it possible for the public to attend public meetings by informing them of when and where to go, and how to get information

regarding the matters under consideration. Arizona courts have emphasized the importance of sufficient notice of meetings. The Arizona Court of Appeals explained, "The notice provisions in the open meeting law are obviously designed to give meaningful effect to provisions such as A.R.S. §§ 38-431.01(A) and 38-431.09. The goal of exposing the public decision-making process to the public itself could be significantly, if not totally thwarted, in the absence of mandatory notice provisions and their enforcement." *Carefree Improvement Ass'n v. City of Scottsdale*, 133 Ariz. 106, 649 P.2d 985 (Ariz. App. 1982).

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

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

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

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

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

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

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

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

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

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

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

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

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

**7.6.7 Notice of Executive Sessions.** When an executive session is to be held, the notice must state the specific provision of law authorizing the executive session. A.R.S. § 38-

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

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

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

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

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

## **7.7 Agendas.**

**7.7.1 Generally.** In addition to notice of the time, date, and place of the meeting, the public body must provide an agenda of the matters to be discussed, considered, or decided at the meeting. A.R.S. § 38-431.02(G). Although this Section provides guidelines for the preparation of agendas, it does not answer every question that will arise. Specific problems should be discussed with the public body's legal counsel. A public body should not have problems if it in good faith follows the Legislature's declaration of policy that agendas "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.09(A). If there is a doubt, all questions should be resolved in favor of greater disclosure of information.

**7.7.2 Contents of the Agenda -- Public Meeting.** The agenda for a public meeting must contain a listing of the "specific matters to be discussed, considered or decided at the meeting." A.R.S. § 38-431.02(H). This requirement does not permit the use of generic agenda items such as "personnel," "new business," "old business," or "other matters" unless the specific matters or

items to be discussed are separately identified. *See Thurston v. City of Phoenix*, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). The degree of specificity of the agenda depends on the circumstances. For example, if an environmental board is going to consider the approval of pesticides for application within 1/4 mile of a school, a listing such as "Approval of pesticides for application within 1/4 mile of a school" is sufficient. However, if the board is going to consider removing a pesticide from the approved list, the agency should specify the pesticide being considered for removal. *See* Form 7.7 (Sample Notice and Agenda).

If it is likely that the public body will find it necessary to discuss any particular agenda item in executive session with the public body's attorney, the agenda should plainly say so. For example, the agenda might include a provision stating "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on the approval of pesticides for application within 1/4 mile of a school pursuant to A.R.S. § 38-431.03(A)(3)."

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

**7.7.4 Distribution of the Agenda.** The agenda may be made available to the public by including it as part of the public notice or by stating in the public notice how the public may obtain a copy of the agenda and then distributing the agenda in the manner prescribed. A.R.S. § 38-431.02(G); *see* Forms 7.2 - 7.4, 7.6, 7.7.

Because both the public notice and the agenda must be available at least twenty-four hours in advance of a meeting, the simplest procedure is to include the agenda with the public notice. *See* Form 7.7 (Sample Notice and Agenda).

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

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

obtained. A good practice is to require that an item be removed from the consent agenda upon the request of any member of the public body. *See* Form 7.7 (Sample Notice and Agenda).

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

**7.7.6 Discussing and Deciding Matters Not Listed on the Agenda.** The public body may discuss, consider, or decide only those matters listed on the agenda and "other matters related thereto." A.R.S. § 38-431.02(H). The "other matters" clause provides some flexibility to a public body but should be used cautiously. The "other matters" must in some reasonable manner be "related" to an item specifically listed on the agenda. *Thurston v. City of Phoenix*, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988).

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

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

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

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

**7.7.8 Current Event Summaries.** The Open Meeting Law allows the chief administrator, presiding officer or a member of a public body to present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that the summary is listed on the agenda and that the public body does not propose, discuss, deliberate or take legal

action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action. A.R.S. § 38-431.02(K). Public bodies should limit the use of this provision to appropriate situations and should strive to provide as much advance information as possible to the public.

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

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

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

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

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

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

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

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

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

**7.8.2 Contents of the Minutes of Public Meetings.** The minutes of a public meeting must contain the following information:

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

*(Not part of the Open Meeting Law – Clarkdale Specific)*

*The minutes of all meetings are not official until they are reviewed and approved by the council/commissioners at their next regular meeting. When reviewing the minutes, council/commissioners should check to make sure that they reflect the meeting overall, that the direction given or motions made are correct. Any major revisions (changes in content) needed must be made at the time the minutes are being considered for approval. The change must be approved by a motion. Minor revisions such as grammar or spelling errors should be given to staff in advance or at the beginning of the meeting in which the minutes are being considered for approval. Minor revisions do not require a motion. The Town Council votes to approve its own minutes, but never to approve the minutes of other boards or commissions. Minutes of other boards and commissions are approved by that board or commission and are included in the Town Council's packet for informational purposes only.*

**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 School Dist. No. 13 of Pima County v. Bernini*, 206 Ariz. 200, 205, 76 P.3d 874, 879 (App. 2003). *However*, Arizona courts have held that once a complainant alleges facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation, the burden of proof immediately shifts to a public body to prove that an affirmative defense or exception to the Open Meeting Law authorized an allegedly inappropriate executive session. *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz. 116, 122, 912 P.2d 1345, 1351 (App. 1995). *See also Tanque*, 206 Ariz. 200 at 205, 76 P.3d 874 at 881. Hence, the best practice is for public bodies to tape record or keep detailed minutes of executive sessions in order to ensure that they are prepared to meet their burden of proof in the event a lawsuit is filed.

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

1. Any member of the public body that met in the executive session and members who did not attend the executive session. A.R.S. § 38-431.03(B)(1); *Picture Rocks Fire Dist. v. Updike*, 145 Ariz. 79, 699 P.2d 1310 (App. 1985).
2. Any officer, appointee, or employee who was the subject of discussion at an executive session authorized by A.R.S. § 38-431.03(A)(1) may see those portions of the minutes directly pertaining to them. A.R.S. § 38-431.03(B)(2); *see* Section 7.9.4.
3. Staff personnel, to the extent necessary for them to prepare and maintain the minutes of the executive session.
4. The attorney for the public body, to the extent necessary for the attorney to represent the public body.
5. The Auditor General in connection with the lawful performance of its duty to audit the finances or performance of the public body. A.R.S. § 38-431.03(B)(3); Ariz. Att'y Gen. Op. I79-130.
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 that a public body advise all persons attending an executive session or obtaining access to executive session minutes or information that such

minutes and information are confidential. A.R.S. § 38-431.03(C). Public bodies should maintain executive session minutes in a secure file separate from the public meeting minutes to guard against accidental disclosure.

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

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

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

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

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

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

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

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

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

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

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

body to enter executive session to discuss or consider the actual evaluation. Ariz. Att'y Gen. Op. I96-012.

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

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

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

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

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

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

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

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

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

**7.9.9 International, Interstate, and Tribal Negotiations.** A public body may go into executive session for the purpose of "[d]iscussion, consultation, or consideration for international and interstate negotiations." A.R.S. § 38-431.03(A)(6). This provision does not apply to meetings at which the public body receives recommendations from representatives of federal agencies. Ariz. Att'y Gen. Op. I80-159.

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

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

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

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

## **7.10 Public Access to Meetings.**

**7.10.1 Public Participation and Access.** The public must be allowed to attend and listen to deliberations and proceedings taking place in all public meetings, A.R.S. § 38-431.01(A); however, the Open Meeting Law does not establish a right for the public to participate in the discussion or in the ultimate decision of the public body, Ariz. Att'y Gen. Op. 78-1. Other statutes may, however, require public participation or public hearings. For example, before promulgating rules, state agencies must permit public participation in the rule making process, including the opportunity to present oral or written statements on the proposed rule. *See* Chapter 11. *See also* Section 7.7.2 for a discussion of the authorization (but not requirement) for public bodies to use an open call to the public.

The public body must provide the public with access to all public meetings. *See* A.R.S. § 38-431.01(A). This requirement is not met if the public body invokes any procedure or device that obstructs or inhibits public attendance at public meetings, such as requiring persons to sign in before they are permitted to attend the meeting or holding the meeting in a remote location, in a room too small to accommodate the reasonably anticipated number of observers, in a place to which the public does not have access, such as private clubs, or at an unreasonable time. The

Open Meeting Law, however, does not prevent a public body from requiring persons who intend to speak at the meeting to sign a register so as to permit the public body to comply with the minute-taking requirements. *See* Section 7.8.2(5).

In addition to complying with the Open Meeting Law, the notice and accommodations should conform with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 - 12213 (Supp. 1992). *See* Sections 16.22.2.3 - 16.22.2.5; *see also* § 7.6.3 (notice requirements relating to reasonable accommodations).

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

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

1. The notice and the agenda should state that one or more members of the public body will participate by telephonic, video or internet communications. In the appropriate notice, insert the following after the first sentence: "Members of the [name of public body] will attend either in person or by telephone, video or internet conferencing."

2. The public meeting place where the public body normally meets should have facilities that permit the public to observe and hear all telephone, video or online communications.

3. The public body should develop procedures for clearly identifying all members participating by telephonic, video or internet communications.

4. The minutes of the meeting should identify the members participating by telephonic or video communications and describe the procedures followed to provide the public access to all communications during the meeting.

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

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

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

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

of convening the quorum to discuss or decide the particular matter for which the member is disqualified. *See Croaff v. Evans*, 130 Ariz. 353, 358, 636 P.2d 131, 136 (App. 1981).

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

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

## **7.12 Ratification.**

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

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

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

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

1. The decision to ratify must take place at a public meeting held in accordance with the Open Meeting Law.

2. Ratification must take place within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.

3. The public notice of the meeting at which ratification is to take place, in addition to complying with the other requirements of the Open Meeting Law, *see* Sections 7.6 and 7.7, must include (a) a description of the action to be ratified, (b) a clear statement that the public body proposes to ratify a prior action, and (c) information on how the public may obtain a written description of the action to be ratified. *See* Form 7.12.

4. In addition to the notice and agenda of the meeting, the public body must make available to the public a detailed written description of the action to be ratified and a description of all prior deliberations, consultations, and decisions by members of the public body related to the action to be ratified.

5. The description required under paragraph 4 must be included as part of the minutes of the meeting at which the decision to ratify was made.

6. The public notice, agenda, and written description discussed in paragraphs 3 and 4 must be made available to the public at least seventy-two hours prior to the public meeting.

### **7.13 Sanctions for Violations of the Open Meeting Law.**

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

The Arizona Supreme Court, however, has held that legal actions taken in violation of the Open Meeting Law are voidable at the discretion of the court. *Karol*, 122 Ariz. at 97, 593 P.2d at 651. In the *Karol* case, the court held that: "[A] technical violation having no demonstrated prejudicial effect on the complaining party does not nullify all the business in a public meeting when to conclude otherwise would be inequitable, so long as the meeting complies with the intent of the legislature." *Id.*, 122 Ariz. at 98, 593 P.2d at 652. This decision imposes a substantial compliance test and requires a weighing of the equities before a court will declare an action void. The decision, however, preceded the 1982 amendment to the Open Meeting Law which specifically authorizes a procedure for ratification. It remains to be seen whether this change will cause the court to follow the literal language of the Open Meeting Law. Nevertheless, the serious consequences that flow from having an action of a public body declared void should serve to remind the public body that it should take every precaution to avoid even technical violations of the Open Meeting Law.

In some cases, the public body may have discussed a matter at an unlawful meeting, but thereafter met in a lawful open meeting at which it took a formal vote as its "final action." The Arizona Court of Appeals has held that the subsequent "final action" taken at a lawful meeting is not void. *Valencia v. Cota*, 126 Ariz. 555, 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 of the law. The Attorney General and County Attorneys are authorized to investigate alleged Open Meeting Law violations and enforce the Open Meeting Law. A.R.S. § 38-431.06.

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

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

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

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

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

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

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

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

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

## **B. 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.

## **C. 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.

#### **D. 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.
3. 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.

## **E. 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, 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. Thus, if there are five representatives present and two representatives abstain from a vote, two representatives vote in favor and one against, the motion passes. If one representative abstains, then there are only 4 voters, three must vote in favor for a motion to pass. If the vote is 2-2, then there is a tie and the motion fails.

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.

## **F. 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 so 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.

# APPENDIX

## Clarkdale Heritage Conservancy Board Statement of Policy and Goals

On October 29, 1982, the property known as Clark Memorial Clubhouse was placed on the National Register of Historic Places.

It was then the desire of the Town Council to encourage restoration of the historic Town-owned buildings. The Town Council therefore established the Town of Clarkdale Restoration Commission.

On August 8, 1989, the Town Council established the Heritage Conservancy Board to address a broader scope of issues than the Restoration Commission addressed. .

### **Membership**

The Heritage Conservancy Board consists of five representatives

### **Rules of Procedure**

The Town Council has full and final authority on all Heritage Conservancy Board issues, and no issues shall be concluded by anyone else unless so directed by the Town Council.

The issues of the Heritage Conservancy Board, including proposals and suggestions shall be prepared in written form and presented to the Town Manager to be placed on the Town Council agenda to be discussed and acted upon by the Town Council.

### **Powers and Duties**

- A. To advise the Town Council and Staff regarding the preservation, conservation and promotion of natural, cultural and historical resources.
- B. To assist the Town Council in establishing general priorities relating to historic preservation.
- C. To study the needs, define the problems, establish priorities, and present a plan of action for the restoration of the historic buildings in the Town of Clarkdale.
- D. To suggest/promote fees and/or fund-raising ideas to finance projects in relation to the Heritage Conservancy Board.

# **Advisory Board for Clark Memorial Public Library**

## **Statement of Policy and Goals**

The Library Manager is the administrative officer of the library. The Library Manager manages and operates the library and its staff under direction of the [Human Resources & Community Services Director](#) with advice from the Library Board.

Clarkdale strives to continually evaluate the efforts of the Library to meet the needs and wishes of our community

### **Membership**

The Library Board consists of five representatives.

### **Rules of Procedure**

The Town Council has full and final authority on all Library Advisory Board issues, and no issues shall be concluded by anyone else unless so directed by the Town Council.

All issues, including proposals and suggestions shall be prepared in written form and presented to the Town Manager to be placed on the Town Council agenda to be discussed and acted upon by the Town Council.

### **Powers and Duties**

- A. Give varied opinions representative of the majority of the population in our municipality as opposed to a singular set of ideas regarding types of books, hours of operation and planning for the future of the Clark Memorial Library.
- B. The Library Board is an advisory body to the Town Council, Town Manager, and Library Manager for the purpose of giving input regarding all phases of library operations.
- C. To assist the Town Council in establishing general priorities relating to the operations of the Clark Memorial Public Library.
- D. To study the needs, define the problems, establish priorities, and present a plan of action for the operations and needs of the Library.
- E. To suggest/promote fees and/or fund-raising ideas to finance projects in relation to the library operations.

# **Clarkdale Parks and Recreation Commission**

## **Statement of Policy and Goals**

The need for open space for parks and recreation is becoming more important. The challenge before the Parks and Recreation Commission is to provide and maintain sufficient and attractive parks and special recreational facilities for leisure time activities and to be a positive and responsive service agency in providing a wide variety of wholesome recreation opportunities.

The various recreation programs are charged with providing a creative and responsive service to the community, and developing events and activities to meet its ever changing needs and desires by providing opportunities for recreational participation. The weight of these needs and desires must be measured constantly in relation to existing programs, facilities and services, as well as their benefit to the total Clarkdale citizenry.

### **Membership**

The Parks and Recreation Commission shall consist of five representatives.

### **Powers and Duties:**

- A. Make recommendations to the Town Council on valuable open space, and on avenues for individual, group and family participation in a wide variety of activities and special community events.
- B. To assist the Town Council in the purchase, sale, lease or other method of acquiring or disposing of lands, structures, and facilities for use as parks or recreational centers. This would include the responsibility to consider land purchases, sales and donations, recommending construction of recreation centers and planning for future park needs.
- C. To assist the Town Council in establishing general priorities relating to park development and recreation programs. To assist in establishing a plan for the town's park system involving research, comments, and/or recommendations on parks and recreation-related matters.
- D. To assist the Town Council on the 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 centers.  
Including:
  - Proposing measures to repair or expand facilities to accommodate greater use.
  - Proposing signing, fencing, or other measures the Town may undertake to prevent the facilities from being damaged or destroyed by unauthorized uses.
- E. To assist the Town Council in establishing priorities at budget time relating to park acquisition, development and recreation programs. Assist in the preparation of the annual budget.

- F. Suggest/propose fees and/or fund raising ideas to finance expansion of development of facilities.
- E. Make recommendations to the Town Council to receive, accept and acquire by gift, bequest or devise real and personal property of every kind, nature and description in the name of the Town for park and recreational purposes, subject to the terms of such gift.

# **Clarkdale Planning Commission**

## **Statement of Policy and Goals**

The Planning Commission is an advisory body to the Town Council. The purpose of the Planning Commission is to promote orderly growth and development that fits the needs and character of the community.

Principal Activities include:

1. It is the duty of the Commission to formulate and administer any lawful plan duly adopted by the Town Council 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”.
2. 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.
3. To recommend to the Town Council revisions in such plans which, in the opinion of the Commission, are for the best interest of the citizens of the Town.
4. To establish rules of procedure if such rules are approved by the Town Council.

### **Procedural Guidelines**

The procedural guidelines for the Town of Clarkdale Planning Commission are intended to clarify and facilitate processes of the commission as established in the Town Code and authorized by Arizona Revised Statutes.

Planning Commissions in Arizona must operate within the limits set by State Laws - The Arizona Revised Statutes: Title 9, Cities and Towns; Chapter 4, General Powers: Article 6, Municipal Planning; Article 6, Municipal Zoning. Municipal Subdivisions Regulations, Open Space Conservation, General Plan, Zoning Code, Sign Code, and all other related statutes contain additional local limits.

### **Membership**

The Planning Commission consists of five representatives..

### **Powers and Duties**

- A. The basic duty of the Planning Commission is to advise and make recommendations to the Town Council regarding the General Plan, re-zoning requests, and changes to the zoning ordinance.
- B. The Commission will also review and comment on subdivision plats, site plans, Planned Area Developments, zoning requests, variances, special plans and specific plans.

- C. The Planning Commission must hold a public hearing on certain items as regulated by ARS.
- D. Review applicable capital improvement programs.
- E. Maintain and recommend ways to implement the General Plan.
- F. Promote public interest and understanding of the General Plan along with annually reporting on the General Plan.
- G. Consult with and advise public officials, utility companies, civic, professional and educational organizations, and citizens in general about carrying out the General Plan.

# Clarkdale Board of Adjustment

## Statement of Policy and Goals

The Board of Adjustment is a quasi-judicial body that interprets the meaning and spirit of the Zoning Ordinance, or other ordinances as specified by the Town Council, as enacted by the Town Council. It acts as a fact-finding body whose decisions are final unless appealed to Superior Court. Each request for interpretation or grant of variance is considered unique, and is decided on its own merits. Previous decisions do not set a precedent for later cases.

### **Membership**

- A. The Board of Adjustment has five representatives.
- B. At least one representative should be experienced in the field of architecture or building construction.
- C. At least one representative should be experienced in the field of engineering.
- D. At least one representative should be experienced in the field of law.

### **Meeting**

The Board of Adjustment meets as often as necessary to conduct business depending on applications.

### **Powers and Duties**

The Board of Adjustment shall have the powers and duties as prescribed by law and ordinance 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 any order, requirement or decision made by an administrative official based on the enforcement of the Zoning Code or 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 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 zoning district or immediate vicinity.

Decisions of the Board of Adjustment shall be based upon the review of the application in conformance with the following criteria:

- A. **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 it's shape, size, topography, location or surroundings and may not be related to the personal circumstances of the property owner or applicant.
- B. **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.
- C. **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.
- D. **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.
- E. **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.
- F. **USE VARIANCE:** Pursuant to Arizona Revised Statutes 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.)

Each item on the agenda which requires review pursuant to the adopted criteria shall be considered in the context of such criteria. The Board shall adopt findings based on the criteria when taking action on such agenda items. A written copy of said findings shall be placed in the case file and a separate copy shall be forwarded to the applicant within ten working days of the date of the Board's decision.

### **Applicant Procedure**

An application for appeal to the Board of Adjustment shall be made in writing, on forms prescribed by the Board of Adjustment, and shall include supporting documentation and materials as required by the Community Development Director.

### **Proceedings of Meetings**

Meetings of the Board of Adjustment shall be conducted in general conformance with Robert's Rules of Order and shall proceed as follows:

1. Call to Order.
2. Quorum and Roll Call - A quorum shall consist of minimum of (3) representatives of Board of Adjustment.
3. Approval of Minutes - Review, revise and approve minutes of previous meeting(s).
4. Communications and Reports.
5. New Business - Consideration of new items on the agenda.
  - A. Chair opens public hearing.
  - B. Staff report and opportunity for Board representatives to question staff.
  - C. Applicant presentation and Board questions of applicant.
  - D. Public comment on the issues, either pro or con.
  - E. Rebuttal - opportunity for staff/and or applicant to respond to public comments.
  - F. Close of public hearing.
  - G. Findings of Fact - A Board representative moves to adopt specific Findings of Fact based on the review criteria. After a second and discussion, if any, the Findings of Fact are adopted by affirmative vote of a majority of the quorum.
  - H. Board Decision - A Board representative moves to approve, approve with conditions, deny or continue the agenda item. After a second on the motion the Board may discuss the motion and make amendments if desired. A decision is reached by the affirmative vote of a majority of the quorum.
  - I. Old Business - Consideration of items tabled from a previous meeting.
  - J. Adjournment.

# Clarkdale Design Review Statement of Policy and Goals

## **Membership**

The Design Review consists of five representatives.

## **Rules of Procedure**

The Design Review Board shall have the power to approve, conditionally approve, or disapprove all requests.

The decision of the Design Review Board is final unless an appeal is filed in accordance with the proper procedures identified in Article 17 of the Town Code.

## **Powers and Duties**

- A. Review the exterior design of proposed new buildings, proposed alterations to buildings and major development or redevelopment projects which do not include new buildings within the Town of Clarkdale, in order to insure that new development or redevelopment is compatible with the surrounding environment, and to preserve and protect the integrity and character of the Town of Clarkdale.
- B. The Design Review Board shall review applications for design approval of new construction, alterations, additions, or renovations to existing buildings or structures.
- C. Review applications for design approval of signs.
- D. Conduct Site Plan Reviews.