



City of Prescott

City Council - Workshop Meeting

December 19, 2023 | 10:00 AM
201 N Montezuma Street
City Council Chambers, 3rd Floor
Prescott, AZ 86301

MINUTES

1. CALL TO ORDER

Mayor Goode called the meeting to order at 10:14 a.m.

2. ROLL CALL

Phil Goode - Mayor
Connie Cantelme - Mayor Pro Tem
Lois Fruhwirth - Councilwoman
Ted Gambogi - Councilman
Brandon Montoya - Councilman
Eric Moore - Councilman
Cathey Rusing - Councilmember

3. DISCUSSION

- A. Discussion & Training Presented by the City Attorney, City Clerk & Human Resources Offices for Council and All City Boards, Committees & Commissions Regarding Open Meeting Law, Conflict of Interest, Council Rules of Procedure, BCC Code of Conduct, Harassment and Public Records Request Law.

City Attorney Joseph Young provided a presentation to Council and present BCC members regarding Open Meeting Law (OML), public records and conflicts of interest. It is important to remember the intent and the public policy. The business of the public should happen in the public. Open Meeting law applies to meetings and requires that they be held in public.

Meeting:

- * Gathering in person or through technological devices of a quorum of the public body to discuss, propose, deliberate or take/propose legal action
- * If the body doesn't have a quorum they should not conduct the meeting; reschedule presentations and discussion
- * Subcommittees & other small groups - two members constitute a quorum; they should not meet to discuss the specifics of their board but broader Council discussions would be acceptable

Executive Sessions:

- * Require prior consent of City Attorney
- * Seven legal reasons for convening into E-Session. The most common are - personnel matters, discussion of confidential information, legal advice from city attorney, discussion of settlement/contract/property negotiations
- * Members of the public may attend until a motion is made to enter into the

closed session

- * Information cannot be shared unless with the Attorney General or members of the city necessary to effect the action

Councilmember Rusing stated that minutes are taken during the executive session and asked if the public could request a copy of those.

Mr. Young stated that they are not public record. He reminded everyone that discussions that take place in Executive Session cannot be discussed outside Executive Session.

How to Avoid Pitfalls of OML:

- * Don't poll other members on commission business
- * Limit discussions to public meetings
- * Don't send emails to each other
- * Distribute information to the Council or Commission through your staff liaison
- * Disband meetings when a quorum is not present

Councilman Gambogi asked if it would be a violation of the OML to take an entire Commission to Christmas dinner.

Mr. Young confirmed that it would be.

Councilmember Rusing asked staff to address replying all to emails.

Mr. Young responded to not reply all to emails. This is something that Board Members just shouldn't do because it could be perceived as daisy chaining or circumventing the OML. He continued with information regarding a gathering of less than a quorum, for example a regular meeting of three members of the Council. There is language in court cases that says other meetings could be a violation of OML.

Staff Email:

- * Staff may send emails to board members
- * Passive receipt of information from staff is not a violation of OML

Internet & Social Networking:

- * Blogs and social media like Twitter and Facebook can present the same issues as email among board members
- * If a quorum of members is discussing board business using any technological means a meeting may result
- * This type of communication may be considered a virtual meeting, requiring notice and access to technological equipment as it was discussed in the virtual meeting opinion
- * This type of communication results in the creation of electronic public records which must be maintained, preserved and produced upon request

Meeting Etiquette:

- * Avoid passing notes, whispering, privately communicating to one another during the meetings

Social Events:

- * If a quorum may be present, have a courtesy notice posted through the City Clerk's Office
- * Include statement that no business of public body will be discussed and no action taken

Public Forums, Speeches & Community Events:

- * If a quorum might be present when one or more Council Members plan on speaking or discussing city business with those in attendance
- * Special Meeting agenda must be posted
- * Agenda must include a description of the general topic or topics to be discussed and that no action will be taken
- * City Attorney should review all agendas for accuracy

Rights of the Public:

- * The public has the right to attend, listen, tape record, video tape
- * Public does not have the right to disrupt or participate

Penalties:

- * A violation of OML carries the following potential enforcement and penalty options - mandatory nullification of business, civil penalties between \$500-\$2,500, equitable relief, attorney's fees, or removal from office

Councilmember Rusing asked if there is an OML violation by some members does that mean all members are chastised or just the ones involved.

Mr. Young responded that chastised is a strange word, but that the penalties in effect are individual penalties, however, if the body takes action without a quorum it would be the full public body that would have a penalty.

Public Records Law:

- * Business of the public should be made open to the public
- * Involves any record in the custody of a government entity that has a substantial nexus to government activity is presumed a public record
- * The public has a right to view public records and receive a copy for a fee
- * Arizona imposes a presumption in favor of disclosure of public records
- * Exception - when public disclosure and access is outweighed by confidentiality, etc.
- * Records that are reasonably necessary to account for daily activities
- * Gets difficult when talking about cell phones, iPads or computers that are used for city use; you are the custodian of the public record but it is a public record when related to city business

Conflict of Interest:

- * ARS 38-501 through 511
- * Applicability - all public officers and employees
- * Involvement in decisions - a public officer who has, or whose relative has, a substantial interest in a decision of the public agency or in any contract, sale, purchase, or service to such public agency must disclose that interest in the

official record and not vote or participate in the decision or transaction

- * Substantial interest- any pecuniary or proprietary interest, either direct or indirect other than a remote interest

- * Three questions - will my decision have a positive or negative impact on my interests or that of my relative, do I have monetary or financial interest in the matter, and is my interest other than the one designated remote interest

Mayor Pro Tem Cantelme asked if an individual is sitting on a Board or Commission and making a decision based on zoning, and they live in the area and would benefit, even in the future, would that be a conflict? She feels there is a potential for conflict if a person serves in the community in a role that would be familiar with the issues at hand but asked how would that be handled.

Mr. Young responded that he would need to look at it to make that determination, but generally, if there is a group that would benefit, it would be a remote interest in those areas. If you live in a subdivision with a zoning decision coming before your body and there are 200 houses that would be impacted equally, it is a remote interest and would not be a conflict. But if there are ever questions, contact the City Attorney and discuss it. He can also send a formal Conflict of Interest determination which will be distributed to all members of the body. It is an obligation on the individuals to determine their conflict of interest. He also addressed, for example, an affordable housing commission and which home builder should be contracted with and one of the members is a homebuilder, that would be a conflict, but if there was an establishment of a program for affordable housing programs in the future that would be a remote interest.

Councilmember Rusing asked about recusal and disclosure and whether these these go hand in hand.

Mr. Young responded that conflicts should be disclosed, there may be comfort conflicts where they could vote on something but don't feel they should. In this case, the member would not have to disclose that. Members of staff are not going to investigate a person's background and determine if you have a conflict, that is your responsibilities individually.

Gifts & Bribes:

- * Never use your official position to secure and never accept, any valuable thing or benefit that would not ordinarily accrue in the performance of official duties

- * Additional Income - a public officer or employee may not receive any additional compensation in matters before the agency

Conflict of Interest Remedies & Penalties:

- * Contracts are voidable

- * Affected person may sue

- * Court may assess attorney's fees and costs

- * Forfeiture of office

- * Felony or misdemeanor

Mr. Young reiterated that the business of the public should happen in the public and if any members has questions please contact the city staff. He added that

members should be familiarized with the city's BCC Code of Conduct and the Council Rules of Procedure. Business should be done with respect, and members should publicly share relevant information that they receive outside the decision-making process when voting on things. This type of information should be shared with staff liaisons.

Human Resources Director Branden Nunez continued the discussion regarding respectful workplaces. The city has hundreds of employees, volunteers and elected officials, all of whom have a hand in shaping the culture of the organization. The culture is critical to ensuring employees are treated with respect and dignity.

City Policies:

- * Apply to all
- * Sexual harassment, anti-discrimination, harassment and hostile work environment
- * The city strives to maintain a workplace that fosters mutual respect and promotes positive and productive working relationships and does not tolerate any form of unlawful discrimination or harassment

Federal Law Refresher:

- * Harassment is a form of employment discrimination
- * Unwelcome Conduct based on protected classes
- * Harassment is unlawful if - enduring the conduct is a condition of employment, or the conduct is severe, pervasive, intimidating, hostile or offensive to a reasonable person

Respectful Workplace Free From:

- * Offensive jokes, slurs or name calling
- * Physical assaults or threats
- * Intimidation
- * Ridicule or mockery
- * Offensive objects or pictures
- * Interference with work performance
- * Rude gestures

What if an Employee Comes to You:

- * Gather the facts
- * Notify Human Resources, City Manager and Legal to determine course of action
- * Can circumvent chain of command if necessary

Final Takeaways:

- * Lead by example - everybody helps set the tone and attitude for the city
- * Set the bar high by creating a respectful culture
- * All employees should be welcomed and enabled to thrive based on their diverse backgrounds
- * Don't fail to act

Member of General Plan Committee Ralph Hess asked about recommending a

topic for consideration and if two members could discuss that outside a meeting and if a member of a committee receives text or email messages on their personal account suggesting a topic does that email or text become a public record. And does that apply to a communication from a member of the public as well.

Mr. Young responded that if the board is five or larger two members could have that discussion and it is appropriate, with regard to the text messages that is a public record because it relates to city or board business. When an items administrative use is over you may dispose of it. In most cases that would be a public record.

Mayor Goode asked how members of BCCs should respond to requests from the public.

Mr. Young responded there is no potential violations related to that. If you have it there is a public record. Nothing like this presents a problem for OML or public records requirements.

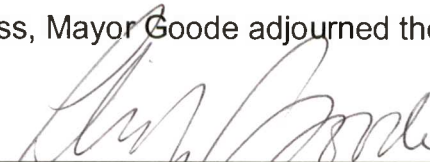
Fire Board of Appeals Member Jim Campbell asked if a member could provide any communications they may receive to the staff liaisons and in turn, make that individual responsible for the record.

Mr. Young responded that if you have a message from a citizen and you want to give it to the city and delete it that is fine.

This item was for discussion only, no formal action was taken.

4. ADJOURNMENT

There being no further business to discuss, Mayor Goode adjourned the meeting at 11:16 a.m.



PHILIP R. GOODE, Mayor

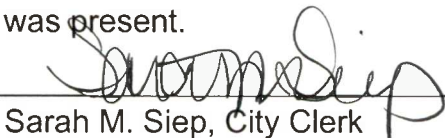
ATTEST:



SARAH M. SIEP, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Voting Meeting of the City Council Voting Meeting of the City of Prescott, Arizona held on December 19, 2023. I further certify the meeting was duly called and held and that a quorum was present.



Sarah M. Siep, City Clerk

