



**PUBLIC NOTICE
THE ELOY CITY COUNCIL
Meets
TUESDAY, FEBRUARY 21, 2023
5:30 PM
ELOY CITY COUNCIL CHAMBERS
595 NORTH C STREET
ELOY, ARIZONA 85131
For a
WORK SESSION**

AGENDA

- I. Call to Order**
- II. Roll Call**
- III. Pledge of Allegiance**
- IV. Discussion Items**

A. Tom Belshe, Executive Director of the League of Arizona Cities and Towns will discuss and make a presentation on the Council-Manager form of government, Arizona freedom of information, conflict of interest laws, etc.

Kazi Haque

B. Questions and Comments

- V. Adjournment**

**POSTED BY 5:00 P.M., MONDAY, FEBRUARY 13, 2023, AT ELOY CITY HALL,
ELOY POST OFFICE, TROY THOMAS COMMUNITY CENTER, TOLTEC
COMMUNITY/SENIOR CENTER AND CITY WEBSITE: www.elayaz.gov**

Mary Myers, MMC, CPM
City Clerk

INDIVIDUALS WITH SPECIAL ACCESSIBILITY NEEDS MAY CONTACT LORENA LaSALDE-RIOS, ADA COORDINATOR FOR THE CITY OF ELOY AT 520-466-9201 OR 520-466-7455 (TDD). IF POSSIBLE, SUCH REQUESTS SHOULD BE MADE 72 HOURS IN ADVANCE. ONE OR MORE MEMBERS OF THE COUNCIL AND/OR STAFF MAY PARTICIPATE BY TELEPHONIC OR VIDEO MEANS.

CITY OF ELOY

CITY COUNCIL RULES AND PROCEDURES

Adopted November 23, 2020

SECTION I - RULES OF PROCEDURES:

The Council shall determine its own rules, order of business, conduct of public meetings, and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

SECTION II - MEETINGS:

The Council shall hold regular meetings on the second and fourth Mondays of the month at such times and places as the Council prescribes. Special meetings or work sessions may be held on the call of the Mayor, City Manager or at the written request of three (3) or more Council members. All meetings shall be public, except executive sessions. Executive sessions may be held for the purposes allowed by law. Pre-sessions or briefing sessions are permissible to brief Council members on the items included on the agenda. Notices of meetings will include the time, place and agenda and will be sent to the press/media and posted in a public place at least twenty-four hours in advance of the meeting. In case of an emergency, notice will be posted as long as is reasonable under the circumstances and in accordance with State law.

SECTION III - AGENDA:

Items may be placed on the Agenda for City Council discussion and possible action by: (i) the Mayor acting through the City Manager; (ii) two (2) Council Members acting through the City Manager; and, (iii) the City Manager.

The City Clerk shall list the matters according to the order of business and distribute and post the agenda(s) prior to the Council meeting(s), as early as possible. No item shall be submitted to the Council, except through the City Manager/designee or City Clerk. However,

any member of the public may address item(s) not on the agenda under "Unscheduled Public Appearances", but due to State Statute, the City Council shall not discuss items not on the agenda. At the conclusion of all citizens' comments, the Mayor may take any or all of the following actions:

- 1) Ask staff to review the matter and report back to Council.
- 2) Ask that the matter be placed on a future Agenda.
- 3) Thank the citizen(s) for their comments.

The order of business at all regular and special meetings shall ordinarily be as follows:

- I. Call to Order
- II. Roll Call
- III. Invocation
- IV. Pledge of Allegiance
- V. Public Appearances
 - a. Scheduled
 - b. Unscheduled
- VII. Reports and Announcements
 - a. Council Members' Announcements
 - b. Mayor's Announcements
 - c. City Manager's Announcements
- VIII. Consent Agenda Department Director
- IX. Business Agenda Department Director
- X. Executive Session
- XI. Adjournment

The order of business at all work sessions shall ordinarily be as follows:

- I. Call to Order
- II. Roll Call
- III. Invocation
- IV. Pledge of Allegiance
- V. Unscheduled Public Appearances

VII. Discussion Items

Department Director

VIII. Adjournment

The Presiding Officer may consider items out of sequence from the published agenda for any meeting of the City Council. The Presiding Officer may call a recess/break if necessary during the course of a Public Meeting.

The consent agenda matters are routine and may be adopted by one motion. There will be no discussion of separate items, unless members of the City Council, staff, or the public requests that a specific item be discussed or removed from the consent agenda for individual consideration.

Agenda packet materials will ordinarily be distributed to the Mayor and Council on the Wednesday prior to the scheduled Monday or Tuesday Council meeting or work session.

SECTION IV - PRESIDING OFFICER - DUTIES:

The Mayor shall be the Presiding Officer of the Council. The Presiding Officer shall preserve order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects and decide all questions of order. Any decision or ruling of the Mayor may be appealed to the Council as a whole by a motion and second. The Mayor (or Presiding Officer) shall call for roll call to see if the chair shall be upheld; if the roll call loses, the Mayor (or Presiding Officer) is reversed.

In accordance with Section 2-11 of the Eloy Code of Ordinances, the Mayor shall notify the City Council through the City Manager or City Clerk of his/her intent to be absent from the City for more than fifteen (15) days for any reason, or if he/she is unable to fulfill the duties of Mayor due to health reasons.

SECTION V – APPOINTMENT OF VICE MAYOR:

In accordance with Section 2-11.2 of the Eloy Code of Ordinances, the City Council shall designate one of its members as Vice Mayor, and the Vice Mayor shall perform the duties of the Mayor during the absence or disability of the Mayor. The term of the Vice Mayor shall be one (1) year; and a Council Member may serve more than one term, provided the terms are nonconsecutive.

SECTION VI - CALL TO ORDER - PRESIDING OFFICER:

The Mayor, or in his/her absence, the Vice Mayor shall call the Council to order at the scheduled meeting time. In the absence of the Mayor or Vice Mayor, the Council member with the most tenure on the Council shall call the Council to order. A temporary Presiding Officer shall then be elected by the members of the Council present. When the Mayor or Vice Mayor arrives, the temporary Presiding Officer shall relinquish the chair when the business immediately before the Council is finished.

SECTION VII - ROLL CALL:

Before proceeding with the business of the Council, the City Clerk shall call the roll of the members, and the names of those present shall be entered in the minutes.

Members of the Council may attend a Council meeting by telephone in the event of a special meeting being held telephonically or by video, in the event of an epidemic or natural emergency, or if they are too ill to attend or are out-of-town. Members should provide the City Clerk with three (3) hours notice of their intent to attend a meeting by telephone. In no event shall more than three (3) Council members attend a council meeting by telephone, except for special telephonic or video meetings or in the event of an epidemic or natural emergency. When a member of the Council attends a meeting by telephone, the Mayor shall state for the record the member of the Council who is attending the meeting by telephone.

SECTION VIII - QUORUM:

A quorum shall consist of a majority of the members of Council; however, no action of the Council shall be valid or binding unless adopted by the affirmative vote of four or more members of the Council.

SECTION IX - PROCEDURES FOR DEBATE:

On those issues requiring debate, the Presiding Officer shall state the issue before the Council and may call for a motion and second thereon. Unless Council by consensus determines no report is necessary, staff shall report on the issue and will respond to Council questions. Council members shall be allotted time to present their positions and concerns. Interested members of the community shall also have an opportunity to express their positions on any issue coming before the Council.

A motion and second on the issue will be in order at any time during Council discussion. Discussion may continue after the motion is made.

SECTION X - RULES OF DEBATE:

- a) **PRESIDING OFFICER MAY DEBATE AND VOTE ON ANY MATTER.** The Mayor or member of the Council that is presiding may move, second and debate from the chair, subject only to such limitations of debate as are imposed on all members. The Presiding Officer shall not be deprived of any of the rights and privileges of a Council member.
- b) **GETTING THE FLOOR.** Every member desiring to speak on any matter under debate shall address the Presiding Officer and receive verbal affirmation prior to speaking.
- c) **INTERRUPTIONS.** A member, once recognized, shall not be interrupted when speaking, unless the Presiding Officer recognizes a personal privilege of a Council member.
- d) **PERSONAL PRIVILEGE:** The right of a Council member to address the Council on a question of personal privilege shall be limited to cases in which his/her integrity, character or motives are questioned, or where the welfare of the Council is concerned. A Council member may interrupt another speaker only if the Mayor recognizes the

"privilege".

- e) **PRIVILEGE OF CLOSING DEBATE:** The Council member moving the adoption of an ordinance or resolution shall have the privilege of closing the debate.

SECTION XI - ADDRESSING THE COUNCIL:

Any person wishing to address the Council shall first secure permission of the Presiding Officer to do so. The Council may limit the length of time that a person is permitted to address the Council.

WRITTEN COMMUNICATIONS. Interested parties or their authorized representatives may address the Council by written communications in regard to matters under discussion.

ORAL COMMUNICATIONS. During the proper time on the agenda, taxpayers or residents of the City, or their authorized representatives, may address the Council on any matter concerning the City's business, or any matter over which the Council has control. Oral presentations shall not be repetitious and the Mayor may limit the length of presentations.

AFTER MOTION MADE. No person shall address the Council after a motion is made without first securing the permission of the Presiding Officer to do so.

SECTION XII - DECORUM:

- a) **BY COUNCIL MEMBERS.** While the Council is in session, the members must preserve order and decorum. A member shall neither by conversation or otherwise, delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to obey the orders of the Council or its Presiding Officer.
- b) **BY PERSONS.** Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous while addressing the Council, or who interferes with the order of business before the Council, and who fails, upon request of the Presiding Officer to cease such activity, shall be barred from further audience before the Council, unless permission to continue is granted by a majority vote of the Council.

SECTION XIII - ENFORCEMENT OF DECORUM:

The Mayor may appoint a sergeant-at-arms at the Council meetings. He/She, or they, shall carry out all orders and instructions given by the Presiding Officer for the purpose of maintaining order and decorum at the Council meeting. Upon instructions of the Presiding Officer, it shall be the duty of the sergeant-at arms, to remove any person who violates the order and decorum of the meeting.

SECTION XIV - VOTING:

- a) **ROLL CALL.** All votes shall be by roll call. (A device which displays the vote of each Councilmember is considered a roll call vote.)
- b) **PRECEDENCE OF MOTIONS.** When a motion is before the Council, no motion shall be entertained except: (1) to adjourn, (2) to fix hour of adjournment, (3) to lay on the

table, (4) motion for previous question, (5) to postpone to a certain day, (6) to refer, (7) to amend, (8) to postpone indefinitely or to (9) divide the question. These motions shall have precedence in the order indicated.

- c) **AMENDMENTS.** No more than one amendment to a main motion is permitted. When an amendment is before the Council, the Council shall vote first on the amendment. After the amendment has passed or failed, the Council shall vote on the main motion.
- d) **MOTION TO TABLE.** The purpose of this motion is to temporarily by-pass the subject. A motion to lay on the table is non-debatable and shall preclude all amendments or debate of the subject under consideration. If the motion prevails, the matter may be "taken from the table" at any time prior to the end of the next regular meeting.
- e) **MOTION FOR PREVIOUS QUESTION.** The purpose of this motion is to close debate on the main motion. It is non-debatable, and no further discussion shall be permitted until the motion is acted upon. If the motion fails, debate is reopened; if motion passes, then the Council shall vote on the main motion.
- f) **DIVISION OF QUESTION.** If the question contains two or more divisible propositions, the Mayor may, or upon successful motion of the Council, shall divide the same.
- g) **WITHDRAWAL OF MOTION.** When a motion is made and seconded, it shall be so stated by the Chair before debate commences. A motion may not be withdrawn by the mover without the consent of the member seconding it.
- h) **CONFLICT OF INTEREST.** Council members shall abide by the provisions of A.R.S. Chapter 38, Article 3. When a Council member determines he or she has a conflict of interest, he or she shall announce such conflict and refrain from discussing or voting upon the matter.
- i) **COUNCIL MEMBER REQUIRED TO VOTE.** Council members are required to vote on all issues placed before them. A failure to vote or a voluntary abstention shall be counted an "aye" vote unless excused by State Conflict of Interest Laws.
- j) **RECORDING VOTES; TIE VOTES.** The minutes of the proceedings of the Council shall record individual's votes on all ordinances, resolutions, and other formal actions by the Council. In the case of a tie in votes on any motion, the motion fails.

SECTION XV - RECONSIDERATION:

After the decision on any question, any Council member who voted with the prevailing side may move for reconsideration of any action at the same or at the next succeeding meeting, provided, however, an approved contract or agreement may be reconsidered at any time before the final execution thereof. A motion to reconsider shall require a 2/3rds vote (5 to 2 vote) of all Council members, whether present or not, not disqualified from voting by an actual conflict of interest or who abstains from voting due to a potential conflict of interest; but, in no event, by less than four (4) affirmative votes.

SECTION XVI - PETITIONS:

Any citizen of the City may appear before the Council at any regular meeting and present a written petition. Petitions, communications and comments or suggestions from citizens present, shall be heard by the Council. All such remarks shall be addressed to the Council as a whole, and not to any member thereof. No person other than the individual speaking shall enter into the discussion without the permission of the Presiding Officer. No question shall be asked of a Council member except through the Presiding Officer.

SECTION XVII - ORDINANCE - EMERGENCY CLAUSE:

Ordinances shall be prepared in conformance with the provisions of the City of Eloy Code. Emergency shall be further defined as not including any routine matter such as establishment of fines or penalties, the authorization for contracts, rezoning of property, creation of taxes, lease of City land, amendment of the City Code, or the levy of assessments unless harm to the public can be expected from a delay of action.

SECTION XVIII - SPECIAL COMMITTEES:

When the Council determines that a board, commission or citizen's committee is needed the following procedure shall be used:

- a) The party proposing the creation of the board, commission or citizen's committee will prepare a memorandum defining the purpose, duties and objectives of the committee and whether it is to be an ad hoc or continuing committee.
- b) That memorandum will be submitted to the City Manager for placement on an agenda for Council discussion.
- c) The City Manager shall request the City Attorney draft an ordinance or resolution, if necessary.
- d) The Council shall approve, modify, or reject the proposal.
- e) Once a board, commission, or citizen's committee is approved, the Mayor shall prepare nominations for members including their length of terms (not to exceed three years).
- f) The Mayor's nominations shall be submitted to the Council at least seven days prior to the meeting at which nominations will be confirmed.
- g) Council members may suggest alternate nominations during the meeting. Each member appointed shall be approved by a majority of the Council.
- h) If the party proposing an ad hoc committee is a Councilmember, he/she shall serve on the committee as an ex-officio member.

SECTION XIX - COUNCIL MEMBER CONDUCT:

Public officers and employees are prohibited from using or attempting to use their official positions to secure valuable things or benefits for themselves, unless such benefits are part of the compensation they would normally be entitled to for performing their duties.

Council members representing the City at civic and governmental functions or events shall maintain a professional demeanor and promote the highest ethical standards. Council members shall not make commitments or decisions on behalf of the City, unless prior approval or authorization is obtained from the Mayor and/or City Council.

To avoid any possible conflict of interests, each Council member shall be asked to sign the City ethics policy agreeing to adhere to its standards.

SECTION XX - ENFORCEMENT SUSPENSION, AND AMENDMENT OF RULES:

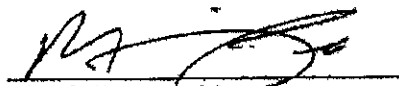
Enforcement of these rules shall be incumbent upon the Eloy City Council. These rules may be suspended or amended at any time by a two-thirds vote (5 to 2 vote) of the City Council.

SECTION XXI - RULES OF ORDER:

The rules of parliamentary practice, comprised in Roberts Rules of Order, latest edition, shall govern the Council in all cases to which they are applicable, provided they are not in conflict with these Rules or with the Code of Ordinances of the City of Eloy.

SECTION XXII – EFFECTIVE DATE:

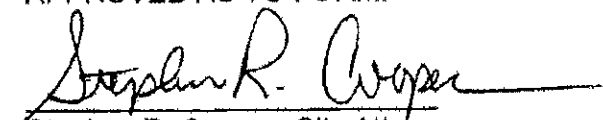
These Council Rules and Procedures shall be effective on January 1, 2021.


Micah Powell, Mayor

ATTEST:


Mary Myers, City Clerk

APPROVED AS TO FORM:


Stephen R. Cooper, City Attorney

RESOLUTION NO. 21-1505

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF ELOY, PINAL COUNTY, ARIZONA, ADOPTING A CODE OF ETHICS POLICY FOR PUBLIC OFFICIALS ENTITLED "CITY OF ELOY CODE OF ETHICS POLICY FOR ELECTED OFFICIALS"

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL of the City of Eloy, Pinal County, Arizona, as follows:

WHEREAS, the Eloy City Council desires to ensure and promote an environment of honesty, integrity, impartiality, openness, and transparency in all its affairs; and

WHEREAS, the Eloy City Council has determined to advance this cause by adopting a Code of Ethics Policy for Elected Officials ("Code of Ethics Policy"); and

WHEREAS, this Code of Ethics Policy shall apply to all elected officials; and

WHEREAS, this Code of Ethics Policy is not intended to legislate morality but to convey general expectations of appropriate conduct.

NOW THEREFORE, IT BE RESOLVED that the Mayor and City Council of the City of Eloy hereby adopts the following Code of Ethics Policy:

CODE OF ETHICS

Operating under the Council-Manager form of government, the Mayor and City Council are responsible for setting policy guidance and fiscal priorities and management to administer the operations of an economically and environmentally sustainable City for its existing and future residents, businesses and visitors.

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for the Mayor and Councilmembers. Ethics is a standard of conduct for professional and personal behavior based on shared values. In order to uphold a duty of honesty, fairness, accountability, and transparency of actions a code of ethics is essential to serve as a clear guide in assessing behaviors and decisions. Statements provided herein should not be considered a substitute for the law or for an official's best judgment.

The Mayor and Councilmembers should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach and they should not use their official position for personal gain. Although opinions may vary about what behavior is inappropriate, this City Council will consider impropriety in terms of whether reasonable person who is aware

of all of the relevant facts and circumstances surrounding the councilmember's action would conclude that the action was inappropriate.

FUNDAMENTAL PRINCIPLE

The Mayor and Councilmembers have an obligation to conform their behavior to standards of ethical conduct that is representative of the different roles they serve:

- As advocates, who strive to advance the legitimate needs of their citizens.
- As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions.
- As decision-makers, who arrive at fair and impartial determinations.

The Mayor and Councilmembers commit to act in a manner that maintains their integrity, independence, and commitment yet is responsive to the interests and needs of those they represent.

MEETINGS

The Mayor and Councilmembers will commit to conducting the affairs of the City of Eloy in an open and public manner through compliance with all applicable laws (A.R.S. § 38-431.09) governing open meetings and public records. The intent of the open meeting laws is to increase the understanding of public policy decisions and ensure that decision-making by representatives of the public is done in the open without secrecy. In regards to closed executive sessions, deliberate attention will be made to ensure the meetings are lawfully conducted and that such sessions do not stray from the purposes for which they are called (A.R.S. § 38-431.03).

CONFLICT OF INTEREST

A conflict of interest occurs when an elected or appointed official is no longer able to remain impartial or objective in choosing between the interests of the City of Eloy and the interest of oneself. The Mayor and Councilmembers shall disclose and make known any conflicts of interest to the City Attorney and/or City Manager.

Conflict Disclosures

The Mayor and Councilmembers shall not be involved in any activity which conflicts with their responsibilities to the City and its residents. Any personal affiliations including family, friends, financial holdings, or business associates that could be an undue influence on City business must be disclosed. In addition, elected officials shall refrain from voting on, or lobbying for, issues that pose a conflict or violate the principles of the Code of Ethics.

Contracts with the City

Arizona law (A.R.S. §§ 38-501- 38-532) prohibits any elected or appointed official who has "a substantial interest in any contract, sale, purchase or service to such public agency" from receiving personal gain such as for self, family, friends, creditors, business associates or employees in the course of a transaction, decision or contract on behalf of the City.

Employment of Relatives

Arizona law (A.R.S. § 38-481; Eloy City Code 2- 55, Eloy City Personnel Policy 390) prohibits any elected or appointed official from being involved in the appointment, hiring or supervision of a relative.

Relatives shall be defined to include: Husband, Wife, Mother (in-law), Father (in-law), Sister (in-law), Brother (in-law), children (step), Step parents (in-law) Daughter (in-law), Son (in-law), Grandchildren (step), Grandparents (in-law)

Administration of Confidential Information

The City of Eloy is committed to maintaining an open and accessible government intended to engender trust and confidence from the public. Equally as important to garnering public confidence, is protecting confidential information as defined by the law.

The Mayor and Councilmembers often have access to important non-public information regarding the property, operations, policies or affairs of the City. The Mayor and Councilmembers shall not;

- Willfully or knowingly disclose any confidential, privileged, or protected information, unless authorized or required by law to do so;
- Use any confidential, privileged or protected information to advance the financial or other private interest of himself or herself or others; or
- Accept employment or engage in any business or professional activity which will require him or her to disclose confidential, privileged or protected information which he or she has gained by reason of his or her official position or authority.

If the Mayor or a Councilmember believes that his or her actions, while legal and ethical, may be misunderstood, the official should seek the advice of the City Attorney and/or City Manager. When information is available through channels open to the public, there is no prohibition from disclosure.

Electronic Mail

City-assigned electronic mail accounts shall be used only for City business or for minor personal use such as setting up medical appointments or communicating occasionally with one's family in a way that does not interfere with City business. City-assigned electronic mail accounts may not be used for any campaign purpose.

All City-assigned electronic mail is considered official City business and must be retained in accordance with the City's records management program. In general, electronic mail communications are public records and subject to disclosure under the public records law in A.R.S. § 39-101 et. seq.

Social Media

Personal and professional social media accounts pose risks to City operations when not used with care. Information related to City business must be handled in a respectful, professional and responsible manner when communicating via a social or digital media platform. Open discussion of City related matters could inadvertently result in the violation of Arizona Open

Meetings Laws if a sufficient number of other public officials engage on the post, resulting in a quorum.

Any content related to City business is considered a public record and is subject to Arizona public records laws. The disclosure of nonpublic information, such as classified or confidential information, or other forms of information intended to further private interests or the private interests of others is considered a violation of the Code of Ethics.

GIFT POLICY

Arizona law (A.R.S. § 38-505(A), & A.R.S. §§ 41-1231, 41-1232 et seq.) prohibits mayors and members of council from receiving anything of value or any compensation outside their normal salary and benefits for services rendered. Since gifts always have the potential to influence decisions and create perceptions of impropriety, the standard and general practice is to refuse gifts and to not use one's position to influence, request, or accept a gratuity or gift.

Gifts include, but are not limited to, monetary compensation outside of one's salary, gift cards, meals, travel, entertainment tickets to sporting events, concerts, theaters or other productions, and other tangibles or contributions that have a personal value.

Promotional items and meals valued at less than \$50 (pens, calendars, t-shirts, etc.) may be accepted.

THE "ETHICS TEST"

When you face a situation that causes YOU to question your ethical conduct ask yourself these questions:

- How does this situation make me feel about myself?
- How would my family react to knowing about this and my decision?
- Would it pass the "headline test"? How would the community react?
- How does the decision and my proposed action align with the City's Ethics Policy?
- Will it violate a law or a City policy?
- Will my action or solution be fair to all concerned?
- How will this affect other decisions I may be called upon to make in the future?
- Could I disclose, without reservation, my decision or action to my family, my peers, or the community?

COMPLAINTS, INVESTIGATIONS, AND SANCTIONS

The City of Eloy encourages individuals to report possible violations of governmental ethics laws, and other laws, regulations and rules governing the conduct of City officers. All complaints made to the City are **confidential** to the extent permitted by State law. Complaints shall be made to the City Attorney and/or City Manager. Upon completion of an investigation, the City Attorney and/or City Manager will communicate the conclusion and provide a recommendation to the complainant, the Mayor, and the City Council.

DISCRIMINATION

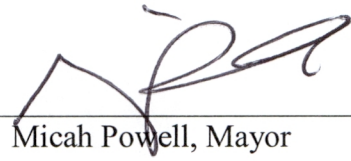
It is the policy of the City of Eloy to promote equal opportunities through a positive continuing program. This means that the Mayor and Councilmembers will not discriminate, nor tolerate

discrimination, harassment or intimidation, against any applicant, employee, resident or individual because of his or her race, color, religion, gender, national origin, age, or disability.

ACKNOWLEDGEMENT

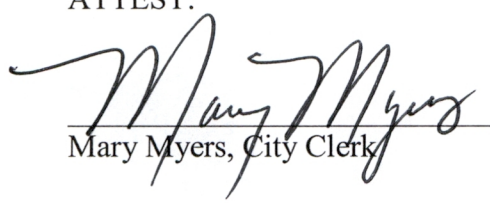
All current, and newly elected, council members shall read the City Eloy Code of Ethics Policy and sign the "Ethics Policy Acknowledgement and Agreement" form found in Appendix A to this Resolution.

PASSED AND ADOPTED BY THE Mayor and Council of the City of Eloy, Pinal County, Arizona, this 26th day of July 2021.



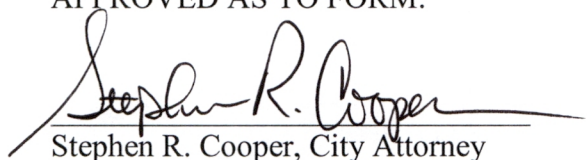
Micah Powell, Mayor

ATTEST:



Mary Myers, City Clerk

APPROVED AS TO FORM:



Stephen R. Cooper, City Attorney

APPENDIX A

Ethics Policy Acknowledgment and Agreement

CITY OF ELOY, ARIZONA

By my signature below, I acknowledge that I have read and understand the City of Eloy's Code of Ethics Policy. I agree that I will comply with the Constitution and laws of the United States of America, the Constitution and laws of the State of Arizona, and the laws, regulations and policies of the City of Eloy, including the Code of Ethics Policy.

Signature

Position

Printed Name

Date



COUNCIL-MANAGER GOVERNMENT IN ARIZONA

Prepared by

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November 2020

League of Arizona
Cities AND Towns

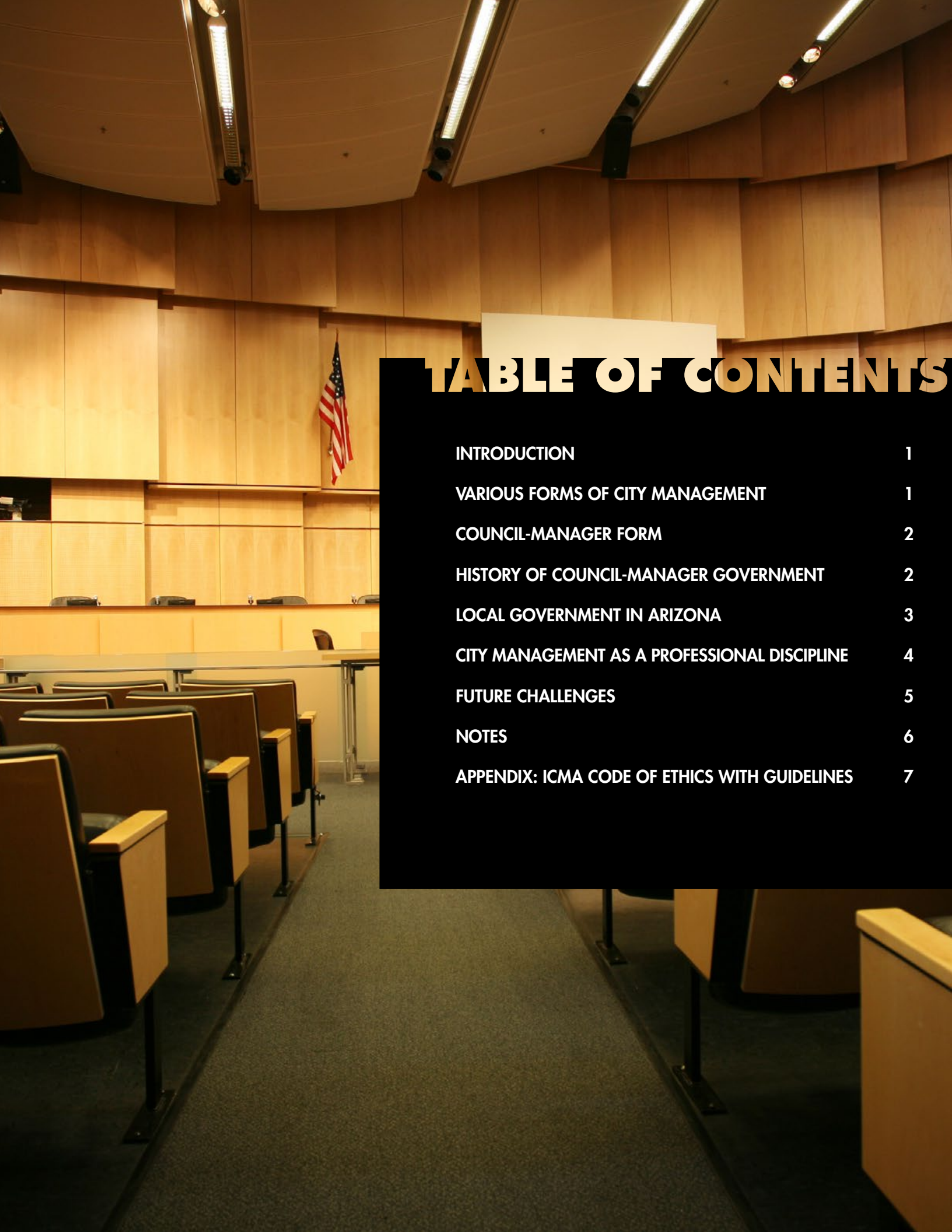


TABLE OF CONTENTS

INTRODUCTION	1
VARIOUS FORMS OF CITY MANAGEMENT	1
COUNCIL-MANAGER FORM	2
HISTORY OF COUNCIL-MANAGER GOVERNMENT	2
LOCAL GOVERNMENT IN ARIZONA	3
CITY MANAGEMENT AS A PROFESSIONAL DISCIPLINE	4
FUTURE CHALLENGES	5
NOTES	6
APPENDIX: ICMA CODE OF ETHICS WITH GUIDELINES	7

INTRODUCTION

Local government advocates consistently proclaim that cities and towns are the level of government that is “closest to the people” and “most responsive to the people.” Does the municipal form of government have anything to do with validating those truisms? The likely answer is, “yes.”

Those claims may be consistent with the emergence of the council-manager form of government: a system in which political leadership and professional leadership are blended and public policy decisions are made by elected officials on the basis of professional recommendations and advice using the objective standards of cost, efficiency, measurable outcomes and optimum service to the citizens rather than because of political influence, cronyism, nepotism, favoritism, or dishonesty.

Today, the council-manager system is the most prevalent form of local government in the United States (existing in more than 3,500 cities and towns and more than 370 counties), but it is not the only one. Other models, generally created many years ago and unchanged over time, still exist.

Across the country, the issue of the local form of government emerges as a subject of debate from time to time. In the majority of cases, there is an effort to adopt the council-manager form, but occasionally there are proposals to move away from council-manager to another governmental model. On the whole, however, the trend is toward more adoption of the council-manager form.

Some of the motivation to use this form comes from frustration with the practices observed in the current system which the public finds distasteful and offensive: cronyism, influence peddling, graft, secret arrangements, partisan decision making and hiring based on connections rather than objective qualifications. The council-manager form addresses the issues generally found to be the most distasteful to the public.

The system is not perfect, but it is designed specifically to make sure professional municipal employees are responsive to the public and that government resources are spent in the most efficient, objective manner possible, while elected officials set the policy direction and priorities of the city.

Why is it then that the public seems to be generally unaware of the council-manager form, and sees the position of Mayor as the “boss of the city?” Perhaps because chief executives at the state and national level do have a higher profile management role, or because a colorful, flamboyant stereotypical Mayor makes a more appealing character for movies or novels, and that the strong mayor form still remains more common in the eastern part of the country and in many of the nation’s largest cities.

VARIOUS FORMS OF CITY MANAGEMENT

Incorporated communities in early America conducted business primarily through the **Town Meeting** system in which every member of the community was a voting delegate at a large public meeting. There are still remnants of this system today in some New England states where annual Town meetings are required to conduct some kinds of municipal business.

As local governments developed, a small number of individuals were elected as “Selectmen” to provide for fulfillment of the directives approved by citizens at the Town Hall. Today, some states still retain the title of Selectman for members of their city councils.

As cities grew and the need arose to provide a greater level of urban services, more and more people were needed to administer them. This led to the “long ballot” election in which a large number of candidates vied for the right to run certain city departments.

A movement emerged advocating a “short ballot” so that voters could be more informed about the various candidates for local office. Over time, some cities adopted a ward system to elect members of a common council. The voters in each ward would have fewer decisions to make, but there were still a large number of people elected to the city council. Chicago, for example, has council members elected from 50 separate wards.

The **Weak Mayor** system is found primarily in small towns that do not have the organizational structure for a manager. In this system council members handle both the policy and administrative operations of various city departments, while the Mayor presides at meetings and is the ceremonial face of city government. The collective council has relatively limited influence since the individual council members have management authority for their scope of responsibility.

In the **Strong Mayor** form, the roles are essentially reversed. The elected Mayor has management authority for all operations of the city while the council has only limited authority. This system is highly dependent on the management skills of the person in the Mayor’s office. Depending on the administrative qualities of the Mayor, this system can either function smoothly or be a virtual train wreck. And, it changes each time someone new comes into the office. Under the strong mayor form, the government can be no more effective than the individual that currently occupies the office.

The **Commission** form offers yet another variation. In this system, individual council members are elected to direct the operations of various city departments as “commissioners.” In a few commission cities, the mayor assigns council members to head various city bureaus. Depending on a council member’s relationship with the Mayor, they may either get a desirable assignment such as the Police, Fire

or Parks Bureaus, or they may be assigned less glamorous functions such as the Sewer or Solid Waste Departments.

A common weakness among all these forms of municipal government is that the quality of leadership and management is highly dependent on the skills of those elected to office. These systems also are highly susceptible to political and financial influence. One's relationship to the Mayor or to various groups such as developers, financiers and unions can be extremely influential in determining assignments rather than an objective evaluation of one's operational skills.

These systems also fail to separate the important functions of policymaking from administration. The Mayor and council are put in the position of developing policy positions and also being responsible for operational implementation. It is rare to find elected officials who have the training and experience to handle the administrative tasks of local government.

COUNCIL-MANAGER FORM

The **Council-Manager** form of local government (cities, towns and counties) creates a bright line between the adoption of municipal policy and the administrative or operational functions of city staff. Under the council-manager form, elected officials on the council are ultimately responsible for making the policy decisions about city functions, budgets, tax rates, planning and zoning, general plans, long- and short-range city goals, contract approvals, etc. They receive information and recommendations from the city manager and generally oversee the performance of city government. They also are the link between citizens in the community and their local government. All governmental authority resides with the council as a body of elected officials.

The council works with a professionally-trained manager or administrator to develop policy positions, and then delegates to the manager the responsibility to carry out their decisions. The manager does not set or make policy decisions, but is the person primarily responsible for making policy recommendations and for carrying out the decisions of the council.

The manager and his or her management team have responsibility for hiring and firing personnel, for managing city operations within the council-approved budget and for implementing the various day-to-day services of the city. The manager and his or her staff do the background research on various topics in order to present the council with objective pros and cons on policy alternatives. He or she serves at the pleasure of the council and can be dismissed at any time with the vote of a majority of its members.

The council-manager form of government is unique to the local level in government but it is similar to the Board/Chairman/CEO structure common in private corporations as well as school districts, hospitals and non-profit organizations.

For those who question whether "non-elected bureaucrats" should be in charge of the operations of a unit of government, the council-manager system has generally been shown to be more financially accountable and more efficient operationally than governments in which the elected officials are also the people in charge of directly managing government services and supervising staff. The system is designed to maximize the strengths of elected officials and local government professionals. It allows elected officials to spend more of their time listening to the concerns of constituents, and provides structure to the staff to be able to know that their job duties will be consistent and based on professional standards rather than subject to differing political whims.

The system also diffuses political power among all elected officials so that no one individual—Mayor or council member—can dictate policies of the city, hire or fire personnel or make changes in the governmental structure. While Mayors can be visionary leaders who help the goals for the city through their personality and "bully pulpit," the Mayor and council's strength is exercised through the will of the voting majority. Any individual council member has very little actual authority.

The impact of an elected official lies in persuading his or her colleagues of the validity of his position, being willing to compromise in order to gather support, and being able to deliver a majority vote. In that way, all council members share in decision-making, bringing their unique background and experience to the group. In American political spheres the majority rules, individuals do not.

HISTORY OF COUNCIL-MANAGER GOVERNMENT

The council-manager structure is one of the products of the Progressive Movement in the United States during the late 19th and early 20th centuries. In general, the movement was a reaction against dominant political bosses and machines, corporate corruption and monopolies, "robber barons" and oppressive working conditions.

Reformers were successful in making a series of changes to social and corporate institutions as well as introducing a number of concepts to make government more accountable to the people rather than special interests. Some of the political changes include citizen initiatives, referendum and recall, women's suffrage, direct election of U.S. Senators and the council-manager form of government.

It is generally accepted that the first city manager position was created in Staunton, Virginia, in 1908, although a number of other communities were also moving in that direction. Today, the council-manager form is the most dominant system of local government, appearing in more than 3,500 U.S. cities and 144 of the 247 largest cities. It is also used in nearly 400 county governments. The City

of Phoenix, Arizona, generally believed to be the largest U.S. city with the council-manager form of government, was also one of the first in the nation to adopt the system. It was included as part of the city charter approved by voters by a margin of nearly two-to-one in October 1913.

The council-manager form has gained widespread acceptance for its attributes of efficiency, professionalism and predictability for city employees as well as residents. In contrast to the strong mayor system, which has the perception of inviting corruption, the council-manager system separates policymaking from operational processes, and encourages hiring and contracting practices based on objective, measurable standards rather than cronyism and friendship. The city management profession is also set apart by the strong commitment of its members to a uniform code of ethical behavior.

In a December 6, 2009, story in the **Baltimore Sun** headlined, "City's governmental structure encourages official corruption," reporter David B. Levy writes:

"It is clear that developers and other interest groups perceive—probably correctly—that the best method to gain decisions in their favor is to 'grease' the pathway. Sometimes that grease is pure corruption. More frequently, it is some version of interest peddling that does not quite rise to the level of outright corruption. Either way, it bends governmental decisions away from the public interest and toward the private interest of those doing the greasing." He goes on to say, "The best-managed and cleanest local governments in the United States are not strong-mayor governments; they are council-manager governments."

Today, cities, towns and counties across the U.S. are continuing to evaluate their local governmental structure. Where there has been limited or no experience with the council-manager form, vigorous public debates usually occur when a proposal to adopt that form is brought to the public or council for a vote. It is not uncommon for those who have no experience with the council-manager form to reject it in favor of the status quo. It is far more unusual for cities that have had the council-manager form to reject it in favor of others.

LOCAL GOVERNMENT IN ARIZONA

Cities and towns in Arizona are authorized by the state Constitution in Article 13; Counties are authorized in Article 12. Both units of local government are subject to statutes enacted by the State Legislature and, as such, are considered political subdivisions of the state.

Cities and towns are voluntary units of government, created by the people who live in the same geographic area and who

decide to incorporate. To incorporate as a town in Arizona requires a minimum population of 1,500; a city requires 3,000.¹ Cities may adopt a charter, similar to a local constitution, which specifies structural and organizational procedures for the city. Charters are adopted by a vote of the people and any amendments must also be voted on by the people.²

There are 19 charter cities in Arizona; all the rest are considered "general law" cities and towns and operate under the authority of the Arizona Revised Statutes. Among other things, charter provisions may: specify the city governmental structure, impose council and mayoral term limits, prescribe how various administrative departments are to be organized, or whether voter approval is required to impose certain taxes. The Arizona Constitution describes a charter as being the "organic law" of the city. There are specific procedures for developing and adopting a charter in Article 13, Section 2. In some ways the charter may have the effect of limiting the city government's authority while general law cities and towns may have greater flexibility in implementing some decisions.

ARS 9-303 authorizes cities and towns to adopt the council-manager form of government in local ordinances, and specifies that the manager serves at the pleasure of the majority of the council.

Cities in Arizona also have the option of adopting a system of geographic districts called "wards." In this arrangement, voters in a ward select a council member to represent them rather than having all council members elected at large by all voters. In the ward system, only the Mayor is selected at large. In Arizona, all municipal governments except for the City of Tucson are officially non-partisan; candidates for Mayor and council do not run on political party tickets or serve as members of a political party and the council does not formally organize itself into a political majority and minority.

Unlike cities and towns, everyone living in Arizona also resides in one of the 15 counties. County government functions as a delivery system for many state government services such as elections, jails, property tax assessment and collection, courts and healthcare among other items. Counties are restricted in the administrative flexibility they have locally. Counties can exercise only the authority granted to them by statute, whereas cities, under the general laws of the state, can engage in a broad range of activities unless specifically prohibited by statute.

The line between local and state authority is one that is the subject of much dispute, particularly at the State Legislature. Some legislators believe that as political subdivisions of the state, the legislature has the authority to regulate any local matter they choose to be involved in. They see their role as having preeminence

¹ For a more complete discussion of incorporation procedures, see the League publication, "Municipal Incorporation in Arizona."

² For a more complete discussion of city charters, see the League publication "Exploring Charter Government for Your City."

over local officials in virtually every matter, and claim the ability to override any and all local decisions.

This kind of thinking dates back to the establishment of “Dillon’s Rule” from a ruling by Judge John F. Dillon of Iowa in 1868. Judge Dillon’s opinion introduced the parent-child concept and said the authority of local officials is limited only to that which has been officially granted to them by the Legislature or which are indispensable to local operations. His opinion reads in part: “Municipal corporations owe their origin to, and derive their powers and rights wholly from, the Legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control.”³

A subsequent publication by Dillon argued that states have unlimited power except for those items specifically articulated as being federal responsibilities (see 10th Amendment to the U.S. Constitution), but that municipal governments have only power expressly granted to them by the state government. This principle has been reinforced over time by court decisions in a variety of states.

It has been speculated that Dillon may have been influenced in his decision by the fact that there was widespread corruption in late 19th century American local government (as well as state government, it should be noted) and that this opinion may have been his way of bringing some degree of reform to city government. An opposing local government philosophy was expressed by Michigan Supreme Court Judge Thomas M. Cooley in 1871 when he wrote: “[L]ocal government is a matter of absolute right; and the state cannot take it away.”⁴

A few decades later in 1912, when the Progressive Movement was at its peak, Arizona became a state and its Constitution, adopted in 1911, became effective. As noted earlier, a number of components of the Progressive Movement platform, such as initiative, referendum and recall, were included in the Arizona Constitution, which raises a question. Does the Arizona Constitution follow the line of thinking of Dillon’s Rule or is it more influenced by the line of thinking that authorizes more local decision making authority?

That question does not have a definitive answer. While some believe the language in the Arizona Constitution leans toward greater flexibility on the part of city governments, Arizona court decisions, like those in other states, tend to tip the scales toward the state Legislature as having preeminence in authority.

However, a 2012 decision by the Arizona Supreme Court in the case of *Tucson v. Arizona* contains the following language regarding the relationship of the state government to city charter governments: “Nineteenth century case law and legal commentary generally viewed cities and towns as entirely subordinate to and dependent on the state’s legislature for any governmental Authority...The framers of Arizona’s Constitution, however, rejected that view, valuing local autonomy.”⁵

CITY MANAGEMENT AS A PROFESSIONAL DISCIPLINE

In 1914 the International City Management Association (ICMA) was created to serve as a vehicle for promoting and advancing the council-manager form of government and to serve as a resource for people entering the field of city management. Since then, ICMA has provided a continuing program of technical information, management resources and educational programs to its members. Today, ICMA has more than 9,000 members serving cities, towns and counties across the U.S. and around the world.

One of ICMA’s principal products is its Code of Ethics for municipal managers. The 12-point code was originally developed in 1924. As a condition of ICMA membership, applicants must agree to abide by the ethical tenets and submit to a peer-to-peer review process for any suspected violations. The tenets emphasize the professional, objective standards of city management, prohibit political activities by members, emphasize the ultimate authority of elected officials and warn about any appearance of impropriety or conflict of interest as a breach of the public trust.⁶

Most states also have an affiliate organization of the ICMA. In Arizona, that organization is the Arizona City-County Management Association (ACMA).⁷ The ACMA holds two major conferences annually as well as hosting other special meetings and an electronic listserv where members can post questions and receive advice from their Arizona colleagues. ACMA provides valuable information and networking resource for managers, helping them learn the latest and best practices of the city management profession and avoid “reinventing the wheel.”

As a general rule, people entering the city management profession today have completed a Master of Public Administration (M.P.A.) degree program or a closely related field, and many have also completed internships at various local governments prior to seeking full-time employment. One of the most respected institutions of higher education

³ *City of Clinton v. Cedar Rapids and the Missouri River Railroad, Co.*, 24 Iowa 455, 475 (1868).

⁴ *People ex rel. Le Roy v. Hurlbut*, 24 Mich. 44, 108 (1871).

⁵ *City of Tucson v. State* (229 Ariz. 172, 173-174, 273 P.3d 624, 625-626 (2012))

⁶ The text of the latest edition of the Code of Ethics with Guidelines is found in the Appendix For more information on the ICMA, visit their website at: ICMA Code of Ethics <http://www.azmanagement.org/>

in the city management field is located right here in Arizona at Arizona State University (ASU). In 2009, the ASU M.P.A. program was listed as one of the best in the nation by U.S. News and World Report, with the ASU School of Public Affairs ranking 25th overall nationally. Based on a survey of more than 250 programs nationwide, ASU ranked sixth in City Management & Urban Policy and eighth in Public Management.

As with many professional disciplines, practitioners often get their start as a chief administrative officer in small or medium size communities, or as a department manager in a larger city. In general, the career track of a city manager progresses from smaller communities to larger urban ones, although many people find professional fulfillment with the lifestyle of a smaller community and prefer to spend their careers in those areas.

The typical city manager has an average tenure with any one community of approximately seven years. Of course, there are instances where managers have been with one city for 20 years or more and others where managers are terminated after only one year.

Because of the high profile nature of the manager position, they are often the lightning rod for structural problems with city administration that may or may not have been directly attributable to their position. Since city managers can be dismissed at any time, with or without cause, on the vote of a simple majority of the city or town council, they typically negotiate employment contracts that include severance terms. These contract provisions help terminated managers bridge the income gap until they are hired at another local government. It can frequently take several months to secure a new position, and terminations are usually effective immediately.

Managers are sometimes fired due to a change in political administration and the desire to make a new start in the city's management structure. Due to the volatility in the profession, it is generally not considered a stigma to have been terminated by a community. However, if an individual has a pattern of repeated terminations after relatively short periods of employment, it may indicate an inability to adapt to the delicate relationship of managing a city and staff while still reporting to a body of elected leaders.

To aid communities in identifying people who have a combination of professional training and real world experience, and to recognize city managers who have excelled in their chosen field, ICMA has developed a credentialing program. The program uses a combination of factors to evaluate candidates on their education, experience, commitment to integrity and ethics, and lifelong learning. Applicants are evaluated through a peer-review process with the title of Credentialed Manager being awarded only by the ICMA Executive Board. There are currently about 1,200 Credentialed Managers in the U.S.

Successful city managers tend to have a wide variety of skills encompassing professional disciplines such as finance & budgeting, personnel/labor management, contracting, planning, project management and forecasting, among others. They also must be excellent communicators with their staffs, community leaders and the public, and be able to articulate the vision they have for their city. They must be adept at time management and in quickly comprehending situations and making wise decisions. Additionally, they must be skilled diplomatically in dealing with a sometimes-changing and often volatile mix of personalities on the council, and be able to maintain positive relationships with them all. Successful managers tend to avoid the limelight of public attention and give credit to the elected officials for successes of the city.

City management can be a highly rewarding yet also frustrating career. Those who master the job can take great pride in bringing a high quality of life to the communities in which they serve, and in leaving the world a better place than what they found.

FUTURE CHALLENGES

Local government in Arizona is being severely tested by the conflicting pressures of providing an increasing level of effective public services while financial resources are becoming tighter. Revenues from state and local taxes declined sharply starting in the recession of 2006-2007 but citizens continue to demand rapid response times for public safety services, smooth and fully-functioning streets and transit systems, trouble-free utilities, and excellence in customer service.

In order to continue to fulfill their obligations to the residents of cities and towns, municipal leaders introduced innovations such as more electronic and Web-based services, extended service hours during four-day work weeks and reassignment of personnel to high-demand services. In response to diminishing revenues, local governments have instituted hiring freezes, wage freezes or reductions, mandatory furlough days and even layoffs. Government at all levels is being challenged to continue to deliver the full menu of public services even as the resources to provide those services are in serious decline.

While local revenues have begun to recover with the economy, they are still a long way from the high levels of the early 2000s. This is the environment in which today's city, town or county manager are required to function.

As with generations before who faced unique and daunting challenges, today's managers are required to develop innovative, efficient solutions to continue to carry out their mandate of providing first-rate public services. Combined with a general resistance of the public to support increased taxation, this requires a high degree of creativity, innovation and courage to forge a new way of doing business.

Today's financial environment may lead to the emergence of practices that will become standard in the future. These may include more privatization of services, consolidation and cooperation between communities or even the elimination of some items. The State Legislature continues to pass unfunded mandates and greater regulations while at the same time some members call for reducing local revenues. City managers are regularly forced to confront all the forces that affect city revenue and operational capabilities and still develop policy recommendations that continue to preserve our municipal mission within available resources.

As the council-manager form of local government begins its second century of practice, it will remain a model of governmental efficiency, planning, integrity and service. As long as honest, skilled and self-sacrificial people choose to make it their profession, the future of our cities is in good hands.

NOTES

Based in part on the booklet, "The Council-Manager Form of Government in Arizona" by the Arizona City Management Association; published by the Morrison Institute for Public Policy and the School of Public Affairs, Arizona State University, 1986.



APPENDIX

June 2018 Version
ICMA Code of Ethics

ICMA CODE OF ETHICS

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in June 2018.





WHAT ALL ELECTED LOCAL OFFICIALS NEED TO KNOW

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November 2020

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TABLE OF CONTENTS

CHAPTER I. LOCAL GOVERNMENT PRIMER

A Philosophy of Government	1
Your City or Town Today	1
Policy vs. Administration	1
Forewarned is Forearmed	2
Teamwork is Essential	2
If You Don't Know, Don't Act	3
Your Words are News	4
Your Time is Your Stock in Trade	5
Avoiding the Appearance of Impropriety	5
Conclusion	5

CHAPTER II. YOU AS AN ELECTED PUBLIC OFFICER

Qualifications for Office	6
Term of Office	6
Oath of Office	6
Official Bond	6
Conflict of Interest	6
Incompatibility of Offices	7
Financial Disclosure	8
Nepotism	8
Municipal and Personal Liability	8
Duties of the Mayor	9
Compensation	9
Recall	9
Vacancies in Office	10

CHAPTER III. THE JOB OF THE COUNCIL

Council Meetings	11
Open Meeting Law	13

The Council's Law Making Powers	14
Powers of Appointment and Removal	15
Election Powers and Duties	15
Joint Exercise of Powers	15
Boards/Commissions and Committees	15
Conclusion	16

CHAPTER IV. WHAT IS A CITY OR TOWN?

Legal Standing of Municipal Governments	17
City/Town Organization	18
General Law vs. Charter Government	18
Charter Government	19
Local Options for General Law Cities and Towns	20
Courts	21
Municipal Annexation of Property	21
Financing Local Government	22
The Budget	22
Municipal Indebtedness	24
Audits	24
Public Employees	24
Planning for the Future	24

CHAPTER V. YOU AND THE OUTSIDE WORLD

Introduction	27
Regional Councils of Governments	27
What Does a COG Do?	28
County Government	28
State Government	28
Federal Government	29
Conclusion	29

FOREWORD

Congratulations on your election to office! Your decision to serve your community as a mayor or councilmember gives you a crucial role in determining the present and future course of your community. Your election also designates you as a public officer with legal restraints as well as powers and responsibilities.

This handbook has been prepared to provide an overview of the major functions of your job as a locally elected official. If you've just been elected, the information contained within these covers may serve as a crash course in what your office is and how local government works.

This 2020 edition is a revision of the ten previous editions of the handbook. The information in this edition reflects changes in state law since publication of the last edition.

We hope this handbook will provide you with helpful information in performing your duties as a mayor or councilmember. Any comments or suggestions for this publication will be greatly appreciated

CHAPTER I: LOCAL GOVERNMENT PRIMER

The campaign is over and you emerge victorious. Now that you've been elected, what are some of the things you need to know to be successful as a local elected official in Arizona? This document will outline the key functions of your role as a mayor or councilmember.

Since you've been elected, you may have already come to the conclusion that becoming a good policy official is largely dependent on remaining in office long enough to master the responsibilities and duties of your job. For the newly elected mayor or councilmember, survival is indeed an issue. Therefore, the purpose of this chapter is to discuss the basics of political survival for a locally elected official and how you may avoid some of the common pitfalls of local office.

A PHILOSOPHY OF GOVERNMENT

At the outset of your term of office, you should define for yourself the framework in which you are to operate. It is essential to identify your own philosophy of government to serve as a base for determining your future course of action. It is vital to have a basic guide or set of principles of personal and public beliefs about the nature and function of government at all levels. Unless you take time to develop a framework of principles, you may find that your decisions on detailed proposals will be haphazard.

The philosophy of government that you develop need not be detailed to the point that it would only be useful to a political scientist; but rather, a series of general statements that you can apply to specific situations and draw logical conclusions. Perhaps the best way to develop a working

philosophy is to ask yourself, "What kind of government do I want to see for my community?" Once you've established a baseline of what you believe government should or should not be doing, you can begin to determine what role your municipal government should play within this broad context and what would best serve the public good. Many councilmembers feel the time they invested in sorting out a philosophy of government has been recovered several times over by facilitating the arduous job of making specific decisions that frame the policy of the community they serve.

The philosophy should not be etched in stone. After some time in office, you may find it necessary to redefine your philosophy of government.

In summary, your philosophy of government should be specific enough for you to be committed and consistent, while being general enough to allow you the flexibility needed to consider all alternative courses of action.

YOUR CITY OR TOWN TODAY

The next step is to learn more about the structure and functions of your city or town. What kind of government do you have? What services are you now providing to the citizens of your community? A good starting point may be last year's budget; it indicates in money terms the priorities of your predecessors.

Once you have an understanding of the broad service areas of your city or town, you may find it useful to evaluate and examine those services. Should we provide these services and at what level? If possible, try to avoid being hyper-critical of current practices. Instead, look at services from a policy perspective. For example, if garbage pick-up is a municipal service, should we consider contracting out this service to a private firm? Are there service gaps that should be filled by the city or town?

In each individual community the questions will differ, but take the time to familiarize yourself with your city or town government before you begin making decisions. It will be time well spent.

POLICY VS. ADMINISTRATION

Once you've established a working philosophy of government and examined your present city or town government, you can then determine what it means to be a mayor or a councilmember. According to the philosophy of representative government, the Constitution and laws of this state, the primary reason for your existence as an elected official is to determine policy to guide and protect the orderly growth and development of your community.

On the road to policy determination, perhaps the greatest pitfall for the newly elected official is paying too much attention to administrative detail. It is important to remember that your position as mayor or councilmember is time consuming and is not how you earn your bread and butter. It

will become increasingly important to juggle your priorities between your job as an elected official, your family and the duties and responsibilities of earning a living. Getting wrapped up in administrative detail is time consuming and only can be accomplished at the expense of one of your other priorities. Generally, it has been found that paying too much attention to detail will cause your policy making role to suffer. You will likely find yourself unable to spend a lot of time poring over the sketched plans of a housing development or checking the gauges at the sewer treatment plant, while still being able to accomplish your main goal, which is to determine whether the housing development or the treatment plant should be built in the first place.

To avoid giving excessive attention to administrative details, a good rule of thumb is to use your staff. In other words, remember that you have personnel available who are paid to implement your policy. These are generally career people, and their success in their chosen occupation depends on how well they administer the details of your policy decisions. Your administrative role is to instruct the career people as to your expectations and to evaluate their performance as they carry out council policy. Your staff will have a solid working knowledge of the problems and challenges facing your community - learn to rely upon these people.

By keeping in mind that your job is to determine the content of municipal policy and that the job of the staff is to implement that policy, you will have time to keep in touch with the public and to reflect the real concerns of your community in municipal legislation.

FOREWARNED IS FOREARMED

To effectively fulfill your responsibilities as an elected official, you must take time to do your homework. Learn to use the basic sources of information about municipal government.

It is important that you learn how to evaluate the advice of your staff. Appointed specialists such as the manager or clerk, attorney, engineer, police chief, public works director and others are the operating base of your community. A large part of their job is to provide the know-how that makes decision making possible. In this regard, the role of the manager or clerk is essential in consolidating the information from department heads and presenting it in a manner that will be useful to the council. However, when discussing an issue with your staff, remember that they are not elected officials, and you should not indirectly abdicate your policy making powers to them.

It is important to get good legal, engineering, accounting, law enforcement as well as general administrative and technical advice, but it is even more important to use this advice as objectively as possible in decision making. In this connection, gathering and interpreting technical data as well as fairly representing the public interest is your specialty and

belongs to no one else. Read your council meeting packets and ask questions before the meeting. Be sure to seek staff comments and support their efforts whenever possible. City or town employees are a vital part of your team.

Remember above all that you were elected to decide how the city or town should be run. If the staff is making those decisions in your community, it is likely because you and the other members of the council have created a vacuum and have failed to provide the necessary policy direction to your employees.

In addition to your staff, find out what agencies are available to assist you with factual information and to what extent you can rely on their data. It is also important that you determine the position of those agencies assisting you so that you can screen out the bias transmitted with their information. One place to start learning basics of operating a municipal government is from your state municipal league. A prime role of a municipal association such as the League of Arizona Cities and Towns is to provide objective information to the cities and towns they represent. A municipal league provides you with a central point of contact for information you may need to perform your new job as a public official.

In summary, your decisions can only be as valid as the information you use in making your determinations. It is necessary to the successful operation of your role that every effort is expended to gather and analyze available information. Often, dangerous or unworkable municipal policy could have been avoided had the council explored an issue more in depth before making a decision. In other words, it is much better to be forewarned of potential problems in municipal policy than to be placed in the embarrassing situation of having to publicly reverse an adopted policy.

TEAMWORK IS ESSENTIAL

One of the first things you will find after taking your seat on the council is that your friends and opponents in the community think you have more power as an individual than you actually do. In fact, many people on the council for the first time ran on a platform which, simply stated, said: "If you will only elect me, we'll see some real changes around this place."

Often the greatest disappointment for newly elected officials is finding out that the other members of the council don't see issues their way and that they can do little more than sit and watch campaign promises go by the wayside. One of the hardest thing for a newly elected official to learn is that it takes a majority of the council to make policy, and that at times, compromise is the only way to accomplish what is in the interest of the entire community.

Therefore, the first rule to remember if you wish to be an effective councilmember is that municipal government is a team job. Secondly, it must be remembered that the other

councilmembers also represent certain interests and those interests have a right to be heard and considered, whether you like them or not. Keep in mind that the council chamber is a legitimate place for honest disagreement and dispute, but that it is no place to air personal animosities that can only serve to divide the council and stymie progress as policy solutions are lost by the wayside. In other words, have your say on each issue and ask questions of the other positions, but remember above all this is a team job and that a united front after the decision is necessary to carry your community forward and to perpetuate public trust in city hall.

The necessity of working as a team becomes more apparent as you begin to grasp the scope and complexity of the government you've been elected to serve. At first, it may appear that you've landed on the top of a gigantic tidal wave and that nothing you do can check its momentum. Municipal government today is big business. It is also a difficult business because it involves delivering public services that the private sector cannot, will not or does not want to provide. For example, operation of a police department has too much inherent liability to be considered a profitable enterprise by the private sector. Besides police protection, you may find yourself faced with problems of street construction and maintenance, parks and recreation development, operation and extension of a sewer or water system or treatment plant, provision of fire protection as well as comprehensive planning, zoning and capital improvements programming. You will also find that the people who elected you now think that you are an expert on all aspects of municipal business. It is extremely important to be realistic about the amount of information you will be able to absorb in your first few years in office regarding the operations of your city or town. No municipality, however small, is so simple that a person can master every phase of its functioning within his or her first year or so in office.

Once you have come to this conclusion, look to the other elected officials who are riding the same tidal wave and draw upon their knowledge where it is greater than yours and provide them with knowledge in your area of working expertise. Once you begin to do this, you will find that teamwork will evolve naturally as a necessary part of your role as a mayor or councilmember. As a rule, you will find that decisions made from the input of all councilmembers as well as your staff will be consistently better for the entire community than those decisions strong-armed through by one or two individuals.

Throughout your life and particularly in your business, you have probably met people who are either in favor of or against anything and everything. There may be such an individual on your council. Most typically, this is an individual who feels that he was elected to be against virtually all that you are trying to do. This kind of attitude will be detrimental to the effectiveness of your council, because predetermining a decision for or against an issue does not allow sufficient time

for thoughtful consideration of the possible consequences. With this type of person on your council, you will find that you have lost a necessary source for decision making and what otherwise might have proven to be a valuable resource.

Therefore, it is part of your responsibility to the team to assist such council members in fulfilling his or her responsibilities to the community in a thoughtful manner. You must make every attempt to draw this person out by asking questions and advice on issues facing the council. Additionally, you must sometimes bend over backwards to make such a person feel a part of the team and a valuable if not essential part of the decision-making process. To do this you must not only take the time to tell the person why you don't agree on an issue, but you must discuss why you agree on other issues. Equally, you must convince the person that while personalities undoubtedly have an impact, they should not be allowed to substantially interfere with the business of running your city or town. Remember, above all, that for a council to operate effectively, every councilmember has not only the right but the obligation to speak out on issues no matter what you think of his or her opinion.

To work together as a team, it is absolutely essential that your dealings with the other councilmembers be open and honest. In discussing an issue you must present your opinion and philosophy as clearly as possible and back your position with facts whenever possible. You must also be willing, although sometimes it will take a great deal of effort, to listen to the other person's point of view. If you practice this rule, you will find that the degree to which you are honest in your personal transactions with other councilmembers is quite often the degree to which you are effective in impacting council decisions.

On issues that are very close to you personally, there are often internal pressures to coerce rather than influence or to misrepresent your case in an attempt to secure passage of an ordinance. When you find yourself confronted with this pressure, it is essential that you suppress it or you may find it will be the last time you will have a meaningful role in the decision making process. It is not necessary that you be liked by the other councilmembers or that you agree with them, but it is absolutely vital that they learn to respect you and rely on your honesty.

IF YOU DON'T KNOW, DON'T ACT

At times you will find yourself under pressure from your constituents or staff and other councilmembers to pass legislation or act on a policy matter that you don't completely understand. You will find this particularly true in your first year of office when many things coming before the council seem to be drafted in a foreign language. Do not allow the pressures of time and a heavy workload force you to rubber stamp a legislative or policy matter. Do not succumb to pressures by the other members of the council and citizens that a particular solution is sufficient; request a delay until

they can give you a brief but clear explanation of the issue. Obviously, this will slow things up at first and frustrate your colleagues to some extent, but it is essential to your learning process for you to avoid endorsing things that you might later regret. There are very few matters that must be passed immediately or that cannot wait a week or two while you have the opportunity to better understand the situation.

You will find that council decisions will be consistently better if you take the time to ask yourself two basic questions before passing a municipal ordinance or resolution. These two questions are:

- 1. If we pass it, can we enforce it?***
- 2. How much is it going to cost?***

By asking these two questions on local legislation under consideration, you can avoid adopting an unworkable policy or binding your community beyond its financial capacity. In connection with this, you will probably find that what seems to be essential to the successful operation of your government may be too expensive for your budget. In other words, refrain from passing “wishful thinking” legislation and from buying steak when you can only afford hamburger.

You were not elected to make friends, but to provide for the health, safety and welfare of your community. This sometimes means assuming a position that is contrary to powerful special interests or investigating an area where you’re not wanted. However, you will need to accept this situation if you are to fulfill your greater obligations to the whole community. Remember, above all, that you asked the people of your community to place you on the hot seat and that your obligations extend to the whole community. Your personal interests are now secondary to those of the community as a whole as they have now placed their pressures and problems on your shoulders. There is an old adage among elected officials to the effect: “If you can’t take the heat, get out of the kitchen.” Draw whatever comfort you can from this adage by realizing that you are not alone in the kitchen, and that in the final analysis, it is much more important to be fair than to be nice.

YOUR WORDS ARE NEWS

Before you were elected, you could say almost anything you wanted without your words coming back to haunt you. Chances were that your close circle of friends would listen to and value your opinions. If you held especially strong opinions, you might offend your neighbors or other acquaintances in the community but that would be all. Now that you’re elected, your words are news. Anything you say has news value to your local newspapers, radio and TV stations and especially to local social media gossip lines. You will

soon discover that your opinions are news, even if they have nothing to do with municipal government operations. You will find yourself being quoted about state, federal and county issues. You may even find that the public is interested in your opinion on non-governmental issues. You are now considered to be a “politician” or public figure and, as such, fair game for public scrutiny with regard to all your endeavors and opinions.

If you study the “old timers” on your council, one of the first things you will notice is that they take the time to think before expressing an opinion. These people learned that they could not afford to be impulsive. The second thing you will notice about the more experienced members of the council is that they have learned to temper candor with diplomacy. This does not imply that they do not say what they mean, but rather that they have found ways to convey their opinions without unduly trampling the sensitivities of certain segments of the community. On top of increasing their chances of reelection, learning the art of diplomacy enables the elected official to express opinions without seriously disrupting or polarizing the community. Nothing can be more destructive to the orderly growth of a community than an elected official who swings a broad axe when a pen knife will do the job.

Additionally, your personal and public actions as well as those of your fellow councilmembers have significant news value. Armed with the phrase “the public’s right to know” the media will promptly inform you that they are entitled to all the facts used in determining policy. Also, they will resent being excluded from your deliberations. While the public that elected you does indeed have the right to know, you may find that the local media will often pass over routine matters in favor of reporting conflicts and controversies that make headlines. Obviously, from a news viewpoint, a knockdown, drag-out argument is delightful because it is more fascinating than less exciting routine business.

You should also be aware that, in addition to being news, your words may also render you liable in a lawsuit if you use them to defame someone else. Although the courts have granted immunity for statements made by councilmembers during a council meeting, you do not have an absolute privilege to say anything about anyone. If the person who is the brunt of your verbal attack can prove you were moved by actual malice, then you may be liable for defamation. The key is always to try not to lose your cool.

There are certain matters, however, that by their nature must be withheld by officials until resolved. Basically, these include such things as private business information that falls into the hands of the council, personal information about job applicants that could seriously affect the standing of the person in the community if divulged and certain legal matters. Remember there is a state law specifying just what you can discuss in a private executive session. Follow it carefully!

One absolute rule in dealing with the media is to never attempt to cover up personal or public wrongdoing or anything that relates to the improper conduct of any public official. This clearly falls within the province of the public's right to know. One final warning - there is no statue as a "small town exception" for laws relating to open government.

YOUR TIME IS YOUR STOCK IN TRADE

To effectively perform as a mayor or councilmember, you will have to become an accomplished juggler. You now have three very important roles and only so much time to perform them. Obviously, these roles are (1) your public position; (2) your spouse and family and (3) your career. You already know how much time is demanded by your career and your family, but few people realize how many hours including evenings, Saturdays and Sundays are needed to conduct your public business. Many councils meet several times between regular meetings. In view of this, taking the time to carefully and thoughtfully budget your time as much as possible for the next year is the best insurance you can buy for your own personal happiness. Operating without an organized schedule will leave you constantly facing conflicts between your three priority areas of concern. In addition to your happiness, your competency as an elected official and in your employment may be seriously affected because you have not appropriately organized your time. You will find yourself extremely busy as a result of your election and the need to efficiently and effectively budget your time cannot be overemphasized.

AVOIDING THE APPEARANCE OF IMPROPRIETY

A significant factor in your survival as an elected official is your approach to conflicts of interest and personal favors. It is important to remember that what appears to be an innocent action to you may appear to be large scale corruption to the public at large and may in fact be against the law. Nothing causes more public distrust of officials and loss of confidence in the council, and therefore the city government, than what may appear to be conflicting loyalties between public and private interests. Obviously, some of it is unavoidable. For example, if you work for a company that owns property in the municipality you may be termed by a few to be a tool of a special interest no matter how impartial your decisions may actually be. Other actions such as fixing a parking ticket for your next door neighbor can result in public mistrust of you and the city government that will be hard to repair. It is important to weigh all your actions against your broad responsibility to the entire community. Moreover, it's important to learn to handle public gossip and idle chatter, and you must constantly hold yourself at arm's length to maximize the separation between your personal activity and your public identity.

CONCLUSION

Certainly the issues discussed above do not cover ALL you will need to know to survive your term of office. They are, however, intended to provide a framework for survival by highlighting some of the quagmires that lie before you. In other words, do not expect that the information contained in this chapter will make you a good public official. If studied and understood, these basic political principles should buy you enough time to learn your new business and to start you on your way as an effective and respected local elected official.

CHAPTER II: YOU AS AN ELECTED PUBLIC OFFICER

Now that you have reviewed some of the political realities of your job as a mayor or councilmember, it is crucial that you become familiar with the legal responsibilities of your office. As a local elected official, you are required by law to perform certain tasks and your failure to comply with these legal responsibilities could place your city or town in the very undesirable situation of being faced with a lawsuit.

In this chapter, a review of your legal status is presented highlighting some of the major provisions applicable to you under the law. However, this review is only a guide and you should meet with your city or town attorney to determine your status in light of the local situation.

Although the majority of your responsibilities as a mayor or councilmember will be collective, there are certain responsibilities and liabilities that you accept as an individual when you take the oath of office. Most of these requirements are set forth in state law; however, charter cities may prescribe additional duties and qualifications for their elected officials. Therefore, although the mayor and council in charter cities must comply with state legal requirements, their city charter should also be consulted for any additional requirements. (Chapter IV discusses the difference between general law and charter government in Arizona and also reviews various options available to general law cities and towns.)

QUALIFICATIONS FOR OFFICE

First, you must be qualified to hold your office. State law requires that, at the time of election, a councilmember must be at least 18 years old, a qualified elector of the city or town and a resident for at least one year. In addition, a councilmember must be able to speak, write and read the English language to be eligible to hold office according to state law.

TERM OF OFFICE

State law provides for a term of two years for all members of a city or town council, and you will be serving your city or town until your successors are elected and qualified unless you choose to resign your office before the end of the term. An alternative to two-year terms, which has been provided in state law and adopted by most communities by a majority vote of the qualified electors, is four-year staggered terms. Some advantages have been cited to this optional procedure, the principal one being the continuity achieved with having experienced members on the council at all times.

If you are serving in a charter city, the charter rather than state law determines your term of office and may set certain limitations on the number of consecutive terms you serve.

OATH OF OFFICE

Taking the oath of office will be your first official action. All elected public officers of the state including city

and town mayors and councilmembers are required to take an oath of office prior to assuming their duties and being seated on the council. The form of this oath is prescribed by state law. The oath is as follows:

State of Arizona, County of _____, I, _____, do solemnly swear (or affirm) 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 the office of (name of office) according to the best of my ability, so help me God (or so I do affirm).

Signature of Officer

Your signed oath will be filed in the city or town files. The oath is usually administered by the city or town clerk or other officer who has taken the oath.

OFFICIAL BOND

To protect the people who elected you, all public officers, including city and town mayors and councilmembers, must execute and file an official bond. The purpose of the bond is to protect individual citizens through court action against unlawful or negligent behavior on the part of municipal officers. You are pledging by this bond to adhere to the oath of office. The bond must be signed by at least two sureties or a qualified surety company. The bond may be an individual bond or a blanket bond. The cost of the bond is usually borne by the municipality and is often part of the comprehensive liability policy carried by the city or town.

CONFLICT OF INTEREST

Once you take the oath of office, you are officially a public officer, and one of the most critical things for you to understand is the conflict of interest law. Generally, the law holds that if you or a close relative has a substantial interest in any contract, sale, purchase or service or in any decision of the council, you must make that interest known in the official records of the city or town and not vote or otherwise participate in the contract, sale, purchase or decision. State law allows cities and towns to purchase supplies, materials and equipment from a member of the council without going to public competitive bid if the single transaction does not exceed \$300, the annual total of such transactions does not exceed \$1,000 and a municipal policy covering such purchases is approved on an annual basis. All transactions with a city or town's elected official above and beyond these limits must be the result of an open, competitive public bid process.

Not all private interests, however, constitute a conflict. The law defines some private interests as remote that do not constitute a conflict of interest in the legal sense. A conflict



of interest will most often result from substantial ownership or salaried employment with a private corporation doing business with the city or town. However, distinguishing between remote and substantial interests can be a very complicated matter. Therefore, it is advisable to consult the city or town attorney or a private attorney before you take office to determine where you may have conflicts and whenever you have a question as to whether a conflict exists.

State law also places specific limits on your activities with the city or town during and after your term of office. For example, you are barred from representing another person for compensation before the council or other city or town agency for one year after you have left office if you were directly concerned and personally participated in the subject matter during your term of office. Further you are prohibited from using for profit any confidential information obtained during your term of office. Also, you may not use or attempt to use your service as a mayor or councilmember to secure any valuable thing or benefit for yourself.

In the absence of specific advice, it would be better to be cautious and declare that a conflict exists and refrain from participation in the decision in any way than to risk violation of the law. This declaration should be included in the council minutes. There are very severe legal sanctions for violations of the conflict of interest law. A public officer who intentionally or knowingly conceals or fails to disclose such a substantial interest or who intentionally or knowingly violates any provisions of the conflict of interest law is guilty of a felony and upon conviction automatically forfeits his office. In addition, any contract, sale or purchase made in violation of the law may be voided by action of the city or town council.

The conflict of interest law may be amended by the Legislature, and we strongly suggest a careful review of the current provisions of this law before you take office. You may wish to read a League publication entitled "You as a Public Official," which is regularly updated to reflect those changes in law.

INCOMPATIBILITY OF OFFICES

You probably have enough demands on your time as a member of the council without considering taking on another public office. However, the question does occasionally arise as to whether locally elected officials can also serve in another public capacity. Our principal concern here is whether an elected local official may hold more than one public office.

Generally, an incompatibility of office exists in either of the following two situations:

- (1) the main duties of the two offices cannot be carried out with care and ability; or***
- (2) one office is subordinate to and interferes with the other office and leads to the conclusion that the duties of the two offices cannot be performed at the same time with "impartiality and honesty."***

Specifically, you are barred from being a state legislator, or a U.S. Congressman or Senator. In addition, members of the State Personnel Board and most state employees cannot be candidates for nomination or election to any paid public office. Federal employees have been allowed to run for public office on a nonpartisan basis, and in certain areas of the country, including Sierra Vista and Huachuca City in Arizona, they have been granted a further exemption. In such specified areas, a federal employee may run for office as an independent even though other candidates may be officially identified on the ballot as candidates of a national or state political party.

A distinction is drawn in the incompatibility of office question between employment and service as an elected or appointed member of a board or commission. Thus, as a mayor or

councilmember you are permitted to serve on a school board or other uncompensated public body as long as the duties do not conflict. State law prohibits you, except during the final year of your term of office, from offering yourself for nomination or election to any salaried local, state or federal office. You are determined to have offered yourself for nomination or election to a salaried public office upon filing of a nomination paper or upon formal declaration of candidacy for such office, whichever occurs first. The League's General Counsel has issued an opinion finding that this prohibition does not apply if your service on the city or town council is not compensated.

In addition to the general bar against holding two elected offices simultaneously, you are prohibited from working for or receiving any compensation from the city or town during your term of office other than the compensation provided for your office of mayor or councilmember. In the opinion of the League General Counsel, this prohibition also means that you cannot resign your office during your term of office and then be hired as an employee of the city or town. There may be additional restrictions if you are holding office in a charter city. Once again, the complicated legal nature of this question makes it advisable for you to consult an attorney before you consider accepting another public office during your term as mayor or councilmember.

FINANCIAL DISCLOSURE

State law requires each city and town to adopt standards of financial disclosure applicable to the mayor and council including annual reporting requirements. You filled out such a report during your candidacy for local office. If you have been appointed to fill a vacancy on the council, you must file a financial disclosure statement within 60 days after assuming office. The financial disclosure statement must be filed annually with the clerk on or before January 31 of each year covering the previous calendar year. These statements are public records and must be open to inspection by the public. A public officer who knowingly fails to file a financial disclosure statement, or who knowingly files an incomplete or false financial disclosure statement, is guilty of a class 1 misdemeanor. There are also civil penalties for violations.

NEPOTISM

The laws of Arizona prohibit nepotism, which is the hiring of relatives by local officials. The law specifies that a public officer may not appoint or vote for the appointment of a person related to him by affinity (marriage) or consanguinity (blood) within the third degree. In essence, what this means is that you cannot in any way be involved in the appointment of an in-law or a blood relative as defined by law. "Consanguinity to the third degree" includes your husband or wife, brother or sister, parent or child, great grandparents, grandparents, grandchildren, great grandchildren, uncle or aunt, nephew or niece. It appears, however, that this law does not apply to cousins. This law has limited effect in cities and towns with the council-manager system, since the council has limited

appointment authority. This law does not prohibit a relative of a mayor or councilmember from working for the city or town; rather it prohibits the mayor or councilmember from being involved in any way in the appointment of the relative.

MUNICIPAL AND PERSONAL LIABILITY

In Arizona, local governments may be held liable for certain tort actions. A tort is a civil wrong other than a breach of contract for which the injured party may bring legal action against the wrongdoer.

However, despite the existence of this governmental liability, the municipality must be proven negligent in a particular case before it may be held liable for its torts. It is the responsibility of the courts to determine whether negligence has indeed occurred.

Local governments face an increase in both tort liability suits and the costs of public liability insurance coverage. This means serious headaches for local officials since the city can be tied up in litigation for long periods of time if a liability suit is brought against the municipality.

Absolute Immunity. State law specifically defines when absolute and qualified immunity apply to governmental acts. A city or town is not liable for acts and omissions of its employees that constitute the exercise of a judicial or legislative function and the exercise of an administrative function involving the determination of fundamental governmental policy. According to state law, the determination of fundamental governmental policy involves the exercise of discretion in the allocation of existing and potential governmental resources. The determination of fundamental governmental policy also includes the licensing and regulation of any profession or occupation.

Qualified Immunity. Unless a public employee acting within the scope of his employment intended to cause injury or was grossly negligent, neither a city or town or a public employee is liable for specific actions. These specific actions include the issuance of or failure to revoke or suspend any license, permit or similar authorization for which absolute immunity is not provided, and the failure to discover violations of any provision of law requiring inspections of property other than property owned by the city or town. Qualified immunity also applies to the failure to make an arrest or the failure to retain an arrested person in custody, and an injury caused by a peace officer while rendering emergency care at the scene of an emergency

State law also provides for qualified immunity under other circumstances. Cities and towns and their employees are not liable for injuries arising out of the design, construction, maintenance or improvement to highways, roads and streets if such is in conformance with generally accepted engineering or design standards in effect at

the time. In addition, governmental entities and their employees acting within the scope of their employment are exempt from either punitive or exemplary damages.

Additionally, it should be noted that state law attempts to limit the liability of mayors and councilmembers for the unlawful act of an officer or employee of the city or town. However, where the plaintiff can prove that the official knew or reasonably should have known of the act of the city employee or that the act was committed with the authority of the official, the official will be held liable.

Theories of liability are very complex, and, in every case where a potential issue of liability is raised, advice should be sought from your municipal attorney.

DUTIES OF THE MAYOR

In addition to the general legal requirements for all councilmembers in Arizona, the mayor may have several additional duties or responsibilities. The duties may vary considerably for a mayor in a charter city and for a mayor in a general law city or town. A city charter may prescribe

Responsibilities of the Mayor:

***Executive
Legislative
Ceremonial***

additional duties for the mayor, while the duties of mayors in general law cities and towns, regardless of what options are exercised, are substantially similar. The city charter is the best source of information concerning the role of the mayor in a charter city. Local ordinances are the best sources of information about the role of a general law city or town mayor. Since the vast majority of cities and towns in Arizona operate under the general laws of the state, this section concentrates on the responsibilities of the mayor in such communities.

Executive Responsibilities. State law provides that the mayor is the chief executive officer of the municipality. What this designation means will differ considerably depending upon local laws and practice. If the mayor has specific executive responsibilities, these should be found in local ordinances.

The mayor may also be given extraordinary authority in emergencies. For example, the mayor may assume certain duties in the face of widespread civil disorder or in the event of a natural disaster if the council has provided by ordinance for the exercise of such powers.

Legislative Responsibilities. There are certain responsibilities of a legislative nature that are vested in the office of the mayor in common council municipalities in Arizona. Since the mayor is a member of the council, the mayor has the right to participate in all deliberations of the council in the same manner as any other member and is expected to vote on all matters coming before the council unless a conflict of interest exists. Whether the mayor exercises the right to vote in council meetings will depend on the customs or council procedures of the particular city or town. The mayor also presides over council meetings and may call special meetings of the council if a procedure for calling such meetings has been adopted by the council. Except as may be provided in a city charter, the mayor does not have the power to veto legislation passed by the council.

Ceremonial Responsibilities. The mayor will also be called upon to perform certain duties that can best be described as ceremonial. The mayor is often the one who acts as spokesperson for the city or town with the press. For example, the mayor may be asked to be present at openings of large facilities to “cut” the ribbon, to issue proclamations declaring such things as Fire Prevention Week and be called upon to give speeches to civic clubs and other such groups. This public posture of the mayor will depend a great deal upon the individual’s personality; however, it should be stressed that the willing performance of such functions often helps to create a most favorable impression of city hall as well as to enhance the public’s awareness and popularity of the mayor’s office.

A good deal of the public relations work of the community usually falls on the mayor’s shoulders. Such activities may involve working with the chamber of commerce in an effort to attract tourists or new industries to the community or making sure that local projects and programs get sufficient publicity in the press.

In the absence of the mayor, the vice mayor usually performs the duties of the mayor, including the executive and legislative responsibilities discussed above.

COMPENSATION

You are certainly not in this job for the money! Most cities and towns provide a minimum salary or none at all for the mayor and council. The council by ordinance or resolution can specify the salaries for the mayor and council.

A council may not increase its own compensation; therefore, any approved salary increases do not take effect until after the next regular election.

RECALL

Your seat on the council is not necessarily secure for the duration of your term of office. All persons holding elected

public office in Arizona are subject to the possibility of a recall. The qualified electors of your city or town may cause your removal from office by following these procedures:

1. Petitions signed by a number of electors equal to 25 percent of the votes cast for the office subject to recall in the preceding general election must be filed with the city or town clerk requesting that a recall election be called. This petition must include a statement of not more than 200 words explaining the reasons for the recall.
2. After the petitions are filed and the signatures verified by the county recorder, the clerk notifies the officer in writing that a recall petition has been filed. The officer then has 10 days in which to file a statement of not more than 200 words defending his or her official conduct. If such a statement is filed, it is printed on the ballot at the time of the recall election.
3. If the officer does not resign within five days after the petition has been filed, the clerk calls a recall election to be held on the next following consolidated election date that is 90 days or more after the order calling the election.
4. The officer's name automatically appears on the ballot at the recall election if the officer does not resign within the five-day period. Other candidates may appear on the ballot through a nomination petition process. The petitions must include names equal to or exceeding 2 percent of the total votes cast for all candidates for that office at the last election. If more than one member of the council is being recalled, the nomination petition must specify who the challenger is running against. The statements that were contained on the recall petition and on the officer's statement also appear on the ballot. The candidate receiving the largest number of votes in the election serves for the remainder of the term.

No recall petition may be circulated against either a mayor or a councilmember until the person has been in office for at least six months. The six months is cumulative; if you are elected to a second term, you can be recalled at any time. If a recall election has been called against an officer, no other recall petition may be circulated against that officer during a single term of office, unless those signing the petition for the second recall election first pay all the expenses of the preceding election.

VACANCIES IN OFFICE

Arizona law defines vacancies in office as resulting from any one of the following causes:

1. Death.
2. Insanity, when judicially determined.
3. Resignation and the lawful acceptance thereof.
4. Removal from office.
5. Ceasing to be a resident of the state or of the city, town or ward from which the officer was elected or appointed.
6. Absence from the state without permission of the council for more than three consecutive months.
7. Ceasing to discharge the duties of office for a period of three consecutive months.
8. Conviction of a felony or an offense involving a violation of the officer's official duties.
9. Failure of the person elected or appointed to file an official oath or bond within the time prescribed by law.
10. Decision of a competent tribunal declaring void the officer's election or appointment.
11. Failure of a person to be elected or appointed to the office.
12. Violation of A.R.S. § 38-296. This section prohibits any incumbent of a salaried elective office, except in the final year of his or her term, from offering themselves for nomination or election to another salaried elective office.

Regardless of the cause of a vacancy in the office of a mayor or councilmember, the vacancy is filled either by appointment or election. If the mayor's office is vacated temporarily by a permitted absence, the council may appoint one of its members to serve as mayor.

Law enacted in 2011 modifies the method of filling vacant seats on city and town councils in non-charter municipalities, based on when the vacancy occurs. If the vacancy occurs more than 30 days before the nomination deadline, the appointment is until the next regularly scheduled council election. If the vacancy occurs less than 30 days before the nomination deadline, the appointment is for the whole length of the unexpired term.

CHAPTER III: THE JOB OF THE COUNCIL

The council in Arizona cities and towns is the local policy making and law-making body possessing broad authority and the legal power to govern the affairs of the community. The job of the council essentially is to use these powers granted by state law and local ordinances for the good of the community and its residents. In legal jargon, the city or town council is a legislative body vested with all the corporate powers of the municipality. The legislative tasks of the council are accomplished through its collective power to pass laws and make decisions regarding the city or town. It is important to remember, however, that the powers of local government are restricted. Local laws must conform to the United States and Arizona Constitutions, federal laws and the laws of the state of Arizona. Although the power to enact local laws is therefore limited, a city or town council has a wide range of legal authority to pass laws for the good of the community. The actions of a city or town council over the years have determined to a great extent what type of community your city or town is at the present time, and what direction it will take in the future.

Later in this chapter several of the specific functions of the council will be discussed. However, first it is important, particularly for the new mayor or councilmember, to understand the basic setup and organization of a council meeting.

COUNCIL MEETINGS

Your collective policy and law making powers are put into action at the meetings of the council. It is here that you perform the business of your city or town. In the early days of our country, the powers of local government were exercised by all the adult members of a community coming together to decide what the laws were going to be. The democratic concept of those early town hall meetings has carried over to today in the exercise of governmental powers by city or town councils throughout the United States. In fact, this early heritage carries over to local governments far more than to any other level of government in our country today. The opportunity for citizens to be heard, the availability of local officials to the citizenry and the openness of council meetings all lend themselves to the essential democratic nature of local government.

However, it should be emphasized that the council meeting is exactly that, a meeting of the council. It is not the public's meeting. As an elected official, you have the responsibility of representing the citizens, and to do that job well, you have to be able to accomplish your tasks during council meetings. Remember, the right of the public under the open meeting law is simply to attend and listen to the deliberations, not participate in them.

Certainly, one of the most important jobs of the council is to hear both the requests and grievances of local citizens and to respond to the needs of the residents of the community within the realm of local decision making powers. The council will be asked to solve all sorts of problems, and, in some cases, this may be extremely difficult or impossible. However, both the need and the value of a public forum are nevertheless critical to the viability of local government as we know it today.

Some councils have established time limits for petitions or comments from the public, and when a controversial item is being discussed a total time limit may be established for each side in the debate.

Without diminishing the extreme importance of what the council actually accomplishes at its meetings, it is nearly as important to also maintain a certain degree of decorum at the meetings. The majority of Americans today, if they ever see government at work, are most likely to judge both the effectiveness and the democracy of government through attendance at a local council meeting. After all, few citizens have the opportunity to observe the state Legislature or for that matter, a county board of supervisors at work. Your council meeting may be the only contact many people have with government in the United States. This should not lead, however, to marathon council meetings nor should the audience run the meeting. A six-hour council meeting serves no one - the ability to comprehend and make decisions is not enhanced by endurance tests. The success of council meetings often can be directly traced to the ability and willingness of the mayor to be a strong chairman. Issues should be discussed and a vote taken; there is no need to deliberate so long and hard as to run the meeting or the issue into the ground.

In Arizona cities and towns, the council is principally a policy making body with the administrative functions delegated to the city or town staff in the council/manager form. Organizationally then, the council is, in almost all instances, acting as the council of the whole rather than as individual members charged with particular and distinct administrative functions.

First Council Meeting. The council in non-charter municipalities is required to meet within 20 days after the canvass of its election. In communities where the mayor is not directly elected, the primary purpose of this first meeting is the election of one of the councilmembers to be mayor. At this first meeting, the council may determine the schedule for future council meetings and fix the hour and date by ordinance, although usually the practice of previous councils is simply observed. The council must meet at the regularly scheduled times. A number of cities and towns have provided by ordinance for special meetings of the council, which are called by the mayor, or the manager or clerk at the request of a specified number of the councilmembers. A special meeting must be called in accordance with the notice requirements of

state law, unless it is an emergency meeting. In addition, at this first meeting, the council may determine the procedures to be followed in all future meetings. Since a quorum or majority of the council is necessary to transact business, it is important that all councilmembers realize the importance of attending the regular council meetings.

Conduct of Council Meetings. The mayor is the presiding officer at council meetings while the city or town clerk serves as the clerk of the council. In the absence of the mayor, the vice mayor presides or the council may appoint one of its members as the presiding officer. As part of the rules of procedure to be followed by the council in its meetings, the order of business for council meetings should be determined. This order of business will constitute the agenda for the meeting; however, the order of business should be flexible rather than rigid to enable the council to conduct its business easily.

State law is very explicit about the contents of an agenda. For an open public meeting, the agenda must specifically list the items to be discussed, considered or decided upon. This prohibits the use of such agenda items as "new business," "unfinished business" or "committee reports," unless the specific items of new or unfinished business and committee reports are listed in some detail on the agenda.

As an overall framework for the business of the council, the following order is sometimes used.

1. Call To Order (Many councils then ask those in attendance to join them in the Pledge of Allegiance; some also have an opening Invocation.)
2. Roll Call
3. Minutes (The clerk may read the minutes of the preceding council meeting that should either be approved as written, or, if there are errors, these should be noted and corrected. In practice, the manager or clerk may provide the council with advance copies of the previous meeting's minutes so that they need not be read in full. However, the council should, at this time, note any errors.)
4. Petitions or Comments by Those Citizens Present or Call To The Public (You may want to provide time limits for such presentations by each individual person. The mayor is usually charged with the responsibility of asking persons to introduce themselves and to ensure that the comments of the citizens are in order.)
5. Reports From Officers and Committees (At this time, individual department heads or chairpersons of various municipal committees may be asked to report on the activities under their responsibility.) For discussion to occur on these reports, they must be listed as separate agenda items.

6. Ordinances/Resolutions (This includes the introduction/discussion of new ordinances and resolutions, which must be listed by subject matter on the agenda.)

7. Adjournment

The responsibility for drawing up the agenda is usually placed with the manager or clerk under the direction of the mayor. The agenda, as well as supporting documents, should be circulated in advance of the meeting to each member of the council, other municipal officials and interested parties such as the press. The open meeting law requires that the agenda must be made available to the public and posted on your city website at least 24 hours prior to the meeting. In addition, copies of the agenda should be made available to people who attend the meetings of the council. Several copies of the agenda should also be posted in conspicuous places in city hall near the council chambers. By doing this, everyone interested will know what the council will consider at the meeting and when each item will be considered.

A number of cities and towns use a consent agenda to dispose of routine matters before the council. These matters are listed on the agenda and one motion is made to approve all items on the consent agenda. Members of the council can request that an item be removed from the consent agenda for specific discussion and action. Use of the consent agenda leaves more time to consider important business before the council.

To further increase the efficiency of their meetings, a number of city and town councils schedule work sessions prior to the regular meeting time. At such sessions, councilmembers can review the matters scheduled for the meeting and have ample time to question and receive input from the staff and consult with the city or town attorney on legal technicalities. Some sort of briefing session before a council meeting is very helpful to the smooth running of the council, and more importantly, can help to ensure that councilmembers are aware of any problems and the potential consequences of their actions. If you do hold work sessions, these meetings must be open to the public and should not lead to rubber-stamping decisions at the formal council meeting.

Council Meeting Procedures. After the mayor calls the meeting to order and the clerk has called the roll and read the minutes of the previous meeting, the mayor as presiding officer is responsible for moving the meeting along by announcing the next order of business. The job of running a council meeting has been compared to walking a tightrope, and in many cases, it is a very appropriate comparison. You want everyone to be heard and yet there have to be some limitations in order to avoid meaningless debate. Particularly when controversial questions or matters are before the council, this can be a thorny problem. It will be up to the mayor in most cases to handle this type of situation as he or she best sees fit. Some cities and towns use Robert's Rules of Order as a guide in matters of parliamentary procedure,

although its provisions do not always fit the work of a legislative body and should be used with some flexibility.

The mayor should follow the prepared agenda as much as possible. That being said, deviations from the prepared agenda will certainly be necessary on occasion. In that case, the mayor should clearly announce that the council has decided to rearrange the agenda or not consider a particular item at the meeting for the information of those residents in attendance as well as other members of the council. When changing the order of discussion, it must be done so as not to prevent or deny any member of the public the opportunity to listen to the discussion of any agenda item.

Anyone addressing the council, including members of the council, should address themselves to the mayor and wait until they are recognized before proceeding further. This is to prevent general conversation and to keep the order necessary to maintain decorum and accomplish the business of the council. As the council considers specific requests or proposals, the mayor will be responsible for keeping the discussion under control. In many councils, debate will often lapse into informality; however, in voting, it is important that sufficient formality be observed to ensure that the vote on the matter is accurately recorded. Once debate is over, the mayor should restate the question in full, both for the information of the audience and for members of the council. This is particularly true when much debate has been heard on a specific matter. A member of the council then makes the appropriate motion that is seconded by another member of the council. Immediately after a motion has been made and seconded, the mayor should state the motion. Additional debate may be allowed on a question before the mayor calls for a vote. The mayor may call for the ayes and nays by a voice vote or roll call. In either case, the clerk is required to record the vote of each member on the issue.

To recap then . . .

The basic steps to a motion are as follows.

A member of the council:

- 1. Addresses the chair;***
- 2. Waits for recognition; and***
- 3. Makes the motion.***

A second member of the council:

- 4. Seconds the motion.***

The mayor:

- 5. States the motion;***
- 6. Calls for remarks;***
- 7. Puts the question;***
- 8. Takes the vote; and***
- 9. States the results.***

OPEN MEETING LAW

The state open meeting law is very specific, and you should familiarize yourself with its provisions (see the League publication "You as a Public Official"). The law provides very simply that, with a few limited exceptions, all meetings of a public body must be open to all persons desiring to attend. Electronic communications cannot be used to circumvent the law. Notices of the date, time and place of every meeting are required, and you must make available an agenda for each meeting at least 24 hours in advance. There are exceptions for emergency meetings. When an actual emergency is found to exist, a meeting can be called with notice appropriate under the circumstances. Court actions can be filed against the entire council for violating the law, or individual members who knowingly violate the law. Penalties range from civil fines to removal from office.

The American with Disabilities Act requires that all public activities, including public meetings, be accessible to persons with disabilities. The notice for a public meeting should also contain information on how a person with a disability can go about receiving reasonable accommodations, such as a sign language interpreter, so that he or she can participate. No legal action can be taken by the council except in a public meeting. If you hold work sessions, these meetings must be open to the public. Citizens are wary of behind the scenes decision making, and you should make sure that adequate discussion of all matters before the council occurs at the regular council meeting.

State law allows the holding of executive sessions of a council for certain specific discussions only. The city or town attorney should be consulted for those topics that you may discuss in executive session. The executive session is a council meeting at which the public is excluded. An executive session may be convened by a majority vote of the members of the council constituting a quorum. Notice of the meeting must be posted at least 24 hours in advance of the meeting. In addition, an agenda must be made available 24 hours in advance, although the agenda should not contain information that would defeat the purpose of the executive session. Minutes of the executive session are confidential. A council should exercise discretion in using executive sessions and be certain of state law limitations. In addition, no final decisions can be made in executive session, although you may give your legal counsel direction to proceed in certain instances.

It must be reemphasized that the council cannot make any decisions or discuss the business of the council except in a meeting that is open to the public. This is a requirement of state law and further preserves the democratic quality of local government proceedings. Certainly, the public has a right to know what its government and especially its elected officials, are doing.

THE COUNCIL'S LAW-MAKING POWERS

The principal job of the council is legislative in nature, and municipal legislation is accomplished primarily through two devices - ordinances and resolutions.

The question sometimes arises as to whether the council's action should be in the form of an ordinance, a resolution or merely a motion. In general, an ordinance is considered the highest, most authoritative form of action the council can take.

Three specific instances when ordinances are required:

1. If the council is declaring something illegal and providing a penalty for violations.
2. If state law requires that council action be in the form of an ordinance.
3. If the council is amending or repealing another ordinance.

It should also be noted that there are two basic types of ordinances - general and special. General ordinances are those that establish a rule that applies generally, for example, no dog may run at large within the city. Special ordinances provide for specific acts such as the annexation of a particular piece of property.

Your city or town attorney should always be consulted if the council is in doubt as to whether a specific action should be in the form of an ordinance.

Members of the council should have some idea of the form of a typical ordinance even though the actual drafting of ordinances is usually handled by the city or town staff or attorney. In general, there are seven basic parts to an ordinance: a number, a title, an enacting clause, a body, a penalty clause, a repealer clause and a saving or severability clause.

The title should include a very general statement of the content of the ordinance phrased in sufficiently broad terms to avoid limiting the scope of the ordinance. The enacting clause declares that the ordinance is to be enacted into law and states the name of the city or town that is passing the ordinance. The body is that part of an ordinance that sets forth the main provisions of the ordinance arranged so that each section consists of a single provision. Sections should be numbered, titled and arranged in a logical sequence. In addition, each section should be readily identifiable for a person looking for a specific provision. The penalty clause states the penalty to be imposed for violation of the ordinance. Particularly if a penalty clause is to be included in an ordinance, the council should have the city or town attorney check to ensure that it is in accordance with the state constitution and state law. The repealer clause states that other ordinances or sections of ordinances that are in conflict with the present ordinance are repealed. It is

helpful, of course, to include the specific ordinance numbers, if known, of those previous ordinances that are repealed or affected by the new law. The saving or severability clause expresses the council's intent that an ordinance be enforced although some parts of it may be declared invalid. In addition, an emergency clause may be attached to allow the ordinance to go into effect immediately if three-quarters of all the members of the council vote for the ordinance.

There are posting and publication requirements for ordinances. For example, ordinances with penalty clauses do not become operative until posted in three public places. Publication requirements apply not only to ordinances, but also to notices of elections, invitations for bids, notices of letting contracts and other notices of a public character. The frequency of publication depends on whether the newspaper in your community is a weekly or a daily paper. For weekly papers, ordinances and other official acts of the municipality must be published once a week for two consecutive weeks. In a daily newspaper the law requires publication four consecutive times. If no newspaper is printed within the municipality, these publication requirements may be met by printing the ordinance or other document in a newspaper published in the county in which the municipality is located. Further, state law provides that the cost of publication of any laws or ordinances that have been enacted on behalf of private persons be paid by the individual who also can designate the newspaper in which they wish the document to be printed.

A number of Arizona cities and towns have enacted codes that contain all the general and permanent laws in effect in a municipality. This codification of ordinances is accomplished by reorganizing the provisions of the municipality's laws into an orderly and concise code that the council then enacts as the official law of the city or town, repealing the original ordinances. In many instances, these codes are available online on the city or town's website. The advantages of adopting a code of ordinances include accessibility by both citizens and local officials, and simplification of the task of researching laws on any given subject. It is important that a code be carefully organized and thoroughly indexed to enhance its usefulness to the council and the city or town as a whole.

The continued validity and usefulness of a code will depend on how up to date the code is kept. Accordingly every general ordinance passed by the council should be adopted as an amendment to the code. Further, the provisions of the ordinance should be inserted into every copy of the code so that current law can be referenced. A municipal code can become obsolete and useless to the council and citizens within months of passage if it is not updated regularly. Special ordinances are not usually placed in the city or town code.

Whereas ordinances are regulations of a general and permanent nature, resolutions are generally more temporary and are used for council action on administrative or executive

matters or on statements of general council policy. In essence, a resolution is a written motion. Additionally, there is no law requiring it to have a title or a number. Although it is customary for the resolution to be signed by the mayor, there is no statutory requirement to this effect. It is important, however, that your city or town attorney make the final determination of whether an ordinance or resolution is appropriate for the particular case, since state law does require that some actions be taken by ordinance.

POWERS OF APPOINTMENT AND REMOVAL

The council has full authority over the appointment of municipal officers and employees in common council cities and towns, although this appointing authority is often delegated by the council to the manager. Where this is not the case, the council often accepts the recommendation of the manager where appointments are concerned. In most Arizona municipalities, local merit system ordinances require that certain positions be filled on the basis of ability or competence. As a result, examinations of one kind or another may determine the appointment to a large extent.

There are both federal and state laws that must be observed in the appointment and removal of officers and employees. In hiring and firing municipal employees it is important to observe equal opportunity and affirmative action guidelines. In addition, the Americans with Disabilities Act prohibits an employer from discriminating against a qualified individual with a disability.

ELECTION POWERS AND DUTIES

The council has been assigned specific powers in regard to the municipal election process.

. . . the council has the final word on whether or not an individual meets the necessary legal requirements to become an elected public officer.

The most important duty of the council in regard to the municipal election process is the canvass of the vote and the issuance of certificates of nomination and election. Although this may seem to be a fairly routine function, it must be remembered that the council makes the decision that all applicable laws have been followed for the election.

In addition, the council may call special elections for the purpose of presenting a bond issue to local residents or for submitting a charter or charter amendments to the people. With the exception of city charter adoption elections, special elections can only be held on four dates as provided by Arizona statute. There are two dates in the spring in March and May, and two in the fall in September and November.

It is important to note that the council cannot submit a measure to the people unless there is specific statutory

authorization. In practice, this means that although the voters may petition for an initiative, the council cannot submit an ordinance to the people in the absence of such a petition unless otherwise provided for by law.

JOINT EXERCISE OF POWERS

Under Arizona law, a city or town may enter into "joint exercise of powers agreements" with any other governmental agency. Such an agreement, often called an intergovernmental agreement, provides for one or more agencies to perform jointly anything that each agency is empowered to do on its own or that multiple agencies can form a non-profit corporation to perform the function on behalf of the agencies. Consequently, this can be a useful device for a city or town to join forces with the county or another municipality to perform some function more effectively or economically. This authority has been used for such purposes as sharing a sanitary landfill or operating a library. The procedure for making such agreements is specified in state law. These procedures should be followed carefully to ensure a valid agreement.

BOARDS/COMMISSIONS AND COMMITTEES

Boards, commissions and citizen committees can provide a city or town council with a great deal of assistance both in formulating public policy and in transforming policy decisions into action. Some boards and commissions are empowered to make administrative decisions, some make only recommendations to the council, and others may be primarily fact finding bodies. The council may establish boards and commissions as permanent bodies with members appointed to overlapping terms to add continuity to committee operations. An example of this type of board or commission in many municipalities is the planning and zoning commission. The council may also appoint committees, sometimes known as task forces, for a limited time to accomplish a single purpose. Meetings of boards and commissions are considered public meetings and must have proper legal notice, be open to the public and have minutes taken.

The advantages of utilizing special boards and commissions include the ability to deal with technical problems considered beyond the scope of elected officials who must deal with problems of all kinds. In addition, boards and commissions provide the city or town with an opportunity for utilizing the talents of private citizens with special expertise and for permitting citizens to serve their community in a meaningful capacity. In addition, such boards or commissions, because of their limited scope, may be able to delve more deeply into a particular problem or area of concern. On the other hand, such boards or commissions should not be considered a substitute for consideration of a matter or action by the council, and care should be taken to avoid using boards and commissions more than necessary.

Membership on boards and commissions varies from three to 20 members, although in Arizona there seems to be a preference for small boards and

commissions. Members are usually appointed by the council to serve for terms set by the council.

A special advisory committee or task force can sometimes do the background work for the council on a technical or even a politically sensitive issue. Care must be exercised in both the decision to appoint such a committee and the members appointed. When the committee is finished with its work, it should be disbanded, perhaps with an official thank you recognition of committee members at a council meeting.

CONCLUSION

These are the principal legislative and administrative responsibilities of the council within a municipality. Again, it must be stressed that in charter cities additional requirements and functions may be assumed by members of the council depending upon provisions of the individual charter.

You will be involved in a wide range of decision making that encompasses a broad variety of subjects. The authority and responsibility of your office in performing these tasks may at times be a burden, but the service you are providing for the residents of your community can also be rewarding as you see the city or town benefit from local policy decisions.

CHAPTER IV: WHAT IS A CITY OR TOWN?

Each city and town in the state of Arizona is unique. Not only are there vast differences in size and population, but there are also different programs and services being provided to residents of each individual community.

Yet, despite these variations there are a number of activities that are common to every Arizona city and town. For example, as local officials you are charged with providing police protection for local residents and with maintaining and constructing local streets. Additionally, other services commonly provided by cities and towns include fire protection, garbage and trash collection, water and sewer service, and parks and recreation. The types and levels of municipal services in your community depend to a great extent on the needs of the residents and the financial resources of your city or town government.

In essence, municipal government through the services it provides and through its involvement in land use regulation provides for the physical needs and development of the community in response to local needs. To explain how these functions are performed, this chapter reviews the legal standing of a city or town, its organization, financial resources, budgeting, bonding authority and tools involved with land use control. Hopefully, an understanding of these areas will answer the basic questions that are involved with just “what is a city or town?”

LEGAL STANDING OF MUNICIPAL GOVERNMENTS

To put the whole subject of your legal standing in perspective, let's start at the very beginning. First, your city or town is incorporated. Basically, incorporation is the process by which city and town governments are formed in the state of Arizona. Procedures that must be followed and requirements that must be met in order to incorporate are strictly prescribed by state law.

The first legal requirement for incorporation of an area is that it include a population of at least 1,500 people, including men, women and children. In 1972, the Legislature amended the law increasing the minimum number of people necessary for incorporation from 500 to 1,500. This action in no way affected, of course, those towns incorporated with less than 1,500 prior to 1972.

The second basic legal requirement is that the area proposed for incorporation be a community. The task of determining whether a “community” exists is a matter of state definition and court interpretation. Basically, it must be an area that is urban in nature and in which the residents have common interests in basic public services, such as police protection, and participate in common social activities.

There are two methods for accomplishing incorporation. The first requires that a petition be submitted to the county board of supervisors that includes the signatures of two-thirds of the qualified electors residing within the area to be incorporated. If all legal procedures are followed and the board of supervisors is satisfied that the petitions are signed by two-thirds of the qualified electors in the area under consideration, it orders the area incorporated.

The second method of incorporation provides that 10 percent of the qualified electors residing within the area proposed for incorporation may petition the board of supervisors for an election on the question of incorporation. If a majority of the qualified electors voting on the issue vote in favor of incorporation, the board of supervisors will declare the community incorporated. If a majority of those voting vote against the incorporation, no further election can be held for one year and the community remains unincorporated.

When the board of supervisors orders an area incorporated, it appoints the first council, consisting of seven residents of the newly incorporated community.

Arizona law also provides for the incorporation of a community that lies within more than one county, for the incorporation of a community within an urbanized area, for the consolidation of two towns into one, for the disincorporation of a city or town and for the reincorporation of a previously existing city or town.

It is important to remember that cities and towns, unlike counties, are voluntary units of local government. Cities and towns exist because the people in a particular area desired local government and took affirmative action to establish (incorporate) the community. With the birth or incorporation of a new community, however, does not come independence. Cities and towns in Arizona are political subdivisions of the state. What this means is that all legislative, administrative and judicial powers exercised by municipalities are granted by the constitution or are delegations of power by the Legislature. Except as restricted by the constitution, the Legislature may restrict or take away such powers as it deems necessary. In the words of the Arizona Supreme Court, “Municipal corporations are creatures of the state and possess only such powers as the state confers upon them, subject to addition or diminution at the state's discretion.”

Additionally, the actions of Arizona municipalities are limited by the United States Constitution and laws passed by Congress as well as judicial interpretation of the Constitution and public law. The United States Constitution, for example, requires that municipalities must not infringe upon the individual's freedom of speech, press or religion. Also, a city or town may not restrict the rights of due process and equal protection or interfere with interstate commerce. Whenever municipal officials are unsure whether proposed

actions are authorized and not in conflict with federal or state law, the city or town attorney should be consulted.

Most of the authorized powers and the restrictions on the actions of local governments are to be found in the Arizona Revised Statutes, which are enacted by the Legislature. In the absence of constitutional restrictions, the Legislature has broad power over municipalities. It is to state law more than anywhere else that municipalities must look to learn what they can and cannot do.

All of the provisions of the federal and state constitutions and state statutes are subject to interpretation by the courts, and these judicial decisions may affect the powers of local governments. Finally, Arizona cities and towns are limited by the ordinances that are adopted by the mayor and council. Within the limits set by state law, various powers, programs, activities and regulations can be adopted in the form of a municipal ordinance that is a legal document passed by the mayor and council, and signed by the mayor.

CITY/TOWN ORGANIZATION

Under Arizona law, a newly incorporated community with a population of between 1,500 and 3,000 is designated as a "town." A community with a population of more than 3,000 has the option of incorporating as a "city." If a community incorporates as a town and subsequently attains a population level over 3,000, it may change its status to a city, if approved by the voters.

State law substantially regulates the organization of towns. The only elected officials are the members of the town council. In towns incorporated prior to 1972 with less than 1,500 persons, five councilmembers are elected at-large for two-year terms. These towns have the option of increasing the membership of the council from five to seven members when their population exceeds 1,500. This optional increase in membership from five to seven was enacted by the Legislature in 1981. Prior to that, the increase was mandatory. If the town council passes an ordinance increasing its membership, the additional two members are elected at the next regular election after passage of the ordinance.

Communities incorporated after 1972 have at least 1,500 inhabitants at the time of incorporation, and the council consists of seven members. Legislation to allow the incorporation of small jurisdictions within the vicinity of a National Park was enacted in 2003 and is an exception to the 1,500 population requirement. The seven councilmembers are elected at-large for two-year terms. However, cities and towns may choose to directly elect their mayor or to adopt the four-year staggered term option for all members of the council, both of which are discussed later in this chapter.

In cities and towns without direct election of the mayor, the council selects one of its members to serve as mayor. The mayor may be elected for up to a two-year term or may serve at the pleasure of the council. Unless a council-manager ordinance provides otherwise, the council also must appoint a town clerk, town marshal and town engineer. The clerk is to be the town treasurer and the engineer is to have charge of the town's streets, sewers and utilities. In towns of 3,000 or less, the town marshal, in addition to his duties as marshal, may also serve as town engineer. Additional officers needed by the town, but not specifically provided for by statute, may be appointed by the council.

Municipalities with a population of 3,000 or more that choose to adopt the "city" form of government have a city council of seven members. The councilmembers are elected at-large for two-year terms unless the city chooses to adopt the ward or overlapping term option. As in the town form, unless otherwise provided by ordinance and approved by the voters, the mayor is selected by the council from among its own membership and serves either at the pleasure of the council or for up to a two-year term. Over time, the majority of cities and towns in Arizona have chosen to have their mayors directly elected by the voters.

The city council must also appoint a city clerk, ex officio treasurer, city attorney, city marshal or chief of police and city engineer, unless a council-manager ordinance provides a different procedure. Additional officers, such as fire chief or public works director, may be appointed at the discretion of the council. The same person may hold two or more appointive offices if the council so desires.

Under Arizona law, there is very little difference between the town and city form of government. Aside from the added "prestige" which some feel a city has over a town, the main difference is that cities have the option of choosing to adopt their own charters.

GENERAL LAW VS. CHARTER GOVERNMENT

Most incorporated communities in Arizona are general law cities or towns. The connotation "general law" means that the city or town exists and operates under the general laws of the state, the Arizona Revised Statutes. In practical terms this means that as a general law city or town, the mayor and council must look to the state for authority to pass local laws. Either specific or general enabling authority must be found in state statutes before the council can act.

Charter cities, on the other hand, operate not only under state law and the state constitution but also under a home rule charter adopted by the people in the community. Arizona has constitutional home rule rather than statutory home rule since the authority to adopt a charter and to be governed by a home rule charter is in the state constitution rather than simply in state law. Therefore local

determination is incorporated into the state constitution and cannot be altered solely by the Legislature.

In explaining home rule charter government, a valid comparison can be made between a charter and the constitution. Cities adopting charters are actually adopting constitutions setting out the basic governing procedure for local government. This adoption process is similar to the famous founding fathers who met and created the constitutional basis of our national government. In adopting a city charter, a similar group of “founding fathers” creates a local government unique to their city.

There are three primary advantages of home rule charter government. First, and foremost, a city charter strengthens the ability of a community to deal with public concerns of a local nature under the terms and conditions the community prefers. Secondly, and closely related to the first point, a charter allows a city to adopt the kind of government the community desires and not one prescribed by another level of government. Thirdly, a charter provides cities with the power needed to meet the growing demands on local government.

CHARTER GOVERNMENT

The state constitution provides that cities with a population of more than 3,500 may frame and adopt their own charters. The purpose of charter or home rule government is to give cities a greater degree of self-determination. Thus, it applies the principle of self-government in its most ultimate sense at the local level.

There are currently 20 charter cities in Arizona. The city of Tombstone operates under a territorial charter, originally granted in 1881. The other 19 charter cities have adopted their charters through procedures established in the state constitution and state statutes.

An Arizona Supreme Court opinion issued in 2012 (Tucson v. Arizona) discusses the concept of charter cities as envisioned by Arizona’s founders. Here are some excerpts from that opinion: “Nineteenth century case law and legal commentary generally viewed cities and towns as entirely subordinate to and dependent on the state’s legislature for any governmental authority... The framers of Arizona’s Constitution, however, rejected that view, valuing local autonomy...” “The purpose of the home rule charter provision of the Constitution was to render the cities adopting such charter provisions as nearly independent of state legislation as was possible.”

The Powers of Charter Cities. Charter cities are by no means completely free of state control. The charters may not be inconsistent with the constitution or state laws, and provisions of local charters regarding matters of statewide concern give way to state law when there is a conflict. It is up to the courts to decide whether such a conflict exists. Some of the specific powers that may be included in a charter adopted by a city are the right to:

1. Structure its governmental organization in any way that it desires;
2. Exercise additional authority over the investment of city funds;
3. Sell or dispose of city property without advertising;
4. Control its own municipal elections although the state consolidated dates for elections apply to charter cities;
5. Levy taxes not expressly authorized by state law; and
6. Raise and use funds for advertising purposes over and above the state law limitations.

The Arizona Supreme Court has defined the charter as follows:

“The charter of a city is its organic law which bears the same relationship to ordinances as the state constitution bears to its statutes.”

The following procedure is established by the constitution and state statutes for framing and adopting a charter:

- 1. An election is held on the question, "Shall the city adopt a charter form of government?", and at the same time, a 14-member board of freeholders is elected. This election may be called either by the city council or by the mayor when petitioned to do so. The petition must be signed by a number of qualified voters equal to 25 percent of the number voting in the preceding municipal election.***
- 2. If a majority of the voters favor adopting a charter, the board of freeholders proceeds to write a charter. They must complete their work within 90 days after the election.***
- 3. When the charter is completed, it must be published in the local newspaper for at least 21 days, if the paper is a daily or in three consecutive issues if it is a weekly.***
- 4. Within 30 days, and not less than 20 days after publication, an election is held on the question of ratifying the charter. If a majority of the voters favor the charter, it is then submitted to the governor for approval.***

LOCAL OPTIONS FOR GENERAL LAW CITIES AND TOWNS

Direct Election of Mayor. State law allows cities and towns to provide for the direct election of the mayor, if such a provision is approved by the voters. First, the council passes an ordinance providing that upon approval of the voters the mayor will be directly elected. In this ordinance, the council specifies whether the mayor will serve a two-year or a four-year term. Then the question is presented to the voters at either a special or regular election. If approved by the voters, the ballot at the next election will list two municipal offices - mayor and councilmembers.

Overlapping Terms. An option that cities and towns may adopt by a majority vote of the qualified electors voting at an election is that of establishing overlapping terms for councilmembers. Under this option, members of the council serve four-year terms.

If the option is adopted, the council divides its members by lot into two classes. The first class, composed of three members, holds office until the next regular election. The second class, composed of four members, holds office until the second regular election. Thus, at the first regular election held after the adoption of this system, three councilmembers are elected, and at the second regular election four councilmembers are elected. Thereafter members of the council are elected in classes of three and four at successive, regular elections and hold office for terms of four years each and until their successors are elected and qualified. When a city or town adopts this option, the council determines by lot which of its current members shall be of the first and second classes. In the case of a five member town council, the first class is to consist of two members, the second class of three. The major advantage of overlapping terms is that there will always be experienced members on the

council, which provides for a greater continuity of government. Also, the provision for four-year terms gives councilmembers more time in office in which to gain experience and become familiar with the city's problems. On the other hand, a disadvantage of this form is that if the voters are dissatisfied with the council, they cannot elect an entirely new council at a single election.

District Elections. The common system of selecting councilmembers in municipalities is through "at-large" elections, which means that each elector votes for every position on the council. Every councilmember, therefore, represents the city or town at-large rather than representing a specific geographic section of the city.

Both cities and towns have the option of electing councilmembers from districts upon approval of the proposition by a majority vote of the city or town's qualified electors voting at the election. If the district system is adopted, the council divides the city or town into not more than six districts. (In charter cities, the term "district" is used rather than "districts.") The councilmembers are then elected from districts, and the mayor is elected at-large. Under this system, each voter votes only for the mayor and for the councilmember from his or her district. It should be noted that adoption of the district system option automatically provides for direct election of the mayor rather than having the mayor chosen by the council, however, the mayor still serves as a member of the council.

The district system is more than simply another method for electing the council. Each councilmember represents a specific area of the community, is elected and may be up for reelection by the people in the district. For this reason, a councilmember

may represent their interests and needs even though they may be in conflict with those of other districts. Advocates of the district system point out that this is a more democratic method of representation for the various social and economic groups within the community, ensuring that all citizens will be heard. Critics of the district system point out that councilmembers may be more interested in the well-being of their district than the city as a whole.

Council-Manager Government. Nearly all cities and towns in Arizona operate under the council-manager form of municipal government. Under this system, which is also the predominant form of local government nationwide, the council hires a manager who is academically and professionally trained and experienced in municipal administration. The manager is generally given the power to appoint and remove all employees, to draft the annual budget for submission to the council, to supervise and coordinate the day-to-day operations of the various departments and to present policy alternatives to the council.

The widespread use of the council-manager form in Arizona, as well as across the nation, has largely been a consequence of the growing complexity of municipal government. Professional administrative skills have become increasingly desirable to assist the council in managing the affairs of the community.

The size of municipal government has also been an important factor in the growth of the council/manager form of government. As the number of programs and activities of cities and towns grows, so does the need for full-time centralized management rather than part-time elected councilmembers. In order for the council to focus on its primary responsibility for policy making and community leadership, most cities and towns have turned to the council-manager form.

COURTS

Prior to the passage of legislation during the 1994 session of the state Legislature, every general law city and town was required to have a municipal court. As a result of the passage of this legislation, a city or town, in lieu of establishing or maintaining its own municipal court, may enter into an inter-governmental agreement with either a justice of the peace in whose jurisdiction the city or town is located and the county in which the city or town is located, or with another city or town within the same county to provide the services of the municipal court, including jurisdiction of all cases arising under the ordinances of the city or town. This is an option that city and town councils may wish to pursue at some point in the future.

The city and town magistrate is generally appointed by the council. The magistrate must be appointed for a term of not less than two years during which the magistrate can only be removed for cause. The State Supreme Court, in addition to the city or town council, has jurisdiction over municipal courts. This authority is specifically spelled out in the state constitution. The degree of administrative authority by the city or town over the courts is a matter of some debate. Administrative orders issued by the Supreme Court have attempted to clarify the relationship of the court to the city or town in areas such as personnel.

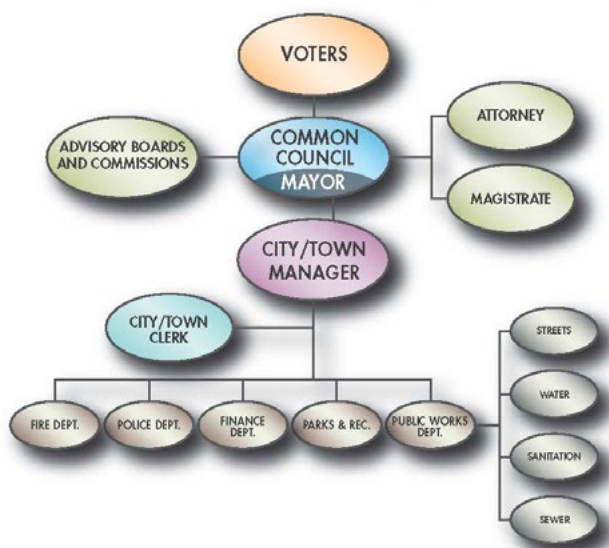
MUNICIPAL ANNEXATION OF PROPERTY

Annexation refers to the process by which a city or town expands the area within its corporate limits. An area eligible for annexation must be contiguous to the city or town; that is, a portion of its boundaries must touch the boundaries of the city or town. State law also requires that territory to be annexed meet certain size and shape specifications unless the territory is already surrounded or bordered on at least three sides by the city or town and prohibits annexations that will result in unincorporated areas that are completely surrounded by multiple cities and towns. In general, these specifications prohibit strip annexations.

Procedures for the annexation of new areas into the municipality are also set forth and regulated by state law. Thirty days prior to actually beginning the process of gathering signatures, blank petitions (including a map of the area proposed to be annexed) must be filed with the county recorder. During this 30-day waiting period, the city or town must hold a public hearing. At least 15 days before the end of the waiting period and at least six days prior to the public hearing on the proposed annexation, notice of the hearing must be published in the newspaper. In addition, at least six days prior to the public hearing, notice of the hearing must be posted in at least three public places in the area proposed to be annexed. Notices must also be sent by mail to each property owner in the area and to the chairman of the affected county board of supervisors.

Within one year of the end of the 30-day waiting period, petitions with the signatures of the owners of more than

Figure 2
COUNCIL-MANAGER CITY/TOWN



See Figure 2 for a typical organizational form of a council/manager city.

one-half of the value of the property within the area plus more than one-half of the property owners in the area proposed to be annexed must be filed with the county recorder. The county recorder cannot accept a filing for annexation without also receiving a sworn affidavit verifying that no part of the territory is already subject to an earlier filing for annexation. If a council plans to adopt an annexation within 90 days of an election, it is recommended that additional notice and communication be made with the county recorder's office to ensure that the county has sufficient time to place any proposed new residents into voting precincts for the municipal election. After filing the signed petitions, the council then adopts an ordinance annexing the property. The annexation may be challenged in court within 30 days after adoption of the ordinance. You may wish to refer to the League's Annexation Manual for additional details.

FINANCING LOCAL GOVERNMENT

As a mayor or councilmember, one of your chief concerns and possibly one of your major headaches will involve the financial affairs of your city or town. There is no way to avoid the fact that it takes money to provide the services and programs needed and demanded by the local citizenry. Consequently, it is best to start with the local revenue picture which, of course, may differ considerably from one community to the next.

Each method of financing municipal government has its own advantages, disadvantages and limitations. As a mayor or councilmember, you must find the combination of revenue sources that seems "right" for your community. The following is a listing of some of the characteristics of each revenue form.

Locally Imposed Taxes. In Arizona there are three direct taxes that can be levied by cities and towns to cover municipal expenses:

1. The transaction privilege tax, often called the sales tax, provides for the collection of a tax as a percentage of gross revenues of a business in return for a permit to transact such business within the city or town.
2. The property tax provides for the collection of a tax based on the assessed valuation of property within the city or town. In other states, it is the primary source of municipal funding; however, in Arizona, dependence upon the property tax has decreased steadily as a percent of total local revenues, and many cities and towns do not even levy this tax.

Arizona's two direct taxes which can be levied by cities and towns to cover municipal expenses:

> transaction privilege tax
> property tax

Finally, there are other local sources of revenue used by cities and towns. These include utility or user fees, fines and forfeitures, permit and franchise fees, development fees and various service charges, such as those from the issuance of building permits.

State Collected, Locally Shared Taxes. Other sources of funding available to cities and towns are state shared taxes. These include the following:

1. State Sales Tax: Cities and towns receive a share of the state's sales tax, which is distributed on the basis of population.
2. State Income Tax: A portion of the state income tax is distributed to cities and towns on a population basis.
3. Highway User Revenues: A portion of highway user revenues (taxes on gasoline, diesel fuel and other motor vehicle related fees) are returned to cities and towns based on a two-part formula. One half of the amount is allocated on the basis of a city or town's population in relation to the total population of all incorporated cities and towns. The other half is distributed on the basis of the county of origin of sales of motor vehicle fuel and then on the basis of each city or town's population in relation to all other incorporated cities and towns in the county. The expenditure of all highway user revenue funds is limited to street and related projects.
4. Vehicle License Tax: A portion of the automobile license tax is distributed to the cities and towns on a population basis within the county in which it is collected. Prior to this distribution, a certain amount of this tax is placed in the highway user revenue fund.

Federal Funds. The amount of federal assistance available to cities and towns is limited. The two remaining federal revenue sources are categorical and block grants. Categorical grants are usually awarded for specific projects and operate under strict guidelines as to the use of the funds. Block grants are a more flexible funding source and are subject to fewer spending restrictions than are categorical grants. Under this category, the Community Development Block Grant (CDBG) Program has been the principal source of federal financial assistance for most Arizona cities and towns.

THE BUDGET

The spending of revenues received by your city or town brings us to the subject of your annual municipal budget. Although there is a tendency to think of budgeting only in terms of the need to prepare a complicated document in sufficient time to comply with the deadlines established by state law, it is important for the members of the council to realize that this document is one of its most important tools to ensure a workable, well organized city or town. Under state law, when the council adopts the budget it is

State Collected, Locally Shared Taxes:

> State Sales Tax

> State Income Tax

> Highway User Revenues

> Vehicle License Tax

setting maximum limits on the amount of money that can be spent as set forth in the published budget.

In adopting a budget, the council, in effect, promises that the city or town will do a certain amount of work with a given amount of money. It is a type of contract or agreement with the taxpayers as to what services they will get for their tax money during the coming year. Additionally, the budget should be considered as a work program, since it sets forth the amount of money available for municipal expenditures by purpose.

In municipal budgets, there are two major limitations that must be met. First, state law imposes an expenditure limitation on cities and towns. The actual amount that “controlled” funds are allowed to increase from year to year is determined by the increase in population of the individual community and a national inflation factor. It should be noted that the population and inflation factors are used in conjunction with a community’s 1979-80 actual expenditures minus exclusions, known as the base limit, to determine each year’s expenditure limit. This limit affects all funds not explicitly exempt under the state constitution. These exemptions include such items as federal grant funds, bond principal and interest payments and the amount of highway user revenues received in excess of the amount received in 1979-80.

Additionally, the state constitution allows a city or town council the opportunity to seek voter approval of an alternative to or modification of the state-imposed expenditure limit. Options available to the council include a local alternative expenditure limit (home rule option), permanent base adjustment, one-time override or a voter-approved capital projects accumulation fund. The vast majority of Arizona’s cities and towns operate under a home rule option alternative or a permanent base adjustment to the state-imposed expenditure limitation. The form of a voter-approved home rule option varies depending upon each community’s local needs. This option gives each community more control over expenditure of local revenues.

Regardless of the limitation a community functions under, each city and town must comply with the uniform reporting

system detailed in state law. This law requires that each community file a report within four months of the end of the fiscal year showing compliance with either the state or the local expenditure limit. The chief fiscal officer as designated by the council is responsible for filing this report.

The second limitation on the budget concerns the amount of money to be raised by direct property taxation to support general municipal expenditures proposed in the budget. The state constitution limits the increase in the primary property tax to not more than 2 percent of the amount levied in the preceding fiscal year plus an amount attributable to annexations or new construction. The primary property tax revenues may be expended for all municipal purposes. An unlimited secondary property tax may be levied to pay the principal and interest on bonded indebtedness to pay for capital projects. Before a new property tax can be imposed by a city or town, the voters must approve the tax.

It should be mentioned that the League publication, “Municipal Budget and Finance Manual,” provides detailed information concerning the state-imposed expenditure limitation, home rule option, permanent base adjustment, capital project accumulation fund, one-time override, uniform reporting system and the property tax system. It also serves as a practical guide to budget preparation.

There are several additional requirements in state law that must be followed by the council in this important function of budget preparation and adoption. For example, state law requires that, before the third Monday in July of each year, the council must prepare a full and complete statement of the financial affairs of the city or town for the preceding fiscal year and an estimate of the different amounts that will be required to meet the needs of the city or town for the current fiscal year. These estimated expenditures and revenues must be aired before a public hearing, and the budget estimates and the public hearing notice must be published on the city website and in the newspaper to alert local residents of the city or town’s financial plans for the coming year. Following the public hearing, the council will adopt the final budget. For those cities and towns with a property tax, state law requires at least seven days between adoption of the final budget and adoption of the tax levy. However, the property tax must be adopted by the third Monday in August. Therefore, the deadline for adopting the final budget becomes the second Monday in August. For those without a property tax, it is still recommended that final budget adoption take place by mid-August. Once the budget is adopted, it may not be increased. Transfers between budget items may be accomplished under procedures specified in state law.

MUNICIPAL INDEBTEDNESS

Cities and towns often find it necessary to incur relatively large debts especially when financing major capital improvements. Because of this, the state has authorized municipalities to borrow through the issuance of certain types of bonds. It should be emphasized, however, that municipalities may not become indebted for any purpose without submitting the question for approval by the voters. The major types of bonds that local governments may issue are general obligation bonds, revenue bonds, street and highway improvement bonds and special improvement bonds. These are discussed briefly below.

The major types of bonds that local governments may issue are:

- > General Obligation Bonds***
- > Revenue Bonds***
- > Street and Highway***
- > Improvement Bonds***
- > Special Improvement Bonds***

General Obligation Bonds. The most common means of raising funds for major municipal projects is the issuance of general obligation bonds. These bonds are ordinarily retired from property tax funds. The bonds are referred to as general obligation or full faith and credit bonds because they are guaranteed by the full taxing power of the governmental unit issuing them. Cities and towns are subject to certain constitutional and statutory limits on the issuance of general obligation bonds including:

1. Indebtedness for general municipal purposes may not be incurred for more than 6 percent of the assessed valuation of the taxable property in the city or town.
2. In addition to the 6 percent limitation for general purposes, cities and towns may issue general obligation bonds up to an additional 20 percent of assessed valuation for purposes relating to publicly owned utilities and open space. In other words, the total general obligation indebtedness may go as high as 26 percent of assessed valuation.
3. A majority of the qualified electors of the city or town voting at the bond election must approve the issuance of the bonds.

Thirty days before a general obligation bond election, the city or town must prepare and disseminate an informational packet to the electors. Information must include

the source of payment for the bonds, issuance cost and polling locations among seven other required items.

Revenue Bonds. Revenue bonds may be used to finance a revenue-producing facility such as a public utility or airport. These bonds are usually secured solely by the revenues of the facility for which they were issued, and if these revenues are not sufficient to cover the repayment of the bonds, the city or town is not obligated to provide tax funds for repayment. Because these bonds are not secured by a tax source, they represent a somewhat greater risk for the investor than general obligation bonds, and therefore, sometimes must bear a higher interest rate than do general obligation securities.

Arizona cities and towns are authorized by state law to issue revenue bonds for a wide variety of purposes. While revenue bonds are not subject to the limitations discussed above, there are certain statutory requirements that must be met. For example, revenue bonds must also be approved by a majority of the qualified electors voting at an election. Additionally, revenue bonds must mature within 30 years of the date issued and may not be sold at less than par value.

Street and Highway Improvement Bonds. Cities and towns may issue bonds for constructing and maintaining streets and highways with the funds for retiring these bonds coming from the municipality's share of highway user revenues. Again, these bonds must be approved by a majority of the qualified electors of the city or town voting at a bond election. Municipalities with the consent of the voters may secure such bonds by a pledge of their full taxing power if they so desire, but this is not required.

Special Improvement District Bonds. Special improvement district bonds are those issued to finance improvements on projects such as streets and sewers. The bonds are secured by assessments levied against the property that is benefitted by the improvement. For example, if bonds are issued to finance street improvements, the property bordering the street will ordinarily be assessed to cover the cost of retiring the bonds.

Community Facilities Districts. State law allows the formation of community facilities districts inside cities and towns with the approval of the council. Such districts can be formed for any public infrastructure purpose or certain enhanced municipal services. Both general obligation and revenue bonds can be issued by such a district.

AUDITS

Cities and towns are required by state law to have an audit performed by an independent public accountant once every two years for towns and annually for cities. This examination of the financial accounts of the city or town is designed primarily to ensure that the accounts are being kept properly, although certainly a secondary purpose is to protect local taxpayers from misuse of municipal funds. The audit cannot

be performed by city or town employees and must begin as soon as possible after the close of the fiscal year and be completed within six months. The audit report must include all the accounts and funds of the municipality including operating, special, utility, debt, trust, pension and other money or property for which a municipality is responsible. At least three signed copies of the audit report must be submitted to the municipality with one copy made available as a public record and open for public inspection. A copy of the audit must be sent to the Arizona Department of Library, Archives and Public Records. Audit expenses must be paid for by the municipality.

PUBLIC EMPLOYEES

The public employee is perhaps the most important element in providing local public services in the city or town. A municipality that recruits and is able to retain good employees has taken a big step toward effective local government. On the other hand, a municipality that takes its employees for granted is asking for a lot of trouble.

Court cases have played an increasingly important role in defining the rights of employees, especially in the area of termination and compensation. In early 1985, a Supreme Court decision extended the coverage of the federal Fair Labor Standards Act (FLSA) to all state and local governments. The FLSA contains minimum wage, overtime pay and other requirements that apply to almost all local government employees.

In addition, court cases have brought the issue of sexual harassment in the workplace to the forefront. You must keep in mind that any statements or action that constitute sexual harassment could subject you, as well as the city or town, to a lawsuit.

You may be asking yourself what responsibility does the elected official have in employee-employer relationships especially under the council-manager form of government. As a general rule, the citizens who elected you are expecting fairness with employees and protection from economic reprisals such as damage awards in court cases for wrongful action. Denying due process for employees is a fertile field for court cases. As an elected official, the authority for handling employee-employer problems is delegated to the manager - not the responsibility. You are ultimately responsible to the citizens for the manager's actions.

There are a number of ideas and techniques that can be utilized by a city or town to develop an active program for its public employees. Perhaps one of the first and simplest steps that should be taken is the adoption of a uniform personnel system to be used in hiring, removing or promoting employees; in setting salaries and fringe benefits for employees; in solving employee problems and encouraging better work performance. While there are a number of benefits for a city or town from a

formalized personnel system, one of the most evident is the uniform treatment of all city or town employees within the organization. This uniformity in many cases eliminates the idea that city or town management may be treating employees in one department different than employees in another department. It is this type of idea that leads to employee dissatisfaction and lowers quality in municipal services.

There are numerous incentives that can be built into a local personnel system to head off potential problems. There is one old saying that is extremely applicable to issues in the public employment sector, and that is: "An ounce of prevention is worth a pound of cure." In other words, you should act instead of react, because if you're reacting, it may be too late.

PLANNING FOR THE FUTURE

Everybody has to plan for the future, and cities and towns are no exception. In fact, planning for the future is considered by many as one of the most critical functions of local government in Arizona. Such municipal planning and development includes the methods used by cities and towns to control land use in the community and to ensure that adequate physical development in such areas as the water and sewer system, the transportation system and the solid waste disposal system keeps pace with the growth of the community.

Growing Smarter. Legislation was adopted in 1998, 1999 and 2000 to reform local planning and zoning laws for municipal, county and state land. The intent of the act is to strengthen the ability of Arizona's communities to plan for growth, acquire and preserve open space and develop strategies to comprehensively address growth related pressures. These reforms included adding new elements to the comprehensive or general plan as well as new requirements to existing elements of the general plan. In addition, Growing Smarter legislation promotes greater citizen participation in the development and adoption process of a general plan. Finally, the municipality must readopt a general plan every 10 years.

Statement of Community Goals. This is a listing of those areas of urban growth that are of public concern such as desired standards for parks and open space; objectives of the transportation system including streets, freeways, pedestrian and bike paths or mass transit; desired relationships between business districts, residential areas and other land uses; standards for location and type of public facilities; or the definition of a subdivider's responsibility for public improvements such as streets, sewers and utilities.

General Plan. The goals statement is normally incorporated into a comprehensive plan for community development. This becomes the community's growth policy to guide the development of specified geographic regions of the city or town and its environs.

Zoning Ordinance. The zoning ordinance specifies geographic zones within the community and regulates the type of development that can go on in each area such as residential, industrial or commercial.

Subdivision Ordinance. This ordinance regulates the improvement of subdivided land for sale within the community. It prevents or limits construction in areas that would be dangerous to the public health and well-being, such as areas with steep slopes, areas prone to periodic flooding or areas with insufficient water supplies for the projected population density. The subdivision ordinance may require that the developer provide the necessary improvements and services including streets, water and other utilities, sewers and solid waste disposal systems, open space and other services required for acceptable standards of living.

Building Codes. These are generally standardized regulations adopted by ordinance to provide comprehensive construction standards covering such areas as mechanical, electrical and plumbing specifications.

Utility Extension Policy. A city or town may adopt a utility extension policy to serve as a guide to how new water and sewer facilities are to be financed, particularly in the case of new subdivisions. It may provide that the subdivider bears the cost of such extensions or it may provide for some municipal involvement or repayment agreements.

Capital Improvements Program. This is a document that sets forth priorities for the construction of capital improvements over a five- or six-year period. It is basically a technique for setting priorities on projects and then determining anticipated revenues that will be available for such projects over a five-year or longer period of time.

Development Agreements. State law authorizes a city or town to enter into a development agreement for property located either inside or outside the corporate limits. If located outside the city or town, the development agreement does not become operative until after annexation. Such an agreement may include provisions on permitted uses of property subject to the agreement, dedication of land for public purposes, public infrastructure and its financing, etc.

CHAPTER V: YOU AND THE OUTSIDE WORLD

INTRODUCTION

One of the first things you will learn as a local official is that your municipality does not exist in a vacuum. Even more subtly you will soon find that you are directly concerned with county zoning and building regulations in that area immediately outside your community that the council has been thinking of annexing. To a large extent the activities of your local government are directly affected by the outside world. In addition, people in your community will be expecting you to have the answers to many problems over which you have no control as citizens do not always realize which level of government is appropriate to address their particular concerns.

You will be approached with many problems that you cannot solve directly, but that you can refer to the appropriate jurisdiction. However, you will also be approached with a number of problems that simply cannot be solved by the present government or private organizations operating within your community. These unmet needs of the citizens of your community must either go unsolved or must be directed to some agency or person willing to take up responsibility for initiating new programs. Such situations require your leadership within the community and are the basis for the unique role of cities and towns within government.

Working cooperatively with other cities and towns as well as other levels of government is necessary in today's society. The actions of one community will often affect another entity. In other words, always have a good neighbor policy for adjoining jurisdictions. To develop and implement intergovernmental goals, it is necessary to become active as well as reactive in your relationships with other governmental levels.

The remainder of this chapter will discuss generally the governmental levels and associations of governments having significant impact on city and town governments. Briefly, these are regional councils of governments, the county, the state and the federal government.

REGIONAL COUNCILS OF GOVERNMENTS

In Arizona we have six organizations called regional councils of governments, or more commonly, COGs. Perhaps the best springboard into intergovernmental relations is through the regional council of governments in your area since it is essentially composed of your neighboring cities, towns, tribes and counties who are concerned with, on a regional level, the same local problems facing your community. To understand how your municipality relates with the regional councils of governments, it is necessary to understand how they came about and what they are designed to do.



Historically, much of the emphasis for development of COGs stemmed from federal grant-in-aid programs and related requirements that stressed the need for local or area-wide planning of both a functional and comprehensive nature.

To achieve a degree of uniformity in the planning and programming of various activities, the governor established six planning regions by executive order in 1970. The following planning organizations were formed within these designated planning-regions:

REGION I - Maricopa County (MAG)

REGION II - Pima County (PAG)

REGION III - Apache, Coconino, Navajo and Yavapai Counties (NACOG)

REGION IV - La Paz, Mohave and Yuma Counties (WACOG)

REGION V - Gila and Pinal Counties (CAAG)

REGION VI - Cochise, Graham, Greenlee and Santa Cruz Counties (SEAGO)

WHAT DOES A COG DO?

A regional council of governments (COG) is a voluntary association of general purpose governmental agencies (primarily cities, towns and counties) within a given geographic area. Elected representatives from each governmental unit composing the COG sit on a governing board (regional council) to develop policy impacting on regional comprehensive and functional planning and to serve as a forum for the discussion of area-wide problems. In some regions of the state, COGs have also become actively involved in the operation of manpower and human resource development programs. Although there are numerous roles available to a COG, they are voluntary agencies made up of local officials representing local agencies whose responsibility is to plan with all local agencies for the uniform growth and development of a given planning region. In Maricopa County, for example, MAG takes the lead on regional transportation planning and air quality compliance. Additionally, an equally important aspect of regional councils of governments is the review of federal aid applications in which the COG serves as a regional clearinghouse allowing member jurisdictions to review all plans and federal aid applications impacting on their region.

A COG operates through the use of committees made up of officers and staff members of its member governments. Two essential committees in the COG structure are the management committee and the governing board (regional council). These committees allow managers and elected officials a valuable opportunity to share information and address common problems. The administrative activities of the COG are handled by a staff. Some major goals for COG consideration in Arizona have included the development of plans and programs that will eventually provide for adequate transportation systems, human resource development programs and general environmental planning.



As a newly-elected official, an initial grasp of the complexity and nature of intergovernmental relations can be obtained through discussions with councilmembers and staff members involved in your regional council of governments. It is important to remember that COGs are voluntary associations created by the member agencies, and your leadership and concern are critical in guiding their direction.

COUNTY GOVERNMENT

One of the most vital working relationships you can develop is with the government of the county in which your city or town is located. While much of the emphasis of county government operations has been placed on the delivery of services to unincorporated areas, there are significant county functions that impact on the residents of your community. Briefly, some of these are: county hospitals and health clinics; the county assessor's office; the county attorney; the superior court; justice of the peace courts and the county recorder. Additionally, it is important to remember that the county government operates right up to your city or town limits, and the way that properties adjacent to your community are developed must necessarily be a major concern to the council. Finally, there are a number of areas such as library facilities, sanitary landfills, parks and recreational facilities where cooperative efforts through intergovernmental agreements between your city or town and the county can result in substantial savings to the taxpayer.

Perhaps the best approach to developing good county-city or town relations is to remember that, in essence, the same people that elected you, elected the county officials. Additionally, residents of your city or town are required to pay county taxes, particularly the property tax that goes into the county's general fund.

When working with county governments, it is important to note the distinction between a county and a city or town. A county is an administrative arm of the state and, therefore, has only those powers given to them by the state. As a result, county government may not always be authorized to provide the services or exercise the authority that cities and towns currently enjoy.

A final note to remember in working with county governments is that you are both in the same business. The business, of course, is to deliver services to those citizens you represent. In the long run, a working policy which realizes the importance of delivering services more effectively and efficiently to the citizens will best serve both the city and the county.

STATE GOVERNMENT

In Arizona, cities and towns are voluntary units of local government and political subdivisions of the state. In this connection, the Legislature has the power to delegate to municipalities whatever it feels can be most effectively accomplished at the local level. Conversely, it has the power to take from the local level anything that it feels is not being efficiently accomplished.

As you learn more about your job as a mayor or councilmember, you will find that a few of the municipal problems you face are the result of state mandates that have placed financial constraints on your community. While it is certainly within the rights of the Legislature to determine what type of services should be delivered by local government, there appears to have been some reluctance to appropriate funds to local governments to implement such mandated legislation. However, the situation is not as bleak as it may initially appear. Most legislators are aware of the problems of local government and are trying to work with city, town and county officials in solving problems through legislation which is acceptable to all. In this connection, state legislators need to be informed as to specific municipal concerns if they are to make valid legislative decisions. To some extent, your job should include providing information to your local legislators on the problems and positions of your municipality. Most legislators appreciate hearing from city and town officials in their district and use the input of these officials in making their decisions. Because of the large number of bills introduced during the session, a weekly legislative bulletin is published by the League of Arizona Cities and Towns to advise local officials of the bills that are introduced as well as actions that affect cities and towns on these bills of municipal interest. By using this bulletin, calling in to legislative update conference calls and frequently visiting the legislative pages on the League website, city and town officials can learn which bills affect them and provide comment to their legislators.

In addition to developing sound relationships with the legislative branch of the state government, there are also methods of dealing with the executive branch or the state agencies involved in the administration of state law. It is necessary to work with state agencies to ensure that the regulations they develop can accomplish their goals without seriously hampering the effective operation of your city.

Finally, although you will find that you and your staff deal directly with state agency personnel frequently on specific issues, your regional council of governments and the League will prove to be valuable tools in maintaining constant liaison with the state government and its agencies.

FEDERAL GOVERNMENT

No discussion of intergovernmental relations would be complete without a word about federal governmental agencies and the Congress.

Although the federal-local relationship used to pivot on financial assistance, this is no longer the case. Direct local assistance is minimal; the community development block grant program is the only program providing funds to more than a handful of local governments.

Mandates from the federal government, however, have seemed to increase at the same time the financial aid has decreased. Mandates on the environment and in employment

are particularly prevalent. However, the federal Unfunded Mandates Reform Act of 1995 now requires that Congress either pay for federal mandates or take a roll call vote in favor of passing on the costs to State and local governments.

CONCLUSION

The need for effective intergovernmental relations will continue to increase. To do the best for your community, it is necessary to approach intergovernmental relations in an organized manner. The "outside world" can make a positive impact on your community. However, it is the job of city and town government, where appropriate, to monitor this impact.

OTHER LEAGUE PUBLICATIONS

This handbook is designed as a general overview of local government in Arizona. The League publishes more detailed information in booklet form on several subjects of concern. The following is a list of those publications of particular interest to city and town officials, all of which are available to city and town officials at no charge. Most of them are available for downloading from the league website: www.azleague.org.

A GUIDE FOR ANNEXATION

ANATOMY OF A COUNCIL MEETING

COUNCIL-MANAGER GOVERNMENT IN ARIZONA

CHARTER GOVERNMENT PROVISIONS IN ARIZONA CITIES

GUIDE TO PREPARING AND ADOPTING LOCAL LAWS

LOCAL GOVERNMENT DIRECTORY

MUNICIPAL BUDGET AND FINANCE MANUAL

MUNICIPAL ELECTION MANUAL

MUNICIPAL INCORPORATION IN ARIZONA

MUNICIPAL POLICY STATEMENT

YOU AS A PUBLIC OFFICIAL



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CHAPTER 8
CONFLICT OF INTEREST

Table of Contents

Section 8.1	Scope of this Chapter
Section 8.2	The Arizona Conflict of Interest Laws
8.2.1	Purpose of the Conflict of Interest Laws
8.2.2	Scope of Application
8.2.3	Public Officers
8.2.4	Public Employees
8.2.5	Relatives
Section 8.3	Substantial Interest
Section 8.4	Remote Interests
8.4.1	Generally
8.4.2	Nonprofit Corporations
8.4.3	Landlord/Tenant of a Contracting Party
8.4.4	Attorney of a Contracting Party
8.4.5	Nonprofit Cooperative Marketing Associations
8.4.6	Insignificant Stock Ownership
8.4.7	Reimbursement of Expenses
8.4.8	Recipient of Public Services Generally Available
8.4.9	Relatives of School Board Members
8.4.10	Interests of Other Agencies

8.4.11	Class Interests
Section 8.5	Contracts for Supplies or Services
8.5.1	Contracts Made by Spouses of Public Officers or Employees
Section 8.6	Strict Compliance
Section 8.7	Disclosure of the Interest
Section 8.8	Rule of Impossibility
Section 8.9	Other Conflict of Interest Laws
Section 8.10	Incompatibility of Public Offices
Section 8.11	Representation of Others After Leaving Public Service
Section 8.12	Disclosure or Use of Information Declared Confidential by Law
Section 8.13	Disclosure or Use of Information Made Confidential By Agency Action
Section 8.14	Improper Use of Office for Personal Gain
Section 8.15	Receiving Additional Income for Services
Section 8.16	Sanctions for Violations
8.16.1	Criminal Penalties
8.16.2	Forfeiture of Public Office
8.16.3	Contract Cancellation
8.16.4	Private Citizen Suits
Appendix 8.1	Conflict of Interest Disclosure Memorandum

CHAPTER 8

CONFLICT OF INTEREST

Arizona law requires public officers and employees to avoid conflicts of interest that might influence or affect their official conduct. Determining whether a conflict of interest exists requires public officers and employees to evaluate statutorily-established standards and exceptions to determine whether their personal interests, or those of certain family members, result in a conflict of interest. This Chapter provides general guidelines to assist public officers and employees to determine when conflicts of interest exist, and to avoid conflicts before they arise. The Handbook does not address every situation that may qualify as a conflict of interest, and does not address all specialized conflict of interest prohibitions that may apply to public officers and employees of particular state entities. Public officers and employees should consult with assigned agency counsel concerning conflicts of interest not specifically addressed in this Chapter.

8.1 Scope of this Chapter. This Chapter addresses the statutory conflict of interest laws contained in A.R.S. §§ 38-501 to -511, as well as the incompatibility doctrine. These statutes set the minimum standards expected of public officers and employees who, in their official capacities, are faced with a decision or contract that might affect their pecuniary or proprietary interests or those of a relative.

8.2 The Arizona Conflict of Interest Laws. Arizona law requires a public officer or employee who has a conflict of interest to disclose the interest and refrain from participating in the matter:

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

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

A.R.S. § 38-503.

8.2.1 Purpose of the Conflict of Interest Laws. “The object of conflict of interest statutes is to remove or limit the possibility of personal influence which might bear upon an

official's decision." *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972). Arizona's conflict of interest laws serve to prevent self-dealing by public officials. *Maucher v. City of Eloy*, 145 Ariz. 335, 338, 701 P.2d 593, 596 (App. 1985). The financial interests of public officers or employees must not conflict with the unbiased performance of their public duties because "one cannot serve two masters with conflicting interests." *Id.* Public officials should avoid situations where their professional or financial concerns might conflict with the unbiased performance of their duties. *Id.*; see generally *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 549 (1961) ("The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government.").

8.2.2 Scope of Application. The conflict of interest prohibitions "apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards." A.R.S. § 38-501(A). Essentially, A.R.S. §§ 38-502 through -511 supersede any local charter or local ordinance. A.R.S. § 38-501(B). Any other State statutes on specific conflicts of interest are in addition to the conflict of interest provisions set forth in Title 38. A.R.S. § 38-501(C).

8.2.3 Public Officers. The term "public officer" includes "all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute," regardless of whether they are paid for their services. A.R.S. § 38-502(8). Members of advisory commissions, boards, councils, and committees (such as the Health Advisory Council) are public officers as that term is used in the conflict of interest laws. Ariz. Att'y Gen. Op. 175-211; see also Ariz. Att'y Gen. Ops. 182-105, 188-014, 189-067. All elected officials at the state or local level and directors of state agencies are public officers for the purposes of the conflict of interest laws. For example, the Director of the Department of Health Services is appointed by the Governor and is therefore an appointed officer of a public agency established by state statute and is covered by the conflict of interest laws. A.R.S. § 36-102. Although the members of the Legislature are subject to the requirements of A.R.S. §§ 38-501 through -511, they are also governed by a separate code of ethics adopted by the ethics committees in the Senate and the House of Representatives. See A.R.S. § 38-519.

The members of Arizona's many regulatory boards are also public officers covered by the conflict of interest laws, whether they are paid for or volunteer their services. A.R.S. § 38-502(6), (8). Because of their familiarity with the special areas they regulate or advise, board members often have professional or social ties with the persons they license, regulate, or discipline. Board members should therefore be sensitive to potential conflicts of interest and appearances of impropriety. Conflict of interest rules may have a constitutional, as well as statutory, basis because due process requires that members of a regulatory board not have a direct interest in their decisions affecting licensees or other regulated entities. See *Tumey v. Ohio*, 273 U.S. 510, 532 (1927).

8.2.4 Public Employees. Anyone employed "by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration," whether on a full-time, part-time, or contract basis, is considered an employee for the purposes of the conflict of interest laws. A.R.S. § 38-502(2). For example, a consultant hired by the Department of Transportation to make recommendations regarding the route of an interstate highway would be covered by the conflict of interest laws. The consultant would be prohibited from making recommendations if he or she owned or had an interest in a parcel of land that might be affected by the Department's decision concerning the route of the interstate highway. See Ariz. Att'y Gen. Op. 189-067.

8.2.5 Relatives. The conflict of interest laws require an examination of proprietary and pecuniary interests of the public officer or employee and certain relatives of the officer or employee. A.R.S. § 38-503(A) and (B). "Relative" is defined expansively to include "the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9).

Public officers and employees must recognize that even if they do not have a substantial interest in a decision or a contract, if one of their relatives described in A.R.S. § 38-502(9) does have a substantial interest, the public officer or employee must disclose the interest and refrain from participating in the matter. A.R.S. § 38-503(A) and (B). Even negligence in failing to comply with the conflict of interest law can trigger serious consequences. See, e.g., A.R.S. § 38-510(A)(2)(reckless or negligent violation of the law constitutes a class 1 misdemeanor). A public officer or employee has an obligation to become aware of the interests of relatives in matters in which the officer or employee may become involved.

8.3 Substantial Interest. To determine whether a conflict of interest exists, A public officer or employee must first evaluate whether the official or the official's relative has a "substantial interest" in the matter under consideration. An interest is "substantial" if it is not defined by statute as "remote" and if it is "any pecuniary or proprietary interest, either direct or indirect," of public officers or employees or of their relatives. A.R.S. § 38-502(11). The term "interest" does not mean a mere abstract interest in the general subject or a contingent interest but is "a pecuniary or proprietary interest, by which a person will gain or lose something, as contrasted with a general sympathy feeling or bias." *Yetman*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972). "[T]o violate the conflict of interest statute, a public official must have a non-speculative, non-remote pecuniary or proprietary interest in the decision at issue." *Hughes v. Jorgenson*, 203 Ariz. 71, 74-75, 50 P.3d 821, 824-25 (2002) (neither county sheriff nor his sister had a substantial interest in the sister's possible criminal prosecution); compare Ariz. Att'y Gen. Op. 103-005 (school district governing board member whose employer is a public utility that supplies natural gas to areas in the district must refrain from participating in any discussions or decisions concerning the choice of power to district schools when the board member's employer is a potential supplier), with Ariz. Att'y Gen. Op. 101-009 (because school board members have no pecuniary or proprietary interest in retaining an elected governing board position, they do not have a

conflict of interest that would preclude them from voting on a district unification issue that would result in loss of their position).

The Legislature has determined that certain economic interests are so remote that they do not impermissibly influence a person's decisions or actions. These "remote interests" are listed in A.R.S. § 38-502(10). Unless the interest at issue falls within one of the statutorily specified situations declared by the Legislature to be remote, the interest is substantial and creates a conflict of interest. *Yetman*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

To determine whether a substantial interest exists, the public officer should ask:

1. Could the decision affect, either positively or negatively, an interest of the officer or employee or the officer's or employee's relative?
2. Is the interest a pecuniary or proprietary interest? Could it affect a financial interest or ownership interest?
3. Is the interest something that is not statutorily designated as a remote interest?

If the answer to each of these questions is yes, then a substantial interest exists that requires disclosure and disqualification by the public officer or employee. The public officer or employee must file a conflict of interest form which fully discloses the substantial interest with the appropriate agency or governmental unit, and must refrain from participating in any manner in discussions or decisions relating to the matter.

8.4 Remote Interests.

8.4.1 Generally. A.R.S. § 38-502(11) excludes from the definition of a substantial interest the ten remote interests enumerated in A.R.S. § 38-502(10). If an interest is classified as "remote," the officer or employee need not disclose it and may participate in the agency's action or decision. See A.R.S. § 38-503. A public officer or employee who has any pecuniary or proprietary interest in a decision or contract not covered by one of the statutorily-designated remote interests would have a substantial interest that requires the officer or employee to disclose the interest and refrain from all participation in the decision or contract. A.R.S. §§ 38-502(11), -503(A) and (B). Because a thorough understanding of the remote interests is essential in determining whether the conflict of interest laws apply in a given situation, the remote interests are discussed separately in Agency Handbook Sections 8.4.2 to 8.4.11.

8.4.2 Nonprofit Corporations. If the public officer or employee or a relative is a non-salaried officer of a nonprofit corporation, he or she has a remote interest in any decision affecting that corporation. A.R.S. § 38-502(10)(a).

8.4.3 Landlord/Tenant of a Contracting Party. If the public officer or employee or a relative is a landlord or tenant of a party contracting with an agency, the officer or employee has a remote interest in a decision regarding the contract. A.R.S. § 38-502(10)(b).

8.4.4 Attorney of a Contracting Party. If the public officer's or employee's relative represents a client contracting with the officer's or employee's agency, he or she has a remote interest in any agency decision affecting the client's contract. A.R.S. § 38-502(10)(c). For example, if the Department of Economic Security is considering awarding a contract to a day care center, and that day care center is represented by an attorney who is related to the Director of the Department of Economic Security, the Director's interest in the awarding of the contract is remote.

8.4.5 Nonprofit Cooperative Marketing Associations. If the public officer or employee or a relative is a member of a nonprofit cooperative marketing association, he or she has a remote interest in any decision affecting that association. A.R.S. § 38-502(10)(d).

8.4.6 Insignificant Stock Ownership. If the public officer or employee or a relative owns less than three percent of the shares of a corporation for profit, and if the income from those shares or any other payments made by the corporation to the public officer or employee or relative does not exceed five percent of the person's total annual income, he or she has a remote interest in any decision affecting that corporation. A.R.S. § 38-502(10)(e).

8.4.7 Reimbursement of Expenses. If the public officer or employee is reimbursed for actual and necessary expenses incurred in the performance of official duties, he or she has a remote interest in any decision affecting that reimbursement. A.R.S. § 38-502(10)(f).

8.4.8 Recipient of Public Services Generally Available. If the public officer or employee or a relative is a recipient of public services provided by the governmental agency of which he or she is employed, and if those services are available on the same terms to the general public, the public officer or employee has a remote interest in any decision affecting those services. A.R.S. § 38-502(10)(g). For example, employees of the Department of Transportation may participate in decisions regarding the building of highways because the use of the highways is a service provided on the same terms and conditions to persons who are not officers or employees of the Department of Transportation. However, if the decision concerns the building of a highway adjacent to property owned by an employee, the employee could be said to have a substantial interest and may not participate in it. See A.R.S. § 38-502(11).

8.4.9 Relatives of School Board Members. If a school board member has a relative, other than a dependent as defined in A.R.S. § 43-1001, or a spouse, who has a substantial interest in a decision made by the school board, then the interest is remote, and

the school board member is not barred from participating in the decision. A.R.S. § 38-502(10)(h). For example, if a school board member votes on teachers' contracts for the district and has a relative, other than a spouse or dependent, who is a teacher in the district, the board member's interest is remote, and he or she may participate in the decision. See Ariz. Att'y Gen. Op. 100-013. However, if the school board member's dependent is a teacher covered by the contract, the board member must then disclose his or her dependent's interest and refrain from participating in the decision, because the interest is no longer remote. A.R.S. § 38-502(11). Section 38-503(D) prohibits the governing board of a school district or community college district from employing a person who is a member of a governing board or who is the spouse of a member of the governing board. See also A.R.S. §§ 15-421(D), -1441(H).

8.4.10 Interests of Other Agencies. A public officer or employee may participate in a decision that indirectly affects a relative who is an officer or employee of another public agency or political subdivision. A.R.S. § 38-502(10)(i),(i)-(ii). For example, the head of the state agency responsible for allocating funds to local governments could participate in such decisions even though his or her spouse was an officer or employee of the local government. If, however, the decision confers a direct economic benefit or detriment to the spouse, such as a decision to terminate funding for a program which would result in the termination of a spouse's employment by the local government, a conflict of interest is present. Ariz. Att'y Gen. Op. 187-051.

8.4.11 Class Interests. If the public officer or employee or a relative is a member of a trade, business, profession, or other class of persons consisting of at least ten members, and his or her interest is no greater than the interest of the other members of the class, the public officer or employee has a remote interest in any decision affecting the class. A.R.S. § 38-502(10)(j). For example, if members of the State Board of Dental Examiners were considering approving a rule prohibiting certain types of advertising, the interest of the dentists on the Board in the decision would be no greater than that of other licensed dentists and, therefore, they would not have to disclose the interest and would be allowed to participate in the decision regarding that rule. See, e.g., Ariz. Att'y Gen. Op. 179-142.

However, if a board member's judgment on a board matter is affected by the special interest of the professional association, a conflict of interest could arise. For example, in *Gibson v. Berryhill*, 411 U.S. 564 (1973), the Alabama Board of Optometry, which was comprised solely of independent practitioners, was disqualified from deciding whether optometrists employed by corporations engaged in unprofessional conduct because they were aiding and abetting the illegal practice of optometry. The Alabama District Court determined that the corporation, Lee Optical, "did a large business in Alabama, and that if it were forced to suspend operations the individual members of the Board, along with other private practitioners of optometry, would fall heir to this business." See *Gibson v. Berryhill*, 411 U.S. 564, 571 (1973). The U.S. Supreme Court affirmed the district court's determination that the pecuniary interests of the members of the Alabama Board of Optometry were sufficient to disqualify them. See *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973).

8.5 Contracts for Supplies or Services. If a public officer or employee wishes to supply goods or services to his or her agency, the contract must be awarded pursuant to public competitive bidding. A.R.S. § 38-503(C). This requirement of public competitive bidding is in addition to the disclosure and non-participation requirements discussed in Section 8.6. The public competitive bidding requirement does not apply to school district governing boards in the limited situations specified in A.R.S. § 38-503(C) (1). A.R.S. § 38-503(C) requires school districts to follow public competitive bidding procedures for all procurements between school districts and their employees, however, regardless of the dollar amount involved and regardless of the source of the funds. Ariz. Att'y Gen. Op. 106-002.

Although the competitive bidding requirements of A.R.S. § 38-503(C) do not generally apply to corporations, a public officer or an employee who sells supplies or services to the agency may not evade the bidding requirements of A.R.S. § 38-503(C) by forming a corporation that is the alter ego of the officer or the employee to avoid public competitive bidding. Ariz. Att'y Gen. Op. 186-036.

8.5.1 Contracts Made by Spouses of Public Officers or Employees. Although A.R.S. § 38-503(C) prohibits public officers and employees from supplying equipment, materials, supplies, or services to the public agency except pursuant to an award or contract let after public competitive bidding, such restrictions do not apply to the spouse of the officer or employee. However, the public officer or employee must disclose the interest and refrain from any involvement in the matter. Ariz. Att'y Gen. Op. 199-020.

8.6 Strict Compliance. Once a public officer or employee determines that a substantial interest may be affected, the officer or employee must disclose the interest and withdraw from all participation in the decision or contract. A.R.S. § 38-503(A), (B). Even though public officers or employees may believe that they can be objective in making a decision and that the public interest would not be harmed by their participation, they do not have discretion to ignore the statutory mandate.

Arizona's conflict of interest statutes are broadly construed in favor of the public, and the Legislature has provided substantial civil and criminal penalties for failure to comply with the statutory mandates. See Agency Handbook Sections 8.16.1 - 8.16.4.

8.7 Disclosure of the Interest. Every political subdivision and public agency subject to A.R.S. §§ 38-501 to -511 must "maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article [A.R.S. §§ 38-501 to - 511]." A.R.S. § 38-509. Any public officer or employee who has a conflict of interest in any agency decision or in the award of a contract *must* provide written disclosure of that interest in the agency's special conflict of interest file. A.R.S. § 38-503(A), (B). The officer or employee may either file a signed written disclosure statement fully disclosing the interest or file a copy of the official minutes of the

agency which fully discloses the interest. A.R.S. §§ 38-502(3). See, e.g., Appendix 8.1 (Sample Disclosure Memorandum).

Once the public officer or employee has disclosed the conflict of interest and withdrawn from participation in the matter, the employee or officer must not communicate about the matter with anyone involved in the decision-making process in order to avoid a violation of A.R.S. § 38-503(A) or (B) and the appearance of impropriety.

8.8 Rule of Impossibility. In the unlikely situation that a public agency cannot act because most of its members have a conflict of interest, members may participate in the agency's decision after making known their conflicts of interest in the agency's official records. A.R.S. § 38-508(B). This is referred to as "the rule of impossibility." It is important to note that before the rule of impossibility will apply to a multi-member board or commission, the majority of the entire membership of the board or commission must be unable to participate because of conflicts of interest. The rule of impossibility may not be invoked if merely a quorum of the public body is present and unable to act because of conflicts. In those cases, the public agency must reconvene to take up the matter when all the members are present.

8.9 Other Conflict of Interest Laws. In addition to the general conflicts statutes found at A.R.S. §§ 38-501 to -511, other state statutes impose specific conflict of interest prohibitions on public officers and employees. Examples of these restrictions include: A.R.S. § 4-114(A) (prohibiting members of the Liquor Board, the Liquor Superintendent, or employees of the Department of Liquor Licenses and Control from having a financial interest in businesses licensed to deal in spirituous liquors); A.R.S. §§ 5-103(C)-(E), -103.01 (prohibiting members, employees, or appointees of the Racing Commission or department from holding certain interests in the racing industry or engaging in certain activities); A.R.S. § 6-113(A) (prohibiting the Banking Superintendent and personnel of the Banking Department from engaging in certain business dealings or being employed by financial institutions under the jurisdiction of the Banking Department); A.R.S. § 16-531(D) (prohibiting election-related board members from being a federal, state, county, or precinct officer or a candidate for office at the election); A.R.S. § 20-149(A) (prohibiting the Director of the Department of Insurance and other Department of Insurance personnel from having a financial interest, except as a policyholder or a claimant under a policy, in an entity regulated by the department); A.R.S. § 35-705 (prohibiting board members of a municipal or county industrial development authority from being an officer or employee of the authorizing county or municipality); A.R.S. § 37-132(C) (prohibiting the Commissioner, any deputy or employee of the Land Department from owning or acquiring any interest in state lands, the products on state lands, improvements on leased state lands, or an interest in any state irrigation project affecting state lands); A.R.S. § 38-481 (prohibiting public officials from appointing relatives to paid public service positions in any department of the government of which the public official is a member, or to appoint, vote for or agree to appoint or work for any person in consideration of the appointment of a relative).

Public officers or employees should refer to the statutes governing their particular agency for specific provisions regarding standards of conduct for that agency and its officers and employees.

8.10 Incompatibility of Public Offices. A.R.S. § 38-601 prohibits public officers and employees from receiving any salary in excess of the salary provided by law for their position. This statute does not prohibit compensation for two separate public positions, provided that the two positions are not incompatible and the compensation for the second position is not payable for performance of the regular duties of the first position. Ariz. Atty. Gen. Op. 188-032; see also Ariz. Atty. Gen. Ops. 188-025 and 187-049. If the two offices are incompatible, however, then the common-law doctrine of incompatibility of public offices prohibits an officer holding one public office from accepting a second public office and retaining both positions. *Perkins v. Manning*, 59 Ariz. 60, 69, 122 P.2d 857, 861 (1942); *Coleman v. Lee*, 58 Ariz. 506, 513, 121 P.2d 433, 436-37 (1942). Offices are incompatible when the duties conflict or it is physically impossible to perform the duties of both positions, and when that is the case, acceptance of the second office automatically vacates the first position. *Perkins v. Manning*, 59 Ariz. 60, 70, 122 P.2d 857, 862 (1942).

8.11 Representation of Others After Leaving Public Service. State law also places restrictions on representation of others when a public officer or employee departs from state service. In particular, A.R.S. § 38-504(A) provides:

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

For example, a Corporation Commission employee who was materially involved in a utility rate hearing involving a public service corporation may not represent that corporation before the Commission for one year after the employee has resigned from state service.

8.12 Disclosure or Use of Information Declared Confidential by Law. During the course of employment and for two years thereafter, public officers and employees are prohibited from disclosing or using, without appropriate authorization, any information acquired in the course of their official duties designated as confidential or information made confidential by statute or rule. A.R.S. § 38-504(B). An example of such information is confidential tax information provided to an Assistant Attorney General for the limited uses specified in A.R.S. § 42-2003. For a list of other information that is confidential as a matter of law, see Agency Handbook Chapter 6, Appendix 6.1 and 6.2.

8.13 Disclosure or Use of Information Made Confidential By Agency Action.

Public officers and employees also are prohibited from disclosing or using for profit information that is designated confidential, other than by statute or rule, and which they obtained from their agency as a result of their employment or service with the agency. A.R.S. § 38-504(B). The prohibition exists during the course of employment and for two years after employment has terminated, unless authorization from the agency has been obtained. *Id.* For example, if during the course of employment, a former employee of the Department of Health Services acquired information the Department had designated as confidential, the employee may not disclose the information or use it for personal profit for two years after termination of employment or service with the Department.

The prohibition includes either disclosing or using confidential information. *Id.* Thus, even though a public officer or employee does not benefit or profit from the disclosure, A.R.S. § 38-504(B) prohibits them from disclosing the confidential information for the statutory period.

8.14 Improper Use of Office for Personal Gain. Public officers and employees are prohibited from using or attempting to use their official position to secure valuable things or benefits for themselves that would not be part of their normal compensation for performing their duties. A.R.S. § 38-504(C). It is a class 4 felony for a public servant to solicit, accept, or agree to accept any benefit upon an understanding that his or her vote, opinion, judgment, or other official action may thereby be influenced. A.R.S. § 13-2602. It is a class 6 felony for a public officer to ask for, or to receive, any unauthorized gratuity or reward or promise of a gratuity or reward for doing an official act. A.R.S. § 38-444. For example, if a member of the Racing Commission offered to support an application for a permit to conduct horse racing in return for a gift of a thoroughbred horse, the commission member would violate the above-referenced criminal laws as well as the conflict of interest laws. A criminal violation of A.R.S. §38-504(C) requires an action related to the public officer's official duties. *State v. Ross*, 214 Ariz. 280, 285-86, 151 P.3d 1261, 1266-67 (App. 2007) (defendant county assessor's use of publicly available information from his agency to further his own business purposes did not violate conflict of interest prohibition because it did not involve any action related to his duties as a public officer).

8.15 Receiving Additional Income for Services. Public officers and employees are prohibited from agreeing to receive or receiving, either directly or indirectly, compensation other than as provided by law for services they render in any case, proceeding, application, or other matter pending before the public agency for which the officer or employee serves. A.R.S. § 38-505(A).

8.16 Sanctions for Violations.

8.16.1 Criminal Penalties. Knowingly or intentionally violating any provision of the conflict of interest laws is a class 6 felony. A.R.S. § 38-510(A)(1).

Negligent or reckless violation of the law is a class 1 misdemeanor. This means that public officers or employees may be prosecuted if they fail to disclose a conflict of interest of which they should have known. A.R.S. § 38-510(A)(2).

Knowingly falsifying, concealing, or covering up a material fact as part of a scheme to defraud in any matter related to the business conducted by a state agency or any political subdivision of the state is a class 5 felony. A.R.S. § 13-2311(A).

8.16.2 Forfeiture of Public Office. Upon conviction of a violation of the conflict of interest laws, a public officer or employee forfeits the public office or employment. A.R.S. § 38-510(B).

8.16.3 Contract Cancellation. Any contract made by the state or any of its departments or agencies may be cancelled within three years after its execution if anyone significantly involved in the contract process on behalf of the state is also an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract while the contract or contract extension is in effect. A.R.S. § 38-511(A). A person who had a significant role on behalf of the state in the contract's negotiation or drafting may, however, serve as a consultant to another party to the contract in unrelated matters without subjecting the contract to cancellation. Ariz. Att'y Gen. Op. I08-010.

In addition, any contract entered into by a public agency in violation of the conflict of interest laws is voidable at the option of the agency. A.R.S. § 38-506(A). In *Maucher v. City of Eloy*, 145 Ariz. 335, 337-38, 701 P.2d 593, 595-96 (App. 1985), the Arizona Court of Appeals held that the City of Eloy was entitled to void a contract with an engineer and the City because the contract was awarded without public competitive bidding and was entered into in violation of Arizona's conflict of interest laws. The court ruled that the engineer could not recover his losses under the cancelled contract. *Id.* ("It is clear in Arizona that ' . . . the letting of contracts for public business should be above suspicion or favoritism.'") (quoting *Brown v. City of Phoenix*, 77 Ariz. 368, 377, 272 P.2d 358, 367 (1954)).

A public agency may also recover any consideration or payments that it has paid to the public officer or employee under the contract, without restoring the benefits received by the agency under the contract. A.R.S. § 38-511(E). This is true even though no actual fraud or dishonesty was involved on the part of the public officer or employee. *Maucher v. City of Eloy*, 145 Ariz. 335, 337-38, 701 P.2d 593, 595-96 (App. 1985).

8.16.4 Private Citizen Suits. Any person who is affected by a public agency's decision made in violation of the conflict of interest laws may sue to have the contract or decision declared null and void. A.R.S. § 38-506(B). The court may award costs and attorney's fees to the prevailing party. A.R.S. § 38-506(C). Persons claiming that a public officer, employee, or board member had a pecuniary interest in making a decision against them may also file suit in state or federal court alleging a violation of their civil rights pursuant to 42 U.S.C. § 1983.

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APPENDIX 8.1

CONFLICT OF INTEREST DISCLOSURE MEMORANDUM

Section 8.7

TO: (Name and position of Public Agency Supervisor)

FROM: (Name and position of employee or officer)

RE: CONFLICT OF INTEREST DISCLOSURE PURSUANT TO
A.R.S. §§ 38-501 to -511

1. Identify the decision, case investigation, or other matter in which you or your relative may have a "substantial interest" under A.R.S. §§ 38-501 to -511.

(use as much space as necessary)

2. Describe the "substantial interest" referred to above.

(use as much space as necessary)

Statement of Disqualification

To avoid any possible conflict of interest under A.R.S. §§ 38-501 to -511, I will refrain from participating in any manner in the matter identified above.

Date

Signature

cc: (supervisors)

**CITY OF ELOY
REQUEST FOR COUNCIL ACTION**

Agenda Item: **IV.B.**

Date: **2/21/2023**

Date submitted:
02/08/2023

Action: Other

Subject: Questions and Comments

Date requested:
2/21/2023

TO: Mayor and City Council

FROM:

RECOMMENDATION:

DISCUSSION:

FISCAL IMPACT:

Approved as to Form:



Stephen R. Cooper, City Attorney