



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Meeting Notice and Agenda Board of Adjustment

*Chair Hope Ozer
Boardmember Robert Brown
Boardmember Priti Kaur
Boardmember Eric Leibsohn
Boardmember Jon Newman
Boardmember Quinn Williams*

Wednesday, February 1, 2023

5:30 PM

Council Chambers

1. CALL TO ORDER

2. ROLL CALL

Notice is hereby given that members of the Public Body will attend either in person or by telephone conference call, pursuant to A.R.S. §38-431(4).

3. EXECUTIVE SESSION

The Public Body may convene into an executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the items listed on the agenda as authorized by A.R.S. §38-431.03.A.3.

4. STUDY SESSION ITEMS

Work/Study is open to the public however the following items are scheduled for discussion only. The Public Body will be briefed by staff and other Town representatives. There will be no votes and no final action taken on discussion items. The Public Body may give direction to staff and request that items be scheduled for consideration and final action at a later date. The order of discussion items and the estimated time scheduled to hear each item is subject to change.

5. PUBLIC HEARINGS

The Public Body may take action on this item.

- A. [23-021](#) **UR Project Variance - 7941 N 55th Street (APN 169-06-076B).
Request for Continuance.
Case No. BA-22-06.**

Attachments: [Staff Report](#)
[Applicant's Request for Continuance](#)

6. ACTION ITEMS

The Public Body may take action on this item.

- A. [23-020](#) **Review of Board of Adjustment Handbook**

Attachments: [Staff Report](#)
 [Board of Adjustment Handbook 2022](#)

7. CONSENT AGENDA

All items on the Consent Agenda are considered by the Public Body to be routine and will be enacted by a single motion. There will be no separate discussion of these items. If a Commissioner or member of the public desires discussion on any item it will be removed from the Consent Agenda and considered separately.

A. [23-030](#) **Approval of the January 4, 2023 Board of Adjustment Meeting Minutes**

Attachments: [01.04.23 Draft Minutes](#)

8. STAFF REPORTS

9. PUBLIC BODY REPORTS

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

AGENDA IS SUBJECT TO CHANGE

**Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Planning Commission are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.*

The Town of Paradise Valley endeavors to make all public meetings accessible to persons with disabilities. With 72 hours advance notice, special assistance can also be provided for disabled persons at public meetings. Please call 480-948-7411 (voice) or 480-483-1811 (TDD) to request accommodation to participate in the Planning Commission meeting.



Action Report

File #: 23-021

AGENDA TITLE:

**UR Project Variance - 7941 N 55th Street (APN 169-06-076B).
Request for Continuance.
Case No. BA-22-06.**

STAFF CONTACT:

TOWN *Of* **PARADISE VALLEY**



STAFF REPORT

TO: Chair and Board of Adjustment

FROM: Lisa Collins, Community Development Director
Paul Michaud, Planning Manager
George Burton, Senior Planner
Jose Mendez, Hillside Planner

DATE: February 1, 2023

DEPARTMENT: Community Development Department/Planning Division
Jose Mendez, 480-348-3519

AGENDA TITLE:

UR Project Variance – 7941 N 55th Street (APN 169-06-076B).

Request for Continuance.

Case No. BA-22-06.

This application was originally reviewed by the Board of Adjustment at the October 19, 2022 meeting. The Board of Adjustment continued the application several times to enable the applicant to update the project and associated variance requests. The Board continued this application to February 1, 2023; however, the applicant is requesting another continuance to March 1, 2023 to further update the application and reduce the amount of variance requests.

ATTACHMENTS:

- A. Staff Report
- B. Applicant's Request for Continuance

Jose Mendez

From: Doug Jorden [REDACTED]
Sent: Thursday, January 5, 2023 7:55 AM
To: Jose Mendez
Cc: Jesse Lowery ; Drew Bausom [REDACTED]
Subject: Continuance Request / 7941 N 55th Street / UR Projects Variance

External email: use caution with links & attachments

Good morning. This is written to request that the Board of Adjustment hearing currently set for February 1, 2023, be continued to March 1, 2023. We are continuing to refine the plans for this very difficult lot to eliminate many of the variance requests.

Thank you for your consideration.

Doug Jorden
Jorden Law Firm, P.C.

[REDACTED]

www.jordenlaw.com

[REDACTED]



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Action Report

File #: 23-020

AGENDA TITLE:
Review of Board of Adjustment Handbook

STAFF CONTACT:
George Burton, 480-348-3525

TOWN *Of* **PARADISE VALLEY**



STAFF REPORT

TO: Chair and Board of Adjustment

FROM: Lisa Collins, Community Development Director
Paul Michaud, Planning Manager
George Burton, Senior Planner

DATE: February 17, 2023

DEPARTMENT: Community Development Department/Planning Division
George Burton, 480-348-3525

AGENDA TITLE:
Adoption of Board of Adjustment Handbook

On September 7, 2022, the Board of Adjustment had a training session on the updated Board of Adjustment handbook. The Board asked questions regarding the updates and procedures.

RECOMMENDATION

It is recommended that the Board of Adjustment adopt the updated handbook.

ATTACHMENTS

- A. Staff Report
- B. Board of Adjustment Handbook

BOARD, COMMISSION, AND COMMITTEE HANDBOOK

UPDATED August 2022

Board of Adjustment



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Town of Paradise Valley Board of Adjustment

1/20/2023

| Name | Order | Title | Term Start | Term Expires | Mobile # | Office/Other # | Email |
|----------------|-------|--------------|------------|--------------|--------------|----------------|-------------------------------|
| Hope Ozer | A1 | Chair | 1986 | 2023 | 602-284-2222 | 480-922-8732 | hope@phoenixmanhattan.com |
| Robert Brown | A2 | Board Member | 2021 | 2024 | 480-766-6676 | | bob.brown@brownmanagement.com |
| Priti Kaur | A3 | Board Member | 2021 | 2024 | 480-287-1610 | | hkaur1@gmail.com |
| Eric Leibsohn | A4 | Board Member | 2011 | 2024 | 480-483-3160 | | ELeibsohn@aol.com |
| Jon Newman | A5 | Board Member | 2015 | 2023 | 602-317-4888 | | jon.newman@cox.net |
| Quinn Williams | A6 | Board Member | 2017 | 2023 | 602-619-9002 | 602-445-8343 | williamsq@gtlaw.com |
| vacant | A7 | Board Member | 2019 | 2024 | 617-388-7014 | | vacant |

| | | | | | | | |
|--------------------|-----|-------------------|--|--|--|--------------|--|
| Lisa Collins | A8 | Director Comm Dev | | | | 480-348-3522 | lcollins@paradisevalleyaz.gov |
| George Burton | A9 | Staff Liaison | | | | 480-348-3525 | gburton@paradisevalleyaz.gov |
| Georgette Robinson | A10 | Admin Asst | | | | 480-348-3618 | grobinson@paradisevalleyaz.gov |

Article 2-5

COMMITTEES AND COMMISSIONS

| | | |
|-------|--|---|
| 2-5-1 | Committees and Commissions In General | 639 646 2016-05 2018-07 |
| 2-5-2 | Planning Commission | 6, 7, 429, 532 575 623 643 646 684 2016-05 2017-05 2018-20 2019-08 2019-09 2020-03 |
| 2-5-3 | Board of Adjustment | 8, 9, 81, 176, 189 583 621 623 646 654 685 2016-05 2020-03 2022-05 |
| 2-5-4 | Personnel Board | 401 466 Repealed |
| 2-5-5 | Personnel Appeals Board | 401 655 686 |
| 2-5-6 | Hillside Building Committee | 425 461 608 629 683 2018-09 2020-03 |
| 2-5-7 | Special Use Permit Review Committee (SUPREC) | 425 474 Repealed |

Section 2-5-1 Committees and Commissions in General 639 646 2016-05 2018-07

- A. The Council may create such committees, commissions or boards, standing or special, as it deems necessary. They shall consist of as many members and shall perform such duties as the Council may require and shall exist at the pleasure of the Council. All members of such committees, commissions or boards shall serve at the pleasure of the Council. In the event that the term of a member of a committee, commission, or board has expired, the member whose term has expired shall continue to serve until a successor has been appointed and qualified to fill that member's seat. In the event of a vacancy occurring on any committee, commission, or board due to resignation, death, or disqualification from office, the member appointed to fill the vacant committee, commission, or board seat shall only fill such vacancy for the unexpired term of the vacated seat.
- B. Notwithstanding any other provisions of this Article, or any adopted resolution of the Town, if any member of the committees, commissions or boards created by the Town Council is absent for three consecutive meetings or absent from fifty percent (50%) or more meetings during any six-month period, his office shall be automatically vacated. Attendance at meetings must be reported to the Town Clerk within five (5) business days of the meeting. The Town Clerk shall notify the member in writing by certified, return receipt mail that the office has been automatically vacated.
- C. Statement of Direction - A Statement of Direction is a document that Town Council may adopt at the beginning of a policy or project task assigned to a committee or commission. A Statement of Direction is not a final decision of the Town Council. Its purpose is to guide committees and commissions on policy aspects that are preferred or discouraged by Council in order to be transparent and efficient in the completion of the task. It may address, but is not limited to, the following items:
1. Anticipated time frame for completion;
 2. When and if drafts should be referred back to Mayor and Council;
 3. Expectations for public participation;
 4. Process for new policy considerations; and,
 5. Policy preferences, undesired outcomes, or areas where no further review is necessary.

At any time during the review process, the assigned committee and commission may, by a favorable vote of the majority, request clarification and/or expansion of the Statement of Direction based upon matters not considered by the Town Council.

June 2022 Town Code Amendments Related to the Board of Adjustment

Adopted June 9, 2022

June 2022 Town Code Amendments Related to the Board of Adjustment

Section 1. Chapter 2 (Mayor and Council), Article 5 (Boards and Committees), Section 2-5-3 (Board of Adjustment) is hereby amended to read as follows:

Section 2-5-3 Board of Adjustment

- A. Generally. There shall be a Zoning Administrator, with the responsibility to interpret the Zoning Ordinance and the authority to provide administrative relief from the provisions thereof. There shall also be a Board of Adjustment, with the responsibility to hear appeals of the decisions of the Zoning Administrator and the authority to grant variances from the provisions of the Zoning Ordinance. The word “Board” when used in this Section shall mean the Board of Adjustment.
- B. Zoning Administrator.
1. The Community Development Director shall be the Zoning Administrator. If no person is then serving in said capacity, the Town Manager or authorized designee shall serve as the Zoning Administrator.
 2. The Zoning Administrator shall be responsible for interpretation of the Zoning Ordinance at all times, including upon receipt of a complete application therefore.
 - i. A complete application shall:
 1. Be made on a form prescribed by the Zoning Administrator; and
 2. Clearly state the section requiring interpretation, or the characteristics of the desired use and zoning district in which it is proposed to be located; and
 3. Be submitted along with payment of the required fee.
 - ii. The Zoning Administrator shall issue a written interpretation within ten (10) working days of the submission of a complete application.
 - iii. Records of all interpretations shall be maintained.
 - iv. Prior to determining that a use is permitted within a specific zoning district, the Zoning Administrator shall find that:
 1. The use is described and included in the zoning district; or
 2. The intensity of the use will not adversely affect other properties within the zoning district; and
 3. If there is more than one principal use, all of the principal uses are

permitted and the combination of uses will not alter the basic land use characteristics of each principal use or create a different use than that which would otherwise be prohibited.

3. The Zoning Administrator may authorize administrative relief of up to ten (10) percent of any development standard contained in Article X, and for solar device installations only, Article XXII, of the Zoning Ordinance, unless specifically restricted elsewhere in this Section. Administrative relief shall be authorized in writing, with specific findings consistent with the requirements of this Section, upon receipt of a complete application therefore.
 - i. A complete application shall:
 1. Be made on a form prescribed by the Zoning Administrator; and
 2. Clearly identify the proposed improvement to the property that is subject to the request; and
 3. Be submitted along with payment of the required fee.
 - ii. Notice shall be made by first class mail, postmarked at least five (5) days prior to the proposed date of determination by the Zoning Administrator, to adjacent property owners determined by the Zoning Administrator to be potentially affected by the request for administrative relief.
 - iii. Prior to authorizing administrative relief, the Zoning Administrator shall find that:
 1. The proposed improvement requiring relief will not be detrimental to the property requesting relief, any adjacent property, or the Town; and
 2. The relief granted is the minimum required to meet the needs of the proposed improvement; and
 3. The relief is not contrary to the purpose and intent of the Zoning Ordinance.
 - iv. Administrative relief related to a particular property may only be requested once during an eighteen (18) consecutive month period and only twice during the period of ownership by a recorded owner of the property. The term "owner" is to be interpreted for this purpose to include any person, firm, corporation, partnership, joint venture, trust, or any related persons, parties, firms, corporations, partnerships, joint ventures or trusts, including any successor trusts where the beneficiaries included are the same as any of the persons included as an owner above or as a beneficiary of any preceding

trusts.

- v. The relief requested shall be limited to livable primary and accessory structures and walls, gates, and fences. Administrative relief is not applicable to:
 - 1. New home construction, except to request relief related to an inadvertent error;
 - 2. Properties that are subject to special use permits;
 - 3. Floor area ratio limitations;
 - 4. Tennis or other types of sport courts; or
 - 5. Gazebos or other similar structures.
- vi. The Zoning Administrator may impose reasonable conditions upon any administrative relief granted, to ensure that the public health, safety, and general welfare are protected and substantial justice is done.
- vii. Relief for gates on hillside properties may be allowed, to allow the gates to be as close as necessary to the property line when the topography of the lot precludes them from meeting the setback. Consideration shall be given to proper stacking of vehicles for public safety. No increase in height or size or other deviations from the code shall be granted for gates on hillside properties.

C. Board of Adjustment.

- 1. The Board shall consist of seven (7) members, each of whom shall be appointed for a term of three (3) years. Members of the Board shall be appointed by the Mayor subject to confirmation by majority vote of the Town Council.
 - i. All persons seeking to be appointed or re-appointed to a term on the Board shall file a written application for such appointment or re-appointment with the Mayor on or before the date set by the Town. However, this written application requirement does not apply to an appointment to serve the balance of a term that has become vacant.
 - ii. At its first meeting in April of each year, the Board shall elect one of its members to serve as its Chair, subject to approval by the Town Council. If the Chair is disapproved by the Town Council, the Board shall, at its next meeting after such Council disapproval, elect another member to serve as its Chair, subject to approval by the Town Council. If, for any reason, the position of Chair becomes vacant, then the Board at its next meeting after such position becomes vacant, shall elect a Chair for the remainder of the

term, subject to approval of the Town Council. Each Chair shall be elected for a period of one (1) year, and no member shall serve as Chair for more than two (2) consecutive years.

2. Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Chair, or the Acting Chair in the absence of the Chair, may administer oaths and compel the attendance of witnesses.
3. The Town Council shall have power to make and publish, by Council Resolution from time to time, rules and regulations to govern Board proceedings and to carry into effect the provisions of this section. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, or amendment or repeal thereof, and every order, requirement, decision, or determination of the Board shall immediately be filed in the office of the Board and in the office of the Town Clerk and shall be a public record.
4. The Board may grant variances from the provisions of the Zoning Ordinance.
 - i. A variance may be granted only upon finding by sufficient evidence:
 1. That there are special circumstances applicable to the property, which may include circumstances related to the property's size, shape, topography, location, or surroundings; and
 2. That the special circumstances applicable to the property were not self-imposed or created by the property owner; and
 3. That the strict application of the Zoning Ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district.
 - ii. The Board may not grant a variance:
 1. That will make any changes in the uses permitted in any zoning classification or zoning district; or
 2. That will constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which such property is located.
5. The Board shall be responsible to hear appeals of the decisions of the Zoning Administrator, upon the receipt of a complete application therefore. A complete application shall:

- i. Be made on a form prescribed by the Zoning Administrator; and
 - ii. Clearly identify the decision by the Zoning Administrator from which the applicant requests relief; and
 - iii. Be submitted along with payment of the required fee.
- D. Appeal from the Board of Adjustment. A person aggrieved by a decision of the Board, at any time within 30 days of the decision or, if the decision is reviewed by the Town Council, within 30 days of that review, may bring a special action in the Superior Court of Maricopa County. Commencement of a special action shall not stay enforcement of the relevant decision, unless the Superior Court shall otherwise order.

**Town of Paradise Valley
Rules of Procedure for the Board of
Adjustment**

Requirements of Application for Variance

A. Who may apply?

The owner or agent.

B. Requirements for application:

Completed application form and payment of required fee.

Scheduling and Advertising of Hearing

A. Scheduled Date. When an applicant has submitted a complete application, a hearing shall be scheduled. The scheduled hearing shall be no later than 60 days after receipt of the complete application.

B. Publication and Posting. Fifteen days prior to the scheduled hearing, the Town shall:

1. Publish one notice of the time, place, and date of such hearing in an official newspaper of the Town, or in a newspaper of general circulation in the Town; and
2. Post a notice of the time, place, and date of such hearing on the affected property; such notice shall remain posted for the entire 15-day period.

C. Materials Provided to the Board by Town Staff or Applicant. All materials (including electronic materials such as a PowerPoint presentation that the applicant would like to use at the public meeting) must be submitted before the first date on which an advertisement for the hearing is published in a newspaper of general circulation (the "Cut-off Date").

1. Materials submitted by the applicant after the Cut-off Date shall not be distributed to the Board and shall not be considered at the public meeting or hearing.
2. If an applicant believes that additional materials not submitted before the Cut-off Date need to be placed before the Board, then the applicant may request that the hearing be continued to another suitable date, in which case the applicant shall pay the costs of re-advertising and re-posting the required notices of public hearing.
3. The Community Development Director may make an exception to the

requirements of this Section for materials that do not substantially change the application, or are de minimis in nature, at the discretion of the Director.

- D. Statements or Materials by Members of the Public. Members of the public may either:
1. Submit statements or materials at least 24 hours prior to the posted hearing time; or
 2. Submit a minimum of 10 hard copies of a statement or material at the time of the hearing.

Chair and Acting Chair

- A. Presiding Officer. The Chair shall preside at all Board meetings.
- B. Absence of the Chair. In the absence of the Chair, the members present at any meeting shall elect a member to be Acting Chair, and such Acting Chair shall exercise all powers and prerogatives of the Chair until such time as the Chair is present.

Procedure for Board Meetings

- A. Location of Meetings: Unless otherwise specified by the Chair, all meetings of the Board shall be held at the Paradise Valley Town Hall, 6401 E. Lincoln Drive.
- B. Time for meetings:
1. Regular Meetings:

The Board shall hold regular meetings on the first Wednesday of each month at 5:30 p.m., as needed. When the first Wednesday of the month falls upon a legal holiday recognized by the Town, the regular meeting may be scheduled for the following Wednesday.
 2. Special Meetings:

Special meetings of the Board may be called by the Chair, provided that each member receives notice of such meeting at least 48 hours prior to such meeting in person, by telephone, or in writing.
 3. Work Sessions:

At the discretion of the Chair, the Board may hold a work session to discuss agenda items in advance of a regular or special meeting,
 4. Site Visits:

With the agreement of an applicant, members of the Board may visit the site for which an application has been submitted. Site visits must occur within a

pre-established period of time, and the Board shall issue a Notice of Possible Quorum at least 24 hours before the commencement of such period. Members of the Board are not required to visit the site simultaneously.

During a site visit, members of the Board shall not communicate with each other, with the applicant, or with any other person regarding the details or merits of the relevant application.

C. Quorum Requirements:

A Quorum of the Board shall be four members.

D. Decisions and Actions by Majority Vote:

1. All decisions and actions of the Board shall be by an affirmative vote of a majority of those members present and voting.
2. The vote or abstention from voting, of every individual member, on all matters voted upon, shall be recorded in the minutes of the meeting by the Board Secretary. A member shall vote “yes” or “no,” or expressly abstain from voting.
3. No member who is present at a meeting of the Board shall abstain from voting unless:
 - a. The member was not present for all or a portion of the hearing on the subject to be voted upon; or
 - b. The member has a conflict of interest as provided by law.
4. When a member of the Board abstains from voting, he or she shall publicly state the reason for such abstention prior to the consideration of the item by the Board.
5. If a member declines to vote on any grounds that do not satisfy the requirements for abstention, that member shall be deemed to have voted “no.”
6. The Board may consider multiple motions on a single item.
7. A tie vote shall be treated as a failure of the motion.

E. Addressing the Board: Any person recognized by the Chair may speak and address the Board to express an opinion on any matter before the Board. The Chair may require any person who wishes to speak or present evidence to the Board to take an oath, which shall be administered by the Chair or the Clerk. If the Chair reasonably believes it is necessary to expedite the Board’s action on a matter, the Chair may impose reasonable time limits upon the oral statements of any person. If a spokesperson for an identified group of residents (such as an HOA officer or an

attorney, the “Spokesperson”) desires to speak on behalf of that group, a larger amount of time will be allotted, but not in excess of 15 minutes unless the Chair finds that there are particularly detailed and difficult matters involved in the case. The Chair shall advise the members of a group that has selected a Spokesperson that if the members desire to speak individually at the meeting, the members shall limit their time and avoid any repetition of matters already addressed by the Spokesperson.

- F. Transcription: Upon the request of any party, and at that party’s expense, a certified court reporter may record the proceedings of all or any portion of a meeting. If a transcript of all or any portion of the Board proceedings is prepared, a copy shall be furnished to the Board by and at the expense of the party ordering or causing the transcript to be prepared and completed.
- G. Motion to Reconsider: A motion to reconsider an action taken by the Board may be made only at the same meeting, or at the next regular meeting of the Board.
 - 1. A motion to reconsider must be made by a Member of the Board who voted on the prevailing side of the motion but may be seconded by any other Member. A question failing by virtue of a tie vote may be reconsidered by motion of any Member of the Board.
 - 2. If a Member of the Board desires to make a motion to reconsider after the meeting at which the matter was decided, then the Member shall contact the Chair and the Community Development Director within 15 days of the meeting indicating that they would like to have a motion to reconsider the matter placed on the next Board meeting agenda.
 - 3. If the motion to reconsider passes, then the Board shall then take the matter up for discussion and possible action at the same meeting at which the motion to reconsider passed.
- H. Recording: All or any part of a Board meeting may be recorded by any person in attendance, provided that there is no active interference with the conduct of the meeting.
- I. Order of Business: The Order of Business of all regular Board meetings shall be:
 - 1. Call to Order
 - 2. Roll Call
 - 3. Regular Business of the Board
 - 4. Approval or Amendment of Minutes of Previous Meeting
 - 5. Adjournment

- J. Presumption. When an applicant for a variance is denied or disapproved by the Board and the reason for such denial or disapproval is not stated in the motion, the reason for denial shall be that the applicant has failed to establish facts justifying a variance.

Board Code of Conduct

The Board may adopt a code of conduct to govern the responsibilities of its members, its method of holding meetings, and other matters.

Assistance from Town Staff

- A. The Community Development Director shall attend all meetings of the Board and may comment on any matter before the Board.
- B. Upon request from the Chair of the Board, the Town Manager shall endeavor to provide any information or assistance which may assist the Board or any member of the Board.

Variance Hearing Procedure

- I. Chair states the name of the case and asks for the staff report.
- II. Staff presents its report and recommendation; Board is invited to ask questions.
- III. Applicant/representative presents case; Board is invited to ask questions.
- IV. Chair opens the public hearing, invites speakers in favor of or against the proposal, and asks speakers to state name and whether they are resident of the Town. (Board is invited to ask questions of each speaker after they conclude their remarks.)
- V. Applicant/representative is invited to rebut/clarify/conclude.
- VI. Chair closes public hearing.
- VII. Board members are invited by the Chair to ask questions of the applicant/representative and/or Town Staff.
- VIII. Board deliberates.
- IX. Chair calls for a motion, and a second.
- X. Chair asks for discussion on the motion, if any.
- XI. Voting, either by roll call, hand signal or voice vote.
- XII. The results of the voting are declared by the Secretary.
- XIII. Board moves to next item of business.



COMMUNITY DEVELOPMENT DEPARTMENT VARIANCE CRITERIA

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

THE FOLLOWING CODE REQUIREMENTS MUST BE MET FOR THE BOARD OF ADJUSTMENT TO GRANT A VARIANCE (BASED UPON STATE STATUTE AND TOWN CODE). PLEASE PROVIDE EVIDENCE TO SATISFY THE CONDITIONS BELOW.

1. *"That there are special circumstances applicable to the property, which may include circumstances related to the property's size, shape, topography, location, or surroundings; and"* (Town Code Section 2-5-3(C)4).
2. *"That the special circumstances applicable to the property were not self-imposed or created by the property owner; and"* (Town Code Section 2-5-3(C)4).
3. *"That the strict application of the Zoning Ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district"* (Town Code Section 2-5-3(C)4).

Please note that the Board of Adjustment cannot grant variances that will make any changes in the uses permitted in any zoning classification or zoning district or that will constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which such property is located (Town Code Section 2-5-3(C)4).

Appeal Hearing Procedure

- I. Chair states the name of the case and invites the staff to present the facts related to the appeal.
- II. Chair invites the appellant, or appellant's attorney, to step to the podium, make an introduction, and present the witnesses to be sworn in.
- III. Chair invites witnesses to step forward and face the staff table for swearing-in.
- IV. Chair or clerk rises, asks witnesses to raise their right hands and repeat swearing-in statement after them.
- V. Chair invites applicant/attorney to present argument and invite witnesses to speak as needed.
- VI. Chair opens public hearing and invites interested citizens who wish to speak to be sworn in.
- VII. Chair invites interested citizens to speak.
- VIII. Chair closes public hearing.
- IX. Board members are invited by the Chair to ask questions of the attorney, witnesses, and/or staff.
- X. Board deliberates.
- XI. Chair calls for a motion, and a second.
- XII. Chair asks for discussion on the motion, if any.
- XIII. Voting, either by roll call, hand signal, or voice vote.
- XIV. The results of the voting are declared by the Secretary.
- XV. Board moves to next item of business.

Town of Paradise Valley Board of Adjustment
Board Members Code of Conduct

- I. Board members must attend a training session.
- II. In order to assure a quorum, Board members are requested to advise staff within two (2) days of receipt of packet of their intention to attend or not attend.
- III. Board members are to attend meetings in person.
- IV. Board members must visit the property in the time period between when the agenda is published and hearing date.
- V. Board members are to be familiar with the order of procedure, including having the “Variance Hearing Procedure” document with them at meetings.
- VI. Board members are to be respectful of applicants and the public.
- VII. As rulings made by the Board may be appealed to the Superior Court of the State of Arizona, it is vital that procedures are beyond reproach.

BOARD OF ADJUSTMENT CHAIRPERSON'S SCRIPT

Chair:

- I hereby call the **[Month, Day, Year]** meeting of the Town of Paradise Valley Board of Adjustment to order and welcome you all!
- I am Hope Ozer, Chair of the Board
- Staff secretary, please call the role

Chair:

- The Board of Adjustment is a quasi-judicial body that rules on variances to the Paradise Valley zoning ordinance. We are governed by Arizona State Statute defining under what circumstances we are empowered to provide those variances from the provisions of the Zoning Ordinance.
- Rulings and previous rulings of this Board do not set precedence. Each request is reviewed on its own merits and each decision of the Board is based on the specifics of the property and the requested variance.
- For the benefit of those in attendance, here is an overview of how we will proceed:
 - When the case is called, Town staff will make a presentation with questions from the board.
 - Next, you as the applicant or your representative will present with questions from the board.
 - I will then **OPEN the public hearing** and ask for those who wish to speak in favor of the application, followed by those who wish to speak in opposition to the application.
 - *Each speaker will have 3 minutes to speak. There is a green, yellow, and red light on the podium to assist the speaker on timing. When the yellow light is on, the speaker has one minute remaining and should begin to conclude their remarks. When the red light is on the speaker's time limit is up.*
 - I will then **CLOSE the public hearing**.
 - The board will deliberate, proceed to a motion, and vote.
- When you approach the podium, please speak into the microphone and state your name and Town or City of residence.
- Board decisions may be appealed to the Superior Court of the State of Arizona within 30 days of a decision made by the Board.
- You are free to remain in the chambers after the ruling if you wish. We will by no means be insulted if you choose to leave. We will then move onto the next order of business.

ROBERTS RULES CHEAT SHEET

| To: | You say: | Interrupt Speaker | Second Needed | Debatable | Amendable | Vote Needed |
|--|--|-------------------|---------------|-----------|-----------|---------------|
| Adjourn | "I move that we adjourn" | No | Yes | No | No | Majority |
| Recess | "I move that we recess until..." | No | Yes | No | Yes | Majority |
| Complain about noise, room temp., etc. | "Point of privilege" | Yes | No | No | No | Chair Decides |
| Suspend further consideration of something | "I move that we table it" | No | Yes | No | No | Majority |
| End debate | "I move the previous question" | No | Yes | No | No | 2/3 |
| Postpone consideration of something | "I move we postpone this matter until..." | No | Yes | Yes | Yes | Majority |
| Amend a motion | "I move that this motion be amended by..." | No | Yes | Yes | Yes | Majority |
| Introduce business (a primary motion) | "I move that..." | No | Yes | Yes | Yes | Majority |

The above listed motions and points are listed in established order of precedence. When any one of them is pending, you may not introduce another that is listed below, but you may introduce another that is listed above it.

| To: | You say: | Interrupt Speaker | Second Needed | Debatable | Amendable | Vote Needed |
|--|---|--------------------------------|---------------|---------------------------------------|-----------|-----------------------------|
| Object to procedure or personal affront | "Point of order" | Yes | No | No | No | Chair decides |
| Request information | "Point of information" | Yes | No | No | No | None |
| Ask for vote by actual count to verify voice vote | "I call for a division of the house" | Must be done before new motion | No | No | No | None unless someone objects |
| Object to considering some undiplomatic or improper matter | "I object to consideration of this question" | Yes | No | No | No | 2/3 |
| Take up matter previously tabled | "I move we take from the table..." | Yes | Yes | No | No | Majority |
| Reconsider something already disposed of | "I move we now (or later) reconsider our action relative to..." | Yes | Yes | Only if original motion was debatable | No | Majority |
| Consider something out of its scheduled order | "I move we suspend the rules and consider..." | No | Yes | No | No | 2/3 |
| Vote on a ruling by the Chair | "I appeal the Chair's decision" | Yes | Yes | Yes | No | Majority |

The motions, points and proposals listed above have no established order of preference; any of them may be introduced at any time except when meeting is considering one of the top three matters listed from the first chart (Motion to Adjourn, Recess or Point of Privilege).

PROCEDURE FOR HANDLING A MAIN MOTION

NOTE: Nothing goes to discussion without a motion being on the floor.

Obtaining and assigning the floor

A member raises hand when no one else has the floor

- The chair recognizes the member by name

How the Motion is Brought Before the Assembly

- The member makes the motion: *I move that (or "to") ...* and resumes his seat.
- Another member seconds the motion: *I second the motion* or *I second it* or *second*.
- The chair states the motion: *It is moved and seconded that ... Are you ready for the question?*

Consideration of the Motion

1. Members can debate the motion.
2. Before speaking in debate, members obtain the floor.
3. The maker of the motion has first right to the floor if he claims it properly
4. Debate must be confined to the merits of the motion.
5. Debate can be closed only by order of the assembly (2/3 vote) or by the chair if no one seeks the floor for further debate.

The chair puts the motion to a vote

1. The chair asks: *Are you ready for the question?*
2. The chair says: *Mr. Zuganelis, please reiterate the motion*
3. The chair says: *Mr. Zuganelis please call the role*

The secretary announces the result of the vote.

1. *The ayes have it, the motion carries, and ...* (indicating the effect of the vote) or
2. *The nays have it and the motion fails*

WHEN DEBATING YOUR MOTIONS

1. Listen to the other side
2. Focus on issues, not personalities
3. Avoid questioning motives
4. Be polite

HOW TO ACCOMPLISH WHAT YOU WANT TO DO IN MEETINGS

MAIN MOTION

You want to propose a new idea or action for the group.

- After recognition, make a main motion.
- Member: "Madame Chairman, I move that_____."

AMENDING A MOTION

You want to change some of the wording that is being discussed.

- After recognition, "Madame Chairman, I move that the motion be amended by adding the following words_____."
- After recognition, "Madame Chairman, I move that the motion be amended by striking out the following words_____."
- After recognition, "Madame Chairman, I move that the motion be amended by striking out the following words,_____, and adding in their place the following words_____."

POSTPONE DEFINITELY

You want the membership to have more time to consider the question under discussion and you want to postpone it to a definite time or day, and have it come up for further consideration.

- After recognition, "Madame Chairman, I move to postpone the question until _____."

PREVIOUS QUESTION

You think discussion has gone on for too long and you want to stop discussion and vote.

- After recognition, "Madam President, I move the previous question."

LIMIT DEBATE

You think discussion is getting long, but you want to give a reasonable length of time for consideration of the question.

- After recognition, "Madam President, I move to limit discussion to two minutes per speaker."

RECESS

You want to take a break for a while.

- After recognition, "Madame Moderator, I move to recess for ten minutes."

ADJOURNMENT

You want the meeting to end.

- After recognition, "Madame Chairman, I move to adjourn."

POINT OF PERSONAL PRIVILEGE

The noise outside the meeting has become so great that you are having trouble hearing.

- Without recognition, "Point of personal privilege."
- Chairman: "State your point."
- Member: "There is too much noise, I can't hear."

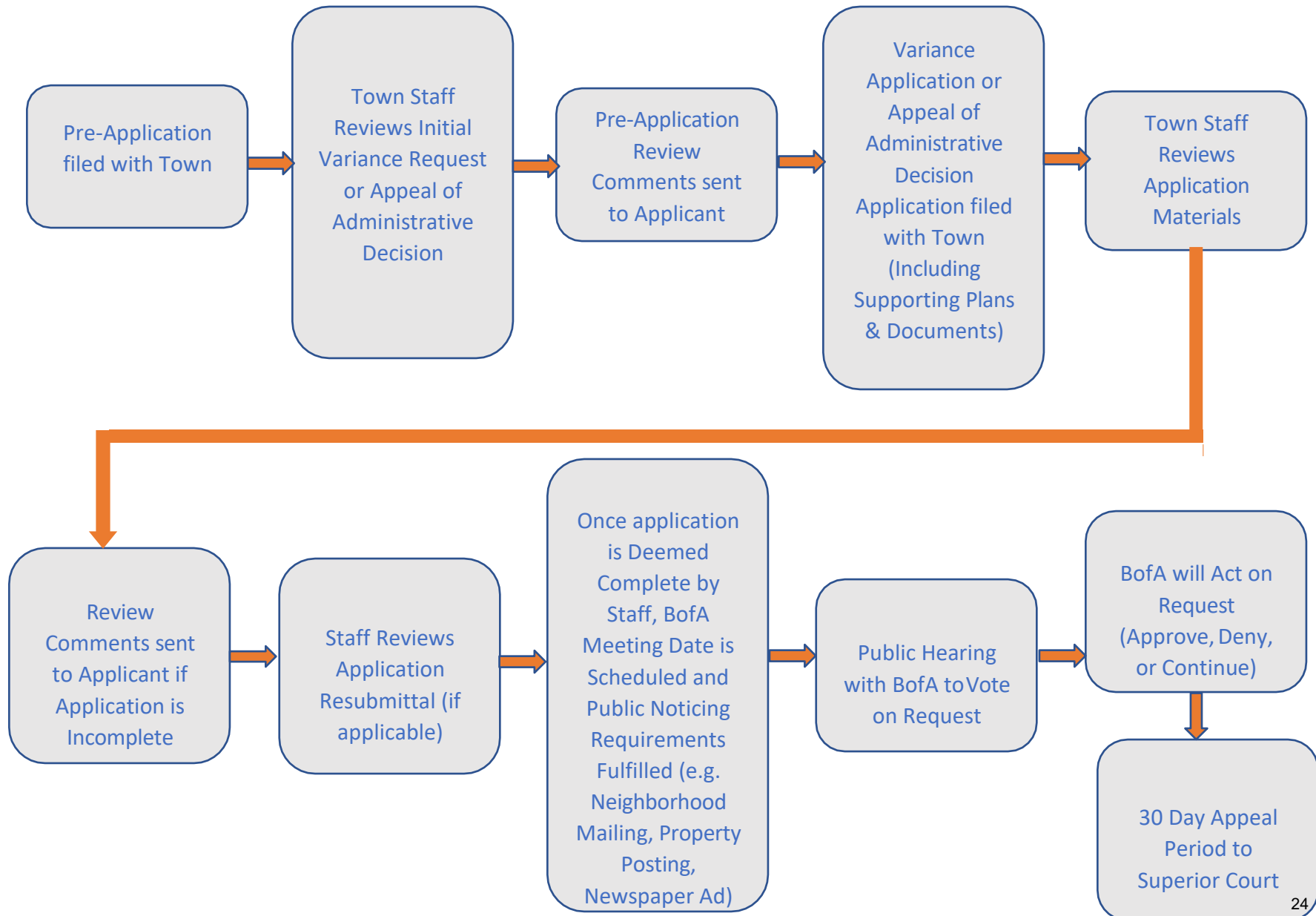
POINT OF ORDER

It is obvious that the meeting is not following proper rules.

- Without recognition, "I rise to a point of order," or "Point of order."

Board of Adjustment (BofA)

Variance Process Guide





COMMUNITY DEVELOPMENT DEPARTMENT

VARIANCE APPLICATION GUIDE

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

STAFF CONTACT INFORMATION

George Burton, Senior Planner 480-348-3525 gburton@paradisevalleyaz.gov

Paul Michaud, Planning Manager 480-348-3574 pmichaud@paradisevalleyaz.gov

Jose Mendez, Hillside Planner 480-348-3519 jmendez@paradisevalleyaz.gov

Brandon McMahon, Planner 480-348-3531 bcmahon@paradisevalleyaz.gov

VARIANCE

The Board of Adjustment has been authorized, as per **Section 2-5-3** of the Town Code, to grant a variance from the terms of the Zoning Ordinance when strict enforcement of the Ordinance would result in an unnecessary hardship. The hardship must be a result of a special condition related to the property such as topography, shape, size, surroundings, or location. The hardship must not be self-imposed and must not constitute a grant of special privilege inconsistent with limitations on other similar properties.

Town Code and Arizona Revised Statutes set criteria an applicant must meet before a Board of Adjustment may grant a variance request. If the Board finds an applicant meets all the variance criteria, the Board may grant the variance. However, if the Board finds the applicant does not meet all the variance criteria, the Board may not grant the variance.

PRE-APPLICATION PROCEDURE

The applicant must complete a [pre-application](#). Following the review, the applicant will be advised if the application has been accepted as submitted. If corrections are needed, the Town will provide a review letter and/or redlined plans identifying the corrections and/or additional information that is needed.

APPLICATION PROCEDURE

The variance application will be reviewed within approximately 15 working days from the date of submittal. Once the application is reviewed and deemed complete by Town staff, the applicant will be advised of the date that the Board of Adjustment can consider the application. The applicant will be asked to provide staff with the appropriate plans, documents, and public hearing materials for the meeting (please reference the submittal checklist on pages 3 and 4 of this application). The Town staff will then prepare a staff report identifying the findings-in-favor and findings-opposed for each variance criteria. You will be provided with a copy of this report prior to the hearing.

PUBLIC HEARING

The applicant or the applicant's representative must be present at the public hearing. The applicant will then have an opportunity to present their application and to respond to any comments made by other speakers.

BOARD OF ADJUSTMENT

The Board consists of seven (7) members appointed by the Town Council. A quorum of the Board is four (4) of the members of the Board. All decisions and actions of the Board shall be by an affirmative vote of a majority of those members present and voting and shall be necessary to authorize any variance from the terms and conditions of the Zoning Ordinance. Any person aggrieved by a decision of the Board of Adjustment by a decision of the Board, may appeal the Board's decision to the Superior Court at any time within thirty (30) days after the Board has rendered its decision.



COMMUNITY DEVELOPMENT DEPARTMENT VARIANCE APPLICATION GUIDE

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

APPLICANT & CONTACT INFORMATION

Project Name: _____

Date: _____ Zoning: _____ Acreage (Net Acres): _____

Property Address: _____

Assessor's Parcel Number: _____

Name of Subdivision & Lot Number: _____

Owner: _____

Address: _____

Phone number: _____

E-mail address: _____

Signature: _____

(Or provide a separate letter of authorization)

Applicant/Representative: _____

Company Name (if Applicable): _____

Address: _____

Phone number: _____

E-mail address: _____

Signature: _____

THE ABOVE APPLICANT HEREBY APPLIES FOR A VARIANCE AS INDICATED IN THE SUBMITTED NARRATIVE,
PLANS, AND DOCUMENTS IN ACCORDANCE WITH SECTION 2-5-3 OF THE TOWN CODE AND IN
ACCORDANCE WITH THE TOWN ZONING ORDINANCE.

FOR DEPARTMENTAL USE ONLY

Variance-App.#: _____ Submittal Date: _____ Expiration Date: _____



COMMUNITY DEVELOPMENT DEPARTMENT VARIANCE APPLICATION GUIDE

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

SUBMITTAL REQUIREMENTS

- ☐ Application form with proof of ownership (warranty deed or current title report)
- ☐ Filing Fee:
 - ☐ Application for Variance \$1,765.00
 - ☐ Application for Variance for non-livable detached structures \$1,615.00
Having less than 10% impact on setback or disturbed area
- ☐ Narrative describing the request and addressing all three variance criteria. Narrative Format – Identify the request at the beginning of the narrative and identify each variance criteria with the response below it explaining how that criteria has been met or addressed (1 paper copy upon staff request).
- ☐ Site plan and all other applicable plans/documents for staff to review for completeness (1 paper copy upon staff request).
- ☐ Electronic copy of the narrative, site plan, and all other applicable plans/documents (in PDF format) on a USB flash drive/memory stick for staff to review for completeness.

After the application is reviewed and deemed complete by staff:

- ☐ Electronic copy of the narrative, site plan, and all other applicable plans/documents (in PDF format) on a USB flash drive/memory stick for the hearing.
- ☐ Noticing Materials (An electronic copy in PDF format on a USB flash drive/memory stick):
 - a. List of all property owners with respective Maricopa County Tax Parcel Number for all properties within the notice area. Notice area is 1,500 feet from perimeter of subject property, or as specified by the Town.
 - b. Completed Neighborhood Notice Form (identifying scope of the request and the Sections of the Town Zoning Ordinance that you are requesting a variance from – see page 7 of this application).
 - c. The completed set of envelopes for each property owner within the notice area must include the following:
 - i. Town return address:
Town of Paradise Valley
Planning Division
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

- ii. Property address shall include 'or current resident'
Example: Mr. & Mrs. Doe or Current Resident
4500 N Main Street
Paradise Valley, AZ 85253
- iii. Appropriate postage paid on each envelope.
- iv. Notice material inserted in each envelope. The Town will provide the Applicant the due date for the noticing material.
- v. All envelopes sealed.
- d. Original Signed Affidavit of Mailing which identifies that the above list is the most current and accurate list from the Maricopa County Tax Assessor's office and the date the notices were mailed out.
- e. Property Posting. Provide a signed Affidavit of Posting and photograph of the posting at the property. The Town will provide the Applicant with the property posting prior to the posting due date.

Town Code/Zoning Ordinance Sections that may apply to your request:

| Zoning Ordinance |
|---|
| <u>Article X, Height and Area Regulations</u> |
| <u>Article XXII, Hillside Development Regulations</u> |
| <u>Article XXIII, Nonconformance</u> |
| <u>Article XXIV, Walls and Fences</u> |



COMMUNITY DEVELOPMENT DEPARTMENT

VARIANCE APPLICATION GUIDE

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

NOTICING REQUIREMENTS

During the Variance application process, neighborhood notification is required in accordance with Arizona Revised Statutes, Town Code, and/or by Town policy. Notification includes, but is not limited to, posting and/or mailing notification to nearby property owners about the application request and applicable meeting date(s). An applicant is always encouraged to meet with the neighbors any number of times above and beyond the minimum noticing requirements.

The minimum noticing requirements required by the applicant are outlined below. The notice of the application request will include the meeting date/time on when the Board of Adjustment will review and take action on the application request. Hearings continued to a date certain do **not** require additional noticing.

Posting of Property

It shall be the responsibility of the applicant to properly post and document the site/property. The basic steps include: (1) obtaining an official posting notice(s) from the Community Development Department at least 21 calendar days prior to the scheduled meeting date; (2) posting the official notice on the subject site/property in a visible location no earlier than 21 calendar days and no later than 15 calendar days prior to the scheduled meeting date; and (3) signing, notarizing, and submitting an affidavit of posting along with a color photo of the posted sign to the Community Development Department no later than 15 calendar days prior to the scheduled meeting date.

Mailing Notification

It shall be the responsibility of the applicant to properly mail the notice by the required deadline dates and document such mailing to the Town. The basic steps include: (1) Providing a list of all property owners with respective Maricopa County Tax Parcel Number for all properties within the notice area. Notice area is 1,500 feet from perimeter of subject property, or as specified by the Town; (2) Providing a sample Notice of Public Hearing (on page 6 below) for staff review and approval. Verify with staff if language must be added to the Notice of Public Hearing regarding remote participation requirements; (3) Mailing the Notice of Public Hearing no earlier than 21 calendar days and no later than 15 calendar days prior to the scheduled meeting date; (4) Verifying with the staff member processing your application that there are no additional persons of interest that will require notification; (5) Making sure each envelope has the Town return address of, "Town of Paradise Valley Planning Division, 6401 East Lincoln Drive, Paradise Valley AZ 85253-4399", and (6) Signing, notarizing, and submitting the affidavit of mailing along with a copy of the notice and mailing address list to the Community Development Department no later than 15 calendar days prior to the scheduled meeting date.

Table 1

| Application Type | Reviewing/Approval Body | Posting of Property | Mailing Notification |
|------------------|-------------------------|-------------------------------------|--|
| Variance | Board of Adjustment | Yes, 21 to 15 days prior to meeting | Yes, 1,500' radius 15 days prior to meeting |



COMMUNITY DEVELOPMENT DEPARTMENT VARIANCE APPLICATION GUIDE

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT THE TOWN OF PARADISE VALLEY BOARD OF ADJUSTMENT WILL HOLD A HEARING ON THE FOLLOWING PROPOSED PROJECT. IF YOU HAVE QUESTIONS ABOUT THIS APPLICATION, PLEASE CALL THE PLANNING DIVISION AT (480) 348-3692.

Applicant/Representative: _____

Applicant's Company Name: _____

Phone Number: _____

E-mail Address: _____

Project/Property Address: _____

Zoning: _____ Acreage: _____

Project Narrative:

MEETING DATE/ TIME/PLACE

Meeting Date: _____ Meeting Time: _____

Meeting Place: Town of Paradise Valley Town Hall Building, 6401 E. Lincoln Drive, Paradise Valley, AZ 85253

Language regarding remote participation requirements on next page (as determined by staff)

Planning Division: 480-348-3692 _____



COMMUNITY DEVELOPMENT DEPARTMENT AFFIDAVIT OF MAILING NOTIFICATION

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

STATE OF ARIZONA)
) ss:
County of Maricopa)

In accordance with the requirements of the Town of Paradise Valley, the undersigned hereby certifies that all the property owners within 1,500 feet of the property, as obtained from the Maricopa County Assessor's Office on _____, for the proposed variance has been mailed on the following date _____, 20__.

(This property list shall not be older than thirty (30) days at the time of filing of the application).

The foregoing instrument was acknowledged by me this _____ day of _____,
20____, by _____.
Name

NOTARY PUBLIC

My commission expires:



COMMUNITY DEVELOPMENT DEPARTMENT

AFFIDAVIT OF POSTING

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

STATE OF ARIZONA)
) ss:
County of Maricopa)

I, _____, depose and state that the attached notice,
of proposed application _____ located at
_____ for the Board of Adjustment meeting date of
_____, 20____ is
a true and correct copy of a notice which I cause to be posted by the following day of the
week _____,
and on the following date _____, 20____ in the following location(s):

All in the Town of Paradise Valley, Arizona and County and State aforesaid, the same being public
places in said County and in the following locations:

All to the Town of Paradise Valley, Arizona and County and State aforesaid.

DATED this _____ day of _____, 20_____.

Signature

This affidavit was Subscribed and sworn to before me on this _____ day of
_____ 20_____.

NOTARY PUBLIC

My commission expires:



COMMUNITY DEVELOPMENT DEPARTMENT VARIANCE CRITERIA

Town of Paradise Valley • 6401 East Lincoln Drive • Paradise Valley, Arizona 85253 • Phone: (480) 348-3692

THE FOLLOWING CODE REQUIREMENTS MUST BE MET FOR THE BOARD OF ADJUSTMENT TO GRANT A VARIANCE (BASED UPON STATE STATUTE AND TOWN CODE). PLEASE PROVIDE EVIDENCE TO SATISFY THE CONDITIONS BELOW.

1. *"That there are special circumstances applicable to the property, which may include circumstances related to the property's size, shape, topography, location, or surroundings; and"* (Town Code Section 2-5-3(C)4).
2. *"That the special circumstances applicable to the property were not self-imposed or created by the property owner; and"* (Town Code Section 2-5-3(C)4).
3. *"That the strict application of the Zoning Ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district"* (Town Code Section 2-5-3(C)4).

Please note that the Board of Adjustment cannot grant variances that will make any changes in the uses permitted in any zoning classification or zoning district or that will constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which such property is located (Town Code Section 2-5-3(C)4).

Board and Commission Training 2021

Town of Paradise Valley

**Andrew McGuire
Gust Rosenfeld, P.L.C.**

What is Open Meeting Law?

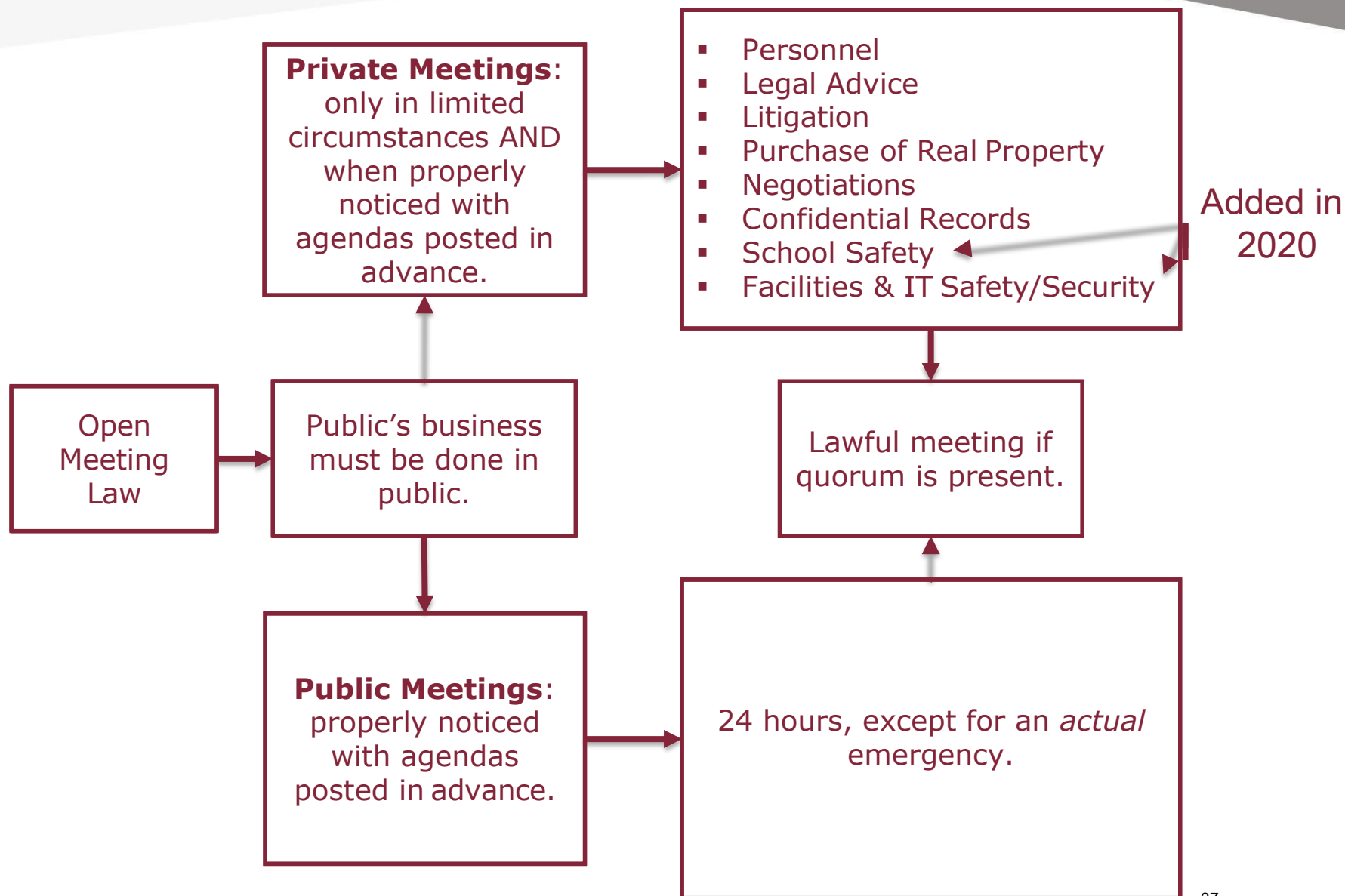
An Act mandating open deliberations and proceedings to the public and prohibiting public bodies from making decisions in secret. A.R.S. §§ 38-431 – 38-431.09



Core Concepts

- Official deliberations & proceedings conducted openly.
- Maximize public access & participation.
- Any uncertainty resolved in favor of openness.





Open Meeting Law applies when:

- You a **Public Body**; *and*
- You are **Meeting**.

But, *what* is a public body and *what* is a meeting?

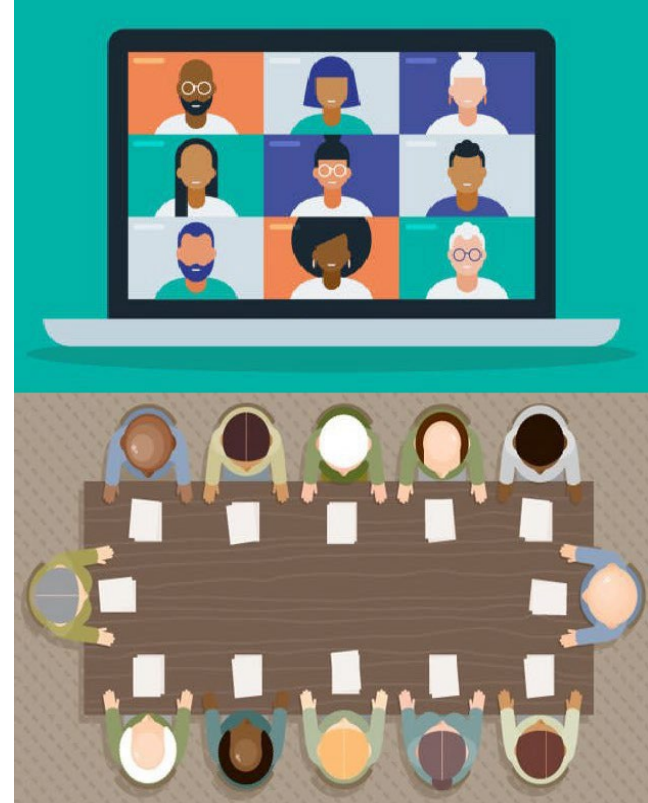
- Legislature (except caucus)
- Boards and commissions of this state or political subdivisions
- Multimember governing bodies
- Quasi-judicial bodies
- Standing, special, or advisory committees or subcommittees of, or appointed by, the public body

- Big No-No!
- The open meeting law specifically states that a member of a public body may not knowingly instruct staff to communicate in violation of the law.
 - A.R.S. § 38-431.01(I).

How It Started



How It's Going



A meeting occurs any time a *quorum* of the public body discusses, proposes, or takes legal action.

Majority of the public body, unless otherwise noted in statute or governing documents.

- 7 persons; quorum = 4
- 5 persons; quorum = 3
- 3 persons; quorum = 2

Vacant positions *do not* reduce the quorum requirement.

- 7 persons; 2 absent; quorum = 4

Discussion among members with less than a quorum present



Later, same discussion had with other members



Enough additional members to constitute a quorum



Possible Serial Meeting

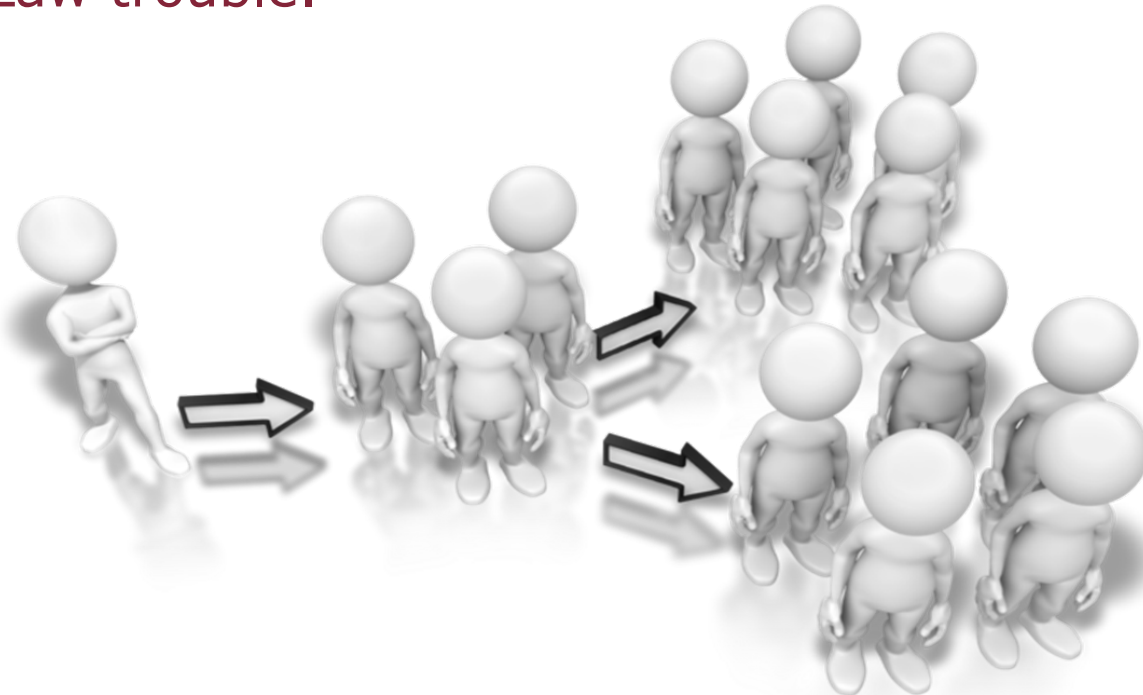
Always remember: A series of gatherings of less than a quorum *may* constitute a meeting if town business is discussed or proposed.

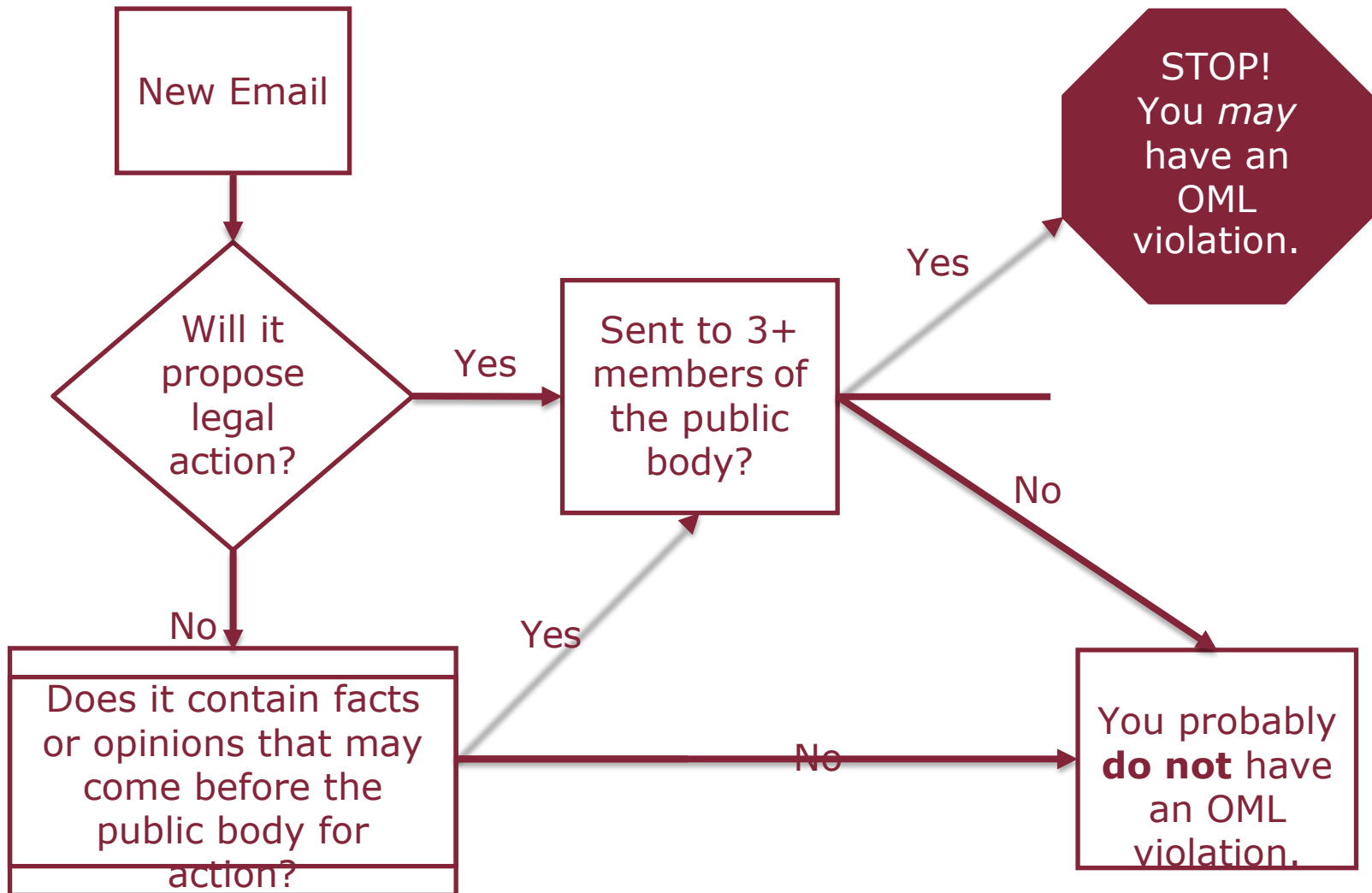




"That was a conference call, dummy! — You just declared war on *everybody!*"

Using “Reply All” and forwarding emails may lead to Open Meeting Law trouble.





Reminder: a one-way
communication can violate the
Open Meeting Law even without a
response!



You post comments about the public meeting on your private Facebook page—where you just happen to be “friends” with other members of your public body.

OML problems?
Maybe.

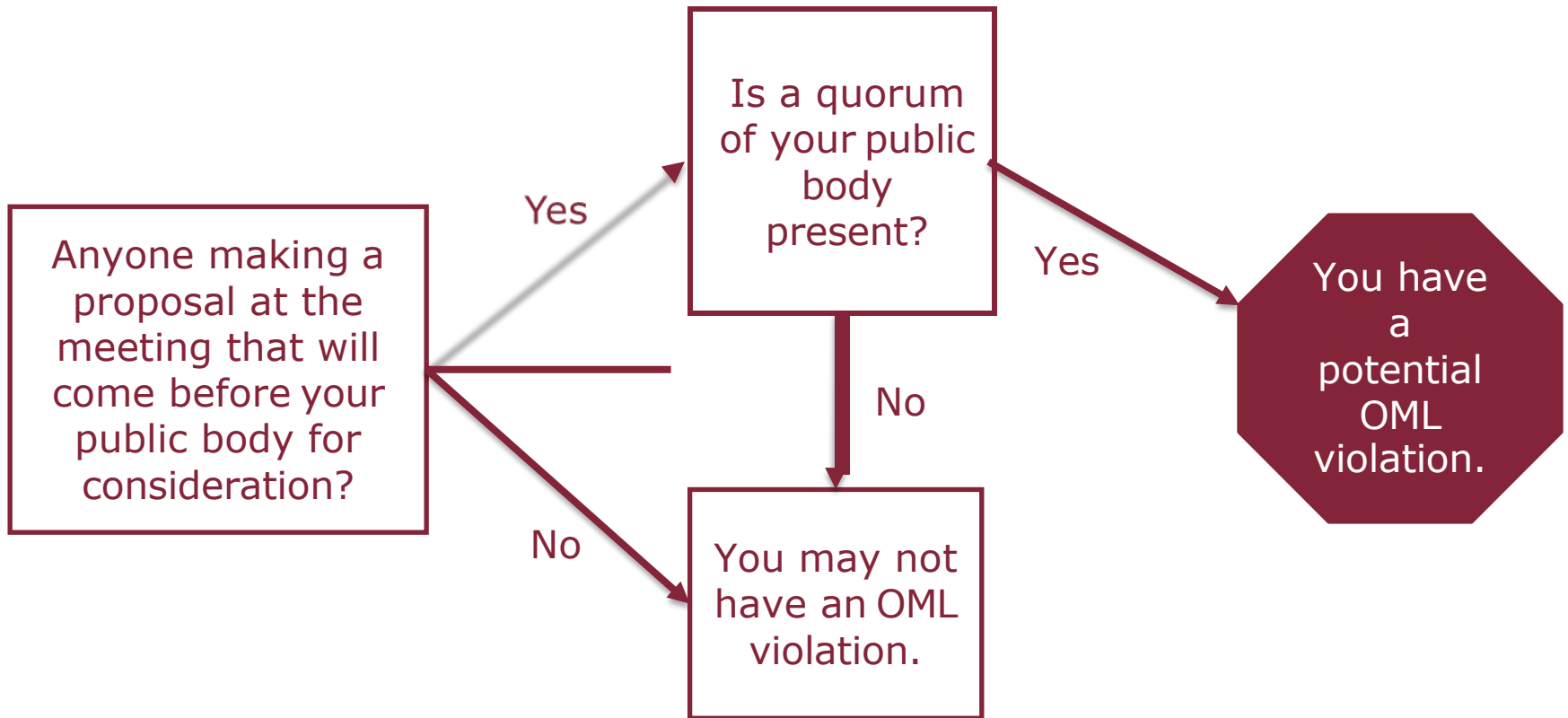


You may express your opinion or discuss issues with the public personally, through the media, or through technological means, if:

- 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.

Best Practices

- Be mindful of who you “friend” online.
- Do not post about board matters if “friends” with members, especially during a meeting!
- Do not comment on their or their friends’ posts if the matter relates to board business (legal action).
- Don’t create a group chat that includes a quorum of the board (remember the email pitfall?).

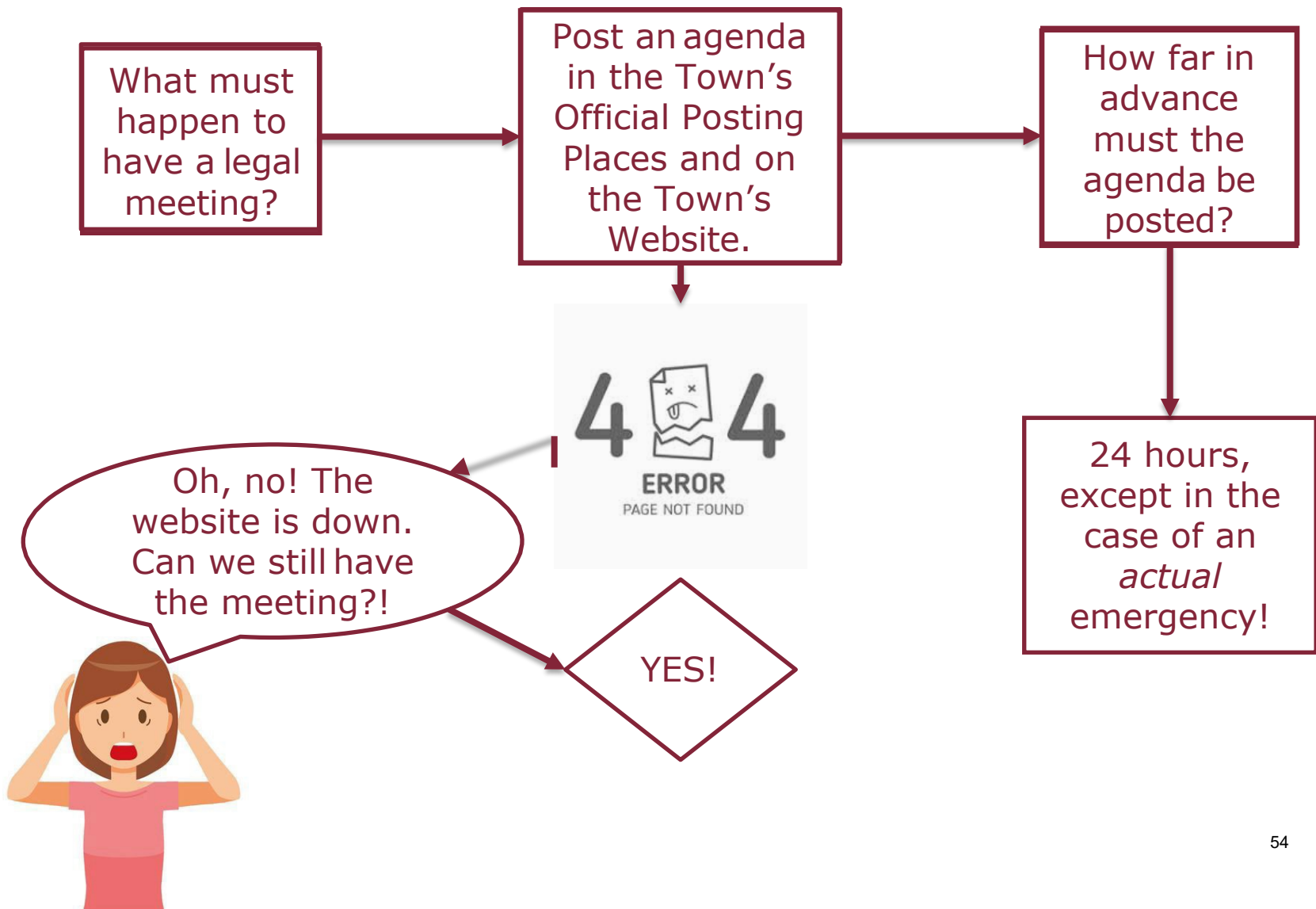


Options?

- Don't attend other public meetings;
- Don't make proposals at other public meetings; or
- Notice the meeting as if it's your own.

In general:

- Be mindful of informal discussions with other members of your public body.
- Text messages, emails, and comments made at other public meetings may be a "serial meeting," but merely reading a media comment from another member is not a meeting.



(applicable in very limited circumstances)

Unless a flood or fire is racing through the Town, you probably *do not* have an actual emergency.



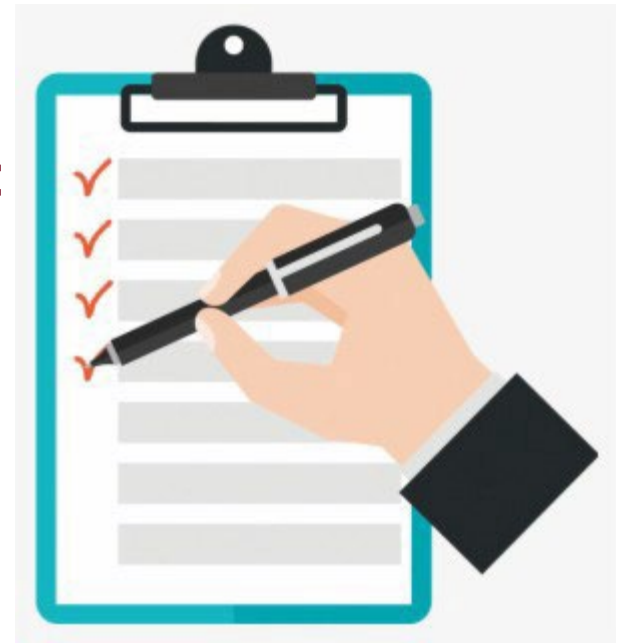
- Limited exception to public meeting.
- Must vote in open meeting for executive session.
- Agenda must state specific provision of law authorizing the session and specify the item.
- Must include a general description of matters to be considered.
- Listing only the statutory authorization is insufficient.

Authorized topics for executive sessions:

- Personnel (must provide 24 hours written notice to employee).
- Discussion or consideration of confidential records.
- Legal advice – with public body's own lawyer(s).
- Litigation.
- Labor negotiations.
- International, interstate, and tribal negotiations.
- The purchase, sale, or lease of real property.
- School safety operations, plans, or programs (2020).
- Safety and security of public body's buildings, facilities, and IT (2020).

Courts have construed exceptions to the OML very narrowly because of the policies that favor open and public meetings.

- Date, time, and place of meeting.
- Agendas must list the specific matters to be discussed, considered, or decided at the meeting.
- Action may only be taken, discussed, or considered on listed items.



Call to the public:

- Citizens may only address the public body on issues within its jurisdiction.
- Public body may not discuss the matter.
- At its conclusion, members may respond to criticism, ask staff to review a matter, or request a future agenda item.
- Do not use generic agenda items topics such as:
 - “personnel”
 - “new business”
 - “old business”
 - “other matters”

Current Event Summaries:

- A member of the public body or the Town Manager may present a brief “summary of current events,” without listing in the agenda the specific matters to be summarized, *if*:
 - The summary & the person giving it are listed on the agenda.
 - The public body does not propose, discuss, deliberate, or take legal action at that meeting on any matter in the summary not properly noticed for legal action.

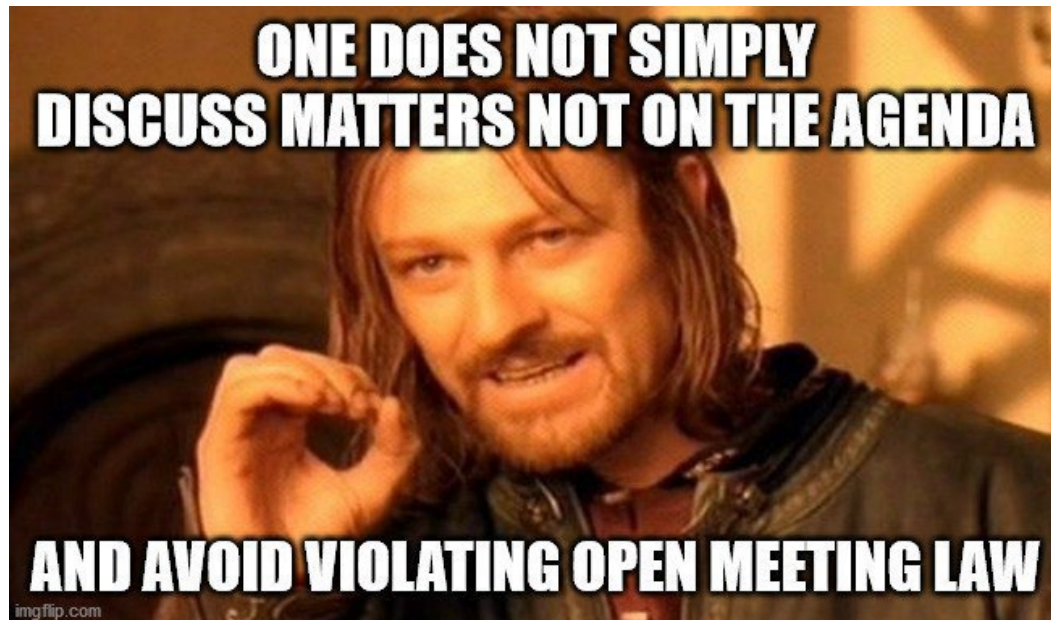
Current Event Summaries:

- May only be given by a member of the public body or the Town Manager.
 - Only one person may report on the current events; no further discussion allowed!
- Town Manager may not delegate to a staff member.
- Reports on current events must truly be about current events—no proposals or department reports.

Reports other than Current Event Summaries:

- May include department head reports on agenda.
- Must list the items department head will report on and state whether discussion or action will be taken.
- No generic agenda items, such as “Sheriff’s Department Report” or “Public Works Department Report”.
 - These must be separately listed agenda items containing information reasonably necessary to inform the public of matters to be discussed or decided.

- A. No.
- B. Seriously, No.
- C. Not if we don't want trouble.
- D. ~~Maybe, if it's an Actual Emergency.~~
- E. All of the above.



- May be in writing or recorded.
- Minutes or statement of legal actions taken must be available for public inspection within 3 working days after the meeting.
 - If unapproved, mark as draft or unapproved—do not withhold pending approval.
- Post approved meeting minutes within 2 working days following approval.
- If recorded, the public must be able to access the recording.
- If written in shorthand, must be typed or written in longhand.

Minutes must include the following:

- Date, time, and place.
- Members present or absent.
- Accurate descriptions of all legal actions proposed, discussed, or taken.
- Record of how each member voted.
- Names of the members who propose each motion.
- Names of persons speaking before the public body.

- Minutes must remain on website for 1 year.
- Executive Session minutes must contain same contents as regular minutes plus:
 - An accurate description of all instructions given to attorneys or designated representatives.
 - If holding an emergency meeting, a statement of the reasons for emergency consideration of any matters not on the agenda;
 - Any other information as appropriate.

- Subcommittees and advisory committees of cities and towns with a population of more than 2,500 shall take written minutes or record meetings; *and*
- Within 10 working days post a statement describing any legal action or post any recording of the meeting.

Actions taken are

NULL AND VOID



The attorney general investigates.

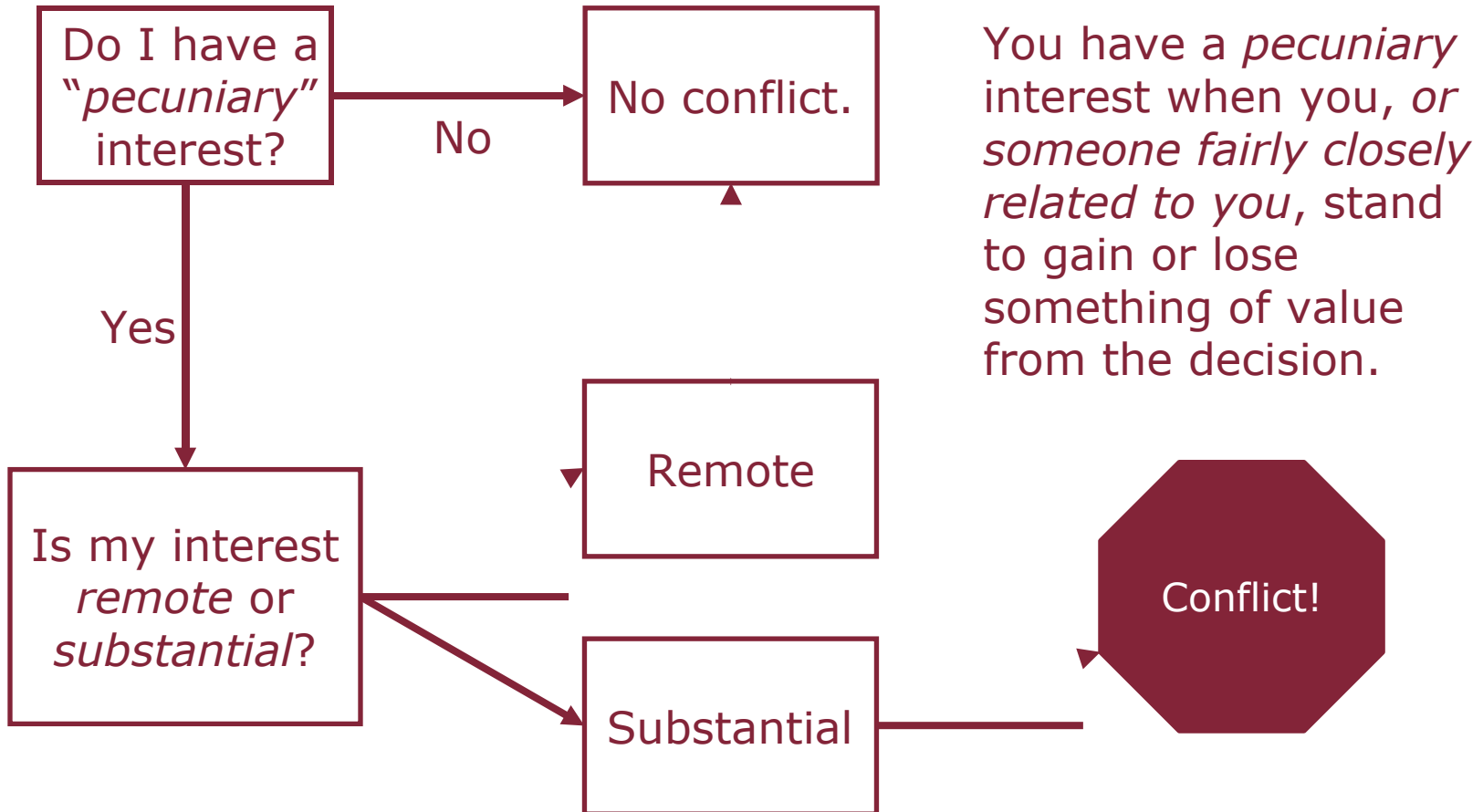
- \$500/day civil penalty.
- Removal of an officer.
- Assess the officer with all costs awarded to the plaintiff.
- May not spend public monies for legal counsel.



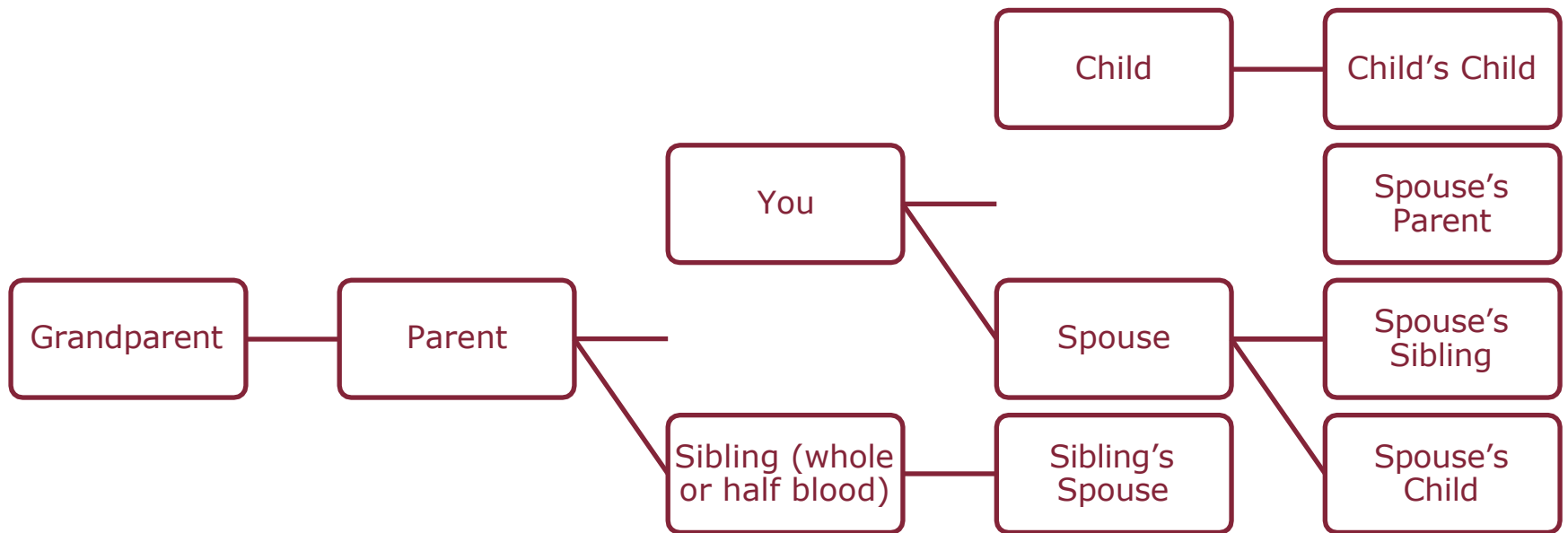
Steps to prevent self dealing:

1. Analyze every matter coming before your public body to determine if you have a conflict of interest.
2. Make your determination prior to the meeting addressing the matter.
3. Follow the statutory mandates for disclosing your conflict of interest.

Do I have a conflict of interest?



Who are relatives?



You have determined you have a substantial interest. What should you do?

Do:

- Disclose your interest in the official records of the public agency.
- Recuse yourself and refrain from participating in any manner in the decision or contract, including any discussion of the matter.
- If there is **any** question, get the opinion of the Town Attorney; it may help you avoid “reckless” or “negligent.”

Do not:

- Ignore it and think it will go unnoticed.

interest laws?

- Civil suit to enforce the law.
- Court may award reasonable attorney's fees.
- Class VI felony for intentionally or knowingly violating the law.
- Class I misdemeanor for any reckless or negligent violation of the law.
- Person found guilty may be required to forfeit his public office.
- Contracts entered into in violation of conflicts of interest laws **may** be cancelled or voided.

Questions?

SECTION 1.

GENERAL INFORMATION/VOLUNTEERING

Thank You for Volunteering

Congratulations for being selected by the Town Council to volunteer for appointed office. The Town is fortunate to have so many high caliber individuals willing to volunteer their valuable time. Volunteerism exemplifies the true spirit of Paradise Valley and gives you the opportunity to make a real difference in the Town, share your time and expertise, and connect at a deeper level with the Town.

This handbook has been developed as a reference for volunteer board, commission or committee members while conducting Town business to ensure that you operate within federal, state, and local law, as well as adhering to the Town's philosophies and form of government.

The information in this handbook will provide you with the general knowledge needed to effectively:

- Understand current and applicable laws
- Review, analyze, and decide applications before you
- Use available Town resources
- Participate effectively in public meetings

Form of Government

Paradise Valley was incorporated on May 24, 1961. The Town Council consists of a direct elected Mayor who serves a 2-year term, and six at-large Council Members who serve 4-year staggered terms. One Council Member is selected by the Council to serve as Vice Mayor for a 1-year term.

Paradise Valley operates under the Council-Manager form of local government. Under this model, which is prevalent in Arizona and in the western United States, the Mayor and Council select a full-time professional manager to serve as the chief administrative officer and head of the Town. The Manager is responsible for implementing Council policies, managing staff, preparing the budget, and undertaking other responsibilities as authorized by the Council in the Town Code. Paradise Valley has committed its local government to being inclusive, participative, and transparent.

Town Vision and Values

Paradise Valley is a premier, low-density, residential community that was incorporated based on the conscious decision to preserve the natural desert and to provide for a semi-rural residential community that complements our high-quality resorts, houses of worship, schools, and medical offices. We operate under a limited form of government that relies on community volunteers and strong resident support.

The Town uniquely provides a balance between the powers of local government and individual property rights, while retaining its characteristic low-density residential housing, providing quality public safety and other limited services, preserving natural open spaces and mountain views, ensuring neighborhood-compatible land use decisions, and preserving the quiet enjoyment of our neighborhoods.

The Town of Paradise Valley is characterized by six common values:

- Primarily one-acre, residential community
- Limited government
- Creating a sense of community
- Partnerships with existing schools and resorts to enhance recreational opportunities
- Improving Aesthetics / Creating a Brand
- Preserving natural open space

GENERAL PLAN

A general plan is a publicly adopted long range plan for land use and development, serving as a basis for decision making regarding policies and programs by the Town Council and the town's land use committee's as well as by the town's residents and developers. Arizona state law requires that each municipality adopt a comprehensive general plan to guide the physical development within their community. State law also requires a general plan to be readopted every 10 years. The Town's General Plan was most recently adopted in 2012.

The Town's General Plan contains a vision statement, along with maps, goals, policies, and implementation measures that address issues such as:

- Land Use and Development
- Community Character and Housing
- Mobility
- Open Space and Recreation
- Sustainability
- Public Facilities/Services

SECTION 2. BOARDS, COMMISSIONS, AND COMMITTEES

The Council establishes all advisory Boards, Commissions and Committees. Members are appointed by the Mayor and Council and serve at the pleasure of the Council. These various Boards, Commissions and Committees serve to guide, advise, and/or implement the policies of the Town Council.

Volunteers serve a variety of roles and make decisions that require their valued input. All boards, Commissions and Committees are administrative (with the exception of the Board of Adjustments), but in some cases, the Council may delegate its authority to make final decisions on behalf of the Town.

2.1 Volunteer Recruitment, Selection, and Appointment

Notices of volunteer openings are posted on the Town of Paradise Valley's website with a link to the online application. Additionally, a press release is emailed to the *Paradise Valley Independent*, which often runs articles regarding the volunteer openings and the Town's process for making an application.

Candidates must be residents in the Town and are typically interviewed by the Town Council. Based on background, skill sets and the positions available, applicants may be asked to consider volunteering for another position other than their first choice. Once selected, the Council officially makes the appointment with a motion and vote at a future scheduled business meeting.

2.2 Oath of Office

Prior to the first meeting following appointment, the volunteer will take the Oath of Office administered by the Town Clerk or a Notary Public. This Oath is required by State Law and must be taken (along with signing a written oath that is submitted to the Town Clerk for filing) prior to participating on the various Boards, Commission or Committee.

The Oath is:

I, [volunteer's name], do solemnly swear that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of [volunteer position] of the Town of Paradise Valley, according to the best of my ability, so help me God.

SECTION 3. ROLES & RESPONSIBILITIES

All *Volunteers* shall:

Regularly attend meetings and comply with the Town Code requirements for all absences;
Communicate with the Staff Liaison and/or Chair when unable to attend a meeting;
Prepare, for each meeting by reviewing the meeting agenda, application materials and agenda packet, any additional information provided, public comments received prior to the meeting and, as necessary, visiting site(s) to assist in understanding an application;
Become educated on policies, codes, and procedures that apply to the Board, Commission, or Committee;
Treat citizens, applicants, elected officials, peers, and staff with respect;
Follow the Board, Commission or Committee, rules of procedure, ethics requirements (Appendix D), Roberts Rules of Order, and parliamentary procedure in general (Appendix G);
Dress and conduct yourself in a professional manner at public meetings;
Comply with the Open Meeting Law;
Declare conflicts of interest and avoid participating in a matter where a conflict exists; and when in doubt about a conflict, contact the Town Attorney in advance of the meeting at which the potential conflict matter will be discussed or acted upon;
Resign from the Board, Commission or Committee if elected as Mayor or to a Council seat; and
Not assign work to Town staff.

The *Chair*, in addition to participating in the role of a board, commission, or committee, shall:

Serve as the presiding officer and facilitate public meetings;
Communicate meeting processes to the public and to the board, commission, or committee members
Provide periodic reports or updates to the Council when requested;
Encourage discussion amongst members and give all members the opportunity to speak in a fair and orderly manner;
Keep discussions and meetings on track and on time;
Ensure that all meeting participants are treated with respect; and
Be knowledgeable with rules and procedures, parliamentary procedures, and appropriate Robert's Rules of Order.

The *Council* shall:

Establish all boards, commissions, and committees that they deem appropriate to guide, advise, and/or implement Town policies and goals;
Establish, when desired by the Council, rules and regulations governing the various boards, commissions, and committees;
Ratify by-laws when applicable;
Authorize processes for recruiting, interviewing, selecting, and appointing new members to vacant positions;
Appoint, where Council deems appropriate, a member of the Council to serve as a liaison to a board, commission, or committee; however, by Town Code, the Vice Mayor automatically serves as the Council Liaison to the Planning Commission
Remove board, commission, and committee members when necessary, in accordance with the Town Code of Paradise Valley, Section 2-5-1.

The *Council Liaison* shall:

Attend board, commission, or committee meetings, as needed;
Serve as an ex officio (non-voting) member, when there is a Town Code or resolution authorizing such ex-officio status;
Provide guidance, support and encouragement;
Provide regular updates to the Council; and
Not speak for the Council regarding matters before the various boards, commissions, or committees, unless the Council has formally adopted a Council position or policy in a prior open meeting.

The *Staff Liaison* shall:

- Provide board, commission, and committee members with codes, by-laws, membership lists, and other documents necessary to fulfill their duties;
- Educate and provide guidance on policies, codes, and procedures that are applicable;
- Draft minutes of the meetings for board, commission, or committee review and approval;
- Provide the Town Clerk with agendas or minutes to be posted;
- Secure meeting rooms;
- Consult with the Town Attorney or Town Clerk for guidance on the Open Meeting Law, Conflicts of Interest, Public Records, and other requirements;
- Participate in discussions, provide guidance and subject matter expertise; and monitor member attendance at meetings for compliance with the Code of Paradise Valley, Section 2-5-1(B). (See Appendix B)

The *Town Attorney* shall:

- Assist in ensuring compliance with Open Meeting Law
- Assist members who have questions regarding potential conflicts of interest;
- Provide legal advice as needed on particular matters coming before the board, commission or committee.

The *Town Clerk* shall:

- Post agendas and minutes in accordance with Open Meeting Law and Town Code.
- Manage all Council directed aspects of recruiting and staffing
- Assist, with Town Attorney, providing guidance and respond to questions from the Staff Liaison regarding requirements of the Open Meeting Law, Conflicts of Interest, and Public Records;
- Maintain minutes and other official Town records as such are required to be maintained by law;
- Respond to inquiries together with Staff Liaison and/or Town Attorney from the public, elected officials, and staff;
- Manage removal from office in accordance with the Code of Paradise Valley, Section 2-5-1(B).

SECTION 4. MEETINGS

4.1 Agendas and Meeting Packets

An agenda shall be prepared and posted for all meetings. Meeting packets shall be distributed, prior to a meeting in accordance with Town policy, and these packets may include staff reports and related materials to assist various board, commission, and committee members to prepare for the meeting.

All agendas are posted at the Town Hall facility parking lot and on the Paradise Valley website at least 24 hours prior to the meeting in accordance with the Open Meeting Law.

4.2 Other Gatherings

On occasion, a quorum of a board, commission, or committee members may attend a conference, social event, or similar activity. Members must exercise extreme caution to avoid violations of the Open Meeting Law at such events. These events are not meetings as defined by the Open Meeting Law and are not posted as meetings. Members shall be knowledgeable with all Open Meeting Law requirements (See Appendix E).

4.3 Official Minutes & Legal Actions

Official minutes are prepared for all board, commissions, and committee meetings. These official minutes must include the date, time, and place; members present or absent; a general discussion of the matters discussed; and an accurate description of any actions taken.

A verbatim transcript of meetings is generally not created or made available. Only certain boards, commission, and committees record their meetings with audio, video, or similar media. If meetings are recorded for a use other than the preparation of minutes and are not immediately destroyed upon completion of the minutes, the audio, video, or similar media is a public record and must be maintained and disposed of in accordance with *Paradise Valley's Record Management Standards and Retention Schedules*.

Upon approval and execution of the official minutes, the Staff Liaison or designee is required to immediately submit the original minutes to the Town Clerk. The Town Clerk retains the official minutes as a permanent record.

Per Open Meeting Law requirements cities and towns over a population of 2,500 to maintain a website where they post meeting notices and legal actions on their website platform. The Town of Paradise Valley has such a website and must post approved minutes to the website. Draft minutes or actions posted to the website must be retained on the website for one year.

The Town of Paradise Valley adopted the following practices to comply with these statutory requirements, which ensure consistency between the Council, boards, commissions, and committees so the public can readily access information:

Agendas and meeting notices are posted at the Town Hall facility parking lot and the Paradise Valley website at least twenty-four (24) hours prior to a meeting as required by the Open Meeting Law.

Draft minutes are posted to the Town of Paradise Valley website within three (3) working days of

each meeting. These draft minutes contain all legal actions taken. In limited cases, actions are posted in lieu of draft minutes.

Approved and signed minutes are submitted to the Town Clerk immediately following approval to ensure minutes are posted to the Town of Paradise Valley website within two (2) working days of approval.

- Draft minutes, actions, and approved minutes are maintained on the Town of Paradise Valley website for at least one year after being posted.

4.4 Conduct

All board, commission, and committee members are representatives of the Town. The following information serves as a guide to all members when acting as a representative of the Town:

- Act in a professional manner at meetings when representing the Town, even when diverse ideas and opinions are presented.
- Be aware that publicly-expressed opinions (to the public, press, stakeholders, etc.) by an individual member reflect only the individual's view and may not be represented as a board, commission, or committee statement or position without the approval of a majority of members officially conducted in a public hearing process.

Never use your position or information in the performance of duty as a means of private profit or to advance the financial interest of others.

Never give special favors or privileges to anyone.

Never accept gifts or benefits that could be construed by reasonable persons as influencing the performance of official duties. Any gifts accepted must be reported in accordance with the *Town of Paradise Valley Ethics Policy* (Appendix C).

Exercise caution to avoid making statements that might be construed as promises or binding upon the duties of office.

Avoid commenting upon negotiations entered into by the Town that involve the purchase or sale to the Town of land, goods, or materials while acting in the capacity of a public official. In the event that this occurs, certain guidelines must be observed. (See Section 7: Conflicts of Interest).

4.5 Parliamentary Procedure

Meetings are generally conducted in accordance with the adopted or approved Board, Commission or Committee rules of procedure and Roberts Rules of Order. Members are expected to understand basic parliamentary procedure. The following provides information regarding basic parliamentary procedure to serve as a guide.

See Appendix G, Robert's Rules of Orders, for Clarification

4.5.1 Quorum

A quorum is the number of members that is necessary to conduct business. In most cases, a quorum constitutes a simple majority of the total number of members specified in the Town Code or other document (sometimes a resolution) that created the particular board, commission or committee. For example, a board with seven members would need four members to constitute a quorum.

4.5.2 Motions

There are a variety of acceptable forms by which to make a motion. It is also important to always

be mindful that with the exception of the Board of Adjustments, motions for approval are administrative in nature. The Council is the only body that has the authority to take legislative actions. The Planning Commission motions are typically a motion to **recommend** to the Council a particular action on a matter, however, there are some actions, such as the granting of a conditional use permit, where the Commission makes the final approval. This is further explained below in the examples provided. The role and formality of the board, commission, or committee will often determine what is most appropriate in each situation. Motions are not required for discussion items but are used to make decisions and recommendations. Motions may also be used to provide direction to staff but are not required. Motions should be clear and concise; such that other members understand the action upon which they are voting.

A motion requires a second to be discussed or considered. In the event that there is no second, the motion is not discussed or considered, and dies for the lack of a second.

Motions are stated in a variety of manners, and are generally proposed with the following phrase:

- I move...
- Move for.. .
- Motion to...

The following examples show the same action stated in different manners:

- I move for approval based on the recommendation in the staff report
- I move the recommended action in the staff report
- Move for approval of the staff report recommended action
- Move for approval (if the subject has been previously stated with sufficient specificity)
- Motion to approve the action recommended in the staff report, as submitted

The complexity of the role of the board, commission, or committee may also determine the formality and complexity of motions, e.g.:

- Motion to recommend approval to the Council of the rezoning of the "X" based on the findings of fact in Zoning Case 2020-01, and subject to the conditions contained in the draft ordinance
- Move to approve Case 2020-02 with the staff recommendation and (insert additional conditions of approval)
- Move to recommend to the Council the adoption of the proposed 2022 master plan
- For the Board of Adjustment, more specificity should be added to a motion for approval or denial should be made due to its quasi-judicial nature, e.g., "I move we deny variance request 2020-04 as there are no special circumstances that support a variance"

After a motion is seconded, the members may comment upon and/or discuss the proposed action.

Following discussion, the Chair calls for a vote, and announces the results of the vote. Votes can be taken using electronic voting equipment, by voice, by roll call, or by a show of hands.

4.5.3 Amending a Motion

A subsidiary motion can be made to amend a motion to add, substitute, or take away from the original motion. A second is required for a motion to amend.

An amendment might be stated as:

Move to amend the motion to delete condition xx.
Move to amend to add a new condition (state condition).

In the event that an amendment is made, the amendment must first be voted upon prior to the main original motion.

If an *amendment passes*, it changes the original motion. A vote on the original motion, as amended, follows.

If an *amendment fails*, there is no change to the original motion. A vote on the original motion is taken.

4.5.4 Reconsideration

Occasionally, a member may feel that an action should be reconsidered and may move to reconsider an agenda item. A member who voted on the prevailing side must request reconsideration. If the motion for reconsideration is approved, the Chair may reopen the item.

Under the Roberts Rules of Order, an item may also be considered on the next day, or at the next meeting. Due to the requirements of the Open Meeting Law, reconsideration at the next meeting must be listed on the agenda. For the Planning Commission, Board of Adjustment, and the Hillside Building Committee, the required timing and procedures for getting a motion to reconsider placed on the agenda on the next business meeting for each of these particular bodies is contained in the Rules of Procedure for each body. A Board, Commission, Committee member who voted on the prevailing side and who requests reconsideration at the next meeting must contact the Staff Liaison so that the item is included on the agenda that is posted in compliance with the Open Meeting Law.

4.6 Subcommittees & Other Committees

Subcommittees and other committees formed or appointed by a board, commission, and committee must comply with the Rules and Procedures established by the Council, or, where provided, by the board, commission, or committee and all Open Meeting Law requirements. The Staff Liaison should contact the Town Clerk to determine whether the Open Meeting Law pertains to the subcommittee or other committee. The Town Clerk consults with the Town Attorney, if necessary.

SECTION 5. LAWS AND OTHER DOCUMENTS

5.1 Town of Paradise Valley Town Code

The Town Code sets forth the local laws and regulations adopted by the Mayor and Council. These laws and regulations are adopted by ordinance.

All board, commission, and committee members are subject to the requirements found in the Town Code, Article 2-5.

A copy of the Town Code, Article 2-5, can be found in Appendix B.

5.2 Council Policy Statements

The Council may establish policies through a Council Resolution. The following Council Policy applies to all boards, commissions, and committees.

Town of Paradise Valley Ethics Policy

The Town of Paradise Valley Ethics Policy establishes standards of conduct for Paradise Valley's public officials. Topics covered in the policy address the responsibilities of public service, procedures, confidential information, code of ethics training, and enforcement.

A complete copy of this policy statement can be found in Appendix C.

5.3 Other Town Codes and Documents

Local laws are also found in codes or documents that have been adopted for a specific purpose. The Town Code contains articles and sections that are often referenced and that can stand independently. These items include but are not limited to the Zoning Ordinance, the Hillside Safety Improvement Measures and Review Process Regulations, the Subdivision Regulations, the Storm Drainage Design Manual, and Special Use Permit Guidelines.

The General Plan is a state-required document that must be updated every 10 years and must be approved by the voters of the Town through an extensive public participation and adoption process. The General Plan is a flexible policy document and is not an ordinance. The Town Council also adopts policy positions through resolutions. It is not uncommon that the Council provide direction to a board, commission, or committee, through the use of a resolution or statement of direction (see Appendix C). The Staff Liaison provides board, commission, and committee members a copy of or link to the Codes or documents necessary to perform their duties.

5.4 State Laws

The Arizona Revised Statutes contain the laws of the State of Arizona. Paradise Valley is a General Law municipality, which means that it does not have a Charter and that its authority is set forth in the laws of the State of Arizona.

Certain boards, commissions, and committees may be subject to other statutory requirements that establish authority and processes. The Planning Commission, Board of Adjustment, Public Safety Personnel Retirement Board, Paradise Valley Mountain Preserve Trust, and the Municipal Property Corporation are just a few that may have additional statutory requirements. The Staff Liaison is responsible to communicate these requirements to each member and to ensure compliance.

5.5 Rules of Procedure and By-Laws

Some of the boards, commissions, and committees have Rules of Procedure that are statutory or have been approved by the Town Council. Others may also have by-laws that contain requirements specific to that particular board, commission, or committee. The rules of Procedure and the by-laws may

include information regarding meetings, quorums, membership, or other matters of procedure affecting the particular board, commission or committee.

The Staff Liaison will provide rules and by-laws, if applicable, and as needed.

5.6 Other Documents

The League of Arizona Cities and Towns created the publication *You as a Public Official*. This publication covers a variety of topics applicable to you. The majority of the information contained in this document may help assist in further training if applicable.

A copy of You as a Public Official can be found in Appendix D.

SECTION 6. OPEN MEETING LAW

It is the policy of the State of Arizona that the public's business be conducted in public. The State Legislature has adopted a law known as the Open Meeting Law that is applicable to public bodies and public officers. To comply with the Open Meeting Law, the Staff Liaison and/or the Town Clerk is responsible for preparing or supervising the preparation of agendas, posting agendas, posting draft minutes or actions, and posting approved minutes.

Boards, commission, and committee members must exercise caution when interacting with other, members in order to avoid violations of the Open Meeting Law. Accordingly, members should not congregate after meetings to discuss the business of the board, commission, or committee after the meeting is adjourned.

The following are typical questions asked about the Open Meeting Law.

1. *What is the Open Meeting Law?*

The policy of the State is that the public's business be conducted in public. The Open Meeting Law requirements contain the rules that public bodies must follow to ensure that this policy is properly carried out. (see Appendix D)

2. *Is my board a "public body" under the Open Meeting Law?*

Yes. All boards, commissions, and committees appointed by the Mayor or the Council are "public bodies" governed by the Open Meeting Law. However, a "committee" appointed by the Town Manager to provide advice only to the Manager would not be considered a "public body." If a department director sets up a committee to research and advise him or her, that committee is also not a "public body."

3. *What is a meeting?*

Any time a quorum of the public body discusses, proposes, or takes legal action related to municipal business, a meeting is being held. "Legal action" includes collective decisions, commitments, or promises of the public body, and does not necessarily include a formal vote. A series of gatherings, conference calls, or e-mails of less than a quorum can result in a "public meeting," especially if a

consensus is reached. A gathering of the quorum may also include occasions when one or more members participate by telephone or video conference. A "meeting" may also result from discussions held over e-mail if a quorum is involved and if a "discussion" is taking place about municipal business. Great care should be taken in the use of e-mail to ensure that you do not violate the Open Meeting Law. If you have any questions regarding whether it is appropriate to exchange email regarding business matters with a quorum of the public body please contact the Staff Liaison or the Town Attorney.

4. *If my board is going to have a meeting, what do we have to do?*

Arizona State law requires that public bodies of the municipality file a statement with the Town Clerk or Mayor's Office stating where public notices of their meetings will be posted, and on the internet. The law also requires that the public body "shall give such additional public notice as reasonable and practical as to all meetings." In addition, meetings may not be held without at least 24 hours' notice to the members of the public body and to the general public. The Town of Paradise Valley, notices of meetings are (for most activities) posted at the following locations:

- ▶ Town Hall (parking lot), 6401 E. Lincoln Drive, Paradise Valley, AZ 85253
- ▶ Town's website at: <https://paradisevalleyaz.gov/81-Notices-Agendas-Minutes-Summar>

The agenda must include the date, time, and place of the meeting. It must also include an agenda of matters to be discussed or decided at the meeting, or information regarding how the public may obtain a copy of the agenda.

There is a statutory exception to this rule in case of an "actual emergency," in which case the meeting may be held without the required 24-hour notice so long as a notice is posted within 24 hours declaring that an emergency meeting has been held. In that case, the notice must include a discussion of the specific matter considered or decided at the meeting. There are very few circumstances that qualify as an "actual" emergency. Please refer to the Town Attorney for legal guidance for all meetings considered an emergency.

5. *Can we discuss matters not on the agenda?*

Not unless the item to be discussed is about an "actual emergency" (see above).

6. *May there be "communications from citizens" on the agenda?*

Yes, but the agenda must have a specific listing for such "calls to the public" and the member of the public who is speaking is only allowed to address the public body on an issue within the jurisdiction of the public body. The public body may not discuss the matter raised by the member of the public (unless it is on the agenda), but at the conclusion of the open call to the public, individual members of the public body may respond to criticism made by those who have addressed that public body. The public body may ask staff to review a matter brought forth by a member of the public or may ask that the matter be put on a future agenda.

7. *May the agenda include an item permitting individual members of the board, commission, or committee to make a statement or report (without discussion) at the end of the meeting?*

Yes, but only specific to certain board, commission, and committee Rules and Procedures. If applicable, the law does permit the public body to include on the agenda an item to "Report on Current Events" by the Chair, a department director, or other principal staff member in charge of the public body. At that time, the individual may make a report to the public and to the public body. However, the public body may not discuss or take legal action on the matter unless the matter has also been listed on the agenda.

8. *Can my board meet in private, or an executive session?*

Yes and No. Generally, meetings in private are prohibited unless they fit under one of the exceptions contained in the State Statutes for executive sessions. For most boards, commissions, and committees, there will be little justification for entering into an executive session other than to obtain legal advice from the attorney for the public body. In the case of the Town Council, the exceptions for holding an executive session are much broader and more likely to occur.

9. *If we have an executive session, do we have to keep minutes?*

Yes. However, minutes are kept confidential except from members of the public body that met in the executive session and, if the executive session was held for personnel matters, the officers, appointees, or employees who were the subject of discussion.

10. *Can I express my opinion to the news media or discuss an issue with the public if I know that other fellow members may read or hear my comments?*

Yes. The Open Meeting Law 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 or through news or social media outlets so long as (1) the opinion or discussion is not principally directed at or directly given to another member of the public body, (2) there is no concerted plan to engage in collective deliberation to take legal action, and (3) the member providing the opinion clarifies that it is an individual opinion and not that of the Town. Additionally, the Attorney General's Office has released a statement that a meeting does not occur when members of the public body merely hear or read a comment made by another member of the public body in the media.

11. *What happens if my board, commission, committee or any members violates the Open Meeting Law?*

First, any action that you took in violation of the Open Meeting Law is null and void.

Second, the Attorney General or County Attorney's Office may investigate a complaint alleging violation of the Open Meeting Law and may conduct an investigation. The Attorney General or County Attorney has broad powers to inspect all documents, to require any person to submit a report or make a statement, and to issue investigative demands for the production of documents. If a public body or an officer refuses to cooperate, the Attorney General or County Attorney may go to court to obtain an order for enforcement.

Upon finding that a public officer has violated the Open Meeting Law, a court may impose a civil penalty not to exceed \$500 for each violation against the person who has violated the article or who has knowingly aided, agreed to aid, or attempted to aid another person to violate the Open Meeting Law. If the court determines that a public officer has intended to deprive the public of information, a

court may remove the public officer from the office, and shall assess him with all costs and attorney fees awarded to the plaintiff pursuing the action.

The municipality may not expend public monies to retain legal counsel to provide legal services to the public body or to an officer unless the public body takes legal action at a public meeting to approve the expenditure.

Additional information on the Open Meeting Law is available for your perusal. See Chapter 7 of the Attorney General's Arizona Agency Handbook and the Arizona Ombudsman's Open Meeting Book.

SECTION 7. CONFLICTS OF INTEREST

At times, board, commission, and committee members may need to declare a conflict of interest. The following questions will assist you as you determine whether you have a conflict of interest.

1. *How do I know if I, as a member of a public body, have a conflict of interest?*

The first question you should ask is whether, in any matter that comes before your board, commission, or committee, do you have a "pecuniary" interest in the outcome of the matter. A pecuniary interest is any matter in which you stand to gain or lose something of value from the decision.

2. *If I determine that I have a pecuniary interest in a decision, then what?*

You need to determine whether your interest is a "remote interest." A remote interest is any of the following:

- a. The interest of a non-salaried officer of a non-profit corporation.
- b. The interest of a landlord or tenant of the contracting party.
- c. The interest of an attorney of the contracting party.
- d. The interest of a member of a non-profit cooperative marketing association.
- e. The ownership of less than three percent of the shares of a corporation for profit, provided that the total annual income from dividends, including the value of stock options, from the corporation does not exceed five percent of the total annual income of such officer or employee, and that any other payments made to him by the corporation do not exceed five percent of his total annual income.
- f. The interest of a public officer or employee to be reimbursed for actual and necessary expenses incurred in the performance of official duty.
- g. The interest of a recipient of public services generally provided by the incorporated city or town, political subdivision, state department, commission, agencies, body, or board of which the member is a public officer or employee on the same terms and conditions as if he or she were not an officer or employee.

- h. The interest of a public officer, employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee, or his or her relative of any of the following:
 - 1. Another political subdivision;
 - 2. A public agency of another political subdivision; or
 - 3. A public agency, except if it is the same governmental entity.
- 1. The interest of a member of a trade, business, occupation, profession, or class of persons consisting of at least ten members which is no greater than the interest of the other members of the trade, business, occupation, profession, or class of persons.

3. *If I determine that my pecuniary interest does not fit one of the above exceptions, then what?*

If your pecuniary interest does not fit one of the above exceptions, then you have a "substantial interest."
If the interest fits one of the above exceptions, you do not have a conflict of interest.

4. *If I have a substantial interest in a decision or matter coming before my board, commission or committee, what should I do?*

You must not take part in any discussion or action involving that matter. You do not have to resign from the board, commission, or committee. However, you must "make known" your substantial interest in the public records. The Town Clerk will provide a form that you will keep on file. On that form, you must disclose the substantial interest that resulted in your conflict of interest.

5. *What happens if I violate the conflict of interest laws?*

Any person affected by the decision of the public body may commence a civil suit in Superior Court for the purpose of enforcing the law. The Court may award reasonable attorneys' fees to the prevailing party. Intentionally or knowingly violating the conflict of interest laws is a Class VI Felony. Recklessly or negligently violating the conflict of interest laws is a Class I Misdemeanor. A person found guilty of such negligence may be required to forfeit his or her public office.

SECTION 8. PUBLIC RECORDS

The Town's records are the property of the State of Arizona. State laws require that records be maintained in accordance with the laws, standards, and requirements developed and implemented by Arizona State Library, Archives, and Public Records.

The Arizona Revised Statutes define records as books, papers, maps, photographs, or 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. These records include databases and electronic information.

The *Staff Liaison and Town Clerk* are responsible for maintaining all public records.

State laws governing records disclosure and protection of the public's right to know require that the municipality permit the examination and/or reproduction of records.

Agenda packets and other materials provided to boards, commissions, and committees by Town staff are retained by the Town staff if they constitute a record. Members may dispose of the agenda after the meeting. If a member keeps notes on agenda packets and retains these packets, they are subject to disclosure if The Town of Paradise Valley receives a public records request or a subpoena.

Electronic mail (e-mail) may be used to transmit documents or may itself constitute a record. Members must exercise extreme caution in the use of e-mail when communicating with other members to ensure that an improperly documented meeting does not take place. Generally, it is acceptable to disseminate information via electronic mail, but no discussions should occur to avoid the risk that the communication violates the Open Meeting Law. Members who use private e-mail accounts are responsible to forward record e-mails to the staff liaison for retention in conformance with the law. **We encourage you to use the Town provided email address [name@paradisevalleyaz.gov]. An email relating to official business sent through a private email address is still a public record and may result in having to search your private emails for official records should the Town receive a public record request. In the case of a subpoena, use of a personal email address may also result in a request by a litigant to have the right to search of your personal email account for records related to official Town business. Failure to provide official records that may have been sent from a personal email address may also be considered a violation of the Arizona Open Meeting Law.**

SECTION 9. CLOSING SUMMARY

Thank you again for your willingness to volunteer your time and expertise to the Town of Paradise Valley. We hope that you find your experience serving the Town's residents as both engaging and rewarding. Please take the time to read the appendices provided with this packet and reach out to your board, commission, or committee's staff liaison if you have any questions.

The entire General Plan is located on the Town's website at <https://www.paradisevalleyaz.gov>

The entire Zoning Ordinance is located on the Town's website at <https://www.paradisevalleyaz.gov>

TOWN OF PARADISE VALLEY ETHICS POLICY

The purpose of this ethics policy for the Town of Paradise Valley is to assure the quality of government through ethical principles which shall govern the conduct of the Town Council and members of the Town's boards, committees and commissions. We shall:

- 1. Obey the Constitution and laws of the United States of America, the Constitution and Laws of the State of Arizona, and the laws of the Town of Paradise Valley.***
- 2. Be dedicated to the concepts of effective and democratic local government.***

Democratic Leadership. We shall honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws, rules, and regulations.

- 3. Affirm the dignity and worth of the services rendered by the Town government and maintain a deep sense of social responsibility as a trusted public servant.***
- 4. Be dedicated to the highest ideals of honor, ethics, and integrity in all public and personal relationships.***

Public Confidence. We shall conduct ourselves so as to maintain public confidence in Town government and in the performance of the public trust.

Impression of Influence. We shall conduct our official and personal affairs in such a manner as to give a clear impression that we cannot be improperly influenced in the performance of our official duties.

- 5. Recognize that the chief function of local government is at all times to serve the best interests of all the people.***

Public Interest. We shall treat our office as a public trust, only using the power and resources of public office to advance public interests, and not to attain personal benefit or pursue any other private interest incompatible with the public good.

- 6. Keep the community informed on municipal affairs; encourage communication between the citizens and all municipal officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.***

Accountability. We shall assure that government is conducted openly, efficiently, equitably, and honorably in a manner that permits the citizens to make informed judgments and hold Town officials accountable.

Respectability. We shall safeguard public confidence in the integrity of Town government by being honest, fair, caring and respectful, and by avoiding conduct creating the appearance of impropriety, or impropriety of which is otherwise unbefitting a public official.

7. ***Seek no favor; believe that personal benefit or profit secured by confidential or privileged information or by misuse of public time is dishonest.***

Private Employment. We shall not engage in, solicit, negotiate for, or promise to accept private employment or render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of official duties.

Confidential Information. We shall not disclose to others, or use to further our personal interest, confidential information acquired in the course of our official duties.

Gifts. We shall not directly or indirectly, in connection with service to the Town, solicit any gift or accept or receive any gift - of any value - whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form of gratuity. This policy shall not apply to hospitality, transportation or other assistance provided to Town officials, which is directly related to their participation in community events as a representative of the Town.

Investment in Conflict with Official Duties. We shall not invest or hold any investment, directly or indirectly, in any financial business, commercial or other private transaction that creates a conflict with our official duties.

Personal Relationships. Personal relationships shall be disclosed in any instance where there could be the appearance of conflict of interest or a conflict of interest.

8. ***Conduct business of the Town in a manner which is not only fair in fact, but also in appearance.***

Disclosure. In quasi-judicial proceedings, we shall abide by the directives of Arizona Revised Statutes which require full disclosure of contacts by proponents and opponents of land use projects which are before the Town Council. The Town's Boards and Commissions are also subject to these same rules. In addition to these requirements of state statutes, we shall apply this same standard of disclosure to other discretionary actions of the Council.

TOWN OF PARADISE VALLEY CONFLICT OF INTEREST

Applicability

All public officers and employees of incorporated cities and towns are covered by conflict of interest law. This includes the mayor, council members and members of all appointed boards and commissions; the town manager, his appointees and all consultants; and full-time, part-time and contractual employees of the town.

The conflict of interest law is also applicable when the private interests of a public official's or public employee's relative are under consideration. The law defines a relative to be a husband or wife, brother, sister, parent, grandparent, child or grandchild. In addition, the provisions apply to the following in-laws: brothers, sisters, parents as well as the child of a spouse. All other relatives, whether by blood or marriage, are not subject to the restrictions of this law.

Conflict of Interest Defined

The conflict of interest law distinguishes between interests which are "remote" and those which are "substantial".

Remote conflicts are so minor they do not constitute illegal conflicts of interest, and any interest which is not remote, as detailed in State law, is a substantial interest. If you have a remote interest in a matter before the council, board, or commission, then you can vote and participate in the discussion. Here is what the law defines as a remote interest.

Remote interests exist when the public officer or employee or a relative is:

1. A non-salaried officer or member of a non-profit corporation doing business with or requesting money from the town. Thus, being a non-salaried officer or member of a non-profit health agency would not constitute a conflict.
2. The landlord or tenant of a contracting party. For example, a council, board or commission member may lease office space to a party which has a private interest in a public matter without it resulting in a conflict of interest.
3. An attorney of a contracting party.
4. A member of a non-profit cooperative marketing association doing business with the town.
5. The owner of less than three percent of the shares of a corporation doing business with the town, provided that:
 - a. Total annual income from dividends, including the value of stock dividends, does not exceed five percent of the officer's or employee's total annual income;
 - b. Any other payments made to the public officer or employee by the corporation do not exceed five percent of the officer's or employee's total annual income.
6. Being reimbursed for actual and necessary expense incurred in performance of official duties.

7. Receiving municipal services on the same terms and conditions as if not an officer or employee of the municipality. Thus, when a council, board or commission member who owns a business within the town votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.
8. An officer or employee of another political subdivision, a public agency of another political subdivision or any other public agency unless it is the same governmental entity and is voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a council member who is a school teacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the council member.
9. A member of a trade, business, occupation, profession or class of persons consisting of at least ten members and has no greater interest than the other members of that trade, business, occupation, profession or class of persons. For example, a plumber who serves on a city council may vote to increase or decrease plumbing inspection fees since the effect of this decision will be equal on all plumbers within the city.

Substantial interest is defined indirectly in State law as any pecuniary or proprietary interest other than those which are remote. In general, a conflict of interest will most often result when a public officer or employee of the town is involved in substantial ownership or salaried employment with a private corporation doing business with the town. For example, if a council, board or commission member owns or is employed by a lumberyard selling to the town, a conflict may exist. On the other hand, if the council, board or commission member is a lawyer of that lumberyard, or if the council, board or commission member leased land to the lumberyard, no conflict may exist.

A public officer or an employee may sell equipment, material, supplies or services to the municipality in which the officer or employee serves if this is done through an award or contract let after public competitive bidding. An exception to this law allows the town to purchase supplies, materials and equipment from a member of the council, board or commission without going to public competitive bids as long as the single transaction does not exceed three hundred dollars and the annual total of such transaction does not exceed one thousand dollars. The town must adopt a policy governing such purchases and must approve this policy on an annual basis. All transactions above and beyond these limits must take place as a result of public competitive bidding. However, the town public officer or employee would not be able to influence the bidding process in any way and must make known such interest in the official records of the town.

The Attorney General has concluded there is no statutory restriction on a school board member or employee from bidding on property being sold by the district, as long as the board member or employee publicly discloses such interest in the property sale and refrains from participating in any manner in the decision to sell the property.

Additional Provisions

The conflict of interest law also contains the following restrictions on the activities of public officers and employees which should be reviewed with the town attorney.

1. When a public officer or employee has exercised "administrative discretion" in an issue, that officer or employee cannot receive compensation if representing another person before an agency of the town on the same issue. This restriction extends to twelve months after termination of office or employment with the town.

2. A public officer or employee cannot use confidential information obtained during the term of office or employment for personal gain.
3. A public officer or employee of the town cannot receive any compensation for performance of services in any case, special proceedings, application or other matter pending before any agency of the town. This does not apply, however, to activities such as filing or amending tax forms, applying for permits, licenses or other documents.
4. A public officer or employee of the town cannot use his or her position to obtain anything of value which would normally 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 public official.

Declaration of a Conflict of Interest

When a substantial conflict exists, the public officer or employee must:

1. Refrain from voting or in any way influencing a decision of the governing body or agency of the town; and,
2. Make this conflict of interest known in the official records of the town. For a member of the council, board or commission, this can be done by declaring at a council, board or commission meeting that a conflict of interest exists and having this declaration officially entered into the minutes. For an employee who faces a conflict of interest situation, the employee should file a letter with the manager or clerk declaring in writing that a conflict exists and refrain from participating in the decision or issue.

Penalty

A public officer or employee who intentionally or knowingly conceals or fails to disclose any substantial interest or engages in any of the activities prohibited by Sections 38-503 through 38-505, Arizona Revised Statutes, is guilty of a class 6 felony, and upon conviction will automatically forfeit office. A class 6 felony carries a penalty of 1 1/2 years imprisonment or a maximum fine of \$150,000. A public officer or employee who negligently or recklessly violates the conflict of interest law by failing to disclose a substantial interest or engaging in the activities prohibited by Section 38-503 through 38-505, A.R.S. is guilty of a class 1 misdemeanor which is punishable by imprisonment for up to six months or a fine of not more than \$2500. Any person affected by a decision of a public agency where a conflict of interest is alleged may bring suit in superior court, and the court may order appropriate reimbursement including attorneys fees to the prevailing party. In addition, any contract made in violation of the law may be voided by action of the town. **When in doubt ask your town attorney!**



YOU AS A PUBLIC OFFICIAL

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Prepared by

League of Arizona Cities and Towns

1820 West Washington Street

Phoenix, Arizona 85007

(602) 258-5786

www.azleague.org

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INTRODUCTION

Congratulations on making the choice to serve your community as an elected official. As a mayor or member of your city or town council, you are putting into action the best principles of our form of government. You are continuing in the tradition of citizen lawmakers, people who are willing to give up their time and privacy, and apply their experience and knowledge to the business of making public policy choices for their communities.

Holding public office is an honor but it comes with certain legal responsibilities that can be a challenge. As an elected official, you need to know and understand the various Arizona laws that apply to your conduct in office and how to comply with them.

This report is designed to assist you in meeting that challenge. Seven topics are included: open meetings; conflict of interests; public records; incompatibility of offices; nepotism; financial disclosure; and limitations on entertainment. These laws apply not only to elected officials, but also appointed officials (city or town staff) with the exception of the final one - limitations on entertainment - which only applies to elected officials.

The life of a public official is not an easy one. In addition to the challenges of making good decisions for the future of your community, you must be careful to not violate state laws in the course of your service on the city or town council. These laws, like the seven highlighted in this report, continually affect the decision-making process. While very few public officials ever intend to violate the law in the conduct of their duties, good intentions alone (such as, "but I didn't **mean** to violate the law") are not enough. Even well-intentioned elected officials who violate the law may face stiff penalties. Therefore, it is in your own self-interest as well as the interest of your city or town to be familiar with the laws governing your conduct in public office.

We hope you will take the time to read this report and retain it for future reference. Most importantly we hope this report will prompt you to discuss each of these laws with your city or town attorney. This report is not intended to replace the need for you to review these laws with your local attorney; it's really only a starting point for discussion of your particular situation in your city or town.

OPEN MEETING LAW

GENERAL PROVISIONS¹ - The operation of government and the activities, decisions and policies of government officials are issues of concern to the general public. The public has a right to expect—and state law demands—adherence to an important and distinct principle: **THE PUBLIC'S BUSINESS MUST BE CONDUCTED IN PUBLIC!**

The Arizona Legislature has declared its policy concerning open meetings very clearly:

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this [law] shall construe any provision of this [law] in favor of open and public meetings.”²

State law requires that all public officials elected or appointed to a public body review Open Meeting Law materials prepared by the attorney general at least one day before taking office. The Open Meeting Law materials from the attorney general's office are to be posted on the public body's website.³

Arizona's Open Meeting Law (Law) provides very simply that, with a few limited exceptions, all meetings of a public body shall be open to all persons desiring to attend and listen to the deliberations and proceedings.⁴ The Law defines a "meeting" 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." The definition of a meeting also includes "electronic communications that propose legal action, including one-way communication from one member to a quorum of members of a public body or an exchange of electronic communications among a quorum of the public body."⁵ Technological devices include but are not limited to e-mail, website, blogs, tweets, Facebook, telephone and video conferences and similar technologies. The label attached to a particular meeting does not alter application of the Law. Whether the meeting is referred to as regular or special, workshop or study session, the Law's requirements must be met. A meeting may also occur when less than a quorum of the council discusses a matter of city or town business and one or more members later discusses the matter with another member of the council. The only exception to the public meeting requirement is an executive session, which is discussed later.

Members of the public body may express an opinion or discuss an issue with members of the public outside of a meeting without violating the Law. Examples of this would include a person to person conversation, through the media or other form of public broadcast communication or through technological means if the opinion or discussion is not principally directed at or directly given to another member of the public body, or if there is no concerted plan to engage in collective deliberation to take legal action.⁶ The attorney general has determined that an individual member of the public body may speak to the media about an issue that may come before the public body without violating the Law.⁷

"Public body" is defined as: "the Legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article."⁸

This broad definition includes planning and zoning commissions, boards of adjustment, state licensing boards, library boards, and school boards. It also includes advisory committees and subcommittees created by action of the mayor and council, even if no member of the original appointing public body is a member of the advisory group.⁹

PUBLIC NOTICES OF MEETINGS - The Law requires a public body to give advance notice of every public meeting and executive session to the general public and to each member of the public body. In giving notice, the first step is to conspicuously post on the city/town website or on the League's website a statement identifying where notices of the meetings of the public body will be posted, including physical and electronic locations.¹⁰

Once this statement has been posted, the Law requires the public body post notice of each of its meetings in accordance with the statement and "give such additional public notice as is reasonable and practicable."¹¹ Notice of individual meetings is not necessary if the public body intends to meet at a regular day, time, and place and chooses to post one notice of all of its meetings during a specified time period.¹² Such notice must be posted at the beginning of the period and specify the period covered.

Except in the case of an actual emergency, no public meeting or executive session may be held with less than 24 hours' notice to the general public and each member of the public body.¹³ The 24-hour period includes Saturday if the public has access to the physical posted location but excludes Sundays and holidays. The notice must include the date, time, and place of the meeting. If an executive session will be held, the notice must also cite the specific provision of law authorizing the executive session.¹⁴

There are three exceptions to the notice requirements outlined above. First, a meeting for which notice has been properly posted may be recessed and resumed with less than 24 hours' notice, although the date, time, and place of the resumed meeting must be announced prior to recessing the originally posted meeting or the method by which notice is to be given is announced publicly.¹⁵ Second, an emergency meeting may be held with less than 24 hours' notice in the case of an *actual* emergency. Such an emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequences that would result from waiting until the required notice could be given. Prior to the emergency discussion or action, the public body must give as much notice as possible, announce the nature of the emergency, include those reasons in the minutes of the emergency meeting, and post a public notice within 24 hours declaring that an emergency session has been held and setting forth the agenda items covered.¹⁶ Third, notice of a meeting to consider ratification of a prior act taken in violation of the Law requires at least 72 hours' advance notice.¹⁷

AGENDAS - In addition to notice of the date, time, and place of the meeting, the Law requires that the notice include either an agenda of the matters to be discussed, considered, or decided at the meeting, or information on how the public may obtain a copy of the agenda. The agenda for a public meeting must list the "specific matters to be discussed, considered or decided,"¹⁸ and should contain "such information as is reasonably necessary to inform the public of the matters to be discussed or decided."¹⁹ Such items as "new business" or "old business" are insufficient unless the specific items of new or old business are identified.

Agendas for executive sessions must contain a "general description of the matters to be considered" and must "provide more than just a mere recital of the statutory provisions authorizing the executive session," but the agenda should not contain information that "would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege."²⁰

The agenda may be made part of the public notice or, if the notice advises members of the public how they can obtain an agenda, then it can be distributed separate from the notice. In either case, the agenda must be made available at least 24 hours before the meeting, unless an actual emergency exists. The 24-hour period includes Saturday if the public has access to the physical posted location but excludes Sundays and holidays. Supporting documentation that is referred to in or made part of the agenda should be made available to the public in the same time frame to the extent possible. It may be appended to the actual agenda itself (provided the public can read it), or the agenda may advise the public where such supporting documentation can be obtained.

The agenda sets the parameters of what can be done during a public meeting. Only those items specifically listed on the agenda or matters related thereto may be discussed, considered, or decided.²¹ Two quasi-exceptions apply.

First, agendas may include a “summary of current events” item, during which any member of the public body or the chief administrator “may present a brief summary of current events without listing in the agenda the specific matters to be summarized.”²² However, the public body may not propose, discuss, deliberate, or otherwise take legal action on such a matter at that meeting, unless that particular matter also has been specifically identified on the posted agenda.

Second, a public body may (but is not required to) put an “open call to the public” on its agenda to allow members of the public to address the public body on matters not otherwise listed on the agenda. The public body may impose reasonable time restrictions on speakers during “call to the public.” However, the public may only raise issues within the jurisdiction of the public body, and members of the public body may not discuss or take legal action on new matters raised during an open call to the public. Members of the public body have four options: sit in silence or wait until “the conclusion of an open call to the public” and then respond to criticism, ask staff to review a matter, or ask that a matter be put on a future agenda so it can be discussed.²³ The best practice is to include language on the agenda that explains to the public that the council members are limited to these responses pursuant to the Law.

WEBSITE POSTINGS - All public notices of meetings held by any public body of a city or town that maintains a website must be posted on the website. If the city or town does not maintain a website, the information can be posted on the League’s website. The Open Meeting Law requires that cities and towns with populations in excess of 2,500 post on their website a statement showing legal actions taken by a city/town public body during a meeting (including how each member voted) or a recording of the meeting within three working days after the meeting. In addition, approved minutes of council meetings must be posted to the website within two working days of approval except for executive session minutes, which remain confidential. An exception to the time frame requirements is made for advisory committees and subcommittees. Those bodies must post a statement of legal action or a recording of their meeting within 10 working days of the meeting. Minutes must remain on the website for at least one year from the date posted and are subject to records retention requirements.

EXECUTIVE SESSIONS - The Law permits an executive session (a closed meeting) to be held only for seven limited purposes. In addition to the notice and agenda requirements set forth earlier, members of the public body must vote during a public meeting to agree to meet in executive session. The general public is properly excluded from an executive session. Only those “individuals whose presence is reasonably necessary in order for the public body to carry

out its executive session responsibilities may attend the executive session.”²⁴ The public body must instruct those present at the executive session that all matters discussed in the executive session, as well as the minutes, must be kept confidential.²⁵ Finally, no vote may be taken during an executive session. However, the public body may instruct its attorneys or representatives on the issues listed below under 4, 5, and 7. Any final action on an item discussed in an executive session must be taken when the public body reconvenes in a public meeting.²⁶

The only purposes for which an executive session discussion may be held are the following:

1. Personnel matters involving a specific position or individual (and these individuals must be given written notice at least 24 hours in advance in case they want to be discussed in open session).²⁷ The employee being discussed may be invited to attend but has no right to do so. Personnel matters are extremely sensitive, and there may be other laws and city charter provisions that will apply to these discussions. It is critically important that your legal counsel be consulted.
2. Confidential information specifically exempt by law from public inspection.
3. Legal advice provided by the public body's attorney.²⁸
4. Discussion with the public body's attorney regarding pending or contemplated litigation, settlement discussions to avoid or resolve litigation, or contract negotiations.
5. Instruction of designated representatives concerning salary and compensation negotiations with employee organizations.
6. International and interstate negotiations, and negotiations by a city or town with a tribal council located within or adjacent thereto.
7. Instruction of designated representatives concerning negotiations for the purchase, sale, or lease of real property.²⁹

Improper use of the executive session provision is one of the most common types of Open Meeting Law violations. Therefore, a public body, with the assistance of its attorney, should establish a clear procedure to use before holding an executive session.

MINUTES - All public bodies must take and retain written minutes or a recording of all meetings.³⁰ The minutes or a recording of all public meetings must include, at a minimum, the following:

1. The date, time, and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters discussed or considered.

4. An accurate description of all legal actions proposed, discussed, or taken, and the names of members who proposed each motion.
5. The names of persons making statements or presenting material to the public body and a reference to the specific legal action addressed by the person.
6. Sufficient information to permit further investigation of the background or specific facts of a decision if the discussion in the public session does not adequately disclose the subject matter and specifics of the action taken.
7. In case of an actual emergency, a statement setting forth the reasons necessitating a discussion, consideration, or decision without the matter being placed on an advance agenda.
8. In case of ratification, a copy of the required disclosure statement.

The minutes of executive sessions must contain the information described in 1, 2, 3, and 7 above, and an accurate description of all instructions given in an executive session and such other matters as may be deemed appropriate by the public body.³¹

The minutes or a recording of any meeting (*except* an executive session) must be available for public inspection no later than three working days after the meeting.³² In addition, for cities and towns with populations in excess of 2,500, a statement showing legal actions and votes taken by a city/town public body at a meeting must be posted within three days of the meeting and approved minutes of council meetings must be posted to the city/town website within two working days of approval except for executive session minutes which are confidential. Advisory committees and subcommittees have ten working days to post a statement of legal action or a recording of their meeting on the website.

Minutes must be taken in executive sessions and must be kept confidential except from the members of the public body that met in executive session; the officers, appointees, or employees who were the subject of discussion in a personnel executive session; the auditor general when conducting an audit; or the attorney general or county attorney when investigating alleged violations of the Law.³³ If the public body wishes to exclude all staff from attending the executive session, then the minutes should be kept or recorded by a member of the public body.

In addition to written or recorded minutes of the meeting, the Law provides that any part of a public meeting may be recorded by any person in attendance by means of a tape recorder, camera, or other means of sonic reproduction as long as there is no active interference with the conduct of the meeting.³⁴

E-MAIL AND OTHER SOCIAL MEDIA VIOLATIONS - The Law applies to all meetings of a public body, whether a quorum gathers “in person or through technological devices.”³⁵ Therefore, you should be extra careful when communicating with any other council members – even less than a quorum – via technology, such as by telephone or e-mail. This includes serial discussions where you communicate with one member and that member speaks to another, etc. Otherwise, you may find that you have violated the Law.

A “meeting” occurs when a quorum of a public body “gathers” and takes any one of four actions: discusses legal action, proposes legal action, takes legal action, or deliberates with respect to any such actions. The law states that the simple act of a public body member sending out a single e-mail to a quorum of the public body could violate the Law if the e-mail proposes legal action.³⁶ Moreover, “[t]hree of these activities [to discuss, deliberate, or take action] necessarily involve more than a one-way exchange between a quorum of a public body,” so even the simple act of a member of the public body responding to, exchanging, or otherwise circulating e-mails regarding legal action among a quorum could be interpreted as a violation of the Law.³⁷ Therefore, you should be extra cautious whenever communicating with other council members using e-mail or other technological devices.

To help public bodies comply with the Law, the attorney general recommended that, while it is not legally required, members of public bodies who send e-mails to each other might want to include the following language in their e-mail message to remind colleagues that replying or circulating an e-mail to others could be construed as discussing, deliberating, or taking legal action:

“To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other board (council) members and board (council) members should not reply to this message.”

For similar reasons, the attorney general advised that staff might want to use the following language:

“To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the public body. Members of the public body may reply to this message, but they should not send a copy of the reply to other members.”

Your city or town should adopt a policy governing social media and consider the provisions of the Open Meeting Law in drafting the policy. Discussions among members of a public body via blogs, tweets, Facebook and similar social media are subject to the Open Meeting Law in the same manner as e-mail.

RATIFICATION - A public body may ratify legal action that may have been taken in violation of the Law. Ratification is appropriate when the public body needs to validate retroactively a prior act in order to preserve the earlier effective date of the action.

Ratification merely validates the prior action. It does not eliminate liability of the public body or others for violation of the Law.

All legal action transacted during a meeting held in violation of the Law is null and void unless ratified. The procedure for ratification is prescribed in A.R.S. § 38-431.05(B). It is a detailed and complicated procedure that must be followed carefully, “within thirty days after discovery of the violation,” and with advice by the public body's attorney.

SANCTIONS - All legal action transacted by any public body during a meeting held in violation of the Open Meeting Law is null and void unless the ratification procedure discussed above is utilized.³⁸ However, the Open Meeting Law does not render null and void all legal action taken

at a meeting at which an Open Meeting Law violation occurs if the violation involves only a single improperly noticed agenda item.³⁹ The Law can be enforced against a member of a public body and any person who knowingly aids, agrees to aid, or attempts to aid in violating the Law.⁴⁰ Any person affected by an alleged violation, the attorney general, or the county attorney for the county in which an alleged violation occurred, may file an action and obtain civil penalties. If the court finds that a public officer (in this report the term “public officer” includes elected and appointed officials of a city or town) knowingly violated the Law, the court may remove the officer from office and assess him or her personally with the attorney's fee award. The court may impose a civil penalty of \$500 for the second violation and a penalty of \$2500 for a third or subsequent violation. Civil penalties assessed against the public officer cannot be paid or reimbursed to the public officer by the public body. The court may also exempt from liability a public officer who objected to any unlawful action taken by the public body if the objection was noted on a public record. Moreover, a member of a public body shall not direct staff to communicate in violation of the Law.⁴¹

In addition to enforcement of the Open Meeting Law by the attorney general's office, the state ombudsman-citizens aide has been given investigative authority for alleged violations of both the Open Meeting Law and Public Records Law. The ombudsman may investigate, hold hearings, and issue subpoenas if necessary to compel testimony or evidence when the city or town has failed to produce information when requested. The ombudsman's office is also charged with the responsibility of providing educational programs on both laws and providing educational materials regarding the public access laws.⁴²

CONFLICT OF INTERESTS

One of the most misunderstood phrases in the media today is: conflict of interests. The phrase carries such negative connotations, and yet it is only natural, in our system of part-time citizen legislators, for elected and appointed officials to face potential conflict of interests situations. It is not "bad" to have a conflict of interests, but it is illegal to fail to declare a conflict of interests under Arizona law or to participate or otherwise be involved in discussions on issues or contracts where such a conflict exists.

This portion of the report may help you identify potential conflicts of interests and how you may avoid violations of this state law, which is one of the most complicated set of laws on the books. To understand its effect on your actions we suggest you discuss the law and your particular situation with your own private attorney, or your city or town attorney. You should also discuss with relatives (see definition below) their various business dealings so you do not inadvertently discuss or vote on a matter where your relative has a substantial interest. FIND OUT AHEAD OF TIME WHAT YOUR CONFLICTS ARE!

APPLICABILITY - The Conflict of Interests Law covers all public officers and employees of incorporated cities and towns. This includes the mayor, council members, and members of all appointed boards and commissions (parks, planning and zoning, libraries, etc.); the city manager, his or her appointees, and all consultants; and full-time, part-time, and contractual employees of the city or town.

The Conflict of Interests Law is also applicable when the private interests of a public official's or public employee's relative are under consideration. The law broadly defines a relative to be not only a husband or wife, child, grandchild, parent, grandparent, brother or sister (and their spouses) but also the following in-laws: brothers, sisters, parents, and the child of a spouse.⁴³ All other relatives, whether by blood or marriage, are not subject to the restrictions of this law.

CONFLICT OF INTERESTS DEFINED - The Conflict of Interests Law distinguishes between interests that are "remote" and those that are "substantial."⁴⁴

Essentially what it says is that remote interests are so minor that they do not constitute illegal conflicts of interests, and that any interest which is not remote, as detailed in state law, is a substantial interest. If you have only a "remote interest" in a matter before the council, then you can vote and participate in the discussion. Here is what the law defines as a remote interest.

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

1. A nonsalaried officer or member of a nonprofit corporation. Thus, being a nonsalaried officer or a member of a nonprofit health agency doing business or requesting a grant from the city or town technically would not constitute a conflict.
2. The landlord or tenant of a contracting party. For example, a council member may lease office space to a party that has a private interest in a public matter without it resulting in a conflict of interests.
3. An attorney of a contracting party. For attorneys who serve on council or as a member of any other public body or as employees of a public body there may be State Bar ethics rules, which could restrict their actions.
4. A member of a nonprofit cooperative marketing association.
5. The owner of less than 3 percent of the shares of a corporation with an interest in a matter with the city or town, provided that:
 - a. Total annual income from dividends, including the value of stock dividends, does not exceed 5 percent of the officer's or employee's total annual income; and
 - b. Any other payments made to the officer or employee by the corporation do not exceed 5 percent of the officer's or employee's total annual income.
6. Being reimbursed only for actual and necessary expenses incurred in performance of official duties.
7. Receiving municipal services on the same terms and conditions as if the person were not an officer or employee of the municipality. Thus, when a council member who owns a business within the city or town votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.

8. An officer or employee of another political subdivision, a public agency of another political subdivision, or any other public agency unless it is the same governmental entity being served who is voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a council member who is a school teacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the council member.
9. A member of a trade, business, occupation, profession, or class of persons and has no greater interest than the other members of that trade, business, occupation, profession, or class of persons. A class must consist of at least 10 members to qualify the interest as remote.
10. A relative who is an employee of any business entity or governmental entity that employs at least twenty-five employees within this state and who, in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.
11. The ownership of any publicly traded investments that are held in an account or fund, including a mutual fund, that is managed by one or more qualified investment professionals who are not employed or controlled by the officer or employee and that the officer or employee owns shares or interest together with other investors.

SUBSTANTIAL INTEREST is defined in this law as any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than those that are remote.⁴⁵ In general, a conflict of interests will result when an officer or employee of a city or town or relative of an officer or employee is involved in substantial ownership or salaried employment with a private corporation doing business with the city or town. For example, if a council member owns or is employed by a lumberyard selling to the city, then a conflict may exist. On the other hand, if the council member is the lawyer for that lumberyard, or if the council member leased land to the lumberyard, then it is possible that no conflict exists.

A public officer or an employee may sell equipment, material, supplies, or services to the municipality in which the officer or employee serves if this is done through an award or contract let after public competitive bidding.⁴⁶ An exception to this law allows cities and towns to purchase supplies, materials, and equipment from a member of the council without going to public competitive bid as long as the single transaction does not exceed \$300 and the annual total of such transactions with a member of the council does not exceed \$1,000.⁴⁷ The city or town must adopt a policy governing such purchases and must approve this policy on an annual basis. All transactions above these limits must take place as a result of public competitive bidding. However, the city or town officer or employee would not be allowed to influence the bidding process in any way and must make known in a timely manner such interest in the official records of the city or town.

The attorney general has concluded that there is no statutory restriction on a school board member or employee bidding on property being sold by the district, as long as the board member or employee publicly discloses such interest in the property being sold and refrains from participating in any manner in the decision to sell the property.⁴⁸

ADDITIONAL PROVISIONS - The Conflict of Interests Law also contains the following restrictions on the activities of public officers and employees that should be reviewed with your city or town attorney.

1. When a public officer or employee has been directly concerned or has exercised "administrative discretion" in an issue, that officer or employee may not represent another person before an agency of the city or town on the same issue and receive compensation for such representation. This restriction extends to 12 months after termination of office or employment with the city or town.⁴⁹
2. During the period of a public officer's term or employee's employment and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties that has been clearly designated to the officer or employee as confidential and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee cannot disclose or use confidential information obtained during the term of office or employment.⁵⁰
3. A public officer or employee cannot receive any compensation (other than as provided by law) for performance of services in any case, special proceeding, application, or other matter pending before any agency of the city or town.⁵¹
4. A public officer or employee 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 public official.⁵²

The State Bar of Arizona has placed another restriction on local elected officials who are lawyers. The State Bar ruled that attorneys on city or town councils cannot represent clients in the city or town's courts.⁵³ However, the Arizona Supreme Court has ruled that attorneys on city and town councils may represent clients in superior court in cases that involve members of the police department in such council member's city as adverse witnesses.⁵⁴

DECLARATION OF A CONFLICT - When a public officer or employee (or their relative) has a substantial interest in any decision of, or contract, sale, purchase, or service, to their city or town, the public officer or employee must:

1. Refrain from participating in any manner (voting, discussing, or in any way attempting to influence) in their capacity as an officer or employee a decision of the governing body or agency of the city or town; and
2. Make the substantial interest known in the official records of the city or town. For a member of the council, this can be done by either declaring at a council meeting that a conflict of interests exists and having this declaration officially entered in the minutes or filing a written declaration with the city or town clerk. For an employee who faces a conflict of interests situation, the employee should file a letter with the manager or clerk declaring in writing that a conflict exists. Both officers and employees with a substantial interest must refrain from

participating in any manner as an officer or employee in the decision or issue.⁵⁵ As a best practice, you should file notice with the clerk as soon as you become aware of the conflict.

The provisions of state law relating to conflict of interests, specifically the requirement that members of the council refrain from participating in or attempting to influence a decision in which they have a substantial interest, may preclude the council from acting as required by law in its official capacity. For example, this situation may occur when a majority of the members of the *entire* council (not just those present at a particular meeting) have a substantial conflict of interests. To address this potential problem, state law provides that if the conflict of interests statutes prevent a public body from acting as required by law in its official capacity, such action shall be allowed if the members of the public body with the apparent conflicts make known their substantial interests in the official records of the public body.⁵⁶ For example, each affected council member should state that he or she has a substantial interest in the issue before the council, and then make sure it is recorded in the official minutes of the meeting. Such statement should be made at the beginning of any discussion of the issue by the council. This process can be tricky, so seek legal counsel before proceeding.

LEGAL OPINIONS - If you ask your city or town attorney for an opinion on conflict of interests, the request is confidential. However, formal final opinions are a matter of public record and must be filed with the city or town clerk.⁵⁷ This filing requirement does not apply to verbal communications between a mayor or council member and the city/town attorney. In addition, no city/town public officer or employee is personally liable for acts done in his official capacity in good faith reliance on written opinions of the city or town attorney of the city or town where they serve.

FILING OF DISCLOSURES - The clerk must maintain a special file for all disclosures of conflicts of interests. One method to comply with this requirement would be to place a separate copy of the council meeting minutes when a conflict is declared in a special file labeled "Conflict of Interests Disclosures."

PENALTIES - A public officer or employee who intentionally or knowingly conceals or fails to disclose any substantial interest or engages in any of the activities prohibited by A.R.S. § 38-503 through 38-505, is guilty of a class 6 felony, plus a conviction will automatically forfeit office. A public officer or employee who negligently or recklessly violates the Conflict of Interests Law by failing to disclose a substantial interest or engaging in the activities prohibited by A.R.S. § 38-503 through 38-505, is guilty of a class 1 misdemeanor. Any person affected by a decision of a public agency where a conflict of interests is alleged may bring a civil suit in superior court, which may order equitable relief including attorney's fees to the prevailing party. In addition, any contract made in violation of the law may be voided by action of the city or town.⁵⁸ **WHEN IN DOUBT ABOUT POTENTIAL CONFLICTS, ASK YOUR ATTORNEY!**

PUBLIC RECORDS ⁵⁹

Arizona's Public Records Law is an odd paradox. On the one hand, the sweeping language of its core provisions makes the law appear to be straightforward and simple. On the other hand, the hundreds of exceptions in other statutes and judicial decisions can make application of the law rather complex at times. Given this unique blend of simplicity and complexity, you should learn

the following basics, but then seek immediate assistance if you directly receive a request for public records.

SIMPLE AND SWEEPING - Arizona's Public Records Law commands that "[p]ublic records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours."⁶⁰ The law applies to, among others, officers of cities and towns.⁶¹ The definition of "public records" is quite sweeping, so the law reaches not only paper items (including "all books, papers, maps, photographs or other documentary materials"), but also all other information "regardless of physical form or characteristics, including ... items produced or reproduced on film or electronic media."⁶² E-mail generated or maintained on a government e-mail system are public records but purely personal e-mails may be exempted from disclosure.⁶³ Likewise, e-mails on a personal computer relating to official business may also be public records. Use of social media such as Facebook and Twitter may also create public records depending on the subject matter. The recommendation for a social media policy for compliance with the Open Meeting Law applies to the Public Records Law as well. Assume anything you make a record of, in any format, related to your position as a public officer or employee is a public record.

The Arizona Supreme Court has ruled that a public record maintained in an electronic format includes not only the information normally visible upon printing the document but also any embedded metadata.⁶⁴ The court has also indicated if the record is maintained electronically, in most cases it must be provided in that format.

Sometimes the law specifically details what is a public record. For example, disciplinary records involving public officers or employees of a public body must be open to inspection and copying unless inspection or disclosure of the records or information in the records is contrary to law.⁶⁵ Importantly, if any doubts exist about whether a member of the public can see a particular document, courts have declared that public records are "presumed open to the public for inspection."⁶⁶

COMPLEX MAZE OF EXCEPTIONS - That presumption of openness, however, is just a presumption and not an absolute rule. Indeed, the Arizona Supreme Court has recognized three sets of exemptions to the sweeping presumption of openness: when confidentiality restrictions apply, when privacy interests of individuals outweigh the public's right to know, or when the best interests of the government outweigh the public's right to inspection.⁶⁷

First, Congress and the Legislature have enacted hundreds of confidentiality exceptions to the Public Records Law. Often buried in obscure niches of federal and state statute books, these confidentiality restrictions usually are designed to protect the public at large (*e.g.*, prevent disclosure of the vulnerability of certain facilities to sabotage or attack),⁶⁸ guard the safety of certain individuals (*e.g.*, prevent disclosure of the home addresses and telephone numbers of a long list of public officials including judges, prosecutors, public defenders, peace officers, border patrol agents, code enforcement officers, law enforcement support staff and victims of domestic violence, stalking, or harassment),⁶⁹ and protect against identity theft (*e.g.*, prevent disclosure of social security numbers).⁷⁰ Note that you do not have independent authority to promise that documents will be protected as confidential.⁷¹

Secondly, privacy interests may protect certain information in public records from being released. For example, the Arizona Supreme Court declared that a public teacher's birth date could be withheld from public inspection, based on the court's recognition that such personal identifying information could be combined with other information, which in turn could lead to identity theft.⁷²

Finally, a record may be withheld from public inspection when disclosure would be detrimental to "the best interest" of the government. The Arizona Court of Appeals clarified this otherwise broad exemption when it noted that while "public records are presumed open to the public for inspection," certain records may be withheld if "the public official can demonstrate a factual basis why a particular record ought not be disclosed to further an important public or private interest."⁷³ Note that the burden is on the public official to prove that the record should be kept from the public rather than on the person seeking the record.

STEPS TO COMPLY - Public officials should keep the following seven steps in mind to comply with public records requests.

Step One: Properly Maintain Public Records. Arizona law imposes duties on public officers even before they receive a request to produce public records for inspection. For example, the law mandates that "[a]ll officers and public bodies shall maintain all records ... reasonably necessary or appropriate 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."⁷⁴ Moreover, "[e]ach public body shall be responsible for the preservation, maintenance and care of that body's public records and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to" an authorized document retention policy.⁷⁵

Step Two: Seek Assistance. With the exceptions to the Public Records Law ever evolving and sometimes "hidden" in statute books and judicial decisions, application of Arizona's Public Records Law can be complex. Therefore, if you ever receive a request for a public record, then the best practice is to seek help immediately from staff members who are more familiar with the law. Staff members, in turn, should contact their legal counsel for guidance to avoid problems.

Step Three: Receiving a Public Records Request. The law allows "any person" to request access to a public record. Importantly, the law does not require people to identify themselves when they are seeking access to public records. Nor do they have to identify why they want to see the record although you may confirm that that request is not for a commercial purpose.

Step Four: Act "Promptly." The law declares that "[a]ccess to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record," although the law does not define precisely what "promptly" means.⁷⁶ Denying access to a public record exposes the public body to liability, so reasonable efforts must be made to provide the requested documents "promptly."

Step Five: Inspection and Copying. Members of the public actually have rights relating to public records. They have a right to "inspect" those documents, which essentially means they may "examine" or "look at" the requested records.⁷⁷ (A court still may review the withheld

documents and order them disclosed.) If a person wants, they are entitled to get “copies, printouts or photographs” of the records, which must be provided “promptly.” As noted above if the records are maintained electronically, they must be provided electronically.

Certain records may contain information that legitimately should be withheld from public inspection. In those situations, the information that is confidential, private or harmful to the best interest of the government should be withheld but the rest of the record should be made available to the person requesting the public record.⁷⁸

Step Six: Recovering Costs. Searching for and making copies of public records costs time and money. The law recognizes two categories of requestors and limits what each may be charged. When a person requests public records for a “commercial purpose” – for example, obtaining lists of names to try to sell insurance – then the public body may charge a “reasonable fee” for both the time searching for the records and the actual cost of the copying.⁷⁹ When, however, the request is not for a commercial purpose, then the public body may charge only for the cost of the copying; it is not authorized to charge for the cost of searching for the records. There is an exception to the right to impose any charge for records and it covers crime victims. A victim of a crime or the immediate family of the victim if the victim is killed or incapacitated is entitled to a free copy of the police report from the investigative law enforcement agency as well as the minute entry or portion of any court proceeding which is necessary for the person to pursue a claimed victim’s right.⁸⁰ There is also an exception for issuing certified copies of public records or searching for them when they are to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits to be received from the United States.⁸¹

Note: Because of the First Amendment, requests by journalists are not considered to be for a commercial purpose.

Step Seven: Mailing. The law allows a person to “request that the custodian mail a copy of any public record not otherwise available on the public body’s website to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges.”⁸²

VIOLATIONS - Violations of the Public Records Law 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, for example, 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,⁸³ or overcharging for copies of public records.⁸⁴ The court may award attorney’s fees and other legal costs that are reasonably incurred in any action under the Public Records Law if the person seeking public records has substantially prevailed.⁸⁵ Additionally, “[a]ny person who is wrongfully denied access to public records pursuant to this article (the Public Records Law) shall have a cause of action against the officer or public body for any damages resulting from the denial.”⁸⁶

“Personal” violations occur when, for example, a public officer or employee releases confidential information that is protected from disclosure by statute,⁸⁷ steals or in an unauthorized way removes, secretes, mutilates, or defaces a public record,⁸⁸ or otherwise “tampers with a public record” by destroying, altering, or falsifying a public record.⁸⁹ The penalties for personal violations can range from removal from office and imposition of civil penalties to being convicted of a class 4, 5, or 6 felony.

PRACTICAL TIPS - To avoid problems, you might want to keep the following three tips in mind. First, whenever creating documents (including informal writings, such as e-mail, which are subject to the Public Records Law⁹⁰), 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.

Secondly, don’t “tamper” with a public record – by destroying it, backdating it, hiding it, altering it (such as erasing or changing portions of it), or otherwise falsifying it. Each of these acts is a crime in Arizona. Redaction of confidential portions of a record may be permissible, but you should consult with your city or town attorney on what is appropriate.

Thirdly, whenever you receive a request for a public record, it is a sound practice to immediately seek help from staff.

INCOMPATIBILITY OF OFFICES

On many occasions, local officials have asked the League whether a public official may hold two or more public offices at one time. In response to these requests, we compiled the following information to help in determining when two or more public offices may be incompatible.

EARLY CONCEPTS OF INCOMPATIBLE OFFICES - Arizona's law prohibiting the holding of incompatible offices can be traced, in large part, to early English common law. Offices were said to be incompatible or inconsistent if:

1. The main duties of the two offices could not be carried out with care and ability; or
2. One office is subordinate to and interferes with the other office such that the duties of the two offices cannot be performed at the same time with "impartiality and honesty."

Very few laws, if any, have been based upon the first principle. Apparently, it has been difficult to determine when an individual fails to execute the duties of two public offices with "care and ability." The second principle mentioned above has been the basis for most Arizona law on the incompatibility of public offices.⁹¹

STATE LAWS AND INTERPRETATIONS - From Arizona’s Constitution and statutes, and interpretations by the attorney general and the League's general counsel, we have compiled a list of legal provisions focusing on the issue of incompatible public offices.

ARIZONA STATE CONSTITUTION

1. No member of the Legislature may hold any other office or be employed by the state or any county, city, or town, except a legislator may also be a school board member or a teacher.⁹²
2. Incumbents of a salaried elective office may not "offer" themselves for nomination or election to any salaried local, state, or federal office unless during the final year of their term. However, an incumbent may resign and then run for another office.⁹³
3. Justices of the peace may hold the additional position of police magistrate in incorporated cities and towns.⁹⁴

STATE STATUTES

1. A public official may not hold two salaried public offices at the same time. However, elected officials in the final year of their term of office may offer themselves for nomination to another elected office. The point in time at which an elected official is determined to have offered herself or himself for nomination or election to another public office is upon the filing of nomination papers or upon formal declaration of candidacy for such office, whichever occurs first.⁹⁵
2. Mayors, aldermen, or council members cannot receive any compensation from the city or town during the term of office for which they were elected in addition to the compensation paid to them as elected officials.⁹⁶ As a result, city and town elected officials cannot hold any other paid public office with the city or town. In the opinion of our League general counsel, this provision also prevents a mayor or council member from resigning office and accepting another compensated position with the municipality prior to the end of the term of office for which the person was elected.⁹⁷
3. Public defenders employed by the county may also serve as public defenders for a city or town. State law requires the city or town to reimburse the county for the public defender's services.⁹⁸
4. Members of the State Personnel Board and most state employees cannot be candidates for nomination or be elected to any paid public office, nor may they take part in managing a political party or political campaign.⁹⁹ Certain state employees are exempted from these restrictions, so we suggest that you discuss individual cases with your city or town attorney.
5. A person may not be a candidate for more than one public office if the elections for the offices are held on the same day and the person would be prohibited from serving both positions simultaneously.¹⁰⁰

CITY CHARTER PROVISIONS - If you are holding office in a charter city, there may be additional limitations placed on your ability to hold other public offices. We suggest you consult the charter or your city attorney on any such provisions.

ATTORNEY GENERAL OPINIONS - The attorney general has issued a number of opinions on the topic of incompatibility of office. Of particular interest to cities and towns:

1. State employees subject to the State Personnel Commission may not hold the position of city or town council member, if the council position is compensated.¹⁰¹
2. The positions of school board member and council member could be held by the same individual because the school board position was uncompensated.¹⁰²
3. A legislator may not assume an elective office in a charter city during the legislative term for which he or she was elected.¹⁰³
4. The duties of a county supervisor are not inherently inconsistent with the duties imposed on a member of the Arizona Board of Regents.¹⁰⁴

LEAGUE GENERAL COUNSEL OPINIONS - The League's general counsel has been requested on a number of occasions to issue opinions on possible instances of incompatible offices. The following is a list of these opinions:

1. One individual in a non-chartered city cannot hold the positions of mayor and city or town magistrate at the same time.¹⁰⁵
2. The compensated positions of city alderman and volunteer fireman could not be held at the same time by one individual because aldermen can only receive the specific compensation designated by law for their service as aldermen.¹⁰⁶
3. A magistrate, during absence from his post, may request another magistrate or justice of the peace from a neighboring city or town to serve in his post. The city or town should, however, adopt an ordinance authorizing this arrangement.¹⁰⁷
4. The general counsel of the League also suggests that the offices of town manager and police magistrate not be held by one individual.

Before an employee accepts another public office, local ordinance provisions and personnel rules and regulations should be consulted. For particular employees there may be departmental regulations that also govern such activities.

NEPOTISM

As a city or town official, you must exercise caution when your relatives are being considered for appointment to offices or positions of employment with the city or town. Arizona's anti-nepotism statute prohibits public officials from appointing their relatives to offices or positions of employment compensated from public funds.¹⁰⁸

Specifically, any executive, legislative, ministerial, or judicial officer cannot appoint or vote for (or even suggest, arrange, or be a party to) the appointment of a relative who is related by blood or marriage "within the third degree" to a paid office or position of employment. Public officers of a city or town subject to this restriction would include mayors, council members, appointed officials, and department heads.

As mentioned above, the law prohibits the appointment of relatives by blood or marriage "within the third degree." To apply this law accurately, there is a method to compute whether a person is related within what is legally defined as the "third degree." In summary, this method of computation would prohibit a public officer from appointing or participating in the appointment of the following in-laws or blood relatives: a husband or wife, brother or sister, parent or child, great grandparents, grandparents, grandchildren, great grandchildren, uncles or aunts, and nephews or nieces.¹⁰⁹ To illustrate, the attorney general found that the wife of a justice of the peace could be appointed by her husband to perform the function of setting bail.¹¹⁰ This opinion was based in part on the fact that the public official's wife was not compensated for these duties. In another attorney general's opinion a justice of the peace could not appoint his wife's sister to a compensated position of clerk without violating this law.¹¹¹

One important question is whether a city or town employee can continue employment after a relative within the third degree has assumed a position on the city or town council or some other position with appointment authority. In addressing a situation of this nature, the general counsel of the League was of the opinion that an employee could continue employment even though a relative was elected to the city or town council.¹¹² However, if a situation arises where the employee's appointment or reappointment is placed before the council, the relative on the council should not participate in any way in that decision.¹¹³

The council-manager form of government or the existence of a merit system also affect the application of the anti-nepotism law because the law does not prohibit the appointment or employment of a relative, but rather governs the participation of the related public official in the decision-making process. If there are questions that relate to nepotism, we suggest that you discuss these with your local city or town attorney. In most instances, questions of nepotism can be clarified quickly due to the precise nature of this law.

FINANCIAL DISCLOSURE

State law requires elected officials, including those appointed to elective office, to file an annual financial disclosure statement.¹¹⁴ Since 1984, cities and towns have been required to adopt standards of financial disclosure consistent with the standards imposed for state elected officials.¹¹⁵

The annual financial disclosure statement is due each year on January 31 covering the immediately preceding calendar year. The city or town clerk should make the forms available to meet this filing requirement.¹¹⁶ Candidates for city or town office must file the financial disclosure statement covering the preceding 12-month period when nomination papers are filed.¹¹⁷

The law requires elected public officials to disclose personal financial data including information on members of the "household" (defined as the public official's spouse and any minor child of whom the official has legal custody). Information on business holdings is required under certain circumstances. Property owned by the official or a member of the official's household must also be reported (with certain exceptions).

The report must be filed with the city or town clerk and is available for public inspection. Failure to file or filing a false or incomplete financial disclosure statement, if done knowingly, is a class 1 misdemeanor.¹¹⁸

LIMITS ON ENTERTAINMENT

In 2000, the Legislature extended part of the state’s lobbying laws to prohibit certain entertainment for local officials if paid by compensated lobbyists. The law provides that it is illegal for a compensated lobbyist to offer and for a member of a city or town council (as well as other local governing bodies) to accept “an expenditure or single expenditure for entertainment.”¹¹⁹

Careful attention to these three parts – the giver, the recipient, and the outlawed gift – is important because violations may result in criminal and civil penalties.¹²⁰ As for the giver, the law applies to “a person who for compensation attempts to influence the passage or defeat of legislation, ordinances, rules, regulations, nominations and other matters that are pending or proposed or that are subject to formal approval by the corporation commission, a county board of supervisors, a city or town governing body or a school district governing board or any person acting on that person's behalf.” So even if the people offering entertainment do not call themselves “lobbyists,” the law still applies if they are compensated to do any of the things listed. Next, as for the receiver, the law applies in the city and town context to city/town elected officials (whether elected or appointed), but not directly to city or town staff (although local ordinances or policies might).¹²¹

Third, the law prohibits giving or receiving “entertainment,” which is defined to mean “the amount of any expenditure paid or incurred for admission to any sporting or cultural event or for participation in any sporting or cultural activity.”¹²² As written, the ban prohibits not only receiving tickets to attend a sporting or cultural event, but also having a compensated lobbyist pay for your participation in any cultural or sporting event. In other words, a compensated lobbyist may not offer – and council members cannot accept – tickets to sporting or cultural events (such as baseball, basketball, football, hockey, or soccer, or any other sports at any level – professional, college, or local – or art gallery, ballet, movie, opera, theater, or anything else). Nor may they offer to pay or you allow or accept their payment for your “participation” in “sporting or cultural” activities such as golf, fishing, hunting, bowling, yoga, painting, ballet, or any other activity.

CONCLUSION

Accepting a position as a public official may introduce a number of complex and confusing legal situations into an individual's life. This report has tried to shed some light on selected areas of law that place restrictions and requirements on the activities of public officials in Arizona cities and towns. If the report has raised questions, please do not hesitate to contact the League office. However, we emphasize the importance of consultation with your personal attorney or the city or town attorney on specific questions regarding all of the subjects discussed in this report.

ENDNOTES

1. To read the state statutes on the Open Meeting Law see A.R.S. § 38-431 through 38-431.09.
2. A.R.S. § 38-431.09.
3. A.R.S. § 38-431.01(G). The Open Meeting Law information from the attorney general's office can be accessed at www.azag.gov and on the city/town website. The Arizona ombudsman - citizens' aide office also produces a helpful publication on the requirements of the Open Meeting Law. It can be accessed at www.azoca.gov.
4. A.R.S. § 38-431.01(A). The Open Meeting Law grants the public the right to attend and listen to a public body's deliberations and proceedings. See Attorney General Opinions I83-049 and I84-133. This includes the right to know exactly how each individual council member votes on an issue. A.R.S. § 38-431.01(B).
5. A.R.S. § 38-431(4).
6. A.R.S. § 38-431.09.
7. Ariz. Att'y Gen. Op. I07-013.
8. A.R.S. § 38-431(6).
9. A.R.S. § 38-431; For a discussion of the applicability of the Open Meeting Law to special boards created by political subdivisions see Ariz. Att'y Gen. Op. I07-001.
10. A.R.S. § 38-431.02(A).
11. A.R.S. § 38-431.02(A)(4).
12. A.R.S. § 38-431.02(F).
13. A.R.S. § 38-431.02(C).
14. A.R.S. § 38-431.02(B).
15. A.R.S. § 38-431.02(E).
16. A.R.S. § 38-431.02(D) & (J).
17. A.R.S. § 38-431.05(B)(4).
18. A.R.S. § 38-431.02(H).
19. A.R.S. § 38-431.09; *see* Ariz. Att'y Gen. Op. I83-56. The Open Meeting Law does not specifically prohibit a public body from considering agenda items in an order different from that appearing on the agenda. However, when changing the order of discussion, it must be done in a way that is not designed to deny any member of the public the opportunity to listen to the discussion of any agenda item.
20. A.R.S. § 38-431.02(I).
21. A.R.S. § 38-431.02(H).
22. A.R.S. § 38-431.02(K).

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23. A.R.S. § 38-431.01(H).
 24. A.R.S. § 38-431(2).
 25. A.R.S. § 38-431.03(C).
 26. A.R.S. § 38-431.03(D); *see Johnson v. Tempe Elementary School Dist. Governing Board*, 199 Ariz. 567, 20 P.3d 1148 (2001) (dismissing a public body's appeal as improper when the public body instructed its attorney in an executive session to file an appeal but then failed to confirm that instruction in public with a proper formal vote).
 27. A.R.S. § 38-431.03(A).
 28. Only legal advice, not policy discussions, may be discussed; *see City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 803 P.2d 891 (1990).
 29. *See Tanque Verde Unified School Dist. v. Bernini*, 206 Ariz. 200, 76 P.3d 874 (2003) (affirming that a public body violated the Open Meeting Law by conducting a site selection process in an executive session).
 30. A.R.S. § 38-431.01(B).
 31. A.R.S. § 38-431.01(C).
 32. A.R.S. § 38-431.01(D).
 33. A.R.S. § 38-431.03(B).
 34. A.R.S. § 38-431.01(F).
 35. A.R.S. § 38-431(4).
 36. A.R.S. § 38-431(4). *See* Ariz. Att'y Gen. Op. I05-004 ("Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML (Open Meeting Law) requirements. ... While some one-way communications from one board member to enough members to constitute a quorum would not violate the OML, an e-mail by a member of a public body to other members of the public body that proposes legal action would constitute a violation of the OML.").
 37. Arizona Agency Handbook § 7.5.2 (Rev. 2018). ("Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions.... Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss the topic that is or may be presented to the public body for a decision.")
 38. A.R.S. § 38-431.05(A).
 39. Ariz. Att'y Gen. Op. I08-001.
 40. A.R.S. § 38-431.07(A).
 41. A.R.S. § 38-431.01(I).
 42. A.R.S. § 41-1376.01.
 43. A.R.S. § 38-502(9).

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44. Compare A.R.S. § 38-502(11) (“substantial interest”) and 38-502(10) (“remote interest”); *see also* Ariz. Att’y Gen. Op. I85-052.
 45. A.R.S. § 38-502(11); *see* Ariz. Att’y Gen. Op. I03-005.
 46. A.R.S. § 38-503(C). *see* Ariz. Att’y Gen. Op. 70-5, 79-067, 79-133, I06-002; General Counsel Opinion May 18, 1979, and letter dated October 23, 1984 from attorney general to Town of Parker.
 47. A.R.S. § 38-503(C)(2).
 48. Ariz. Att’y Gen. Op. I85-067.
 49. A.R.S. § 38-504(A).
 50. A.R.S. § 38-504(B).
 51. A.R.S. § 38-505.
 52. A.R.S. § 38-504(C).
 53. State Bar Ethics Opinion No. 74-28.
 54. *See Gomez v. Superior Court*, 149 Ariz. 223, 717 P.2d 902 (1986).
 55. A.R.S. § 38-503(A) & (B).
 56. A.R.S. § 38-508.
 57. A.R.S. § 38-507.
 58. A.R.S. § 38-506; *see also* A.R.S. § 38-511.
 59. *See* Arizona Agency Handbook prepared by the attorney general’s office (www.azag.gov) and Arizona Public Records Law prepared by the office of the Arizona ombudsman-citizens’ aide (www.azoca.gov).
 60. A.R.S. § 39-121.
 61. A.R.S. § 39-121.01(A).
 62. A.R.S. § 41-151.18.
 63. *Griffis v. Pinal County*, 156 P.3d 418, 215 Ariz. 1 (2007).
 64. *David Lake v. City of Phoenix*, 218 P.3d 1004, 222 Ariz. 547 (2009).
 65. A.R.S. § 39-128.
 66. *Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242 (1984).
 67. *Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242 (1984).
 68. A.R.S. § 39-126.
 69. A.R.S. §§ 11-483, 16-153 39-123(A).
 70. 42 U.S.C. § 405(C)(2)(c)(ii) (viii)(I); A.R.S. § 44-1373.
 71. *Moorehead v. Arnold*, 637 P.2d 305, 130 Ariz. 503 (Ariz. App. 1981).

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72. *Scottsdale Unified School Dist. v. KPNX Broadcasting*, 191 Ariz. 297, 955 P.2d 534 (1998); *Judicial Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 267 P.3d 1185 (Ariz. App. 2011).
 73. *Star Publishing Co. v. Pima County Attorney's Office*, 891 P.2d 899, 181 Ariz. 432 (Ariz. App. 1994).
 74. A.R.S. § 39-121.01(B).
 75. A.R.S. § 39-121.01(C).
 76. A.R.S. § 39-121.01(D)(1), (E); *see Phoenix New Times, L.L.C. and John Dougherty v. Joseph M. Arpaio*, 217 Ariz. 533, 177 P.3d 275 (2008); *West Valley View, Inc. v. Maricopa County Sheriff's Office*, 165 P.3d 203, 216 Ariz. 225 (Ariz. App. 2007); *McKee v. Peoria Unified School District*, 236 Ariz. 254, 338 P.3d 994 (Ariz. App. 2014); *Congress Elementary School Dist. No. 17 of Yavapai County v. Warren* 227 Ariz. 16, 251 P.3d 395 (Ariz. App. 2011).
 77. A.R.S. § 39-121.01(D)(1).
 78. *Carlson*, 687 P.2d at 1243-1246 (“a practical alternative to the complete denial of access would be deleting specific personal identifying information, such as names”); *see also Cox Arizona Publications v. Collins*, 175 Ariz. 11, 852 P.2d 1194, 1198 (1993)(finding that the county attorney violated the Public Records Law by withholding public records without offering to redact portions and producing the rest for inspection).
 79. A.R.S. § 39-121.03 (explaining what may be charged for commercial copies).
 80. A.R.S. § 39-127.
 81. A.R.S. § 39-122.
 82. A.R.S. § 39-121.01(D)(1).
 83. *Star Publishing Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899 (1994).
 84. *Hanania v. City of Tucson*, 128 Ariz. 135, 624 P.2d 332 (1981).
 85. A.R.S. § 39-121.02(A), (B); *Democratic Party of Pima County v. Ford* 228 Ariz. 545, 269 P.3d 721 (Ariz. App. 2012).
 86. A.R.S. § 39-121.02(C).
 87. A.R.S. §§ 39-124, 13-2401.
 88. A.R.S. § 38-421.
 89. A.R.S. § 13-2407.
 90. Ariz. Att’y Gen. Op. I05-004 at 10 (“E-mails that board members or staff generate pertaining to the business of the public body are public records.] Therefore, the e-mails must be preserved according to a records retention program and generally be made available for public inspection.”).
 91. 3 McQuillin Mun. Corp. § 12:12(3d ed.); *see Ari. Att’y Gen. Op.* 76-41.

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92. Arizona Constitution, Article IV, Part 2, Section 5; Ariz. Att’y Gen. Op. 77-221.
 93. Arizona Constitution, Article XXII, Section 18; *see* A.R.S. § 38-296.
 94. Arizona Constitution, Article VI, Section 32. Justice of the peace and magistrate courts are not courts of record and would not be subject to the restriction of Article VI, Section 28 of the Constitution.
 95. A.R.S. § 38-296.
 96. A.R.S. § 9-304.
 97. General Counsel Opinion August 17, 1988.
 98. A.R.S. § 11-585.
 99. A.R.S. § 41-752.
 100. A.R.S. § 38-296.01.
 101. Ariz. Att’y Gen. Op. 71-32-L (The state personnel commission’s jurisdiction extends to all state offices and positions except those specifically exempted by law.); *see* A.R.S. § 41-752.
 102. Ariz. Att’y Gen. Op. 72-20-L and 80-061.
 103. Ariz. Att’y Gen. Op. 77-221.
 104. Ariz. Att’y Gen. Op. 80-019; *see* Ariz. Att’y Gen. Op. 59-30, 75-2-L, and 77-216.
 105. General Counsel Opinion December 10, 1965.
 106. General Counsel Opinion November 2, 1966.
 107. General Counsel Opinion May 26, 1970.
 108. A.R.S. § 38-481.
 109. *See Graham County v. Buhl*, 76 Ariz. 275, 263 P.2d. 537 (1953), Ariz. Att’y Gen. Op. 77-115.
 110. Ariz. Att’y Gen. Op. 63-75-L.
 111. Ariz. Att’y Gen. Op. 63-9. *see* Ariz. Att’y Gen. Op. 54-26, 65-6-L.
 112. General Counsel Opinions June 26, 1968; *see* Ariz. Att’y Gen. Op. 78-71.
 113. *See* Ariz. Att’y Gen. Op. 77-138.
 114. A.R.S. Title 38, Chapter 3.1, Article 1.
 115. A.R.S. § 38-545.
 116. *See* League Municipal Election Manual for forms.
 117. A.R.S. § 38-543.
 118. A.R.S. § 38-544.
 119. A.R.S. § 41-1232.08(B).

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120. Ariz. Att’y Gen. Op. I00-031.
121. League General Counsel Opinion January 15, 2001.
122. A.R.S. § 41-1231(5).



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Action Report

File #: 23-030

AGENDA TITLE:

Approval of the January 4, 2023 Board of Adjustment Meeting Minutes

STAFF CONTACT:



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Minutes - Draft

Board of Adjustment

Chair Hope Ozer
Boardmember Robert Brown
Boardmember Priti Kaur
Boardmember Eric Leibsohn
Boardmember Jon Newman
Boardmember Quinn Williams

Wednesday, January 4, 2023

5:30 PM

Council Chambers

1. CALL TO ORDER

2. ROLL CALL

Present 5 - Boardmember Robert Brown
Boardmember Priti Kaur
Boardmember Eric Leibsohn
Boardmember Jon Newman
Chairperson Hope Ozer
Absent 1 - Boardmember Quinn Williams

3. EXECUTIVE SESSION

4. STUDY SESSION ITEMS

5. PUBLIC HEARINGS

- A. [23-001](#) Thiara Fence Wall Variance
Variance to allow 6-foot-tall fence wall to encroach into the setback
Case No. BA-22-10. 5608 E. Horseshoe Road (APN 168-43-004)
- Mr. Burton identified the variance request is to allow a fence wall to encroach into the rear yard setback. The property is zoned R-43, is one acre in size, and is bordered by Doubletree Ranch Road to the north, 56th Street to the west, and Horseshoe Road to the south.
- In 2020, the applicant received permits to redevelop the site, and during a July 2021 meeting with the building official, it was discovered that a wall in the rear yard did not meet the required setback. The code allows for three options for fences in the rear yard: a view fence with a 10-foot setback, a meandering fence with a 15-foot setback, or a solid straight wall with a 20-foot setback. The wall in question is a solid straight wall at the property line. The staff determined that the property has no hardships that warrant the variance and that the code compliant alternatives exist. Therefore, staff recommends denial of the application. The Board has three options: to deny the application, to approve the application with conditions, or to continue the application for further review.

Andrew Miller, the applicant's representative, noted that the property is uniquely located next to a busy street and a school, which creates a hardship that could be solved by allowing the requested variance for a wall with a lesser setback. He also argued that the location and surroundings of the property, including the nearby school and busy streets, are distinctive factors that justify granting the variance. Additionally, he pointed out that the property's location was not self-created and that the hardship it experiences is not unique to this property. He provided photographs of the property and the surrounding area to illustrate his points. He also pointed out that other properties in the area have walls with lesser setbacks and that the strict application of the code would deprive the property in the question of the same benefits. He provided photographs and other evidence to support his arguments, including the impact of traffic on the property and the attractiveness of the proposed wall. He also noted that the property owner had received a permit to build the wall and that they had relied on the assumption that they could proceed with the construction when they made improvements to the backyard.

Boardmember Leibsohn asked Mr. Miller to clarify the timing of when Bob Lee informed the homeowners that they were building the wall in an improper location.

Mr. Miller replied that there was a misunderstanding because the homeowners thought that they could rely on their permit and did not understand that part of the wall was in violation. He also explained that the homeowners had health issues and worked with the Town staff to see if the wall could be considered a subdivision wall. They decided not to appeal the interpretation and chose to seek a variance instead.

Boardmember Newman asked how the wall is safer now than if it were at the required setback.

Mr. Miller explained that having a consistently built six-foot wall along the entire stretch promotes safety because it does not give people a place to hide and provides better noise attenuation.

Chair Ozer noted that the two homes to the east of the subject property have their walls built on the property line in alignment with the subject property. She also noted that neighboring non-conforming walls would have to come into setback compliance when they redevelop or seek a variance to keep them at their current location.

Mr. Miller explained that the subject property's decision to build a six-foot wall was not an exceptional or unusual decision, given that the neighboring properties also have six-foot walls.

Sam Thiara, the applicant, stated that in June 2016, he visited the Town to gather information about building a home on a property they were interested in purchasing. The Town representative, Sharon Bennett, provided information about building restrictions and setbacks. He was also told that the existing walls

and fences on the property could remain and that the front yard wall could be a maximum of three feet tall and must be set back ten feet from the property line. He consulted with a builder and was told that they should be able to design a home on the property. He ultimately decided to purchase the property, and the Town approved plans for a home with a 6-foot concrete block wall replacing the existing fence. However, when the applicant asked if they could add an iron fence above the 3-foot wall on the west side, they were told that the wall on the north side could not be built as planned and would need to be moved. The applicant argued that the change would significantly impact the design and drainage of the site but was told that the approval stamp on the plans protected the Town from errors. He later spoke to a superior, Lisa Collins, who apologized and attempted to find a resolution. Mr. Thiara believed that the Town did not follow the correct process and is now requesting a variance.

Ms. Collins clarified that the stamp on the building permit plans identify that the approved permit does not allow construction to violate the Town Codes.

Dahljit Thiara, the applicant, discussed the process of purchasing property and building a home, including consulting with the Town and obtaining permits. She mentioned concerns about privacy and security. She stated that she had planned to enjoy her backyard with future grandchildren but now feels that this is being taken away from her due to the potential need to move the wall. She expressed frustration about the situation and felt that Mr. Thiara and she should not be penalized for mistakes made by the Town.

Mr. Ankifer, a resident, talked about the benefit of the ordinances in the Town and how they have positively impacted the community. He also mentioned an experience he had while trying to build a guest house on his property and how the setbacks described to him by the Town made it impossible to do so. He expressed concern about the issue with the Thiaras' wall, saying that if the proper notification was not given to them in a timely manner, the Board should consider that. However, if the information was provided and the wall was still built out of compliance, he believed the Board should follow the standard set by the ordinances. He also noted the beauty and wildlife in the community and the issue of traffic outside the Thiara's house.

Lannie Grant, the Thiara's realtor, stated that the Town staff gave them information that the wall could be placed on the property line and if they had known a 20-foot setback was required, they would not have purchased the lot.

Chair Ozer stated that she initially had a negative reaction to the request for a variance. However, after considering the request further and examining the property, she saw that there were special circumstances and hardships present that fits the criteria for granting a variance. She also observed that other properties in the same classification have privileges that would be denied to the subject property if the variance were not approved.

Board Member Leibsohn stated that he would not support the motion to approve the variance for the property and would vote for denial. He believed that the 20-foot setback should apply to the wall in question and that the property may

be redeveloped in the future, at which point the same setback rules would apply.

A motion was made by Boardmember Brown, seconded by Boardmember Kaur, to approve Case No. BA-22-10, to allow a 6-foot-tall fence wall to encroach into the rear yard setback subject to the stipulations in the staff report and with the addition of the following stipulation: That reasonable landscaping be added to the exterior of the wall and approved by the Town. The motion passed by the following vote:

Aye: 3 - Boardmember Brown, Boardmember Kaur and Chairperson Ozer

Nay: 2 - Boardmember Leibsohn and Boardmember Newman

Absent: 1 - Boardmember Williams

6. ACTION ITEMS

7. CONSENT AGENDA

A motion was made by Boardmember Brown, seconded by Boardmember Newman, to approve October 19, 2022 and November 2, 2022 meeting minutes. The motion carried with the following vote:

A. [23-003](#) Approval of the October 19, 2022 Board of Adjustment Meeting Minutes

Approved

Aye: 5 - Boardmember Brown, Boardmember Kaur, Boardmember Leibsohn, Boardmember Newman and Chairperson Ozer

Absent: 1 - Boardmember Williams

B. [23-004](#) Approval of the November 2, 2022 Board of Adjustment Meeting Minutes

Approved

Aye: 5 - Boardmember Brown, Boardmember Kaur, Boardmember Leibsohn, Boardmember Newman and Chairperson Ozer

Absent: 1 - Boardmember Williams

8. STAFF REPORTS

9. PUBLIC BODY REPORTS

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

Meeting Adjourned at 7:02 pm.

A motion was made by Boardmember Leibsohn, seconded by Boardmember Brown, to adjourn the meeting. The motion carried with the following vote:

Aye: 5 - Boardmember Brown, Boardmember Kaur, Boardmember Leibsohn, Boardmember Newman and Chairperson Ozer

Absent: 1 - Boardmember Williams