

# Legal and Ethical Issues for Elected Officials

# Topics to be Covered



- Council Authority & Procedure
- Open Meeting Law
- Ethics, Conflicts of Interest, and Gifts
- Social Media
- Influencing the Outcome of Elections

**Council Authority:** Council's acts can be in a legislative, administrative, or quasi-judicial capacity depending on the issue; and the level of discretion Council has varies based on the type of action:

- **Liquor Licenses** (City license, State License - Recommendation)
- Contracts (Procurement of Materials, Title 34)
- Resolutions (e.g., IGAs, Development Agreements, Utility Contracts, Sale or Transfer of Real Property)
- **Resolutions** – Site Plan Approval & Council Use Permits (*without rezoning*)
- Ordinances – Rezoning, Changes to City Code
- **Plats**

**Ordinances:** must be introduced (just a procedural vote) and six or more days after introduction Council can vote on approval. To change an ordinance after introduction requires reintroduction and the six-day waiting period. Charter Section 211(B).

## Procedure: A Few of the Basics

- City Manager places items on the agenda – the Mayor or 3 Councilmembers can also. M.C.C. 1-5-7.
- Mayor determines questions of parliamentary procedure and presides over the meeting. M.C.C. 1-5-8.
- Cannot abstain from a vote unless you declare a conflict. Charter Section 209(C).
- The “Call to the Public” (Items from Citizens Present): Generally, Council may not discuss/comment if unrelated to an agenda item. After all the citizens speak, you can only: ask staff to review the matter, ask for it to be put on a future agenda, or respond to criticism (e.g., personal attack on you or Council as a whole).

**Use of Staff:** Ethics Handbook pg. 13. Interference w/ Administration – Charter 205(C).

# Open Meeting Law



- Purpose—to inform the public of matters to be discussed or decided.
- Public Body—applies to all “public bodies,” which includes the City Council, its subcommittees, and any advisory committee appointed by the City Council—this includes all ad hoc type committees Council creates.
- Meeting— when a Councilmember discusses with a quorum of the Councilmembers something that may reasonably come before the Council.
  - Can occur in person or through technological means.
  - No polling or relaying discussions through staff, and no serial discussions with a quorum.
  - Staff can brief Councilmembers (individually or, if not a subcommittee briefing, often times in pairs), but just cannot relay the discussions.
  - Note: Quorum of Council is 4, but quorum for a Council Committee is 2.

- Agenda Language
  - Must list the specific matters to be discussed at the meeting—must reasonably give notice to the public that this may be discussed.
    - Test for Discussion: Is it reasonably related to the item on the agenda?
    - Budget/Finance Issues vs. Other Topics
    - When agenda language is too narrow for you, talk to City Manager or City Attorney at least 24 hours before the meeting.
    - Cannot “discuss” a matter not on the agenda.
  - Executive session agenda limited by statute to certain topics (e.g., personnel issues, legal advice, contract negotiations, purchase of real property). If it is only for legal advice, then the E-Session is limited to the legal advice. No voting in E-Session.



## Social Event Notice vs. Meeting

- Social events where a quorum of Council will be present often times are noticed by the City Clerk—the notice does not make the social event a meeting where matters that may come before Council can be discussed by a quorum.
  - State of the City – there is an exception for presenters at events like the State of the City. A.R.S. § 38-431.09(B).
  - District Forum – the A.G.'s Office did not apply this exception to a district forum event.

# Conflicts of Interest



- If you or your relative has a substantial interest in a matter, you have to “make known such interest in the official records” and not participate “in any manner as an officer or employee in such decision.” A.R.S. § 38-503(B).
- Substantial Interest (the use of “substantial” is a misnomer)
  - Any non-speculative pecuniary (financial) or proprietary (ownership) interest, either direct or indirect, other than a remote interest
  - Remote Interest—defined by statute A.R.S. § 38-502(10); the most common are:
    - Non-salaried officer of a nonprofit corporation
    - Recipient of public services generally available (e.g., utilities, roads)
    - Insignificant Stock Ownership & Mutual Fund Exception
    - Relative – is an employee, 25+ size org., “does not assert control or decision-making authority over the entity’s management or budget decisions.”



# Conflicts of Interest



- Not a Legal Conflict: a general feeling of sympathy or bias does not create a legal conflict of interest, but you may want to avoid the appearance of a conflict (e.g., voting on matter involving a best friend).
- Relatives – Conflict applies the same whether it is you or your relative that has the substantial interest. Relative = your spouse, child, child's child, parent, grandparent, brother or sister (whole or half) and their spouses and the parent, brother, sister or child of a spouse.
- What to do if you or a relative has a substantial interest in an issue before the Council:
  - Do not participate in discussion or action on the issue.
  - Briefly explain on the record that you are conflicting off (conflict vs. conflicting off to avoid the appearance of a conflict).
  - Complete a Public Officer Disclosure Form available in the City Clerk's Office.

# OML and Conflicts—Enforcement and Penalties



Penalties for Violations of OML or Conflict Laws are generally similar:

- AG's Office has a team devoted to investigating Open Meeting Law complaints and citizens can file a suit for a violation.
- Civil Penalties & Criminal Penalties – both OML and Conflict Law violations have civil penalty provisions and criminal provisions.
  - Penalty may be assessed against the member (i.e., City cannot pay).
  - Court may award reasonable attorney's fees against member.
  - Public body is not permitted to expend funds for legal services to defend action, with exception for expenditures made under separate legal authority and approval of Council at a public meeting.
  - Can be removed from office for violation of conflicts laws or intentional violation of OML

## Three Step Analysis

### 1. Does it violate state law?

- Entertainment Ban:

- No sporting or cultural event tickets/admissions from a person who is paid to influence or lobby legislation (more broadly worded than lobbyist) if there is a matter pending or proposed. A.R.S. § 41-1232.08(B).

- No Improper Gain:

- Prohibited from agreeing to receive or receiving anything of value in any case, proceeding, application, or other matter which is pending before the public agency. A.R.S. § 38-505(A).
- May not use your official position to secure “any valuable thing or valuable benefit” if the thing or benefit is “of such character as to manifest a substantial and improper influence” on your official duties. A.R.S. § 38-504(C).

## 2. Are there ethical issues with accepting the gift?

- Seek to avoid the appearance of impropriety
- Consider if there is a matter pending or proposed -- you can ask Planning Department and City Manager's Office.
- Factors you may want to consider:
  - How are my decisions likely to be perceived by others?
  - Is the gift from someone with business before the City? (timing)
  - What is the value of the gift? (nominal versus more than nominal)
  - Is the gift for all versus an individual? Can it be shared? (e.g., holiday gift to share with office vs. individual gift/benefit before decision, or banquet for many vs. individual dinner with developer) What if an employee took the gift . . . ?
- Sources of guidance:
  - Ethics Handbook for Elected Officials – updates coming
  - Management Policy 354 (Ethics) & Ethical Guidelines & Scenarios – updates coming

## 3. Do I need to disclose the gift?

- If the gift is an athletic or entertainment ticket/activity or if the gift exceeds \$50 and gift was given by someone that has business before the City or that may come before the City, need to disclose.
- Must file a Disclosure Statement with City Clerk within two business days of accepting the gift or getting back in town when traveling.
- Notes of Caution:
  - If it is unlawful to accept a particular gift (see Step 1), disclosure of the gift does not make it lawful.
  - *The Ethics Handbook for Elected Officials is out of date regarding acceptance of tickets/entertainment gifts because it was adopted before the passage of A.R.S. § 41-1232.08.*



- Official Social Media Page of a Government Official = Public Forum or Limited Public Forum under First Amendment
  - Even personal pages can be deemed to be governmental if official uses them to conduct official business
  - Important to keep your personal/campaign and official profiles separate, and keep the official business on only the official profile
- Why does it matter if the page is a Public Forum or Limited Public Forum?
  - First Amendment places limits on how a government may regulate speech in a public forum
  - No viewpoint discrimination—cannot ban someone for saying something critical of the government
  - Reasonable Time, Place, and Manner Restrictions = OK
    - Can prohibit threats, inappropriate language, posting of confidential information
    - Posting the rules of acceptable conduct on the page – upcoming, working with PIO
  - Can create a “limited public forum” by posting clear requirements about the topics that will be discussed (e.g. a City Parks page that only allows posts relating to the City’s parks)
  - Can make the interaction one-way (e.g. you can post but all comments are banned)



# Influencing the Outcome of Elections



- State law prohibits spending or using City “resources. . . for the purpose of influencing . . . the outcomes of elections.” A.R.S. § 9-500.14.
  - Resources is broadly defined to include using a City computer, City staff time, using any City equipment, City meetings/events, City buildings, etc.
  - Prohibition is broad—applies to all levels and types of elections (candidate and ballot measure, local, state, federal elections)
  - Don’t present information that has the effect of supporting or opposing a candidate or ballot measure—ask staff for bond/election facts
- Take particular care during election years. For example, in the six months preceding an election, avoid using City resources for non-routine communications that highlight your accomplishments or sponsoring community events. (This is an Ethics Handbook update topic that will be coming to Council.)
- It is OK to use your personal resources on your personal time for election-related activities.