AGENDA
WORK SESSION
MAYOR AND COMMON COUNCIL
Of the TOWN OF CAMP VERDE
COUNCIL CHAMBERS · 473 S. Main Street, Room #106
WEDNESDAY, APRIL 13, 2016 at 5:30 p.m.

Note: Council member(s) may attend Council Sessions either in person or by telephone, video, or internet conferencing.

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance**

4. **Presentation and possible direction to staff as it relates to affordable housing solutions to include but not limited to; building code requirements, zoning issues and other challenges.** Staff Resource: Steve Ayers and Sebra Choe

5. **Discussion regarding proper protocol and future action regarding items on the agenda, to include but not limited to Roberts Rules of Order, Open Meeting Law and Council Code of Conduct.** Staff Resource: Russ Martin

6. **Discussion and possible direction to staff regarding business license applications, including application requirements, enforcement and penalties.** Staff Resource: Virginia Jones

7. **Discussion and possible direction to staff regarding current Town Code requiring Department Monthly Reports.** Staff Resource: Russ Martin – Virginia Jones

8. **Adjournment**

Posted by: _____ Date/Time: 04-07-16 3:07 PM

Note: Pursuant to A.R.S. §38-431.03.A.2 and A.3, the Council may vote to go into Executive Session for purposes of consultation for legal advice with the Town Attorney on any matter listed on the Agenda, or discussion of records exempt by law from public inspection associated with an agenda item.

The Town of Camp Verde Council Chambers is accessible to the handicapped. Those with special accessibility or accommodation needs, such as large typeface print, may request these at the Office of the Town Clerk.

5.

Town of Camp Verde

Agenda Item Submission Form – Section I

Meeting Date: April 13, 2016 Work Session

☐ *Consent Agenda* ☐ *Decision Agenda* ☐ *Executive Session Requested*

☐ *Presentation Only* ☐ *Action/Presentation* ☐ *Pre-Session Agenda*

Requesting Department: **Town Manager**

Staff Resource/Contact Person: ***Russ Martin***

Agenda Title (be exact):

Discussion regarding proper protocol and future action regarding items on the agenda, to include, but not limited to Roberts Rules of Order, Open Meeting law and Council Code of Conduct.

List Attached Documents:

- ***Policy & Procedures Section 15 Code of Conduct for Elected and appointed officials***
- ***Pamphlet – You as a Public Official***

Estimated Presentation Time: 5 minutes

Estimated Discussion Time: 10 minutes

Reviews Completed by:

☒ ***Department Head:***_____ ☐ ***Town Attorney Comments:*** N/A

☐ ***Finance Department*** N/A
Fiscal Impact: None
Budget Code: N/A_____ ***Amount Remaining:*** _____
Comments:

Background Information: In light of the new law regarding violations of open meeting law and penalties attached, the Town Manager, Town Attorney and Clerk have determined that it would be a good time for Council and the Public to refresh proper protocol when it comes to agenda items. This can include Roberts Rules of Order, Open Meeting Laws and Code of Conduct.

Recommended Action (Motion): Direction to Staff

Instructions to the Clerk: None

14.2 USE OF BUDGETED FUNDS; PROCEDURES

A. The Council budget may be used only for expenses incurred by individual Council members for participation in business activities and events at which a Council member is representing the Town in the Councilmember's official capacity.

B. In order to receive reimbursement for amounts expended for participation in activities or events described in Paragraph A, a Councilmember shall submit a receipt(s) to the Finance Director showing the amount expended and the purpose of the expenditure. If no receipt was received for the expenditure, reimbursement may be given if satisfactory evidence of the expenditure is submitted to the Finance Director. If there is uncertainty regarding whether the expenditure is an expense for which the Council member may be reimbursed pursuant to this section, the Finance Director shall obtain approval from the Town Manager prior to providing reimbursement to the Councilmember.

SECTION 15 CODE OF CONDUCT FOR ELECTED AND APPOINTED OFFICIALS

15.1 SUMMARY

The Three Rs of Camp Verde Government Leadership: Roles, Responsibilities and Respect

The Town Code provides information on the roles and responsibilities of Council Members, the Vice Mayor and the Mayor. This is a Code of Conduct for the Town of Camp Verde's elected officials.

This Code of Conduct is designed to describe the manner in which Council Members and appointed officials of the Town (collectively, "Public Officials") should treat one another, Town staff, constituents, and others they come into contact with in representing the Town of Camp Verde. It reflects the work of defining more clearly the behavior, manners and courtesies that are suitable for various occasions. This is designed to make the public meetings and the process of governance run more smoothly.

The content of this Code of Conduct includes:

- Overview of Roles and Responsibilities
- Policies and Protocol Related to Conduct
- Council Conduct with One Another
- Council Conduct with Town Staff
- Council Conduct with the Public
- Council Conduct with Other Public Agencies

- Council Conduct with Boards and Commissions
- Council Conduct with the Media
- Sanctions
- Principles of Proper Conduct
- Checklist for Monitoring Conduct

The constant and consistent theme through all of the conduct guidelines is "respect." Public Officials experience significant workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, Public Officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Public Officials to do the right thing in even the most difficult situations.

15.2 OVERVIEW OF ROLES AND RESPONSIBILITIES

Other resources that are helpful in defining the roles and responsibilities of Public Officials can be found in the Town of Camp Verde Code and in the Elected Officials Guide published by the League of Arizona Cities & Towns.

MAYOR

- Is directly elected by the people pursuant to ARS §9-232.03. (Town Code, Section 2-2-1)
- Acts as the official head of the Town for all ceremonial purposes
- Chairs Council meetings (Town Code, Section 2-2-4)
- Calls for special meetings (Town Code, Section 2-3-2)
- Recognized as spokesperson for the Town of Camp Verde
- Makes judgment calls on proclamations, agendas, etc.
- Recommends subcommittees as appropriate for Council approval
- Leads the Council into an effective, cohesive working team
- Sign documents on behalf of the Town of Camp Verde

VICE MAYOR

- Serves at the pleasure of the Council (Town Code, Section 2-2-2)
- Performs the duties of the Mayor if the Mayor is absent (Town Code, Section 2-2-2)
- Chairs Council meetings in the absence of the Mayor

- Represents the Town at ceremonial functions at the request of the Mayor

ALL COUNCIL MEMBERS

All members of the Town Council, including those serving as Mayor and Vice Mayor, have equal votes. No Council Member has more authority than any other Council Member, and all should be treated with equal respect.

All Council Members should:

- Fully participate in Town Council meetings and other public forums while demonstrating kindness, consideration, and courtesy to others.
- Prepare in advance of Council meetings and be familiar with issues on the agenda.
- Represent the Town at ceremonial functions at the request of the Mayor or at the request of the Council.
- Be respectful of other people's time. Stay focused and act efficiently during public meetings.
- Serve as a model of leadership and civility to the community
- Inspire public confidence in Camp Verde government
- Provide contact information with the Town Clerk in case of an emergency or urgent situation arises while the Council Member is out of Town
- Demonstrate honesty and integrity in every action and statement
- Participate in scheduled activities to increase team effectiveness and review Council procedures, such as this Code of Conduct

MEETING CHAIR

The Mayor will chair official meetings of the Town Council, unless the Vice Mayor or another Council Member is designated as Chair of a specific meeting.

- Maintains order, decorum, and the fair and equitable treatment of all speakers
- Keeps discussion and questions focused on specific agenda items under consideration
- Makes parliamentary rulings. Chair rulings may be overturned if a Council Member makes a motion as an individual and the majority of the Council votes to overrule the Chair.

15.3 POLICIES AND PROTOCOL RELATED TO CONDUCT

A. Ceremonial Events

Requests for a Town representative at ceremonial events will be handled by Town staff. The Mayor will serve as the designated Town representative. If the Mayor is unavailable, then Town staff will determine if event organizers would like another representative from the Council. If yes, then the Mayor will recommend which Council Member should be asked to serve as a substitute. Invitations received at Town Hall are presumed to be for official Town representation. Invitations addressed to Council members at their homes are presumed to be for unofficial, personal consideration.

B. Correspondence Signatures

Council Members do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. The Town Clerk will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor unless the Mayor requests that they be signed by another Council Member or the Town Clerk.

If correspondence is addressed only to one Council Member, then that Council Member may check with staff on the best way to respond to the sender.

C. **Endorsement of Candidates**

Council Members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meetings or other official Town meetings.

D. Public Announcements in Council Meetings

Council Members who want to speak during the Call to the Public or Council Members Report portion of the Council meeting should notify the Chair in advance. Council Members, like members of the public who use this portion of the agenda to recognize achievements or promote an event, will be limited to three minutes each, and should keep the focus on matters of community-wide interest. Matters that may require Council action or direction should not be discussed and those items on the agenda should not be used for any form of campaigning.

E. Public Hearing Protocol

The applicant shall have the right to speak first. The Chair will determine the length of time allowed for this presentation. Speakers representing either pro or con points of view will be allowed to follow. All speakers should be heard. All statements should be made to and through the Chair. The applicant will be allowed to make closing comments. The Chair has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly.

Council Members should not express opinions during the public hearing portion of the meeting, except to ask pertinent questions of the speaker or staff. All Council Member comments or questions should be directed to the Chair. "I think" and "I feel" comments by Council Members are not appropriate until after the close of the public hearing. Council Members should refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view.

Main motions may be followed by amendments, followed by substitute motions. Any Council Member can call for the question or a point of order. Only Council Members, who voted on the prevailing side, may make motions to reconsider. Motions to reconsider must be made prior to adjourning the meeting.

F. Travel Expenses

The policies and procedures related to the reimbursement of travel expenses for official Town business by Council Members is according to the Town of Camp Verde Financial Operations Guide, as may be amended. All Council travel in excess of the allowed budget, in which the Council Member expects to officially represent the Town and/or be reimbursed by the Town for travel costs, must be approved in advance by the Council. In addition, all out of state travel for which the Council Member expects to officially represent the Town and/or be reimbursed by the Town for related travel costs, must be approved by the entire Council PRIOR to taking the trip. The travel policy and budget for Council should be reviewed at each annual budget cycle.

15.4 COUNCIL CONDUCT WITH ONE ANOTHER

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

A. IN PUBLIC MEETINGS

1. **Practice civility and decorum in discussions and debate**

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Council Members to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated.

2. **Honor the role of the Chair in maintaining order**

It is the responsibility of the Chair to keep the comments of Council Members on track during public meetings. Council Members should honor efforts by the Chair to focus discussion on current agenda items. If there is disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, following procedures outlines in parliamentary procedure.

3. **Avoid personal comments that could offend other Council Members**

If a Council Member is personally offended by the remarks of another Council Member, the offended Council Member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Council Member to justify or apologize for the language used. The Chair will maintain control of this discussion.

4. **Demonstrate effective problem-solving approaches**

Council Members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole. When requesting that staff provide copies to Council members, provide an explanation as to your reasoning for the request.

B. IN PRIVATE ENCOUNTERS

1. **Continue respectful behavior in private**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

2. **Be aware of the lack of security of written notes, voicemail messages, and e-mail**

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message were played on a speakerphone in a full office? What would happen if this e-mail message were forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

3. **Even private conversations can have a public presence**

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted. Remember the open meeting law prohibits conversations of four or more council members or the "linking" together through a common source of four or more individual conversations.

4. **Other Town Public Officials**

The foregoing guidelines concerning "Conduct with One Another" shall be followed not only by Council Members but also by other Town Public Officials.

15.5 COUNCIL CONDUCT WITH TOWN STAFF

Governance of a Town relies on the cooperative efforts of elected officials, who set policy, and Town staff, who implements and administers the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

A. **Treat all staff as professionals**

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Inappropriate behavior towards staff is not acceptable.

B. **Limit contact to specific Town staff**

Consequently, remember Town staff is accountable to their supervisors. Tasks performed by staff that come from outside the normal chain of supervision could cause staff confusion, inadequate work product and inefficient performance. Questions of Town staff and/or requests for additional background information should be directed through the Town Manager, Town Clerk or Department Heads, or the Department Head's designee. The Town Manager should be copied on any request. In accordance with Town Code Section 3-2-1-E, no Council Member shall give orders or instructions to any subordinate of the Town Manager other than instructions for the purpose of inquiry without the consent of the Town Manager.

When in doubt about what staff contact is appropriate, Council Members should ask the Town Manager for direction. Materials supplied to a Council Member in response to a request will be made available to all members of the Council so that all have equal access to information.

C. **Do not disrupt Town staff from their jobs**

Council Members should not disrupt Town staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met.

D. **Never publicly criticize an individual employee**

Council should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's manager. Misdirected comments could violate the Town's personnel rules and limit the Town's ability to deal fairly and efficiently with personnel matters. Comments about staff performance should only be made to the Town Manager through private correspondence or conversation.

E. **Do not get involved in administrative functions**

Council Members must not attempt to influence Town staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of Town licenses and permits.

F. **Check with Town staff on correspondence before taking action**

Before sending correspondence, Council Members should check with the Town Manager to see if an official Town response has already been sent or is in progress.

G. **Do not attend meetings with Town staff unless requested by staff.**

Even if the Council Member does not say anything, the Council Member's presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

H. **Limit request for staff support**

Routine secretarial support will be provided to all Council Members by Clerk's Office staff. Routine secretarial support consists of simple requests that consume minimum staff time, such as an occasional letter or note, travel arrangements for Council-approved events, or providing copies of requested material. Secretarial support does not include making phone calls or other support for non-Council-sanctioned events and/or maintaining an appointment calendar.

The Clerk's Office staff will prepare and/or process all correspondence and documents that have been approved in a duly convened Council meeting by a majority of the members. All requests for secretarial support must be made through the Town Clerk.

Requests for additional staff support – even in high priority or emergency situations – should be made through the Town Manager who is responsible for allocating Town resources in order to maintain a professional, well-run Town government.

The Clerk's Office opens all mail for Council Members and distributes per the Correspondence policy. Mail delivered to Town Hall and marked 'confidential' will not be treated as confidential unless permitted under the Arizona Public Records Act, but will be distributed according to the Correspondence policy.

I. **Do not solicit political support from staff**

Council Members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from Town staff; to do so could violate the law. Town staff may, as private citizens with constitutional rights, support political candidates for other government entities but all such activities must be done away from the workplace.

J. **Other Town Public Officials**

The foregoing guidelines concerning "Conduct with Town Staff" shall be followed not only by Council Members but also by other Town Public Officials.

15.6 COUNCIL CONDUCT WITH THE PUBLIC

A. IN PUBLIC MEETINGS

1. **Making the Public Feel Welcome** is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual council Members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

   Be welcoming to speakers and treat them with respect

   Be fair and equitable in allocating public hearing time to individual speakers

   Generally, each speaker will be allocated three minutes. If many speakers are anticipated, the Mayor may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

   No speaker will be turned away unless he/she exhibits inappropriate behavior. After the close of the public hearing, no more public testimony will be accepted.

2. **Give the appearance of active listening**

   It is disconcerting to speakers to have Council Members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time or gazing

around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

3. **Ask for clarification, but avoid debate and argument with the public**

Only the Mayor, no individual Council Members, can interrupt a speaker during a presentation. However, a Council Member can ask the Mayor for a point of order if the speaker is off the topic or exhibiting behavior or language the Council Member finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council Members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Council members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

4. **No personal attacks of any kind, under any circumstances**

Council Members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

B. IN UNOFFICIAL SETTINGS

1. **Make no promises on behalf of the Council**

Council Members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of Town policy and to refer to Town staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise Town staff will do something specific (fix a pothole; remove a library book; plant new trees, etc.)

2. **Make no personal comments about other Council Members**

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Council Members, their opinions and actions.

3. **Remember Camp Verde is a Small Town**

Council Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the Town of Camp Verde. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Council Members, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

Other Town Public Officials

The foregoing guidelines concerning "Conduct with the Public" shall be followed not only by Council Members but **also by other Town Public Officials.**

15.7 COUNCIL CONDUCT WITH OTHER PUBLIC AGENCIES

A. **Be clear about representing the Town or personal interests**

If a Council Member appears before another governmental agency or organization to give a statement on an issue, the Council Member must clearly state: 1) if his or her statement reflects personal opinion or is the official stance of the Town; 2) whether this is the majority or minority opinion of the Council.

Council Members should be clear about which organizations they represent and inform the Mayor and Council of their involvement in order to assure their independence and impartiality on behalf of the common good. Public Officials should not use their official positions to influence government decisions in which they have a substantial financial interest or a relationship that may give the appearance of a conflict of interest. Public Officials should abstain from participating in deliberations and decision-making where conflicts of interest may exist as defined under Arizona law. Public Officials should discuss issues of conflict of interest with the Town Attorney.

B. **Correspondence also should be equally clear about representation**

Town letterhead may be used when the Council Member is representing the Town and the Town's official position. A copy of official correspondence should be given to the Town Clerk to be filed as part of the permanent public record.

Town letterhead should not be used for correspondence of Council Members representing a personal point of view, and is best not used to express a dissenting point of view from an official Council position. However, should Council Members use Town letterhead to express a dissenting point of view, the official Town position must be stated clearly, so the reader understands the difference between the official Town position and the viewpoint of the Council Member.

C. **Other Town Public Officials**

The foregoing guidelines concerning "Conduct with Other Public Agencies" shall be followed not only by Council Members but also by other Town Public Officials.

15.8 COUNCIL CONDUCT WITH BOARDS AND COMMISSIONS

The Town has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the Council. They are a valuable resource to the Town's leadership and should be treated with appreciation and respect.

A. **If attending a Board or Commission meeting, be careful to only express personal opinions**

Council Members may attend any Board or Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation - especially if it is on behalf of an

individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Council Member at a Board of Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire Town Council.

B. **Limit contact with Board and Commission members to questions of clarification**

It is inappropriate for a Council member to contact a Board or Commission member to lobby on behalf of an individual, business, or developer. It is acceptable for Council Members to contact Board or Commission members in order to clarify a position taken by the Board or Commission.

C. **Remember that Boards and Commissions serve the community, not individual Council Members**

The Town Council appoints individuals to serve on Boards and Commissions, and it is the responsibility of Boards and Commissions to follow policy established by the Council. But Board and Commission members do not report to individual Council Members, nor should Council Members feel they have the power or right to threaten Board and Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Board or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board or Commission appointment should not be used as a political "reward."

D. **Be respectful of diverse opinions**

A primary role of Boards and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council Members may have a closer working relationship with some individuals serving on Boards and Commissions, but must be fair and respectful of all citizens serving on Boards and Commissions.

E. **Keep political support away from public forums**

Board and Commission members may offer political support to a Council member, but not in a public forum while conducting official duties. Conversely, Council Members may support Board and Commission members who are running for office, but not in an official forum in their capacity as a Town Council Member.

F. **Inappropriate behavior can lead to removal**

Inappropriate behavior by a Board or Commission member should be noted to the Mayor, and the Mayor should counsel the offending member. If inappropriate behavior continues, the Mayor should bring the situation to the attention of the Council.

15.9 COUNCIL CONDUCT WITH THE MEDIA

Council Members are frequently contacted by the media for background and quotes.

A. **The best advice for dealing with the media is to <u>never</u> go "off the record"**

Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

B. **The Mayor is the official spokesperson for the Town.**

The Mayor is the designated representative of the Council to present and speak on the official Town position. If an individual Council Member is contacted by the media, the Council Member should be clear about whether their comments represent the official Town position or a personal viewpoint.

C. **Choose words carefully and cautiously**

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

D. **Other Town Public Officials**

The foregoing guidelines concerning "Conduct with the Media" shall be followed not only by Council Members but also by other Town Public Officials.

15.10 ENFORCEMENT OF THE ETHICS POLICY

A. **Complaints**

1. Public Officials themselves have the primary responsibility to assure compliance with this Code of Conduct.

2. The Chairs of commissions, boards, and committees and the Mayor have the additional responsibility to intervene when actions of the Public Officials appear to be in violation of this Code of Conduct.

3. If the Mayor or the chair of the applicable board, commission or committee fails to intervene, two members of the Council, board, commission may request the Mayor or the chair of the applicable public body to intervene. If the complaint arises out of actions or inactions of the Mayor or the chair, the matter shall be directed to the vice-mayor or vice-chair. If the Mayor, chair, vice-mayor or vice-chair fails to intervene, then the matter shall be referred to the Town Attorney.

4. The Town Attorney shall review the complaint and shall simultaneously notify in writing the Town official subject to the complaint of such review.

5. Within 30 days, the Town Attorney shall submit the results of his or her review to the complainant, to the official who is the subject of the complaint, and to the Mayor or chair of the public body on which the official who is the subject of the complaint sits. If the matter cannot be resolved within ten days, the matter shall be referred to the Town Council. The Town Council shall consider the Town Attorney's report at a public meeting. If the Town Council finds an ethical violation by a person serving on a commission, board or committee, then the Town Council may remove the member from the Town board, commission, or committee. In resolving a complaint, the totality of the

circumstances shall be taken into consideration, including the intent of the person accused of the wrongdoing.

6. In addition, the Town Council may impose sanctions on Public Officials whose conduct does not comply with this Code of Conduct, such as reprimand, censure, loss of seniority or committee assignment, or official travel restrictions.

B. **Resolving Complaints against the Mayor and/or other Members of the Town Council.**

1. When complaints are levied against the Mayor or members of the Town Council, the Town Attorney shall have the authority to decide either to (a) act directly on any complaint filed against the Mayor and/or other members of the Town Council pursuant to subparagraph A above, or (b) refer a complaint to an independent reviewing authority such as a city or town attorney from another jurisdiction or an attorney from the office of the county attorney.

15.11 SANCTIONS

A. **Public Disruption**

Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.

B. **Inappropriate Staff Behavior**

Council Members should refer to the Town Manager any Town staff that does not follow proper conduct in their dealings with Council Members, other Town staff, or the public. These employees may be disciplined in accordance with standard Town procedures for such actions.

C. **Council Members Behavior and Conduct**

In addition to sanctions imposed pursuant to paragraph A.6 above, Town Council Members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose seniority or committee assignments (both within the Town of Camp Verde or with inter-government agencies) or have official travel restricted.

15.12 PRINCIPLES OF PROPER CONDUCT

Proper conduct IS . . .

- Keeping promises
- Being dependable
- Building a solid reputation

- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

Proper conduct IS NOT . . .

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

IT ALL COMES DOWN TO RESPECT

Respect for one another as individuals . . . respect for the validity of different opinions . . . respect for the democratic process . . . respect for the community that we serve.

15.13 CHECKLIST FOR MONITORING CONDUCT

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?

- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

15.14 Exit Process for Departing Council/Commission Members

During the elected/appointed term, members receive and/or have access to information relative to the Town of Camp Verde government, such as reports, maps, photographs, gifts that have been accepted by a member on behalf of the Town, and other documentation, as well as Town-owned equipment, cell phones, keys, computers, office supplies, etc. This list is not all inclusive.

The Clerk's Office is responsible for coordinating the Exit Process with all Council/Commission members. All Town-owned equipment and other documents, supplies, information, keys, etc. must be returned to the Clerk's Office at least TWO business days prior to the end of the member's term. Staff will assist the member with determining what information, documents, etc. that may be removed Town offices. At no time, will a departing member be permitted to remove items without staff review.

SECTION 16 SUMMARY OF GOOD GOVERNMENT RULES FOR ELECTED AND APPOINTED OFFICIALS

16.1 SUMMARY AND NOTICE OF STATUTORY AUTHORITY.

YOU AS A PUBLIC OFFICIAL

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INTRODUCTION

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

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

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

The life of a public official is not an easy one. In addition to the challenges of making good decisions for the future of your community, you must be careful to not violate state laws in the course of your service on the city or town council. These laws, like the seven highlighted in this report, continually affect the decision-making process.

While very few public officials ever intend to violate the law in the conduct of their duties, good intentions alone (such as, "but I didn't **mean** to violate the law") are not enough. Even well-intentioned elected officials who violate the law may face stiff penalties. Therefore, it is in your own self-interest as well as the interest of your city of town to be familiar with the laws governing your conduct in public office.

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

OPEN MEETING LAW

General Provisions[1]

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

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

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

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

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

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

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

applies except and only to the extent that specific constitutional provisions supersede this article."[8]

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

Public Notices of Meetings

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

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

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

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

Agendas

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

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

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

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

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

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

Website Postings

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

Executive Sessions

The Law permits an executive session (a closed meeting) to be held only for seven limited purposes. In addition to the notice and agenda requirements set forth earlier, members of the public body must vote during a public meeting to agree to meet in executive session. The general public is properly excluded from an executive session. Only those "individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session." [24] The public body must instruct those present at the executive session that all matters discussed in the executive session, as well as the minutes, must be kept confidential. [25] Finally, no vote may be taken during an executive session. However, the public body may instruct its attorneys or representatives on the issues listed below under 4, 5, and 7. Any final action on an item discussed in an executive session must be taken when the public body reconvenes in a public meeting.[26]

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

1. Personnel matters involving a specific position or individual (and these individuals must be given written notice at least 24 hours in advance in case they want to be discussed in open session).[27] The employee being discussed may be invited to attend but has no right to do so. Personnel matters are extremely sensitive, and there may be other laws and city charter provisions that will apply to these discussions. It is critically important that your legal counsel be consulted.

2. Confidential information specifically exempt by law from public inspection.

3. Legal advice provided by the public body's attorney.[28]

4. Discussion with the public body's attorney regarding pending or contemplated litigation, settlement discussions to avoid or resolve litigation, or contract negotiations.

5. Instruction of designated representatives concerning salary and compensation negotiations with employee organizations.

6. International and interstate negotiations, and negotiations by a city or town with a tribal council located within or adjacent thereto.

7. Instruction of designated representatives concerning negotiations for the purchase, sale, or lease of real property.[29]

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

Minutes

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

1. The date, time, and place of the meeting.

2. The members of the public body recorded as either present or absent.

3. A general description of the matters discussed or considered.

4. An accurate description of all legal actions proposed, discussed, or taken, and the names of members who proposed each motion.

5. The names of persons making statements or presenting material to the public body and a reference to the specific legal action addressed by the person.

6. Sufficient information to permit further investigation of the background or specific facts of a decision if the discussion in the public session does not adequately disclose the subject matter and specifics of the action taken.

7. In case of an actual emergency, a statement setting forth the reasons necessitating a discussion, consideration, or decision without the matter being placed on an advance agenda.

8. In case of ratification, a copy of the required disclosure statement.

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

The minutes or a recording of any meeting (*except* an executive session) must be available for public inspection no later than three working days after the meeting.[32] In addition, for cities and

towns with populations in excess of 2,500, a statement showing legal actions taken by a city/town public body at a meeting must be posted within three days of the meeting and approved minutes of council meetings must be posted to the city/town website within two working days of approval except for executive session minutes which are confidential. Advisory committees and subcommittees have ten working days to post a statement of legal action or a recording of their meeting on the website.

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

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

E-Mail and Other Social Media Violations

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

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

To help public bodies comply with the Law, the attorney general recommended that, while it is not legally required, members of public bodies who send e-mails to each other might want to include the following language in their e-mail message to remind colleagues that replying or

circulating an e-mail to others could be construed as discussing, deliberating, or taking legal action:

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

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

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

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

Ratification

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

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

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

Sanctions

All legal action transacted by any public body during a meeting held in violation of the Open Meeting Law is null and void unless the ratification procedure discussed above is utilized.[38] However, the Open Meeting Law does not render null and void all legal action taken at a meeting at which an Open Meeting Law violation occurs if the violation involves only a single improperly noticed agenda item.[39] The Law can be enforced against a member of a public body and any person who knowingly aids, agrees to aid, or attempts to aid anyone in violating the Law.[40] Any person affected by an alleged violation, the attorney general, or the county attorney

for the county in which an alleged violation occurred, may file an action and obtain civil penalties of up to $500 for each violation, plus attorney's fees and court injunctions against the offending public body or public official. If the court finds that a public officer (in this report the term "public officer" includes elected and appointed officials of a city or town) intentionally violated the Law, the court may remove the officer from office and assess him or her personally with the attorney's fee award. Moreover, a member of a public body shall not direct staff to communicate in violation of the Law. [41]

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

CONFLICT OF INTERESTS

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

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

Applicability

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

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

Conflict of Interests Defined

The Conflict of Interests Law distinguishes between interests that are "remote" and those that are "substantial."[44]

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

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

1. A nonsalaried officer or member of a nonprofit corporation. Thus, being a nonsalaried officer or a member of a nonprofit health agency doing business or requesting a grant from the city or town technically would not constitute a conflict.

2. The landlord or tenant of a contracting party. For example, a council member may lease office space to a party that has a private interest in a public matter without it resulting in a conflict of interests.

3. An attorney of a contracting party. For attorneys who serve on council or as a member of any other public body or as employees of a public body there may be State Bar ethics rules, which could restrict their actions.

4. A member of a nonprofit cooperative marketing association.

5. The owner of less than 3 percent of the shares of a corporation with an interest in a matter with the city or town, provided that:

    a. Total annual income from dividends, including the value of stock dividends, does not exceed 5 percent of the officer's or employee's total annual income; and

    b. Any other payments made to the officer or employee by the corporation do not exceed 5 percent of the officer's or employee's total annual income.

6. Being reimbursed only for actual and necessary expenses incurred in performance of official duties.

7. Receiving municipal services on the same terms and conditions as if the person were not an officer or employee of the municipality. Thus, when a council member who owns a business within the city or town votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.

8. An officer or employee of another political subdivision, a public agency of another political subdivision, or any other public agency unless it is the same governmental entity being served who is voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a council member who is a school teacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the council member.

9. A member of a trade, business, occupation, profession, or class of persons and has no greater interest than the other members of that trade, business, occupation, profession, or class of persons. A class must consist of at least 10 members to qualify the interest as remote.

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

A public officer or an employee may sell equipment, material, supplies, or services to the municipality in which the officer or employee serves if this is done through an award or contract let after public competitive bidding.[46] An exception to this law allows cities and towns to purchase supplies, materials, and equipment from a member of the council without going to public competitive bid as long as the single transaction does not exceed $300 and the annual total of such transactions with a member of the council does not exceed $1,000.[47] The city or town must adopt a policy governing such purchases and must approve this policy on an annual basis. All transactions above these limits must take place as a result of public competitive bidding. However, the city or town officer or employee would not be allowed to influence the bidding process in any way and must make known in a timely manner such interest in the official records of the city or town.

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

Additional Provisions

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

1. When a public officer or employee has been directly concerned or has exercised "administrative discretion" in an issue, that officer or employee may not represent another person before an agency of the city or town on the same issue and receive compensation for such representation. This restriction extends to 12 months after termination of office or employment with the city or town.[49]

2. During the period of a public officer's term or employee's employment and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties that has been clearly designated to the officer or employee as confidential and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee cannot disclose or use confidential information obtained during the term of office or employment.[50]

3. A public officer or employee cannot receive any compensation (other than as provided by law) for performance of services in any case, special proceeding, application, or other matter pending before any agency of the city or town.[51]

4. A public officer or employee cannot use or even attempt to use his or her position to obtain anything of value that normally would not be received in the performance of official duties. Something is considered to have "value" when it exerts a "substantial and improper" influence on the duties of the public official.[52]

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

Declaration of a Conflict

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

1. Refrain from <u>participating in any manner</u> (voting, discussing, or in any way attempting to influence) in their capacity as an officer or employee a decision of the governing body or agency of the city or town; and

2. Make the substantial interest known in the official records of the city or town. For a member of the council, this can be done by either declaring at a council meeting that a conflict of interests exists and having this declaration officially entered in the minutes or filing a written declaration with the city or town clerk. For an employee who faces a conflict of interests situation, the employee should file a letter with the manager or clerk declaring in writing that a conflict exists. Both officers and employees with a substantial interest must refrain from participating in any manner as an officer or employee in the decision or issue.[55] As a best practice, you should file notice with the clerk as soon as you become aware of the conflict.

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

Legal Opinions

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

Filing of Disclosures

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

Penalties

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

PUBLIC RECORDS [59]

Arizona's Public Records Law is an odd paradox. On the one hand, the sweeping language of its core provisions makes the law appear to be straightforward and simple. On the other hand, the hundreds of exceptions in other statutes and judicial decisions can make application of the law rather complex at times. Given this unique blend of simplicity and complexity, you should learn the following basics, but then seek immediate assistance if you directly receive a request for public records.

Simple and Sweeping

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

The Arizona Supreme Court has ruled that a public record maintained in an electronic format includes not only the information normally visible upon printing the document but also any

embedded metadata.[64] The court has also indicated if the record is maintained electronically, in most cases it must be provided in that format.

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

Complex Maze of Exceptions

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

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

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

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

Steps to Comply

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

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

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

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

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

Step Five: Inspection and Copying. Members of the public actually have rights relating to public records. They have a right to "inspect" those documents, which essentially means they may "examine" or "look at" the requested records.[77] (A court still may review the withheld documents and order them disclosed.) If a person wants, they are entitled to get "copies, printouts or photographs" of the records, which must be provided "promptly." As noted above if the records are maintained electronically, they must be provided electronically.

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

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

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

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

Violations

Violations of the Public Records Law come in two forms: "governmental" violations and "personal" violations.

"Governmental" violations occur when the government (operating through public officials and employees) fails to comply with the Public Records Law by, for example, refusing to produce public records, purposefully delaying the release of public records, refusing to release records based on speculation that they may contain information that does not need to be produced,[83] or overcharging for copies of public records.[84] The court may award attorney's fees and other legal costs that are reasonably incurred in any action under the Public Records Law if the person seeking public records has substantially prevailed.[85] Additionally, "[a]ny person who is wrongfully denied access to public records pursuant to this article (the Public Records Law) shall have a cause of action against the officer or public body for any damages resulting from the denial."[86]

"Personal" violations occur when, for example, a public officer or employee releases confidential information that is protected from disclosure by statute,[87] steals or in an unauthorized way removes, secretes, mutilates, or defaces a public record,[88] or otherwise

"tampers with a public record" by destroying, altering, or falsifying a public record.[89] The penalties for personal violations can range from removal from office and imposition of civil penalties to being convicted of a class 4, 5, or 6 felony.

Practical Tips

To avoid problems, you might want to keep the following three tips in mind. First, whenever creating documents (including informal writings, such as e-mail, which are subject to the Public Records Law[90]), presume they will be public records available for inspection, copying, and printing on the front page of the local newspaper. Therefore, be as careful with the tone and language of the document as you are with the substantive accuracy of your writing.

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

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

INCOMPATIBILITY OF OFFICES

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

Early Concepts of Incompatible Offices

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

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

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

State Laws and Interpretations

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

Arizona State Constitution

1. No member of the Legislature may hold any other office or be employed by the state or any county, city, or town, except a legislator may also be a school board member or a teacher.[92]

2. Incumbents of a salaried elective office may not "offer" themselves for nomination or election to any salaried local, state, or federal office unless during the final year of their term. However, an incumbent may resign and then run for another office.[93]

3. Justices of the peace may hold the additional position of police magistrate in incorporated cities and towns.[94]

State Statutes

1. A public official may not hold two salaried public offices at the same time. However, elected officials in the final year of their term of office may offer themselves for nomination to another elected office. The point in time at which an elected official is determined to have offered herself or himself for nomination or election to another public office is upon the filing of nomination papers or upon formal declaration of candidacy for such office, whichever occurs first.[95]

2. Mayors, aldermen, or council members cannot receive any compensation from the city or town during the term of office for which they were elected in addition to the compensation paid to them as elected officials.[96] As a result, city and town elected officials cannot hold any other paid public office with the city or town. In the opinion of our League general counsel, this provision also prevents a mayor or council member from resigning office and accepting another compensated position with the municipality prior to the end of the term of office for which the person was elected.[97]

3. Public defenders employed by the county may also serve as public defenders for a city or town. State law requires the city or town to reimburse the county for the public defender's services.[98]

4. Members of the State Personnel Board and <u>most</u> state employees cannot be candidates for nomination or be elected to any paid public office, nor may they take part in managing a political party or political campaign.[99] Certain state employees are exempted

from these restrictions, so we suggest that you discuss individual cases with your city or town attorney.

5. A person may not be a candidate for more than one public office if the elections for the offices are held on the same day and the person would be prohibited from serving both positions simultaneously.[100]

City Charter Provisions

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

Attorney General Opinions

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

1. State employees subject to the State Personnel Commission may not hold the position of city or town council member, if the council position is compensated.[101]

2. The positions of school board member and council member could be held by the same individual because the school board position was uncompensated.[102]

3. A legislator may not assume an elective office in a charter city during the legislative term for which he or she was elected.[103]

4. The duties of a county supervisor are not inherently inconsistent with the duties imposed on a member of the Arizona Board of Regents.[104]

League General Counsel Opinions

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

1. One individual in a non-chartered city cannot hold the positions of mayor and city or town magistrate at the same time.[105]

2. The compensated positions of city alderman and volunteer fireman could not be held at the same time by one individual because aldermen can only receive the specific compensation designated by law for their service as aldermen.[106]

3. A magistrate, during absence from his post, may request another magistrate or justice of the peace from a neighboring city or town to serve in his post. The city or town should, however, adopt an ordinance authorizing this arrangement.[107]

4. The general counsel of the League also suggests that the offices of town manager and police magistrate not be held by one individual.

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

NEPOTISM

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

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

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

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

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

FINANCIAL DISCLOSURE

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

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

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

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

LIMITS ON ENTERTAINMENT

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

Careful attention to these three parts – the giver, the recipient, and the outlawed gift – is important because violations may result in criminal and civil penalties.[120] As for the giver, the law applies to "a person who for compensation attempts to influence the passage or defeat of

legislation, ordinances, rules, regulations, nominations and other matters that are pending or proposed or that are subject to formal approval by the corporation commission, a county board of supervisors, a city or town governing body or a school district governing board or any person acting on that person's behalf." So even if the people offering entertainment do not call themselves "lobbyists," the law still applies if they are compensated to do any of the things listed. Next, as for the receiver, the law applies in the city and town context to city/town elected officials (whether elected or appointed), but not directly to city or town staff (although local ordinances or policies might).[121]

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

CONCLUSION

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

ENDNOTES

1. To read the state statutes on the Open Meeting Law see A.R.S. § 38-431 through 38-431.09.
2. A.R.S. § 38-431.09.
3. A.R.S. § 38-431.01(G). The Open Meeting Law information from the attorney general's office can be accessed at www.azag.gov and on the city/town website. The Arizona ombudsman - citizens' aide office also produces a helpful publication on the requirements of the Open Meeting Law. It can be accessed at www.azoca.gov.
4. A.R.S. § 38-431.01(A). The Open Meeting Law grants the public the right to attend and listen to a public body's deliberations and proceedings. See Attorney General Opinions I83-049 and I84-133. This includes the right to know exactly how each individual council member votes on an issue. A superior court has ruled that a secret ballot procedure used to select the mayor from the common council violates the Open Meeting Law. *See Mohave County Attorney v. Common Council of the City of Kingman* (No. SA-140, June 14, 1983).
5. A.R.S. § 38-431(4).
6. A.R.S. § 38-431.09.
7. Attorney General Opinion I07-013.
8. A.R.S. § 38-431(6).
9. For a discussion of the applicability of the Open Meeting Law to advisory committees and special boards created by political subdivisions see Attorney General Opinions I92-007 and I07-001.
10. A.R.S. § 38-431.02(A).
11. A.R.S. § 38-431.02(A)(4).
12. A.R.S. § 38-431.02(F).
13. A.R.S. § 38-431.02(C).
14. A.R.S. § 38-431.02(B).
15. A.R.S. § 38-431.02(E).
16. A.R.S. § 38-431.02(D),(J).
17. A.R.S. § 38-431.05(B)(4).
18. A.R.S. § 38-431.02(H).
19. A.R.S. § 38-431.09. The Open Meeting Law does not specifically prohibit a public body from considering agenda items in an order different from that appearing on the agenda. However, when changing the order of discussion, it must be done in a way that is not designed to deny any member of the public the opportunity to listen to the discussion of any agenda item. See Attorney General Opinion I83-56.
20. A.R.S. § 38-431.02(I).

21. A.R.S. § 38-431.02(H).

22. A.R.S. § 38-431.02(K).

23. A.R.S. § 38-431.01(H).

24. A.R.S. § 38-431(2).

25. A.R.S. § 38-431.03(C).

26. A.R.S. § 38-431.03(D). See also *Johnson v. Tempe Elementary School Dist. Governing Board*, 199 Ariz. 567, 20 P.3d 1148 (court of appeals dismissed a public body's appeal as improper when the public body instructed its attorney in an executive session to file an appeal but then failed to confirm that instruction in public with a proper formal vote).

27. A.R.S. § 38-431.03(A)(1). The other exceptions are also set forth in A.R.S. § 38-431.03(A).

28. Only legal advice, not policy discussions, may be discussed. See *City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 803 P.2d 891.

29. See *Tanque Verde Unified School Dist. v. Bernini*, 206 Ariz. 200, 76 P.3d 874 (affirming that a public body violated the Open Meeting Law by conducting a site selection process in an executive session).

30. A.R.S. § 38-431.01(B).

31. A.R.S. § 38-431.01(C).

32. A.R.S. § 38-431.01(D).

33. A.R.S. § 38-431.03(B).

34. A.R.S. § 38-431.01(F).

35. A.R.S. § 38-431(4).

36. Attorney General Opinion I05-004 ("Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML (Open Meeting Law) requirements. … While some one-way communications from one board member to enough members to constitute a quorum would not violate the OML, an e-mail by a member of a public body to other members of the public body that proposes legal action would constitute a violation of the OML.").

37. Arizona Agency Handbook § 7.5.2 produced by the Arizona attorney general's office. ("Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions…. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss the topic that is or may be presented to the public body for a decision.")

38. A.R.S. § 38-431.05(A).

39. Attorney General Opinion I08-001.

40. A.R.S. § 38-431.07(A).

41. A.R.S. § 38-431.01(I).

42. A.R.S. § 41-1376.01.

43. A.R.S. § 38-502(9).

44. Compare A.R.S. § 38-502(11) ("substantial interest") and 38-502(10)("remote interest"); see also Attorney General Opinion I85-052.

45. A.R.S. § 38-502(11). See also Attorney General Opinion I03-005.

46. A.R.S. § 38-503(C). See also Attorney General Opinions 70-5, 79-067, 79-133, I06-002; General Counsel Opinion May 17, 1979, and letter dated October 23, 1984 from attorney general to Town of Parker.

47. A.R.S. § 38-503(C)(2).

48. Attorney General Opinion I85-067.

49. A.R.S. § 38-504(A).

50. A.R.S. § 38-504(B).

51. A.R.S. § 38-505.

52. A.R.S. § 38-504(C).

53. State Bar Ethics Opinion No. 74-28.

54. See *Gomez v. Superior Court,* 149 Ariz. 223, 717 P.2d 902.

55. A.R.S. § 38-503(A), (B).

56. A.R.S. § 38-508.

57. A.R.S. § 38-507.

58. A.R.S. § 38-506 and A.R.S. § 38-511.

59. See also Arizona Agency Handbook prepared by the attorney general's office (www.azag.gov) and Arizona Public Records Law prepared by the office of the Arizona ombudsman-citizens' aide (www.azoca.gov).

60. A.R.S. § 39-121.

61. A.R.S. § 39-121.01(A).

62. A.R.S. § 41-151.18.

63. *Griffis v. Pinal County*, 156 P.3d 418, 215 Ariz. 1 (2007).

64. *David Lake v. City of Phoenix*, 218 P.3d 1004, 222 Ariz. 547 (2009).

65. A.R.S. § 39-128.

66. *Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242, 1246.

67. *Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242, 1246.

68. A.R.S. § 39-126.

69. A.R.S. §§§ 11-483, 16-153, 39-123(A).

70. 42 U.S.C. § 405(c)(ii), (viii)(l), and A.R.S. § 44-1373.

71. *Moorehead v. Arnold*, 637 P.2d 305, 130 Ariz. 503 (Ariz. App. 1981).

72. *Scottsdale Unified School Dist. v. KPNX Broadcasting,* 191 Ariz. 297, 955 P.2d 534 and *Judicial Watch, Inc. v. City of Phoenix*, (Ariz. App. Div. 1, 2011) 228 Ariz. 393, 267 P.3d 1185.

73. *Star Publishing Co. v. Pima County Attorney's Office*, 891 P.2d 899, 181 Ariz. 432 (Ariz. App. 1994).

74. A.R.S. § 39-121.01(B).

75. A.R.S. § 39-121.01(C).

76. A.R.S. § 39-121.01(D)(1), (E). See also *Phoenix New Times, L.L.C. and John Dougherty v. Joseph M. Arpaio*, 217 Ariz. 533, 177 P.3d 275; *West Valley View, Inc. v. Maricopa County Sheriff's Office*, 165 P3d. 203, 216 Ariz. 225 (Ariz. App. Div. 1 2007) and *Congress Elementary School Dist. No. 17 of Yavapai County v. Warren* (Ariz. App. Div. 1 2011) 227 Ariz. 16, 251 P.3d 395.

77. A.R.S. § 39-121.01(D)(1).

78. *Carlson*, 687 P.2d at 1243-1246 ("a practical alternative to the complete denial of access would be deleting specific personal identifying information, such as names"); *see also Cox Arizona Publications v. Collins*, 175 Ariz. 11, 852 P.2d 1194, 1198 (finding that the county attorney violated the Public Records Law by withholding public records without offering to redact portions and producing the rest for inspection).

79. A.R.S. § 39-121.03 (explaining what may be charged for commercial copies).

80. A.R.S. § 39-127.

81. A.R.S. § 39-122.

82. A.R.S. § 39-121.01(D)(1).

83. *Star Publishing Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899.

84. *Hanania v. City of Tucson*, 128 Ariz. 135, 624 P.2d 332.

85. A.R.S. § 39-121.02(A),(B). *Democratic Party of Pima County v. Ford* (Ariz. App. Div. 2, 2012) 228 Ariz. 545, 269 P.3d 721.

86. A.R.S. § 39-121.02(C).

87. A.R.S. §§ 39-124, 13-2401.

88. A.R.S. § 38-421.

89. A.R.S. §§ 13-2407.

90. Attorney General Opinion I05-04 at 10 ("E-mails that board members or staff generate pertaining to the business of the public body are public records. [citations omitted] Therefore, the e-mails must be preserved according to a records retention program and generally be made available for public inspection.").

91. McQuillin on Municipal Corporations Volume 3, Section 12.67. See also Attorney General Opinion 76-41.

92. Arizona Constitution, Article IV, Part 2, Section 5; Attorney General Opinion 77-221.

93. Arizona Constitution, Article XXII, Section 18. See also A.R.S. § 38-296 and Attorney General Opinion 82-001.

94. Arizona Constitution, Article VI, Section 32. Justice of the peace and magistrate courts are not courts of record and would not be subject to the restriction of Article VI, Section 28 of the Constitution.

95. A.R.S. § 38-296.

96. A.R.S. § 9-304.

97. General Counsel Opinion August 17, 1988.

98. A.R.S. § 11-585.

99. A.R.S. § 41-752.

100. A.R.S. § 38-296.01.

101. Attorney General Opinion 71-32-L. The attorney general further opined that the state personnel commission's jurisdiction extends to all state offices and positions except those specifically exempted by law. See also A.R.S.§ 41-752.

102. Attorney General Opinions 72-20-L and 80-061.

103. Attorney General Opinion 77-221.

104. Attorney General Opinion 80-019; see also Attorney General Opinions 59-30, 75-2-L, and 77-216.

105. General Counsel Opinion December 10, 1965.

106. General Counsel Opinion November 2, 1966.

107. General Counsel Opinion May 26, 1970.

108. A.R.S. § 38-481.

109. See *Graham County v. Buhl,* 76 Ariz. 275, 263 P.2d. 537, and Attorney General Opinion 77-115.

110. Attorney General Opinion 63-75-L.

111. Attorney General Opinion 63-9. See also Attorney General Opinions 54-26, 65-6-L.

112. General Counsel Opinions June 24, 1968 and January 19, 1977. See also Attorney General Opinion 78-71.

113. See Attorney General Opinion 77-138.

114. A.R.S. Title 38, Chapter 3.1, Article 1.

115. A.R.S. § 38-545.

116. See League Municipal Election Manual for forms.

117. A.R.S. § 38-543.

118. A.R.S. § 38-544.

119. A.R.S. § 41-1232.08(B).

120. Attorney General Opinion I00-031.

121. League General Counsel Opinion January 15, 2001.

122. A.R.S. § 41-1231(5).

common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, is more than one thousand dollars or if the removal of the finished product, material or article of merchandise causes damage to the structure or renders the structure unfit for its intended use.
10. Employees of the owners of condominiums, townhouses, cooperative units or apartment complexes of four units or less or the owners' management agent or employees of the management agent repairing or maintaining structures owned by them.
11. Any person who engages in the activities regulated by this chapter, as an employee of an exempt property owner or as an employee with wages as the person's sole compensation.
12. A surety company or companies that are authorized to transact business in this state and that undertake to complete a contract on which they issued a performance or completion bond, provided all construction work is performed by duly licensed contractors.
13. Insurance companies that are authorized to transact business in this state and that undertake to perform repairs resulting from casualty losses pursuant to the provisions of a policy, provided all construction work is performed by duly licensed contractors.
14. Any person other than a licensed contractor engaging in any work or operation on one undertaking or project by one or more contracts, for which the aggregate contract price, including labor, materials and all other items, but excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, is less than one thousand dollars. The work or operations that are exempt under this paragraph shall be of a casual or minor nature. This exemption does not apply:
(a) In any case in which the performance of the work requires a local building permit.
(b) In any case in which the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than one thousand dollars, excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, for the purpose of evasion of this chapter or otherwise.
(c) To a person who utilizes any form of advertising to the public in which the person's unlicensed status is not disclosed by including the words "not a licensed contractor" in the advertisement.
15. A person who is licensed, certified or registered pursuant to title 41, chapter 16 and who is not otherwise required to be licensed under this chapter or an employee of such person.
16. A person who functions as a gardener by performing lawn, garden, shrub and tree maintenance.
17. Alarm agents as defined in section 32-101.
B. A person who is licensed to perform work in a particular trade pursuant to this chapter shall not be required to obtain and maintain a separate license for mechanical or structural service work performed within the scope of such trade by such person.
C. Any person who does not have an exemption from licensure pursuant to subsection A, paragraph 14, subdivision (c) of this section is subject to prosecution for a violation of section 44-1522. The attorney general may investigate the act or practice and take appropriate action pursuant to title 44, chapter 10, article 7.
D. The exemptions from licensure pursuant to subsection A, paragraphs 4, 9 and 14 of this section do not apply to either of the following:
1. All fire safety and mechanical, electrical and plumbing work that is done in connection with fire safety installation and fire safety maintenance and repair. For the purposes of this paragraph, "fire safety installation" means hardwired or interconnected smoke alarms and fire sprinklers and does not include an individual device that is attached by a nail, screw or other fastening device to the frame or foundation of any residential unit. For the purposes of this paragraph, fire safety maintenance and repair does not include routine work that is conducted by an employee of an apartment or condominium complex that is incidental to the fire safety equipment.
2. All work that is done, including the installation, maintenance and repair of devices, appliances or equipment, that involves the connecting to any supply of natural gas, propane or other petroleum or gaseous fuel. Nothing in this paragraph impacts the effect of section 36-1624.01.

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6.

Town of Camp Verde

Agenda Item Submission Form – Section I

Meeting Date: April 13, 2016 Work Session

☐ *Consent Agenda* ☐ *Decision Agenda* ☐ *Executive Session Requested*

☐ *Presentation Only* ☐ *Action/Presentation* ☐ *Pre-Session Agenda*

Requesting Department: **Town Clerk**

Staff Resource/Contact Person: ***Virginia Jones***

Agenda Title (be exact):

Discussion and possible direction to staff regarding business license applications, including application requirements, enforcement and penalties.

List Attached Documents:

Chapter 9 – Town Code

Estimated Presentation Time: 5 minutes

Estimated Discussion Time: 5 minutes

Reviews Completed by:

☒ ***Department Head:***_____ ☐ ***Town Attorney Comments:*** N/A

☐ ***Finance Department*** N/A
Fiscal Impact: None
Budget Code: N/A ***Amount Remaining:*** _____
Comments:

Background Information: The Town Code states it is unlawful for any person, firm, organization, corporation or other entity to engage in business within the corporate limits of the Town without first obtaining a business license.

We first enacted the Business License process by Ordinance 1992-A76, updated it in 2004 by Ordinance 2004-A280 and again in 2008 by Ordinance 2008-A355.

The changes that have been made over the years in the Town Code and in the application process, have been made to protect the citizens and to include the building and zoning officials input. This safeguards the community that all our existing codes are being met.

We have not been requiring realtors, doctors, lawyers or dentist etc., (Professionals) to get a license and it seems this is a violation of the code.

We currently do not have a late fee or penalty if payment is not received in a timely manner. The Code only states that if the fee is not paid within thirty (30) days of their due date the license will be cancelled.

Staff is looking for direction or confirmation that the intent of the code is that EVERY person engaging in business within the corporate limits of the Town must obtain a Business License and other than cancelling the license does Council want to consider a penalty for late payments.

Recommended Action (Motion): Direction to Staff

Instructions to the Clerk: None

CHAPTER 9
BUSINESS REGULATIONS

ARTICLE 9-1

PEDDLER'S/SOLICITOR'S LICENSE (2004-A280) (2008-A355)

9-1-1 Definitions
9-1-2 License Required
9-1-2.1 Exemptions
9-1-3 Applications
9-1-4 Licensing, Bonding, and Fees
9-1-5 Fees for Charitable, Religious or Civic Organizations (2010-A373)
9-1-6 License to be posted
9-1-7 Location Restrictions
9-1-8 Undue Noise Prohibited
9-1-9 Enforcement Provisions
9-1-10 Revocation
9-1-11 Signs to be observed

SECTION 9-1-1 DEFINITIONS (2004-A280) (2008-A355)

In this Article unless the context otherwise requires:

A. "Canvasser or solicitor" means any person, whether a resident of the Town or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance from place to place, from house to house or from street to street taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether such person is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself or for another person, hires, leases, uses or occupies any building, structure, tent, railroad car, boat, hotel room, lodging house, apartment, shop, or any other place within the Town for the sole purpose of exhibiting samples and taking orders for future delivery.

B. "Peddler" means any person, whether a resident of the Town or not, traveling by foot, wagon, automobile, or any other type of conveyance from place to place, from house to house or from street to street carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or a person who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car or other vehicle or conveyance. It is further provided that a person who solicits orders and, as a separate transaction, makes delivery to purchasers as a part of the scheme or design to evade the provisions of this chapter shall be deemed a peddler subject to the provisions herein contained. The word "peddler" shall include the words "hawker" and "huckster".

C. "Transient merchant," "itinerant merchant," or "itinerant vendor" means any person, whether owner or otherwise, whether a resident of the Town or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the Town, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad car, boat, hotel room, lodging house, apartment, shop, or any street, alley or other place within the Town for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction, provided that such definition shall not be construed to include any person, firm or corporation who, while occupying such temporary location, does not sell from stock but exhibits samples only for the purpose of securing orders for future delivery. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any such local dealer, trader, merchant, or auctioneer.

D. "Special Event" includes the temporary sales and displays by street vendors, craft shows, fair booths, and similar operations usually associated with a special event or holiday.

E. "Producer" includes owners, proprietors or tenants of agricultural lands, orchards, farms and gardens whereon food products are grown, raised, or prepared for market. "food product" includes: every product of the soil in its natural or manufactured state, including, without limitation, beef and beef products; swine and pork products; fowls and poultry products; eggs and egg products; milk and milk products; honey, and lamb and sheep products.

SECTION 9-1-2 LICENSE REQUIRED (2004-A280) (2008-A355)

It is unlawful for any peddler, solicitor, canvasser, transient merchant, itinerant merchant, or itinerant vendor to engage in such business within the corporate limits of the Town without first obtaining a Peddler/Solicitor's license in compliance with the provisions of this chapter. This Article does not apply to participants of Town Events who have paid booth fees, OR garage sales, auctions, sidewalk sales, home-based party sales of items for personal use (avon, tupperware, etc.), student fund raising sales, and bake sales that occur less than three (3) times per year. This Article also does not apply to licensed retail businesses that conduct occasional off-site sales events, such as car and recreational vehicle shows and home shows. However, off-site sales may require zoning clearance.

SECTION 9-1-2.1 EXEMPTIONS

A person conducting the following shall be exempt from this chapter. (NOTE: FIREWORKS SALES ARE NOT EXEMPT FROM THIS CHAPTER.):

a. Activities required by statute or by order of any court
b. Bona fide auction sales pursuant to Arizona law
c. Religious, political, or nonprofit organizations, as recognized by internal revenue service (must provide documentation)
d. School and youth activities (i.e. boy scouts, girl scouts, church clubs, youth sports groups, etc.).
e. Fund raising activities intended to provide financial assistance to the gravely ill, to assist the victims of crimes, disasters, or the less fortunate, for the construction of a community facility, etc.
f. Governing agencies (federal, state, county, city or town)
g. Outdoor sales or activities being conducted on a property directly related to the primary sales of a business located on the same property (though, activity shall be subject to zoning compliance)
h. Any business or vendor that is participating in a community-wide special event activity that is sponsored by the Town or a private (non-public) organization. However, a vendor who does not have a permanent Camp Verde business license must obtain a temporary business license for special events pursuant to the Town of Camp Verde Special Event Policy.
i. Producer of farm products on agricultural lands, farms, and gardens
j. Activities intended to increase public awareness of public programs.

SECTION 9-1-3 APPLICATIONS (2004-A280) (2008-A355)

A. Applicants for a Peddler/Solicitor's License under this chapter must file with the Clerk a sworn application in writing, on a form to be furnished by the Clerk, which shall give the following information:

1. A current and valid driver's license or other form of state-issued identification that includes the applicant's name, description, and recent photograph.
2. Complete address, physical and mailing of the peddler/solicitor
3. A brief description of the nature of the business and the goods to be sold.
4. Verification of a Transaction Privilege Tax License.
5. If employed, the name and address of the employer, together with credentials establishing the exact relationship.
6. The length of time for which the right to do business is desired. No Peddler/Solicitor's License shall be issued for a period longer than three (3) consecutive days.
7. If a vehicle is to be used, a complete description, including make and model, license plate and number, vehicle identification number, and other identifying characteristics of all vehicles that will be used in the business. .
8. A statement as to whether or not the applicant has ever been convicted of any crime, misdemeanor, or violation of any municipal laws and the nature of the offense and the punishment or penalty assessed therefore.
9. If operating from a specific location (i.e. retail parking lot) and not door-to-door, original written and signed letter of consent from the property owner of record permitting the activity or event.
10. Copies of any necessary health or other regulatory permits required by law.

B. No license issued hereunder shall be transferable.

SECTION 9-1-4 LICENSING, BONDING, AND FEES (2004-A280) (2008-A355)

A. Fees

The license fees for peddlers, solicitors, canvassers, and transient merchants and the application fee provided in Section 9-1-3 shall be determined by resolution of the Council, but is no less than the actual costs associated with a background check. No fee shall be required of any person, agency, or agent selling products of the farm, soil, or orchard.

B. Bond Required

The applicant shall post either a certified check or a surety bond payable to the Town of Camp Verde in the amount of one thousand dollars ($1,000) with the Town Clerk. Every business, firm, company, or corporation, which has employees or agents acting in the capacity of peddler, solicitor, canvasser, or transient merchant, shall file with the clerk a blanket surety bond covering all such employees or agents and running to the Town in the amount of five thousand dollars ($5,000).the surety bond must remain active for the duration of the license. If the bond is cancelled or renewal premiums are not paid, the license will be revoked immediately. Surety bonds must include the following statement, at minimum: this bond meets the requirements of chapter 9, business regulations, of the Town Code.

C. License

The applicant shall submit fingerprint(s) and all fees associated with the cost of a background check to the marshal's office for a complete background check. The Clerk shall forward a copy of the application to the marshal's office. The marshal's office shall have ten (10) working days in which to respond with comments or concerns. Following a clean background investigation and payment of license fees, the Clerk shall issue the peddler/solicitor's license for a period not to exceed three (3) days. The license shall be displayed with the peddler/solicitor at all times.

Peddler/solicitor's license may be issued to the same person(s) or organization no more than three (3) times in a one-year period.

SECTION 9-1-5 FEES FOR CHARITABLE, RELIGIOUS OR CIVIC ORGANIZATIONS

(2004-A280) (2008-A355)(2010-A373)

There shall be no fees assessed for the use of Town-owned facilities, grounds, or equipment by charitable*, religious, or civic organizations[1]. It shall be the duty of the Clerk to determine if the organization making the application is a charitable, religious, or civic organization and that the individual making the application is a member of the organization. The Town Clerk is authorized to waive user fees only for these organizations based on Council policy. Fees are determined by Council Resolution on an annual basis. The determination by the Clerk may be appealed to the Town Manager, which may at his discretion decide such appeal or refer it to the Council.

SECTION 9-1-6 LICENSE TO BE POSTED (2004-A280) (2008-A355)

The license issued by the Clerk shall be posted in a conspicuous place if the licensee is using a vehicle or a building in his business and otherwise must be kept by the person and exhibited at any time upon request.

SECTION 9-1-7 LOCATION RESTRICTIONS (2004-A280) (2008-A355)

No peddler, canvasser, or transient merchant shall locate on the public street or property, and must have written permission of a property owner for private property in their possession and on file with the clerk's office. It is unlawful for any peddler, canvasser, or transient merchant to operate in any stationary location, to operate within three hundred feet of a public school ground, or to operate in any congested area where such operation might impede or inconvenience the public or cause traffic or parking hazards. The judgment of a law enforcement officer exercised in good faith shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

SECTION 9-1-8 UNDUE NOISE PROHIBITED (2004-A280) (2008-A355)

No licensee, nor any person on the licensee's behalf, shall shout, make any outcry, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound amplifying system, for the purpose of attracting attention to any goods, wares, or merchandise which such licensee proposes to sell upon any of the streets, alleys, parks or other public places of the Town or upon any private premises in the Town where sound of sufficient volume is emitted or produced that is capable of being plainly heard upon the public thoroughfares.

SECTION 9-1-9 ENFORCEMENT PROVISIONS (2004-A280) (2008-A355)

It shall be the duty of any law enforcement officer of the Town to enforce the provisions of this Article.

SECTION 9-1-10 REVOCATION (2004-A280) (2008-A355)

The Clerk after notice for any of the following causes may revoke permits and licenses issued under the provisions of this chapter:

A. Fraud, misrepresentation, or false statement contained in the application for license;
B. Fraud, misrepresentation, or false statement made in the course of carrying on business;
C. Any violation of this Article;
D. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

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*Charitable organizations must be recognized as tax-exempt by the internal revenue service. Documentation proving IRS exemption shall be presented at the time of the request to waive fees.

SECTION 9-1-11 SIGNS TO BE OBSERVED (2004-A280) (2008-A355)

It is unlawful for any peddler, solicitor, canvasser or transient merchant, in the course of his business to ring the doorbell or knock at any building whereon a sign bearing the words "No Peddlers," "No Solicitors," "No Canvassers," No Transient Merchants," or a similar message is exposed to public view.

ARTICLE 9-2

OFF-PREMISES CANVASSING AND SIGNAGE

9-2 Definitions
9-2-1 Limitations on Off-Premises Canvassing Activity
9-2-3 Specific Prohibitions and Appropriate Conduct
9-2-4 Violations and penalties

SECTION 9-2 DEFINITIONS

A. "Off-premises solicitations" mean activities initiated by businesses or its representatives that is meant to engage the public in a conversation in order to consummate a business transaction.
B. "Visitor's Center" means the Town of Camp Verde facility operated as the Town's official visitor's center.
C. "Visitor's Center Signage" means that signage that is specific to the Town's official Visitor's Center. No other signage implying that a business is the Town's official visitor's center will be permitted.
D. "Business" means any commercial activity in which any real property, timeshare interests, goods, services, or edibles are sold or offered for sale or for rent within the corporate limits of the Town.
E. "Business Agent" means the employee, representative, agent, or solicitor of any business.
F. "Enclosed Structure" means a structure having a roof and supported by columns or walls. Enclosed structure does not include any sidewalks under a roofed area.
G. "Goods" shall mean any tangible item, including, but not limited to edibles, merchandise, products, supplies, coupons, pamphlets, brochures, and maps.
H. "Off-Premises Canvassing" (OPC) means person-to-person efforts initiated by a business agent solely intended to interest, entice pedestrians in or solicit the participation of any person to participate in commercial transactions with a business, including, but not limited to offers of goods, cash, discounts on products or services, or other items including the offering of free goods or services of value made in exchange for or with the intent to induce the recipient's willingness to receive information relating to a possible commercial transaction, except when done entirely within an enclosed structure.
I. "OPC Employer" means any business or other person who directly hires or otherwise contracts with an OPC solicitor to conduct OPC activities on its behalf.
J. "OPC solicitor" shall mean any person engaged in off-premises canvassing.
K. "Product" shall mean the real property comprising the primary business of a resort or commercial lodging establishment but only that portion of real property that is owned by a resort or commercial lodging establishment which is used exclusively for resort or commercial lodging activity. Such activity includes only the providing of lodging or ancillary services to the provision of lodging for the benefit of the establishment's guests.
L. "Sidewalk" means any outside walkway, public or private, used by pedestrians.
M. "Street" shall mean all that area dedicated to public use for public street purposes and is within the jurisdiction and control of the Town of Camp Verde or the Arizona Department of Transportation and shall include, but not be limited to public roadways, parkways, and alleys.

SECTION 9-2-1 LIMITATIONS ON OFF-PREMISES CANVASSING ACTIVITY

No person shall engage in off-premise canvassing within the corporate limits of the Town of Camp Verde, except on real property comprising the primary business of a resort or commercial lodging establishment.

SECTION 9-2-2 SIGNAGE

It shall be unlawful for any person, company, corporation, OPC solicitor or OPC employer or entity engaged in the procurement of prospective customers for sales, solicitations, presentation or substantially similar activity, to identify or advertise itself by means of any sign, that utilizes the following phrases or substantially similar phrases, "Tourist Information", "Tourist Center", "Visitor Information", "Visitor Center", "Activity Center", "Activity Information", unless:

A. The identity of the business is disclosed on the face of the sign in letters of sufficient size to be clearly readable to the public, but in no event less than 50% of the average size of the sign text, which is larger; and

B. The words "Sales Solicitation" are caused to be printed within thirty days after April 20, 2011 in an unobscured manner, in at least clearly readable three-quarter (3/4) inch block letters within two feet of aforementioned signage concerning tourist or visitor information either on the doors to the building or on the exterior wall of the building immediately adjacent to the door; or if the business operates from a booth within another business establishment, the same shall be printed on the front panel of the booth in a location clearly and consistently visible to any persons passing by.

C. The following notice is provided in clearly visible and readable three-quarter (3/4) inch block letters on the doors of the building, or on the exterior wall of the building immediately adjacent to the doors or on any booth referred to in subsection B. Complaints or concerns about sales solicitation activity may be reported to theTown of Camp Verde by calling 928-567-6631.

D. Such signs shall comply in all material respects with any ordinances or rules specifiying signage standards within the Town of Camp Verde.

SECTION 9-2-3 SPECIFIC PROHIBITIONS AND APPROPRIATE CONDUCT

In addition to the provisions of any other applicable term of this Article, it shall be considered unlawful and a violation of this Article for an OPC solicitor to:

A. Interfere with or obstruct the free travel or passage of any pedestrian on any street or sidewalk or obstruct or otherwise impede any person's free movement or access to or from any public street or sidewalk.

B. Throw, place, or deposit solid waste, litter, paper, documents or handbills on any street or sidewalk.

C. Intentionally inflict emotional distress by verbal or physical harassment or coercion on any person.

D. Misrepresent in any way the price, quality, or nature of the product being promoted.

E. Misrepresent the source or sponsor of any information offered or provided.

F. OPC solicitors shall conduct themselves in accordance with the following standards:

1. No OPC solicitor shall touch a person without consent during a solicitation.
2. No OPC solicitor shall solicit using any offensively loud sound, vociferous speech, boisterous conduct, or profane or vulgar language.
3. No OPC solicitor shall solicit an occupant of a vehicle in a public street whether the vehicle is moving, stopped, or parked.

SECTION 9-2-4 VIOLATIONS AND PENALTIES

1. Any responsible OPC employer and each responsible OPC solicitator shall be jointly and severally liable for any violations of this Article.
2. Any violations of the terms of this Article shall be punishable by a civil fine or in the alternative, may be prosecuted as a class 1 misdemeanor. In addition, the Town may bring suit for injunctive relief where warranted.
3. The Marshal's Office and Code Enforcement Official of the Community Development Department is charged with the implementation and enforcement of this Article.

ARTICLE 9-3

BUSINESS LICENSES (2008-A355)

9-3 Definitions
9-3-1 Purpose
9-3-2 Registration and License
9-3-3 Issuance of Business License
9-3-4 Payment
9-3-5 Posting of Business License
9-3-6 License not Transferable
9-3-7 Fees
9-3-8 Penalty

SECTION 9-3 DEFINITIONS (2008-A355)

A. "Business" means occupation, work, or trade in which a person is engaged; commercial, industrial, or professional dealings; the buying and selling of commodities; and any commercial store or factory. For the purposes of this Article, "Business" also includes those property owners that offer for lease three (3) or more residential units and/or one (1) or more commercial unit(s) that are located within the incorporated limits of the Town of Camp Verde.

B. "Business Location" means the physical location (address) of the business location. If business location includes more than one parcel, all parcel numbers must be listed on the Application for Business License and receive a Zoning Clearance approval before a Business License will be issued.

C. "Home Occupation" means an occupation, profession, activity or use located in a residential district, and which uses is merely incidental to the residential use and does not change the character of the neighborhood by externally detectable lighting, noise, odor, or appearance associated with the activity, and is created and operated as a sole proprietorship with no more than one non-residential employee. No storage or use of toxic materials and/or chemicals that are utilized in connection with a Home Occupation are permitted in a residential district.

D. "Property Owner" means the legal owner of the land/parcel on which the business is conducted.

E. "Occupier of Land" means a business owner that does not own the land/parcel on which the business is conducted.

F. "Telecommuting" means working from home as an employee or employer by way of electronic transmission devices. Telecommuting does not require a Business License.

G. "Toxic Materials/Chemicals" mean liquid, aerosol, or solid substances that are harmful, destructive, deadly, or poisonous to human, animal, or fowl.

SECTION 9-3-1 PURPOSE (2008-A355)

The Council has determined that it is in the best interest of the public to maintain a list of business activities within the Town to provide contacts for emergency services, directories, compliance with zoning codes, building and fire codes, tax, and/or other ordinances and statutes.

SECTION 9-3-2 REGISTRATION AND LICENSE (2008-A355)

It is unlawful for any person, firm, organization, corporation or other entity to engage in business within the corporate limits of the Town without first obtaining a Business License in compliance with the provisions of this Chapter.

SECTION 9-3-3 ISSUANCE OF BUSINESS LICENSE (2008-A355)

It is the duty of the Town Clerk to prepare and issue a Business License under this Article for every person, firm, company, or corporation liable therefore; the period of time covered; the name of the person, firm or corporation for whom issued; the type of business; the location or place of business and verification of privilege tax license.

SECTION 9-3-3.1 CERTIFICATE OF COMPLIANCE (2008-A355)

No operation of any new business, excluding Home Occupation or service businesses that do not have a permanent location, will be allowed or Business License issued within the limits of the Town without the issuance of a Certificate of Compliance from the Building Department. The Certificate of Compliance requires a physical inspection of the building to verify that the proposed business activity and building are in compliance with all zoning, building, and fire codes, as approved by the Building Official.
Issuance of the Business License does not imply that the Town in any way regulates or warrants the manner in which the operator does business.

SECTION 9-3-4 PAYMENT (2008-A355)

A. All Business License fees shall be paid at the office of the Town Clerk.
B. Business Licenses are issued for a 12-month period. Annual renewal payments are due on the first day of the month in which the license was first issued. For example, renewal fees for License #000 issued on January 30, 2008 becomes due on January 1, 2009.
C. The Business License and registration for all businesses which do not pay the required fees within thirty days of their due date will be cancelled. A new application and associated fees will be required to reinstate the Business License.
D. A full fee shall be paid for each fee period.
E. A separate Business License must be obtained for each branch established or separate place of business in which any business is carried on. If a business location includes more than one parcel, all parcel numbers must be listed on the Application for Business License. All parcels must receive Zoning Clearance approval before a Business License will be issued.

SECTION 9-3-5 POSTING OF CERTIFICATE (2008-A355)

Every person, firm, company, or corporation, having a Business License under the provisions of this Article, shall keep such Business License posted and exhibited, while in force, in some conspicuous part of the place of business. Every person having such Business License and not having a fixed place of business shall carry such Business License with him at all times while carrying on that business for which the same was granted. Every person, firm, company, or corporation having a Business License under the provisions of this Article shall produce and exhibit the same whenever requested to do so by any officer authorized to issue, inspect, or collect by the Town.

SECTION 9-3-6 LICENSE NOT TRANSFERABLE (2008-A355)

No Business License issued under the provisions of this Article shall in any manner be assignable or transferable to any other person, firm, company, or corporation.

SECTION 9-3-7 FEES (2008-A355)

All businesses liable shall pay a set fee as set forth by the Council by resolution. Fees are non-refundable and are not set on a pro rata basis.

SECTION 9-3-8 PENALTY (2008-A355)

It is unlawful for any person to commence, transact, or carry on any business within the Town without first having obtained a license from the Town or to comply with all provisions of this Chapter. Violations shall be punishable under Chapter 1, Article 1-8 with each day that such business is practiced, transacted or carried on constituting a separate offense. It shall be the duty of any authorized personnel or officer of the Town to enforce the provisions of this Chapter.

ARTICLE 1-8

PENALTY

A. Any person found guilty of violating any provisions of this code, except as otherwise provided, shall be guilty of a Class 2 misdemeanor, and upon conviction thereof shall be punished as provided by law.

B. Each day that a violation continues shall be a separate offense punishable as herein described.

☐ New Business License – Fee - $50.00 – License #_____

☐ Special Event Vendor Application – Fee - $25.00 – License #_____

☐ Event Name:

Town of Camp Verde
473 S Main Street, Suite 102
Camp Verde, AZ 86322
Clerk's Office 928-554-0000
www.campverde.az.gov

BUSINESS LICENSE/SPECIAL EVENT LICENSE AND/OR
HOME OCCUPATION APPLICATION
INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED

BUSINESS/VENDOR INFORMATION				TYPE OF OWNERSHIP	TYPE OF SERVICE
Company name				☐ Sole proprietorship	☐ Retail
Phone Number				☐ Partnership	☐ Service
E-mail address:				☐ Corporation	☐ Food
Would you like your renewal notice e-mailed to you ☐ yes ☐no				☐ Other	☐ Non Profit/Civic Organization (No Fee)
Mailing Address City, State ZIP Code					
Address of Business City, State ZIP Code					
Description of Business/Promotional Item/Hours of Operation					
Emergency Contact Name				Emergency Contact Phone #	
State Tax #					
Contractor License #		Square footage of Building if located in CV:			
# of Signs if in CV		Number of Parking Spaces			
# of Employees		Driver's License Number			
Is this Rental Property ☐yes ☐ no	If Yes Who is Owner of Property where Business is located:				

Issuance of a business license does not constitute a waiver of any existing Zoning Ordinance, other laws, or any deed restrictions (PER TOWN CODE, CHAPTER 9 ARTICLE 9-3-2). BEFORE A LICENSE IS ISSUED, IT WILL BE REVIEWED BY COMMUNITY DEVELOPMENT DEPARTMENT.

All Vendors shall obtain any necessary health or regulatory permits required by law and obtain the written permission of the property owner for the operation prior to setting up a display.

I hereby certify that the statements made herein have been examined by me and are to the best of my belief and knowledge, true and complete. I further certify that I understand that a "Use Permit' or a "Change of Use Permit" may be required prior to the issuance of a Business License.

COMPLETE THIS SECTION ONLY IF YOU HAVE A HOME OCCUPATION BUSINESS

I hereby declare that, in the conduct of my home occupation at the above address, I will comply with the requirements pertaining to such occupations as set forth in the Town of Camp Verde Planning & Zoning Ordinance Part 3 Section 303 "Home Occupations". A home occupation shall be deemed an accessory use to a residential dwelling and shall be subject to the following standards:

Please mark (X) each statement that applies to your home occupation business:

☐ The occupation is clearly incidental and secondary to the principal use of the residence; ☐ Not more than one outside employee (not residing on the premises).

☐ The occupation is not disruptive of the residential character of the neighborhood; ☐ The occupation shall not create a traffic or parking problem;

☐ The occupation shall not create any disturbing or offensive activity, noise, vibration, smoke, dust, odor, heat, glare, or other unhealthy or unsightly condition;

☐ Signage shall be limited to identification as specified in the Planning & Zoning Ordinance Section 404 F, identification signs.

☐ Floor area for the Home Occupation is limited to 25% of the total floor areas of the structure(s) on the premises in which the home occupation is conducted.

By signing below I declare that I have read, understand and agree to abide by the standards set forth in Part 3 Section 303 "Home Occupations" as stated above:

I hereby certify that the statements made herein have been examined by me and are to the best of my belief and knowledge, true and complete. I further certify that I understand that a "Use Permit" or a "Change of Use Permit" may be required prior to the issuance of a Business License. TIME FRAME as required by ARS 9-835 - All Applications will be processed within 10 Business Days unless additional inspections are required by the Building Official. If a Use permit or Change of Use Permit is required, the application will be processed within 10 Business Days after Use Permit is approved and fees paid. A License WILL NOT be issued without the Building Officials Approval.

SIGNATURES FOR BUSINESS LICENSE/SPECIAL EVENT AND HOME OCCUPATION

Signature		Signature	
Title and Date		Title and Date	

*Note: Business license numbers must be included on all correspondence, invoices and Certificates of Insurance's.

TIME FRAME as required by ARS 9-835 - All Applications will be processed within 10 Business Days unless additional inspections are required by the Building Official. If a Use permit or Change of Use Permit is required, the application will be processed within 10 Business Days after Use Permit is approved and fees paid. A License WILL NOT be issued without the Building Officials Approval.

FOR OFFICE USE ONLY

Date sent to Community Development_____ **Planning & Zoning Review:**_____

Parcel #_____ **Building Review:**_____

Zoning_____ **Code Enforcement Review:**_____

Marshal's Office Notified:_____

Town Clerk:_____

Date

Business License Fees:

New or Change in Ownership or Location	
New Business License Fee/Inspection/Setup Fee	$50.00
Peddler/Solicitor's License (in addition to $1,000 Bond & Cost of Background Check)	$25.00 Per day
Special Event Promoter (Per Event)	No Charge
Special Event Vendor (Non-Profits)	No Charge
Special Event Vendor	$25.00 Per Event
Renewal	
Business License Fee (annual)	$25.00
Name Change in Addition to Annual Fee	No Charge
Liquor License Permits	
Application/Posting/Inspection Fee	$250.00
Business License (annually) + the following:	
Series 01 through 14 and Series 16 & 17	$50.00
Series 15 Special Event (Temporary License - Annually)	$100.00
One-time Special Event Permit	$50.00

I hereby acknowledge the above restrictions and conditions on this permit.

Signature:_____ Date_____.

7.

Town of Camp Verde

Agenda Item Submission Form – Section I

Meeting Date: April 13, 2016 Work Session

☐ *Consent Agenda* ☐ *Decision Agenda* ☐ *Executive Session Requested*

☐ *Presentation Only* ☐ *Action/Presentation* ☐ *Pre-Session Agenda*

Requesting Department: **Town Manager**

Staff Resource/Contact Person: ***Russ Martin***

Agenda Title (be exact):

Discussion and possible direction to staff regarding current Town Code requiring Department Monthly Reports.

List Attached Documents: Section 3-2-2 Town Clerk B.3

Estimated Presentation Time: 5 minutes

Estimated Discussion Time: 5 minutes

Reviews Completed by:

☒ ***Department Head:***_____ ☐ ***Town Attorney Comments:*** N/A

☐ ***Finance Department*** N/A
Fiscal Impact: None
Budget Code: N/A_____ ***Amount Remaining:*** _____
Comments:

Background Information: Council has discussed in the past the possibility of the various departments making reports during Council meetings instead of the current system of receiving written reports monthly. Staff would like direction and clarification. An Amendment to the Town Code would be required if Council wishes to change the current procedure

Recommended Action (Motion): Direction to Staff

Instructions to the Clerk: None

In the absence of the Town Manager from his office, or upon the disability of the Town Manager, or in the event the position has been vacated by either the resignation of the Manager or the termination of his contract by action of the Town Council, the Acting Town Manager shall be appointed as follows:

A. For a temporary absence or disability of the Town Manager, the Town Marshal will serve as Acting Town Manager. If the Town Marshal is not available, the Town Clerk will serve as Acting Manager.

B. For a vacancy in the position, the Acting Town Manager shall be appointed by resolution of the Council, which may also resolve to keep the position vacant until filled by later selection and contract.

C. The Acting Town Manager shall have the duties and responsibilities of the Town Manager as established by this code, ordinance or statute, except that he shall not without prior approval of the Council:

1. Incur any unbudgeted indebtedness on behalf of the Town.
2. Discharge any Town employee except for extreme cause.
3. Substantially change duties and authorities assigned to other staff members.

D. The Acting Town Manager may assign, in writing, temporary duties to other staff members for a period not to exceed twenty working days.

SECTION 3-2-2 TOWN CLERK (2000-A160)

A. Office Established. The Office of the Town Clerk is hereby established. The Town Clerk shall be appointed by the Town Manager on the basis of ability and shall hold office pursuant to Section 3-1-3.A of this code. The Town Clerk shall also be Treasurer of the Town.

B. Duties.

1. Records. The clerk shall keep a true and correct record of all business transacted by the Council and any other records that either pertain to the business of the Town or that the Council directs. The clerk shall number, plainly label, and file separately in a suitable manner all resolutions, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders, and other documents of whatever nature.
2. Public Inspection of Records. The clerk shall keep convenient for public inspection all public reports and public documents under the control of the clerk, as provided by state statute.
3. Monthly Reports. The clerk shall prepare and collect from Town officers and employees such monthly reports prepared in such manner and to include such information as may be directed by the Council.
4. Minutes. The clerk shall prepare or cause to be prepared all minutes of Council proceedings and ensure their correctness and accuracy.
5. Ordinances, Resolutions, Budgets and Notices. The clerk shall process, record, file, publish and, if required by state statute, post all ordinances, resolutions, budgets, and notices that may be passed by the Council.
6. Election Official. The clerk shall be the Town election official and perform those duties required by state statute and as directed by the Council.
7. Licenses. The clerk shall issue or cause to be issued all licenses that may be prescribed by state statute, Town ordinance, or this code.
8. Administrative Duties. The clerk shall perform those administrative responsibilities and duties that are conferred upon the clerk by the Council in addition to those specified in Arizona Revised Statutes, Town ordinances, and this code.

SECTION 3-2-3 FINANCE DIRECTOR (2000-A160) (2007-A346)

A. Office Established. (2007-A346)
The office of the Finance Director is hereby established. The Finance Director shall be appointed by the Town Manager on the basis of ability.

B. Duties of Finance Director.