



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Meeting Notice and Agenda Town Council

Thursday, December 7, 2017

4:00 PM

Council Chambers

1. CALL TO ORDER / ROLL CALL

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

2. STUDY SESSION ITEMS

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

[17-426](#)

Governance - Discussion #7 / Remaining Items 60 Minutes

Staff Contact:

Kevin Burke, Town Manager

[17-428](#)

Review of Contract Proposal for a Single Trash Hauler 60 Minutes

Recommendation:

Review the single hauler proposal and provide direction regarding public input process.

Staff Contact:

Kevin Burke, 480.348.3690

3. EXECUTIVE SESSION

[17-412](#)

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

4. BREAK

5. RECONVENE FOR REGULAR MEETING 6:00 PM**6. ROLL CALL****7. PLEDGE OF ALLEGIANCE*****8. PRESENTATIONS***[17-431](#)**Mummy Mountain Preserve Trust 20 Year Anniversary**

Recommendation: Receive and file the proclamation recognizing the 20th Anniversary of the Mummy Mountain Preserve Trust.

Staff Contact: Timothy Gomez, Executive Assistant/Deputy Town Clerk

[17-411](#)**Planning Commission Update**

Staff Contact: Paul Michaud, 480-348-3574

9. CALL TO THE PUBLIC

Citizens may address the Council on any matter not on the agenda. In conformance with Open Meeting Laws, Council may not discuss or take action on this matter at this Council meeting, but may respond to criticism, ask that staff review a matter raised, or ask that it be placed on a future agenda. Those making comments shall limit their remarks to three (3) minutes. Please fill out a Speaker Request form prior to addressing the Council.

10. CONSENT AGENDA

All items on the Consent Agenda are considered by the Town Council to be routine and will be enacted by a single motion. There will be no separate discussion of these items. If a member of the Council or public desires discussion on any item it will be removed from the Consent Agenda and considered separately. Please fill out a Speaker Request form prior to the start of the meeting and indicate which item you would like to address.

[17-414](#)**Minutes of Town Council Meeting November 16, 2017**[17-427](#)**Resolution 2017-23 Managerial and Minor Amendment Fees for Schools, Government Buildings, and Places of Worship**

Recommendation: Adopt Resolution 2017-23 approving the reduction in fees for managerial and minor amendments for schools, government buildings, and places of worship

Staff Contact: Dawn Marie Buckland, 480.348.3555

11. PUBLIC HEARINGS

The Town Council may hear public comments and take action on any of these items. Citizens may address the Council regarding any or all of these items. Those making comments are limited to three (3) minutes. Speakers may not yield their time to others. Please fill out a Speaker Request form prior to the start of the meeting and indicate which item you would like to address.

12. ACTION ITEMS

The Town Council May Take Action on This Item. Citizens may address the Council regarding any or all of these items. Those making comments are limited to three (3) minutes. Speakers may not yield their time to others. Please fill out a Speaker Request form prior to the start of the meeting and indicate which item you would like to address.

[17-415](#)

2018 Legislative Agenda

Recommendation: Adopt Resolution 17- 22 approving the 2018 Legislative Agenda

Staff Contact: Dawn Marie Buckland, 480.348.3555

[17-416](#)

Cancellation of December 21, 2017 Council Meeting

Recommendation: Consider cancelling the December 21, 2017 regular Council meeting.

Staff Contact: Kevin Burke, Town Manager

13. FUTURE AGENDA ITEMS

The Town Council May Take Action on This Item. The Mayor or Town Manager will present the long range meeting agenda schedule and announce major topics for the following meeting. Any member of the Council may move to have the Town Manager add a new agenda item to a future agenda. Upon concurrence of three more Members, which may include the Mayor, the item shall be added to the list of future agenda items and scheduled by the Town Manager as a future agenda item within 60 days.

[17-413](#)

Consideration of Requests for Future Agenda Items

Recommendation: Review the current list of pending agenda topics.

Staff Contact: Kevin Burke, 480-348-3690

14. MAYOR / COUNCIL / MANAGER COMMENTS

The Mayor, Council or Town Manager may provide a summary of current events. In conformance with Open Meeting Laws, Council may not have discussion or take action at this Council meeting on any matter discussed during the summary.

15. STUDY SESSION CONTINUED

[17-426](#)

Governance - Discussion #7 / Remaining Items 60 Minutes

Staff Contact: Kevin Burke, Town Manager

16. ADJOURN*AGENDA IS SUBJECT TO CHANGE*

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

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



Action Report

File #: 17-426

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager

DATE: November 16, 2017

DEPARTMENT: Town Manager

AGENDA TITLE:

Governance - Discussion #7

Governance - Remaining Items

Town Value(s):

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

In order to more effectively and efficiently manage the limited municipal government of Paradise Valley, the Town Council has embarked upon a review of numerous policies and procedures.

Council Goals or Statutory Requirements:

Governance - Review and seek improvement to processes and procedures for our community.

RECOMMENDATION:

Two parts. Finish discussion on Appointments and then review remaining topics. Sixty minutes has been allotted before the business meeting and a session after the business meeting to get as far as possible and possibly complete the review of Governance topics.

SUMMARY STATEMENT:

Mayor and Council have identified 13 Governance topics to be discussed this term. They have prioritized the first six as:

1. Use of Consultants
2. Transparency
3. Cost Estimating

4. ~~Defining Limited Government~~
5. ~~Rules of Procedure; and,~~
6. Appointment Process.

Council identified numerous Governance topics in its September 14 work session. The Council then agreed to tackle the first 6 in a specific order. This should be completed with this session. Mayor and Council have some remaining work on Appointments and then will be asked about the remaining topics including working on those topics during this Council Meeting.

Appointments

At the November 16, Study Session on this topic, the Council gave direction on three points. First, it would like to see all appointments on the same cycle (April 1). To accomplish this, staff needs to alter the articles of Incorporation and associated documents of the Municipal Property Corporation and of the Mummy Mountain Trust. Second, there were no additions or deletions from which committees should have a Council liaison. Third, the representative to the Experience Scottsdale Board of Directors should be rotated every year and that appointment should be made by the Council. The Town Manager spoke with the Executive Director of Experience Scottsdale and she was amenable to an annual appointment but asked that it match their cycle of July 1 - June 30; therefore, the Council could make the appointment in March, but that person would not take office until July.

The remaining subtopics of appointments was continued. Mayor and Council will be asked if they would like to make any alterations to the appointment process or memorialize the process they have. Further discussions under this topic include, but are not limited to:

- how to engage volunteers for Boards and Commissions who are not selected;
- endorsement of Members of Council and staff who want to run for election on another board in which the Town is a Member (League Executive Board, MAG President or Committee Chair, AMRRP, etc.) (exclude professional associations); and,
- how to proceed with current vacancies on a few commissions.

Remaining Governance Topics

At the September 14, 2017 meeting, Council agreed to schedule the first six topics and then revisit the remaining topics afterwards. That point has arrived. There are six remaining topics. These are:

- Conflict of Interest/Ethics Policy;
- Training Members of Land Use committees;
- Sequence regarding Variances versus Hillside Building Committee;
- Use of Statement of Direction for non-SUP's;
- Parameters for Town Manager Task Force with Members of Council
- Supervising Structure for Town Attorney;

In order to possibly resolve these remaining issues, additional information is provided below.

Conflict of Interest/Ethics Policy

Councilmember Pace has asked if there are improvements that can be made to the existing Town Ethics Policy or conflict of interest documentation or processes that can enhance transparency to residents, provide confidence to residents about fairness and ethics, and provide education and criteria to help volunteer recuse themselves when appropriate?

Town Attorney Andrew Miller will facilitate this discussion.

Staff divides this conversation into three pieces-conflict of interest, ethics policy and training. Conflict of interest is a defined term in State statute. It is focused upon a substantial pecuniary interest. Further, the Town may not make expand or broaden this definition. Consequently, the proposal is to increase awareness of the conflict of interest statutes by adopting the attached document by Resolution and placing it in the Town Council book of Policies and Procedures.

Because the conflict of interest statute is fairly narrow in scope, municipalities aspiring for a higher standard of conduct, often turn to an Ethics Policy. Ethics policies can be aspirational or regulatory. The Town's Ethics Policy (attached) is generally aspirational. It outlines how Members of the Council, Boards and Commissions should behave. There is no corollary policy that sets how the Town will determine a violation not the consequences of a violation. The ability to impose consequences upon fellow Members of the Council is very limited for general law municipalities (those without a Charter). Elected officials in those municipalities can only be removed consistent with State Statutes. However, Section 2-5-1 of the Town Code states that "All members of such committees, commissions or boards shall serve at the pleasure of the Council." This means that the Town Ethics Policy could be used in a regulatory sense. If a board or commission member violates the Ethics Policy, the Town Council could remove that member. Although they do not need a specific reason to remove a committee member from office. This regulatory element is already in place and no code or policy additions are proposed. However, Councilmember Pace may propose an amendment to the Ethics Policy itself. Staff has also attached examples of ethics and conflict of interest policies from Mesa, Scottsdale and Gilbert.

The third element is training. What are the differences between conflict of interest and ethics policy? How does Arizona Law address conflict of interest? What does "avoid undue influences or the appearance of impropriety" mean in the Town's Ethics Policy? Are their examples the Town can provide to help volunteers understand each of these? What is the process to follow if a volunteer believes they or a colleague have a conflict? The conflict of interest statute is a pretty vetted piece of legislation and so there are good examples to use for training. The proposal is to conduct a training module by the Town Attorney and Town Clerk upon orientation of new Members of Council or board and commission members.

During the study session, the Town Attorney will provide an overview of the conflict of interest statute and the difference between conflict of interest and ethics. Thereafter Council will review the proposed actions.

Training Land Use Board Members

Councilmembers Moore and Pace have been calling for enhanced training of members of the Planning Commission, Hillside Building Committee and Board of Adjustments. The Town Manager has made arrangements with the Town Attorney of Marana, who is an author and frequent lecturer on land use topics, to provide training during a one day, on-site session after the first of the year (likely February).

This training is intended to be second level training, but likely will still need to cover some basics. Staff has developed a series of questions for each board that it is asking the trainer to speak upon.

That list, with edits from Councilmember Moore, is attached for Mayor and Council review and comment. Furthermore, Councilmember Moore has asked for a book of documents (which could also be a set of links for those inclined) to relevant documents. The current list of reference links for Town Council and a possible list of land use governing documents is attached.

Possible action on this topic can include editing the training questions/material, establishing expected outcomes, determining staff's short and long-term responsibility on this topic, and/or appointing a Town Manager Task Force with Council Members to work on the initiative further.

Sequence of Variances versus Hillside Building Committee

Councilmember Pace asked to examine the sequence of Hillside building applications that are requesting both a variance and are required to obtain Hillside Building Committee (HBC) approval. There are pros and cons to each strategy.

The current process is to apply and receive a determination from the Board of Adjustments (BOA) regarding the variance first. Once that determination is made then the application is reviewed by the HBC. This sequence was developed for a couple of reasons. First, the HBC is an administrative committee. They are reviewing the application against the Hillside Code (a subsection of the Town's Zoning Code) and determining if it meets those criteria or not. Their discretion is limited. Therefore, there is less reason to present an application that is known not to meet the Hillside Code to a board that cannot waive or alter the code provisions. Consequently, the applicant is directed to receive a determination from BOA who can waive a Zoning Code provision (of which the Hillside Code is part of). Further, conducting a full review on a project that does not meet the code, can be frustrating use of time for the HBC if the variance is not approved.

Second, if the HBC opines on a variance before it proceeds to the BOA, it could create an untenable position for both committees. First, variances have to meet their own six criteria which the BOA uses for their review and determination. The HBC uses a different set of criteria to determine if the application is meeting the Hillside Code. Asking the HBC to review the variance against the 6 criteria of the BOA would be redundant. Any opinion not based upon those 6 criteria that the BOA can consider would be less useful. Further, there is concern that the applicant will take any endorsement or mixed review from the HBC and use that as leverage against the BOA when they really cannot consider the opinion unless it is based upon one of the six criteria for a variance.

The argument for reversing the sequence is that, why spend the time and money seeking a variance, if the Hillside Committee is not going to approve the rest of the project? Plus, the HBC may identify other limitations that also do not meet Hillside Code and need additional variances or could identify a way to avoid a variance request.

Councilmember Pace asked how an alteration of this sequence might improve consideration of safety concerns to Hillside development projects. While Hillside safety is an extensive topic, it is likely covered similarly in either sequence. Safety concerns, particularly with some of the proposed language for the Hillside Code, would make this a discussion point when the application comes before the HBC. However, safety might still show itself if the variance requested resulted in some sort of risk (could be a flood risk, soil risk, structural risk). However, BOA would be focused only upon safety issues relative to the variance that is being requested not the overall project.

There are two things to keep in mind regardless of the sequence. First, an applicant can continue to apply and reapply to the HBC until they can show an application that is consistent with the Hillside Code. The HBC is unlikely ever to arrive at a point where it declares a lot unbuildable. They will simply make a determination that the application does not comply with the Hillside Code. So long as it does not comply with the Code, then the application will not proceed. Second, on larger more complicated applications to the Hillside Code, the process requires a concept and then formal review (see attached flow chart). At the concept review, the HBC tells the applicant what information they are going to be looking for in order to determine if this application is compliant with the code. It is then in the applicant's best interest to respond on point to those requests in order to gain approval. This perhaps provides an opportunity for an alternate scenario.

Perhaps an application requiring a variance could go to HBC first for a concept plan review. Obviously the HBC would inform the applicant that the project does not appear to meet the Hillside Code without a variance and that will be one of the conditions that will need to either be met or the non-conforming element will need to be removed from the application. The HBC can further identify all the other information it will be seeking in a final application and review. It could also make suggestions that might avoid the need for a variance. This can outline the scope and scale of the requirements to an applicant up-front giving the applicant a more complete picture. It also provides neighbors and the public an opportunity to express concerns they see with the application as it relates to the HBC and not be boxed in to comments just related to the six criteria on a variance.

This study session will ask Council for a discussion and direction on this topic.

Use of Statement of Direction for Non-SUP Projects

Councilmember Moore proposed expanding the use of the Statement of Direction (SOD) tool during the Council retreat in March 2017. Since then it has been applied to the Bike/Ped plan and the Hillside Code update. This topic proposes codifying this tool in Article 2, Section 5 (Committees and Commissions) of the Town Code.

2-5-1 (C.) Statement of Direction - A Statement of Direction is a document administered by the Town Council at the beginning of policy or project task assigned to a committee or commission. A Statement of Direction is not a final decision of the Town Council. Its purpose is to guide committees and commissions on policy aspects that are preferred or discouraged by Council in order to be most transparent and efficient in its development. It may address, but is not limited to, the following items:

1. Anticipated time frame for completion;
2. When and if drafts should be referred back to Mayor and Council;
3. Expectations for public participation;
4. Process for new policy considerations.

At any time during the review process the assigned Committee and Commission may request clarification and/or expansion of the Statement of Direction based on additional information that has evolved.

Parameters for Town Manager Task Force with Members of Council

Town Manager Burke requested guidance on this governance topic. Mayor and Town Council had an extensive discussion regarding this topic during its September 14 study session. Staff proposes

articulating parameters and procedures for such Town Manager Task Force with Members of Council in the Town Council Rules of Procedure.

SECTION XXI - TOWN MANAGER TASK FORCE WITH MEMBERS OF COUNCIL

From time to time it shall be appropriate for the Town Manager to form a work group with staff, members, the public, and/or less than a quorum of Members of the Council. Such Task Force may be created at the advice of the Mayor and Town Council during a Study Session or Council meeting. In such occasions, the following parameters shall apply:

- a) Council shall select who the assigned Members of Council will be;
- b) Council shall define the scope of work, or statement of direction, that Members of Council shall be involved in prior to the first meeting of the Task Force;
- c) Members of Council shall not be involved in the selection of a consultant or other vendor to accomplish work of the task force. They may, however, be involved in writing the scope of work for the contract, request for proposal, or similar procurement document;
- d) The Town Manager shall retain directional authority over all staff;
- e) The Members of the Task Force may make process decisions regarding the topic, such as when it is ready for Council review, but may not make legislative or policy decisions outside the scope provided by Council.

Mayor and Council will be asked to review the above, offer additions, deletions or comments and provide direction if such rule should be incorporated.

Supervisory Structure for Town Attorney

Councilmember Pace requested discussion regarding the supervisory structure of the Town Attorney position. Article 3, Section 3, Subsection 5 of the Town Code creates the office of Town Attorney and provides the following language primarily focused upon duties:

The Town Attorney or such other legal counsel as may be **retained by the Council** shall act as the legal counselor and advisor of the Council and other Town officials, as such shall give his opinion in writing when requested. He shall draft all deeds, contracts, conveyances, ordinances, resolutions, and other legal instruments when required by the Council. He shall approve or disapprove as to form, in writing, all drafts of contracts and all official or other bonds before final approval or acceptance thereof by the Council. He shall return, within ten days, all ordinances and resolutions submitted to him for consideration by the Council, with his approval or disapproval as to form noted thereon, together with his reasons therefore. He shall prosecute and defend all suits, actions, or causes where the Town is a party, except where provided otherwise by insurance contract, and shall report to the Council, periodically, the condition of any suit or action to which the Town is a party. He shall prosecute, on behalf of the State or Town, all misdemeanor cases where (1) a violation of the Town Code or Town Zoning Ordinance is charged, or (2) a misdemeanor violation of the Arizona Revised Statutes is charged in a complaint filed with the Town Magistrate's Court, or the Maricopa County Superior Court-Juvenile Traffic Court.

Presumably because the language states that the Town Attorney shall be "retained by Council," this

position is appointed and reports to the Mayor and Council similar to the Town Manager and Presiding Magistrate.

A word search of the Town Code on “supervise” revealed no direction on this topic. The Town Code does provide in Section 2-2-7 that the Vice Mayor shall be responsible for coordinating the annual performance reviews for the Town Manager and Town Attorney.

BUDGETARY IMPACT:

No budgetary impact associated with conducting these discussions.

ATTACHMENT(S):

Conflict of Interest Potential Policy

Ethics Policy

Possibly Training Topics for Land Use Boards

Demographics and General Information

Land Use Governing Document

Hillside Flow Chart

TOWN OF PARADISE VALLEY CONFLICT OF INTEREST

Applicability

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

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

Conflict of Interest Defined

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

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

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

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

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

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

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

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

Additional Provisions

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

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

2. A public officer or employee cannot use confidential information obtained during the term of office or employment for personal gain.
3. A public officer or employee of the town cannot receive any compensation for performance of services in any case, special proceedings, application or other matter pending before any agency of the town. This does not apply, however, to activities such as filing or amending tax forms, applying for permits, licenses or other documents.
4. A public officer or employee of the town cannot use his or her position to obtain anything of value which would normally not be received in the performance of official duties. Something is considered to have "value" when it exerts a "substantial and improper" influence on the duties of the public official.

Declaration of a Conflict of Interest

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

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

Penalty

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

TOWN OF PARADISE VALLEY ETHICS POLICY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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09/09

City of Mesa
Ethics Handbook for
Elected Officials

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Approved by Mesa City Council: Resolution No. 7313, dated January 19, 1999

Approved by Mesa voters: Primary Election, March 14, 2000

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I. City of Mesa Ethics Policy

IT IS THE POLICY of the City of Mesa to uphold, promote, and demand the highest standards of ethics from all of its officials, whether elected to City Council or appointed to advisory boards. Accordingly, all members of City boards, commissions, committees and the City Council (“elected officials and advisory board members”) shall maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, comply with all applicable laws, and never use their City position or powers improperly or for personal gain.

The City of Mesa and its elected officials and advisory board members all share a commitment to ethical conduct in service to their community. This Code of Ethics has been created to ensure that all elected and appointed officials and advisory

¹ **Note:** Examples are used in certain portions of this Code and Handbook to illustrate the meaning of the text. Examples are intended to describe some situations of ethical or unethical conduct under this Code. The examples are not intended to be, and shall not be interpreted to be, the sole situation to which the text applies.

board members have clear guidance for carrying out their responsibilities.¹

II. Applicable Laws and Policies

A. General Character

Elected officials and advisory board members are often called upon to make decisions that affect various groups and individuals adversely. Balancing diverse constituent interests is a difficult task. While someone will always be disappointed in decisions, officials shall adhere to ethical standards that eliminate disappointment borne of dishonesty, conflicts of interest, unfairness or illegality. Preservation of public trust is critical for the preservation of democracy.

A certain amount of detail is required in any code of ethics so that it serves as a clear guide. However, at the core of ethical behavior are some basic standards that officials shall use to reach a level of conduct that strives to be beyond reproach. Treating others as you would have them treat you is always a good ethical test. Another standard is to reflect on how your actions or decisions might be viewed by persons you or the public holds in high regard because of their ethical integrity.

1. Honesty and Integrity.

Honesty and integrity shall be the primary values in all issues. The public trust in the City Council and citizen boards can be a reality only when public officials are truthful.

2. Fairness and Respect.

All issues and citizens shall be handled with fairness, impartiality and respect. Elected officials and advisory board members have an obligation to treat all citizens fairly, such as by dividing time reasonably among potential speakers on an issue at a public hearing or meeting. In

reviewing, discussing and deciding issues, City Councilmembers and citizen advisory board members have an obligation to be accessible, open and direct, not only with the other members of the Council or board, but also to the citizens and business representatives who appear before them. The public is entitled to communicate with their public servants and understand the position of the Council and boards on public issues.

3. Effort.

Elected officials and advisory board members have an obligation to attend meetings and to be prepared. It is expected that these officials will review the materials, participate in discussions and make an informed decision on the merits of the issue.

B. Conflict of Interest

Elected officials and advisory board members must be constantly on guard against conflicts of interest. In short, elected officials and advisory board members shall not be involved in any activity which conflicts with their responsibilities to the City and its residents. The people of Mesa have a right to expect independence and fairness toward all groups without favoring individuals or personal interests.

1. Self-Dealing and Financial Disclosure

Arizona conflict-of-interest laws apply to all elected officials and advisory board members, who must be consistently aware of any potential issues which may appear to be self-dealing. Officials must not be involved in discussing or deciding any issue over which they have jurisdiction as a Council or board member which may impact the member, or the member's family, financially.

It should also be noted that Councilmembers must comply

annually with the Financial Disclosure Act, as outlined in A.R.S. §§ 38-541-545.

2. Disclosure of and Policy on Acceptance of Gifts and Favors

Arizona law prohibits elected officials and advisory board members from receiving anything of value or any compensation other than their normal salary for any service rendered in connection with that person's duties with the City. A.R.S. § 38-505(A).

Elected officials and advisory board members must consider ethical principles before accepting personal gifts of entertainment and sports/athletic activities.

Within two business days of receipt of the following gifts or favors in Mesa, or within two business days of returning to Mesa after receipt of a gift of favor while traveling outside of Mesa, elected officials and advisory board members shall disclose in writing to the City Clerk all gifts, benefits, or favors received from people with a financial interest in business before the City, or which may come before the City, that:

- relate to professional or collegiate sports, athletic, or entertainment activities or tickets, or
- have a face value of \$50 or more, amount subject to periodic review.

Under no circumstances shall a council or board member accept a gift or favor that is a bribe, or reflects, to a reasonable person, an effort to improperly influence the member contrary to that member's responsibility to the public to act impartially and on the merits of a matter.

When in doubt about these requirements, elected officials and advisory board members shall disclose the gift, benefit or favor. All disclosures will be kept for public record in the

City Clerk's Office.

In summary, you can follow this checklist:

- Does the gift or favor come from someone with business before the city or which may come before the city?
- And does the gift or favor exceed \$50 dollars in value, or consist of the type of sports or entertainment tickets described above?
- And did you accept the gift or favor for yourself or another?

If you answer "yes" to all these questions, then the gift or favor has to be reported to the City Clerk.

If you answer "no" to any of these questions, then the gift or favor does not have to be reported to the City Clerk unless it represents a bribe or other improper influence as described above.

Gifts having a value greater than \$50 that are donated to the city or a bona fide charity also do not need to be reported.

This section does not apply to gifts exceeding \$50 in value and intended for the City rather than as a personal gift to a Councilmember or board member. These items are City of Mesa property. Elected officials and advisory board members who receive a gift on behalf of the City exceeding \$50 in value shall promptly turn the gift over to the City Manager for public display or other appropriate handling.

3. Loyalty

Elected officials and advisory board members have an obligation to put the interests of the City of Mesa over all personal considerations. Their goal should be "what is in the best interest for the broadest public good of the City of Mesa, consistent with constitutional and other legal protec-

tions for minority, property, and other interests.”

4. Nepotism

As provided in the City Charter and Personnel Rules, no relative of a sitting Councilmember may be hired by the City, and no relative of a sitting advisory board member may be hired in the City department for which that advisory board member provides guidance.

C. Legal Compliance

1. Meetings

Public Access: Open Meetings and Public Records

Discussion of issues which may appear before the Council or citizen board shall be prohibited when a situation arises where a quorum of the Council or board exists. Numerous Arizona and City laws require that meetings of public bodies be open to the public and that public records be available for inspection. Open Meeting Laws are found in A.R.S. §§ 38-431 through 431.09 and in the City Charter Section 209A, and Public Records Laws are found in A.R.S. §§ 39-121 through 121.03.

2. Attendance

Attendance is outlined by the City Charter and City ordinances.

a. Mayor and City Council

The City Charter provides that five councilmembers may discipline another councilmember if he or she misses three (3) consecutive and duly noticed meetings of the City Council without good cause. Duly noticed meetings of the City Council include regular council meetings, special council meetings, study sessions, policy ses-

sions, executive sessions, budget review meetings, and council committee meetings to which a councilmember is assigned.

Through this Ethics Code, the City Council finds that personal illness, family emergencies, military absences, family weddings, family graduation exercises, and bona fide business and vacation trips constitute good cause for nonattendance at council meetings. Whether good cause exists for any other absence shall be determined by vote of the entire City Council upon request of any councilmember made within ten (10) business days following the absence. The vote shall be taken after sufficient information is received explaining the reason for the councilmember's absence.

b. Boards, Commissions and Committees

The City's attendance policy for members of boards, commissions and committees provides that, if a member fails to attend three (3) consecutive and duly noticed meetings of such groups without being excused for good cause, the City Council may declare the seat vacant and appoint a replacement.

Members of City boards, commissions and committees are expected to attend all regularly scheduled meetings and should make every effort to do so. The City Council appoints members for their experience, background and perspective in a particular policy area, and desires the benefit of knowledgeable consideration and judgment. Moreover, boards, commissions and committees cannot conduct any business unless a quorum is present. Members should notify the chairperson of the board or the staff liaison regarding any meeting missed or to be missed.

The advisory board, commission, or committee shall

decide by vote of the entire body, upon request made by any member of the body with ten (10) business days following the absence, whether the absence was for good cause or not. Advisory boards, commissions, and committees shall use the same standard for good cause as set forth above for councilmembers.

3. Disclosure of Confidential Information

Arizona law provides that, during a person's employment or service with the City and for two years thereafter, no member of a City board, commission, committee or the City Council may disclose or use confidential information without appropriate authorization. The information is outlined A.R.S. § 38-504(B). For example, confidential information includes discussions during executive sessions and certain economic development information such as prospect leads.

4. Discrimination and Harassment

Public decision-making must be fair and impartial and shall not be discriminatory on the basis of those protected classes, such as racial and religious groups, outlined in federal, state, and city laws and ordinances.

It is the policy of the City of Mesa that its elected officials and advisory board members conduct business and operate in a manner that is free from illegal discrimination on the basis of age, sex, color, race, disability, national origin, or religious persuasion, both internally and in the relationships of the elected officials and advisory board members with their constituencies.

In addition, it is the policy of the City of Mesa that the elected officials and advisory board members strive to cre-

ate an operating environment internally and in the relationships of the elected officials and advisory board members with their constituencies, that is productive and free from intimidation, hostility or other adversity. Harassment of any sort – verbal, physical, visual – including intentional and unwarranted actions that would constitute sexual harassment were they to occur in an employment relationship, by any elected official or advisory board member, is prohibited and is considered a violation of this Code of Ethics.

D. Political Activities

Elected officials and advisory board members shall not use their political or appointed office to advance private interests. The prohibited activities are outlined in City Charter sections 902(a)4 through 6. Section 205a prohibits the Mayor and Councilmember from holding other offices. Board members are also governed by the resign-to-run regulation (Ordinance 3353), which requires the board member to resign from the City board when they seek any elective public office.

Elected officials, advisory board members and candidates shall not engage in political campaigning at City meetings or within city buildings. However, nothing in this section shall prohibit an elected official, advisory board member, or candidate from participating in public forums/debates or utilizing city buildings in the same manner and to the same extent as that provided to the general public. For example, participation in candidate forums or debates sponsored by private or non-profit organizations, and attendance at non-city sponsored meetings held in city community rooms. The use of these city buildings will only be provided in the same manner and under the same terms and conditions as these facilities are made available to the general public.

They shall also not use public resources for political campaigning. For example, candidates or supporters of candidates shall refrain from circulating petitions during a City meeting and refrain from soliciting City employees to support their specific cause. Council and board members are free to express their opinions about the public issues on the agenda before them, but they must not make campaign speeches at council or board meetings touting their, or another's, candidacy, nor may they urge residents to vote for them or another, through words, signs, buttons or other means during duly noticed meetings of the City Council or its citizens advisory boards.

E. Facilities, Resources, and Expenses

1. Expense Reports and Travel

When traveling on City business, elected officials and advisory board members shall conduct themselves professionally as representatives of the City of Mesa. Travel guidelines for officials are outlined in the City's Management Policy 201. Officials are entitled to be reimbursed for actual and necessary expenses during travel. Expenses must be documented completely and accurately. Officials are asked to contact the appropriate City staff for assistance in travel plans and expense reports.

2. Use of Equipment and Facilities

Elected officials and advisory board members shall not use City equipment or City facilities for private purposes, except to the extent that they are available to the public. A.R.S. §13-1802.

a. Software Management.

Elected officials and advisory board members shall not make, use, accept or install illegal copies of computer software, documentation, or templates. The City con-

ducts periodic audits to ensure compliance with City policies on software installed on City-owned computers.

The legality of software is ideally established by possession or accountability of the following five items: the original software diskettes, the license, the original manuals, documented evidence of purchase, or copy of the completed product registration.

b. Electronic Mail.

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

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

3. Use of Staff

Under the council-manager form of government, the City Council appoints a City Manager, who directs the day-to-day operations of all employees. Councilmembers need to be sensitive to the role of the City Manager and City staff. Councilmembers shall work through the City Manager or the City Manager's staff.

Councilmembers may ask other staff members about the status of a matter and may ask for information, but Councilmembers shall not expressly or implicitly give orders or direction to staff, except through their

participation on the City Council. They shall not try privately to influence the decisions or recommendations of staff members, but they may share information with staff.

Council and board members shall not intervene directly with staff on behalf of a particular constituent or organization on a pending matter, but shall participate with council or board colleagues in discussing and deciding policy matters for staff to carry out.

Appointed board members shall work through the staff liaisons of their board.

III: Procedures

A. Where to Seek Advice

Questions about this Code, a conflict of interest, or other ethical problems should be presented to the City Attorney's Office (480-644-2343). If time permits, requests should be in writing to the City Attorney directly. Requests related to conflicts of interest, A.R.S. §38-507 must be kept confidential. However, official opinions of the City Attorney are required by this law to become a public record.

B. What to Do if You Are Uncertain

The existence of an ethical issue often does not arise until a meeting is underway. Rather than risk an inadvertent violation of law, the safest course of action is simply to declare that a conflict may exist that prevents an elected official or advisory

² After the City Council adopted this Ethics Code and Handbook on Jan. 19, 1999, Mesa voters approved Proposition 102 during the March 14, 2000 Primary Election. Among other things, Proposition 102 amended the Mesa City Charter to make violations of this Ethics Code and Handbook grounds for five Councilmembers to issue a letter of warning, monetary penalty, reprimand, censure, suspend, or order the forfeiture of office for any Councilmember or Citizen Advisory Board Member who violates this Code and Handbook.

board member from participating. Indeed, if there is a consistent theme to this handbook, it would be: “If in doubt, don’t.”

C. How to Declare a Possible Conflict

If an official believes that a conflict of interest (or even a possible conflict) exists, then he or she should disclose the fact as soon as possible. For example, as soon as an elected official or advisory board member realizes that a conflict exists on a given matter, they must disclose the conflicting interest on the record for the minutes. From that point on, the official shall not participate in any manner (by discussing, questioning or voting) in that matter.

Declaring a conflict and not participating should be recognized as a necessary part of preserving public trust and should not be avoided simply because of delays or inconvenience. Indeed, officials should declare possible conflicts to avoid any appearance of impropriety.

D. Where to Report Improper Behavior

Elected officials and advisory board members have a duty to create the image and reality of a responsive, accessible, and fair city government. Accordingly, council and advisory board members have a duty to report if another elected official or advisory board member is violating laws or ethics relating to city government, as set forth in this code and handbook. Moreover, officials shall never attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any person with the intent of interfering with that person’s duty to disclose such improper activity.

If an official believes that someone else may have violated this Handbook, they may consult with the City Attorney’s Office, the City Clerk, or their colleagues.

IV: Penalties and Sanctions

It is the intent of the City Council to educate, and where necessary, discipline board or councilmembers who violate this Code and Handbook. Discipline shall be progressive, from the least punitive to the most punitive measures, unless the Council believes progressive discipline does not provide the appropriate sanction because of the gravity of the offense, or because the Council does not believe the sanction would deter future misconduct. In all instances, the totality of the circumstances shall be taken into consideration in resolving a matter, including the intent of the one accused of wrongdoing. This Code does not prevent informal resolution of minor infractions, such as by immediate corrective action of the possible misconduct.²

V: Adoption and Amendment

Adoption of and amendments to this Ethics Code and Handbook shall require the affirmative vote of at least a two-third's majority of the full City Council — that is, five (5) votes. Adoption and amendment shall occur through passage of a resolution by the City Council.

SCOTTSDALE REVISED CODE

Sec. 2-49. Conflicts of interests.

(a) Arizona law prevents local governments from imposing different conflicts of interests laws than state law. To provide guidance to city officials, Scottsdale interprets Arizona's conflicts of interests laws as follows.

(b) A conflict of interests arises when a city official, a relative of that official, or an entity in which a city official has a substantial interest is actively engaged in an activity that involves the city's decision-making processes. "Decision-making processes" is broader than just voting and includes being involved with any aspects of any decisions the city makes, such as contracting, sales, purchases, permitting, and zoning.

(c) When a conflict of interests arises, the city official involved must immediately refrain from participating in any manner in the city's decision-making processes on the matter as a city official, including voting on the matter or attending meetings with, having written or verbal communications with, or offering advice to any member of the city council, or any city employee, contractor, agent, charter officer, or member of a city board, commission, committee, task force, other appointed advisory group, or agency (other than the city attorney when the city official is seeking legal advice regarding a possible conflict). In addition, within three business days the city official must declare the specific nature of the interest on the public record by updating her or his Personal Interest Disclosure Form in the city clerk's office.

(d) During a public meeting when an agenda item in which a city official has a conflict of interests comes up for consideration, the city official shall state publicly that he or she has a conflict, recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

(e) In situations where a city official has a question about the applicability of this ethics code or the provisions of Arizona's conflicts of interests laws, the city charter, or any city ordinance, a ruling may be sought from the city attorney on whether an actual conflict of interests exists. City officials are strongly encouraged to avoid involvement in situations where a ruling declares no technical conflict of interests, but where active participation might raise the perception of undue influence or impropriety.

(f) As a prerequisite for exercising any power of office, a city official is required to read, complete, and submit to the city clerk the Personal Interest Disclosure Form, shown below,² before participating in her or his first meeting and before January 31 of every year of continued service to the city.

² See Exhibit B to this Ordinance No. 3675.

SCOTTSDALE CITY CHARTER
ARTICLE 8, SECTION 6

Sec. 6. Conflict of interest

All elected and appointed officers of the city, including members of boards and commissions; whether established by charter, ordinance, resolution, state constitution or statute; and all city employees shall be subject to the conflict of interest laws of the state of Arizona.

ARTICLE 8. CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

§ 38-501. Application of article

A. This article shall apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards.

B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.

C. Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 1, eff. Oct. 1, 1978; Laws 1992, Ch. 140, § 1.

§ 38-502. Definitions

In this article, unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.
2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.
3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to § 38-509.
4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
6. "Public agency" means:
 - (a) All courts.
 - (b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.

- (c) The state, county and incorporated cities or towns and any other political subdivisions.
- 7. "Public competitive bidding" means the method of purchasing defined in title 41, chapter 4, article 3, [FN1] or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.
- 8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
- 9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.
- 10. "Remote interest" means:
 - (a) That of a nonsalaried officer of a nonprofit corporation.
 - (b) That of a landlord or tenant of the contracting party.
 - (c) That of an attorney of a contracting party.
 - (d) That of a member of a nonprofit cooperative marketing association.
 - (e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.
 - (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
 - (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
 - (h) That of a public school board member when the relative involved is not a dependent, as defined in § 43-1001, or a spouse.
 - (i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:
 - (i) Another political subdivision.
 - (ii) A public agency of another political subdivision.
 - (iii) A public agency except if it is the same governmental entity.

- (j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.

11. "Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1973, Ch. 116, § 6; Laws 1974, Ch. 199, § 1; Laws 1977, Ch. 164, § 17; Laws 1978, Ch. 151, § 7; Laws 1978, Ch. 208, § 2, eff. Oct. 1, 1978; Laws 1979, Ch. 145, § 36; Laws 1992, Ch. 140, § 2.

[FN1] Section 41-722 et seq.

§ 38-503. Conflict of interest; exemptions; employment prohibition

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.
- C. Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:
 - 1. A school district governing board may purchase, as provided in §§ 15-213 and 15-323, supplies, materials and equipment from a school board member.
 - 2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.
- D. Notwithstanding subsections A and B of this section and as provided in §§ 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 3, eff. Oct. 1, 1978; Laws 1980, Ch. 170, § 3; Laws 1986, Ch. 17, § 3; Laws 1986, Ch. 246, § 1; Laws 1987, Ch. 138, § 2.

§ 38-504. Prohibited acts

- A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.
- B. During the period of a public officer's or employee's employment or service 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 which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.
- C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

Added by Laws 1974, Ch. 199, § 3. Amended by Laws 1995, Ch. 76, § 5; Laws 1999, Ch. 40, § 1.

§ 38-505. Additional income prohibited for services

- A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.
- B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Added by Laws 1974, Ch. 199, § 3.

§ 38-506. Remedies

- A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.

- B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.
- C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-507. Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978. Amended by Laws 1992, Ch. 140, § 3.

§ 38-508. Authority of public officers and employees to act

- A. If the provisions of § 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.
- B. If the provisions of § 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-509. Filing of disclosures

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.

*Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.
Current through legislation effective May 11, 2006.*

§ 38-510. Penalties

- A. A person who:
 - 1. Intentionally or knowingly violates any provision of §§ 38-503 through 38-505 is guilty of a class 6 felony.
 - 2. Recklessly or negligently violates any provision of §§ 38-503 through 38-505 is guilty of a class 1 misdemeanor.
- B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.
- C. It is no defense to a prosecution for a violation of §§ 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.
- D. It is a defense to a prosecution for a violation of §§ 38-503 through 38-505 that the interest charged to be substantial was a remote interest.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-511. Cancellation of political subdivision and state contracts; definition

- A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.
- B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by § 37-289 and other lawful provisions of the lease.
- C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.
- D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

- E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.
- F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.
- G. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22. [FN1]

Added as § 38-507 by Laws 1978, Ch. 189, § 1. Renumbered as § 38-511. Amended by Laws 1985, Ch. 155, § 1; Laws 1988, Ch. 169, § 1; Laws 1992, Ch. 45, § 1.

[FN1] Sections 48-1501 et seq., 48-1701 et seq., 48-1901 et seq., 48-2301 et seq., 48-2601 et seq., 48-2901 et seq., 48-3701 et seq.

City of Scottsdale
Personal Interest Disclosure Form

Pursuant to the City of Scottsdale Code of Ethical Behavior, all City officials (the Mayor, members of the City Council, and members of all City boards, commissions, committees, task forces, and other appointed advisory groups), before participating in their first meeting and before January 31 every year thereafter that they serve the City, must complete and submit a Personal Interest Disclosure Form to the City Clerk's Office. The purpose of the form is to help City officials by alerting and reminding them of their need to avoid participating in any manner on behalf of Scottsdale when a conflict arises between their official City duties and their personal interests (or the interests of their relatives).

Two definitions are very important because violating Arizona's conflicts of interests laws is a criminal offense and can lead to serious consequences.

1. Arizona law requires that if a public officer of a public agency, or her or his relative has a *substantial interest* in any contract, sale, purchase or service to the public agency, or an official decision of the public agency, then that officer "shall make known that interest in the official records of the public agency and shall refrain from voting upon or *otherwise participating in any manner* as an officer or employee" regarding that matter. (A.R.S. § 38-503). *Substantial interest* means a pecuniary (money/financial) or propriety (property) interest, direct or indirect, except certain specific, limited *remote interests* listed in the statute. (A.R.S. § 38-502). By listing "voting" and "otherwise participating in any manner" separately, the Legislature has made clear that if you have a conflict, then you must immediately refrain from taking *any* action in your official position; you may not do anything – vote, talk, discuss, write, wink, or nod – to try to influence the decision or any decision-makers.

2. The definition of relative is quite sweeping, and includes your "spouse, child, child's child [grandchildren], parent, grandparents, brother or sister [and step-brother or step-sister], and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9).

If after you complete this form another substantial interest surfaces that was not anticipated, then you are obligated to immediately refrain from participating in the decision-making process and, within three business days, update this form to disclose the interest in the City Clerk's Office. If you have any questions, please contact the City Attorney's Office with as much lead time as possible.

1. Identify the decision or other matter in which you or a relative may have a substantial interest. (Attach another page if more space is needed.)

2. Describe each substantial interest referred to above. (Attach another page if more space is needed.)

Statement of Disqualification

To avoid any possible conflict of interests, I will refrain from participating in any manner in the matter(s) identified above.

Name (please print)

Signature

Date

Position in the City of Scottsdale



**DECLARATION OF
CONFLICT OF INTEREST OR PERSONAL INTEREST**

NAME: _____

PUBLIC BODY: _____

DATE OF PUBLIC MEETING: _____ AGENDA ITEM NO.: _____

DESCRIPTION OF ITEM: _____

☐ I declare that I have a "substantial interest" in the above-referenced decision or matter, as provided in A.R.S. § 38-501 et seq., and, therefore, declare that I have a conflict of interest in the decision or matter.

Describe the substantial interest held by you or your relative(s) referred to above:

☐ I don't believe that I have a substantial interest in the above-referenced decision or matter and, therefore, do not have a conflict of interest as provided by Arizona law, but I believe that my active participation in the above-referenced decision or matter might raise the perception of undue influence or impropriety.

Explain: _____

To avoid a conflict of interest or the perception of undue influence or impropriety, as indicated above, I will refrain from participating in any manner in the decision(s) or matter(s) identified above.

Signature

Date Signed

PLEASE NOTE: Completion and filing of this form with the City Clerk's Office is not, by itself, sufficient for a public officer to meet the requirements of the Conflict of Interest law and Code of Ethical Behavior (S.R.C. § 2-47 et seq.). To complete the requirements the public officer must state publicly at the meeting of the public body that he or she has a conflict of interest, or that participation might raise the perception of undue influence or impropriety; then recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

A copy of this form will be filed as a supplement to the public officer's Personal Interest Disclosure form.

SCOTTSDALE REVISED CODE

Sec. 2-50. Gifts; prohibited; exceptions.

(a) City officials are prohibited from soliciting, receiving, or accepting gifts of any kind from anyone who is engaged in a general practice or specific situation that involves the city's decision-making or permitting processes, except as exempted below. The term "gifts of any kind" includes money, services, loans, travel, entertainment, hospitality (including meals), promises of any future gifts, or anything of value that might be construed as an attempt to create a more favorable relationship than that enjoyed by any other citizen, including: (a) the purchase, sale, or lease of any real or personal property by the city official, that official's relative, or an entity in which that official has a financial interest at a value below or above that available to the general public, and (b) employment and/or services, contracts, direct or indirect, by a city official, that official's relative, or an entity in which that official or relative has a financial interest.

(b) Exemptions include entertainment, hospitality (including meals), transportation, and token mementoes directly associated with events that an official is attending as a representative of the city. If any gift or personal benefit is permissible and exceeds \$25 in value, then the city official must declare it to the city clerk as provided in the Scottsdale Revised Code Section 14-135, unless reporting is not required by the Code provision.

SCOTTSDALE REVISED CODE

Sec. 14-135. Gifts and gratuities.

(a) The provisions of this section are intended to promote ethical conduct and public trust in the integrity of Scottsdale municipal government and therefore, shall apply to all city employees, elected and appointed officers, including members of boards and commissions, in the course of their employment or the performance of their official duties with the city.

(b) No gifts, gratuities, and other benefits or items of value shall be solicited by a city employee or officer for personal benefit.

(c) Monetary gratuities, tips, honoraria, or other payments for services rendered for performing city employment or official city duties, other than compensation from the city or that which is otherwise provided by law or city policy, shall not be accepted.

(d) Gifts and other personal benefits or items of value shall not be accepted if acceptance could reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action.

(e) If, after consideration of the ethical standards expressed in this policy, a gift, personal benefit, or other item in excess of twenty-five dollars (\$25.00) in value, is accepted, it must be declared in writing with the city clerk's office within five (5) business days of acceptance. The declaration shall be made on a form designated by the clerk.

(f) The following items reflect legitimate public duties or purposes, or are otherwise not considered gifts to an employee or officer for personal benefit that must be declared pursuant to 14-135(e):

- (1) Admission to events which are sponsored or funded in whole or in part by the city, if furnished by the city or sponsor(s) of such events;
- (2) Reasonable hosting, including meals and refreshments, travel, and related expenses, furnished in connection with official speaking engagements, ceremonies or other work-related appearances on behalf of the city, when public or civic purposes are served;
- (3) Gifts of goodwill or other tokens of appreciation accepted on behalf of the city, or in the case of food, accepted and shared with others in the work place.
- (4) Items received and donated to a charitable organization.

(Ord. No. 1837, § 1(Art. 8, § 805), 6-15-87; Ord. No. 2868, § 41, 3-4-96; Ord. No. 3264, § 1, 10-4-99)

Event	Date	Site
Matching Event Advertising Funding		
51st Annual Scottsdale Arabian Horse Show	February 17-26, 2006	WestWorld
Arizona Bike Week	March 31 - April 9, 2006	WestWorld
Sun Country Circuit Quarter Horse Show	January 27 - February 4, 2006	WestWorld
35th Anniversary Barrett-Jackson Collector Car Auction	January 14 - 22, 2006	WestWorld
Celebration of Fine Art	January 14 - March 26, 2006	Scottsdale Road and Union Hills, SE corner
FBR Open	January 30 - February 5, 2006	TPC
PF Chang's Rock n' Roll Marathon	January 15, 2006	Phx, Scdl, Tempe
Russo and Steel Collector Automobile in Scottsdale	January 19 - 21, 2006	Scottsdale and Mayo Raods, SE Corner
Scottsdale Classic Futurity and Quarter Horse Show	October 6 - 15, 2005	WestWorld
Scottsdale Culinary Festival	April 18 - 23, 2006	Various Scdl Resorts and Scdl Civic Center Ma

**City of Scottsdale
Declaration of Gifts Form**

To be filed in the City Clerk's office within five business days after acceptance of an applicable gift, personal benefit or other item in excess of \$25.00 in value, pursuant to Scottsdale City Code section 14-135 (printed on reverse side).

Check Relevant Filing Category:

Employee

☐

Public Officer/City Official

☐

Name: _____

Public body you are member of (i.e. city council, board or commission, etc.), if applicable.

Phone: (preferred number for access): _____

Department (if applicable): _____

Description of Gift(s) and Related Comments: _____

Date Received: _____ Face Value of Gift(s): _____ (if applicable)

Source of Gift(s) [Name of individual(s) and organization(s), if applicable]:

Submitted by: _____
(Signature)

Date: _____

Scottsdale Revised Code Section 14-135
Gifts and Gratuities

Sec. 14-135. Gifts and Gratuities.

(a) The provisions of this section are intended to promote ethical conduct and public trust in the integrity of Scottsdale municipal government and therefore, shall apply to all city employees, elected and appointed officers, including members of boards and commissions, in the course of their employment or the performance of their official duties with the city.

(b) No gifts, gratuities, and other benefits or items of value shall be solicited by a city employee or officer for personal benefit.

(c) Monetary gratuities, tips, honoraria, or other payments for services rendered for performing city employment or official city duties, other than compensation from the city or that which is otherwise provided by law or city policy, shall not be accepted.

(d) Gifts and other personal benefits or items of value shall not be accepted if acceptance could reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action.

(e) If, after consideration of the ethical standards expressed in this policy, a gift, personal benefit, or other item in excess of \$25.00 in value, is accepted, it must be declared in writing with the city clerk's office within five business days of acceptance. The declaration shall be made on a form designated by the clerk.

(f) The following items reflect legitimate public duties or purposes, or are otherwise not considered gifts to an employee or officer for personal benefit that must be declared pursuant to 14-135(e):

- (1) admission to events which are sponsored or funded in whole or in part by the city, if furnished by the city or sponsor(s) of such events;
- (2) reasonable hosting, including meals and refreshments, travel, and related expenses, furnished in connection with official speaking engagements, ceremonies or other work-related appearances on behalf of the city, when public or civic purposes are served;
- (3) gifts of goodwill or other tokens of appreciation accepted on behalf of the city, or in the case of food, accepted and shared with others in the work place.
- (4) items received and donated to a charitable organization.

SCOTTSDALE REVISED CODE

Sec. 2-51. Open government.

(a) The citizens of Scottsdale expect and deserve open government. Arizona has an official public policy "that meetings of public bodies be conducted openly" and that any doubt should always be resolved "in favor of open and public meetings" (A.R.S. § 38-431.09). The city council has adopted a formal goal of "Open and Responsive Government: Make government accessible, responsive and accountable so that decisions reflect community input and expectations" (Nov. 4, 2004 Mission and Goals). And Scottsdale citizens have voted in favor of a Vision Statement that "Scottsdale will be a leader in promoting open government processes that are accessible, responsive, and fair to all of its citizen participants" (City of Scottsdale General Plan 2001, page 87).

(b) Therefore, city officials shall conduct themselves in a manner that fully adheres to and preferably exceeds state laws concerning open meetings and transparency of actions. Indeed, city officials are encouraged to employ a "mindset of openness" in conducting the affairs of the city and should be cautious before voting to hold a portion of a meeting in executive session. Moreover, city officials are reminded that any attempt to circumvent the Open Meeting Law -- such as by using technology, a "hub-and-spoke" scheme, or any other technique involving less than a quorum yet designed to communicate with a quorum of the public body -- can violate the Open Meeting Law. City officials also shall show no favoritism on who has access to or receives relevant information on matters under consideration or of general public interest.

(c) The city attorney is encouraged to vigorously promote and enforce state laws regulating open meetings, and be proactive and assertive in ensuring strict adherence to those laws reflecting the city's "mindset of openness."

SCOTTSDALE REVISED CODE

Sec. 2-52. Open meeting laws; executive sessions.

(a) Arizona law recognizes that there are very narrowly limited occasions when the public's interests are best protected by the public body meeting in closed executive session. To honor the mindset of openness, city officials should consider that, although state law allows discussion of certain limited matters in executive session, closed meetings should be utilized as infrequently as possible and only in clearly compelling circumstances.

(b) In addition to complying with the Open Meeting Law requirement that a majority of the public body vote in favor of meeting in closed executive session, Scottsdale public bodies will first introduce the item on the agenda, hear the need to go into executive session explained, receive the assent of the city attorney (or designee) that the matter would be an appropriate use of the executive session exception, and then vote to see if a majority of the public body agrees there is a legitimate need to go into executive session.

(c) To ensure strict compliance with state law, the city attorney (or designee) shall be present at and actively protect the letter and spirit of the Open Meeting Law in all council meetings, all council executive sessions, and all executive sessions to be held by any other city board, commission, committee, task force, or other appointed advisory group. While in executive session, the city attorney (or designee) shall ensure that all discussions and consultations that take place fit within the bounds of what is allowed and appropriate under a strict and tight interpretation of Arizona's Open Meeting Law. All other questions and discussions related to that same issue shall be posed and addressed only in a public forum either prior to or following the executive session.

(d) The city attorney (or designee) will not attend those portions of executive sessions involving personnel matters, pursuant to A.R.S. § 38-431.03(A)(1), relating to the city auditor, city clerk, city judge; associate city judges, city manager, or city treasurer, but may attend if requested to do so by the city council.

(e) Before leaving the executive session, the city attorney (or designee) shall remind those present in the closed executive session that Arizona law (a) mandates that all discussions within and minutes of executive sessions are strictly confidential for all time, and (b) prohibits attendees from revealing to anyone, including family members, any part of any discussion that took place in executive session.

ARTICLE 3.1. PUBLIC MEETINGS AND PROCEEDINGS

§ 38-431. Definitions

In this article, unless the context otherwise requires:

1. "Advisory committee" means a committee that is officially established, upon motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in § 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in § 38-431.03 and the auditor general as provided in § 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.

3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.

4. "Meeting" means 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. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.

6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

CREDIT(S)

Added by Laws 1962, Ch. 138, § 2. Amended by Laws 1974, Ch. 196, § 1, eff. May 22, 1974; Laws 1978, Ch. 86, § 1; Laws 1982, Ch. 278, § 1; Laws 1985, Ch. 203, § 1; Laws 2000, Ch. 358, § 1.

§ 38-431.01. Meetings shall be open to the public

A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

B. All public bodies, except for subcommittees and advisory committees, shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:

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 considered.

4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.

C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to § 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.

D. The minutes or a recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article.

E. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder, camera or other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

F. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall distribute open meeting law materials prepared and approved by the attorney general to a person elected or appointed to a public body prior to the day that person takes office.

G. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

H. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

CREDIT(S)

Added by Laws 1962, Ch. 138, § 2. Amended by Laws 1974, Ch. 196, § 2, eff. May 22, 1974; Laws 1975, Ch. 48, § 1; Laws 1978, Ch. 86, § 2; Laws 1982, Ch. 278, § 2; Laws 2000, Ch. 358, § 2.

§ 38-431.03. Executive sessions

A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.

2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.

3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.

4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.

5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.

7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

B. Minutes of and discussions made at executive sessions shall be kept confidential except from:

1. Members of the public body which met in executive session.

2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.

3. The auditor general on a request made in connection with an audit authorized as provided by law.

4. A county attorney or the attorney general when investigating alleged violations of this article.

C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.

D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.

E. Except as provided in § 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.

F. Disclosure of executive session information pursuant to this section or § 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or § 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 6, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 4; Laws 1982, Ch. 278, § 4; Laws 1983, Ch. 274, § 2, eff. April 27, 1983; Laws 1990, Ch. 56, § 1, eff. April 12, 1990; Laws 2000, Ch. 358, § 4.

§ 38-431.04. Writ of mandamus

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

CREDIT(S)

Added as § 38-431.03 by Laws 1962, Ch. 138, § 2. Renumbered as § 38-431.04 by Laws 1974, Ch. 196, § 6, eff. May 22, 1974.

§ 38-431.05. Meeting held in violation of article; business transacted null and void; ratification

A. All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.

B. A public body may ratify legal action taken in violation of this article in accordance with the following requirements:

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.

2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.

3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.

4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

CREDIT(S)

Added as § 38-431.04 by Laws 1962, Ch. 138, § 2. Renumbered as § 38-431.05 by Laws 1974, Ch. 196, § 6, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 5; Laws 1982, Ch. 278, § 5.

§ 38-431.06. Investigations; written investigative demands

A. On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.

B. In addition to other powers conferred by this article, in order To carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:

1. Issue written investigative demands to any person.

2. Administer an oath or affirmation to any person for testimony.

3. Examine under oath any person in connection with the investigation of the alleged violation of this article.

4. Examine by means of inspecting, studying or copying any account, book, computer,

document, minutes, paper, recording or record.

5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.

C. The written investigative demand shall:

1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.

2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.

3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.

4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.

D. If a person objects to or otherwise fails to comply with the written investigation demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa county or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona rules of civil procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court's order, the court may issue any of the following orders until the person complies with the order:

1. Adjudging the person in contempt of court.

2. Granting injunctive relief against the person to whom the demand is issued to restrain the conduct that is the subject of the investigation.

3. Granting other relief the court deems proper.

CREDIT(S)

Added by Laws 2000, Ch. 358, § 5.

§ 38-431.07. Violations; enforcement; removal from office; in camera review

A. Any person affected by an alleged violation of this article, the attorney general or the

county attorney for the county in which an alleged violation of this article occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of, this article, by members of the public body, or to determine the applicability of this article to matters or legal actions of the public body. For each violation the court may impose a civil penalty not to exceed five hundred dollars against a person who violates this article or who knowingly aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as it deems appropriate in the circumstances. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff's reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information violated any provision of this article the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.

B. A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to incurring any such obligation or indebtedness.

C. In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 7, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 6; Laws 1982, Ch. 278, § 7; Laws 2000, Ch. 358, § 6.

§ 38-431.08. Exceptions; limitation

A. This article does not apply to:

1. Any judicial proceeding of any court or any political caucus of the legislature.
2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
4. Good cause exception determinations and hearings conducted by the board of fingerprinting pursuant to § 41-619.55.

B. A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.

2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification which verifies the person's signature.

3. Prevent and prohibit any articles from being taken into a hearing except recording devices, and if the person who attends a hearing is a member of the media, cameras.

4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

C. The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation of this section shall be those remedies available in § 38-431.07, as against the director only.

D. Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, § 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 7, eff. May 22, 1974. Amended by Laws 1975, Ch. 71, § 1, eff. May 20, 1975; Laws 1977, Ch. 128, § 1; Laws 1982, Ch. 278, § 8; Laws 1990, Ch. 298, § 1, eff. June 16, 1990; Laws 1998, Ch. 232, § 8; Laws 1998, Ch. 270, § 12, eff. August 17, 1999; Laws 1999, Ch. 211, § 33; Laws 2000, Ch. 251, § 14; Laws 2000, Ch. 358, § 7.

§ 38-431.09. Declaration of public policy

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 article shall construe any provision of this article in favor of open and public meetings.

CREDIT(S)

Added by Laws 1978, Ch. 86, § 7. Amended by Laws 1982, Ch. 278, § 9; Laws 2000, Ch. 358, § 8.

**STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL**

ATTORNEY GENERAL OPINION

by
TERRY GODDARD
ATTORNEY GENERAL

July 25, 2005
No. I05-004
(R05-010)

Re: Open Meeting Law Requirements and
E-mail to and from Members of a Public Body

To: Donald M. Peters, Esq.
Miller, LaSota & Peters
722 East Osborn Road, Suite 100
Phoenix, Arizona 85014

Pursuant to Arizona Revised Statutes ("A.R.S.") §15-253(B), you submitted for review your opinion to the president of the Washington Elementary School District ("District") Governing Board ("Board") regarding electronic mail ("e-mail") communications to and from members of the Board and Arizona's Open Meeting Law ("OML").

This Opinion revises your analysis to set forth some parameters regarding e-mail to and from members of a public body and is intended to provide guidance to public bodies throughout the State that are subject to the OML. *See* Ariz. Att'y Gen. Op. I98-006 at 2, n.2.

Question Presented

What are the circumstances under which the OML permits e-mail to and from members of a public body?

Summary Answer

Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML requirements. When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under

the OML. 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.

Analysis

The OML is intended to open the conduct of government business to public scrutiny and prevent public bodies from making decisions in secret. *See Karol v. Bd. Of Educ. Trs.*, 122 Ariz. 95, 97, 593 P.2d 649, 651 (1979). “[A]ny person or entity charged with the interpretation [of the OML] shall construe any provision [of the OML] in favor of open and public meetings.” A.R.S. § 38-431.09. In addition, devices used to circumvent the OML and its purposes violate the OML and will subject the members of the public body and others to sanctions.¹ *See e.g.* Ariz. Att’y. Gen. Ops. I99-022, n. 7; I75-7. These principles guide the analysis of the use of e-mails by members of a public body. E-mail communications to or from members of the public body are analyzed like any other form of communication, written or verbal, in person or through technological means.

A. An Exchange of E-mails Can Constitute a Meeting.

1. A Meeting Can Occur Through Serial Communications between a Quorum of the Members of the Public Body.

All meetings of public bodies must comply with the OML.² The OML 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.

¹ A.R.S. § 38-431-.07 (A) provides for penalties for violating the OML against not only members of the public body, but also against “[a person] who knowingly aids, agrees to aid or attempts to aid another person in violating [the OML].”

² A “public body” subject to the OML includes:
the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivisions. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.
A.R.S. § 38-431(6).

A.R.S. § 38-431(4).

The OML does not specifically address whether all members of the body must participate simultaneously to constitute a “gathering” or meeting. However, the requirement that the OML be construed in favor of open and public meetings leads to the conclusion that simultaneous interaction is not required for a “meeting” or “gathering” within the OML. “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 a topic that is or may be presented to the public body for a decision.” *Arizona Agency Handbook* § 7.5.2. (Ariz. Att’y Gen. 2001) Thus, even if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a “meeting.” See *Del Papa v. Board of Regents*, 114 Nev. 388, 393, 956 P. 2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place)³; *Roberts v. City of Palmdale*, 20 Cal. Rptr. 2d 330, 337, 853 P. 2d 496, 503 (1993) (“[A] concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement.”)⁴

2. Discussion, Proposals and Deliberations Among a Quorum of a Public Body Must Occur at a Public Meeting.

A “meeting” includes four types of activities by a quorum of the members of the public body: discussing legal action, proposing legal action, taking legal action, and deliberating “with respect to such action[s].” A.R.S. § 38-431(4). Three of these activities necessarily involve more than a one-way exchange between a quorum of members of a public body.

For example, the ordinary meaning of the word “discuss” suggests that a discussion of possible legal action requires more than a one-way communication. See *Webster’s II New College Dictionary* 385 (1994) (defining “discuss” as “to speak together about.”) Likewise, the term

³ Like the OML, Nevada’s open meeting law defines a “meeting” as a gathering of a quorum of members of the public body. Nev. Rev. Stat. 241.015(2).

⁴ This Office declines to follow *Beck v. Shelton*, 267 Va. 482, 491, 593 S.E.2d 195, 199 (2004) because of differences between Arizona’s law and Virginia’s. In *Beck*, the court concluded that “the term [‘assemble’] inherently entails the quality of simultaneity.” Further, the court observed that “[w]hile such simultaneity may be present when e-mail technology is used in a ‘chat room’ or as ‘instant messaging,’ it is not present when e-mail is used as the functional equivalent of letter communication by ordinary mail, courier, or facsimile transmission.” *Id.*, 267 Va. at 490, 593 S.E. 2d at 199.

“deliberations” requires some collective activity. *See* Ariz. Att’y Gen. Op. I97-012, *citing Sacramento Newspaper Guild v. Sacramento Bd. of Supervisors*, 69 Cal. Rptr. 480, 485 (App. 1968) (reversed on other grounds). “Deliberations” and “discussions” involve an exchange between members of the public body, which denotes more than unilateral activity. *See* Ariz. Att’y Gen. Op. I75-8; *Webster’s* at 390 (“exchange” means “to take or give up for another”; “to give up one thing for another”; “to provide in return for something of equal value.”) Finally, “taking legal action” in the context of the OML requires a “collective decision, commitment or promise” by a majority of the members of a public body. A.R.S. § 38-431(3); Ariz. Att’y Gen. Op. I75-7.

Unlike discussions and deliberations, the word “propose” does not imply or require collective action. Webster’s defines “propose” as “to put forward for consideration, discussion, or adoption.” *Webster’s II New College Dictionary* at 944. A single board member may “propose” legal action by recommending a course of action for the board to consider. For example, the statement, “Councilperson Smith was admitted to the hospital last night” is not a proposal, but “We should install a crosswalk at First and Main” is a proposal. Thus, an e-mail from a board member to enough other members to constitute a quorum that *proposes* legal action would be a meeting within the OML, even if there is only a one-way communication, and no other board members reply to the email.⁵

3. An Exchange of Facts, as Well as Opinions, Among a Quorum of Members of a Public Body Constitutes a Meeting within the OML, if it is Reasonably Foreseeable that the Topic May Come Before the Public Body for Action in the Future.

Arizona’s OML does not distinguish between communication of facts or opinions. An exchange of facts, as well as opinion, may constitute deliberations under the OML. *See* Ariz. Att’y Gen. Ops. I97-012, I79-4; I75-8.⁶ The term “deliberations” as used in A.R.S. § 38-431 means “any exchange of facts that relate to a matter which foreseeably might require some final action . . .” Ariz. Att’y Gen. Op. I75-78; *see also Sacramento*

⁵ It might be argued that because the definition of meeting refers to a gathering of a quorum at which they discuss, propose or take legal action, the definition only applies to proposals made by a quorum or circumstances in which more than one person actually makes a proposal. That interpretation, however, is inconsistent with the ordinary meaning of the word “propose” and with the process for proposing legal action for consideration by public bodies. It is also contrary to the directive that the OML be construed broadly to achieve its purposes.

⁶ Unlike Arizona, some states permit exchanges of information among a quorum of a public body outside of public meetings. *See* Fla. AGO 2001-20, 2001 WL 276605 (Fla. A.G.) (“[C]ommunication of information, when it does not result in the exchange of council members’ comments or responses on subjects requiring council action, does not constitute a meeting subject to [Florida’s sunshine law]). As in many other states, Florida’s open meeting law is known as its “sunshine law.”

Newspaper Guild, 69 Cal. Rptr. at 485 (deliberation connotes not only collective discussion, but also the collective acquisition and exchange of facts preliminary to the final decision).

Of course, the OML applies only to an exchange of facts or opinions if it is foreseeable that the topic may come before the public body for action. *See Valencia v. Cata*, 126 Ariz. 555, 556-57, 617 P.2d 63, 64-5 (App. 1980); Ariz. Att'y Gen. Op. 75-8. The scope of what may foreseeably come before the public body for action is determined by the statutes or ordinances that establish the powers and duties of the body. *See* Ariz. Att'y Gen. Op. I00-009.

4. Applying OML Principles to E-mail.

Few reported decisions discuss when the use of e-mail violates a state's open meeting law. In *Wood v. Battle Ground School District*, 107 Wash. App. 550, 564, 27 P. 3d 1208, 1217 (2001), the Washington Court of Appeals held that the exchange of e-mail messages may constitute a meeting within Washington's Open Public Meetings Act. While the court held that "the mere use or passive receipt of e-mail does not automatically constitute a 'meeting'," it concluded that the plaintiff established a *prima facie* case of "meeting" by e-mails because the members of the school board exchanged e-mails about a matter, copying at least a quorum and sometimes all of the other members. The court said, "[T]he active exchange of information and opinions in these emails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or to discuss Board business." 107 Wash. App. at 566, 27 P. 3d at 1218.

Although the Washington Open Public Meetings Act is not identical to the OML, like the OML, it broadly defines "meeting" and "action," and includes the directive that the law be liberally construed in favor of open and public meetings. 107 Wash. App. At 562, 27 P. 3d at 1216. The holding of the court in *Wood* and its attendant analysis are, therefore, persuasive.

The available case law and Arizona's statutory language indicate that a one-way communication by one board member to other members that form a quorum, with no further exchanges between members, is not a *per se* violation of the OML. Additional facts and circumstances must be evaluated to determine if the communication is being used to circumvent the OML. A communication that proposes legal action to a quorum of the board would, however, violate the OML, even if there is no exchange among the members concerning the proposal. In addition, passive receipt of information from a member of the staff, with nothing more, does not violate the OML. *See Roberts*, 20 Cal. Rptr. 2d at 337, 853 P. 2d at 503

(receipt of a legal opinion by members of a public body does not result in a meeting.); *Frazer v. Dixon Unified Sch. Dist.*, 18 Cal. App. 4th 781, 797, 22 Cal. Rptr. 2d 641, 657 (1993) (passive receipt by board members of information from school district staff is not a violation of the open meeting law).⁷

There are risks whenever board members send e-mails to a quorum of other board members. Even if the first e-mail does not violate the open meeting law, if enough board members to constitute a quorum respond to the e-mail, there may be a violation of the OML. In addition, a quorum of the members might independently e-mail other board members on the same subject, without knowing that fellow board members are also doing so. This exchange of e-mails might result in discussion or deliberations by a quorum that could violate the OML. Because of these potential problems, I strongly recommend that board members communicate with a quorum about board business at open public meetings, not through e-mails.

B. Hypotheticals Illustrating the Use of E-mail.

The analysis of the OML and e-mail is theoretically no different than analyzing other types of communications. To provide additional guidance, this Opinion will address OML applications to specific factual scenarios.⁸

a. E-mail discussions between less than a quorum of the members that are forwarded to a quorum by a board member or at the direction of a board member would violate the OML.

b. If a staff member or a member of the public e-mails a quorum of members of the public body, and there are no further e-mails among board members, there is no OML violation.

c. Board member A on a five-member board may not e-mail board members B and C on a particular subject within the scope of the board's responsibilities and include what other board members D and E have previously communicated to board member A. This e-mail would be part of a chain of improper serial communications between a quorum on a subject for potential legal action.

d. A board member may e-mail staff and a quorum of the board proposing that a matter be placed on a future agenda. Proposing

⁷ This office has also opined that, in the context of a Call to the Public, passive receipt of information does not constitute a meeting. Ariz. Att'y Gen. Op. I99-006.

⁸ These hypotheticals assume that the e-mails are not sent by board members or at a board member's direction with the purpose of circumventing the OML and that any unilateral communications do not propose legal action.

that the board have the opportunity to consider a subject at a future public meeting, without more, does not propose legal action, and, therefore, would not violate the OML.

e. An e-mail from the superintendent of the school district to a quorum of the board members would not violate the OML. However, if board members reply to the superintendent, they must not send copies to enough other members to constitute a quorum. Similarly, the superintendent must not forward replies to the other board members.

f. One board member on a three-member board may e-mail a unilateral communication to another board member concerning facts or opinions relating to board business, but board members may not respond to the e-mail because an exchange between two members would be a discussion by a quorum.

g. A board member may copy other board members on an e-mailed response to a constituent inquiry without violating the OML because this unilateral communication would not constitute discussions, deliberations or taking legal action by a quorum of the board members.

h. An e-mail request by a board member to staff for specific information does not violate the OML, even if the other board members are copied on the e-mail. The superintendent may reply to all without violating the OML as long as that response does not communicate opinions of other board members. However, if board members reply in a communication that includes a quorum, that would constitute a discussion or deliberation and therefore violate the OML.

i. A board member may use e-mail to send an article, report or other factual information to the other board members or to the superintendent or staff member with a request to include this type of document in the board's agenda packet. The agenda packet may be distributed to board members via e-mail. Board members may not discuss the factual information with a quorum of the board through email.

C. Measures to Help Ensure that the Public Body Conducts Its Business in Public.

Although it is not legally required, I recommend that any e-mail include a notice advising board members of potential OML consequences

of responding to the e-mail. Possible language for a notice for e-mails from the superintendent or staff is as follows:

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.

Language for e-mails from board members could be the following:

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

Although the OML does not require the above notice, such notification may serve as a helpful reminder to board members that they should not discuss or deliberate through email. It is also important to remember that e-mail among board members implicates the public records law, as well as the OML. E-mails that board members or staff generate pertaining to the business of the public body are public records. *See Star Publ'g Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899 (App. 1994); *see also Arizona Agency Handbook* § 6.2.1.1 (Ariz. Att'y Gen. 2001). Therefore, the e-mails must be preserved according to a records retention program and generally be made available for public inspection. A.R.S. §§ 39-121, 41-1436. Although the OML focuses on e-mails involving a quorum of the members of the public body, the public records law applies to any e-mail communication between board members or board members and staff. Public bodies might consider maintaining a file that is available for public inspection and contains any e-mails sent to and from board members. Ready access to this type of information helps ensure compliance with the legislative mandates favoring open government.

I encourage all public bodies to educate board members and staff concerning the parameters of the OML and the public records law to ensure compliance with these laws. E-mail is a useful technological tool, but it must be used in a manner that follows the OML's mandate that all public bodies propose legal action, discuss, deliberate, and make decisions in public.

Conclusion

E-mail communications among a quorum of the board are subject to the same restrictions that apply to all other forms of communications among a quorum of the board. E-mails exchanged among a quorum of a board that involve discussions, deliberations or taking legal action on

matters that may reasonably be expected to come before the board constitute a meeting through technological means. While some unilateral e-mail communications from a board member to a quorum would not violate the OML, a board member may not propose legal action in an e-mail. Finally, a quorum of the board cannot use e-mail as a device to circumvent the requirements in the OML.

Terry Goddard
Attorney General

450529

SCOTTSDALE REVISED CODE

Sec. 2-53. Preservation and availability of public documents.

(a) Consistent with Arizona's Public Records Laws, written communications between public officials and private citizens on matters explicitly involving the affairs of the city are considered public documents. Such written communications shall be preserved in compliance with the city's document retention policy and made available for review upon request.

(b) "Written communications" includes city-related e-mail messages and attachments originating from or received by elected or appointed officials on any publicly or privately owned equipment at city hall, the city official's place of employment, private residence, or remote locations. Destruction of such communications prior to the expiration of the time period specified in the city's document retention policy is prohibited.

(c) The city's electronic messaging systems and electronic communications systems (including telephones) are to be used for official city business only, except for limited personal uses (*e.g.*, asking a person to lunch or a social event, checking on the welfare of family members, scheduling or canceling a doctor's appointment). City officials are prohibited from using the city's official e-mail service for commercial purposes or other inappropriate uses.

SCOTTSDALE REVISED CODE

Sec. 2-54. Undue influence on subordinates.

(a) Under the city's charter, administrative authority is vested solely in the city manager. Members of the city council may make inquiries to city staff. Members of the city council may not interfere with the city manager's authority, however, by giving orders or explicit directions or requests, publicly or privately, regarding city matters to any subordinates of the city manager, and they shall not attempt to exert influence on the city manager on issues relating to the hiring or removal of persons employed by the city.

(b) All city officials shall respect the orderly lines of authority within city government.

SCOTTSDALE CITY CHARTER

Article 2: The Council

* * * * *

Sec. 17. Interference in administrative service.

Neither the council nor any of its members shall direct or request the appointment of any person to, or his removal from, office by the city manager or by any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the city. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately. Nothing in this section shall be construed, however, as prohibiting the council while in open sessions from fully and freely discussing with or suggesting to the city manager anything pertaining to city affairs or the interests of the city.

**SCOTTSDALE REVISED CODE
ARTICLE II, CHAPTER 2**

DIVISION 4. CODE OF ETHICAL BEHAVIOR: ENFORCEMENT

Sec. 2-55. Filing complaints.

(a) Contents. Any person who believes a city official in her or his official capacity has violated a mandatory requirement or prohibition in the City of Scottsdale Code of Ethical Behavior, set forth in division 3 of this article, above, or violated any state or city law may file a sworn complaint with the city attorney identifying:

- (1) The complainant's name, address, and telephone number;
- (2) The name and position of the city official who is the subject of the complaint;
- (3) The nature of the alleged violation, including the specific provision of the ethics code or law allegedly violated;
- (4) A statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred;
- (5) All documents or other material in the complainant's possession that are relevant to the allegation, a list of all documents or other material relevant to the allegation that are available to the complainant but not in the complainant's possession, and a list of all other documents or other material relevant to the allegations but unavailable to the complainant, including the location of the documents, if known;
- (6) A list of witnesses, what they may know, and their contact information, if known; and
- (7) If the alleged violation occurred more than ninety days before the sworn complaint is filed with the city attorney, then the complaint must identify the date the complainant learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation, a list of the persons with knowledge about the date the violation was discovered, and a summary of the information they possess about the discovery.

The complaint shall include an affidavit stating that the information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the ethics code. If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those sources. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

(b) Time for filing. A complaint must be filed on or before the 365th day after the violation is alleged to have occurred or the 90th day after the violation was discovered, whichever date is earlier.

(c) False or frivolous complaints. A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and potential civil liability for, among other possible causes of action, defamation. If after reviewing an ethics complaint it is determined that a sworn complaint is groundless and appears to have been filed in bad faith or for the purpose of harassment, or that intentionally false or malicious information has been provided under penalty of perjury, then the city attorney may refer the matter to the appropriate law enforcement authority for possible prosecution. A city official who seeks to take civil action regarding any such complaint shall do so at her or his expense.

(d) Elections complaints. Any complaints relating to city elections shall be filed with or referred to the city clerk for review and disposition as provided by law.

Sec. 2-56. Complaints against members of boards, commissions, committees, task forces, and other appointed advisory groups.

(a) Initial screening of complaints. The city attorney shall review each complaint filed alleging a violation by a member of a city board, commission, committee, task force, and other appointed advisory group and within fifteen days either:

- (1) Return it for being incomplete;
- (2) Dismiss it for being untimely;
- (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition – as opposed to an aspirational or administrative provision – of the ethics code or any laws;
- (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the city attorney determines the complaint was false, misleading, frivolous, or unsubstantiated;
- (5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or
- (6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the city's Code of Ethical Behavior or a city law, take action as set forth below.

In all circumstances, the city attorney shall simultaneously notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(b) Review and findings. For ethics complaints alleging violations of the city's Code of Ethical Behavior or a city law that proceed for additional review, the city attorney shall investigate the allegations and, within thirty days (unless the city attorney requests a fifteen day extension that is granted in writing by the mayor or vice mayor), submit to the city council, the complainant, the official who is the subject of the complaint, and the city clerk a report with findings of fact,

conclusions of law, and a recommendation. The city council shall consider the city attorney's report at a public meeting. If the city council finds an ethical violation, then it may remove the member from the city board, commission, committee, task force, or other appointed advisory group. In resolving a complaint, the totality of the circumstances shall be taken into consideration, including the intent of the person accused of wrongdoing.

Sec. 2-57. Complaints against the mayor and members of the city council.

(a) Independent ethics reviewers. The city shall use independent, non-city personnel to handle ethics complaints lodged against the mayor and members of the city council (and to handle any ethics complaints filed against a member of a city board, commission, committee, task force, or other appointed advisory group if the city attorney would have a conflict of interests in handling that complaint). The city attorney, in compliance with applicable provisions of the city Procurement Code, shall select a pool of ten to twelve individuals who could serve as the city's independent ethics reviewers to handle ethics complaints lodged against the mayor and members of the city council. To be eligible for selection, individuals must be retired federal or state judges or faculty members at the law schools at Arizona State University or the University of Arizona who do not live in Scottsdale and do not work for firms or employers that regularly have business in Scottsdale or represent clients in Scottsdale. In the event the city attorney cannot select a sufficient number of eligible people who can perform the necessary services, then the city attorney may complete the pool by selecting independent qualified attorneys who do not live or office in Scottsdale and whose firms or employers do not regularly have business in Scottsdale or represent clients in Scottsdale. At least two-thirds of the independent ethics reviewers shall be retired judges or law school faculty members. Individuals who serve as the city's independent ethics reviewers shall do so as the city's agents and enjoy the city's full liability protection and immunity as allowed by law. Each year the city attorney shall nominate one person from the independent ethics reviewers to serve as the city's "independent ethics officer," and the other independent ethics reviewers will either confirm the nominee or select another reviewer from the pool. The independent ethics officer shall not serve in that role for more than one consecutive year.

(b) Initial screening of complaints. The city attorney shall immediately transfer any complaint filed against the mayor or members of the city council to the city's independent ethics officer, who will conduct the initial screening of the complaint and within fifteen days issue a report of findings and conclusions and recommend that the city attorney handle the complaint as follows:

- (1) Return it for being incomplete;
- (2) Dismiss it for being untimely;
- (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition – as opposed to an aspirational or administrative provision – of the ethics code or any laws;
- (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the independent ethics officer

determines the complaint was false, misleading, frivolous, or unsubstantiated;

(5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or

(6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the city's Code of Ethical Behavior or a city law, refer the matter to an independent ethics panel for further action as set forth in subsection (c) below.

In all circumstances, the city attorney shall follow the independent ethics officer's recommendation and notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(c) Review and findings. If the independent ethics officer recommends referral of a complaint to an independent ethics panel for further review, then the city attorney shall immediately transfer the complaint to an ethics panel consisting of three independent ethics reviewers selected by the independent ethics officer from the pool of eligible individuals. The members of the ethics panel shall investigate the complaint and report to the city council, the complainant, the official who is the subject of the complaint, the city attorney, and the city clerk its findings of fact and conclusions of law within sixty days (unless the panel requests a thirty day extension that is granted in writing by the independent ethics officer). The city council shall consider the ethics panel's report at a public meeting and either accept or reject the ethics panel's report as submitted.

Sec. 2-58. Review of complaints.

(a) Presumptions. The city attorney's recommendation to refer a complaint for further review does not mean that any of the complaint's allegations are true or that any city official has violated this ethics code or any law.

(b) Procedures. The city attorney will adopt written rules of procedure to govern the review process, including the right of a city official against whom the complaint has been lodged to respond to the complaint, attend any hearing, and present witnesses and other evidence on her or his own behalf.

(c) Expedite. The timelines for handling complaints set forth above set the outer limits. Reviewers and decision-makers are strongly encouraged to make their findings, recommendations, and decisions as expeditiously as possible for the sake of the public and the city officials against whom complaints have been filed.

(d) Public information regarding action taken and reports issued. On the same day the city attorney notifies a complainant of the action taken on a complaint as set forth in subsections 2-56(a) and 2-57(b) of this Code, above, and on the same day the city attorney issues a report to the city council regarding complaints against members of city boards, commissions, committees, task forces,

or other appointed advisory groups as set forth in subsection 2-56(b) of this Code, above, or an ethics panel issues a report to the city council regarding complaints against the mayor or a member of the city council as set forth in subsection 2-57(c) of this Code, above, copies of those notices and reports shall be filed with the city clerk and made available to the public as public records.

(e) Inapplicable provisions. The provisions of section 1-8 of this Code are inapplicable to divisions 3 and 4 of this article.

**COMPLAINT AGAINST CITY OFFICIAL
CITY OF SCOTTSDALE CODE OF ETHICAL BEHAVIOR**

If you believe a city official in her or his official capacity has violated a mandatory requirement or prohibition in the City of Scottsdale Code of Ethical Behavior, set forth in Scottsdale Revised Code ("SRC"), Article II, Chapter 2, Division 3 (§§ 2-47 through 2-54) or violated any state or city law you may file a sworn complaint with the Scottsdale city attorney.

You are required to sign and have notarized an affidavit as to the truth of the information in your complaint. Pursuant to SRC § 2-55(c):

A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and potential civil liability for, among other possible causes of action, defamation. . .

To make a complaint, **all** of the information listed below **must be identified/provided**. Attach additional pages, as necessary. Incomplete information will result in the return of your complaint. If the complaint is based on information and belief, you must identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to you by those sources.

1. Your name, address, and telephone number.

2. Name and position of the city official who is the subject of the complaint.

3. The nature of the alleged violation, including the specific provision of the ethics code or law allegedly violated.

4. Statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred.

5. List all documents or other material in your possession that are relevant to the allegation.

6. List all documents or other material relevant to the allegation that are available to you, but are not in the your possession.

7. List all other documents or other material relevant to the allegations but unavailable to you, including the location of the documents, if known.

8. A list of witnesses, what they may know about the allegation, and their contact information, if known.

9. If the alleged violation occurred more than 90 days before the filing of this sworn complaint with the city attorney, you must:

- a) identify the date that you learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation.

b) provide a list of the persons with knowledge about the date the violation was discovered.

c) provide a summary of the information the persons listed in b), above, know about the discovery.

AFFIDAVIT

I, _____, after first being duly sworn, upon my oath, depose and say that the information contained in the forgoing complaint, including any attachments to it, is true and correct, or I have good reason to believe and do believe that the facts alleged constitute a violation of the City of Scottsdale Code of Ethical Behavior and/or state or City law. I declare under penalty of perjury of the laws of the State of Arizona that the foregoing is true and correct.

Signature of complainant

Subscribed and sworn to before me by _____
this ____ day of _____, _____.

Notary Public

My Commission Expires:

Provided with the Ethics Training Handbook is a copy of “You as a Public Official (December 2005).”

This is a publication of the League of Arizona Cities and Towns and is available for purchase at: <http://azleague.org/> or by calling (602) 258-5786.

City of Scottsdale elected and appointed officials, residents and staff, may contact the City Attorney’s Office at (480) 312-7308 for a copy.

BOARD, COMMISSION, AND COMMITTEE HANDBOOK

UPDATED OCTOBER 2015



SECTION 5. LAWS AND OTHER DOCUMENTS

5.1 Code of Gilbert

The Code of Gilbert sets forth local laws adopted by the Mayor and Council. Laws are adopted by Ordinance.

All Board, Commission, and Committee members are subject to the requirements found in the Code of Gilbert, Chapter 1, Article IV Boards, Commissions and Committees, Division 1 Generally. Other requirements governing specific Boards, Commissions, or Committees may be found in Article IV Board, Commissions, and Committees.

A copy of the Code of Gilbert, Chapter 1, Article IV Boards, Commissions and Committees, can be found in Appendix C.

5.3 Council Policy Statements

Council may establish policies through a Council Policy Statement. The following Council Policy Statements relate the Boards, Commissions, and Committees.

Policy Statement 2012-03 Code of Ethics

The Code of Ethics establishes standards of conduct for Gilbert's Public Officials. Topics covered in the policy address the responsibilities of public service, Open Meeting Law, Conflicts of Interest, Confidential Information, Council Relations with Other Public Bodies and Agencies, Code of Ethics Training, Procedures, and Enforcement.

Policy Statement 2012-05 Electronic Equipment and Services Policy

Certain Boards, Commissions, and Committees may use electronic equipment and services that may include email accounts, iPads, personal computers, or accounts in Dropbox or similar cloud computing. The policy sets forth what users must comply with if they are assigned these devices or services.

A complete copy of these Policy Statements can be found in Appendix D.

5.3 Other Town Codes and Documents

Local laws are also found in Codes or documents adopted for a specific purpose, such as the Land Development Code, the General Plan, the Subdivision Regulations, and similar Codes. The Staff Liaison provides the Board, Commission, or Committee members a copy of any Codes or documents needed to perform their duties.

POLICY STATEMENT NO. 2012-03

SUBJECT: Code of Ethics

DATE: August 2, 2012

POLICY STATEMENT

SUBJECT: Code of Ethics for Members of the Town Council and Boards, Commissions and Committees

PURPOSE AND ETHICS STATEMENT

The Town of Gilbert is a clean, safe and vibrant community that values trust, honesty, personal responsibility, professionalism, service and accountability. Members of the Town Council and its boards, commissions and committees ("Public Officials") have an obligation to the residents of Gilbert, its customers and its partners to uphold the highest standard of ethics.

The purpose of this Code of Ethics is to establish standards of conduct for Gilbert's Public Officials in order to maintain public confidence in the integrity of Gilbert's Public Officials and to instill public trust through the actions, words and deeds of Gilbert's Public Officials. The requirements of this Code of Ethics are in addition to and are intended to complement the requirements of State law governing conduct of Public Officials.

POLICY

1. ***Responsibilities of Public Service.*** Recognizing the special responsibilities of serving Gilbert and its citizens and customers, Public Officials shall maintain the highest standards of integrity and honesty and shall treat all members of the public and fellow colleagues with respect, courtesy, concern and responsiveness.
 - 1.1 **Fairness and Respect.** All issues and citizens shall be handled with fairness, impartiality and respect. Public Officials have an obligation to treat all citizens fairly, such as by dividing time reasonably among potential speakers on an issue at a public hearing or meeting, by having an open mind on issues presented, and by being willing to listen to different points of view.
 - 1.2 **Meeting Attendance.** It is the responsibility of Councilmembers to attend Council meetings and the responsibility of other Public Officials to attend meetings of their respective board, commission or committee to which they have been appointed in order to fairly conduct the business of Gilbert. It is also the responsibility of Public Officials who have been appointed as voting members representing Gilbert on other boards, commissions or committees to attend meetings of those boards, commissions or

committees. Absence from meetings should be avoided if at all reasonably possible.

- 1.3 Abstaining from Voting. A Public Official should not abstain from voting on a matter before his or her Public Body unless he or she has a conflict of interest or believes he or she may have a conflict of interest or a personal interest as set forth in Paragraph 3.4.
2. **Open Meeting Law.** The intent of the open meeting law is to assure that government is transparent and that the public's business is conducted in public.
 - 2.1 Compliance with Open Meeting Law. Public Officials shall comply with the open meeting law of the State of Arizona and shall not attempt to circumvent the requirements of the open meeting law.
 - 2.2 Polling. Practices such as polling individual members to reach a decision outside a public meeting is prohibited.
 - 2.3 Serial Meetings. A discussion among less than a quorum may lead to a violation of the open meeting law if eventually a quorum is involved in the discussion. This is a violation of the open meeting law and is prohibited. For example, if three members of the Council discuss a matter that is before the Council or may come before the Council for discussion or action, and one of those members discusses the matter with another member of the Council, a serial meeting has been held without notice and agenda required by the open meeting law. Serial meetings may occur through telephone conversations, written correspondence, e-mail or other means of communications about a matter of Town business.
 - 2.4 Use of Staff or Others. Use of Gilbert's staff or others to promote discussion among other members of the Public Body to circumvent the purposes of the open meeting law is prohibited.
 - 2.5 Open Meeting Law Violations. Notwithstanding the reporting process set forth in paragraph 7.4, reports of violations of the open meeting law may be made directly to the Attorney General's office or the County Attorney's office.
3. **Conflicts of Interest.** The purpose of the conflict of interest laws is to prevent self-dealing by Public Officials and to remove or limit any improper influence which might bear on a Public Official's decision. A conflict of interest occurs when (i) a Public Official or a relative of the Public Official has a pecuniary interest in a matter that may come before the Public Body during the Public Official's term of office on which the Public Official sits and that interest is not a remote interest as defined in ARS Section 38-502(10), or (ii) or when the Public Official has an interest that results in the Public Official not being able to act

impartially on a matter before the Public Body. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.


- 3.1 **Compliance with Conflict of Interest Laws.** Public Officials shall comply with the conflict of interest laws of Arizona. If a Public Official is not sure he or she has a conflict of interest on a matter before the Public Body of which the Public Official is a member, the Town Attorney should be contacted. Requests related to conflicts of interest are confidential; however, official opinions of the Town Attorney are required by law to be a public record.
 - 3.2 **Disclosure of Conflict of Interest.** If a Public Official has a conflict of interest, he or she shall disclose that fact as soon as possible by filing a statement with the Town Clerk setting forth the nature of the conflict of interest. The Public Official shall not participate in any manner as a Public Official in the matter.
 - 3.3 **Loyalty.** Public Officials have an obligation to put the interest of Gilbert over personal considerations and to make the public's interest their primary concern.
 - 3.4 **Personal Interests.** Occasionally a Public Official may find that he or she has a personal interest in a matter, even though a conflict of interest would not exist under the conflict of interest laws. Public Officials are encouraged to adhere to strongly held ethical values which are exercised in good faith and to refrain from discussing or voting on a matter if he or she believes the personal interest precludes making a fair and impartial decision.
 - 3.5 **Gifts.** Public Officials shall disclose in writing to the Town Clerk any (i) gift, benefit or favor received with a value in excess of \$50.00 or (ii) any gifts, benefits or favors with a combined value in excess of \$50.00 within a six month period, from a person with a financial interest in business with the Town or in a matter which may come before the Public Body. The written disclosure shall be made within two (2) business days of receipt of the gift, benefit or favor or multiple gifts, benefits or favors totalling \$50.00 in value within a six month period. If the gift is donated to Gilbert or a bona fide charity, it does not have to be disclosed; provided however, that the gift is donated immediately upon receipt.
4. ***Confidential Information.*** Gilbert is committed to maintaining an open and accessible government intended to engender trust and confidence from the public, while at the same time protecting confidential information as required or permitted by law.

- 4.1 **Disclosure of Confidential Information.** Public Officials shall not disclose confidential, privileged or protected information, unless authorized by the majority vote of a quorum of the Council or is required by law to do so.
- 4.2 Public Officials shall not use confidential, privileged or protected information to advance the financial or other private interest of himself or herself or others.
- 5. ***Town Council Relations with other Public Bodies and Agencies.*** The Town Council may attend meetings of other Public Bodies of Gilbert or other governmental agencies. Individual Councilmembers shall accurately describe the positions of Gilbert to such Public Bodies and governmental agencies.
- 6. ***Code of Ethics Training.*** It is important that training be made available to Public Officials in order that the purposes of this Code of Ethics may be successfully implemented.
 - 6.1 **Training.** Public Officials shall attend at least one training session per term regarding the regarding this policy.
- 7. ***Procedures.*** It is important that procedures for reporting violations of this Code of Ethics be clearly understood and followed.
 - 7.1 **Questions.** Questions about this Code of Ethics, a conflict of interest, or other ethical problem should be presented to the Town Attorney's office. If time permits, requests should be in writing to the Town Attorney. If the ethical issue arises during a meeting, rather than risk an inadvertent violation of the law, the safest course of action is simply to declare that a conflict may exist that prevents the Public Official from participating.
 - 7.2 **Obligation to Report Violations.** Public Officials have a duty to report if another Public Official is violating laws or this Code of Ethics.
 - 7.3 **Interference with Duty to Disclose Violations.** Public Officials shall never attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any person with the intent of interfering with that person's duty to disclose improper activity.
 - 7.4 **Reporting Process.** Reports of alleged violations of this Code of Ethics shall be made to the Town Clerk, whether such report is by a member of the public, an employee or a Public Official. Upon receipt of an alleged violation, the Town Clerk shall forward a copy to the members of the Public Body and to the Town Attorney. The Town Attorney shall either prepare a recommendation to the Public Body or request an independent investigation. Recommendations of the Town Attorney or the independent

investigator shall be filed with the Town Clerk. The Town Clerk may place the matter on a Council agenda for action by the Council.

8. **Enforcement.** The Council intends that violations of this Code of Ethics be treated fairly and expeditiously.

- 8.1 **Council Action.** The Council shall review the report and the recommendation at a regular or special Council meeting. The report and the recommendation shall be a public record. If the Council determines that a Code of Ethics violation has occurred, the Council may impose penalties in accordance with Paragraph 8.2.
- 8.2 **Penalties.** It is the intent of the Council to educate, and where necessary, discipline Public Officials who violate this Code of Ethics. In addition to other penalties provided by law, the members of a Public Body may vote to censure another member who violates this Code of Ethics, provided that (i) the member who may be censured shall not vote on the matter but may explain his or her actions, and (ii) censure shall require a vote of five (5) members of the Public body. This paragraph does not prevent informal resolution of minor infractions, such as immediate corrective action of the alleged misconduct.


John W. Lewis, Mayor

ATTEST:


Catherine A. Templeton, Town Clerk

Possible Training Topics for Land Use Boards

Board of Adjustments

- Arizona Government 101
 - Limitations on local authority based on constitution and statutes
 - B of A rules and procedures
 - How to conduct meetings- protocol for a quasi-judicial board
- 1. The Board of Adjustment makes quasi-judicial determinations. What does that mean and how is it different from decisions of other boards and commissions?
What factors can and should BOA consider in making their determination?
 - Educate the 6 criteria needed to consider a variance
- 2. What factors cannot be considered? What then would be inappropriate questions?
- 3. How should the board deal with communications from neighbors?
- 4. How should the board deal with ex parte communications from applicants?
 - State law- Conflicts of interest
- 5. Any suggestions on how to deal with experts (hydrologists, geologists, architects)?
 - a. Can the applicant call them forward?
 - b. Can residents call them forward?
 - c. Can the board ask for experts through staff?
- 6. Is there a different approach for zoning determinations versus appeals?
- 7. [not a question for Frank but maybe something we should cover] Why doesn't the BOA rule on appeals of SUP's?
- 8. What if I just don't like the project on the table? What is the scope of my discretion?
- 9. When is staff our advisor and when are they a party to the appeal? Or said differently, if staff is a party to the appeal, who can we ask questions about policies, engineering, procedure?
- 10. When, if at all, is a super majority vote required.
- 11. How does conflict of interest apply to these boards?

Planning Commission

1. What is the jurisdiction of the Planning Commission?
 - Roberts Rules of Order
 - Formal Rules and Procedures / our code
 - Conflicts of Interest / Ethics
 - Limitations on local authority based on constitution and statutes
2. What is the best way to learn and become familiar with the zoning code?
3. When are hearings required and when are they optional?
4. What factors should the Commission consider in making their determination?
5. What if I just don't like the project on the table? What is the scope of my discretion?
6. When am I acting legislatively and when am I acting administratively? And What's the difference and why is it important?
7. If a planning commissioner thinks a zoning code is vague, or the staff has interpreted it wrong, what should be the process for resolving?

Hillside Building Committee

1. What is in their jurisdiction and what is not?
2. Any suggestions on how to deal with experts (hydrologists, geologists, architects)?

- a. Can the applicant call them forward?
 - b. Can residents call them forward?
 - c. Can the board ask for experts through staff? No, No and No. Our Hillside Board is not certified engineers, experts or legislators and therefore have no business reviewing expert engineering. That is the job of our paid staff and engineer.
3. What does it mean that this is purely an administrative board?
4. How come I can tell them what color to paint their house but not where to put their windows?
They can't do either
5. If the Committee thinks a zoning code is vague, or staff has interpreted it wrong, what should the process be for resolving (maybe an internal question)?

City of El Mirage Code of Conduct for Elected Officials

The Three Rs of El Mirage Government Leadership: Roles, Responsibilities and Respect

The City Code provides information on the roles and responsibilities of Council Members, the Vice Mayor and the Mayor. Until now, what has not been clearly written down is a Code of Conduct for the City of El Mirage's elected officials.

This Code of Conduct is designed to describe the manner in which Council Members should treat one another, City staff, constituents, and others they come into contact with in representing the City of El Mirage. 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:	Page
○ Overview of Roles and Responsibilities	2
○ Policies and Protocol Related to Conduct	4
○ Council Conduct with One Another	7
○ Council Conduct with City Staff	8
○ Council Conduct with the Public	10
○ Council Conduct with Other Public Agencies	11
○ Council Conduct with Boards and Commissions	12
○ Council Conduct with the Media	13
○ Sanctions	14
○ Principles of Proper Conduct	15

The constant and consistent theme through all of the conduct guidelines is "respect." Council Members experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected 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 Council Members to do the right thing in even the most difficult situations.

Ethics Policy

As a prerequisite for exercising any power of office, each city official is required to read and agree in writing to comply with the provisions of these laws, regulations, policies and this ethics code, as well as to participate annually in continuing education workshops regarding public service ethics.

A listing of key public service ethic laws is shown in Exhibit "A"

Overview of Roles and Responsibilities

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the City of El Mirage Code and in the Elected Officials Guide published by the League of Arizona Cities & Towns.

MAYOR

- Acts as the official head of the City for all ceremonial purposes
- Chairs Council meetings
- Calls for special meetings
- Recognized as spokesperson for the City of El Mirage
- Makes judgment calls on proclamations, agendas, etc.
- Recommends subcommittees as appropriate for Council approval
- Serves as the liaison between the Council and the City Manager and City Attorney in regards to employee relations
- Leads the Council into an effective, cohesive working team
- Sign documents on behalf of the City of El Mirage

VICE MAYOR

- Serves at the pleasure of the Council
- Performs the duties of the Mayor if the Mayor is absent
- Chairs Council meetings in the absence of the Mayor
- Represents the City at ceremonial functions at the request of the Mayor

ALL COUNCIL MEMBERS

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

All Council Members should:

- Fully participate in City 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 City at ceremonial functions at the request of the Mayor
- Place activities and events on the Council's weekly activities calendar that invite official participation of all Council Members. A list of the activities of individual Council Members may also be submitted for public record at the option of the Council Member.
- 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 El Mirage government
- Provide contact information with the City Clerk in case of an emergency or urgent situation arises while the Council Member is out of City
- 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 City 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 with advice, if requested, from the City Attorney who acts as an advisory parliamentarian. 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.

FORMER COUNCIL MEMBERS

Past members of the City Council who speak to the current City Council about a pending issue should disclose whom they are speaking on behalf of (individual or organization).

Policies & Protocol Related to Conduct

Attendance

The City Code provides that five councilmembers may discipline another councilmember if he or she misses three (3) consecutive and duly noticed meetings of the City Council without good cause. Duly noticed meetings of the City Council include regular council meetings, special council meetings, study sessions, policy sessions, executive sessions, budget review meetings, and council committee meetings to which a councilmember is assigned.

Through this Ethics Code, the City Council finds that personal illness, family emergencies, military absences, family weddings, family graduation exercises, and bona fide business and vacation trips constitute good cause for nonattendance at council meetings. Whether good cause exists for any other absence shall be determined by vote of the entire City Council upon request of any councilmember made within ten (10) business days following the absence. The vote shall be taken after sufficient information is received explaining the reason for the councilmember's absence.

Ceremonial Events

Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City 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 City Hall are presumed to be for official City representation. Invitations addressed to Council Members at their homes are presumed to be for unofficial, personal consideration.

Correspondence Signatures

Council Members do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. The City 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 City Clerk.

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

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 City meetings.

Gifts

Arizona law prohibits elected officials and advisory board members from receiving anything of value or any compensation other than their normal salary for any service rendered in connection with that person's duties with the City. A.R.S § 38-505 (A).

Elected officials and advisory board members must consider ethical principles before accepting personal gifts of entertainment and sports/athletic activities.

Within two business days of receipt of the following gifts or favors in El Mirage, or within two business days of returning to El Mirage after receipt of a gift of favor while traveling outside of El Mirage, elected officials and advisory board members shall disclose in writing to the City Clerk all gifts, benefits, or favors received from people with a financial interest in business before the City, or which may come before the City, that:

- Relate to professional or collegiate sports, athletic, or entertainment activities or tickets, or
- Have a face value of \$50 or more, amount subject to periodic review.

Under no circumstances shall a council or board member accept a gift or favor that is a bribe, or reflects, to a reasonable person, an effort to improperly influence the member contrary to that member's responsibility to the public to act impartially on the merits of a matter.

When in doubt about these requirements, elected officials and advisory board members shall disclose the gift, benefit or favor. All disclosures will be kept for public record in the City Clerk's Office.

In summary, you can follow this checklist:

- Does the gift or favor come from someone with business before the city or which may come before the city?
- And does the gift or favor exceed \$50 dollars in value, or consist of the type of sports or entertainment tickets described above?
- And did you accept the gift or favor for yourself or another?

If you answer "yes" to all these questions, then the gift or favor has to be reported to the City Clerk. If you answer "no" to any of these questions, then the gift or favor does not have to be reported to the City Clerk unless it represents a bribe or other improper influence as described above.

Gifts having a value greater than \$50 that are donated to the city or a bona fide charity also do not need to be reported.

This section does not apply to gifts exceeding \$50 in value and intended for the City rather than as a personal gift to a Councilmember or board member. These items are City of El Mirage property. Elected officials and advisory

board members who receive a gift on behalf of the City exceeding \$50 in value shall promptly turn the gift over to the City Manager for public display or other appropriate handling.

Public Announcements in Council Meetings

Council Members who want to present a brief statement of current event may do so under the portion of the meeting specifically provided for that purpose, titled "Council Summary of Current Events." Under the Arizona Open Meeting Law, only brief announcements of public events or recognition of achievements are allowed. Council Members' statements should be focused on matters of community-wide interest and should not be used for any form of campaigning. No questions or discussions may take place, unless they are specifically listed as a separate item on the agenda.

The Call to the Public is reserved for members of the public who wish to address the Council and who have filled out the required comment card. Comments by members of the public will be limited to three minutes each. 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.

Amended 3/22/07

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 before a person is heard before a second time. 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 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. Council Members, who desire to make the first motion on issues, which they feel

strongly about, should discuss their intention with the Chair in advance of the Council meeting.

Travel Expenses

The policies and procedures related to the reimbursement of travel expenses for official City business by Council Members is according to the City of El Mirage Personnel Rules and Regulations, Section 13.4. All Council travel in excess of the allowed budget, in which the Council Member expects to officially represent the City and/or be reimbursed by the City for travel costs, must be approved in advance by the Council. The travel policy and budget for Council should be reviewed at each annual budget cycle.

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.

IN PUBLIC MEETINGS

- **Use formal titles**

The Council should refer to one another formally during public meetings as Mayor, Vice Mayor or Council Member followed by the individual's last name.

- **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.

- **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.

- **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.

- **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.

IN PRIVATE ENCOUNTERS

- **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.

- **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.

- **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.

Council Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, who implement and administer 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.

- **Treat all staff as professionals**

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

- **Direct requests for staff support through City Manager**

Consequently, remember City 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 City staff and/or requests for additional background information should be directed only to the City Manager.

- **Do not disrupt City staff from their jobs**

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

- **Never publicly criticize an individual employee**

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

- **Do not get involved in administrative functions**

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

- **Check with City staff on correspondence before taking action**

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

- **Do not attend meetings with City 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.

- **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 City staff; to do so could violate the law. City 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.

Council Conduct with the Public

IN PUBLIC MEETINGS

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**

The Mayor will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated five 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 unless the Mayor reopens the public hearing for a limited and specific purpose.

- **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.

- **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.

- **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.

IN UNOFFICIAL SETTINGS

- **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 City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new trees, etc.)

- **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.

- **Remember you are being observed**

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 City of El Mirage. 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.

Council Conduct with Other Public Agencies

- **Be clear about representing the City 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 City; 2) whether this is the majority or minority opinion of the Council.

If the Council Member is representing another organization whose position is different from the City, the Council Member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council Members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- **Correspondence also should be equally clear about representation**

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

City 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 City letterhead to express a dissenting point of view, the official City position must be stated clearly so the reader understands the difference between the official City position and the viewpoint of the Council Member.

Council Conduct With Boards and Commissions

The City 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 City's leadership and should be treated with appreciation and respect.

- **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 or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

- **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.

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

The City 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.”

- **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.

- **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 City Council Member.

- **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.

Council Conduct with the Media

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

- **The best advice for dealing with the media is to never 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.

- **The Mayor is the official spokesperson for the City’s position.**

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

- **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.

Sanctions

- **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.

- **Inappropriate Staff Behavior**

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

- **Council Members Behavior and Conduct**

City 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 City of El Mirage or with inter-government agencies) or have official travel restricted. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Council Members should point out to the offending Council Member infractions of the Code of Ethics or Code of Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose

actions are being challenged, then the matter should be referred to the Vice Mayor.

It is the responsibility of the Mayor to initiate action if a Council Member's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council Members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to: discussing and counseling the individual on the violations; recommending sanction to the full Council to consider in a public meeting; or forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration. Videotaping of the complaint hearing should be used for a Council ad hoc subcommittee.

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.

I have read the City of El Mirage Ethics Policy and agree to abide by the City's policy and all applicable state and local regulations.

Signature

State of Arizona
County of Maricopa

Subscribed and sworn to (or affirmed) before
me this _____ day of _____, 2006,
by:

Signature of Notary Public

City of El Mirage
Sampling of Public Service Ethics Laws Applicable to City Officials
(Mayor, City Council Members, and Members of All City Boards, Commissions, and Committees)

Topic	Arizona Law	General Summary¹	Penalties & Sanctions²
Bribery	A.R.S. §§ 13-2602; 38-444	It is illegal for you to solicit, accept, or agree to accept any benefit upon an understanding that it may influence your official conduct, or to ask for or receive any gratuity of reward (or promise thereof) for your official act.	Felony
Conflicts of Interests (general)	A.R.S. §§ 38-501 through -511	If you or any relative could benefit from you taking official action, then you must (1) <i>disqualify</i> yourself by not participating “in any manner” – not voting, not discussing, not anything, and (2) <i>disclose</i> that personal interest.	Felony or misdemeanor, more
Contracting with the City	A.R.S. §§ 38-503, 36-1406, -1477	If you or any relative has a substantial interest in “any contract, sale, purchase or service” to the City, then you must disclose that interest and “refrain from voting upon or... participating in any manner.”	Felony or misdemeanor; cancel contract
Conduct After Leaving City Position (“Anti-Revolving Door”)	A.R.S. § 38-504(A)	For 12 months after your City service, you cannot represent another person for compensation before the City in connection with any matter in which you personally participated in a substantial and material	Felony or misdemeanor
Confidential Information (Disclosure/Use of)	A.R.S. § 38-504(B)	During and for two years after your City service, it is illegal for you to disclose or use for personal profit any confidential information you learned in the course of your duties.	Felony or misdemeanor, more
Discrimination & Favoritism	Constitutions, plus statutes; A.R.S. § 38-231(G)	It is illegal to discriminate based on race, color, gender, national origin, religion, age, or physical or mental disability; plus, in your Loyalty Oath you pledged to “faithfully and impartially discharge the duties of...office.”	Attorneys fees, damages, more
E-mail	A.R.S. §§ 39-121; 38-431 <i>et seq.</i>	Your e-mail communications are subject to the Public Records Law, and improper e-mail involving a quorum of the members of a public body may violate the Open Meeting Law.	Attorneys fees, costs, more
Employment of Relatives (“Nepotism”)	A.R.S. § 38-481	You may not be involved in the appointment or hiring of a relative (which is defined broadly to include your parents, siblings, spouse, children, grandchildren, grandparents, and all in-laws).	Misdemeanor
Employment – Discussion of Future Employment	A.R.S. §§ 38-503, -504(C)	If you engage in certain discussions about future employment, then it might trigger bribery or conflicts of interest laws.	Felony or misdemeanor

¹ **CAUTION:** These brief descriptions are provided for quick introductory purposes and cannot and do not present the full scope of these laws.

² Violations of these laws may expose a City official to a variety of sanctions, including criminal penalties, personal financial liability (for damages and fines, as well as payment of costs and attorneys fees – both prosecution and defense), cancellation of contracts, public embarrassment (for the official and her or his family and employer), and removal from office. For example, a City official convicted of a felony may fined up to \$150,000 for each violation and sent to prison for several years. A.R.S. §§ 13-801, - 701. Conviction of a misdemeanor may result in a fine up to \$2,500 for each violation and a jail sentence of up to six months. A.R.S. §§ 13-802, - 707. This information is presented not to scare City officials, but to help them by underscoring the seriousness of conducting the public’s business properly.

EXHIBIT A

PARADISE VALLEY TOWN COUNCIL REFERENCE MATERIALS

Demographics and General Information

- [Demographics](#)
- [Map Book](#) (click on grid section to enlarge)
 - [Home Owners Association Map](#)
 - [Sewer District Map](#)
 - [Water District Map](#)
- Zoning Information
 - [Special Use Permit \(SUP\) Properties](#)
 - [Residential Homes by Zoning District](#)

Governing Documents

- [Mission Vision Values Statements](#)
- [General Plan](#)
- [Town Code and Zoning Ordinance](#)
- [Town Council Policies and Procedures](#)

Financial Documents

- [Budget](#)
- [Comprehensive Annual Financial Report \(Audit\)](#)

Reference Publications / Manuals

- [You as a Public Official](#)
- [What All Local Elected Officials Need to Know](#)
- [Anatomy of a Council Meeting](#)
- [Granicus iLegislate](#)

Social Media

Website <http://www.paradisevalleyaz.gov>
Facebook [Paradisevalley.az](#)
Twitter [@ParadiseVallAZ](#)
YouTube [Paradi5eValleyAZ](#)

Staff Telephone Numbers

Kevin Burke	O-480-348-3533	C-602-
Andrew Miller	O-480-348-3526	C-602-
Pete Wingert	O-480-348-3502	C-928-
Eva Cutro	O-480-348-3522	C-602-
Dawn Marie Buckland	O-480-348-3555	C-623-
Paul Mood	O-480-348-3573	C-480-
Jinnett Hancock	O-480-348-3520	C-602-
Brent Skoglund	O-480-348-3540	C-602-
Duncan Miller	O-480-348-3610	C-480-
Tim Gomez	O-480-348-3544	

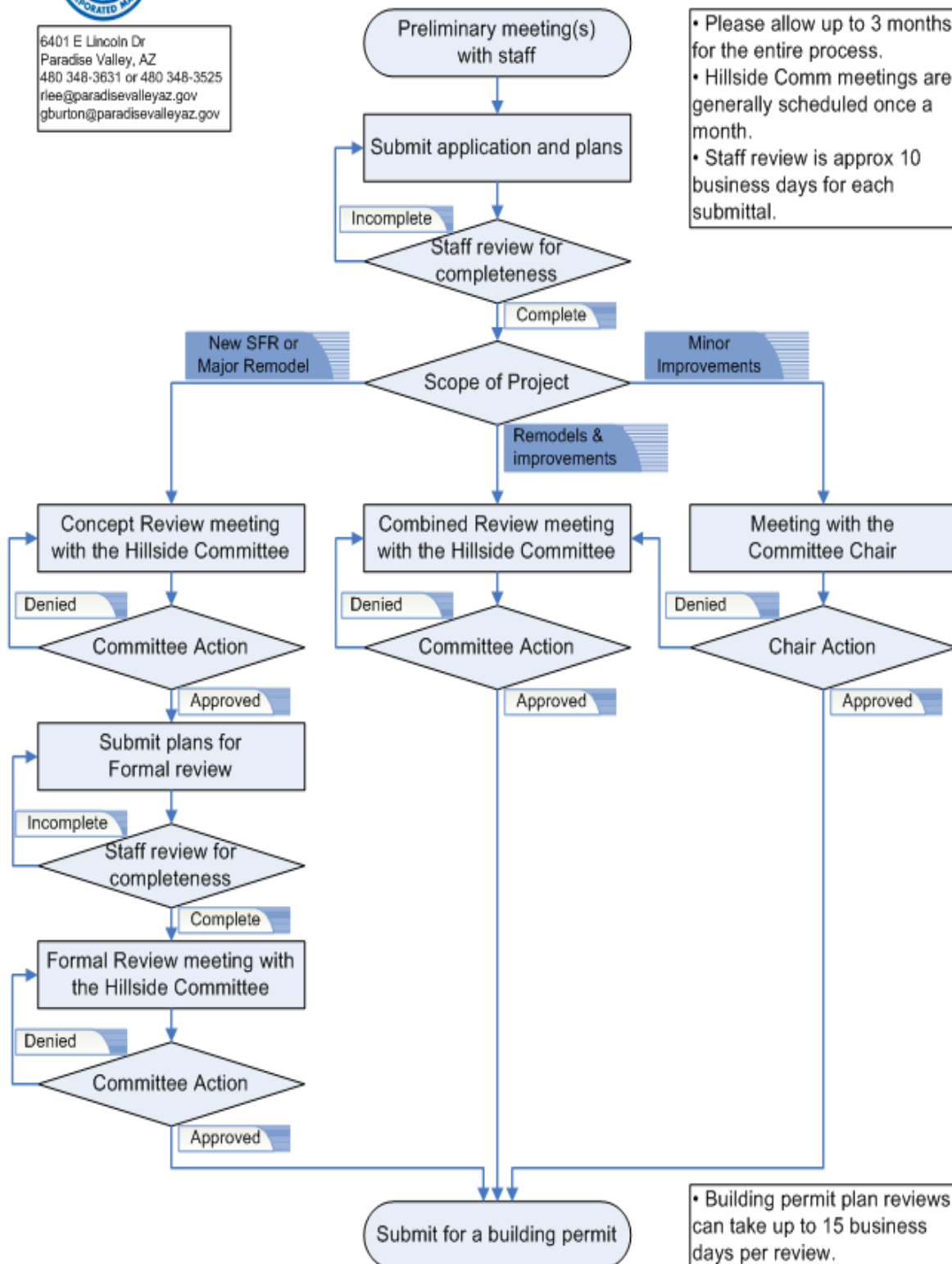
LAND USE BOARD RELATED DOCUMENTS

- Chapter 2, Section 5 of Town Code
- Enabling Ordinance of Committee
- Zoning Code
- Hillside Code
- Hillside Flow Chart
- A.R.S. Statutes pertaining to Planning Commission and Board of Adjustment
- Landscape Guidelines
- SUP Guidelines



6401 E Lincoln Dr
Paradise Valley, AZ
480 348-3631 or 480 348-3525
rlee@paradisevalleyaz.gov
gburton@paradisevalleyaz.gov

Hillside Code Process Flow Chart



TOWN OF PARADISE VALLEY

Governance #7
December 7, 2017



Appointments

- Key Question: Does Mayor and Council wish to alter and/or memorialize the appointment process currently in place?



Appointments

- Changes Proposed 11-16-17
 - Get all Committees on Same Cycle (MPC, Mummy)
 - Liaisons to Experience Scottsdale an Annual Appointment by the Council.
 - ES would prefer a July 1 – June 30 cycle
 - No Other Changes to Liaison Assignments



Governance

- Appointments
 - Boards and Commissions
 - Special Committees
 - ~~– Liaisons to Boards and Commissions~~
 - ~~– Representatives to Member Agencies~~



Appointments

NAME	LEGAL	MEMBERSHIP
	<u>AUTHORIZATION</u>	<u>APPOINTMENT</u>
Board of Appeals	TC Chap 5. 2012 IBC 113.1	Town Council Serves as members
Planning Commission	A.R.S. / TC Sec 2-5-2	Council Appointment
Personnel Appeals Board	TC Sec. 2-5-5	Council Appointment
Advisory Committee on Public Safety	TC Res. 1330/Res 2017-21	Council Appointment
Municipal Property Corporation	Articles of Incorporation	(1)Council Appt. or (2)MPC Board Appt/Council Confirm
Public Safety Personnel Retirement Board	A.R.S. 38-847	Mayor Appt / Council Confirm
Board of Adjustment	A.R.S./ TC Sec. 2-5-3	Mayor Appt / Council Confirm
Mummy Mountain Preserve Trust	Res. 923 /Articles of Incorporation	Mayor Appt / Council Confirm
Arts Advisory Committee	TC	Mayor Appt / Council Confirm
Hillside Building Committee	TC Sec. 2-5-6	Mayor Appt / Council Confirm
Historical Advisory Committee	TC	Mayor Appt / Council Confirm



Appointments

- Boards & Commissions – Variety of Methods
 - Mayor Appoint/Council Confirm
 - Council Appointments
 - Committee Nominates and Council Confirms
- Mid Year Vacancies
 - Alternates (How to engage those who weren't selected)
 - Any Process ideas for Mid-Year Vacancies



Appointments

- Key Question: Does Mayor and Council wish to alter and/or memorialize the appointment process currently in place?



Governance

- Next Steps – Remaining Topics
 - Conflict of Interest/Update Ethics Policy
 - Training Land Use Boards
 - Sequence regrading Board of Adjustments Variances versus Hillside Building Committee Review
 - Use of Statement of Direction
 - Parameters of Town Manager Work Groups
 - Supervising Structure
 - ~~How to Attract and Engage Volunteers~~



Conflict of Interest/Ethics Policy

- Proposed by Councilmember Pace
- Review what is covered by COI Statute and Not
 - Who is privileged to receive that information?
 - What if Council or public disagrees?
- Are there improvements to be made to the Ethics Code?



What falls under existing Ethics Policy?

Conflict of Interest/Ethics Policy

- Does Council want it aspirational or regulatory?
- Propose implementing a training module
- Town Attorney led item



Train Land Use Board Members

- Proposed by Councilmembers Moore and Pace
- Planning Commission, Hillside, BOA Focus
- Beyond Open Meeting Law
- Provided Governing Documents and Review
 - Process, Rules of Procedure, Jurisdiction
- Second Level Training
 - Case Law, Appropriate Questions, Roles, Public



Train Land Use Board Members

- Historically Base Level Training Done by State
 - Stopped, ULI now conducting but infrequent
- Manager has Secured a Trainer
 - Town Attorney of Marana
- Possible Town Manager Task Force
- Role of Staff, Possible Mayor or Council Liaison



Sequence of Hillside Application

- Discussed by Several Councilmembers
- What comes first, a variance or Hillside Building Committee review
- Currently variance comes first (but no rule)
- Justification is:
 - Variances have specific criteria diff from Hillside
 - Concern how HBC Comments used in BOA Hearing



Sequence of Hillside Application

- Reversing Sequence has Benefit of:
 - Public gets to see the full project
 - HBC can outline all requirements, ideas for no var.
- Propose
 - Application to HBC for Concept Review
 - Variance by BOA
 - Formal Review by HBC



Use of SOD's

- Proposed by Councilmember Moore
- Use of Statement of Direction when delegating work to a committee.
- SOD is a tool in the Zoning Code (1102.3(4))
- Mentioned in Section 2-5-2 of Town Code
- Suggest an Amendment to 2-5-1 (C).



Use of SOD's

2-5-1 (C.) Statement of Direction - A Statement of Direction is a document administered by the Town Council at the beginning of policy or project task assigned to a committee or commission. A Statement of Direction is not a final decision of the Town Council. Its purpose is to guide committees and commissions on policy aspects that are preferred or discouraged by Council in order to be most transparent and efficient in its development. It may address, but is not limited to, the following items:

1. Anticipated time frame for completion;
2. When and if drafts should be referred back to Mayor and Council;
3. Expectations for public participation;
4. Process for new policy considerations.

At any time during the review process the assigned Committee and Commission may request clarification and/or expansion of the Statement of Direction based on additional information that has evolved.

Parameters of Town Manager Task Force

- Proposed by Manager Burke
- Possible Parameters – In Rules of Procedure
 - Council Define Scope of Work for Task Force
 - Assigned Members won't participate in vendor selection, but can develop procurement docs
 - Task Force can decide process but not new policy
 - Town Manager retains directional authority over staff



Supervising Structure

- Proposed by Councilmember Pace
- Council has 3 primary employees
 - Town Manager
 - Town Attorney
 - Presiding Judge (kind-of Associate Judges)
- Reviews of TM and TA led by Vice Mayor (2-2-7)



Discussion about supervision of Town Attorney

Governance

Questions?





Action Report

File #: 17-428

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager
Duncan Miller, Town Clerk

DATE: December 7, 2017

DEPARTMENT: Town Manager

AGENDA TITLE:

Review of Contract Proposal for a Single Trash Hauler

Town Value(s):

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

Mitigating the impacts of multiple trash haulers on neighborhoods creates an improved sense of community.

Council Goals or Statutory Requirements:

Responsiveness to Residents - Identify and consider resident concerns in a timely manner and seek solutions to the best of the Town's ability. Trash - Explore a single hauler solution.

RECOMMENDATION:

Review the single hauler proposal and provide direction regarding public input process.

SUMMARY STATEMENT:

For the past two years, the Town has been examining the impacts associated with multiple trash haulers in Paradise Valley neighborhoods. The Town divided its mitigation work into two tiers. Tier one were legislative changes that maintained multiple haulers but limited collection to two days per week, required new vehicles with less emissions, and required the implementation of technology that reduced noise (such as smart back up alarms and operation at idle hydraulics).

The second tier, and one identified in the March 2017 Council Retreat, was to explore the possibility of a single hauler. The outstanding items to be mitigated included impact to Town streets and economies of scale from a single provider. Both impacts were anticipated to be mitigated by a single trash hauler.

Regarding the impact on Town streets, Council requested information to help quantify the impact particularly from a financial standpoint. The attached memos from staff outline that research and findings (Shano April 2016 Memo, Burke 2017 memo).

In terms of economies of scale, Council was clear that this was not intended to be a theoretical discussion but rather the solicitation of actual proposals that could be evaluated and compared to the status quo. Staff and Council developed a Request for Proposal (RFP) procurement document collaboratively to ensure that current services could be purchased from a single hauler and to know how those costs compared. The RFP was published in July. Four proposals were received in September. A committee evaluated the proposals based upon the scoring criteria on the RFP. The scoring criteria was as follows (the full RFP is attached):

- General Information (10%)
- Experience and Qualifications (20%)
- Method of Approach (30%)
- Billing, Customer Service, and Public Education (10%)
- Cost of Service (30%)

The following was the ranked order of the proposals:

1. Republic Services (a.k.a. Allied Waste Transportation)
2. Right Away Disposal (RAD)
3. Waste Management
4. Curbside Recycling and Disposal

The Town Manager and Town Clerk then commenced negotiations with the top scoring proposer, Republic Services, to develop a contract for services to present to the Town Council for a vote up or down.

The study session on December 7, will review the full terms of this contract and solicit Mayor and Council comments regarding soliciting public feedback. Staff's recommendation in terms of public process include:

- Publication of the terms and conditions on the Town's Website
- Notification that these terms are posted by:
 - Twitter
 - Facebook
 - Neighborhood.com
 - Email to subscribers of "Notify Me" and "In the News" on the Town Website
 - Code Red Administrative Alert
- Publishing of a ½ page ad in the January 3rd and January 10th issues of the *Paradise Valley Independent*.

- A page in the December 2017 Issue of the Town Reporter
- Conducting a Community Conversation/Public Comment Session at the January 11, 2018 Town Council Meeting
- Providing an email address specifically for public feedback to Mayor and Council regarding the proposal. TrashFeedback@paradisevalleyaz.gov

The intention is to listen to public feedback on January 11th Council Meeting and either vote that night or postpone the vote to the January 25th Council meeting in order to address any follow-up questions or requests of Council.

The terms and conditions of the Republic Service Proposal are more fully detailed in the attached contract, but are summarized here for review purposes.

- I. All vehicles shall be of Compressed Natural Gas (CNG) with the exception of any small (less than 12' in length, by 8' in height and at or under six cubic yards) unit for purposes of collecting on hillside or narrow collection points.
- II. All carts (96 Gallon collection bins) shall be new upon commencement of the contract for each customer.
- III. Call center hours shall be maintained from 4:00 a.m. - 7:00 p.m. Arizona Time
- IV. Allied Waste shall provide a mobile app that allows customers to enroll, pay their bill and report problems with service.
- V. Paradise Valley Customers shall have the ability to pay by cash, check or credit card.
- VI. Failed or missed collections reported before 11 a.m. shall be retrieved the same day. Otherwise collections shall be within 24 hours of reported time.
- VII. Allied Waste shall install and operate video cameras and recordings on each vehicle operating in the Town. This will help confirm or dispute complaints including missed collections.
- VIII. Allied Waste shall have Geographic Position Systems (GPS) on each vehicle collecting in the Town so as to provide time and location of collections within the Town to aid in resolving complaints and performing licensed services.
- IX. Allied Waste to provide, either themselves or through a third party, annual Household Hazardous Waste collection consistent with the RFP as well as annual Christmas Tree collection and semi-annual shredding events.
- X. Allied Waste shall honor any contract for residential trash and recycling collection and disposal service entered into prior to July 14, 2017 for up to three years from the Commencement Date of this contract (a.k.a. "Most Favored Nation"). This shall apply to individuals or Home Owners Associations. Said contract shall stipulate contracted services (such a frequency, size of collection container, etc.) and price for the entire contract period. Upon expiration of the individual or HOA contract or upon the third anniversary of the Commencement Date, the customer shall move to the rate specified in this contract for selected services. Further, any HOA may remain with their contracted provider up to the third anniversary of the Commencement date consistent with the terms of the RFP.
- XI. The 2018 - 2019 pricing shall be consistent with the Alternate Proposal provided in Exhibit B in that Basic Service (1 time per week trash and 1 time per week recycle), including HHW, Shredding and Christmas tree collections, shall be priced at 17.84 per month. Rate adjustments for the following six years may increase no more than 3.5%. Therefore, anticipated rate shall be no more than"
 - a. July 2018 - June 2019 = \$17.84

- b. July 2019 - June 2020 = \$18.46
 - c. July 2020 - June 2021 = \$19.11
 - d. July 2021 - June 2022 = \$19.78
 - e. July 2022 - June 2023 = \$20.47
 - f. July 2023 - June 2024 = \$21.19
 - g. July 2024 - June 2025 = \$21.93
- XII. All other pricing shall increase by no more than 3.5%.
- XIII. The Town and Allied Waste agree that Standard Service (a.k.a. twice a week collection) will not be offered until October 1, 2018. Exception will be those subscribing under Section X above ("Most Favored Nation").
- XIV. Pricing for a second and additional 96 gallon container shall be reduced to \$5 per month regardless of Basic or Standard subscription.
- XV. Pricing for Back-Door service shall be reduced to \$25 per month for Basic Service and \$50 per month for Standard Service.
- XVI. Allied Waste shall provide an employee full time at the Paradise Valley Town Hall for a period of one week for enrollment and question and answer. Said week shall be mutually agreed upon by both parties but not later than June 1, 2018. Thereafter a dedicated phone number shall be provided through the term of the contract for Paradise Valley residents to call for sign-up and service related questions. Lastly, Allied Waste shall provide an office location for residents to visit for customer service.

Although the primary purpose of the study session is to review the terms and discuss a public feedback process, Council may provide other direction.

BUDGETARY IMPACT:

The Licensee will be responsible for all billing services and customer complaints. No additional Town staffing is anticipated. Additional phone calls are expected but should be absorbed by existing staff. Savings associated with street maintenance are assumed negligible until further review after contract is in place and results can be observed.

ATTACHMENT(S):

Memo from Public Works Director Jim Shano
Memo from Town manager Kevin Burke
Contract with Allied Waste Transportation (Draft)



Public Works / Engineering Department

MEMORANDUM

TO: Kevin Burke, Town Manager

FROM: James P. Shano, P.E., C.P.M., Public Works Director / Town Engineer / Assistant to the Town Manager for Strategic Planning

DATE: April 8, 2016

SUBJECT: WEAR AND TEAR OF GARBAGE TRUCKS ON RESIDENTIAL STREETS

I have reviewed several reports as it relates to the wear and tear of garbage trucks on residential streets:

1. R3 Consulting Group, Inc., Trash Services Study, City of Fort Collins, CO, 2008
2. Schneider, J., Analysis of Waste & Recyclable Materials Collection Arrangements, Presented to the Minnesota Pollution Control Agency, St. Paul, MN, 16 April 2009.
3. Foth Infrastructure & Environment, LLC, Analysis of Waste Collection Service Arrangements, submitted to the Minnesota Pollution Control Agency, St. Paul, MN, 2009.
4. Wilde, W.J., Assessing the Effects of Heavy Vehicles on Local Roadways, Minnesota Department of Transportation, August 2014

Street Maintenance Impacts:

- Trash trucks are typically the heaviest vehicles regularly operating on residential (local) streets and are a major contributor to wear and tear on those streets. While trash trucks also contribute to the wear and tear on collector and arterial streets, those streets are typically designed to a higher standard and experience significantly more vehicle trips and large truck trips than local streets.
- The most significant step the Town can take to minimize trash truck street maintenance impacts is to reduce the number of trash truck miles traveled on the Town's Streets.
- The Town uses a pavement condition index (PCI) which is a common unit of measure used to rate the condition of pavements. The PCI rates pavements on a score of 0 – 100 with a higher value indicating better pavement condition. Rapid deterioration of pavement typically occurs after roadways drop to a PCI score of 60 or lower. Studies have shown that every dollar spent performing preventative maintenance on a roadway with a PCI of 70 or higher saves \$5 in future costs.
- Quoted from the City of Falcon Heights, 2004 study, that limiting the number of garbage trucks....to only one hauler could extend the usefulness of the street 5 to 10 years.

- Most common data available for making damage comparisons is Equivalent Single Axel Load (ESAL's). MnDOT uses a formula of one garbage truck equivalent to 1,000 car trips.
- The City of Roseville estimates \$20 to \$40 per household per year in pavement damage due to garbage trucks per year.
- The table below from the R3 report for the City of Fort Collins, Co provides a comparison of trash and other vehicle impacts to various roadways.

Comparison of Trash and Other Vehicle Impacts.

COMPARISON OF TRASH AND OTHER VEHICLE IMPACTS				
Vehicle Type		Number of Axles	ESAL Factor	Passenger Car Equivalents
General Classification	AASHTO Classification			
Cars	Passenger Cars	2	0.0008	1
Vans/Pickups	Other 2-Axle/4-Tire Trucks	2	0.0052	7
Large Pickups/Delivery Vans	Panel and Pickup Trucks	3	0.0122	15
Large Delivery Trucks	3 or More Axle Trucks	3	0.1303	163
Local Delivery Trucks	2-Axle/6-Tire Trucks	2	0.1890	236
Residential Recycling Trucks		2	0.2190	274
Buses	Buses	2 or 3	0.6806	851
Residential Trash Trucks		3	1.0230	1,279
Long Haul Semi-Trailers	Various Classifications	3-5+	1.1264	1,408



Office of the Town Manager
MEMORANDUM

TO: Mayor Collins and Members of the Town Council

FROM: Kevin Burke, Town Manager
Paul Mood, Town Engineer
Brent Skoglund, Public Works Director
Duncan Miller, Town Clerk

DATE: November 30, 2017

SUBJECT: Impact of Trash Trucks on Town Roads

Throughout the discussion on the Quality of Life topic of trash collection, there has been questions regarding the impact of multiple trash trucks on Town streets. In April of 2016, then Public Works Director Jim Shano crafted the attached memo. In his research he found several studies regarding the impact. None of them gave a good formula for calculating the financial impact of multiple haulers on Paradise Valley streets. However, the question has persisted. Consequently, we offer the following additional information.

Further research confirms that a single trash truck is the equivalent of 1,000-1,450 single axle vehicles (see references). In the Town of Paradise Valley, five trash haulers are licensed. Of those, one (Scott Waste) has a very narrow constituency of several homeowner associations. The other four (Area Disposal, RAD, Republic, and Waste Management) offer their services throughout the Town. Of those four, Area Disposal and RAD offer only once-a-week pick up of trash and once-a-week pick up of recycling. They use the same trucks for both services. So conceivably, they each make two trips down Town roads per week. The other haulers offer twice-a-week pick up of trash and once-a-week pick up of recycling thereby each making three trips down Town roads per week. Cumulatively, there are approximately 10 trips per week or 520 trips per year by trash haulers down Town streets. Using the finding above, that is the equivalent to at least 520,000 single axle cars a week on Town roads each year. The movement to a single trash hauler offering twice-a-week pick up of trash and once-a-week pick up of recycling would reduce this to 156,000 equivalent trips. A reduction of 70%.

The next logical question is how does that translate in terms of financial impact to the Town budget. This has been harder to quantify. There are companies who will quantify this for a price (R3 Consulting Group did this for the City of Fort Collins, Colorado). Using some references from the Shano memo, staff attempts to quantify below. The Shano memo references a community (Falcon Heights, MN) who found that limiting trash collection to a single hauler could save approximately 5-10 years of pavement life. Using that model, the Town spends approximately \$1.5 million a year on pavement preservation (not including Lincoln and Tatum) in order to keep Town streets on a 25-year life-cycle. Extending that to 30 years would save approximately \$250,000 a year. Now there are a couple of disclaimers to this extrapolation.

First, the weather conditions in Minnesota are vastly different than those in Paradise Valley. Rain, snow and freeze-thaw cycles play an important factor in pavement life-cycle. Second, we do not know the condition of the road base either in Falcon Heights or, for that matter, many of the roads in Paradise Valley. We know we have some residential roads that were simply inch-and-a-half of asphalt on natural conditions. This would be an extremely poor base from which to work from and result in much more severe impact from heavier vehicles.

A third reference in the Shano study (City of Roseville, MN) identified that garbage trucks are responsible for \$20-\$40 per year per household in pavement damage. Again, extrapolating that finding to Paradise Valley is fraught with comparison concerns. But for argument sake, using that range against the approximately 5,500 residential structures in Paradise Valley, that would result in \$110,000 - \$220,000 in damage per year. If a single hauler reduced the number of trips by 70%, the argument would proceed that damage could be reduced by 70% which would present a range of \$77,000 - \$154,000 per year in savings for the Town.

Again, extrapolating from these other studies is difficult and the best way to get a more accurate dollar amount would be to contract with a consultant who specializes in this work. As noted above, the comparisons have various factors that need to be taken into consideration such as weather, construction of the original road, condition of the existing road, traffic counts on each road, etc. Perhaps the safest conclusion staff can draw from its research is that Paradise Valley residential roads were not built for these heavier trucks and trash trucks do have an impact on their condition. To what extent is less certain.

LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

This LICENSE AGREEMENT (this “Agreement”) is made on this 11th day of January 2018 (the “Effective Date”) between the Town of Paradise Valley, an Arizona municipal corporation (the “Town”) and Allied Waste Transportation Inc., a Wholly Owned Subsidiary of Republic Services, Inc. (the “Licensee”).

RECITALS

A. The Town issued a Request for Proposals (“RFP”), attached as Exhibit A, seeking proposals from vendors for residential solid waste, recycling, and specialty waste collection and disposal services (the “Services”).

B. The Licensee submitted a proposal for the Services within the Town of Paradise Valley in response to the RFP (the “Proposal”), attached as Exhibit B.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Town and the Licensee hereby agree as follows:

1. Scope of Work. The scope of work is set forth in the RFP and the Licensee’s proposal and as further modified or reiterated on Exhibit C to this Agreement, which is incorporated herein as though set forth in full (the “Scope of Work”). Licensee shall carry out the Scope of Work in a satisfactory and proper manner as determined by Town for the Town of Paradise Valley (the “Service Area”), excluding, for the first three years of this contract, any area with a Home Owners’ Association that has an existing contract for Services and which chooses not to participate in the benefits of the License (the “Excluded Properties”).

2. Representations.

2.1 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Licensee is advised that taxes or Social Security payments will not be withheld from any municipal payments issued hereunder and Licensee agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

2.2 Representations by Town. The Town represents to the Licensee that it is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement. The Town further represents that the person signing on its behalf has been properly authorized and empowered to enter into

this Agreement and that the Town agrees to be bound by this Agreement.

2.3 Representations by Licensee. The Licensee represents to the Town that at the time of execution of this Agreement:

A. Authority. The Licensee is duly qualified and in good standing to do business in the State and is duly qualified and in good standing to do business wherever necessary to carry on the business and operations contemplated by this Agreement. The Licensee further represents that the person signing on its behalf has been properly authorized and empowered to enter this Agreement. The Licensee further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

B. Licenses; Materials. The Licensee has obtained all applicable environmental and other governmental permits, licenses, permits and authorizations that are (1) necessary for providing the Services and (2) required to be issued under Federal, State, local law, regulation, rule or ordinance. Licensee shall maintain in current status all Federal, State and local licenses, permits and authorizations required for the operation of the business conducted by the Licensee. The Town has no obligation to provide Licensee, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The Town has no obligation to provide tools, equipment or material to Licensee.

C. Insurance/Bonds. The Licensee has obtained and submitted to the Town: (1) certificates of insurance for all required insurance coverages specified in this Agreement; and (2) documentation of Performance Bond as required by this Agreement.

No Legal Action Pending. To the best of the Licensee's knowledge, there is no action, suit or proceeding, at law or equity, before or by any court or government authority, pending or threatened against the Licensee, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Licensee of its obligation hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other contract or instrument entered into by the Licensee in connection with the transactions contemplated hereby. Licensee agrees that it shall take all steps necessary to ensure that the representations set forth in this Section 2.3 shall remain true and correct for the entire Term of this Agreement.

3. Term of Agreement.

3.1 Initial Term. Unless sooner terminated in accordance with the provisions in this Agreement, the term of this Agreement shall commence on June 1, 2018 ("Commencement Date") and shall continue in effect for seven (7) years (the "Initial Term"), that is, until May 30, 2025 (the "Expiration Date").

3.2 Exercise of Option to Renew. After the Initial Term, the Town shall have the option in its sole discretion to renew this Agreement for up to three additional one-year terms (each, a "Renewal Term"). The Initial Term and any Renewal Terms shall be collectively referred to herein as the "Term." To exercise the option, the Town shall provide written notice to Licensee not later than 30 calendar days preceding the scheduled date of expiration of the then-current Term. This provision in no way limits the Town's right to terminate this Agreement at any time during the Term pursuant to the provisions in this Agreement. The option to renew shall further be conditioned upon Licensee's meeting conditions further described in this Agreement.

4. Fees for the Services. The Fees to be charged for the Services to the Customer are set forth on Exhibit C.

5. Manner of Providing Services. Unless otherwise stated in this Agreement, the Licensee shall be solely responsible for all aspects of the management, operations and maintenance and equipment relating to the Services including, but not limited to, the following:

5.1 Records. The maintenance of complete and accurate records, including billing records, and the provision of reports to the Town in accordance with the requirements of this Agreement.

5.3 Maintenance. The preventive maintenance, maintenance, and repair of systems and equipment including vehicles, buildings, grounds and other equipment.

5.4 Clean-up. The prevention and clean-up of litter, spillage, dust and odor as set-forth in this Agreement.

5.5 Personnel. The recruitment, hiring, and training of all managerial, supervisory, and operating personnel providing the Services.

5.6 Carts. Cart maintenance and delivery of new solid waste carts and recycling carts, as applicable, once the program begins. Licensee shall also be solely responsible for storage of unused carts.

5.7 Part-Time Residents. Licensee shall provide each residential property the opportunity to suspend service temporarily for a period not less than three continuous months upon notification by the subscriber. The allowed fees for suspension of service shall be in the amounts set forth in Exhibit C.

6. Personnel. Licensee shall assign a qualified person or persons who will be in charge of its operations within the Town and authorized to make decisions on Licensee's behalf and shall provide the name, office telephone number, mobile phone number, email address and facsimile number of Licensee's representatives and key personnel to the Town Manager. Licensee agrees that the Town shall have 24 hour access to said representative via a non-toll call from the corporate limits of the Town. Such records shall be updated as personnel or contact information changes. In addition, Licensee shall adhere to the following requirements:

6.1 Key Personnel. Licensee shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Licensee agrees to assign specific individuals to key positions. Licensee agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Licensee shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel of substantially equal or superior ability and qualifications.

6.2 Uniforms. Licensee shall furnish each employee involved in the performance of this Agreement with a uniform and safety vest, shirt or jacket which clearly displays the name of Licensee. Such uniforms and safety equipment shall make the employee readily visible to other motorists. Licensee's employees shall wear complete uniforms and safety vest, shirt or jacket at all times.

6.3 Safety Training. Licensee shall provide regularly scheduled, on-going operating and safety training for all employees. In addition, Licensee's employees shall be trained to perform their duties at all times. All temporary and newly hired permanent collection personnel and supervisory employees must receive comprehensive safety and operational training prior to working on the collection

vehicles or performing duties under this Agreement. Training manuals and schedules shall be maintained at the local office of Licensee and available for review at any time by Town Manager or designee.

6.4 General Training. All employees involved in the performance of this Agreement including office and all collection personnel, must be provided adequate training before and during their employment with the Licensee. This training shall familiarize employees with the required duties and standards of performance, specific requirement on routes to which they will be assigned, teach the route layouts previously established and approved and provide necessary knowledge to eliminate delays and missed collections. All supervisory and collection employees must be provided equipment and supplies prior to and during the performance of their duties. All collection, administrative, supervisory and customer service personnel must receive customer service training prior to and during the time they are employed by the Licensee.

6.5 Contact with Others. Licensee's employees shall treat all customers, co-workers, Town employees and any individual with whom they come in contact in the performance of their duties in a polite and courteous manner. Rudeness, belligerence and the use of profanity are strictly prohibited. The Town reserves the right to direct Licensee to remove any employee who violates this policy from providing Services to the Town.

6.6 Compliance with Laws. In performance of Services, Licensee's employees must adhere to municipal, State and Federal laws. The Town reserves the right to make a complaint regarding any employee of the Licensee who violates any provision herein, or who is wanton, negligent or discourteous in the performance of his/her duties. The Town may recommend appropriate action be taken by the Licensee and may require the Licensee to remove any unacceptable employee, as determined by the Town, from service to the Town.

7. Spillage and Leakage, Litter, Dust and Odor.

7.1 Spillage and Leakage. Licensee shall clean up any spilled or blowing materials as well as fluids spilled or leaked from Licensee's vehicles by the Licensee, Licensee's employees or authorized person or entity providing service to the Licensee. During transport all materials shall be contained, covered, and enclosed so that leaking, spilling and blowing of materials does not occur. Licensee shall perform all cleanups within two hours of the spillage or leakage.

7.2 Dust and Odor. If Licensee operates a disposal facility or a recycling facility within the Town, such facilities shall be operated so as to prevent the escape of dust and odors and the Licensee shall routinely clean the tip floor and the process and storage areas of said facilities.

8. Recordkeeping, Reporting, Audited Financial Statements and Reporting Format.

8.1 Recordkeeping. The Licensee shall create, maintain and make available records as defined in, and required by, all applicable local, State and Federal laws, rules and regulations, the RFP and any reports as are reasonably necessary to the Services.

8.2 Availability of Documents. All of Licensee's records shall be available to the Town and its representatives at reasonable times and places throughout the term of this Agreement and for a period of five years after termination.

8.3 Reporting.

A. Initial Reports.

1. Transition Plan. The Licensee shall provide a transition plan 90 calendar days prior to Commencement Date. This plan shall detail transition to the Licensee providing the Services. This transition plan will be submitted for approval by the Town Manager.

2. Hazardous Waste Contingency Plan. The Licensee shall provide a hazardous waste contingency plan, 30 calendar days prior to the Commencement Date, to the Town Manager. This plan shall detail what actions shall be taken by the Licensee upon discovery of hazardous waste. The plan shall include a copy of a signed contract(s) with a permitted hazardous waste transporter(s) to handle any hazardous waste discovered. The plan must comply with all State and Federal regulations regarding the handling of hazardous waste. Non-conformance with any State or Federal regulation shall be cause for rejection of the plan. This hazardous waste contingency plan will be submitted for approval by the Town Manager.

B. Monthly Reports. Licensee shall submit monthly reports, including customer service reports, to the Town Manager or authorized designee within seven calendar days following the end of each calendar month consistent with the information required in the RFP and/or accepted proposal..

C. Annual Reports. Licensee shall submit annual reports to the Town Manager or authorized designee within 30 calendar days following the end of the fiscal year.

8.3 Audited Financial Statements. The Licensee will be required to submit audited financial statements prepared by an external accounting firm for itself as a whole within 120 calendar days of the end of the Licensee's fiscal year end. The audited financial statements shall contain detailed information of collection which shall include at a minimum Licensee's income statement and balance sheet; proof that all insurance policies relative to this Agreement are in effect; and information on any outstanding lawsuits that might adversely impact the Town. In the event Licensee is acquired, the Licensee shall notify the Town of the transfer in ownership, whereupon the Town shall have the option to require that the audited financial statements be submitted by the acquiring entity. The Town's approval of the transfer of the license shall not to be unreasonably withheld. In the event Licensee is acquired, the Town shall have the option to require that the acquiring entity provide a guaranty agreement in a form acceptable to the Town Manager. The financial basis records shall be kept in accordance with generally accepted accounting principles.

8.4 Report Format. Within 14 days after the Commencement Date, the Licensee will be required to submit to the Town for its approval the format and sample contents of the records to be maintained and the monthly and annual reports to be generated in fulfillment of the requirements of the Agreement. Licensee shall submit all reports in electronic format approved by the Town and in hard copy.

9. Customer List, Billing and Collections, Payment and Annual Adjustments.

9.1 Customer List. On or prior to March 1, 2019, the Town shall provide Licensee with a residential property service customer file. Regardless of the customer list, Licensee shall provide Services to all residential property in the Town that is in the Service Area, exclusive of the Excluded Properties.

9.2 Billing and Collection.

A. The Licensee shall bill for the Services in accordance with Exhibit B.

1. Understandable Bills. Bills will be clear, concise and

understandable. Bills must be fully itemized, clearly delineating all activity during the billing period, including optional charges, rebates and credits.

2. Uniform Billing. Licensee shall bill all residential properties in a uniform, non-discriminatory manner, regardless of level of service. Payment shall be due no sooner than the 30th day of each billing period, and the due date shall be listed on each bill. Bills shall be mailed no later than the first day of the billing period.

3. Customer Dispute. In case of a bill dispute, the Licensee must respond to a written complaint from a resident within 15 days.

4. Refunds. Refund checks will be issued promptly, but no later than the next billing cycle following resolution of the request or 30 days, whichever is earlier. Credits for service will be issued no later than the next billing cycle following the determination that a credit is warranted.

5. Individual Rights. Licensee shall not deny service, deny access, or otherwise discriminate against citizens on the basis of race, color, religion, national origin, sex, age, or disability. Licensee shall comply at all times with all other applicable federal, state, and local laws and regulations, and as amended from time to time, relating to nondiscrimination.

6. Equal Opportunity. Licensee shall strictly adhere to applicable equal employment opportunity requirements of federal, state, and local regulations as amended from time to time.

7. Protection of Privacy.

a. At the time of delivery of the carts to a residential service unit and at least once a year thereafter, Licensee shall provide notice in the form of a separate, written statement to each residential service unit that clearly and conspicuously informs the occupant of:

(1) The nature of personally identifiable information collected or to be collected and the nature of the use of such information.

(2) The nature, frequency, and purpose of any disclosure which may be made of such information, including any identification of the types of persons to whom the disclosure may be made.

(3) The period during which such information will be maintained by the Licensee.

(4) The times and place at which the customer may have access to such information.

(5) The limitations provided by this section with respect to the collection and disclosure of information by Licensee and the right of the customer to enforce such limitations.

b. For purposes of the subsection, the term “personally identifiable information” does not include any record aggregate data which does not identify particular persons.

c. Except as provided in herein, Licensee shall not disclose personally identifiable information concerning any customer without the prior written or electronic consent of the customer concerned.

d. Licensee may disclose such information if the disclosure is:

(1) Necessary to render, or conduct a legitimate business activity related to Services provided by the Licensee to the customer.

(2) Made pursuant to a court order authorizing such disclosure, if the customer is notified of such order by the person to whom the order is directed.

e. A customer shall be provided, free of charge, access to all personally identifiable information regarding that customer which is collected and maintained by Licensee. Such information shall be made available to the customer at reasonable times and at a convenient place designated by Licensee. A customer shall be provided reasonable opportunity to correct any error in such information.

f. Licensee shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or court orders for access to such information.

8. Licensee shall establish a procedure for addressing delinquent accounts and shall be solely responsible for courteous resolution of any collection matters. The Licensee shall be permitted to pick up the solid waste cart, and recycling cart from any residential service unit for which fees for service have become delinquent by more than 60 days after the first notice of delinquency by the Licensee to the customer. The Licensee shall not receive any payment from the Town on account of excessive delinquencies.

10. Ownership of Solid Waste and Recyclable Materials. Title to solid waste and recyclable materials shall pass to the Licensee once the Licensee takes possession of the materials.

11. Liquidated Damages. Licensee understands that if Licensee does not timely perform its obligations pursuant to the terms of this Agreement, the Town will suffer damages which are difficult to determine and adequately specify. The acts or omissions set forth in this Section 11 shall be considered a breach of the Contract. In addition to remedying the breach, the Licensee shall be liable for liquidated damages amount(s) upon determination of the Town that performance has not occurred consistent with the provisions of the Agreement. The Town shall notify the Licensee in writing or electronically of each act or omission in this Agreement reported to or discovered by the Town. It shall be the duty of the Licensee to take whatever steps or action may be necessary to remedy the cause of the complaint. The Licensee agrees, in addition to any other remedies available to the Town, that the Town may deduct the full amount of any damages from any payment due to the Licensee. The remedy available to the Town under this paragraph shall be in addition to all other remedies which the Town may have under law or at equity.

11.1 Missed Collection. \$25 for each missed collection above two misses per collection day, to be assessed at the end of each collection month. A "missed collection" occurs when (A) a resident reports that their material was set at the curb by 6:00 AM, local time, and was not collected by 6:00 PM of the designated collection day for such residential service unit; and (B) the address was not reported by the Licensee as a late set-out or an improper set-out. Licensee may dispute the designation as a missed collection to the Town Manager. In the case of a dispute, the Town Manager's determination shall be final as to whether a set-out is a missed collection.

11.2 Missed Block. \$250 for each incident of the Licensee failing to pick up material on a block. A “missed block” occurs when one side of a street between cross streets or an entire cul-de-sac where residents from at least three households on that street report that they had their material out before 6:00 AM, local time, and the material was not collected by 6:00 PM of the designated collection day for the missed block of residential service units, and the material was properly sorted and the addresses of the missed block were not reported by the Licensee as a late set-out. Licensee may dispute the designation of a missed block to the Town Manager. In the case of a dispute, the Town Manager’s determination shall be final as to whether a block is a missed block.

11.3 Less than Majority Collected. \$2,500 for each incident for failure to complete a majority (50%) of the collections on a given day.

11.4 Failed Spill Clean-up. \$250 for each incident for failure to clean up material spilled or littered by Licensee within six hours of verbal or written notification.

11.5 Failed Vehicle Maintenance. \$100 for each incident for failure to maintain vehicle in manner which prevents nuisances such as leaky seals or hydraulics.

11.6 Failed Correction of Missed Collection. \$250 for each incident for failure or neglect to collect materials from a missed collection location within 24 hours.

11.7 Fail to Timely Complete Reports. \$250 for each incident for failure to timely provide a complete monthly or annual report.

11.8 Failure to Return Carts. \$100 for each incident for failure to return carts or containers to their original locations after collection. For the purposes of this subsection, “original location” shall mean within ten feet of the location at which the cart was placed immediately prior to the Licensee picking it up for service. Licensee shall not be penalized for any carts returned to their original location which are subsequently moved by a third party.

11.9 Failed Customer Complaint Response. \$100 per Business Day thereafter per incident for failure to respond to any customer complaint received by the close of the following business day.

11.10 Failure to Accept Materials. \$3,000 for each day for failure to be able to accept materials on any day after the date upon which Service begins on which materials are to be collected.

11.11 Video Records – Licensee shall install and operate video monitoring equipment in each vehicle involved in collection services in the Town. Said video equipment shall adequately record the location of carts, or lack thereof, at time of collection. If said video monitoring equipment does not provide a date and time stamp, a separate GPS system shall be installed and recorded to identify the location and time of vehicles collecting in the Town.

12. Performance Guaranty. Licensee shall furnish the Town with a performance bond covering faithful performance of this Agreement (the “Performance Bond”). The Performance Bond shall be submitted within 45 days following the Effective Date, but in no event later than the Commencement Date. The Performance Bond shall be in an amount not less than annual value (based on total anticipated revenue) of this Agreement and shall be in a form approved by the Town Manager. The term of the Performance Bond shall be not less than one year beginning on the Commencement Date. The Licensee shall furnish the Town with a renewal of the Bond for an additional term of not less than one year from the expiration date of the Performance Bond then in effect for each year this Agreement is in effect. The renewal of the Performance Bond shall be submitted at least 30 days prior to the expiration date of the Performance Bond

then in effect. Notwithstanding the foregoing, the Surety shall not be obligated to renew the Performance Bond for any successive year. The Performance Bond shall be limited to one and only one surety which shall be issued by a Surety Company authorized to do business in the State of Arizona and have an A.M. Best rating of "A" or better and the "T" underwriting limitation is not exceeded by this Performance Bond.

13. Taxes. Licensee shall be responsible for and shall pay all sales, consumer, use and other taxes. When equipment, materials or supplies generally taxable to the Licensee are eligible for a tax exemption due to the nature of the item, Licensee shall assist the Town in applying for and obtaining such tax credits and exemptions which shall be paid or credited to the Town.

14. Compliance with Laws and Regulations. The Licensee shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Licensee is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services including the following: (i) existing and future Town and County ordinances and regulations, (ii) existing and future State and Federal laws, (iii) existing and future Occupational Safety and Health Administration ("OSHA") standards, (iv) applicable laws, statutes, codes, rules and regulations related to or prohibiting discrimination in employment in the performance of its work under this Agreement and (v) requirements as established by the Congress of the United States in the Fair Labor Standards Act, as amended from time to time.

15. Town Inspection Rights/Video Requirements.

15.1 Town's Right to Inspect Records, Books, Data and Documents. The Town or any of its duly authorized representatives shall have access, within 24 hours of notification, to all books, records, data and documents of the Licensee for inspection and audit, at the Town's expense. Additionally, the Licensee shall give the Town written notice of any other professional relationships it enters into with the Town or any of its agencies or component units during the period of this Agreement.

15.2 Town's Rights to Inspect Facilities and Equipment. The Town or any of its duly authorized representatives shall have access, within 24 hours of notification, to inspect Licensee's facilities, including the disposal facility and recycling facility if operated by the Licensee, and equipment and perform such inspections, as the Town deems reasonably necessary, to determine whether the Services required to be provided by Licensee under this Agreement conform to the terms hereof and/or the terms of this Agreement. The Town shall conduct the inspection of facilities and equipment during hours of operation. Licensee shall make available to the Town all reasonable facilities and assistance to facilitate the performance of inspections by the Town's representatives.

15.3 Video Records – Licensee shall install and operate video monitoring equipment in each vehicle involved in collection services in the Town. Said video equipment shall adequately record the location of carts, or lack thereof, at time of collection. If said video monitoring equipment does not provide a date and time stamp, a separate GPS system shall be installed and recorded to identify the location and time of vehicles collecting in the Town.

16. Dispute Resolution.

16.1 Interpretation of Agreement. Except as provided otherwise in this Agreement and to the extent permitted by law, the Town Manager shall be responsible for interpreting this Agreement to resolve disputes that may arise hereunder. The parties agree that any decision rendered by the Town Manager in connection with such matters shall be final and binding upon Licensee, the customer, and the Town.

16.2 Definition of Claim. As used herein “claim” means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of the Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this subsection. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this subsection. A claim by the Licensee shall be made in writing and submitted to the Town Manager. When a controversy cannot be resolved by mutual agreement, the Licensee shall submit a written request for final decision to the Town Manager. The written request shall set forth all the facts surrounding the controversy.

16.3 Process for Dispute Resolution. In connection with any claim under this clause, the Licensee, at the discretion of the Town Manager, may be afforded an opportunity to be heard and to offer evidence in support of its claim. The Town Manager shall render a written decision on all claims within 30 Business Days of receipt of the Licensee’s written claim, unless the Town Manager determines that a longer period is necessary to resolve the claim. The decision shall be furnished to the Licensee by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within 30 calendar days, the Town Manager shall notify the Licensee of the time within which a decision shall be rendered and the reasons for such time extension. The Town Manager’s decision shall be final and conclusive. Pending resolution of a claim, the Licensee shall proceed diligently with the performance of the Agreement in accordance with subsection 16.4 below.

16.4 Operations during Dispute. In the event that any dispute arises between the Town and Licensee relating to this Agreement performance or compensation hereunder, Licensee shall continue to render Service and receive compensation in full compliance with all terms and conditions of this Agreement as interpreted, in good faith, by the Town, regardless of such dispute. The Licensee expressly recognizes the paramount right and duty of the Town to provide adequate Services to its residents and further agrees, in consideration of the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court without first negotiating with Town in good faith for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute shall present the matter to mediation in the courts of Arizona. If mediation fails, Licensee shall present the matter to a court in Arizona. Notwithstanding the other provisions in this subsection, the Town reserves the right to terminate this Agreement at any time whenever the Service provided by Licensee fails to meet reasonable standards of the trade, after the Town provides written notice to Licensee pursuant to Section 20.1 of this Agreement. Upon termination, the Town may call the Performance Bond and apply the cash and surety bond for the cost of service in excess of that charged to the Town by the firm engaged for the balance of the Agreement period.

17. Force Majeure. Except for any payment obligation by either party, if the Town or Licensee is unable to perform or is delayed in its performance of any of its obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the Town or Licensee to correct the adverse effect of such event of force majeure. An event of “Force Majeure” shall mean the following events or circumstances to the extent that they delay the Town or Licensee from performing any of its obligations (other than payment obligations) under this Agreement: acts of God, tornadoes, hurricanes, floods, sinkholes, fires and explosions (except those caused by negligence of Licensee, its agents and assigns), landslides, earthquakes, epidemics, quarantine, pestilence and extremely abnormal and excessively inclement weather, acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances or national or international calamities, suspension, termination or interruption of utilities necessary to the operation of either the disposal facility or the recycling facility. In order to be entitled to the benefit of this Section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure

the event of Force Majeure.

18. Indemnification. To the fullest extent permitted by law, the Licensee, as Indemnitor, shall indemnify, defend and hold the Town, its officers, officials, employees, agents and volunteers (“Indemnitees”) harmless from and against any and all liability, claims, losses, suits, actions, damages and expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation (collectively “Claims”) for any personal injury, bodily injury, loss of life or loss or damage to property or any violation of any Federal, state or local law or ordinance or other cause related to or arising out of Licensee’s performance of its obligations pursuant to the terms of this Agreement, caused, in whole or in part by the negligent or intentional acts or omissions of Licensees, its owners, officers, directors, employees, subcontractors or agents or on account of the performance or character of this Agreement. This indemnity includes any claim or amount arising out of or recovered under the Workers Compensation Law or arising out of the failure of Indemnitor to conform to any Federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Indemnitor from and against any and all Claims. It is agreed that Licensee will be responsible for primary loss investigation defense and judgment costs where this indemnification is applicable. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

19. Insurance.

19.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Licensee, Licensee shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town’s option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Licensee. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Licensee’s insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or Services of Licensee. Licensee shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

G. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Licensee shall be solely responsible for any such deductible or self-insured retention amount.

H. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Licensee shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Licensee. Licensee shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

I. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Licensee will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Licensee's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the Town's acceptance of the Licensee's work or Services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Licensee's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

1. The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

a. Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

b. Auto Liability - Under ISO Form CA 20 48 or equivalent.

c. Excess Liability - Follow Form to underlying insurance.

2. Licensee's insurance shall be primary insurance as respects

performance of the Agreement.

3. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against the Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Licensee under this Agreement.

4. A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

19.2 Required Insurance Coverage.

A. Commercial General Liability. Licensee shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$5,000,000 Products and Completed Operations Annual Aggregate and a \$5,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Licensees, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Licensee shall maintain Business Automobile Liability insurance with a limit of \$2,000,000 each occurrence on Licensee's owned, hired and non-owned vehicles assigned to or used in the performance of the Licensee's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Workers' Compensation Insurance. Licensee shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

19.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially change without 30 calendar days' prior, written notice to the Town.

20. Termination; Cancellation.

20.1 By the Town for Cause. In the event there should occur any Material Breach or

Material Default in the performance of any covenant or obligation of Licensee which has not been remedied within 30 days after receipt of written notice from the Town specifying such breach or default (or such longer period of time as is reasonably necessary to cure any such breach or default which is not capable of being cured within 30 days, provided that the Licensee has undertaken the cure within such 30 days and proceeds diligently thereafter to cure in an expeditious manner; provided further that such cure period shall not exceed 90 days), the Town, may if such breach or default is continuing, terminate this Agreement upon written notice to the Licensee. The following events shall, without limitation, constitute a “Material Breach” or a “Material Default” by Licensee for purposes of this Section: (i) Licensee has abandoned, as hereinafter defined, the performance of collection services for a period of five consecutive calendar days unless caused by event of Force Majeure. As used herein, the term “abandon” shall refer to voluntary cessation of performance of collection service; (ii) if the Licensee’s hazardous substance contingency plan as required by this Agreement hereof shall fail to comply with all Federal and State regulations regarding the handling of hazardous waste; (iii) if Licensee is not paying its debts when they become due; shall have filed, or consented by answer or otherwise to the following against it, a petition for relief or reorganization and bankruptcy or insolvency law of any jurisdiction; shall make an assignment for the benefit of its creditors in lieu of taking advantage of any such bankruptcy or insolvency law; shall consent to the appointment of custodian, receiver, trustee or other officer with similar powers with respect to any substantial part of its property; shall be adjudicated insolvent or shall take corporate action for the purpose of any of the foregoing; (iv) the default by Licensee with respect to any obligation to any third party pertaining to the Licensee or to collection services, which may permit any third party, either immediately or following notice and/or the passage of time to accelerate the maturity of any obligation of the Licensee, to assume control of the Licensee or take possession of or to transfer or caused to be transferred to any third party any portion of the assets of the Licensee, but only if such default materially interferes with or prevents Licensee’s performance under the terms of this Agreement; and (v) failure to perform the services promised in Exhibits A, B and C.

A. Failure to Cure. If the Licensee shall fail to cure its Material Breach or Material Default as specified in this Section, the Town may terminate this Agreement upon ten days written notice (a “Notice of Termination”). In such case, the Licensee shall not be entitled to receive further payment for Services rendered from the effective date of the Notice of Termination.

B. Notice of Termination. Upon receipt of Notice of Termination, Licensee shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to the Town all data, drawings, specifications, reports, estimates, summaries, and such other information as may have been required under the terms of Agreement whether completed or in process.

C. Town’s Right to Mitigate. In addition, the Town may enter into a separate contract for the completion of the Agreement, according to its terms and provisions, or use such other methods as in the Town’s sole opinion shall be required for the completion of the Agreement. All damages, costs and charges incurred by the Town, together with the cost of completing the terms and provisions of the Agreement, shall be deducted from any monies due or which may become due to Licensee. In case the damages and expenses so incurred by the Town shall exceed the unpaid balance, then Licensee shall be liable and shall pay to the Town the amount of such excess.

D. Licensee Not in Breach. If after Notice of Termination it is determined for any reason that Licensee was not in Material Breach or Material Default, then the rights and obligations of the Town and the Licensee shall be the same as if the Notice of Termination had not been issued pursuant to the termination for cause clause set forth in subsection 1.A of this Section.

20.2 For Town’s Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause after receipt by Licensee of written notice by the Town. In such

instance, an adjustment shall be made to the Licensee, for the reasonable costs of the work performed through the date of termination. Termination costs do not include lost profits, consequential damages, delay damages, unabsorbed or under absorbed overhead of the Licensee or its subcontractors and/or failure to include termination for convenience clause into its subcontracts and material purchase orders. Licensee shall not expose the Town to liability for lost profits in conjunction with a termination for convenience settlement or equitable adjustment. Licensee expressly waives any claims for lost profit or consequential damages, delay damages, or indirect costs which may arise from the Town's election to terminate this contract in whole or in part for its convenience.

20.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Licensee in the event that the Services are permanently abandoned.

20.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligation by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

20.5 Gratuities. The Town may, by written notice to the Licensee, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Licensee or any agent or representative of the Licensee to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is cancelled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Licensee an amount equal to 150% of the gratuity.

20.6 By Licensee For Cause. In the event there should occur any breach in the performance of any covenant or obligation of the Town which has not been remedied within 30 days after receipt of written notice from the Licensee specifying such breach or default (or such longer period of time as is reasonably necessary to cure any such breach or default which is not capable of being cured within 30 days, provided that the Town has undertaken the cure within such 30 days and proceeds diligently thereafter to cure in an expeditious manner), the Licensee, may if such breach or default is continuing, terminate this Agreement upon written notice to the Town. The following events shall, without limitation, constitute a breach by the Town for purposes of this Section: (i) the failure of the Town to pay amounts owed by the Town itself to the Licensee under the terms of this Agreement within 45 days after such amounts become finally due and payable; or (ii) if the Town shall have filed, or consented by answer or otherwise, to the following against it of a petition for relief or reorganization and bankruptcy or insolvency law of any jurisdiction; shall make an assignment for the benefit of its creditors in lieu of taking advantage of any such bankruptcy or insolvency law; shall consent to the appointment of custodian, receiver, trustee or other officer with similar powers with respect to any substantial part of its property; shall be adjudicated insolvent or shall take official action for the purpose of any of the foregoing. If the Town shall fail to cure its breach as specified in subsection 20.6 hereof, the Licensee may terminate this Agreement upon thirty days written notice. In such case, the Town shall not be entitled to receive further payment from the Licensee from the effective date of the Licensee's notice of termination.

21. Miscellaneous.

21.1 Survival. Any rights either party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such termination.

21.2 Joint Preparation. The preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

21.3 Further Assurance. Licensee and Town agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

21.4 Time of the Essence. For purposes herein, the parties agree that time shall be of the essence of this Agreement and the representations and warranties made are all material and of the essence of this Agreement.

21.5 Captions and Section Headings. Captions and section headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

21.6 No Waiver. No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

21.7 Exhibits. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated into this Agreement by reference.

21.8 Independent Contractor. The Licensee acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Licensee, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Licensee, its employees or subcontractors. The Licensee and not the Town, shall determine the time of its performance of the Services provided under this Agreement so long as Licensee meets the requirements of its agreed scope of work. Licensee is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. The Town and Licensee do not intend to nor will they combine business operations under this Agreement.

21.9 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Licensee.

21.10 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

21.11 Severability. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect by a Court of competent jurisdiction, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein and the other provisions of this Agreement shall, as so amended, modified, or

supplemented, or otherwise affected by such action remain in full force and effect.

21.12 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of and entry into this Agreement.

21.13 Assignment. No right or interest in this Agreement shall be assigned by Licensee without prior, written permission of the Town signed by the Town Manager and no delegation of any duty of Licensee shall be made without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or delegation by Licensee in violation of this provision shall be a breach of this Agreement by Licensee. This Agreement and the rights and obligation contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

21.14 Subcontracts. This Agreement and any permits required for performance of the Agreement may not be assigned, subcontracted, conveyed, or otherwise disposed of without the prior, written approval of the Town, which will not be unreasonably withheld. No such assignment or subcontracting shall relieve Licensee of its liability under this Agreement. In the event Licensee elects to use any subcontractors, this does not relieve Licensee from any prime responsibility of full and complete satisfactory and acceptable performance under any awarded Agreement. However, the Agreement may be assigned for the purpose of financing after notification of the terms of such assignment to the Town Manager or authorized designee.

21.15 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as a waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for Services, shall not release the Licensee from any responsibilities or obligations imposed by this Agreement or by law and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

21.16 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

21.17 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

21.18 Notices and Requests. Unless a specific time frame for notice is otherwise specifically set forth in this Agreement, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (i) delivered to the party at the address set forth below; (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below; (iii) given to a recognized and reputable overnight delivery service,

to the address set forth below; or (iv) delivered by facsimile transmission to the number set forth below:

If to Town: Town Manager
Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

With a copy to: Town Attorney
Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

If to Licensee: _____

Facsimile: _____
Attn: _____

or at such other address and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three Business Days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following Business Day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following Business Day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

21.19 Confidentiality of Records. The Licensee shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Licensee's duties under this Agreement. Persons requesting such information should be referred to the Town. Licensee also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Licensee as needed for the performance of duties under this Agreement.

21.20 Records and Audit Rights. Licensee's and its subcontractor's books, records, correspondence, accounting procedures and practices and any other supporting evidence relating to this Agreement, including the papers of any Licensee and its subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Licensee and its subcontractors are complying with the warranty under subsection 21.21 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Licensee's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Licensee's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 21.21 below. To the extent necessary for the Town to audit the Records as set forth in this subsection, Licensee and its subcontractors hereby waive any rights to

keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Licensee pursuant to this Agreement. Licensee and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Licensee or its subcontractors reasonable advance notice of intended audits. Licensee shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

21.21 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Licensee and its subcontractors warrant compliance with all Federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Licensee's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

21.22 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the Agreement, the Scope of Work, the Fee Proposal, the RFP and the Licensee's Proposal, the documents shall govern in the order listed above.

21.23 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona, Maricopa County.

21.24 Israel Boycott. Licensee acknowledges this Agreement is subject to A.R.S. § 35-393.01, which prohibits the Town from contracting with any person who is currently, or during the Term or any renewal Term, participating in a boycott of Israel. Licensee warrants that it is not and will not participate in such prohibited activity in contravention of A.R.S. § 35-393.01 and has executed the affidavit attached as Exhibit D as assurance to the Town.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

“Town”

Town of Paradise Valley, an Arizona
municipal corporation

“Licensee”

By: Kevin Burke, Town Manager

ATTEST:

Town Clerk

Approved as to From:

Andrew Miller, Town Attorney

(ACKNOWLEDGEMENTS)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____,
by _____ as _____ of _____
_____, a(n) _____, on behalf of the corporation.

My Commission Expires:

Notary Public in and for the State of _____

EXHIBIT A
TO
LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

REQUEST FOR
PROPOSAL

See following pages.

DRAFT

EXHIBIT B
TO
LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

Allied Waste
Transportation Inc.,
September 6, 2017
Response to Town RFP

See following pages.

EXHIBIT C
TO
LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

SCOPE OF WORK AND AMENDMENTS
OR ADDITIONS TO EXHIBIT B

See following page(s).

DRAFT

MUTUALLY AGREED UPON SCOPE OF WORK, TERMS, AND
CONDITIONS
PERTAINING TO THE SEPTEMBER 6, 2017 SUBMITTED
PROPOSAL BY ALLIED WASTE TRANSPORTATION, INC. A
WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES. INC.

- I. All vehicles shall be of Compressed Natural Gas (CNG) with the exception of any small (less than 12' in length, by 8' in height and at or under six cubic yards) unit for purposes of collecting on hillside or narrow collection points.
- II. All carts (96 Gallon collection bins) shall be new upon commencement of the contract for each customer.
- III. Call center hours shall be maintained from 4:00 a.m. – 7:00 p.m. Arizona Time
- IV. Allied Waste shall provide a mobile app that allows customers to enroll, pay their bill and report problems with service.
- V. Paradise Valley Customers shall have the ability to pay by cash, check or credit card.
- VI. Failed or missed collections reported before 11 a.m. shall be retrieved the same day. Otherwise collections shall be within 24 hours of reported time.
- VII. Allied Waste shall install and operate video cameras and recordings on each vehicle operating in the Town. This will help confirm or dispute complaints including missed collections.
- VIII. Allied Waste shall have Geographic Position Systems (GPS) on each vehicle collecting in the Town so as to provide time and location of collections within the Town to aid in resolving complaints and performing licensed services.
- IX. Allied Waste to provide, either themselves or through a third party, annual Household Hazardous Waste collection consistent with the RFP as well as annual Christmas Tree collection and semi-annual shredding events.
- X. Allied Waste shall honor any contract for residential trash and recycling collection and disposal service entered into prior to July 14, 2017 for up to three years from the Commencement Date of this contract (a.k.a. "Most Favored Nation"). This shall apply to individuals or Home Owners Associations. Said contract shall stipulate contracted services (such a frequency, size of collection container, etc.) and price for the entire contract period. Upon expiration of the individual or HOA contract or upon the third anniversary of the Commencement Date, the customer shall move to the rate specified in this contract for selected services. Further, any HOA may remain with their contracted provider up to the third anniversary of the Commencement date consistent with the terms of the RFP.
- XI. The 2018 – 2019 pricing shall be consistent with the Alternate Proposal provided in Exhibit B in that Base Service, including HHW, Shredding and Christmas tree collections, shall be priced at 17.84 per month. Rate adjustments for the following six years may increase no more than 3.5%. Therefore, anticipated rate shall be no more than"
 - a. July 2018 – June 2019 = \$17.84
 - b. July 2019 – June 2020 = \$18.46
 - c. July 2020 – June 2021 = \$19.11
 - d. July 2021 – June 2022 = \$19.78
 - e. July 2022 – June 2023 = \$20.47
 - f. July 2023 – June 2024 = \$21.19
 - g. July 2024 – June 2025 = \$21.93

- XII. All other pricing shall increase by no more than 3.5%.
- XIII. The Town and Allied Waste agree that Standard Service (a.k.a. twice a week collection) will not be offered until October 1, 2018. Exception will be those subscribing under Section X above ("Most Favored Nation").
- XIV. Pricing for a second and additional 96 gallon container shall be reduced to \$5 per month regardless of Basic or Standard subscription.
- XV. Pricing for Back-Door service shall be reduced to \$25 per month for Basic Service and \$50 per month for Standard Service.
- XVI. Allied Waste shall provide an employee full time at the Paradise Valley Town Hall for a period of one week for enrollment and question and answer. Said week shall be mutually agreed upon by both parties but not later than June 1, 2018. Thereafter a dedicated phone number shall be provided through the term of the contract for Paradise Valley residents to call for sign-up and service related questions. Lastly, Allied Waste shall provide an office location for residents to visit for customer service.

DRAFT

EXHIBIT D
TO
LICENSE AGREEMENT BETWEEN
ALLIED WASTE TRANSPORTATION, INC.,
A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES, INC.
AND
THE TOWN OF PARADISE VALLEY

AFFIDAVIT RE
ISRAEL BOYCOTT

See following page(s).

ATTACH THE COMPLETED AFFIDAVIT [SEE SAMPLE ON FOLLOWING PAGES]

AFFIDAVIT OF ISRAEL BOYCOTT

The Arizona legislature enacted legislation to prohibit public entities from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, this form must be completed and returned prior to the Town of Paradise Valley entering into any contract in order that the Town may determine compliance.

As defined by A.R.S. §35-393.01:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:

(a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.

(b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.

2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.

3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.

4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the State treasurer or retirement system owns shares or interests either:

(a) together with other investors that are not subject to this section.

(b) that are held in an index fund.

5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.

6. "Public fund" means the state treasurer or a retirement system.

7. "Restricted companies" means companies that boycott Israel.

8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

You must select one of the following:

_____ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01. I understand that my response will become public record.

_____ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.

By submitting this affidavit, the undersigned person or entity with whom the Town of Paradise Valley is contracting agrees to indemnify and hold the Town of Paradise Valley, its officials, officers, directors, employees, volunteers and agents, harmless from any claims or causes of action relating to the Town of Paradise Valley's action based upon reliance on the above representations, including the

payment of all costs and attorney fees incurred by the Town of Paradise Valley in defending such an action.

Company Name

Signature of Person Authorized to Sign

Address

Printed Name

City

State

Zip

Title

DRAFT

Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, Arizona 85253-4328
www.paradisevalleyaz.gov



Request for Proposals (RFP)
RFP – 17-053-TMG
for
Solid Waste, Recycling, and Specialty Waste Collection
and Disposal Services

RFP ISSUED
July 6, 2017
Revised July 13, 2017

RESPONSES DUE BY
September 6, 2017 at 3:00 PM

TOWN PROJECT MANAGERS

Duncan Miller, Town Clerk
dmiller@paradisevalleyaz.gov

Kevin Burke, Town Manager
kburke@paradisevalleyaz.gov

Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253

**TOWN OF PARADISE VALLEY
SOLID WASTE, RECYCLING, AND SPECIALTY WASTE COLLECTION
AND DISPOSAL SERVICES**

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SECTION 1 – INTRODUCTION & BACKGROUND

1.1 Introduction

The Town of Paradise Valley (“Town” or “PV”) issues this Request for Proposal (RFP) pertaining to solid waste, recycling, specialty waste collection and disposal services. The Town seeks to license a single service provider (“Licensee”) for the aforementioned services to residential units in the Town. This RFP excludes collection of manure/large animal waste, and services for commercial units, such as hotels, resorts, construction sites, and offices.

Trash haulers submitting a proposal (each a “Proposer” and collectively “Proposers”) must provide a proposal that meets all requirement of this RFP by the time and date noted on the cover. The RFP selected by the Town shall enter into a license agreement (“License Agreement”) verifying all of the terms of the successful proposal.

1.2 Background

The Town of Paradise Valley lies in central Maricopa County between Phoenix and Scottsdale. Paradise Valley was incorporated as a Town on May 24, 1961. Today, the Town is still a small residential community of 16 square miles, with a 2010 Census population of 12,820 and approximately 5,600 homes. Although the Town is conveniently located between two large municipalities – the City of Scottsdale to the east and the City of Phoenix to the west – it continues to maintain its unique residential character that strictly enforces the vision described in the Town's General Plan. Residents enjoy and appreciate the peaceful and quiet surroundings, the open space, the dark nighttime sky and the unobstructed views of prominent geographical features – the Phoenix Mountain Preserve, Camelback Mountain, Mummy Mountain and the Indian Bend Wash. Paradise Valley is also home to nine world class resorts that offer numerous recreational opportunities such as golf and tennis, as well as some of the finest dining in the area.

Currently the Town of Paradise Valley licenses five solid waste providers (each a “Provider,” and collectively “Providers”). Any trash hauler may seek licensure by meeting the provisions of Article 8-3-2 of the Town Code. PV residents may contract with any of the five Providers to receive service of which the frequency, scope of services and associated fee are negotiated between the customer and the Provider. As a result, many Town residents have very customized services to meet their unique residential situation. The Town does allow for home owners associations (HOA) to contract with a single Provider for collection of those residential units within a HOA.

SECTION 2 – DESCRIPTION & GOALS

The Town is requesting this proposal in an effort to achieve several goals associated with solid waste, recycling, and specialty waste collection and disposal. These include:

- 2.1 Reduction of Trash Trucks on Residential Streets** – The weight, size and frequency of trash trucks results in numerous negative impacts including wear and tear on Town

owned and private streets; daily noise issues associated with high idles and back-up alarms, and potential conflicts with pedestrian, bicyclists and smaller vehicles on tight residential streets. There are periodic conflicts as passenger vehicles become impatient and try to pass trash trucks on narrow residential streets. All of these impacts are mitigated by reducing trucks on residential streets but are individual goals as well.

- 2.2 Reduction in Number of Collection Vehicles and Days of Collection – Currently the Town is divided into two collection districts. The five licensed Providers pick-up trash in district 1 on Mondays and Thursdays and in district 2 on Tuesdays and Fridays. Having multiple Providers results in inefficiencies, noise, and increased wear and tear on streets. Consolidation into a single licensed hauler that could service the entire Town in one day would address these goals.
- 2.3 Reduce Noise – Elevated idle speeds necessary to lift bins creates distinct unwanted noise. Including operation-at-idle technology has the opportunity to reduce said noise. Further, back-up alarms required for commercial vehicles are often activated when trucks negotiate PV’s narrow streets. This again creates unwanted noise. Use of “smart back-up alarm” technology that senses the ambient noise level and adjusts accordingly can reduce noise.
- 2.4 Price Competitively – By licensing a single hauler for all residential pick-up, the Town seeks to achieve economies of scale that should significantly reduce individual prices.
- 2.5 Maintain a High Level of Customer Service – Because each collection service contract is currently negotiated individually, PV residents are able to achieve high customer service. If not, they may contract with a new Provider. Town seeks to maintain this level of customer service in a single hauler environment.
- 2.6 Reduce Impacts on Streets – Research shows that each trip of a loaded trash truck is the equivalent of 1,000 to 1,300 light vehicles. The Town has witnessed and repaired real damage from trash trucks as they turn in cul-de-sacs and from operations during high temperatures. Reducing the impact of trash trucks is a key goal of licensing a single hauler.
- 2.7 Maximize Efficiency – With five licensed Providers in Paradise Valley, there is great variation in the distance between customers. This leads to variable speeds between pick-ups; the purchase, maintenance and employment of drivers for multiple trucks to service the same area; and excess use of fuel and resulting emissions. A single Licensee should provide better stewardship of precious resources for all parties.

SECTION 3 – SCOPE OF WORK

3.1 Basic Service

All Proposers shall offer and price (see 4.5) a “Basic Service” that consists of:

- A. Once-per-week curbside solid waste collection. Day of the week for collection to be negotiated between the Licensee and Town upon award;
- B. Once-per-week curbside recycling service that collects those materials listed in 4.3.5 below;
- C. Solid waste and recycle collection shall be on the same day;

- D. Licensee shall obtain the necessary waiver of twice-per-week collection from the Maricopa County Health Department;
- E. Provide a single 96 gallon (or equivalent) solid waste receptacle. The Licensee shall retain ownership of the bin. There shall be no additional charge for the receptacle or a receptacle delivery fee. Licensee shall propose a program as part of this RFP for conditions that warrant a no-cost bin replacement. (Note: all subscribers shall be required to use standardized receptacles for automated collection.)
- F. Provide a single 96 gallon (or equivalent) recycle receptacle. The Licensee shall retain ownership of the bin. There shall be no additional charge for the receptacle or a receptacle delivery fee. Licensee shall propose a program as part of this RFP for conditions that warrant a no-cost bin replacement. (Note: all subscribers shall be required to use standardized receptacles for automated collection.)
- G. Subscribers to Basic Service shall also have access to all Special Collection Services found in 3.4 below.

3.2 Standard Service

All Proposers shall offer and price (see 4.5) a “Standard Service” that consists of:

- A. Twice-per-week curbside solid waste collection. Days of the week for collection to be negotiated between the Licensee and Town upon award;
- B. Once-per-week curbside recycling service that collects those materials listed in 4.3.5 below;
- C. Recycle collection shall be on the first pick-up day of the week;
- D. Provide a single 96 gallon (or equivalent) solid waste receptacle/bin. The Licensee shall retain ownership of the bin. There shall be no additional charge for the receptacle or a receptacle delivery fee. Licensee shall propose a program as part of this RFP for conditions that warrant a no-cost bin replacement. (Note: all subscribers shall be required to use standardized receptacles for automated collection.)
- E. Provide a single 96 gallon (or equivalent) recycle receptacle/bin. The Licensee shall retain ownership of the bin. There shall be no additional charge for the receptacle or a receptacle delivery fee. Licensee shall propose a program as part of this RFP for conditions that warrant a no-cost bin replacement. (Note: all subscribers shall be required to use standardized receptacles for automated collection.)
- F. Subscribers to “Standard Service” shall have access to all Special Collection Services found in 3.4 below.

3.3 Additional Services

All Proposers shall offer and price (see 4.5) all of the following additional services that would be available to any PV resident upon subscription:

- A. Additional 96 gallon receptacles;
- B. Dumpsters – Residential Only (not construction)
 - a. 2 yard
 - b. 4 yard

- c. 6 yard
- C. “Walk Up Service” – This service would require the Licensee to retrieve all solid waste and/or recycle receptacles from the residence (designated storage location) and bring to the collection vehicle. This could include the ability to drive the truck upon the driveway if approved by the subscriber. Pricing shall be a standard fee based on an average distance from the street to the receptacle per 96 gallon receptacle.
- D. ~~Additional Pick-up – Propose a price assuming an additional pick up of receptacles is already part of the Basic Service or Standard Service subscription. This service~~
~~Subscribers would only be allowed one additional pick-up per month, and/or one additional pick-up per week in the month of December, on a day of the week mutually agreed upon by the Town and Licensee upon award of the license.~~
Additional Pick-up - This service would permit Subscribers to request one additional pickup per week in December and one additional pick up during the rest of the year (i.e. four additional pickups in December and one additional pickup out of the other 11 months). Additional pickups would occur on a day of the week mutually agreed upon by the Town and Licensee upon award of the license. Propose a per-pickup fee that would be added to the Subscribers bill for the month the service is provided. In order to achieve the goal of limited truck traffic on residential streets, this service is discouraged. Additional containers preferred.
- E. Diversion Program– Propose a program to encourage reduction of waste creation, diversion of recyclables from landfills, and prevention of disposing household hazardous waste in curbside receptacles.
- F. Access to Local Disposal Facility - All subscribers shall have access to drop-off service at transfer station or local disposal facility owned, operated, or utilized by the Proposer (unless prohibited by the disposal facility’s operation agreement) at the established rate-per-ton fee. If proposer does not own or operate a local disposal facility it does not disqualify the proposal but it is taken into consideration under Method of Approach.
- G. Concierge Service – Licensee may provide other services requested by the subscriber that are not inconsistent with Article 8-3 of the Town Code. Any negotiated Concierge Service must be approved by the Town who will evaluate it against the goals stated in Section 2. An additional fee may be charged for the service negotiated between the Licensee and subscriber.

3.4 Special Collection Services

- A. Household Special (Hazardous) Waste (“HHW”) – Propose an annual HHW program to be hosted at the Town municipal campus (6401 E. Lincoln Drive) as a bid option included within the pricing of Basic and Standard Service. Specify if there will be a cap on the amount of refuse material collected per subscriber or in total.
- B. Document Shredding Event – Propose a semi-annual Document Shredding event to be hosted at the Town Municipal Campus in cooperation with the PV Police Department as a bid option included in the pricing of Basic and Standard Service.

- C. Provide annual Christmas Tree curbside pick-up as a bid option included in the cost of Basic or Standard Service.

3.5 Billing & Customer Services

- A. All Proposers shall be responsible for coordinating enrollment of new subscribers and termination of subscribers ending long term rental arrangements or ownership of the residential unit.
- B. All Proposers shall be responsible for collecting subscription fees associated with services provided in accordance with the License Agreement. Specify if billing shall be done monthly or quarterly. Regardless of billing cycle, subscribers must be given a 30-day payment period before a late fee can be charged. Specify if any discounts will be offered for subscribers who pay for the full year in advance.
- C. All Proposers shall offer a “suspension” status and associated pricing for subscribers wishing to suspend services for three months or greater.
- D. The Proposer shall describe their system for receiving, documenting and resolving customer complaints, problems or compliments. The system must include reasonable timelines for resolution. Said system shall include at least quarterly reporting of this information to the designated contact person of the Town.
- E. Annually, Proposer shall conduct a subscriber survey measuring satisfaction with the services provided. Said survey may be through billings, website, phone calls or other method approved by the Town and have a participation rate of at least 20%.
- F. Proposer shall meet not less than annually with the Town to discuss a plan of action for addressing customer service complaints and customer satisfaction survey results.

3.6.1 Additional Conditions

All Proposers shall agree to have their drivers meet semi-annually with the Paradise Valley Police Department to share and receive information and observations associated with Community Policing.

3.7 Contract Term

- A. Proposer shall provide separate pricing for: an initial contract term of three (3) years with the opportunity for two (2) one (1) year extensions: and an initial contract term of five (5) years with the opportunity for three (3) one (1) year extensions.
- B. Proposer shall provide pricing for each year. Pricing for years 2-3 and 2-5 may be a percentage linked to an index or a specific dollar amount. See price sheet, Form 5, for more details.
- C. Pricing for each one (1) year extension shall be negotiated by the Town and the successful Licensee any time after the commencement of the final year of the initial contract.
- D. Among other factors, contract extensions shall be based upon satisfactory customer survey scores, as determined solely by the Town.

3.8 Contracts with Homeowners Associations

In order to minimize disruption to existing solid waste contracts between homeowner's associations and their residents, some areas within the Town may be provided service at a later date. It would be the Town's intention to phase out HOA contracts upon expiration of their contract term or 3 years, whichever comes first.

The Town does not maintain a list of those HOA's with a contract for service. For proposing purposes, assume 1,000 homes are in some sort of collection contract that may phase out over three years.

SECTION 4 — SUBMITTAL FORM, CONTENT, AND EVALUATION CRITERIA

The Town will select a Licensee through a 1,000-point scale based on the criteria below. Firms interested in providing these services must submit a written proposal that addresses the following items:

4.1 General Information (100 Points)

4.1.1. Letter of Intent

The proposal shall be transmitted with a cover letter describing the firm's interest and commitment to provide the services requested in this RFP.

- A. The letter shall state that the proposal shall be binding for a 180-day period from the opening date as specified in this RFP.
- B. It shall include the name, title, address, telephone number, and email address of the individual to whom correspondence and other contacts should be directed during the selection process. The person authorized by the firm to negotiate a contract with the Town shall sign the cover letter.
- C. It shall include a statement as to the accuracy and completeness of the RFP: "The information contained in this Proposal or any part thereof, including its exhibits, schedules and other documents and instruments delivered or to be delivered to the Town, are true, accurate and complete to the Proposer's knowledge. This Proposal includes all information necessary to ensure that the statements herein do not in whole or in part mislead the Town as to any materials facts."

Address the cover letter as follows:

Town of Paradise Valley
Attn: Duncan Miller, Town Clerk
6401 East Lincoln Drive
Paradise Valley, AZ 85253

4.1.2 Statement of Organization

The Proposer shall complete Form 1. Proposers shall supply additional information that will assist the Town in understanding the legal organization of the Proposer. Include the legal name, address, identification number and legal form of the Proposer (e.g., partnership, corporation, joint venture, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If the Proposer is a wholly owned subsidiary of another company, identify the parent company. State that the Proposer is authorized to do business in the State of Arizona.

4.1.3 Disclosure of Preclusion from Participating in Public Procurement

If the firm, business or person submitting this proposal has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Proposer shall fully explain the circumstances relating to the preclusion or proposed preclusion in the proposal. The Proposer shall include a letter with its proposal setting forth the name and address of the governmental entity, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided. Proposer shall disclose this information or state that such status is non-applicable on Form 1 or as an attachment thereto.

4.1.4 Financial Statement

Proposer shall furnish, as an attachment to Form 1 in a separate sealed envelope marked "Confidential" a copy of the Proposer's most recent audited financial statement. In the event the Proposer does not have an audited financial statement, Proposer may substitute non-audited financial statement and complete federal tax return for the last two (2) years.

4.1.5 Litigation, Regulatory Actions, and Payment of Liquidated Damages History

Proposer shall describe, as an attachment to Form 1, all past and pending civil, legal, regulatory, and criminal actions now pending or which have occurred in the past ten (10) years against key personnel, Proposer, Proposer's subcontractor(s), and all subsidiaries owned by Proposer. List the amount of liquidated damages paid, the name of the jurisdiction or party to which damages were paid, and the event(s) that triggered the damages.

4.1.6 Compliance Records

In addition to the compliance information provided in response to other sections of this RFP, Proposer shall submit, as an attachment to Form 1, copies of all notices of violations, corrective action notices, enforcement actions or orders, warning notices, or other forms of permit violation/non-compliance documentation that the Proposer and

Proposer's subcontractor(s) received in the past five years (5) from public agencies for vehicles and other equipment, and vehicle staging, maintenance, processing, transfer, and disposal facilities in Arizona, which are owned or operated by the Proposer, Proposer's subcontractor(s), or Proposer's parent company and subsidiaries. In addition, provide a statement disclosing any and all fines, penalties, settlements, or damages of any kind paid by Proposer, Proposer's subcontractor(s), Proposer's parent company and subsidiaries, to public agencies in the past five (5) years.

4.1.7 Certificate of Insurability

Proposer shall complete Form 2. Failure to complete Form 2 may result in rejection of the proposal.

4.1.8 Acknowledgement of Addendums

Proposer must complete Form 3. Failure to acknowledge all addendums may result in rejection of the proposal.

4.2 Experience and Qualifications (200 Points)

4.2.1 Experience

Proposer must complete Form 4. Proposers are permitted to supply additional information that will assist the Town in understanding the Proposer's experience particularly with regard to serving as a municipality's exclusive Licensee. Also describe how the Proposer has previously handled or would handle the procurement of personnel, training of personnel, transition of billing and fee collection services, determination of routes and operating procedures, delivery of containers, public education, and the preparation of procedures to ensure a smooth transition from one service Provider to another and one type of service to another.

4.2.2 Key Personnel

Proposer shall provide an organization chart, as an attachment to Form 4, for key personnel and job descriptions indicating the qualifications and experience of key personnel the Proposer would assign to the transition team and to the ongoing management of the services provided under agreement. For positions that are currently unfilled, identify minimum qualifications for that position. Specify the amount of time each individual will be dedicated to work on the contract. Provide résumés, names, and phone numbers of municipal references of the key proposed management team members. At a minimum, key personnel shall include general manager, operations manager, and maintenance manager or other personnel that will have regular contact with the Town.

4.2.3 Statement of Independence

The Proposer shall list and describe, as an attachment to Form 4, the Proposer's, or the Proposer's subcontractor's, professional relationships involving the Town or any of its agencies or component units for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to

performing the services sought in this RFP. Additionally, the Proposer shall give the Town written notice of any other professional relationships it enters into with the Town or any of its agencies or component units during the period of the License Agreement.

4.3 Method of Approach (300 Points)

Proposers shall provide the following information on Form 5, consistent with the goals and services listed in Sections 2 and 3:

4.3.1. Description of Vehicles and Collection Equipment (attach to Form 5)

- A. Proposer shall demonstrate their ability to meet the vehicle and collection equipment requirements provided for in Town Code Section 8-3-6 Vehicle Requirements and subsection B below. Proposer shall describe the collection equipment that will be used to perform services and describe how the Proposer plans to access all properties in Town including hillside properties with steep grades and narrow roads.
- B. Proposer shall specify the number of collection vehicles, make, model, age, description of equipment, and materials to be collected via the vehicle. If the Proposer is awarded the License Agreement, the maximum age of a collection vehicle shall be Model Year 2007 and each vehicle shall be equipped with “operation-at-idle” and “smart back-up” technology. Proposer shall commit to meeting this requirement. Proposer shall identify if the collection service will be performed with one-person or two-person crews.

4.3.2 Collection Route Schedules and Maps

- A. Proposer shall include, as an attachment to Form 5, a proposed route schedule and maps for collection of Basic Service and Standard Service assuming every other residential unit is a subscriber to Basic Service and the remainder are subscribers to Standard Service. Proposer may offer alternative ways in which to divide the Town into two collection districts to improve efficiencies. However, it is desirable that the entire Town be serviced in a single day.
- B. Proposer shall provide a plan for missed collection due to holidays, storms, or other events.

4.3.3 Disposal and Processing Contracts:

Proposer shall provide proof of disposal and processing contracts as an attachment to Form 5. If Proposer owns the disposal and processing facilities, provide evidence in place of contracts. Proposer shall also identify if it is able to offer subscribers “drop off” service at a local disposal facility in an attachment to Form 5.

4.3.4 Container Damage and Replacement

As an attachment to Form 5, Proposer shall describe (i.e. manufacturer, capacity, color, and other specifications) the Solid Waste Containers and Recycling Containers to be purchased and provided to Basic and Standard subscribers. If requested, Proposer shall provide a sample of the Solid Waste Containers and Recycling Containers.

Proposer shall describe procedures used to minimize damage to plastic refuse and recycling containers. Also describe the protocol for damaged container replacement and when such replacement will occur at no-cost to the subscriber. Proposal shall also affirm there will be no delivery fee of the receptacle to the subscriber.

4.3.5 Collection of Recycling Materials

Proposer shall describe, on an attachment to Form 5, the method for performing residential recycling collection services.

A. Identify recyclable materials to be collected. The Town recommends:

- Aluminum cans and foil.
- Steel/tin cans
- Glass food and beverage containers (flint, amber, and green)
- Newspaper, slick paper inserts
- Magazines, paperback books
- Residential mixed paper, junk mail inserts
- Telephone books and Yellow Pages
- Cardboard (corrugated, chipboard)
- Aerosol cans
- Plastic bottles and containers (Recycling logo #1 through #6)

B. Processing Site Information. Provide the following information:

- Name, location, and description of the processing facility where recyclable materials will be handled;
- Name of owner and operator of the facility(ies) identifying if the company that owns and/or operates the processing facility is the same as the Proposer, a related-party entity, or subcontractor;
- Contact name and phone number of the site manager;
- Term of the contract; and,
- Operating procedures particularly related to inspection and handling of hazardous materials inadvertently delivered to the facility and related to the sorting equipment used to segregate and consolidate recyclable materials.

C. Proposer shall identify all Recyclable Materials accepted by the Processing Facility. If there are Recyclable Materials not accepted by the Processing Facility

that are to be collected by the Proposer, Proposer shall explain how such material will be handled. If there are Recyclable Material accepted by the processing Facility, but not collected by the Proposer, Proposer shall explain the reason for not collecting said recyclable.

- D. Permitted and Available Processing Capacity: Proposer shall state the daily and annual permitted capacity of the facility. If the facility is not owned and operated by the Proposer, provide a letter from the facility owner and operator that documents their commitment to provide the processing services proposed and guaranteeing the capacity required over the term of the License Agreement. If the capacity guaranteed to the Town relies on development of a new facility or expansion of an existing facility, describe the development or expansion plans, additional capacity to be constructed, schedule for development/expansion, and permitting status of the development/expansion plan.
- E. Diversion Program: Proposer shall fully describe its program to encourage diversion of waste, how it will be implemented and communicated to subscribers, and how success will be measured.
- F. Import Restrictions or Fees: Proposer shall list any import restrictions, taxes, or fees that will be applicable to the receipt of the Town's recyclable materials, specifying for each tax or fee the per-ton dollar amount of such fee. Discuss the ability of the host jurisdiction or state to increase or levy taxes, host fees, or other fees. If there is an import restriction on accepting materials from outside of the local jurisdiction, describe the process to have the import restriction waived.
- G. All revenues to the Proposer from the disposal of recycled materials collected under this contract shall be the property of the proposer and calculated into the overall price of the services requested in this document.

4.3.6 Residential Waste Collection

Proposer shall provide, and an attachment to Form 5, the following information:

- Name, location, and description of the receiving facility where the solid waste will be landfilled or otherwise disposed;
- Name of owner and operator of the facility(ies) identifying if the company that owns and/or operates the facility is the same as the Proposer, a related-party entity, or subcontractor;
- Contact name and phone number of the site manager;
- Term of the contract to dispose of the solid waste in this facility; and,
- Anticipated remaining life of the landfill, in years. If life expectancy is less than 10 years, describe the development or expansion plans, additional capacity to be constructed, schedule for development/expansion, and permitting status of the

development/expansion plan.

4.3.7 Provision of Household Special (Hazardous) Waste and Document Shredding

The Proposer shall describe the method for performing the events listed in Section 3.4 above directly or through a third-party contract.

4.4 Billing, Customer Service, and Public Education (100 Points)

Proposers shall provide the following:

4.4.1 Billing

The Proposer shall be responsible for billing all customers. To ensure that customers receive competent, professional, and courteous customer service, please provide, as an attachment to Form 6, the following:

- Describe how Proposer will provide for the smooth and accurate creation or transition of customer service and billing account data.
- Provide sample of customer bills and a listing of jurisdictions where Proposer currently provides billing services, including a contact name and phone number.
- Describe all acceptable payment types and methods and if a credit card convenience fee would be charged (Types and methods may include: telephone, credit cards accepted, online bill pay, smartphone app, etc).
- Describe the approach, including frequency, for performing audits of service levels and billing to ensure that all customers are being billed properly.
- Describe procedures for dealing with customer service, with regards to customer billing demands, during the transition and throughout the term of the License Agreement.
- Describe Proposer's experience with collecting on unpaid accounts in other communities where Proposer currently provides billing services.

4.4.2 Customer Service Plan

To ensure that customers receive competent, professional, and courteous customer service the Proposer shall, on an attachment to Form 6:

- Describe the location where customer service operation will be provided.
- Describe how calls will be handled and reported, how many calls can be handled per Customer Service Representative, and if any changes will be made to the current operation to accommodate the Town.
- Describe procedures to satisfactorily respond to, record, and report customer complaints. Said system shall include at least quarterly reporting of this information to the Town and a designated contact person for the Town staff.
- Describe how Proposer may conduct a statistically valid subscriber survey measuring satisfaction with the services provided. Said survey may be through billings, website, phone calls or other method approved by the Town and have a participation rate of at least 20%.

4.4.3 Public Education and Outreach Plan

The Town places importance on effective public communication and education. Describe Proposer's method for providing public education programs regarding recycling and handling and disposing of other types of waste.

4.5 Cost Information (300 Points)

Proposer shall provide pricing for services listed in Section 3 on Form 7. This shall represent the all-in cost to the subscriber for the service level requested. No additional fees shall be charged such as account set-up, receptacle delivery fee, etc.

SECTION 5 – RFP SCHEDULE AND FORMAT

Schedule

The solicitation, receipt, evaluation of submittals, and the selection of the Licensee will conform to the following schedule. (Note: Dates are subject to change.)

RFP Issued	July 6, 2017
Pre-Submittal Conference-Mandatory	July 12, 2017 at 10:30 AM
Deadline to Receive Questions about the RFP	July 24, August 7, 2017 at 3:00 PM
Deadline to Receive Requests for proprietary or confidential exception to public disclosure	August 30, 2017
Deadline for RFP Submittal*	September 6, 2017 at 3:00 PM

*** RFP Proposal due no later than 3:00 PM (Arizona Time).** to the Town of Paradise Valley Town Clerk, 6401 East Lincoln Drive, Paradise Valley, AZ 85253. **Late submittals will not be accepted.**

Format

One (1) original, five (6 5) copies, and one (1) electronic copy of the submittal shall be enclosed in a sealed package and marked as follows:

Solid Waste and Recycling Collection Services RFP
RFP-17-053-TMG
Attn: Duncan Miller
Proposing Firm's Name

Proposals shall be delivered to:
Town of Paradise Valley
Office of the Town Clerk
6401 E Lincoln Drive
Paradise Valley, AZ 85253

Incomplete submittals, incorrect information, or late submittals shall be cause for disqualification. Copies received by FAX or Email shall not be accepted. There are no exceptions, even if delay was due to a third party such as a delivery service or adverse weather.

Questions regarding this RFP may be submitted via email only to the Town Project Manager.

SECTION 6 – PRE-SUBMITTAL CONFERENCE

There will be a mandatory pre-submittal meeting for this RFP on July 12, 2017 at 10:30 AM (Arizona Time) in the Town Hall Boardroom, 6401 E Lincoln Drive, Paradise Valley, AZ 85253. Arrangements to participate by phone conference can be made by contacting the Town's project manager for this RFP. Please contact the Town's Project Manager (information above) regarding clarification of this document only. Additional information beyond this document will only be provided in writing to the Project Manager(s) via email.

SECTION 7 - SELECTION PROCESS

A Selection Committee will review the proposals and select the most responsible and responsive Proposer whose proposal is determined to be the most advantageous to the Town, utilizing the evaluation criteria listed in Section 4 above. The top Proposers may be invited to be interviewed by the Selection Committee, and/or asked to present their proposals in person. This will not be considered or scheduled until after the Selection Committee has evaluated and ranked all qualified written proposals. Scoring of the presenting Proposers will be done on a similar 1,000-point scale as the written proposals, as outlined below:

- 1. General Information (100 Points):** The same criteria in "General Information" outlined in Section 4 above will apply. However, it may be possible that this score is higher or lower than the score given during the written evaluation. This difference in score may include, but is not limited to, such factors as clarification of points brought up in the Proposer's presentation.
- 2. Experience and Qualifications (200 Points):** The same criteria in "Experience and Qualifications" outlined in Section 4 above will apply, as well as consideration of the quality of the consultant's presentation, ability to communicate information effectively, and enthusiasm to engage the audience. This score may be higher or lower than the score given during the written evaluation. This difference in score may include, but is not limited to, such factors as clarification of points brought up in the Proposer's presentation.
- 3. Method of Approach (300 Points):** The same criteria in "Method of Approach" outlined in Section 4 above will apply. However, it may be possible that this score is higher or lower than the score given during the written evaluation. This difference in score may include, but is not limited to, such factors as clarification of points brought up in the Proposer's presentation.
- 4. Billing, Customer Service, and Public Education (100 Points):** The same criteria in "Billing, Customer Service, and Public Education" outlined in Section 4 above will apply. However, it may be possible that this score is higher or lower than the score given during the written evaluation. This difference in score may include, but is not limited to, such factors as clarification of points brought up in the Proposer's presentation.
- 5. Cost Information (300 Points):** The Town will evaluate based upon the overall 3 year and 5 year costs to the subscriber. Evaluators will also be looking for completeness (all requested services offered and priced) of the cost information.

SECTION 8 – TERMS AND DISCLOSURES

8.1. Public Records:

Subject to statutory limitations, all documents received by Town are considered public records and will be made available for public inspection and copying upon request after award and execution of a contract by the Town. If you consider any documents submitted with your response to be proprietary or otherwise confidential, please submit a written documentation explaining what specifically is confidential and why. This request for a determination of whether the documents can be withheld from public disclosure is due no later than August 30, 2017. If you do not obtain a determination of confidentiality prior to the submittal deadline, any document(s) submitted will be subject to public disclosure. Note: cost information shall not be considered confidential and will be made public. (The financial audit statement requested in Section 4.1.4 shall be pre-certified as confidential and will be withheld from public disclosure.)

8.2 Instructions:

The Town will not be responsible for firms adjusting their RFP's based on oral instructions by any member of the Town Staff or the Town's contracted consultant(s) or agent(s). RFP's deviating from the specifics contained herein by any means other than an authorized addendum from the Town may be rejected.

8.3 Proposal Amendment or Withdrawal:

A proposal may be withdrawn and amended any time before the proposal due date. A proposal may not be amended or withdrawn after the proposal due date and time except as otherwise provided by applicable law.

8.4 Contact with Town Officials:

Contact with Town staff (other than designated points of contact), elected or appointed officials, or Selection Committee members concerning this RFP, at any time, in any venue, is strictly prohibited and will be grounds for disqualification. Contact prior to evaluation of all proposals is limited to clarification of this RFP through the project manager or alternate named above, or during the pre-submittal conference while it is in session. If a response to this RFP is selected as a finalist for interview, or invited to present to the Selection Committee, contact is restricted to the Selection Committee members only.

8.5 Costs of RFP:

The Town will not be responsible for any costs incurred by any firm submitting an RFP Response or responding to this notice.

8.6 Waiver and Rejection Rights:

The Town reserves the right to waive any irregularities in any submittal and to reject all submittals and re-advertise or cancel the project in its entirety, at its sole discretion.

8.7 Addenda:

Addenda to this RFP will be posted on the Town's website at www.paradisevalleyaz.gov. An email notice will be sent to proposers who have registered on the RFP download page and those who attend the Pre-Submittal Conference. It shall be the responsibility of all Proposers to check the website for any possible addenda.

FORM 1: STATEMENT OF ORGANIZATION

1. Proposer		
Full Legal Name of Business:		
Principle Business Address:		
Principle Phone Number:		
Local Business Address:		
Local Business Contact Person:		
Contact Person Email Address:		
Type of Organization (legal form – corporation, joint venture, sole proprietorship, etc.): (If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member.)		
Is the Proposer a wholly owned subsidiary of another company? If yes, identify the parent company.		
Tax ID #		
Is the Proposer authorized to do business in the State of Arizona?		
Has the Proposer been debarred, suspended, or precluded from participating in any public procurement activity? (See Section 4.1.3)		
Provide names of authorized representative(s) of the Proposer who has legal authority to bind the Proposer in contractual obligations:		
a.		
b.		
c.		

2. Subcontractors		
List of all firms associated with this Proposal:		
Name	Address	Area of Responsibility

Required Attachments to Form 1:

1. Financial Statement (as described in Section 4.1.4) Separate sealed envelope marked “Confidential”
2. Litigation History (as described in Section 4.1.5)
3. Compliance Records (as described in Section 4.1.6)

FORM 2: CERTIFICATE OF INSURABILITY

By submitting a proposal, the submitting Proposer certifies that it is fully aware that the Insurance Requirements contained in the Agreement apply whether awarded one or more Service Options pursuant to this RFP. Furthermore, the Proposer assures the Town of Paradise Valley that it is able to produce the insurance coverage required should it be selected for award of the Agreement.

Should the Proposer's firm be awarded the Agreement by the Town and then be unable to produce the insurance coverage specified within ten calendar days, it is fully aware and understands that it may not be considered for further projects by the Town of Paradise Valley.

Signature of Proposer

Printed Name

Company Name

Date

FORM 3: ACKNOWLEDGEMENT OF ADDENDA

By submission of this Proposal, Proposer hereby certifies receipt of all the addenda listed in the table below.

[illegible]

FORM 4: EXPERIENCE

Required Attachments to Form 4:

1. Experience – operations and training (as described in Section 4.2.1)
2. Key Personnel – organization chart (as described in Section 4.2.2)
3. Statement of Independence (as described in Section 4.2.3)

REFERENCES

1.	Name of Public Agency:	
	Address:	
	Phone Number:	
	Contact Person:	
	Year Contract Initiated:	
	Number of Residential Units Served:	
	Description of Services	

2.	Name of Public Agency:	
	Address:	
	Phone Number:	
	Contact Person:	
	Year Contract Initiated:	
	Number of Residential Units Served:	
	Description of Services	

3.	Name of Public Agency:	
	Address:	
	Phone Number:	
	Contact Person:	
	Year Contract Initiated:	
	Number of Residential Units Served:	
	Description of Services	

4.	Name of Public Agency:	
	Address:	
	Phone Number:	
	Contact Person:	
	Year Contract Initiated:	
	Number of Residential Units Served:	
	Description of Services	

FORM 5: METHOD OF APPROACH

Required Attachment to Form 5:

1. Vehicle requirement compliance (as described in Section 4.3.1)
2. Collection Route Schedules, map, and plan to accommodate missed collections due to holidays, storms, or other events (as described in Section 4.3.2)
3. Disposal Contracts (as described in Section 4.3.3)
4. Container Damage and Replacement Procedures (as described in Section 4.3.4)
5. Collection of Recycling Materials (as described in Section 4.3.5)
6. Residential Waste Disposal (as described in Section 4.3.6)
7. Household Special (Hazardous) Waste, Document Shredding, and Drug Disposal Events (as described in Section 4.3.7)

Form 6: BILLING, CUSTOMER SERVICE, AND PUBLIC EDUCATION

Required Attachment to Form 6:

1. Description of billing process as described in Section 4.4.1)
2. Description of Customer Service Plan as described in Section 4-4-2
3. Description of Public Education and Outreach Plan as described in Section 4.4.3

FORM 7A: COST

Proposer shall provide pricing for each of the first three (3) years. Pricing for years 2-3 may be a percentage, linked to an index, or a specific dollar amount.

Assumptions

Cost proposals should assume the following:

1. Current number of residential properties = 5,556
2. Potential number of residential properties by 2021 = 5,957
3. Existing contracts with HOAs would be terminated within a maximum of three (3) years
4. Single hauler service effective date = April 1, 2018 (Actual service start date may be negotiated between the successful Proposer and the Town in the License Agreement.)
5. All subscribers would be required to use standardized receptacles for automated collection

3 YEAR INITIAL CONTRACT TERM

Service	Unit	Fee	Plus Special Collection Service HHW 3.4(A) Fee	Plus Special Collection Service Shredding 3.4(B) Fee
3.1 Basic Service	2018 price per month	\$	\$	\$
	2019 price per month			
	2020 price per month			
3.2 Standard Service	2018 price per month	\$	\$	\$
	2019 price per month			
	2020 price per month			

Service	Unit	Fee	Notes
3.3 Additional Services			
A. 96 Gallon Solid Waste Bin	2018 price per month	\$	
	2019 price per month		
	2020 price per month		
B. (a) 2 Yard Dumpster	2018 price per month	\$	
	2019 price per month		
	2020 price per month		
B. (b) 4 Yard Dumpster	2018 price per month	\$	
	2019 price per month		
	2020 price per month		
B. (c) 6 Yard Dumpster	2018 price per month	\$	
	2019 price per month		
	2020 price per month		
C. Walk Up Service	Price for each 96G receptacle	\$	
D. Additional Pick up	2018 price per pick-up	\$	Dec 1/week and 1/11 months
	2019 price per pick-up		
	2020 price per pick-up		
3.5(C) Subscription Suspension Fee	2018 price per month	\$	Minimum 3 month suspension
	2019 price per month		
	2020 price per month		

FORM 7B: COST

Proposer shall provide pricing for each of the first five (5) years. Pricing for years 2-5 may be a percentage, linked to an index, or a specific dollar amount.

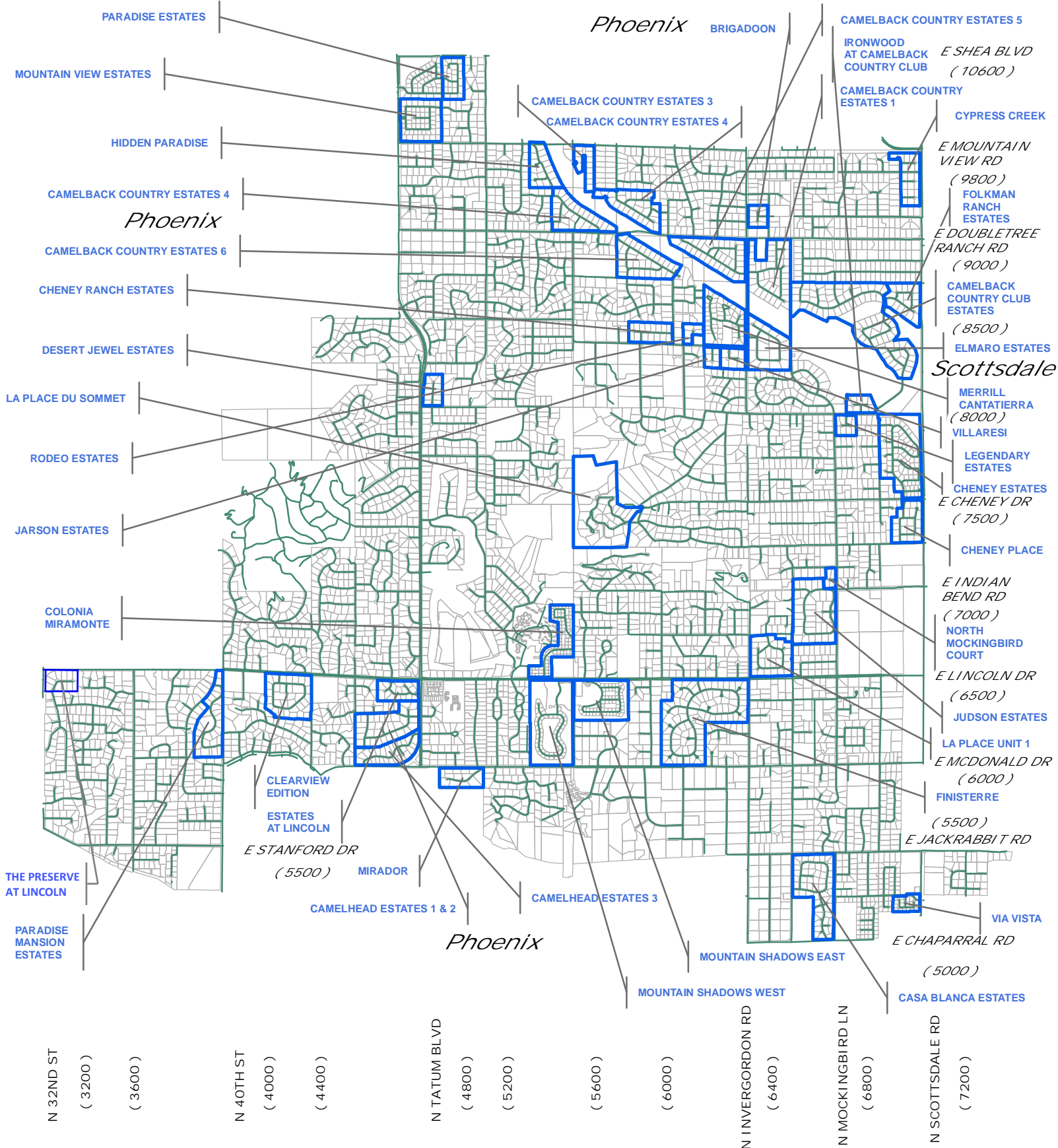
5 YEAR INITIAL CONTRACT TERM

Service	Unit	Fee	Plus Special Collection Service HHW 3.4(A) Fee	Plus Special Collection Service Shredding 3.4(B) Fee
3.1 Basic Service	2018 price per month	\$	\$	\$
	2019 price per month			
	2020 price per month			
	2021 price per month			
	2022 price per month			
3.2 Standard Service	2018 price per month	\$	\$	\$
	2019 price per month			
	2020 price per month			
	2021 price per month			
	2022 price per month			

Service	Unit	Fee	Notes
3.3 Additional Services			
A. 96 Gallon Solid Waste Bin	2018 price per month	\$	
	2019 price per month		
	2020 price per month		
	2021 price per month		
	2022 price per month		
B. (a) 2 Yard Dumpster	2018 price per month	\$	
	2019 price per month		
	2020 price per month		
	2021 price per month		
	2022 price per month		
B. (b) 4 Yard Dumpster	2018 price per month	\$	
	2019 price per month		
	2020 price per month		
	2021 price per month		
	2022 price per month		
B. (c) 6 Yard Dumpster	2018 price per month	\$	
	2019 price per month		
	2020 price per month		
	2021 price per month		
	2022 price per month		
C. Back Door Service	Price for each 96G receptacle	\$	
D. Additional Pick up	2018 price per pick-up	\$	Dec 1/week and 1/11 months
	2019 price per pick-up		
	2020 price per pick-up		
	2021 price per pick-up		
	2022 price per pick-up		
3.5(C) Subscription Suspension Fee	2018 price per month	\$	Minimum 3 month suspension
	2019 price per month		
	2020 price per month		
	2021 price per month		
	2022 price per month		

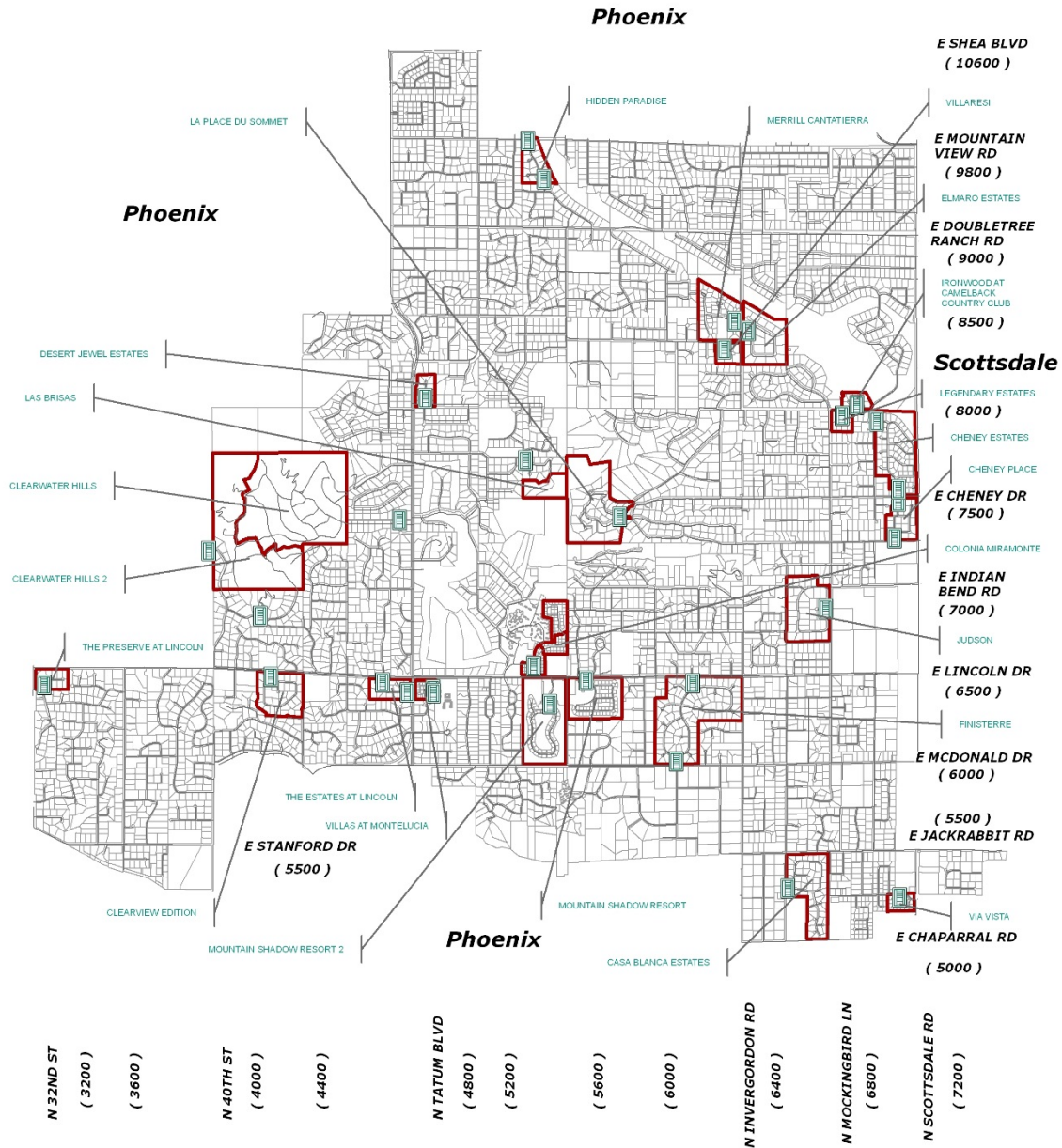


Town of Paradise Valley, AZ Homeowners Association Map





Town of Paradise Valley, AZ Gated Communities Map



TOWN OF PARADISE VALLEY

**Single Trash Hauler Contract
December 7, 2017**



Single Hauler

Purpose: Review proposed terms and contract for single hauler services. Receive and answer clarifying questions. Mayor and Council to provide guidance to staff on process for receiving public input.



Single Hauler Background

- Periodic Discussion in PV Regarding Single Hauler
- QOL Initiative in January 2016
- April 2016 ID Problems and Solutions



Problem/Solution Matrix

Solutions/ Problems	Frequency of Trucks on streets (safety)	Wear and Tear on Streets	Customized Service	Aesthetic of Trash Cans Out Daily	Noise	Rate	Environ Sustain- ability	Limited Regulation
Free Market/ Status Quo	0	0	0	0	0	0	0	0
Limit Days of pickup	+	+	-	+	+	?	+	-
Remove twice a week collection requirement. Allow Hauler to seek single day exemption	+	+	-	+	+	+	+	-
Single Hauler	+	+	-	+	+	+	+	-
Single Hauler but Multiple districts	+	+	-	+	+	+	+	-
Limit hours of pick-up	+	+ / 0	0	0	+	0	?	-
Required buried bins or garage pick-up	0	0	-	+	0	-	-	-
Pay-as-you- Throw	0	0	+	+	0	+	+	-

0 = status quo
 + = positive impact
 - = negative impact



Single Hauler

- Broke the solutions into two tiers
 - Legislative Solutions
 - Single Hauler Proposal
- In Fall 2016 looked at Legislative Solutions



Single Hauler Problem/Solution Matrix

Solutions/ Problems	Frequency of Trucks on streets (safety)	Wear and Tear on Streets	Customized Service	Aesthetic of Trash Cans Out Daily	Noise	Rate	Environ Sustain- ability	Limited Regulation
Limit Days of pickup	+	+/-	-	+	+	0	+	-
Remove twice a week collection requirement. Allow Hauler to seek single day exemption	+	+/-	0	+	+	+	+	-
Limit hours of pick-up	+	+/-	0	0	+	0	?	-
Require newer vehicles	0	0	0	0	+	-	+	-
Require operation at idle and smart back up tech	0	0	0	0	+	0	0	-

0 = status quo
+ = positive impact
- = negative impact



Legislative Amendments

- October 28, 2016 passed Ord 2016-12
 - Haulers may collect trash once per week
 - Haulers may only collect on two days of the week for each neighborhood
 - Vehicles must have smart back-up and operation at-idle technology
 - Vehicles must be 2010 or newer, or 2007 & Alt Fuel



Single Hauler

- Tier 2
 - Reaffirmed to go forward in March 2017 Retreat
 - Drafted RFP in May and June 2017
 - RFP went Public July 6, 2017
 - Proposal Received September 6, 2017



Single Hauler

- Proposals Evaluated by 5 member panel
 - 3 staff, 1 resident, 1 from a Town who changed
- Proposals ranked based upon RFP Criteria
 - General Information (10%)
 - Experience & Qualifications (20%)
 - Method of Approach (30%)
 - Billing, Customer Service, Public Ed (10%)
 - Cost of Service (30%)



Single Hauler

- Resulting Rank
 - Republic Services
 - Right Away Disposal
 - Waste Management
 - Curbside Recycling and Disposal
- Staff Negotiate Contract with Republic



Contract Terms

- All CNG Fleet (except small vehicle for hills)
- All new carts (96 Gallon)
- Call Center 4:00 a.m. – 7:00 p.m.
- Mobile app to enroll, pay bills, complain
- Missed carts reported by 11am, same day
- Missed carts reported after 11am, next day



Contract Terms

- Video cameras on vehicles to film pick-ups
- GPS on trucks to track time and place
- Annual Household Hazardous Waste Disposal
- Semi-annual Shredding Event
- Christmas Tree Pick-up



Contract Terms

- “Most Favored Nation” – Honor contracts of individuals and HOA’s for service up to 3 years
 - Up to July 2021;
 - Entered into before July 14, 2017;
 - HOA can remain with its contracted hauler up to July 2021 if contract in place before July 2014.



Contract Terms

- Pricing – 1x per week pick-up and recycling
 - \$17.84 July 2018-June 2019
 - \$18.46 July 2019-June 2020
 - \$19.11 July 2020-June 2021
 - \$19.78 July 2021-June 2022
 - \$20.47 July 2022-June 2023
 - \$21.19 July 2023-June 2024
 - \$21.93 July 2024-June 2025



Contract Terms

- Twice-a-week trash service = +\$10/mo
- Additional 96 gallon carts = +\$5/mo
- Walk-up service = 1x/wk +\$25, 2x/wk \$50 /mo
- Suspension of Service for 3+ months = \$5/mo
- Additional Pick up = \$10
- 1 quarter trial of 1x per week – 7/18 – 9/18



Single Hauler Problem/Solution Matrix

Solutions/ Problems	Frequency of Trucks on streets (safety)	Wear and Tear on Streets	Customized Service	Aesthetic of Trash Cans Out Daily	Noise	Rate	Environ Sustain- ability	Limited Regulation
Free Market/ Status Quo	0	0	0	0	0	0	0	0
Limit Days of pickup	+	+	-	+	+	?	+	-
Remove twice a week collection requirement. Allow Hauler to seek single day exemption	+	+	-	+	+	+	+	-
Single Hauler	+	+	-	+	+	+	+	-
Single Hauler but Multiple districts	+	+	-	+	+	+	+	-
Limit hours of pick-up	+	+/0	0	0	+	0	?	-
Required buried bins or garage pick-up	0	0	-	+	0	-	-	-
Pay-as-you- Throw	0	0	+	+	0	+	+	-

0 = status quo
 + = positive impact
 - = negative impact



Comparison to Goals

- Frequency of trips – ~70% reduction
- Wear and Tear on Streets – Rough Estimate:
– \$77,000-\$250,000, but not certain
- Customized Service – Menu of charges, no in ground
- Aesthetics and Noise – Consistent with 2016-12
- Rate – Varies. For some ↓, others ↑, others ↔, ↑ in 3yrs
- Environment – CNG vehicles



Public Feedback

- Publish Terms and Conditions on Website then:
 - Twitter
 - Facebook
 - Nextdoor.com
 - “Notify Me” and “In the News”
 - Code Red Administrative Alert



Public Feedback

- ½ Page Ad in *Independent* 1/3 and 1/10
- December 2017 Town Reporter
- Community Conversation/Public Comment 1/11
- Dedicated Email –
TrashFeedback@paradisevalleyaz.gov



Single Hauler

Purpose: Review proposed contract for single hauler services. Receive and answer clarifying questions. Mayor and Council to provide guidance to staff on process for receiving public input.



Single Hauler

Questions?







Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Action Report

File #: 17-412



Action Report

File #: 17-431

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager

DATE: December 7, 2017

DEPARTMENT: Town Manager

AGENDA TITLE:

Mummy Mountain Preserve Trust 20 Year Anniversary

Town Value(s):

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

Council Goals or Statutory Requirements:

RECOMMENDATION:

Receive and file the proclamation recognizing the 20th Anniversary of the Mummy Mountain Preserve Trust.

SUMMARY STATEMENT:

The Mummy Mountain Preserve Trust was created by the Town Council on November 6, 1997 to preserve in perpetuity the mountain areas of the Town. The Trust is celebrating its 20th anniversary this year. On this occasion, it is appropriate for the Council to recognize the many resident volunteers who have served on the Trust since its incorporation and encourage the Town and its residents to support the Trust's goal of preserving hillside open space for future generations.

ATTACHMENT(S):

Proclamation Mummy Mountain Preserve Trust

Proclamation

WHEREAS, *Mummy Mountain and the mountain areas within the Town of Paradise Valley are a natural preserve of significant scenic and environmental value; and*

WHEREAS, *Mummy Mountain and the mountain areas within the Town provide open space, natural beauty, and native habitat and terrain; and*

WHEREAS *the Mummy Mountain Preserve Trust was created on November 6, 1997 to protect the approximately 320-acres of Mummy Mountain identified as being of interest in preserving; and*

WHEREAS, *the Mummy Mountain Preserve Trust is recognized on its twenty year anniversary for its accomplishment in adding 244-acres of the 320-acres to the preserve in deed or conservation easement; and*

WHEREAS, *the Mummy Mountain Preserve Trust has been served by trustees Robert Plenge, David Hann, Bennett Dorrance, Bil Keane, Purdom Thomas, Bernie Barry, Joan Levinson, Fed Pakis, Phil Schneider, Colin Williams, Ron Clarke, Legal Counsel Andrew Miller, and Secretary Duncan Miller.*

NOW, THEREFORE, *I, Michael Collins, Mayor of the Town of Paradise Valley, do hereby recognize*

Mummy Mountain Preserve Trust

for their outstanding service to the residents of the Town of Paradise Valley as well as their twenty year anniversary.

IN WITNESS WHEREOF, *I have set my hand and caused to be affixed the seal of the Town of Paradise Valley this 7th day of December, 2017.*

Michael Collins, Mayor

Attest:

Duncan Miller, Town Clerk



Action Report

File #: 17-411

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager
Eva Cutro, Community Development Director
Paul Michaud, Senior Planner

DATE: December 7, 2017

DEPARTMENT: Community Development

AGENDA TITLE:
Planning Commission Update

Town Value(s):

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

Provide an annual update of the activities of the Planning Commission

Council Goals or Statutory Requirements:

SUMMARY STATEMENT:

Planning Commission Chairman Daran Watschak will provide an update on the work the Planning Commission has accomplished over the past year.

BUDGETARY IMPACT:

None

ATTACHMENT(S):

Power Point Presentation

TOWN OF PARADISE VALLEY

Planning Commission Update

Daran Wastchak, Chair
December 7, 2017



Planning Commission Members

- 7 members appointed by Town Council
- Serve a staggered three-year term
- Recommend to Town Council a chairperson each April
- Serve on Hillside Building Committee

Commissioner	Term Expires	Expertise
Daran Wastchak, Chair	April 2018	Consultant LEED, Energy Star, IECC, Energy Credit
James Anton	April 2020	Real Estate Investment/Furniture Design & Sales
Thomas G. Campbell	April 2020	Architect/Builder
Charles Covington	April 2019	Architectural Consultant/Construction Manager
Richard K. Mahrle	April 2020	Attorney
Dolf Strom	April 2018	Engineer, Aerospace
Jonathan Wainwright	April 2018	Real Estate/Developer/Builder

Planning Commission Powers

Make a recommendation to Council

☐ Long-Range Plans (General Plan)

☐ Zoning Ordinance

☐ Special Use Permits (New, Major, and Intermediate)

- Resorts
- Churches
- Private Schools
- Medical and Kennels

☐ Zoning Map Changes

☐ Preliminary & Final Plats

☐ Lot Splits

- Less than 2.5 Acres
- 2 lots with a new road



Special Use Permit Applications

Intermediate or Major

2017 Applications	No. of Meetings
PCDS – Intermediate SUP <i>Replace admin building, new fencing, and updated signage</i>	6
Sanctuary Resort - Intermediate SUP <i>Add 45 new keys to the existing casitas area, new pool, new snack bar, modified parking near the central part of the property, and additions to the existing ballroom building</i>	3
The Villas at Cheney Estates – Major SUP Roadway Gates An applicant request for roadway gates at the proposed 8-lot single-family development of “The Villas at Cheney Estates”	4



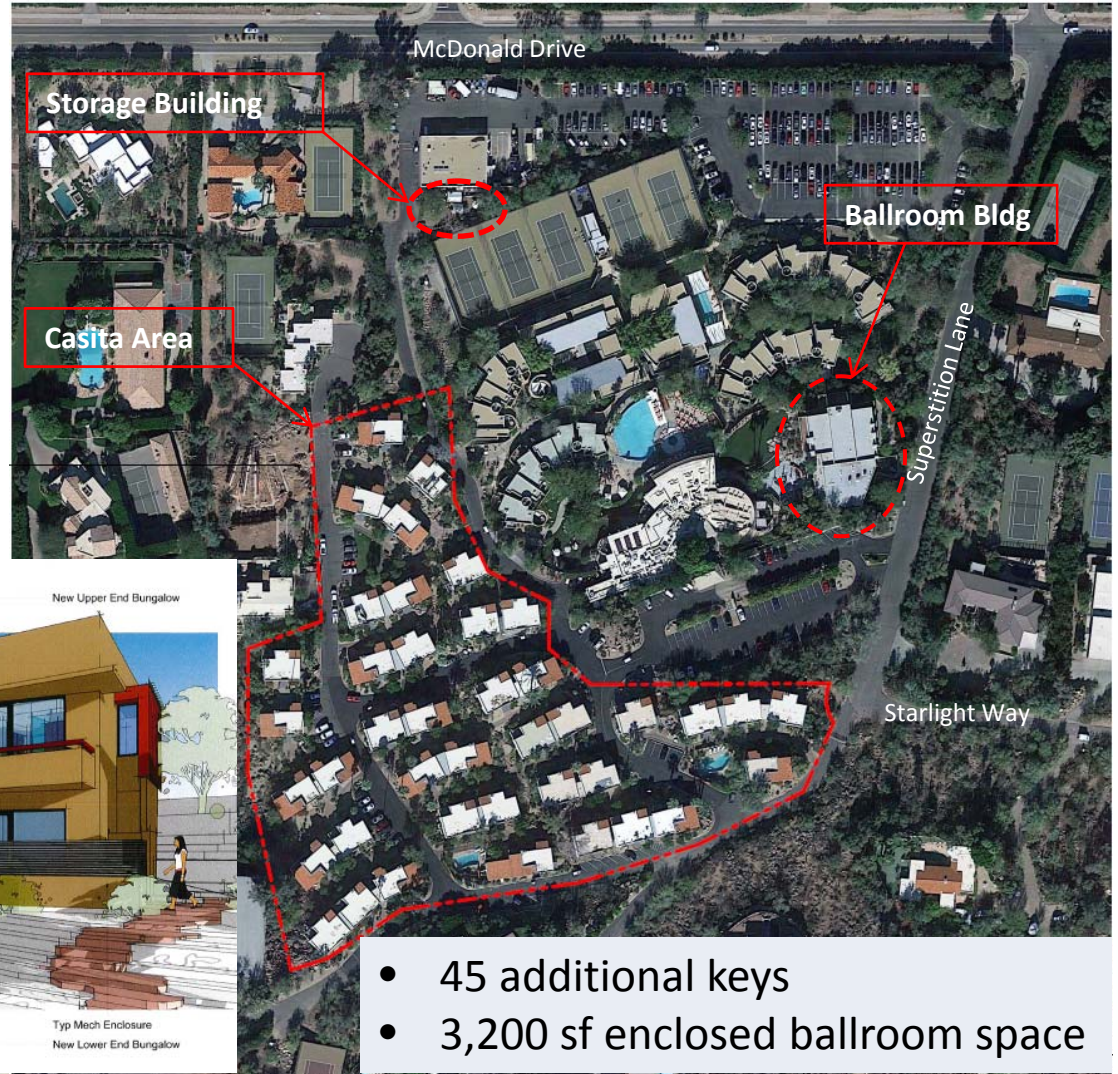
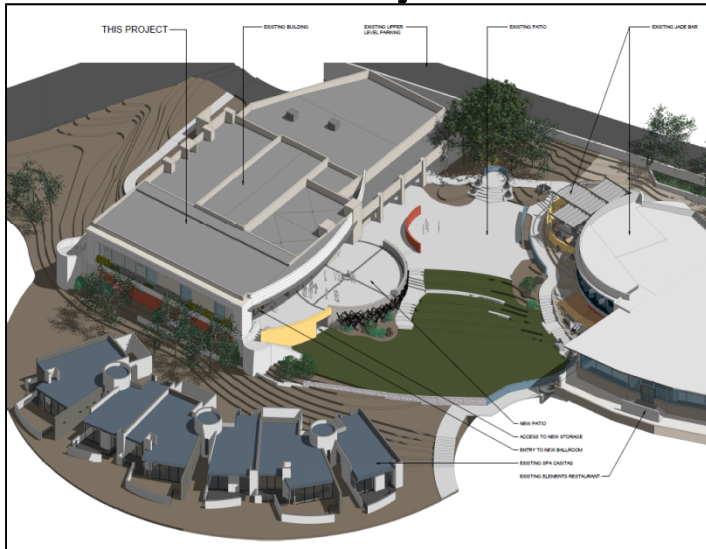
Planning → Council



- 20' high
- 9,935 sf
- 220' setback



Sanctuary Resort



- 45 additional keys
- 3,200 sf enclosed ballroom space

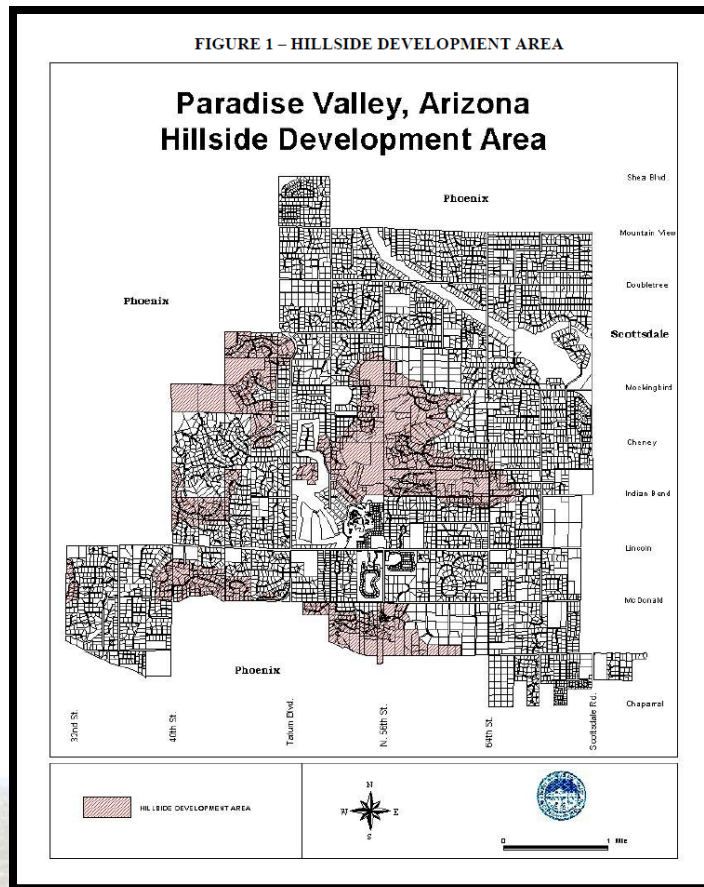
Zoning Ordinance Amendments

2017 Applications	No. of Meetings
Hillside Code Update <i>Focused on clarifications to retaining walls, driveway disturbance credit, lighting, assurance/bond, solar panels, cantilever limitations, on-site retention, and safety</i>	9
Article II & IX, Cluster Plan Provisions Applicant request to allow for modifications on setback and minimum lot size to the cluster plan provisions for an 8-lot single-family development of "The Villas at Cheney Estates"	4
The Villas at Cheney Estates <i>A rezoning request from R-43 and SUP to R-43 Cluster Plan</i>	4



Planning → Council

Hillside Code Update



- Still in process
 - Planning Commission action 12-19-17
 - Town Council Jan – Feb 2018
- Focused on:
 - Retaining Walls
 - Driveway Disturbance Credit
 - Lighting
 - Hillside Assurance/Bond
 - La Place du Sommet applicable code
 - Solar Panels
 - Cantilever Limitations
 - On-Site Retention
 - Add a Safety Section in the Code



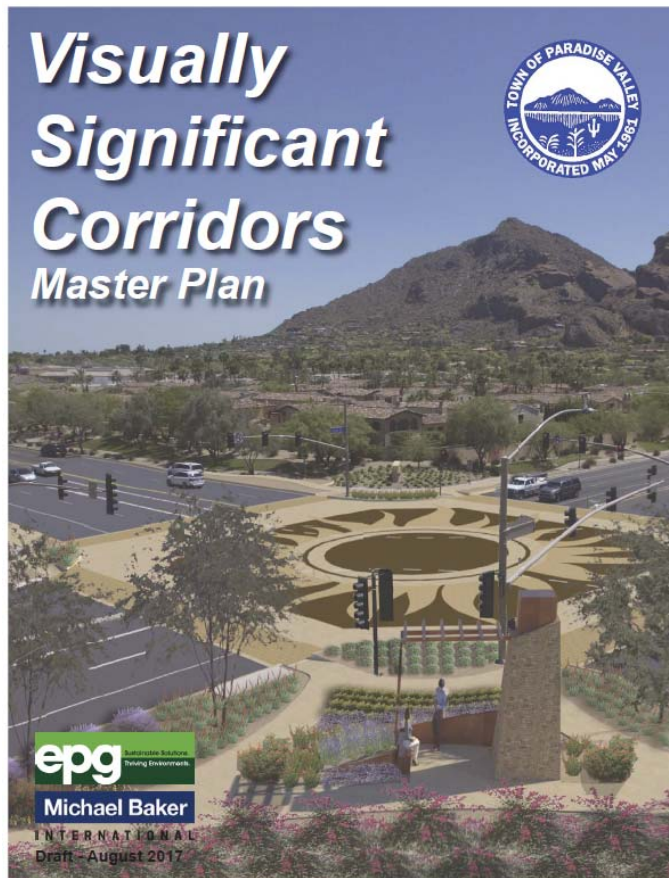
Long-Range Plans

2017 Applications	No. of Meetings
Visually-Significant Corridors Plan Town Council Quality of Life Initiative <i>A master plan that focuses on the major arterials of Tatum Boulevard and Lincoln Drive, and also addresses fundamental quality of life issues within a streetscape, such as promoting attractive treatments that reflect the Town's identity and the Paradise Valley quality of life</i>	3
Pedestrian & Bicycle Plan Town Council Quality of Life Initiative <i>A master plan to identify pedestrian and bicycle facilities that focuses on safety, mitigation of conflicts, limited signage, and compatibility to the street classification and surrounding character</i>	8



Planning → Council

Visually-Significant Corridors Plan



- Still in process
 - Dec 2017 Stakeholder/Community Meetings
 - Feb –Mar 2018 Planning Commission
 - Mar – Apr 2018 Town Council
- Will provide design guidelines along Lincoln Drive & Tatum Boulevard

02 - GUIDELINES SUMMARY

Provides a summary of the three character zones identified for Lincoln Drive and Tatum Boulevard. Each section includes a general description, outlines the patterns and colors, and describes a catalog of materials suggested for streetscape elements and improvements for implementation.

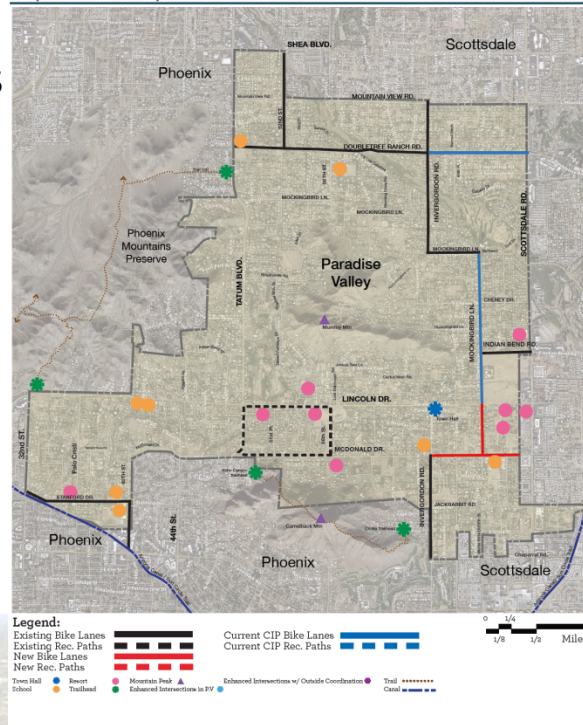


- A. Patterns of Nature Character Zone Design Guidelines
- B. Resort Living Character Zone Design Guidelines
- C. Rural Elegance Character Zone Design Guidelines

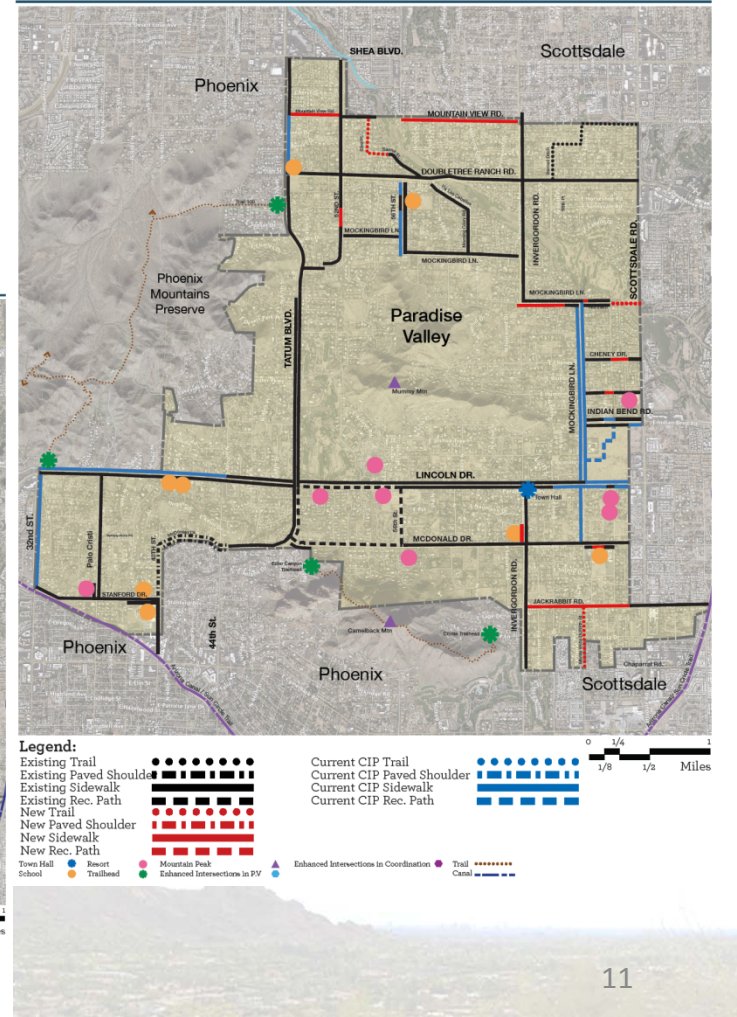
Bicycle-Pedestrian Plan

- Still in process
 - Dec 2017 – Feb 2018 Planning Commission
 - Mar – Apr 2018 Town Council
- Will provide location of future bike/ped facilities
- Will include goals/policies

11.06.2017
Bicycle Facilities Map



11.09.2017
Pedestrian Facilities Map



Plats & Lot Splits

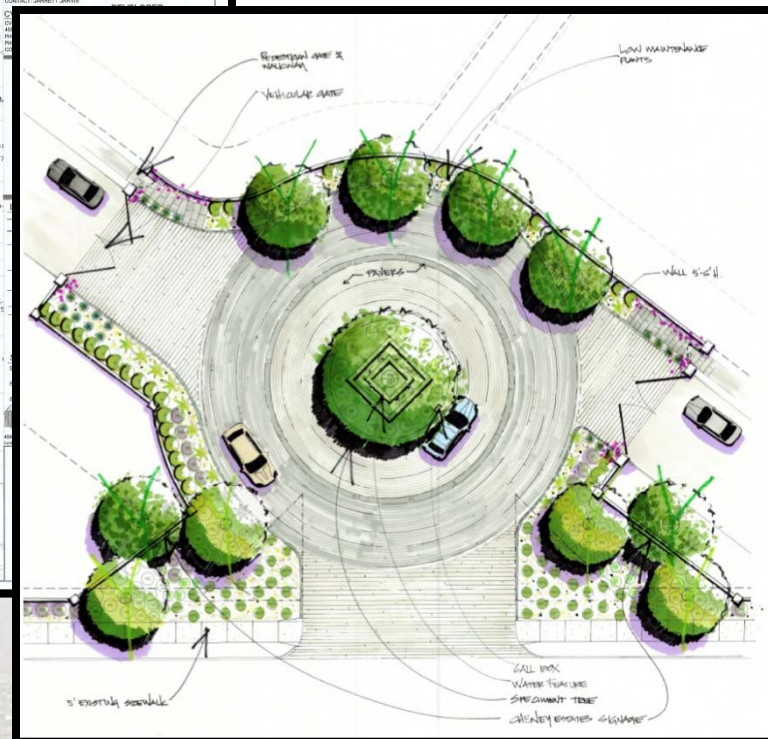
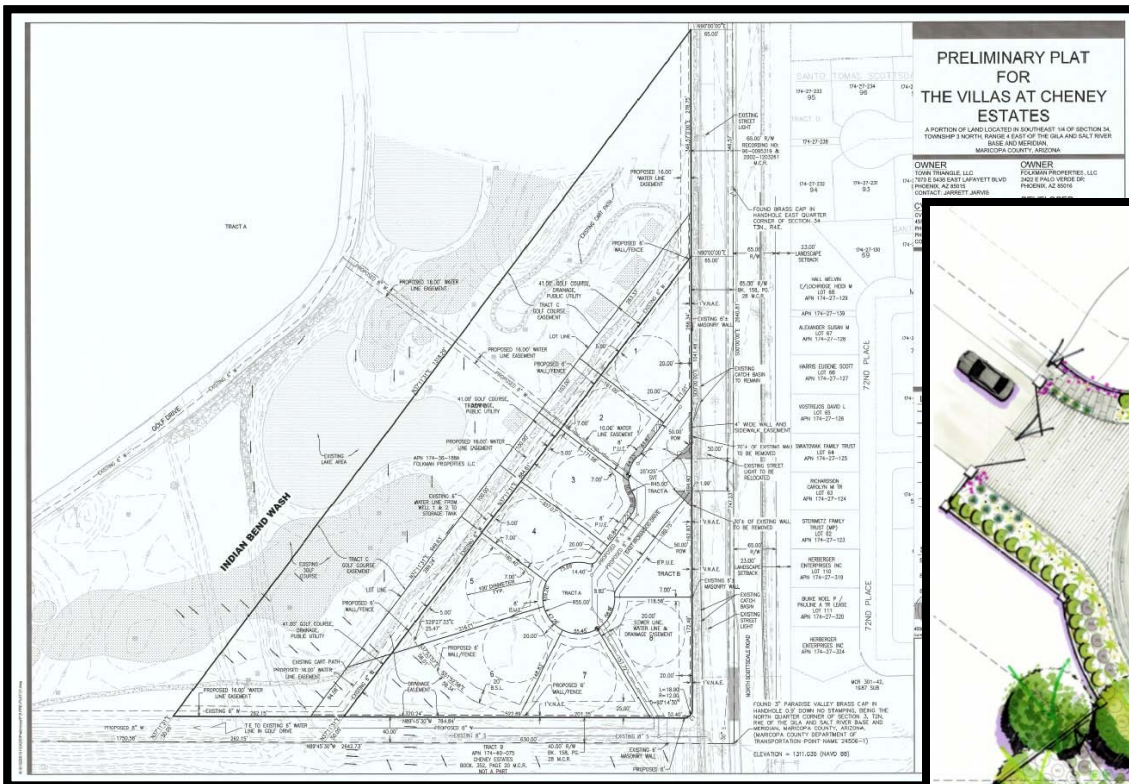
2017 Applications	No. of Meetings
6001 E Cactus Wren Rd Lot Split	2
6912 E Horseshoe Rd Lot Split	1
6722 N Joshua Tree Ln Lot Split	1
6430 Luke/5602 Wilkinson Lot Modification	1
The Villas at Cheney Estates Preliminary Plat – 8 Lots	4

Planning → Council



The Villas at Cheney Estates

- Northwest corner Scottsdale Rd & Northern Ave
- 8 lot plat
- R-43 Cluster Plan



Miscellaneous Applications

2017 Applications	No. of Meetings
Kachina Estates – Subdivision Sign & Wall Modification <i>Add a subdivision sign and amend the subdivision wall along Malcomb Drive to allow for privacy panels</i>	2
The Villas at Cheney Estates – Subdivision Signs <i>A request for 2 subdivision signs at the Scottsdale Rd entry</i>	4



Planning → Council

Kachina Estates

- Northeast corner Casa Blanca Dr & Malcomb Dr
- New subdivision sign
- Modified subdivision wall



Planning Commission Powers

Review, Comment, Modify → Approve

☐ Special Use Permits (Minor)

☐ Conditional Use Permits

- Water booster stations
- Private road
- Antennas



Special Use Permit Applications

Minor

2017 Applications	No. of Meetings
El Chorro – Minor SUP <i>Renovation of office space used by their human resource and sales personnel, along with additional kitchen/storage space, and replacement of the entry monument sign</i>	2
Mountain Shadows – Minor SUP <i>Request for 16 accent light fixtures will be placed on the resort building</i>	2
The Jones Gordon School – Minor SUP <i>Allow for curriculum taught from pre-school through 8th grade to 1st grade through 12th grade at former Tesseract school</i>	3
Ritz Carlton Area B – Minor SUP <i>Shea Homes expanded and elongated (joined) basement window wells to allow additional natural light into the basement areas and provide for outdoor living space</i>	2



Planning → Council

Special Use Permit Applications

Minor

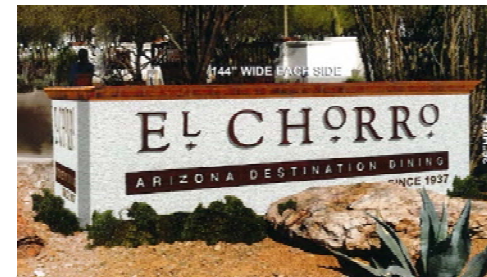
2017 Applications	No. of Meetings
Ritz Parcel B – Minor SUP <i>Request to allow for increased entry wall height and subdivision signage for Area B (Resort Related Luxury Homes (Set for action Dec 19, 2017))</i>	2
Christ Church of the Ascension – Minor SUP <i>Request to add 5th grade, no change in student cap , no new structures (Set for action Dec 19, 2017)</i>	2



Planning → Council

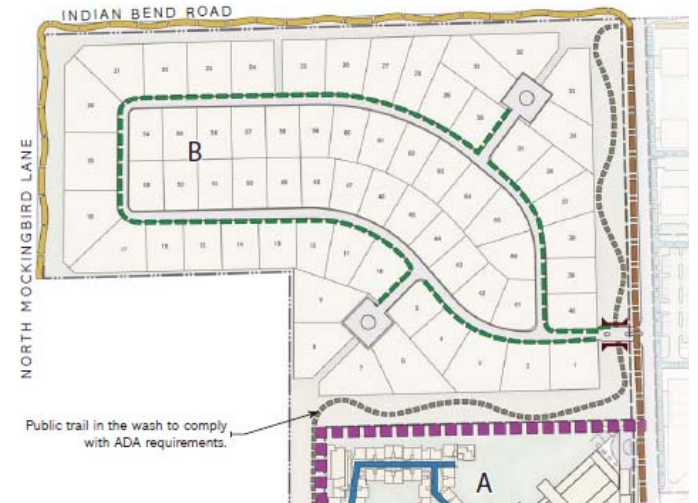
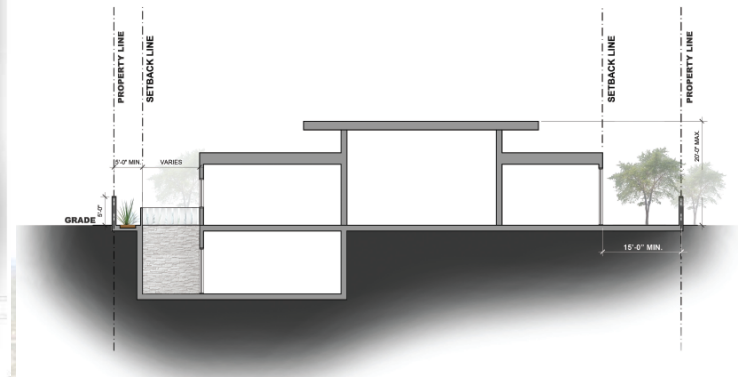
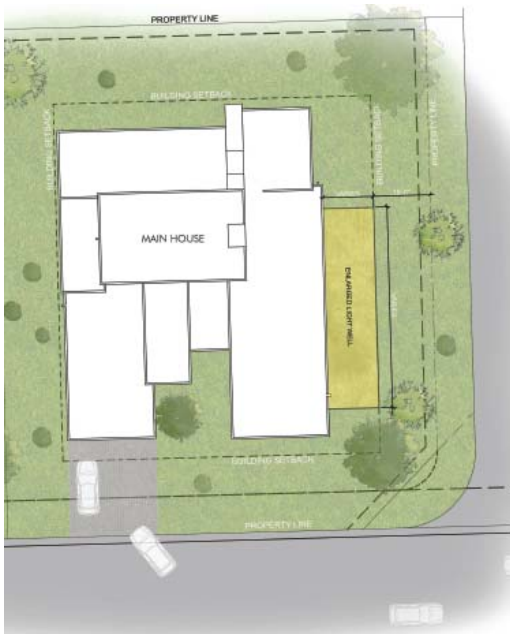
El Chorro

- 5550 E Lincoln Drive
- Replacement entry sign
- Renovation of office space & additional kitchen/storage space – net increase 1,705 sf



Ritz Carlton – Azure by Shea Homes

- Southeast corner Mockingbird Ln & Indian Bend Dr
- Allow for expanded and elongated (joined) basement window wells
- Allow removal of 5' neighborhood walk



Public trail in the wash to comply with ADA requirements.



Conditional Use Permit Applications

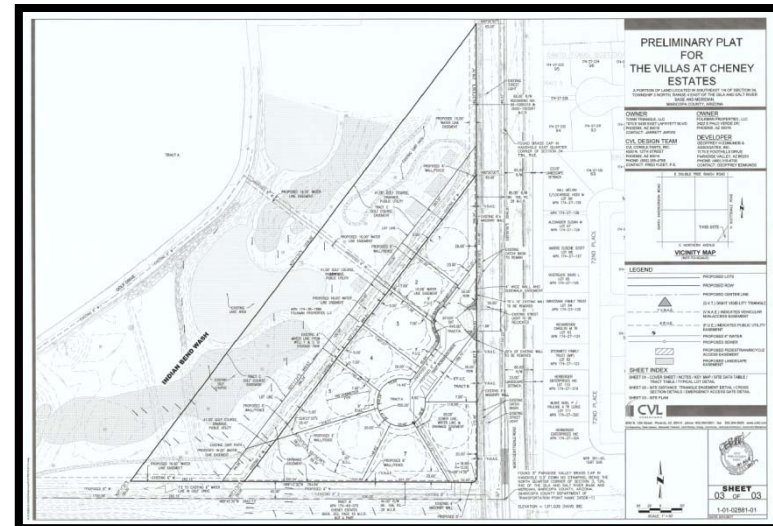
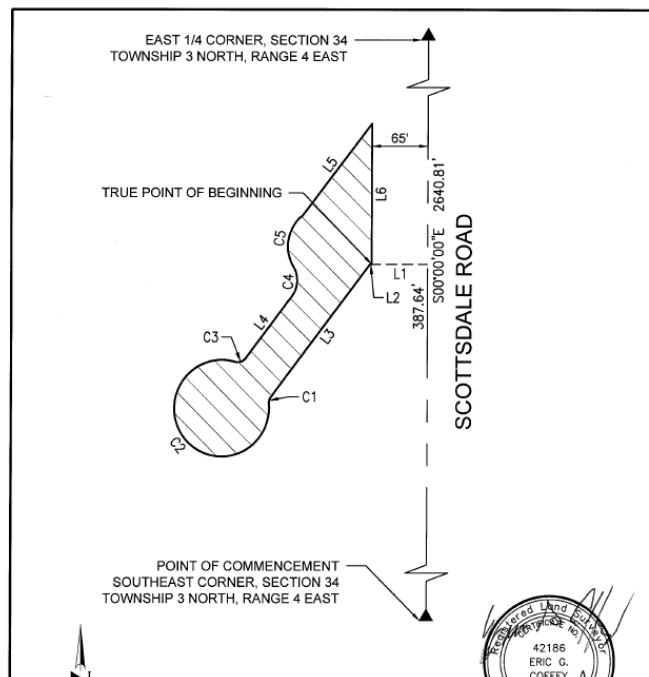
2017 Applications

The Villas at Cheney Estates – Private Road CUP

A request for a private road

No. of Meetings

4



Questions





Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Action Report

File #: 17-414



**TOWN COUNCIL MEETING
6401 E. LINCOLN DRIVE
PARADISE VALLEY, ARIZONA 85253
MINUTES
Thursday, November 16, 2017**

1. CALL TO ORDER / ROLL CALL

Mayor Collins called to order the Town Council Meeting for Thursday, November 16, 2017 at 4:00 p.m. in the Town Hall Boardroom.

COUNCIL MEMBERS PRESENT

Mayor Michael Collins
Vice Mayor Jerry Bien-Willner
Council Member Paul Dembow
Council Member Scott Moore
Council Member Julie Pace
Council Member David A. Sherf
Council Member Mark Stanton

STAFF MEMBERS PRESENT

Town Manager Kevin Burke
Town Attorney Andrew Miller
Town Clerk Duncan Miller
Police Chief Peter Wingert
Deputy Town Manager Dawn Marie Buckland
Public Works Director Brent Skoglund
Community Development Director Eva Cutro
Town Engineer Paul Mood

2. STUDY SESSION ITEMS

17-399 Legislative Agenda 2018

Deputy Town Manager Dawn Marie Buckland presented the final draft of the 2018 Legislative Agenda. The Council offered additional comments and amendments including a suggestion to add another bullet point list of what makes the Town of Paradise Valley unique. (No local property taxes, no above ground utilities, low density residential, volunteer government, and active preservation of mountains and open space)

Town Manager Kevin Burke stated that the 2018 Legislative Agenda would be brought back to Council at the next meeting for adoption by resolution.

Note: Minutes of Town Council meetings are prepared in accordance with the provisions of Arizona Revised Statutes. These minutes are intended to be an accurate reflection of action taken and direction given by the Town Council and are not verbatim transcripts. Video recordings of the meetings along with staff reports and presentations are available online and are on file in the Office of the Town Clerk.

17-401 Governance - Discussion #6

The Town Council discussed the appointment process for committees, commissions, and boards. Mr. Burke stated that the process is not consistent among all the committees. Some positions are appointed by the Council, some are nominated by the Mayor and confirmed by the Council, and some appointed are recommended by the committee and confirmed by the Council. It was decided that this topic needed additional discussion.

Council liaisons to committees was also discussed. It was agreed not to assign liaisons to the Board of Adjustment, Municipal Property Corporation, Personnel Appeals Board, Mummy Mountain Preserve Trust, or Public Safety Personnel Retirement Board. The liaison to Experience Scottsdale would be made by the Council, while the Mayor, or his designee, would serve on the MAG Regional Council and the League of Cities and Towns Resolutions Committee.

There was further consensus that liaisons would serve for one-year terms but could be reappointed.

3. EXECUTIVE SESSION

17-391 Discussion and consultation with the Town Attorney and instructions to Town representatives regarding contract negotiations related to solid waste and recyclable collection and disposal services as authorized by A.R.S. §38-431.03(A)(4).

17-400 Discussion and consultation with the Town Attorney for legal advice regarding the development agreement with Five Star Development as authorized by A.R.S. §38-431.03(A)(3).

A motion was made by Council Member Moore, seconded by Council Member Stanton, to go into executive session AT 5:26 P.M. The motion carried by the following vote:

**Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton**

- 17-392 The Town Council may go into executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the items listed on the agenda as authorized by A.R.S. §38-431.03(A)(3).**

No action was taken on this item.

4. BREAK

5. RECONVENE FOR REGULAR MEETING

Mayor Collins reconvened the meeting at 6:00 PM

6. ROLL CALL**COUNCIL MEMBERS PRESENT**

Mayor Michael Collins
Vice Mayor Jerry Bien-Willner
Council Member Paul Dembow
Council Member Scott Moore
Council Member Julie Pace
Council Member David A. Sherf
Council Member Mark Stanton

STAFF MEMBERS PRESENT

Town Manager Kevin Burke
Town Attorney Andrew Miller
Town Clerk Duncan Miller
Deputy Town Manager Dawn Marie Buckland
Public Works Director Brent Skoglund
Community Development Director Eva Cutro
Town Engineer Paul Mood

7. PLEDGE OF ALLEGIANCE*

Mayor Collins led the Pledge of Allegiance.

8. PRESENTATIONS*

**17-396 Presentation of The National Citizen Survey Voice of the People
Award**

Public Works/Engineering Administrative Support Specialist Nicole Palmquist presented The National Citizen Survey Award to the Town Council. The Town was awarded the prestigious "Voice of the People for Excellence in Foundations of Livability".

17-403 Arts Advisory Committee Update

Arts Advisory Committee Member Laura Paquelet-Carpinelli presented the annual update and accomplishments of the Committee. She responded to questions from the Council.

9. CALL TO THE PUBLIC

There were no public comments.

10. CONSENT AGENDA

Mr. Burke summarized the items on the Consent Agenda.

17-394 Minutes of Town Council Meeting October 26, 2017

17-395 Minutes of Town Council Meeting November 2, 2017

17-398 Adoption of Resolution No. 2017-17; authorizing the Town Attorney to file a Motion to Intervene as in interested party in the matter of the application of EPCOR Water Arizona for increases in its rates and charges for utility service by its Paradise Valley Water District.

Recommendation: Adopt Resolution No. 2017-17.

A motion was made by Council Member Moore, seconded by Council Member Sherf, to approve the Consent Agenda. The motion carried by the following vote:

Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton

11. PUBLIC HEARINGS

17-384 Consideration of Ordinance No. 2016-13, The Villas at Cheney Estates A Text Amendment to amend Article II, Definitions, and Article IX, Cluster Plan District, of the Town's Zoning Ordinance

Senior Planner Paul Michaud presented a request by Doug Jorden, on behalf of Town Triangle, LLC and Folkman Properties. LLC to develop eight single-family lots on a 9.6-acre property located at the northwest corner of the Northern Ave alignment with Scottsdale Road. The development proposal required six applications which Mr. Michaud explained in detail:

- A text amendment to Article II and Article IX
- A rezoning to change the zoning district from R-43 Single Family Residential and SUP / Country Club to R-43 Cluster Plan
- A Preliminary Plat
- A Conditional Use Permit for private roads
- A Special Use Permit for a private roadway gate off Scottsdale Road

- A request for two entry subdivision wall signs.

He stated that the Planning Commission reviewed all six applications and found them to be consistent with the General Plan and in compliance with the Zoning Ordinance. They voted 4 – 0 to recommend approval.

Planning Commissioner Jonathan Wainwright presented the Commission's report and responded to questions.

Developer Rod Cullum and Geoffrey Edmunds, Attorney Doug Jorden, and Engineer Len Erie spoke on behalf of the project and responded to questions.

Mayor Collins opened the public hearing.

Residents Mary Hamway, Bernard Kirk, and Robert Robihsoh spoke in favor of the project.

Resident Wayne Renken expressed concern about the flood plain study and suggested that the Town delay approval until a plan was designed and implemented to mitigate flooding on his property.

Resident Robert Nagle expressed concerns about public safety response to the development, building heights, lights, and potential erection of golf ball netting.

Mayor Collins closed the public hearing.

The Council and staff discussed questions raised during public comments.

A motion was made by Vice Mayor Bien-Willner, seconded by Council Member Stanton, to adopt Ordinance No. 2016-13. The motion carried by the following vote:

Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton

17-385 Consideration of Ordinance No. 2016-14, The Villas at Cheney Estates A rezoning request from R-43 and SUP to R-43 Cluster Plan located at the northwest corner of the Northern Avenue alignment and Scottsdale Road

Mayor Collins opened the public hearing.

Resident Wayne Renken summarized the history of grading and drainage on the parcel and adjoining golf course. He suggested that alterations to the golf course and reconstructed bridge over Scottsdale Road had not received proper review by FEMA.

Mayor Collins closed the public hearing.

A motion was made by Council Member Dembow, seconded by Vice Mayor Bien-Willner, to adopt Ordinance No. 2016-14. The motion carried by the following vote:

Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton

17-387 Consideration of Ordinance No. 2016-15, The Villas at Cheney Estates A Special Use Permit (SUP) for private roadway gates located at the northwest corner of the Northern Avenue alignment and Scottsdale Road

Mayor Collins opened the public hearing. There were no public comments.

Mayor Collins closed the public hearing.

A motion was made by Council Member Stanton, seconded by Council Member Dembow, to adopt Ordinance No. 2016-15. The motion carried by the following vote:

Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton

**17-386 Consideration of The Villas at Cheney Estates Preliminary Plat
located at the northwest corner of the Northern Avenue alignment
and Scottsdale Road**

Mayor Collins opened the public hearing. There were no public comments.

Mayor Collins closed the public hearing.

A motion was made by Council Member Dembow, seconded by Council Member Stanton, to the Preliminary Plat for "The Villas at Cheney Estates" subject to the following conditions:

- 1. The final plat for "The Villas at Cheney Estates" shall be in substantial compliance with the Preliminary Plat, Sheets 1-3, prepared by CVL Consultants, dated August 31, 2017.**
 - 2. Prior to the final plat of this Property being approved by the Town Council, the appropriate documentation shall be provided to the Town regarding "The Villas at Cheney Estates" subdivision having a 100-year assured water supply.**
 - 3. A final subdivision wall and landscape plan shall be approved with the final plat for "The Villas at Cheney Estates." This plan shall exclude the areas approved under the Special Use Permit of Ordinance 2016-15 (SUP-16-03) related to the private roadway gates, walls, and other improvements/landscaping depicted on such plan.**
 - 4. Prior to recordation of the final plat for said subdivision, the applicant shall provide to the Town Attorney a copy of the CC&R's or other documents for review.**
 - 5. Within 60 days of approval of the final plat, the applicant shall submit to the Town mylars of the approved plans and an electronic version of these plans in a pdf format for the Town's permanent record.**
- The motion carried by the following vote:**

Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton

12. ACTION ITEMS**17-389 Consideration of two subdivision wall signs, The Villas at Cheney Estates**

There was no discussion or public comments.

A motion was made by Vice Mayor Bien-Willner, seconded by Council Member Dembow, to approve the subdivision signs for "The Villas at Cheney Estates" subject to the following conditions:

- 1. Subdivision signage and sign lighting for the Property of "The Villas at Cheney Estates" shall be in substantial compliance with the Wall and Gate Plan prepared by Cullum Homes.**
- 2. Sign lighting shall not exceed two fixtures per sign, each fixture shall not exceed a lumen count of 1,080 lumens, and the illumination shall not exceed 0.75 foot-candles at the property line.**

The motion carried by the following vote:

Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton

17-397 Award of Contract to Kimley-Horn and Associates in the Amount of \$319,955.00 for Design and Construction Phase Services for the Reconstruction of Doubletree Ranch Road Between Invergordon Road and Scottsdale Road

Engineering Services Analyst Jeremy Knapp presented a contract with Kimley-Horn and Associates to design and reconstruct Doubletree Ranch Road between Invergordon Road and Scottsdale Road. Construction was anticipated to be completed by March 2019.

Responding to a question from Council, Mr. Knapp stated that this portion of Doubletree Ranch Road had been resurfaced in 2010 and typically roads have a 20 to 25-year life cycle. He clarified that this road was not being resurfaced because of its condition, rather to match the General Plan cross section recommendation.

A motion was made by Council Member Stanton, seconded by Council Member Sherf, to authorize the Town Manager to execute a contract with Kimley-Horn and Associates in the amount of \$319,955.00. The motion carried by the following vote:

Aye: 5 - Mayor Collins
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton
Nay: 2 - Vice Mayor Bien-Willner
Council Member Dembow

17-402 Adoption of Resolution 2017-19 Amending the Town Council Rules of Procedure

Mr. Burke presented a resolution amending the Town Council Rules of Procedure as discussed in previous study sessions.

A motion was made by Council Member Sherf, seconded by Vice Mayor Bien-Willner, to Adopt Resolution 2017-19 amending the Town Council Rules of Procedure. The motion carried by the following vote:

Aye: 6 - Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton
Nay: 1 - Mayor Collins

13. FUTURE AGENDA ITEMS

Mr. Burke summarized the items on the future agenda schedule. There were no other additions.

14. MAYOR / COUNCIL / MANAGER COMMENTS

Council Member Pace announced that Police Chief Wingert and PD Volunteer Ellen Andeen would be repelling off the City Scape building in Phoenix to raise money for the Special Olympics on December 9, 2017.

Council Member Dembow thanked everyone who participated and attended the Annual Veterans' Car Show on November 11th.

EXECUTIVE SESSION CONTINUED

A motion was made by Council Member Dembow, seconded by Council Member Stanton, to go into executive session at 8:10 PM. The motion carried by the following vote:

Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton

17-391 **Discussion and consultation with the Town Attorney and instructions to Town representatives regarding contract negotiations related to solid waste and recyclable collection and disposal services as authorized by A.R.S. §38-431.03(A)(4).**

17-400 **Discussion and consultation with the Town Attorney for legal advice regarding the development agreement with Five Star Development as authorized by A.R.S. §38-431.03(A)(3).**

15. ADJOURN

A motion was made by Council Member Moore, seconded by Vice Mayor Bien-Willner, to adjourn. The motion carried by the following vote:

Aye: 7 - Mayor Collins
Vice Mayor Bien-Willner
Council Member Dembow
Council Member Moore
Council Member Pace
Council Member Sherf
Council Member Stanton

Mayor Collins adjourned the meeting at 8:56 p.m.

TOWN OF PARADISE VALLEY

SUBMITTED BY:

Duncan Miller, Town Clerk

STATE OF ARIZONA)

:SS.

COUNTY OF MARICOPA)

CERTIFICATION

I, Duncan Miller, Town Clerk of the Town of Paradise Valley, Arizona hereby certify that the following is a full, true, and correct copy of the minutes of the regular meeting of the Paradise Valley Town Council held on Thursday, November 16, 2017.

I further certify that said Municipal Corporation is duly organized and existing. The meeting was properly called and held and that a quorum was present.

Duncan Miller, Town Clerk



Action Report

File #: 17-427

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager
Dawn Marie Buckland, Deputy Town Manager

DATE: December 7, 2017

DEPARTMENT: Finance

AGENDA TITLE:

Resolution 2017-23 Managerial and Minor Amendment Fees for Schools, Government Buildings, and Places of Worship

Town Value(s):

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

Applies consistent principles to managerial and minor amendments as with intermediate and major to reduce the cost to schools, government buildings, and places of worship.

Council Goals or Statutory Requirements:

Long term balanced financial plan

RECOMMENDATION:

Adopt Resolution 2017-23 approving the reduction in fees for managerial and minor amendments for schools, government buildings, and places of worship

SUMMARY STATEMENT:

In FY 2017, the Town undertook a comprehensive cost of service study to determine levels of fees required to recover 100% of the costs for planning, building, engineering, and fire prevention. As a policy decision, the fees for intermediate and major amendments for schools, government buildings, and places of worship were set at 50% of cost recovery. Resolution 2017-23 would consistently apply this policy decision to managerial and minor amendments as well, reducing the fee for a managerial amendment from \$1,900 to \$950 and the fee for a minor amendment from \$5,250 to

File #: 17-427

\$2,625 for schools, government buildings, and places of worship.

BUDGETARY IMPACT:

Approval of this item may result in a reduction of revenue typically less than \$5,000 per year.

ATTACHMENT(S):

Resolution 2017-23

1
2
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RESOLUTION NUMBER 2017-23

**A RESOLUTION OF THE TOWN OF PARADISE
VALLEY, ARIZONA, REDUCING THE FEES
FOR MANAGERIAL AND MINOR
AMENDMENTS FOR SCHOOLS,
GOVERNMENT BUILDINGS, AND PLACES OF
WORSHIP;**

11 **WHEREAS**, the Town of Paradise Valley undertook a thorough cost of service study to
12 determine appropriate levels for planning, building, engineering, and fire prevention fees; and

13 **WHEREAS**, the Town Council adopted the updated fee schedule on March 23, 2017, including
14 a 50% subsidy for intermediate and major amendments for schools, government buildings, and
15 places of worship; and

16 **WHEREAS**, a 50% subsidy for managerial and minor amendments for schools, government
17 buildings, and places of worship would provide consistent policy for these customers;
18

19 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE
20 TOWN OF PARADISE VALLEY, ARIZONA THAT:

21 Managerial and minor amendments for schools, government buildings, and places of
22 worship shall also be based on 50% of the cost recovery model.

23 PASSED AND ADOPTED by the Town Council this 7th day of December 2017.
24
25

26
27 _____
Michael Collins, Mayor

28 ATTEST:
29
30

31 _____
32 Duncan Miller, Town Clerk
33

34 APPROVED AS TO FORM
35
36

37 _____
38 Andrew M. Miller, Town Attorney



Action Report

File #: 17-415

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager
Dawn Marie Buckland, Deputy Town Manager

DATE: December 7, 2017

DEPARTMENT: Town Manager

AGENDA TITLE:
2018 Legislative Agenda

Town Value(s):

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

Partnering with our legislators helps us to preserve all of our Town values

Council Goals or Statutory Requirements:

RECOMMENDATION:

Adopt Resolution 17- 22 approving the 2018 Legislative Agenda

SUMMARY STATEMENT:

The 2018 Legislative Session for the State of Arizona begins on January 8, 2018. As our legislative delegation discuss desired changes to the Arizona Revised Statutes, they look to the municipalities they represent to provide policy and impact analyses of proposed language.

At the November 2 and 16 study sessions, Council reviewed and discussed the recommended legislative agenda for the upcoming year. The attached agenda incorporates the direction from Council, and provides a meaningful framework and direction for the upcoming legislative session.

BUDGETARY IMPACT:

File #: 17-415

Preserving state shared revenue, construction sales tax, and local service delivery decision making are key attributes to our long term financial plan.

ATTACHMENT(S):

Resolution 17-22

2018 Legislative Agenda

RESOLUTION NUMBER 17-XXX

**A RESOLUTION OF THE TOWN OF PARADISE
VALLEY, ARIZONA ADOPTING THE
LEGISLATIVE AGENDA FOR THE TOWN OF
PARADISE VALLEY FOR CALENDAR YEAR 2018**

WHEREAS, the Town of Paradise Valley Governmental Affairs Program addresses legislative initiatives at the county, state, and federal levels which follow annual legislative calendars; and,

WHEREAS, the program mission is to develop and advocate for Paradise Valley by fostering and maintaining relationships with individuals and entities that affect the Town's interests; and,

WHEREAS, Paradise Valley believes local government best represents local communities regarding legislative, financial and administrative policy matters; and

WHEREAS, the Town Council of the Town of Paradise Valley, Arizona desires that staff represent the Town interests in a responsive and proactive manner.

NOW THEREFORE, BE IT RESOLVED, that the accompanying Legislative Agenda for the Town of Paradise Valley is hereby adopted for the 2018 legislative session.

PASSED AND ADOPTED by the affirmative vote of the Paradise Valley Town Council this 7th day of December, 2017.

Michael Collins, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM

Andrew M. Miller, Town Attorney



TOWN OF PARADISE VALLEY INTERGOVERNMENTAL AFFAIRS PROGRAM 2018 Legislative Agenda Summary

Paradise Valley is universally enjoyed for its tourism and high quality residential living in Arizona. It embodies what people come to Arizona to enjoy. As a small community within a large metropolitan area, the Town believes local government best represents the quality of life of local communities regarding their respective public safety, legislative, financial and administrative policy matters, and that partnerships develop positive relations and are essential for success. The resulting tourism, commerce, and high quality executive housing offer tremendous benefits to the entire state.

Efficient and effective solutions to difficult problems should not create new agencies or regulations nor duplicate existing ones. Our residents value the ability to determine appropriate service levels to preserve PV's many unique qualities, including:

- No local property tax
- Only residential neighborhoods and resorts; no commercial
- Low density large lots
- Town Council and Municipal Judges 100% volunteers
- Active preservation of open space and mountains - no utility poles

Protecting quality of life, local revenues, and public safety are represented amongst the current issues and interest depicted below.

ACTION ITEMS

- Transaction Privilege Tax (TPT) Construction Sales Tax
 - Amend MRRA to cap maximum project amount or remove alterations
 - Work with all interested parties on reform provided revenues held harmless
- Public Safety/Traffic Enforcement/Smart Technology
 - Essential tool to efficiently provide public safety within limited resources
 - Behavior modification/traffic safety
 - 100% of photo enforcement areas are signed at least once and at least 300' ahead

CONTINUING PRIORITIES

- State-shared revenues
- Rights of Way use, such as with utilities
- Zoning/preservation of quality of life, including sober living homes
- Sustainable pension structure



Action Report

File #: 17-416

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager
Duncan Miller, Town Clerk

DATE: December 7, 2017

DEPARTMENT: Town Manager

AGENDA TITLE:
Cancellation of December 21, 2017 Council Meeting

Town Value(s):

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

Council Goals or Statutory Requirements:
Sections II & XIX - Town Council Rules of Procedure

RECOMMENDATION:
Consider cancelling the December 21, 2017 regular Council meeting.

SUMMARY STATEMENT:

It has been suggested that the second Council meeting in December be cancelled. Section II of the Town Council Rules and Procedures provide that the Council shall meet twice a month except for July and August. However, Section XIX states that the Council may suspend its rules by a majority vote.

It would be appropriate for the Town Council to discuss cancelling the meeting and take a vote at the December 7th meeting.

BUDGETARY IMPACT:

File #: 17-416

No budgetary impact.



Action Report

File #: 17-413

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager
Duncan Miller, Town Clerk

DEPARTMENT: Town Manager

AGENDA TITLE:
Consideration of Requests for Future Agenda Items

Council Goals or Other Policies / Statutory Requirements:
Resolution Number 1250: Town Council Rules of Procedure

RECOMMENDATION:
Review the current list of pending agenda topics.

SUMMARY STATEMENT:
Attached is the most recent Town Council Study Session Topic Schedule. Pursuant to the Council's Rules and Procedures as adopted by Resolution Number 1250, any member of the Council may move to have the Town Manager add a new agenda item to a future agenda. Upon concurrence of three or more Members, which may include the Mayor, the item will be added to the list of future agenda items and placed on a meeting agenda within sixty days. Reminder is provided that any discussion on the motion to add a future agenda item shall be limited to the propriety of placing such item on a future agenda and shall not include discussion on the merits of the topic itself.

BUDGETARY IMPACT:
None

ATTACHMENT(S):
Future agenda topics schedule

TOWN COUNCIL STUDY SESSION TOPIC SCHEDULE

December 1, 2017

12/21?	01/11	01/25	02/08
4 PM STUDY SESSION <ul style="list-style-type: none"> Governance 	3 PM STUDY SESSION <ul style="list-style-type: none"> Hillside Code Update Alarm Monitoring Service RFP Amended Wilkinson Lot Split Budget Goals 	4 PM STUDY SESSION <ul style="list-style-type: none"> Governance Cell Service Update 	4 PM STUDY SESSION <ul style="list-style-type: none"> Hillside Rules of Procedure Plats & Parking Ordinance
EXECUTIVE SESSION	EXECUTIVE SESSION	EXECUTIVE SESSION	EXECUTIVE SESSION
PRESENTATION	PRESENTATION Mummy Mountain Preserve Trust	PRESENTATION	PRESENTATION
CONSENT	CONSENT	CONSENT <ul style="list-style-type: none"> Amended Wilkinson Lot Split 	CONSENT
PUBLIC HEARING	PUBLIC HEARING <ul style="list-style-type: none"> Hillside Code Update 	PUBLIC HEARING	PUBLIC HEARING
ACTION ITEMS	ACTION ITEMS <ul style="list-style-type: none"> Election of Vice Mayor 	ACTION ITEMS <ul style="list-style-type: none"> Trash Service License Agreement Alarm Monitoring Contract 	ACTION ITEMS
STUDY SESSION CONTINUED <ul style="list-style-type: none"> Council Goals TBD 	COMMUNITY CONVERSATION <ul style="list-style-type: none"> Trash Service 	STUDY SESSION CONTINUED <ul style="list-style-type: none"> Council Goals TBD 	STUDY SESSION CONTINUED <ul style="list-style-type: none"> Council Goals TBD

02/22	03/08	03/22	04/12
4 PM STUDY SESSION	4 PM STUDY SESSION	4 PM STUDY SESSION	4 PM STUDY SESSION
EXECUTIVE SESSION	EXECUTIVE SESSION	EXECUTIVE SESSION	EXECUTIVE SESSION
PRESENTATION	PRESENTATION	PRESENTATION	PRESENTATION
CONSENT	CONSENT	CONSENT	CONSENT
PUBLIC HEARING	PUBLIC HEARING	PUBLIC HEARING	PUBLIC HEARING
ACTION ITEMS	ACTION ITEMS	ACTION ITEMS	ACTION ITEMS
STUDY SESSION CONTINUED • Council Goals TBD	STUDY SESSION CONTINUED • Council Goals TBD	STUDY SESSION CONTINUED • Council Goals TBD	STUDY SESSION CONTINUED • Council Goals TBD

Items to be scheduled

1. Storm Drainage Design Manual
2. Arts Advisory Committee Recommendation on Name Change
3. Amendment to Historical Recognition Resolution
4. Mummy Mountain Preserve Trust Recommended Amendments to Bylaws
5. Visually Significant Corridors Master Plan
6. Emergency Planning
7. Ritz Carlton Area C Final Plat
8. Ordinance amendment regarding parking on driveway surfaces
9. Franciscan Renewal Center Land Exchange



Action Report

File #: 17-426

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager

DATE: November 16, 2017

DEPARTMENT: Town Manager

AGENDA TITLE:

Governance - Discussion #7

Governance - Remaining Items

Town Value(s):

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

In order to more effectively and efficiently manage the limited municipal government of Paradise Valley, the Town Council has embarked upon a review of numerous policies and procedures.

Council Goals or Statutory Requirements:

Governance - Review and seek improvement to processes and procedures for our community.

RECOMMENDATION:

Two parts. Finish discussion on Appointments and then review remaining topics. Sixty minutes has been allotted before the business meeting and a session after the business meeting to get as far as possible and possibly complete the review of Governance topics.

SUMMARY STATEMENT:

Mayor and Council have identified 13 Governance topics to be discussed this term. They have prioritized the first six as:

1. Use of Consultants
2. Transparency
3. Cost Estimating

4. ~~Defining Limited Government~~
5. ~~Rules of Procedure; and,~~
6. Appointment Process.

Council identified numerous Governance topics in its September 14 work session. The Council then agreed to tackle the first 6 in a specific order. This should be completed with this session. Mayor and Council have some remaining work on Appointments and then will be asked about the remaining topics including working on those topics during this Council Meeting.

Appointments

At the November 16, Study Session on this topic, the Council gave direction on three points. First, it would like to see all appointments on the same cycle (April 1). To accomplish this, staff needs to alter the articles of Incorporation and associated documents of the Municipal Property Corporation and of the Mummy Mountain Trust. Second, there were no additions or deletions from which committees should have a Council liaison. Third, the representative to the Experience Scottsdale Board of Directors should be rotated every year and that appointment should be made by the Council. The Town Manager spoke with the Executive Director of Experience Scottsdale and she was amenable to an annual appointment but asked that it match their cycle of July 1 - June 30; therefore, the Council could make the appointment in March, but that person would not take office until July.

The remaining subtopics of appointments was continued. Mayor and Council will be asked if they would like to make any alterations to the appointment process or memorialize the process they have. Further discussions under this topic include, but are not limited to:

- how to engage volunteers for Boards and Commissions who are not selected;
- endorsement of Members of Council and staff who want to run for election on another board in which the Town is a Member (League Executive Board, MAG President or Committee Chair, AMRRP, etc.) (exclude professional associations); and,
- how to proceed with current vacancies on a few commissions.

Remaining Governance Topics

At the September 14, 2017 meeting, Council agreed to schedule the first six topics and then revisit the remaining topics afterwards. That point has arrived. There are six remaining topics. These are:

- Conflict of Interest/Ethics Policy;
- Training Members of Land Use committees;
- Sequence regarding Variances versus Hillside Building Committee;
- Use of Statement of Direction for non-SUP's;
- Parameters for Town Manager Task Force with Members of Council
- Supervising Structure for Town Attorney;

In order to possibly resolve these remaining issues, additional information is provided below.

Conflict of Interest/Ethics Policy

Councilmember Pace has asked if there are improvements that can be made to the existing Town Ethics Policy or conflict of interest documentation or processes that can enhance transparency to residents, provide confidence to residents about fairness and ethics, and provide education and criteria to help volunteer recuse themselves when appropriate?

Town Attorney Andrew Miller will facilitate this discussion.

Staff divides this conversation into three pieces-conflict of interest, ethics policy and training. Conflict of interest is a defined term in State statute. It is focused upon a substantial pecuniary interest. Further, the Town may not make expand or broaden this definition. Consequently, the proposal is to increase awareness of the conflict of interest statutes by adopting the attached document by Resolution and placing it in the Town Council book of Policies and Procedures.

Because the conflict of interest statute is fairly narrow in scope, municipalities aspiring for a higher standard of conduct, often turn to an Ethics Policy. Ethics policies can be aspirational or regulatory. The Town's Ethics Policy (attached) is generally aspirational. It outlines how Members of the Council, Boards and Commissions should behave. There is no corollary policy that sets how the Town will determine a violation not the consequences of a violation. The ability to impose consequences upon fellow Members of the Council is very limited for general law municipalities (those without a Charter). Elected officials in those municipalities can only be removed consistent with State Statutes. However, Section 2-5-1 of the Town Code states that "All members of such committees, commissions or boards shall serve at the pleasure of the Council." This means that the Town Ethics Policy could be used in a regulatory sense. If a board or commission member violates the Ethics Policy, the Town Council could remove that member. Although they do not need a specific reason to remove a committee member from office. This regulatory element is already in place and no code or policy additions are proposed. However, Councilmember Pace may propose an amendment to the Ethics Policy itself. Staff has also attached examples of ethics and conflict of interest policies from Mesa, Scottsdale and Gilbert.

The third element is training. What are the differences between conflict of interest and ethics policy? How does Arizona Law address conflict of interest? What does "avoid undue influences or the appearance of impropriety" mean in the Town's Ethics Policy? Are their examples the Town can provide to help volunteers understand each of these? What is the process to follow if a volunteer believes they or a colleague have a conflict? The conflict of interest statute is a pretty vetted piece of legislation and so there are good examples to use for training. The proposal is to conduct a training module by the Town Attorney and Town Clerk upon orientation of new Members of Council or board and commission members.

During the study session, the Town Attorney will provide an overview of the conflict of interest statute and the difference between conflict of interest and ethics. Thereafter Council will review the proposed actions.

Training Land Use Board Members

Councilmembers Moore and Pace have been calling for enhanced training of members of the Planning Commission, Hillside Building Committee and Board of Adjustments. The Town Manager has made arrangements with the Town Attorney of Marana, who is an author and frequent lecturer on land use topics, to provide training during a one day, on-site session after the first of the year (likely February).

This training is intended to be second level training, but likely will still need to cover some basics. Staff has developed a series of questions for each board that it is asking the trainer to speak upon.

That list, with edits from Councilmember Moore, is attached for Mayor and Council review and comment. Furthermore, Councilmember Moore has asked for a book of documents (which could also be a set of links for those inclined) to relevant documents. The current list of reference links for Town Council and a possible list of land use governing documents is attached.

Possible action on this topic can include editing the training questions/material, establishing expected outcomes, determining staff's short and long-term responsibility on this topic, and/or appointing a Town Manager Task Force with Council Members to work on the initiative further.

Sequence of Variances versus Hillside Building Committee

Councilmember Pace asked to examine the sequence of Hillside building applications that are requesting both a variance and are required to obtain Hillside Building Committee (HBC) approval. There are pros and cons to each strategy.

The current process is to apply and receive a determination from the Board of Adjustments (BOA) regarding the variance first. Once that determination is made then the application is reviewed by the HBC. This sequence was developed for a couple of reasons. First, the HBC is an administrative committee. They are reviewing the application against the Hillside Code (a subsection of the Town's Zoning Code) and determining if it meets those criteria or not. Their discretion is limited. Therefore, there is less reason to present an application that is known not to meet the Hillside Code to a board that cannot waive or alter the code provisions. Consequently, the applicant is directed to receive a determination from BOA who can waive a Zoning Code provision (of which the Hillside Code is part of). Further, conducting a full review on a project that does not meet the code, can be frustrating use of time for the HBC if the variance is not approved.

Second, if the HBC opines on a variance before it proceeds to the BOA, it could create an untenable position for both committees. First, variances have to meet their own six criteria which the BOA uses for their review and determination. The HBC uses a different set of criteria to determine if the application is meeting the Hillside Code. Asking the HBC to review the variance against the 6 criteria of the BOA would be redundant. Any opinion not based upon those 6 criteria that the BOA can consider would be less useful. Further, there is concern that the applicant will take any endorsement or mixed review from the HBC and use that as leverage against the BOA when they really cannot consider the opinion unless it is based upon one of the six criteria for a variance.

The argument for reversing the sequence is that, why spend the time and money seeking a variance, if the Hillside Committee is not going to approve the rest of the project? Plus, the HBC may identify other limitations that also do not meet Hillside Code and need additional variances or could identify a way to avoid a variance request.

Councilmember Pace asked how an alteration of this sequence might improve consideration of safety concerns to Hillside development projects. While Hillside safety is an extensive topic, it is likely covered similarly in either sequence. Safety concerns, particularly with some of the proposed language for the Hillside Code, would make this a discussion point when the application comes before the HBC. However, safety might still show itself if the variance requested resulted in some sort of risk (could be a flood risk, soil risk, structural risk). However, BOA would be focused only upon safety issues relative to the variance that is being requested not the overall project.

There are two things to keep in mind regardless of the sequence. First, an applicant can continue to apply and reapply to the HBC until they can show an application that is consistent with the Hillside Code. The HBC is unlikely ever to arrive at a point where it declares a lot unbuildable. They will simply make a determination that the application does not comply with the Hillside Code. So long as it does not comply with the Code, then the application will not proceed. Second, on larger more complicated applications to the Hillside Code, the process requires a concept and then formal review (see attached flow chart). At the concept review, the HBC tells the applicant what information they are going to be looking for in order to determine if this application is compliant with the code. It is then in the applicant's best interest to respond on point to those requests in order to gain approval. This perhaps provides an opportunity for an alternate scenario.

Perhaps an application requiring a variance could go to HBC first for a concept plan review. Obviously the HBC would inform the applicant that the project does not appear to meet the Hillside Code without a variance and that will be one of the conditions that will need to either be met or the non-conforming element will need to be removed from the application. The HBC can further identify all the other information it will be seeking in a final application and review. It could also make suggestions that might avoid the need for a variance. This can outline the scope and scale of the requirements to an applicant up-front giving the applicant a more complete picture. It also provides neighbors and the public an opportunity to express concerns they see with the application as it relates to the HBC and not be boxed in to comments just related to the six criteria on a variance.

This study session will ask Council for a discussion and direction on this topic.

Use of Statement of Direction for Non-SUP Projects

Councilmember Moore proposed expanding the use of the Statement of Direction (SOD) tool during the Council retreat in March 2017. Since then it has been applied to the Bike/Ped plan and the Hillside Code update. This topic proposes codifying this tool in Article 2, Section 5 (Committees and Commissions) of the Town Code.

2-5-1 (C.) Statement of Direction - A Statement of Direction is a document administered by the Town Council at the beginning of policy or project task assigned to a committee or commission. A Statement of Direction is not a final decision of the Town Council. Its purpose is to guide committees and commissions on policy aspects that are preferred or discouraged by Council in order to be most transparent and efficient in its development. It may address, but is not limited to, the following items:

1. Anticipated time frame for completion;
2. When and if drafts should be referred back to Mayor and Council;
3. Expectations for public participation;
4. Process for new policy considerations.

At any time during the review process the assigned Committee and Commission may request clarification and/or expansion of the Statement of Direction based on additional information that has evolved.

Parameters for Town Manager Task Force with Members of Council

Town Manager Burke requested guidance on this governance topic. Mayor and Town Council had an extensive discussion regarding this topic during its September 14 study session. Staff proposes

articulating parameters and procedures for such Town Manager Task Force with Members of Council in the Town Council Rules of Procedure.

SECTION XXI - TOWN MANAGER TASK FORCE WITH MEMBERS OF COUNCIL

From time to time it shall be appropriate for the Town Manager to form a work group with staff, members, the public, and/or less than a quorum of Members of the Council. Such Task Force may be created at the advice of the Mayor and Town Council during a Study Session or Council meeting. In such occasions, the following parameters shall apply:

- a) Council shall select who the assigned Members of Council will be;
- b) Council shall define the scope of work, or statement of direction, that Members of Council shall be involved in prior to the first meeting of the Task Force;
- c) Members of Council shall not be involved in the selection of a consultant or other vendor to accomplish work of the task force. They may, however, be involved in writing the scope of work for the contract, request for proposal, or similar procurement document;
- d) The Town Manager shall retain directional authority over all staff;
- e) The Members of the Task Force may make process decisions regarding the topic, such as when it is ready for Council review, but may not make legislative or policy decisions outside the scope provided by Council.

Mayor and Council will be asked to review the above, offer additions, deletions or comments and provide direction if such rule should be incorporated.

Supervisory Structure for Town Attorney

Councilmember Pace requested discussion regarding the supervisory structure of the Town Attorney position. Article 3, Section 3, Subsection 5 of the Town Code creates the office of Town Attorney and provides the following language primarily focused upon duties:

The Town Attorney or such other legal counsel as may be **retained by the Council** shall act as the legal counselor and advisor of the Council and other Town officials, as such shall give his opinion in writing when requested. He shall draft all deeds, contracts, conveyances, ordinances, resolutions, and other legal instruments when required by the Council. He shall approve or disapprove as to form, in writing, all drafts of contracts and all official or other bonds before final approval or acceptance thereof by the Council. He shall return, within ten days, all ordinances and resolutions submitted to him for consideration by the Council, with his approval or disapproval as to form noted thereon, together with his reasons therefore. He shall prosecute and defend all suits, actions, or causes where the Town is a party, except where provided otherwise by insurance contract, and shall report to the Council, periodically, the condition of any suit or action to which the Town is a party. He shall prosecute, on behalf of the State or Town, all misdemeanor cases where (1) a violation of the Town Code or Town Zoning Ordinance is charged, or (2) a misdemeanor violation of the Arizona Revised Statutes is charged in a complaint filed with the Town Magistrate's Court, or the Maricopa County Superior Court-Juvenile Traffic Court.

Presumably because the language states that the Town Attorney shall be "retained by Council," this

position is appointed and reports to the Mayor and Council similar to the Town Manager and Presiding Magistrate.

A word search of the Town Code on “supervise” revealed no direction on this topic. The Town Code does provide in Section 2-2-7 that the Vice Mayor shall be responsible for coordinating the annual performance reviews for the Town Manager and Town Attorney.

BUDGETARY IMPACT:

No budgetary impact associated with conducting these discussions.

ATTACHMENT(S):

Conflict of Interest Potential Policy

Ethics Policy

Possibly Training Topics for Land Use Boards

Demographics and General Information

Land Use Governing Document

Hillside Flow Chart

TOWN OF PARADISE VALLEY CONFLICT OF INTEREST

Applicability

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

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

Conflict of Interest Defined

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

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

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

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

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

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

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

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

Additional Provisions

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

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

2. A public officer or employee cannot use confidential information obtained during the term of office or employment for personal gain.
3. A public officer or employee of the town cannot receive any compensation for performance of services in any case, special proceedings, application or other matter pending before any agency of the town. This does not apply, however, to activities such as filing or amending tax forms, applying for permits, licenses or other documents.
4. A public officer or employee of the town cannot use his or her position to obtain anything of value which would normally not be received in the performance of official duties. Something is considered to have "value" when it exerts a "substantial and improper" influence on the duties of the public official.

Declaration of a Conflict of Interest

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

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

Penalty

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

TOWN OF PARADISE VALLEY ETHICS POLICY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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09/09

City of Mesa
Ethics Handbook for
Elected Officials

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Dan Brock

Member, Mesa Planning and Zoning Board

Bernard Butts

Member, Crime Prevention Advisory Board

Mike Hughes

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Member, City Municipal Development Corporation
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Approved by Mesa City Council: Resolution No. 7313, dated January 19, 1999

Approved by Mesa voters: Primary Election, March 14, 2000

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I. City of Mesa Ethics Policy

IT IS THE POLICY of the City of Mesa to uphold, promote, and demand the highest standards of ethics from all of its officials, whether elected to City Council or appointed to advisory boards. Accordingly, all members of City boards, commissions, committees and the City Council (“elected officials and advisory board members”) shall maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, comply with all applicable laws, and never use their City position or powers improperly or for personal gain.

The City of Mesa and its elected officials and advisory board members all share a commitment to ethical conduct in service to their community. This Code of Ethics has been created to ensure that all elected and appointed officials and advisory

¹ **Note:** Examples are used in certain portions of this Code and Handbook to illustrate the meaning of the text. Examples are intended to describe some situations of ethical or unethical conduct under this Code. The examples are not intended to be, and shall not be interpreted to be, the sole situation to which the text applies.

board members have clear guidance for carrying out their responsibilities.¹

II. Applicable Laws and Policies

A. General Character

Elected officials and advisory board members are often called upon to make decisions that affect various groups and individuals adversely. Balancing diverse constituent interests is a difficult task. While someone will always be disappointed in decisions, officials shall adhere to ethical standards that eliminate disappointment borne of dishonesty, conflicts of interest, unfairness or illegality. Preservation of public trust is critical for the preservation of democracy.

A certain amount of detail is required in any code of ethics so that it serves as a clear guide. However, at the core of ethical behavior are some basic standards that officials shall use to reach a level of conduct that strives to be beyond reproach. Treating others as you would have them treat you is always a good ethical test. Another standard is to reflect on how your actions or decisions might be viewed by persons you or the public holds in high regard because of their ethical integrity.

1. Honesty and Integrity.

Honesty and integrity shall be the primary values in all issues. The public trust in the City Council and citizen boards can be a reality only when public officials are truthful.

2. Fairness and Respect.

All issues and citizens shall be handled with fairness, impartiality and respect. Elected officials and advisory board members have an obligation to treat all citizens fairly, such as by dividing time reasonably among potential speakers on an issue at a public hearing or meeting. In

reviewing, discussing and deciding issues, City Councilmembers and citizen advisory board members have an obligation to be accessible, open and direct, not only with the other members of the Council or board, but also to the citizens and business representatives who appear before them. The public is entitled to communicate with their public servants and understand the position of the Council and boards on public issues.

3. Effort.

Elected officials and advisory board members have an obligation to attend meetings and to be prepared. It is expected that these officials will review the materials, participate in discussions and make an informed decision on the merits of the issue.

B. Conflict of Interest

Elected officials and advisory board members must be constantly on guard against conflicts of interest. In short, elected officials and advisory board members shall not be involved in any activity which conflicts with their responsibilities to the City and its residents. The people of Mesa have a right to expect independence and fairness toward all groups without favoring individuals or personal interests.

1. Self-Dealing and Financial Disclosure

Arizona conflict-of-interest laws apply to all elected officials and advisory board members, who must be consistently aware of any potential issues which may appear to be self-dealing. Officials must not be involved in discussing or deciding any issue over which they have jurisdiction as a Council or board member which may impact the member, or the member's family, financially.

It should also be noted that Councilmembers must comply

annually with the Financial Disclosure Act, as outlined in A.R.S. §§ 38-541-545.

2. Disclosure of and Policy on Acceptance of Gifts and Favors

Arizona law prohibits elected officials and advisory board members from receiving anything of value or any compensation other than their normal salary for any service rendered in connection with that person's duties with the City. A.R.S. § 38-505(A).

Elected officials and advisory board members must consider ethical principles before accepting personal gifts of entertainment and sports/athletic activities.

Within two business days of receipt of the following gifts or favors in Mesa, or within two business days of returning to Mesa after receipt of a gift of favor while traveling outside of Mesa, elected officials and advisory board members shall disclose in writing to the City Clerk all gifts, benefits, or favors received from people with a financial interest in business before the City, or which may come before the City, that:

- relate to professional or collegiate sports, athletic, or entertainment activities or tickets, or
- have a face value of \$50 or more, amount subject to periodic review.

Under no circumstances shall a council or board member accept a gift or favor that is a bribe, or reflects, to a reasonable person, an effort to improperly influence the member contrary to that member's responsibility to the public to act impartially and on the merits of a matter.

When in doubt about these requirements, elected officials and advisory board members shall disclose the gift, benefit or favor. All disclosures will be kept for public record in the

City Clerk's Office.

In summary, you can follow this checklist:

- Does the gift or favor come from someone with business before the city or which may come before the city?
- And does the gift or favor exceed \$50 dollars in value, or consist of the type of sports or entertainment tickets described above?
- And did you accept the gift or favor for yourself or another?

If you answer "yes" to all these questions, then the gift or favor has to be reported to the City Clerk.

If you answer "no" to any of these questions, then the gift or favor does not have to be reported to the City Clerk unless it represents a bribe or other improper influence as described above.

Gifts having a value greater than \$50 that are donated to the city or a bona fide charity also do not need to be reported.

This section does not apply to gifts exceeding \$50 in value and intended for the City rather than as a personal gift to a Councilmember or board member. These items are City of Mesa property. Elected officials and advisory board members who receive a gift on behalf of the City exceeding \$50 in value shall promptly turn the gift over to the City Manager for public display or other appropriate handling.

3. Loyalty

Elected officials and advisory board members have an obligation to put the interests of the City of Mesa over all personal considerations. Their goal should be "what is in the best interest for the broadest public good of the City of Mesa, consistent with constitutional and other legal protec-

tions for minority, property, and other interests.”

4. Nepotism

As provided in the City Charter and Personnel Rules, no relative of a sitting Councilmember may be hired by the City, and no relative of a sitting advisory board member may be hired in the City department for which that advisory board member provides guidance.

C. Legal Compliance

1. Meetings

Public Access: Open Meetings and Public Records

Discussion of issues which may appear before the Council or citizen board shall be prohibited when a situation arises where a quorum of the Council or board exists. Numerous Arizona and City laws require that meetings of public bodies be open to the public and that public records be available for inspection. Open Meeting Laws are found in A.R.S. §§ 38-431 through 431.09 and in the City Charter Section 209A, and Public Records Laws are found in A.R.S. §§ 39-121 through 121.03.

2. Attendance

Attendance is outlined by the City Charter and City ordinances.

a. Mayor and City Council

The City Charter provides that five councilmembers may discipline another councilmember if he or she misses three (3) consecutive and duly noticed meetings of the City Council without good cause. Duly noticed meetings of the City Council include regular council meetings, special council meetings, study sessions, policy ses-

sions, executive sessions, budget review meetings, and council committee meetings to which a councilmember is assigned.

Through this Ethics Code, the City Council finds that personal illness, family emergencies, military absences, family weddings, family graduation exercises, and bona fide business and vacation trips constitute good cause for nonattendance at council meetings. Whether good cause exists for any other absence shall be determined by vote of the entire City Council upon request of any councilmember made within ten (10) business days following the absence. The vote shall be taken after sufficient information is received explaining the reason for the councilmember's absence.

b. Boards, Commissions and Committees

The City's attendance policy for members of boards, commissions and committees provides that, if a member fails to attend three (3) consecutive and duly noticed meetings of such groups without being excused for good cause, the City Council may declare the seat vacant and appoint a replacement.

Members of City boards, commissions and committees are expected to attend all regularly scheduled meetings and should make every effort to do so. The City Council appoints members for their experience, background and perspective in a particular policy area, and desires the benefit of knowledgeable consideration and judgment. Moreover, boards, commissions and committees cannot conduct any business unless a quorum is present. Members should notify the chairperson of the board or the staff liaison regarding any meeting missed or to be missed.

The advisory board, commission, or committee shall

decide by vote of the entire body, upon request made by any member of the body with ten (10) business days following the absence, whether the absence was for good cause or not. Advisory boards, commissions, and committees shall use the same standard for good cause as set forth above for councilmembers.

3. Disclosure of Confidential Information

Arizona law provides that, during a person's employment or service with the City and for two years thereafter, no member of a City board, commission, committee or the City Council may disclose or use confidential information without appropriate authorization. The information is outlined A.R.S. § 38-504(B). For example, confidential information includes discussions during executive sessions and certain economic development information such as prospect leads.

4. Discrimination and Harassment

Public decision-making must be fair and impartial and shall not be discriminatory on the basis of those protected classes, such as racial and religious groups, outlined in federal, state, and city laws and ordinances.

It is the policy of the City of Mesa that its elected officials and advisory board members conduct business and operate in a manner that is free from illegal discrimination on the basis of age, sex, color, race, disability, national origin, or religious persuasion, both internally and in the relationships of the elected officials and advisory board members with their constituencies.

In addition, it is the policy of the City of Mesa that the elected officials and advisory board members strive to cre-

ate an operating environment internally and in the relationships of the elected officials and advisory board members with their constituencies, that is productive and free from intimidation, hostility or other adversity. Harassment of any sort – verbal, physical, visual – including intentional and unwarranted actions that would constitute sexual harassment were they to occur in an employment relationship, by any elected official or advisory board member, is prohibited and is considered a violation of this Code of Ethics.

D. Political Activities

Elected officials and advisory board members shall not use their political or appointed office to advance private interests. The prohibited activities are outlined in City Charter sections 902(a)4 through 6. Section 205a prohibits the Mayor and Councilmember from holding other offices. Board members are also governed by the resign-to-run regulation (Ordinance 3353), which requires the board member to resign from the City board when they seek any elective public office.

Elected officials, advisory board members and candidates shall not engage in political campaigning at City meetings or within city buildings. However, nothing in this section shall prohibit an elected official, advisory board member, or candidate from participating in public forums/debates or utilizing city buildings in the same manner and to the same extent as that provided to the general public. For example, participation in candidate forums or debates sponsored by private or non-profit organizations, and attendance at non-city sponsored meetings held in city community rooms. The use of these city buildings will only be provided in the same manner and under the same terms and conditions as these facilities are made available to the general public.

They shall also not use public resources for political campaigning. For example, candidates or supporters of candidates shall refrain from circulating petitions during a City meeting and refrain from soliciting City employees to support their specific cause. Council and board members are free to express their opinions about the public issues on the agenda before them, but they must not make campaign speeches at council or board meetings touting their, or another's, candidacy, nor may they urge residents to vote for them or another, through words, signs, buttons or other means during duly noticed meetings of the City Council or its citizens advisory boards.

E. Facilities, Resources, and Expenses

1. Expense Reports and Travel

When traveling on City business, elected officials and advisory board members shall conduct themselves professionally as representatives of the City of Mesa. Travel guidelines for officials are outlined in the City's Management Policy 201. Officials are entitled to be reimbursed for actual and necessary expenses during travel. Expenses must be documented completely and accurately. Officials are asked to contact the appropriate City staff for assistance in travel plans and expense reports.

2. Use of Equipment and Facilities

Elected officials and advisory board members shall not use City equipment or City facilities for private purposes, except to the extent that they are available to the public. A.R.S. §13-1802.

a. Software Management.

Elected officials and advisory board members shall not make, use, accept or install illegal copies of computer software, documentation, or templates. The City con-

ducts periodic audits to ensure compliance with City policies on software installed on City-owned computers.

The legality of software is ideally established by possession or accountability of the following five items: the original software diskettes, the license, the original manuals, documented evidence of purchase, or copy of the completed product registration.

b. Electronic Mail.

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

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

3. Use of Staff

Under the council-manager form of government, the City Council appoints a City Manager, who directs the day-to-day operations of all employees. Councilmembers need to be sensitive to the role of the City Manager and City staff. Councilmembers shall work through the City Manager or the City Manager's staff.

Councilmembers may ask other staff members about the status of a matter and may ask for information, but Councilmembers shall not expressly or implicitly give orders or direction to staff, except through their

participation on the City Council. They shall not try privately to influence the decisions or recommendations of staff members, but they may share information with staff.

Council and board members shall not intervene directly with staff on behalf of a particular constituent or organization on a pending matter, but shall participate with council or board colleagues in discussing and deciding policy matters for staff to carry out.

Appointed board members shall work through the staff liaisons of their board.

III: Procedures

A. Where to Seek Advice

Questions about this Code, a conflict of interest, or other ethical problems should be presented to the City Attorney's Office (480-644-2343). If time permits, requests should be in writing to the City Attorney directly. Requests related to conflicts of interest, A.R.S. §38-507 must be kept confidential. However, official opinions of the City Attorney are required by this law to become a public record.

B. What to Do if You Are Uncertain

The existence of an ethical issue often does not arise until a meeting is underway. Rather than risk an inadvertent violation of law, the safest course of action is simply to declare that a conflict may exist that prevents an elected official or advisory

² After the City Council adopted this Ethics Code and Handbook on Jan. 19, 1999, Mesa voters approved Proposition 102 during the March 14, 2000 Primary Election. Among other things, Proposition 102 amended the Mesa City Charter to make violations of this Ethics Code and Handbook grounds for five Councilmembers to issue a letter of warning, monetary penalty, reprimand, censure, suspend, or order the forfeiture of office for any Councilmember or Citizen Advisory Board Member who violates this Code and Handbook.

board member from participating. Indeed, if there is a consistent theme to this handbook, it would be: “If in doubt, don’t.”

C. How to Declare a Possible Conflict

If an official believes that a conflict of interest (or even a possible conflict) exists, then he or she should disclose the fact as soon as possible. For example, as soon as an elected official or advisory board member realizes that a conflict exists on a given matter, they must disclose the conflicting interest on the record for the minutes. From that point on, the official shall not participate in any manner (by discussing, questioning or voting) in that matter.

Declaring a conflict and not participating should be recognized as a necessary part of preserving public trust and should not be avoided simply because of delays or inconvenience. Indeed, officials should declare possible conflicts to avoid any appearance of impropriety.

D. Where to Report Improper Behavior

Elected officials and advisory board members have a duty to create the image and reality of a responsive, accessible, and fair city government. Accordingly, council and advisory board members have a duty to report if another elected official or advisory board member is violating laws or ethics relating to city government, as set forth in this code and handbook. Moreover, officials shall never attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any person with the intent of interfering with that person’s duty to disclose such improper activity.

If an official believes that someone else may have violated this Handbook, they may consult with the City Attorney’s Office, the City Clerk, or their colleagues.

IV: Penalties and Sanctions

It is the intent of the City Council to educate, and where necessary, discipline board or councilmembers who violate this Code and Handbook. Discipline shall be progressive, from the least punitive to the most punitive measures, unless the Council believes progressive discipline does not provide the appropriate sanction because of the gravity of the offense, or because the Council does not believe the sanction would deter future misconduct. In all instances, the totality of the circumstances shall be taken into consideration in resolving a matter, including the intent of the one accused of wrongdoing. This Code does not prevent informal resolution of minor infractions, such as by immediate corrective action of the possible misconduct.²

V: Adoption and Amendment

Adoption of and amendments to this Ethics Code and Handbook shall require the affirmative vote of at least a two-third's majority of the full City Council — that is, five (5) votes. Adoption and amendment shall occur through passage of a resolution by the City Council.

SCOTTSDALE REVISED CODE

Sec. 2-49. Conflicts of interests.

(a) Arizona law prevents local governments from imposing different conflicts of interests laws than state law. To provide guidance to city officials, Scottsdale interprets Arizona's conflicts of interests laws as follows.

(b) A conflict of interests arises when a city official, a relative of that official, or an entity in which a city official has a substantial interest is actively engaged in an activity that involves the city's decision-making processes. "Decision-making processes" is broader than just voting and includes being involved with any aspects of any decisions the city makes, such as contracting, sales, purchases, permitting, and zoning.

(c) When a conflict of interests arises, the city official involved must immediately refrain from participating in any manner in the city's decision-making processes on the matter as a city official, including voting on the matter or attending meetings with, having written or verbal communications with, or offering advice to any member of the city council, or any city employee, contractor, agent, charter officer, or member of a city board, commission, committee, task force, other appointed advisory group, or agency (other than the city attorney when the city official is seeking legal advice regarding a possible conflict). In addition, within three business days the city official must declare the specific nature of the interest on the public record by updating her or his Personal Interest Disclosure Form in the city clerk's office.

(d) During a public meeting when an agenda item in which a city official has a conflict of interests comes up for consideration, the city official shall state publicly that he or she has a conflict, recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

(e) In situations where a city official has a question about the applicability of this ethics code or the provisions of Arizona's conflicts of interests laws, the city charter, or any city ordinance, a ruling may be sought from the city attorney on whether an actual conflict of interests exists. City officials are strongly encouraged to avoid involvement in situations where a ruling declares no technical conflict of interests, but where active participation might raise the perception of undue influence or impropriety.

(f) As a prerequisite for exercising any power of office, a city official is required to read, complete, and submit to the city clerk the Personal Interest Disclosure Form, shown below,² before participating in her or his first meeting and before January 31 of every year of continued service to the city.

² See Exhibit B to this Ordinance No. 3675.

SCOTTSDALE CITY CHARTER
ARTICLE 8, SECTION 6

Sec. 6. Conflict of interest

All elected and appointed officers of the city, including members of boards and commissions; whether established by charter, ordinance, resolution, state constitution or statute; and all city employees shall be subject to the conflict of interest laws of the state of Arizona.

ARTICLE 8. CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

§ 38-501. Application of article

A. This article shall apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards.

B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.

C. Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 1, eff. Oct. 1, 1978; Laws 1992, Ch. 140, § 1.

§ 38-502. Definitions

In this article, unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.
2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.
3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to § 38-509.
4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
6. "Public agency" means:
 - (a) All courts.
 - (b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.

- (c) The state, county and incorporated cities or towns and any other political subdivisions.
7. "Public competitive bidding" means the method of purchasing defined in title 41, chapter 4, article 3, [FN1] or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.
 8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
 9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.
 10. "Remote interest" means:
 - (a) That of a nonsalaried officer of a nonprofit corporation.
 - (b) That of a landlord or tenant of the contracting party.
 - (c) That of an attorney of a contracting party.
 - (d) That of a member of a nonprofit cooperative marketing association.
 - (e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.
 - (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
 - (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
 - (h) That of a public school board member when the relative involved is not a dependent, as defined in § 43-1001, or a spouse.
 - (i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:
 - (i) Another political subdivision.
 - (ii) A public agency of another political subdivision.
 - (iii) A public agency except if it is the same governmental entity.

- (j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.

11. "Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1973, Ch. 116, § 6; Laws 1974, Ch. 199, § 1; Laws 1977, Ch. 164, § 17; Laws 1978, Ch. 151, § 7; Laws 1978, Ch. 208, § 2, eff. Oct. 1, 1978; Laws 1979, Ch. 145, § 36; Laws 1992, Ch. 140, § 2.

[FN1] Section 41-722 et seq.

§ 38-503. Conflict of interest; exemptions; employment prohibition

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.
- C. Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:
 - 1. A school district governing board may purchase, as provided in §§ 15-213 and 15-323, supplies, materials and equipment from a school board member.
 - 2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.
- D. Notwithstanding subsections A and B of this section and as provided in §§ 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 3, eff. Oct. 1, 1978; Laws 1980, Ch. 170, § 3; Laws 1986, Ch. 17, § 3; Laws 1986, Ch. 246, § 1; Laws 1987, Ch. 138, § 2.

§ 38-504. Prohibited acts

- A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.
- B. During the period of a public officer's or employee's employment or service 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 which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.
- C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

Added by Laws 1974, Ch. 199, § 3. Amended by Laws 1995, Ch. 76, § 5; Laws 1999, Ch. 40, § 1.

§ 38-505. Additional income prohibited for services

- A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.
- B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Added by Laws 1974, Ch. 199, § 3.

§ 38-506. Remedies

- A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.

- B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.
- C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-507. Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978. Amended by Laws 1992, Ch. 140, § 3.

§ 38-508. Authority of public officers and employees to act

- A. If the provisions of § 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.
- B. If the provisions of § 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-509. Filing of disclosures

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.

*Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.
Current through legislation effective May 11, 2006.*

§ 38-510. Penalties

- A. A person who:
 - 1. Intentionally or knowingly violates any provision of §§ 38-503 through 38-505 is guilty of a class 6 felony.
 - 2. Recklessly or negligently violates any provision of §§ 38-503 through 38-505 is guilty of a class 1 misdemeanor.
- B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.
- C. It is no defense to a prosecution for a violation of §§ 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.
- D. It is a defense to a prosecution for a violation of §§ 38-503 through 38-505 that the interest charged to be substantial was a remote interest.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-511. Cancellation of political subdivision and state contracts; definition

- A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.
- B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by § 37-289 and other lawful provisions of the lease.
- C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.
- D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

- E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.
- F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.
- G. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22. [FN1]

Added as § 38-507 by Laws 1978, Ch. 189, § 1. Renumbered as § 38-511. Amended by Laws 1985, Ch. 155, § 1; Laws 1988, Ch. 169, § 1; Laws 1992, Ch. 45, § 1.

[FN1] Sections 48-1501 et seq., 48-1701 et seq., 48-1901 et seq., 48-2301 et seq., 48-2601 et seq., 48-2901 et seq., 48-3701 et seq.

City of Scottsdale
Personal Interest Disclosure Form

Pursuant to the City of Scottsdale Code of Ethical Behavior, all City officials (the Mayor, members of the City Council, and members of all City boards, commissions, committees, task forces, and other appointed advisory groups), before participating in their first meeting and before January 31 every year thereafter that they serve the City, must complete and submit a Personal Interest Disclosure Form to the City Clerk's Office. The purpose of the form is to help City officials by alerting and reminding them of their need to avoid participating in any manner on behalf of Scottsdale when a conflict arises between their official City duties and their personal interests (or the interests of their relatives).

Two definitions are very important because violating Arizona's conflicts of interests laws is a criminal offense and can lead to serious consequences.

1. Arizona law requires that if a public officer of a public agency, or her or his relative has a *substantial interest* in any contract, sale, purchase or service to the public agency, or an official decision of the public agency, then that officer "shall make known that interest in the official records of the public agency and shall refrain from voting upon or *otherwise participating in any manner* as an officer or employee" regarding that matter. (A.R.S. § 38-503). *Substantial interest* means a pecuniary (money/financial) or propriety (property) interest, direct or indirect, except certain specific, limited *remote interests* listed in the statute. (A.R.S. § 38-502). By listing "voting" and "otherwise participating in any manner" separately, the Legislature has made clear that if you have a conflict, then you must immediately refrain from taking *any* action in your official position; you may not do anything – vote, talk, discuss, write, wink, or nod – to try to influence the decision or any decision-makers.

2. The definition of relative is quite sweeping, and includes your "spouse, child, child's child [grandchildren], parent, grandparents, brother or sister [and step-brother or step-sister], and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9).

If after you complete this form another substantial interest surfaces that was not anticipated, then you are obligated to immediately refrain from participating in the decision-making process and, within three business days, update this form to disclose the interest in the City Clerk's Office. If you have any questions, please contact the City Attorney's Office with as much lead time as possible.

1. Identify the decision or other matter in which you or a relative may have a substantial interest. (Attach another page if more space is needed.)

2. Describe each substantial interest referred to above. (Attach another page if more space is needed.)

Statement of Disqualification

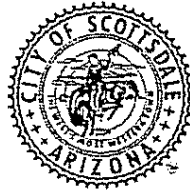
To avoid any possible conflict of interests, I will refrain from participating in any manner in the matter(s) identified above.

Name (please print)

Signature

Date

Position in the City of Scottsdale



**DECLARATION OF
CONFLICT OF INTEREST OR PERSONAL INTEREST**

NAME: _____

PUBLIC BODY: _____

DATE OF PUBLIC MEETING: _____ AGENDA ITEM NO.: _____

DESCRIPTION OF ITEM: _____

☐ I declare that I have a "substantial interest" in the above-referenced decision or matter, as provided in A.R.S. § 38-501 et seq., and, therefore, declare that I have a conflict of interest in the decision or matter.

Describe the substantial interest held by you or your relative(s) referred to above:

☐ I don't believe that I have a substantial interest in the above-referenced decision or matter and, therefore, do not have a conflict of interest as provided by Arizona law, but I believe that my active participation in the above-referenced decision or matter might raise the perception of undue influence or impropriety.

Explain: _____

To avoid a conflict of interest or the perception of undue influence or impropriety, as indicated above, I will refrain from participating in any manner in the decision(s) or matter(s) identified above.

Signature

Date Signed

PLEASE NOTE: Completion and filing of this form with the City Clerk's Office is not, by itself, sufficient for a public officer to meet the requirements of the Conflict of Interest law and Code of Ethical Behavior (S.R.C. § 2-47 et seq.). To complete the requirements the public officer must state publicly at the meeting of the public body that he or she has a conflict of interest, or that participation might raise the perception of undue influence or impropriety; then recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

A copy of this form will be filed as a supplement to the public officer's Personal Interest Disclosure form.

SCOTTSDALE REVISED CODE

Sec. 2-50. Gifts; prohibited; exceptions.

(a) City officials are prohibited from soliciting, receiving, or accepting gifts of any kind from anyone who is engaged in a general practice or specific situation that involves the city's decision-making or permitting processes, except as exempted below. The term "gifts of any kind" includes money, services, loans, travel, entertainment, hospitality (including meals), promises of any future gifts, or anything of value that might be construed as an attempt to create a more favorable relationship than that enjoyed by any other citizen, including: (a) the purchase, sale, or lease of any real or personal property by the city official, that official's relative, or an entity in which that official has a financial interest at a value below or above that available to the general public, and (b) employment and/or services, contracts, direct or indirect, by a city official, that official's relative, or an entity in which that official or relative has a financial interest.

(b) Exemptions include entertainment, hospitality (including meals), transportation, and token mementoes directly associated with events that an official is attending as a representative of the city. If any gift or personal benefit is permissible and exceeds \$25 in value, then the city official must declare it to the city clerk as provided in the Scottsdale Revised Code Section 14-135, unless reporting is not required by the Code provision.

SCOTTSDALE REVISED CODE

Sec. 14-135. Gifts and gratuities.

(a) The provisions of this section are intended to promote ethical conduct and public trust in the integrity of Scottsdale municipal government and therefore, shall apply to all city employees, elected and appointed officers, including members of boards and commissions, in the course of their employment or the performance of their official duties with the city.

(b) No gifts, gratuities, and other benefits or items of value shall be solicited by a city employee or officer for personal benefit.

(c) Monetary gratuities, tips, honoraria, or other payments for services rendered for performing city employment or official city duties, other than compensation from the city or that which is otherwise provided by law or city policy, shall not be accepted.

(d) Gifts and other personal benefits or items of value shall not be accepted if acceptance could reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action.

(e) If, after consideration of the ethical standards expressed in this policy, a gift, personal benefit, or other item in excess of twenty-five dollars (\$25.00) in value, is accepted, it must be declared in writing with the city clerk's office within five (5) business days of acceptance. The declaration shall be made on a form designated by the clerk.

(f) The following items reflect legitimate public duties or purposes, or are otherwise not considered gifts to an employee or officer for personal benefit that must be declared pursuant to 14-135(e):

- (1) Admission to events which are sponsored or funded in whole or in part by the city, if furnished by the city or sponsor(s) of such events;
- (2) Reasonable hosting, including meals and refreshments, travel, and related expenses, furnished in connection with official speaking engagements, ceremonies or other work-related appearances on behalf of the city, when public or civic purposes are served;
- (3) Gifts of goodwill or other tokens of appreciation accepted on behalf of the city, or in the case of food, accepted and shared with others in the work place.
- (4) Items received and donated to a charitable organization.

(Ord. No. 1837, § 1(Art. 8, § 805), 6-15-87; Ord. No. 2868, § 41, 3-4-96; Ord. No. 3264, § 1, 10-4-99)

Event	Date	Site
Matching Event Advertising Funding		
51st Annual Scottsdale Arabian Horse Show	February 17-26, 2006	WestWorld
Arizona Bike Week	March 31 - April 9, 2006	WestWorld
Sun Country Circuit Quarter Horse Show	January 27 - February 4, 2006	WestWorld
35th Anniversary Barrett-Jackson Collector Car Auction	January 14 - 22, 2006	WestWorld
Celebration of Fine Art	January 14 - March 26, 2006	Scottsdale Road and Union Hills, SE corner
FBR Open	January 30 - February 5, 2006	TPC
PF Chang's Rock n' Roll Marathon	January 15, 2006	Phx, Scdl, Tempe
Russo and Steel Collector Automobile in Scottsdale	January 19 - 21, 2006	Scottsdale and Mayo Raods, SE Corner
Scottsdale Classic Futurity and Quarter Horse Show	October 6 - 15, 2005	WestWorld
Scottsdale Culinary Festival	April 18 - 23, 2006	Various Scdl Resorts and Scdl Civic Center Ma

**City of Scottsdale
Declaration of Gifts Form**

To be filed in the City Clerk's office within five business days after acceptance of an applicable gift, personal benefit or other item in excess of \$25.00 in value, pursuant to Scottsdale City Code section 14-135 (printed on reverse side).

Check Relevant Filing Category:

Employee

☐

Public Officer/City Official

☐

Name: _____

Public body you are member of (i.e. city council, board or commission, etc.), if applicable.

Phone: (preferred number for access): _____

Department (if applicable): _____

Description of Gift(s) and Related Comments: _____

Date Received: _____ Face Value of Gift(s): _____ (if applicable)

Source of Gift(s) [Name of individual(s) and organization(s), if applicable]:

Submitted by: _____
(Signature)

Date: _____

Scottsdale Revised Code Section 14-135
Gifts and Gratuities

Sec. 14-135. Gifts and Gratuities.

(a) The provisions of this section are intended to promote ethical conduct and public trust in the integrity of Scottsdale municipal government and therefore, shall apply to all city employees, elected and appointed officers, including members of boards and commissions, in the course of their employment or the performance of their official duties with the city.

(b) No gifts, gratuities, and other benefits or items of value shall be solicited by a city employee or officer for personal benefit.

(c) Monetary gratuities, tips, honoraria, or other payments for services rendered for performing city employment or official city duties, other than compensation from the city or that which is otherwise provided by law or city policy, shall not be accepted.

(d) Gifts and other personal benefits or items of value shall not be accepted if acceptance could reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action.

(e) If, after consideration of the ethical standards expressed in this policy, a gift, personal benefit, or other item in excess of \$25.00 in value, is accepted, it must be declared in writing with the city clerk's office within five business days of acceptance. The declaration shall be made on a form designated by the clerk.

(f) The following items reflect legitimate public duties or purposes, or are otherwise not considered gifts to an employee or officer for personal benefit that must be declared pursuant to 14-135(e):

- (1) admission to events which are sponsored or funded in whole or in part by the city, if furnished by the city or sponsor(s) of such events;
- (2) reasonable hosting, including meals and refreshments, travel, and related expenses, furnished in connection with official speaking engagements, ceremonies or other work-related appearances on behalf of the city, when public or civic purposes are served;
- (3) gifts of goodwill or other tokens of appreciation accepted on behalf of the city, or in the case of food, accepted and shared with others in the work place.
- (4) items received and donated to a charitable organization.

SCOTTSDALE REVISED CODE

Sec. 2-51. Open government.

(a) The citizens of Scottsdale expect and deserve open government. Arizona has an official public policy "that meetings of public bodies be conducted openly" and that any doubt should always be resolved "in favor of open and public meetings" (A.R.S. § 38-431.09). The city council has adopted a formal goal of "Open and Responsive Government: Make government accessible, responsive and accountable so that decisions reflect community input and expectations" (Nov. 4, 2004 Mission and Goals). And Scottsdale citizens have voted in favor of a Vision Statement that "Scottsdale will be a leader in promoting open government processes that are accessible, responsive, and fair to all of its citizen participants" (City of Scottsdale General Plan 2001, page 87).

(b) Therefore, city officials shall conduct themselves in a manner that fully adheres to and preferably exceeds state laws concerning open meetings and transparency of actions. Indeed, city officials are encouraged to employ a "mindset of openness" in conducting the affairs of the city and should be cautious before voting to hold a portion of a meeting in executive session. Moreover, city officials are reminded that any attempt to circumvent the Open Meeting Law -- such as by using technology, a "hub-and-spoke" scheme, or any other technique involving less than a quorum yet designed to communicate with a quorum of the public body -- can violate the Open Meeting Law. City officials also shall show no favoritism on who has access to or receives relevant information on matters under consideration or of general public interest.

(c) The city attorney is encouraged to vigorously promote and enforce state laws regulating open meetings, and be proactive and assertive in ensuring strict adherence to those laws reflecting the city's "mindset of openness."

SCOTTSDALE REVISED CODE

Sec. 2-52. Open meeting laws; executive sessions.

(a) Arizona law recognizes that there are very narrowly limited occasions when the public's interests are best protected by the public body meeting in closed executive session. To honor the mindset of openness, city officials should consider that, although state law allows discussion of certain limited matters in executive session, closed meetings should be utilized as infrequently as possible and only in clearly compelling circumstances.

(b) In addition to complying with the Open Meeting Law requirement that a majority of the public body vote in favor of meeting in closed executive session, Scottsdale public bodies will first introduce the item on the agenda, hear the need to go into executive session explained, receive the assent of the city attorney (or designee) that the matter would be an appropriate use of the executive session exception, and then vote to see if a majority of the public body agrees there is a legitimate need to go into executive session.

(c) To ensure strict compliance with state law, the city attorney (or designee) shall be present at and actively protect the letter and spirit of the Open Meeting Law in all council meetings, all council executive sessions, and all executive sessions to be held by any other city board, commission, committee, task force, or other appointed advisory group. While in executive session, the city attorney (or designee) shall ensure that all discussions and consultations that take place fit within the bounds of what is allowed and appropriate under a strict and tight interpretation of Arizona's Open Meeting Law. All other questions and discussions related to that same issue shall be posed and addressed only in a public forum either prior to or following the executive session.

(d) The city attorney (or designee) will not attend those portions of executive sessions involving personnel matters, pursuant to A.R.S. § 38-431.03(A)(1), relating to the city auditor, city clerk, city judge; associate city judges, city manager, or city treasurer, but may attend if requested to do so by the city council.

(e) Before leaving the executive session, the city attorney (or designee) shall remind those present in the closed executive session that Arizona law (a) mandates that all discussions within and minutes of executive sessions are strictly confidential for all time, and (b) prohibits attendees from revealing to anyone, including family members, any part of any discussion that took place in executive session.

ARTICLE 3.1. PUBLIC MEETINGS AND PROCEEDINGS

§ 38-431. Definitions

In this article, unless the context otherwise requires:

1. "Advisory committee" means a committee that is officially established, upon motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in § 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in § 38-431.03 and the auditor general as provided in § 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.

3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.

4. "Meeting" means 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. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.

6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

CREDIT(S)

Added by Laws 1962, Ch. 138, § 2. Amended by Laws 1974, Ch. 196, § 1, eff. May 22, 1974; Laws 1978, Ch. 86, § 1; Laws 1982, Ch. 278, § 1; Laws 1985, Ch. 203, § 1; Laws 2000, Ch. 358, § 1.

§ 38-431.01. Meetings shall be open to the public

A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

B. All public bodies, except for subcommittees and advisory committees, shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:

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 considered.

4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.

C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to § 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.

D. The minutes or a recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article.

E. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder, camera or other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

F. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall distribute open meeting law materials prepared and approved by the attorney general to a person elected or appointed to a public body prior to the day that person takes office.

G. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

H. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

CREDIT(S)

Added by Laws 1962, Ch. 138, § 2. Amended by Laws 1974, Ch. 196, § 2, eff. May 22, 1974; Laws 1975, Ch. 48, § 1; Laws 1978, Ch. 86, § 2; Laws 1982, Ch. 278, § 2; Laws 2000, Ch. 358, § 2.

§ 38-431.03. Executive sessions

A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.

2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.

3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.

4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.

5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.

7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

B. Minutes of and discussions made at executive sessions shall be kept confidential except from:

1. Members of the public body which met in executive session.

2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.

3. The auditor general on a request made in connection with an audit authorized as provided by law.

4. A county attorney or the attorney general when investigating alleged violations of this article.

C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.

D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.

E. Except as provided in § 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.

F. Disclosure of executive session information pursuant to this section or § 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or § 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 6, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 4; Laws 1982, Ch. 278, § 4; Laws 1983, Ch. 274, § 2, eff. April 27, 1983; Laws 1990, Ch. 56, § 1, eff. April 12, 1990; Laws 2000, Ch. 358, § 4.

§ 38-431.04. Writ of mandamus

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

CREDIT(S)

Added as § 38-431.03 by Laws 1962, Ch. 138, § 2. Renumbered as § 38-431.04 by Laws 1974, Ch. 196, § 6, eff. May 22, 1974.

§ 38-431.05. Meeting held in violation of article; business transacted null and void; ratification

A. All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.

B. A public body may ratify legal action taken in violation of this article in accordance with the following requirements:

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.

2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.

3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.

4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

CREDIT(S)

Added as § 38-431.04 by Laws 1962, Ch. 138, § 2. Renumbered as § 38-431.05 by Laws 1974, Ch. 196, § 6, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 5; Laws 1982, Ch. 278, § 5.

§ 38-431.06. Investigations; written investigative demands

A. On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.

B. In addition to other powers conferred by this article, in order To carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:

1. Issue written investigative demands to any person.

2. Administer an oath or affirmation to any person for testimony.

3. Examine under oath any person in connection with the investigation of the alleged violation of this article.

4. Examine by means of inspecting, studying or copying any account, book, computer,

document, minutes, paper, recording or record.

5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.

C. The written investigative demand shall:

1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.

2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.

3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.

4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.

D. If a person objects to or otherwise fails to comply with the written investigation demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa county or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona rules of civil procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court's order, the court may issue any of the following orders until the person complies with the order:

1. Adjudging the person in contempt of court.

2. Granting injunctive relief against the person to whom the demand is issued to restrain the conduct that is the subject of the investigation.

3. Granting other relief the court deems proper.

CREDIT(S)

Added by Laws 2000, Ch. 358, § 5.

§ 38-431.07. Violations; enforcement; removal from office; in camera review

A. Any person affected by an alleged violation of this article, the attorney general or the

county attorney for the county in which an alleged violation of this article occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of, this article, by members of the public body, or to determine the applicability of this article to matters or legal actions of the public body. For each violation the court may impose a civil penalty not to exceed five hundred dollars against a person who violates this article or who knowingly aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as it deems appropriate in the circumstances. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff's reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information violated any provision of this article the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.

B. A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to incurring any such obligation or indebtedness.

C. In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 7, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 6; Laws 1982, Ch. 278, § 7; Laws 2000, Ch. 358, § 6.

§ 38-431.08. Exceptions; limitation

A. This article does not apply to:

1. Any judicial proceeding of any court or any political caucus of the legislature.
2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
4. Good cause exception determinations and hearings conducted by the board of fingerprinting pursuant to § 41-619.55.

B. A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.

2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification which verifies the person's signature.

3. Prevent and prohibit any articles from being taken into a hearing except recording devices, and if the person who attends a hearing is a member of the media, cameras.

4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

C. The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation of this section shall be those remedies available in § 38-431.07, as against the director only.

D. Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, § 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 7, eff. May 22, 1974. Amended by Laws 1975, Ch. 71, § 1, eff. May 20, 1975; Laws 1977, Ch. 128, § 1; Laws 1982, Ch. 278, § 8; Laws 1990, Ch. 298, § 1, eff. June 16, 1990; Laws 1998, Ch. 232, § 8; Laws 1998, Ch. 270, § 12, eff. August 17, 1999; Laws 1999, Ch. 211, § 33; Laws 2000, Ch. 251, § 14; Laws 2000, Ch. 358, § 7.

§ 38-431.09. Declaration of public policy

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 article shall construe any provision of this article in favor of open and public meetings.

CREDIT(S)

Added by Laws 1978, Ch. 86, § 7. Amended by Laws 1982, Ch. 278, § 9; Laws 2000, Ch. 358, § 8.

**STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL**

ATTORNEY GENERAL OPINION

by
TERRY GODDARD
ATTORNEY GENERAL

July 25, 2005
No. I05-004
(R05-010)

Re: Open Meeting Law Requirements and
E-mail to and from Members of a Public Body

To: Donald M. Peters, Esq.
Miller, LaSota & Peters
722 East Osborn Road, Suite 100
Phoenix, Arizona 85014

Pursuant to Arizona Revised Statutes ("A.R.S.") §15-253(B), you submitted for review your opinion to the president of the Washington Elementary School District ("District") Governing Board ("Board") regarding electronic mail ("e-mail") communications to and from members of the Board and Arizona's Open Meeting Law ("OML").

This Opinion revises your analysis to set forth some parameters regarding e-mail to and from members of a public body and is intended to provide guidance to public bodies throughout the State that are subject to the OML. *See* Ariz. Att'y Gen. Op. I98-006 at 2, n.2.

Question Presented

What are the circumstances under which the OML permits e-mail to and from members of a public body?

Summary Answer

Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML requirements. When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under

the OML. 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.

Analysis

The OML is intended to open the conduct of government business to public scrutiny and prevent public bodies from making decisions in secret. *See Karol v. Bd. Of Educ. Trs.*, 122 Ariz. 95, 97, 593 P.2d 649, 651 (1979). “[A]ny person or entity charged with the interpretation [of the OML] shall construe any provision [of the OML] in favor of open and public meetings.” A.R.S. § 38-431.09. In addition, devices used to circumvent the OML and its purposes violate the OML and will subject the members of the public body and others to sanctions.¹ *See e.g.* Ariz. Att’y. Gen. Ops. I99-022, n. 7; I75-7. These principles guide the analysis of the use of e-mails by members of a public body. E-mail communications to or from members of the public body are analyzed like any other form of communication, written or verbal, in person or through technological means.

A. An Exchange of E-mails Can Constitute a Meeting.

1. A Meeting Can Occur Through Serial Communications between a Quorum of the Members of the Public Body.

All meetings of public bodies must comply with the OML.² The OML 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.

¹ A.R.S. § 38-431-.07 (A) provides for penalties for violating the OML against not only members of the public body, but also against “[a person] who knowingly aids, agrees to aid or attempts to aid another person in violating [the OML].”

² A “public body” subject to the OML includes:
the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivisions. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.
A.R.S. § 38-431(6).

A.R.S. § 38-431(4).

The OML does not specifically address whether all members of the body must participate simultaneously to constitute a “gathering” or meeting. However, the requirement that the OML be construed in favor of open and public meetings leads to the conclusion that simultaneous interaction is not required for a “meeting” or “gathering” within the OML. “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 a topic that is or may be presented to the public body for a decision.” *Arizona Agency Handbook* § 7.5.2. (Ariz. Att’y Gen. 2001) Thus, even if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a “meeting.” See *Del Papa v. Board of Regents*, 114 Nev. 388, 393, 956 P. 2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place)³; *Roberts v. City of Palmdale*, 20 Cal. Rptr. 2d 330, 337, 853 P. 2d 496, 503 (1993) (“[A] concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement.”)⁴

2. Discussion, Proposals and Deliberations Among a Quorum of a Public Body Must Occur at a Public Meeting.

A “meeting” includes four types of activities by a quorum of the members of the public body: discussing legal action, proposing legal action, taking legal action, and deliberating “with respect to such action[s].” A.R.S. § 38-431(4). Three of these activities necessarily involve more than a one-way exchange between a quorum of members of a public body.

For example, the ordinary meaning of the word “discuss” suggests that a discussion of possible legal action requires more than a one-way communication. See *Webster’s II New College Dictionary* 385 (1994) (defining “discuss” as “to speak together about.”) Likewise, the term

³ Like the OML, Nevada’s open meeting law defines a “meeting” as a gathering of a quorum of members of the public body. Nev. Rev. Stat. 241.015(2).

⁴ This Office declines to follow *Beck v. Shelton*, 267 Va. 482, 491, 593 S.E.2d 195, 199 (2004) because of differences between Arizona’s law and Virginia’s. In *Beck*, the court concluded that “the term [‘assemble’] inherently entails the quality of simultaneity.” Further, the court observed that “[w]hile such simultaneity may be present when e-mail technology is used in a ‘chat room’ or as ‘instant messaging,’ it is not present when e-mail is used as the functional equivalent of letter communication by ordinary mail, courier, or facsimile transmission.” *Id.*, 267 Va. at 490, 593 S.E. 2d at 199.

“deliberations” requires some collective activity. *See* Ariz. Att’y Gen. Op. I97-012, *citing Sacramento Newspaper Guild v. Sacramento Bd. of Supervisors*, 69 Cal. Rptr. 480, 485 (App. 1968) (reversed on other grounds). “Deliberations” and “discussions” involve an exchange between members of the public body, which denotes more than unilateral activity. *See* Ariz. Att’y Gen. Op. I75-8; *Webster’s* at 390 (“exchange” means “to take or give up for another”; “to give up one thing for another”; “to provide in return for something of equal value.”) Finally, “taking legal action” in the context of the OML requires a “collective decision, commitment or promise” by a majority of the members of a public body. A.R.S. § 38-431(3); Ariz. Att’y Gen. Op. I75-7.

Unlike discussions and deliberations, the word “propose” does not imply or require collective action. Webster’s defines “propose” as “to put forward for consideration, discussion, or adoption.” *Webster’s II New College Dictionary* at 944. A single board member may “propose” legal action by recommending a course of action for the board to consider. For example, the statement, “Councilperson Smith was admitted to the hospital last night” is not a proposal, but “We should install a crosswalk at First and Main” is a proposal. Thus, an e-mail from a board member to enough other members to constitute a quorum that *proposes* legal action would be a meeting within the OML, even if there is only a one-way communication, and no other board members reply to the email.⁵

3. An Exchange of Facts, as Well as Opinions, Among a Quorum of Members of a Public Body Constitutes a Meeting within the OML, if it is Reasonably Foreseeable that the Topic May Come Before the Public Body for Action in the Future.

Arizona’s OML does not distinguish between communication of facts or opinions. An exchange of facts, as well as opinion, may constitute deliberations under the OML. *See* Ariz. Att’y Gen. Ops. I97-012, I79-4; I75-8.⁶ The term “deliberations” as used in A.R.S. § 38-431 means “any exchange of facts that relate to a matter which foreseeably might require some final action . . .” Ariz. Att’y Gen. Op. I75-78; *see also Sacramento*

⁵ It might be argued that because the definition of meeting refers to a gathering of a quorum at which they discuss, propose or take legal action, the definition only applies to proposals made by a quorum or circumstances in which more than one person actually makes a proposal. That interpretation, however, is inconsistent with the ordinary meaning of the word “propose” and with the process for proposing legal action for consideration by public bodies. It is also contrary to the directive that the OML be construed broadly to achieve its purposes.

⁶ Unlike Arizona, some states permit exchanges of information among a quorum of a public body outside of public meetings. *See* Fla. AGO 2001-20, 2001 WL 276605 (Fla. A.G.) (“[C]ommunication of information, when it does not result in the exchange of council members’ comments or responses on subjects requiring council action, does not constitute a meeting subject to [Florida’s sunshine law]). As in many other states, Florida’s open meeting law is known as its “sunshine law.”

Newspaper Guild, 69 Cal. Rptr. at 485 (deliberation connotes not only collective discussion, but also the collective acquisition and exchange of facts preliminary to the final decision).

Of course, the OML applies only to an exchange of facts or opinions if it is foreseeable that the topic may come before the public body for action. *See Valencia v. Cata*, 126 Ariz. 555, 556-57, 617 P.2d 63, 64-5 (App. 1980); Ariz. Att'y Gen. Op. 75-8. The scope of what may foreseeably come before the public body for action is determined by the statutes or ordinances that establish the powers and duties of the body. *See* Ariz. Att'y Gen. Op. I00-009.

4. Applying OML Principles to E-mail.

Few reported decisions discuss when the use of e-mail violates a state's open meeting law. In *Wood v. Battle Ground School District*, 107 Wash. App. 550, 564, 27 P. 3d 1208, 1217 (2001), the Washington Court of Appeals held that the exchange of e-mail messages may constitute a meeting within Washington's Open Public Meetings Act. While the court held that "the mere use or passive receipt of e-mail does not automatically constitute a 'meeting'," it concluded that the plaintiff established a *prima facie* case of "meeting" by e-mails because the members of the school board exchanged e-mails about a matter, copying at least a quorum and sometimes all of the other members. The court said, "[T]he active exchange of information and opinions in these emails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or to discuss Board business." 107 Wash. App. at 566, 27 P. 3d at 1218.

Although the Washington Open Public Meetings Act is not identical to the OML, like the OML, it broadly defines "meeting" and "action," and includes the directive that the law be liberally construed in favor of open and public meetings. 107 Wash. App. At 562, 27 P. 3d at 1216. The holding of the court in *Wood* and its attendant analysis are, therefore, persuasive.

The available case law and Arizona's statutory language indicate that a one-way communication by one board member to other members that form a quorum, with no further exchanges between members, is not a *per se* violation of the OML. Additional facts and circumstances must be evaluated to determine if the communication is being used to circumvent the OML. A communication that proposes legal action to a quorum of the board would, however, violate the OML, even if there is no exchange among the members concerning the proposal. In addition, passive receipt of information from a member of the staff, with nothing more, does not violate the OML. *See Roberts*, 20 Cal. Rptr. 2d at 337, 853 P. 2d at 503

(receipt of a legal opinion by members of a public body does not result in a meeting.); *Frazer v. Dixon Unified Sch. Dist.*, 18 Cal. App. 4th 781, 797, 22 Cal. Rptr. 2d 641, 657 (1993) (passive receipt by board members of information from school district staff is not a violation of the open meeting law).⁷

There are risks whenever board members send e-mails to a quorum of other board members. Even if the first e-mail does not violate the open meeting law, if enough board members to constitute a quorum respond to the e-mail, there may be a violation of the OML. In addition, a quorum of the members might independently e-mail other board members on the same subject, without knowing that fellow board members are also doing so. This exchange of e-mails might result in discussion or deliberations by a quorum that could violate the OML. Because of these potential problems, I strongly recommend that board members communicate with a quorum about board business at open public meetings, not through e-mails.

B. Hypotheticals Illustrating the Use of E-mail.

The analysis of the OML and e-mail is theoretically no different than analyzing other types of communications. To provide additional guidance, this Opinion will address OML applications to specific factual scenarios.⁸

a. E-mail discussions between less than a quorum of the members that are forwarded to a quorum by a board member or at the direction of a board member would violate the OML.

b. If a staff member or a member of the public e-mails a quorum of members of the public body, and there are no further e-mails among board members, there is no OML violation.

c. Board member A on a five-member board may not e-mail board members B and C on a particular subject within the scope of the board's responsibilities and include what other board members D and E have previously communicated to board member A. This e-mail would be part of a chain of improper serial communications between a quorum on a subject for potential legal action.

d. A board member may e-mail staff and a quorum of the board proposing that a matter be placed on a future agenda. Proposing

⁷ This office has also opined that, in the context of a Call to the Public, passive receipt of information does not constitute a meeting. Ariz. Att'y Gen. Op. I99-006.

⁸ These hypotheticals assume that the e-mails are not sent by board members or at a board member's direction with the purpose of circumventing the OML and that any unilateral communications do not propose legal action.

that the board have the opportunity to consider a subject at a future public meeting, without more, does not propose legal action, and, therefore, would not violate the OML.

e. An e-mail from the superintendent of the school district to a quorum of the board members would not violate the OML. However, if board members reply to the superintendent, they must not send copies to enough other members to constitute a quorum. Similarly, the superintendent must not forward replies to the other board members.

f. One board member on a three-member board may e-mail a unilateral communication to another board member concerning facts or opinions relating to board business, but board members may not respond to the e-mail because an exchange between two members would be a discussion by a quorum.

g. A board member may copy other board members on an e-mailed response to a constituent inquiry without violating the OML because this unilateral communication would not constitute discussions, deliberations or taking legal action by a quorum of the board members.

h. An e-mail request by a board member to staff for specific information does not violate the OML, even if the other board members are copied on the e-mail. The superintendent may reply to all without violating the OML as long as that response does not communicate opinions of other board members. However, if board members reply in a communication that includes a quorum, that would constitute a discussion or deliberation and therefore violate the OML.

i. A board member may use e-mail to send an article, report or other factual information to the other board members or to the superintendent or staff member with a request to include this type of document in the board's agenda packet. The agenda packet may be distributed to board members via e-mail. Board members may not discuss the factual information with a quorum of the board through email.

C. Measures to Help Ensure that the Public Body Conducts Its Business in Public.

Although it is not legally required, I recommend that any e-mail include a notice advising board members of potential OML consequences

of responding to the e-mail. Possible language for a notice for e-mails from the superintendent or staff is as follows:

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.

Language for e-mails from board members could be the following:

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

Although the OML does not require the above notice, such notification may serve as a helpful reminder to board members that they should not discuss or deliberate through email. It is also important to remember that e-mail among board members implicates the public records law, as well as the OML. E-mails that board members or staff generate pertaining to the business of the public body are public records. *See Star Publ'g Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899 (App. 1994); *see also Arizona Agency Handbook* § 6.2.1.1 (Ariz. Att'y Gen. 2001). Therefore, the e-mails must be preserved according to a records retention program and generally be made available for public inspection. A.R.S. §§ 39-121, 41-1436. Although the OML focuses on e-mails involving a quorum of the members of the public body, the public records law applies to any e-mail communication between board members or board members and staff. Public bodies might consider maintaining a file that is available for public inspection and contains any e-mails sent to and from board members. Ready access to this type of information helps ensure compliance with the legislative mandates favoring open government.

I encourage all public bodies to educate board members and staff concerning the parameters of the OML and the public records law to ensure compliance with these laws. E-mail is a useful technological tool, but it must be used in a manner that follows the OML's mandate that all public bodies propose legal action, discuss, deliberate, and make decisions in public.

Conclusion

E-mail communications among a quorum of the board are subject to the same restrictions that apply to all other forms of communications among a quorum of the board. E-mails exchanged among a quorum of a board that involve discussions, deliberations or taking legal action on

matters that may reasonably be expected to come before the board constitute a meeting through technological means. While some unilateral e-mail communications from a board member to a quorum would not violate the OML, a board member may not propose legal action in an e-mail. Finally, a quorum of the board cannot use e-mail as a device to circumvent the requirements in the OML.

Terry Goddard
Attorney General

450529

SCOTTSDALE REVISED CODE

Sec. 2-53. Preservation and availability of public documents.

(a) Consistent with Arizona's Public Records Laws, written communications between public officials and private citizens on matters explicitly involving the affairs of the city are considered public documents. Such written communications shall be preserved in compliance with the city's document retention policy and made available for review upon request.

(b) "Written communications" includes city-related e-mail messages and attachments originating from or received by elected or appointed officials on any publicly or privately owned equipment at city hall, the city official's place of employment, private residence, or remote locations. Destruction of such communications prior to the expiration of the time period specified in the city's document retention policy is prohibited.

(c) The city's electronic messaging systems and electronic communications systems (including telephones) are to be used for official city business only, except for limited personal uses (*e.g.*, asking a person to lunch or a social event, checking on the welfare of family members, scheduling or canceling a doctor's appointment). City officials are prohibited from using the city's official e-mail service for commercial purposes or other inappropriate uses.

SCOTTSDALE REVISED CODE

Sec. 2-54. Undue influence on subordinates.

(a) Under the city's charter, administrative authority is vested solely in the city manager. Members of the city council may make inquiries to city staff. Members of the city council may not interfere with the city manager's authority, however, by giving orders or explicit directions or requests, publicly or privately, regarding city matters to any subordinates of the city manager, and they shall not attempt to exert influence on the city manager on issues relating to the hiring or removal of persons employed by the city.

(b) All city officials shall respect the orderly lines of authority within city government.

SCOTTSDALE CITY CHARTER

Article 2: The Council

* * * * *

Sec. 17. Interference in administrative service.

Neither the council nor any of its members shall direct or request the appointment of any person to, or his removal from, office by the city manager or by any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the city. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately. Nothing in this section shall be construed, however, as prohibiting the council while in open sessions from fully and freely discussing with or suggesting to the city manager anything pertaining to city affairs or the interests of the city.

**SCOTTSDALE REVISED CODE
ARTICLE II, CHAPTER 2**

DIVISION 4. CODE OF ETHICAL BEHAVIOR: ENFORCEMENT

Sec. 2-55. Filing complaints.

(a) Contents. Any person who believes a city official in her or his official capacity has violated a mandatory requirement or prohibition in the City of Scottsdale Code of Ethical Behavior, set forth in division 3 of this article, above, or violated any state or city law may file a sworn complaint with the city attorney identifying:

- (1) The complainant's name, address, and telephone number;
- (2) The name and position of the city official who is the subject of the complaint;
- (3) The nature of the alleged violation, including the specific provision of the ethics code or law allegedly violated;
- (4) A statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred;
- (5) All documents or other material in the complainant's possession that are relevant to the allegation, a list of all documents or other material relevant to the allegation that are available to the complainant but not in the complainant's possession, and a list of all other documents or other material relevant to the allegations but unavailable to the complainant, including the location of the documents, if known;
- (6) A list of witnesses, what they may know, and their contact information, if known; and
- (7) If the alleged violation occurred more than ninety days before the sworn complaint is filed with the city attorney, then the complaint must identify the date the complainant learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation, a list of the persons with knowledge about the date the violation was discovered, and a summary of the information they possess about the discovery.

The complaint shall include an affidavit stating that the information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the ethics code. If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those sources. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

(b) Time for filing. A complaint must be filed on or before the 365th day after the violation is alleged to have occurred or the 90th day after the violation was discovered, whichever date is earlier.

(c) False or frivolous complaints. A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and potential civil liability for, among other possible causes of action, defamation. If after reviewing an ethics complaint it is determined that a sworn complaint is groundless and appears to have been filed in bad faith or for the purpose of harassment, or that intentionally false or malicious information has been provided under penalty of perjury, then the city attorney may refer the matter to the appropriate law enforcement authority for possible prosecution. A city official who seeks to take civil action regarding any such complaint shall do so at her or his expense.

(d) Elections complaints. Any complaints relating to city elections shall be filed with or referred to the city clerk for review and disposition as provided by law.

Sec. 2-56. Complaints against members of boards, commissions, committees, task forces, and other appointed advisory groups.

(a) Initial screening of complaints. The city attorney shall review each complaint filed alleging a violation by a member of a city board, commission, committee, task force, and other appointed advisory group and within fifteen days either:

- (1) Return it for being incomplete;
- (2) Dismiss it for being untimely;
- (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition – as opposed to an aspirational or administrative provision – of the ethics code or any laws;
- (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the city attorney determines the complaint was false, misleading, frivolous, or unsubstantiated;
- (5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or
- (6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the city's Code of Ethical Behavior or a city law, take action as set forth below.

In all circumstances, the city attorney shall simultaneously notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(b) Review and findings. For ethics complaints alleging violations of the city's Code of Ethical Behavior or a city law that proceed for additional review, the city attorney shall investigate the allegations and, within thirty days (unless the city attorney requests a fifteen day extension that is granted in writing by the mayor or vice mayor), submit to the city council, the complainant, the official who is the subject of the complaint, and the city clerk a report with findings of fact,

conclusions of law, and a recommendation. The city council shall consider the city attorney's report at a public meeting. If the city council finds an ethical violation, then it may remove the member from the city board, commission, committee, task force, or other appointed advisory group. In resolving a complaint, the totality of the circumstances shall be taken into consideration, including the intent of the person accused of wrongdoing.

Sec. 2-57. Complaints against the mayor and members of the city council.

(a) Independent ethics reviewers. The city shall use independent, non-city personnel to handle ethics complaints lodged against the mayor and members of the city council (and to handle any ethics complaints filed against a member of a city board, commission, committee, task force, or other appointed advisory group if the city attorney would have a conflict of interests in handling that complaint). The city attorney, in compliance with applicable provisions of the city Procurement Code, shall select a pool of ten to twelve individuals who could serve as the city's independent ethics reviewers to handle ethics complaints lodged against the mayor and members of the city council. To be eligible for selection, individuals must be retired federal or state judges or faculty members at the law schools at Arizona State University or the University of Arizona who do not live in Scottsdale and do not work for firms or employers that regularly have business in Scottsdale or represent clients in Scottsdale. In the event the city attorney cannot select a sufficient number of eligible people who can perform the necessary services, then the city attorney may complete the pool by selecting independent qualified attorneys who do not live or office in Scottsdale and whose firms or employers do not regularly have business in Scottsdale or represent clients in Scottsdale. At least two-thirds of the independent ethics reviewers shall be retired judges or law school faculty members. Individuals who serve as the city's independent ethics reviewers shall do so as the city's agents and enjoy the city's full liability protection and immunity as allowed by law. Each year the city attorney shall nominate one person from the independent ethics reviewers to serve as the city's "independent ethics officer," and the other independent ethics reviewers will either confirm the nominee or select another reviewer from the pool. The independent ethics officer shall not serve in that role for more than one consecutive year.

(b) Initial screening of complaints. The city attorney shall immediately transfer any complaint filed against the mayor or members of the city council to the city's independent ethics officer, who will conduct the initial screening of the complaint and within fifteen days issue a report of findings and conclusions and recommend that the city attorney handle the complaint as follows:

- (1) Return it for being incomplete;
- (2) Dismiss it for being untimely;
- (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition – as opposed to an aspirational or administrative provision – of the ethics code or any laws;
- (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the independent ethics officer

determines the complaint was false, misleading, frivolous, or unsubstantiated;

(5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or

(6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the city's Code of Ethical Behavior or a city law, refer the matter to an independent ethics panel for further action as set forth in subsection (c) below.

In all circumstances, the city attorney shall follow the independent ethics officer's recommendation and notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(c) Review and findings. If the independent ethics officer recommends referral of a complaint to an independent ethics panel for further review, then the city attorney shall immediately transfer the complaint to an ethics panel consisting of three independent ethics reviewers selected by the independent ethics officer from the pool of eligible individuals. The members of the ethics panel shall investigate the complaint and report to the city council, the complainant, the official who is the subject of the complaint, the city attorney, and the city clerk its findings of fact and conclusions of law within sixty days (unless the panel requests a thirty day extension that is granted in writing by the independent ethics officer). The city council shall consider the ethics panel's report at a public meeting and either accept or reject the ethics panel's report as submitted.

Sec. 2-58. Review of complaints.

(a) Presumptions. The city attorney's recommendation to refer a complaint for further review does not mean that any of the complaint's allegations are true or that any city official has violated this ethics code or any law.

(b) Procedures. The city attorney will adopt written rules of procedure to govern the review process, including the right of a city official against whom the complaint has been lodged to respond to the complaint, attend any hearing, and present witnesses and other evidence on her or his own behalf.

(c) Expedite. The timelines for handling complaints set forth above set the outer limits. Reviewers and decision-makers are strongly encouraged to make their findings, recommendations, and decisions as expeditiously as possible for the sake of the public and the city officials against whom complaints have been filed.

(d) Public information regarding action taken and reports issued. On the same day the city attorney notifies a complainant of the action taken on a complaint as set forth in subsections 2-56(a) and 2-57(b) of this Code, above, and on the same day the city attorney issues a report to the city council regarding complaints against members of city boards, commissions, committees, task forces,

or other appointed advisory groups as set forth in subsection 2-56(b) of this Code, above, or an ethics panel issues a report to the city council regarding complaints against the mayor or a member of the city council as set forth in subsection 2-57(c) of this Code, above, copies of those notices and reports shall be filed with the city clerk and made available to the public as public records.

(e) Inapplicable provisions. The provisions of section 1-8 of this Code are inapplicable to divisions 3 and 4 of this article.

**COMPLAINT AGAINST CITY OFFICIAL
CITY OF SCOTTSDALE CODE OF ETHICAL BEHAVIOR**

If you believe a city official in her or his official capacity has violated a mandatory requirement or prohibition in the City of Scottsdale Code of Ethical Behavior, set forth in Scottsdale Revised Code ("SRC"), Article II, Chapter 2, Division 3 (§§ 2-47 through 2-54) or violated any state or city law you may file a sworn complaint with the Scottsdale city attorney.

You are required to sign and have notarized an affidavit as to the truth of the information in your complaint. Pursuant to SRC § 2-55(c):

A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and potential civil liability for, among other possible causes of action, defamation. . .

To make a complaint, **all** of the information listed below **must be identified/provided**. Attach additional pages, as necessary. Incomplete information will result in the return of your complaint. If the complaint is based on information and belief, you must identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to you by those sources.

1. Your name, address, and telephone number.

2. Name and position of the city official who is the subject of the complaint.

3. The nature of the alleged violation, including the specific provision of the ethics code or law allegedly violated.

4. Statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred.

5. List all documents or other material in your possession that are relevant to the allegation.

6. List all documents or other material relevant to the allegation that are available to you, but are not in the your possession.

7. List all other documents or other material relevant to the allegations but unavailable to you, including the location of the documents, if known.

8. A list of witnesses, what they may know about the allegation, and their contact information, if known.

9. If the alleged violation occurred more than 90 days before the filing of this sworn complaint with the city attorney, you must:

- a) identify the date that you learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation.

b) provide a list of the persons with knowledge about the date the violation was discovered.

c) provide a summary of the information the persons listed in b), above, know about the discovery.

AFFIDAVIT

I, _____, after first being duly sworn, upon my oath, depose and say that the information contained in the forgoing complaint, including any attachments to it, is true and correct, or I have good reason to believe and do believe that the facts alleged constitute a violation of the City of Scottsdale Code of Ethical Behavior and/or state or City law. I declare under penalty of perjury of the laws of the State of Arizona that the foregoing is true and correct.

Signature of complainant

Subscribed and sworn to before me by _____
this ____ day of _____, _____.

Notary Public

My Commission Expires:

Provided with the Ethics Training Handbook is a copy of "You as a Public Official (December 2005)."

This is a publication of the League of Arizona Cities and Towns and is available for purchase at: <http://azleague.org/> or by calling (602) 258-5786.

City of Scottsdale elected and appointed officials, residents and staff, may contact the City Attorney's Office at (480) 312-7308 for a copy.

BOARD, COMMISSION, AND COMMITTEE HANDBOOK

UPDATED OCTOBER 2015



SECTION 5. LAWS AND OTHER DOCUMENTS

5.1 Code of Gilbert

The Code of Gilbert sets forth local laws adopted by the Mayor and Council. Laws are adopted by Ordinance.

All Board, Commission, and Committee members are subject to the requirements found in the Code of Gilbert, Chapter 1, Article IV Boards, Commissions and Committees, Division 1 Generally. Other requirements governing specific Boards, Commissions, or Committees may be found in Article IV Board, Commissions, and Committees.

A copy of the Code of Gilbert, Chapter 1, Article IV Boards, Commissions and Committees, can be found in Appendix C.

5.3 Council Policy Statements

Council may establish policies through a Council Policy Statement. The following Council Policy Statements relate the Boards, Commissions, and Committees.

Policy Statement 2012-03 Code of Ethics

The Code of Ethics establishes standards of conduct for Gilbert's Public Officials. Topics covered in the policy address the responsibilities of public service, Open Meeting Law, Conflicts of Interest, Confidential Information, Council Relations with Other Public Bodies and Agencies, Code of Ethics Training, Procedures, and Enforcement.

Policy Statement 2012-05 Electronic Equipment and Services Policy

Certain Boards, Commissions, and Committees may use electronic equipment and services that may include email accounts, iPads, personal computers, or accounts in Dropbox or similar cloud computing. The policy sets forth what users must comply with if they are assigned these devices or services.

A complete copy of these Policy Statements can be found in Appendix D.

5.3 Other Town Codes and Documents

Local laws are also found in Codes or documents adopted for a specific purpose, such as the Land Development Code, the General Plan, the Subdivision Regulations, and similar Codes. The Staff Liaison provides the Board, Commission, or Committee members a copy of any Codes or documents needed to perform their duties.

POLICY STATEMENT NO. 2012-03

SUBJECT: Code of Ethics

DATE: August 2, 2012

POLICY STATEMENT

SUBJECT: Code of Ethics for Members of the Town Council and Boards, Commissions and Committees

PURPOSE AND ETHICS STATEMENT

The Town of Gilbert is a clean, safe and vibrant community that values trust, honesty, personal responsibility, professionalism, service and accountability. Members of the Town Council and its boards, commissions and committees ("Public Officials") have an obligation to the residents of Gilbert, its customers and its partners to uphold the highest standard of ethics.

The purpose of this Code of Ethics is to establish standards of conduct for Gilbert's Public Officials in order to maintain public confidence in the integrity of Gilbert's Public Officials and to instill public trust through the actions, words and deeds of Gilbert's Public Officials. The requirements of this Code of Ethics are in addition to and are intended to complement the requirements of State law governing conduct of Public Officials.

POLICY

1. ***Responsibilities of Public Service.*** Recognizing the special responsibilities of serving Gilbert and its citizens and customers, Public Officials shall maintain the highest standards of integrity and honesty and shall treat all members of the public and fellow colleagues with respect, courtesy, concern and responsiveness.
 - 1.1 **Fairness and Respect.** All issues and citizens shall be handled with fairness, impartiality and respect. Public Officials have an obligation to treat all citizens fairly, such as by dividing time reasonably among potential speakers on an issue at a public hearing or meeting, by having an open mind on issues presented, and by being willing to listen to different points of view.
 - 1.2 **Meeting Attendance.** It is the responsibility of Councilmembers to attend Council meetings and the responsibility of other Public Officials to attend meetings of their respective board, commission or committee to which they have been appointed in order to fairly conduct the business of Gilbert. It is also the responsibility of Public Officials who have been appointed as voting members representing Gilbert on other boards, commissions or committees to attend meetings of those boards, commissions or

committees. Absence from meetings should be avoided if at all reasonably possible.

- 1.3 Abstaining from Voting. A Public Official should not abstain from voting on a matter before his or her Public Body unless he or she has a conflict of interest or believes he or she may have a conflict of interest or a personal interest as set forth in Paragraph 3.4.
2. **Open Meeting Law.** The intent of the open meeting law is to assure that government is transparent and that the public's business is conducted in public.
 - 2.1 Compliance with Open Meeting Law. Public Officials shall comply with the open meeting law of the State of Arizona and shall not attempt to circumvent the requirements of the open meeting law.
 - 2.2 Polling. Practices such as polling individual members to reach a decision outside a public meeting is prohibited.
 - 2.3 Serial Meetings. A discussion among less than a quorum may lead to a violation of the open meeting law if eventually a quorum is involved in the discussion. This is a violation of the open meeting law and is prohibited. For example, if three members of the Council discuss a matter that is before the Council or may come before the Council for discussion or action, and one of those members discusses the matter with another member of the Council, a serial meeting has been held without notice and agenda required by the open meeting law. Serial meetings may occur through telephone conversations, written correspondence, e-mail or other means of communications about a matter of Town business.
 - 2.4 Use of Staff or Others. Use of Gilbert's staff or others to promote discussion among other members of the Public Body to circumvent the purposes of the open meeting law is prohibited.
 - 2.5 Open Meeting Law Violations. Notwithstanding the reporting process set forth in paragraph 7.4, reports of violations of the open meeting law may be made directly to the Attorney General's office or the County Attorney's office.
3. **Conflicts of Interest.** The purpose of the conflict of interest laws is to prevent self-dealing by Public Officials and to remove or limit any improper influence which might bear on a Public Official's decision. A conflict of interest occurs when (i) a Public Official or a relative of the Public Official has a pecuniary interest in a matter that may come before the Public Body during the Public Official's term of office on which the Public Official sits and that interest is not a remote interest as defined in ARS Section 38-502(10), or (ii) or when the Public Official has an interest that results in the Public Official not being able to act

impartially on a matter before the Public Body. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

- 3.1 **Compliance with Conflict of Interest Laws.** Public Officials shall comply with the conflict of interest laws of Arizona. If a Public Official is not sure he or she has a conflict of interest on a matter before the Public Body of which the Public Official is a member, the Town Attorney should be contacted. Requests related to conflicts of interest are confidential; however, official opinions of the Town Attorney are required by law to be a public record.
 - 3.2 **Disclosure of Conflict of Interest.** If a Public Official has a conflict of interest, he or she shall disclose that fact as soon as possible by filing a statement with the Town Clerk setting forth the nature of the conflict of interest. The Public Official shall not participate in any manner as a Public Official in the matter.
 - 3.3 **Loyalty.** Public Officials have an obligation to put the interest of Gilbert over personal considerations and to make the public's interest their primary concern.
 - 3.4 **Personal Interests.** Occasionally a Public Official may find that he or she has a personal interest in a matter, even though a conflict of interest would not exist under the conflict of interest laws. Public Officials are encouraged to adhere to strongly held ethical values which are exercised in good faith and to refrain from discussing or voting on a matter if he or she believes the personal interest precludes making a fair and impartial decision.
 - 3.5 **Gifts.** Public Officials shall disclose in writing to the Town Clerk any (i) gift, benefit or favor received with a value in excess of \$50.00 or (ii) any gifts, benefits or favors with a combined value in excess of \$50.00 within a six month period, from a person with a financial interest in business with the Town or in a matter which may come before the Public Body. The written disclosure shall be made within two (2) business days of receipt of the gift, benefit or favor or multiple gifts, benefits or favors totalling \$50.00 in value within a six month period. If the gift is donated to Gilbert or a bona fide charity, it does not have to be disclosed; provided however, that the gift is donated immediately upon receipt.
4. **Confidential Information.** Gilbert is committed to maintaining an open and accessible government intended to engender trust and confidence from the public, while at the same time protecting confidential information as required or permitted by law.

- 4.1 **Disclosure of Confidential Information.** Public Officials shall not disclose confidential, privileged or protected information, unless authorized by the majority vote of a quorum of the Council or is required by law to do so.
 - 4.2 Public Officials shall not use confidential, privileged or protected information to advance the financial or other private interest of himself or herself or others.
- 5. ***Town Council Relations with other Public Bodies and Agencies.*** The Town Council may attend meetings of other Public Bodies of Gilbert or other governmental agencies. Individual Councilmembers shall accurately describe the positions of Gilbert to such Public Bodies and governmental agencies.
- 6. ***Code of Ethics Training.*** It is important that training be made available to Public Officials in order that the purposes of this Code of Ethics may be successfully implemented.
 - 6.1 **Training.** Public Officials shall attend at least one training session per term regarding the regarding this policy.
- 7. ***Procedures.*** It is important that procedures for reporting violations of this Code of Ethics be clearly understood and followed.
 - 7.1 **Questions.** Questions about this Code of Ethics, a conflict of interest, or other ethical problem should be presented to the Town Attorney's office. If time permits, requests should be in writing to the Town Attorney. If the ethical issue arises during a meeting, rather than risk an inadvertent violation of the law, the safest course of action is simply to declare that a conflict may exist that prevents the Public Official from participating.
 - 7.2 **Obligation to Report Violations.** Public Officials have a duty to report if another Public Official is violating laws or this Code of Ethics.
 - 7.3 **Interference with Duty to Disclose Violations.** Public Officials shall never attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any person with the intent of interfering with that person's duty to disclose improper activity.
 - 7.4 **Reporting Process.** Reports of alleged violations of this Code of Ethics shall be made to the Town Clerk, whether such report is by a member of the public, an employee or a Public Official. Upon receipt of an alleged violation, the Town Clerk shall forward a copy to the members of the Public Body and to the Town Attorney. The Town Attorney shall either prepare a recommendation to the Public Body or request an independent investigation. Recommendations of the Town Attorney or the independent

investigator shall be filed with the Town Clerk. The Town Clerk may place the matter on a Council agenda for action by the Council.

8. **Enforcement.** The Council intends that violations of this Code of Ethics be treated fairly and expeditiously.

- 8.1 **Council Action.** The Council shall review the report and the recommendation at a regular or special Council meeting. The report and the recommendation shall be a public record. If the Council determines that a Code of Ethics violation has occurred, the Council may impose penalties in accordance with Paragraph 8.2.
- 8.2 **Penalties.** It is the intent of the Council to educate, and where necessary, discipline Public Officials who violate this Code of Ethics. In addition to other penalties provided by law, the members of a Public Body may vote to censure another member who violates this Code of Ethics, provided that (i) the member who may be censured shall not vote on the matter but may explain his or her actions, and (ii) censure shall require a vote of five (5) members of the Public body. This paragraph does not prevent informal resolution of minor infractions, such as immediate corrective action of the alleged misconduct.


John W. Lewis, Mayor

ATTEST:


Catherine A. Templeton, Town Clerk

Possible Training Topics for Land Use Boards

Board of Adjustments

- Arizona Government 101
 - Limitations on local authority based on constitution and statutes
 - B of A rules and procedures
 - How to conduct meetings- protocol for a quasi-judicial board
- 1. The Board of Adjustment makes quasi-judicial determinations. What does that mean and how is it different from decisions of other boards and commissions?
What factors can and should BOA consider in making their determination?
 - Educate the 6 criteria needed to consider a variance
- 2. What factors cannot be considered? What then would be inappropriate questions?
- 3. How should the board deal with communications from neighbors?
- 4. How should the board deal with ex parte communications from applicants?
 - State law- Conflicts of interest
- 5. Any suggestions on how to deal with experts (hydrologists, geologists, architects)?
 - a. Can the applicant call them forward?
 - b. Can residents call them forward?
 - c. Can the board ask for experts through staff?
- 6. Is there a different approach for zoning determinations versus appeals?
- 7. [not a question for Frank but maybe something we should cover] Why doesn't the BOA rule on appeals of SUP's?
- 8. What if I just don't like the project on the table? What is the scope of my discretion?
- 9. When is staff our advisor and when are they a party to the appeal? Or said differently, if staff is a party to the appeal, who can we ask questions about policies, engineering, procedure?
- 10. When, if at all, is a super majority vote required.
- 11. How does conflict of interest apply to these boards?

Planning Commission

1. What is the jurisdiction of the Planning Commission?
 - Roberts Rules of Order
 - Formal Rules and Procedures / our code
 - Conflicts of Interest / Ethics
 - Limitations on local authority based on constitution and statutes
2. What is the best way to learn and become familiar with the zoning code?
3. When are hearings required and when are they optional?
4. What factors should the Commission consider in making their determination?
5. What if I just don't like the project on the table? What is the scope of my discretion?
6. When am I acting legislatively and when am I acting administratively? And What's the difference and why is it important?
7. If a planning commissioner thinks a zoning code is vague, or the staff has interpreted it wrong, what should be the process for resolving?

Hillside Building Committee

1. What is in their jurisdiction and what is not?
2. Any suggestions on how to deal with experts (hydrologists, geologists, architects)?

- a. Can the applicant call them forward?
 - b. Can residents call them forward?
 - c. Can the board ask for experts through staff? No, No and No. Our Hillside Board is not certified engineers, experts or legislators and therefore have no business reviewing expert engineering. That is the job of our paid staff and engineer.
3. What does it mean that this is purely an administrative board?
4. How come I can tell them what color to paint their house but not where to put their windows?
They can't do either
5. If the Committee thinks a zoning code is vague, or staff has interpreted it wrong, what should the process be for resolving (maybe an internal question)?

City of El Mirage Code of Conduct for Elected Officials

The Three Rs of El Mirage Government Leadership: Roles, Responsibilities and Respect

The City Code provides information on the roles and responsibilities of Council Members, the Vice Mayor and the Mayor. Until now, what has not been clearly written down is a Code of Conduct for the City of El Mirage's elected officials.

This Code of Conduct is designed to describe the manner in which Council Members should treat one another, City staff, constituents, and others they come into contact with in representing the City of El Mirage. 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:	Page
○ Overview of Roles and Responsibilities	2
○ Policies and Protocol Related to Conduct	4
○ Council Conduct with One Another	7
○ Council Conduct with City Staff	8
○ Council Conduct with the Public	10
○ Council Conduct with Other Public Agencies	11
○ Council Conduct with Boards and Commissions	12
○ Council Conduct with the Media	13
○ Sanctions	14
○ Principles of Proper Conduct	15

The constant and consistent theme through all of the conduct guidelines is "respect." Council Members experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected 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 Council Members to do the right thing in even the most difficult situations.

Ethics Policy

As a prerequisite for exercising any power of office, each city official is required to read and agree in writing to comply with the provisions of these laws, regulations, policies and this ethics code, as well as to participate annually in continuing education workshops regarding public service ethics.

A listing of key public service ethic laws is shown in Exhibit "A"

Overview of Roles and Responsibilities

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the City of El Mirage Code and in the Elected Officials Guide published by the League of Arizona Cities & Towns.

MAYOR

- Acts as the official head of the City for all ceremonial purposes
- Chairs Council meetings
- Calls for special meetings
- Recognized as spokesperson for the City of El Mirage
- Makes judgment calls on proclamations, agendas, etc.
- Recommends subcommittees as appropriate for Council approval
- Serves as the liaison between the Council and the City Manager and City Attorney in regards to employee relations
- Leads the Council into an effective, cohesive working team
- Sign documents on behalf of the City of El Mirage

VICE MAYOR

- Serves at the pleasure of the Council
- Performs the duties of the Mayor if the Mayor is absent
- Chairs Council meetings in the absence of the Mayor
- Represents the City at ceremonial functions at the request of the Mayor

ALL COUNCIL MEMBERS

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

All Council Members should:

- Fully participate in City 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 City at ceremonial functions at the request of the Mayor
- Place activities and events on the Council's weekly activities calendar that invite official participation of all Council Members. A list of the activities of individual Council Members may also be submitted for public record at the option of the Council Member.
- 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 El Mirage government
- Provide contact information with the City Clerk in case of an emergency or urgent situation arises while the Council Member is out of City
- 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 City 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 with advice, if requested, from the City Attorney who acts as an advisory parliamentarian. 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.

FORMER COUNCIL MEMBERS

Past members of the City Council who speak to the current City Council about a pending issue should disclose whom they are speaking on behalf of (individual or organization).

Policies & Protocol Related to Conduct

Attendance

The City Code provides that five councilmembers may discipline another councilmember if he or she misses three (3) consecutive and duly noticed meetings of the City Council without good cause. Duly noticed meetings of the City Council include regular council meetings, special council meetings, study sessions, policy sessions, executive sessions, budget review meetings, and council committee meetings to which a councilmember is assigned.

Through this Ethics Code, the City Council finds that personal illness, family emergencies, military absences, family weddings, family graduation exercises, and bona fide business and vacation trips constitute good cause for nonattendance at council meetings. Whether good cause exists for any other absence shall be determined by vote of the entire City Council upon request of any councilmember made within ten (10) business days following the absence. The vote shall be taken after sufficient information is received explaining the reason for the councilmember's absence.

Ceremonial Events

Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City 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 City Hall are presumed to be for official City representation. Invitations addressed to Council Members at their homes are presumed to be for unofficial, personal consideration.

Correspondence Signatures

Council Members do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. The City 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 City Clerk.

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

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 City meetings.

Gifts

Arizona law prohibits elected officials and advisory board members from receiving anything of value or any compensation other than their normal salary for any service rendered in connection with that person's duties with the City. A.R.S § 38-505 (A).

Elected officials and advisory board members must consider ethical principles before accepting personal gifts of entertainment and sports/athletic activities.

Within two business days of receipt of the following gifts or favors in El Mirage, or within two business days of returning to El Mirage after receipt of a gift of favor while traveling outside of El Mirage, elected officials and advisory board members shall disclose in writing to the City Clerk all gifts, benefits, or favors received from people with a financial interest in business before the City, or which may come before the City, that:

- Relate to professional or collegiate sports, athletic, or entertainment activities or tickets, or
- Have a face value of \$50 or more, amount subject to periodic review.

Under no circumstances shall a council or board member accept a gift or favor that is a bribe, or reflects, to a reasonable person, an effort to improperly influence the member contrary to that member's responsibility to the public to act impartially on the merits of a matter.

When in doubt about these requirements, elected officials and advisory board members shall disclose the gift, benefit or favor. All disclosures will be kept for public record in the City Clerk's Office.

In summary, you can follow this checklist:

- Does the gift or favor come from someone with business before the city or which may come before the city?
- And does the gift or favor exceed \$50 dollars in value, or consist of the type of sports or entertainment tickets described above?
- And did you accept the gift or favor for yourself or another?

If you answer "yes" to all these questions, then the gift or favor has to be reported to the City Clerk. If you answer "no" to any of these questions, then the gift or favor does not have to be reported to the City Clerk unless it represents a bribe or other improper influence as described above.

Gifts having a value greater than \$50 that are donated to the city or a bona fide charity also do not need to be reported.

This section does not apply to gifts exceeding \$50 in value and intended for the City rather than as a personal gift to a Councilmember or board member. These items are City of El Mirage property. Elected officials and advisory

board members who receive a gift on behalf of the City exceeding \$50 in value shall promptly turn the gift over to the City Manager for public display or other appropriate handling.

Public Announcements in Council Meetings

Council Members who want to present a brief statement of current event may do so under the portion of the meeting specifically provided for that purpose, titled "Council Summary of Current Events." Under the Arizona Open Meeting Law, only brief announcements of public events or recognition of achievements are allowed. Council Members' statements should be focused on matters of community-wide interest and should not be used for any form of campaigning. No questions or discussions may take place, unless they are specifically listed as a separate item on the agenda.

The Call to the Public is reserved for members of the public who wish to address the Council and who have filled out the required comment card. Comments by members of the public will be limited to three minutes each. 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.

Amended 3/22/07

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 before a person is heard before a second time. 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 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. Council Members, who desire to make the first motion on issues, which they feel

strongly about, should discuss their intention with the Chair in advance of the Council meeting.

Travel Expenses

The policies and procedures related to the reimbursement of travel expenses for official City business by Council Members is according to the City of El Mirage Personnel Rules and Regulations, Section 13.4. All Council travel in excess of the allowed budget, in which the Council Member expects to officially represent the City and/or be reimbursed by the City for travel costs, must be approved in advance by the Council. The travel policy and budget for Council should be reviewed at each annual budget cycle.

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.

IN PUBLIC MEETINGS

- **Use formal titles**

The Council should refer to one another formally during public meetings as Mayor, Vice Mayor or Council Member followed by the individual's last name.

- **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.

- **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.

- **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.

- **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.

IN PRIVATE ENCOUNTERS

- **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.

- **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.

- **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.

Council Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, who implement and administer 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.

- **Treat all staff as professionals**

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

- **Direct requests for staff support through City Manager**

Consequently, remember City 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 City staff and/or requests for additional background information should be directed only to the City Manager.

- **Do not disrupt City staff from their jobs**

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

- **Never publicly criticize an individual employee**

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

- **Do not get involved in administrative functions**

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

- **Check with City staff on correspondence before taking action**

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

- **Do not attend meetings with City 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.

- **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 City staff; to do so could violate the law. City 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.

Council Conduct with the Public

IN PUBLIC MEETINGS

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**

The Mayor will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated five 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 unless the Mayor reopens the public hearing for a limited and specific purpose.

- **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.

- **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.

- **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.

IN UNOFFICIAL SETTINGS

- **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 City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new trees, etc.)

- **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.

- **Remember you are being observed**

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 City of El Mirage. 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.

Council Conduct with Other Public Agencies

- **Be clear about representing the City 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 City; 2) whether this is the majority or minority opinion of the Council.

If the Council Member is representing another organization whose position is different from the City, the Council Member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council Members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- **Correspondence also should be equally clear about representation**

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

City 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 City letterhead to express a dissenting point of view, the official City position must be stated clearly so the reader understands the difference between the official City position and the viewpoint of the Council Member.

Council Conduct With Boards and Commissions

The City 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 City's leadership and should be treated with appreciation and respect.

- **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 or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

- **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.

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

The City 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.”

- **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.

- **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 City Council Member.

- **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.

Council Conduct with the Media

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

- **The best advice for dealing with the media is to never 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.

- **The Mayor is the official spokesperson for the City’s position.**

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

- **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.

Sanctions

- **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.

- **Inappropriate Staff Behavior**

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

- **Council Members Behavior and Conduct**

City 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 City of El Mirage or with inter-government agencies) or have official travel restricted. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Council Members should point out to the offending Council Member infractions of the Code of Ethics or Code of Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose

actions are being challenged, then the matter should be referred to the Vice Mayor.

It is the responsibility of the Mayor to initiate action if a Council Member's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council Members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to: discussing and counseling the individual on the violations; recommending sanction to the full Council to consider in a public meeting; or forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration. Videotaping of the complaint hearing should be used for a Council ad hoc subcommittee.

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.

I have read the City of El Mirage Ethics Policy and agree to abide by the City's policy and all applicable state and local regulations.

Signature

State of Arizona
County of Maricopa

Subscribed and sworn to (or affirmed) before
me this _____ day of _____, 2006,
by:

Signature of Notary Public

City of El Mirage
Sampling of Public Service Ethics Laws Applicable to City Officials
(Mayor, City Council Members, and Members of All City Boards, Commissions, and Committees)

Topic	Arizona Law	General Summary¹	Penalties & Sanctions²
Bribery	A.R.S. §§ 13-2602; 38-444	It is illegal for you to solicit, accept, or agree to accept any benefit upon an understanding that it may influence your official conduct, or to ask for or receive any gratuity of reward (or promise thereof) for your official act.	Felony
Conflicts of Interests (general)	A.R.S. §§ 38-501 through -511	If you or any relative could benefit from you taking official action, then you must (1) <i>disqualify</i> yourself by not participating “in any manner” – not voting, not discussing, not anything, and (2) <i>disclose</i> that personal interest.	Felony or misdemeanor, more
Contracting with the City	A.R.S. §§ 38-503, 36-1406, -1477	If you or any relative has a substantial interest in “any contract, sale, purchase or service” to the City, then you must disclose that interest and “refrain from voting upon or... participating in any manner.”	Felony or misdemeanor; cancel contract
Conduct After Leaving City Position (“Anti-Revolving Door”)	A.R.S. § 38-504(A)	For 12 months after your City service, you cannot represent another person for compensation before the City in connection with any matter in which you personally participated in a substantial and material	Felony or misdemeanor
Confidential Information (Disclosure/Use of)	A.R.S. § 38-504(B)	During and for two years after your City service, it is illegal for you to disclose or use for personal profit any confidential information you learned in the course of your duties.	Felony or misdemeanor, more
Discrimination & Favoritism	Constitutions, plus statutes; A.R.S. § 38-231(G)	It is illegal to discriminate based on race, color, gender, national origin, religion, age, or physical or mental disability; plus, in your Loyalty Oath you pledged to “faithfully and impartially discharge the duties of...office.”	Attorneys fees, damages, more
E-mail	A.R.S. §§ 39-121; 38-431 <i>et seq.</i>	Your e-mail communications are subject to the Public Records Law, and improper e-mail involving a quorum of the members of a public body may violate the Open Meeting Law.	Attorneys fees, costs, more
Employment of Relatives (“Nepotism”)	A.R.S. § 38-481	You may not be involved in the appointment or hiring of a relative (which is defined broadly to include your parents, siblings, spouse, children, grandchildren, grandparents, and all in-laws).	Misdemeanor
Employment – Discussion of Future Employment	A.R.S. §§ 38-503, -504(C)	If you engage in certain discussions about future employment, then it might trigger bribery or conflicts of interest laws.	Felony or misdemeanor

¹ **CAUTION:** These brief descriptions are provided for quick introductory purposes and cannot and do not present the full scope of these laws.

² Violations of these laws may expose a City official to a variety of sanctions, including criminal penalties, personal financial liability (for damages and fines, as well as payment of costs and attorneys fees – both prosecution and defense), cancellation of contracts, public embarrassment (for the official and her or his family and employer), and removal from office. For example, a City official convicted of a felony may fined up to \$150,000 for each violation and sent to prison for several years. A.R.S. §§ 13-801, - 701. Conviction of a misdemeanor may result in a fine up to \$2,500 for each violation and a jail sentence of up to six months. A.R.S. §§ 13-802, - 707. This information is presented not to scare City officials, but to help them by underscoring the seriousness of conducting the public’s business properly.

EXHIBIT A

PARADISE VALLEY TOWN COUNCIL REFERENCE MATERIALS

Demographics and General Information

- [Demographics](#)
- [Map Book](#) (click on grid section to enlarge)
 - [Home Owners Association Map](#)
 - [Sewer District Map](#)
 - [Water District Map](#)
- [Zoning Information](#)
 - [Special Use Permit \(SUP\) Properties](#)
 - [Residential Homes by Zoning District](#)

Governing Documents

- [Mission Vision Values Statements](#)
- [General Plan](#)
- [Town Code and Zoning Ordinance](#)
- [Town Council Policies and Procedures](#)

Financial Documents

- [Budget](#)
- [Comprehensive Annual Financial Report \(Audit\)](#)

Reference Publications / Manuals

- [You as a Public Official](#)
- [What All Local Elected Officials Need to Know](#)
- [Anatomy of a Council Meeting](#)
- [Granicus iLegislate](#)

Social Media

Website	http://www.paradisevalleyaz.gov
Facebook	Paradisevalley.az
Twitter	@ParadiseVallAZ
YouTube	Paradi5eValleyAZ

Staff Telephone Numbers

Kevin Burke	O-480-348-3533	C-602-
Andrew Miller	O-480-348-3526	C-602-
Pete Wingert	O-480-348-3502	C-928-
Eva Cutro	O-480-348-3522	C-602-
Dawn Marie Buckland	O-480-348-3555	C-623-
Paul Mood	O-480-348-3573	C-480-
Jinnett Hancock	O-480-348-3520	C-602-
Brent Skoglund	O-480-348-3540	C-602-
Duncan Miller	O-480-348-3610	C-480-
Tim Gomez	O-480-348-3544	

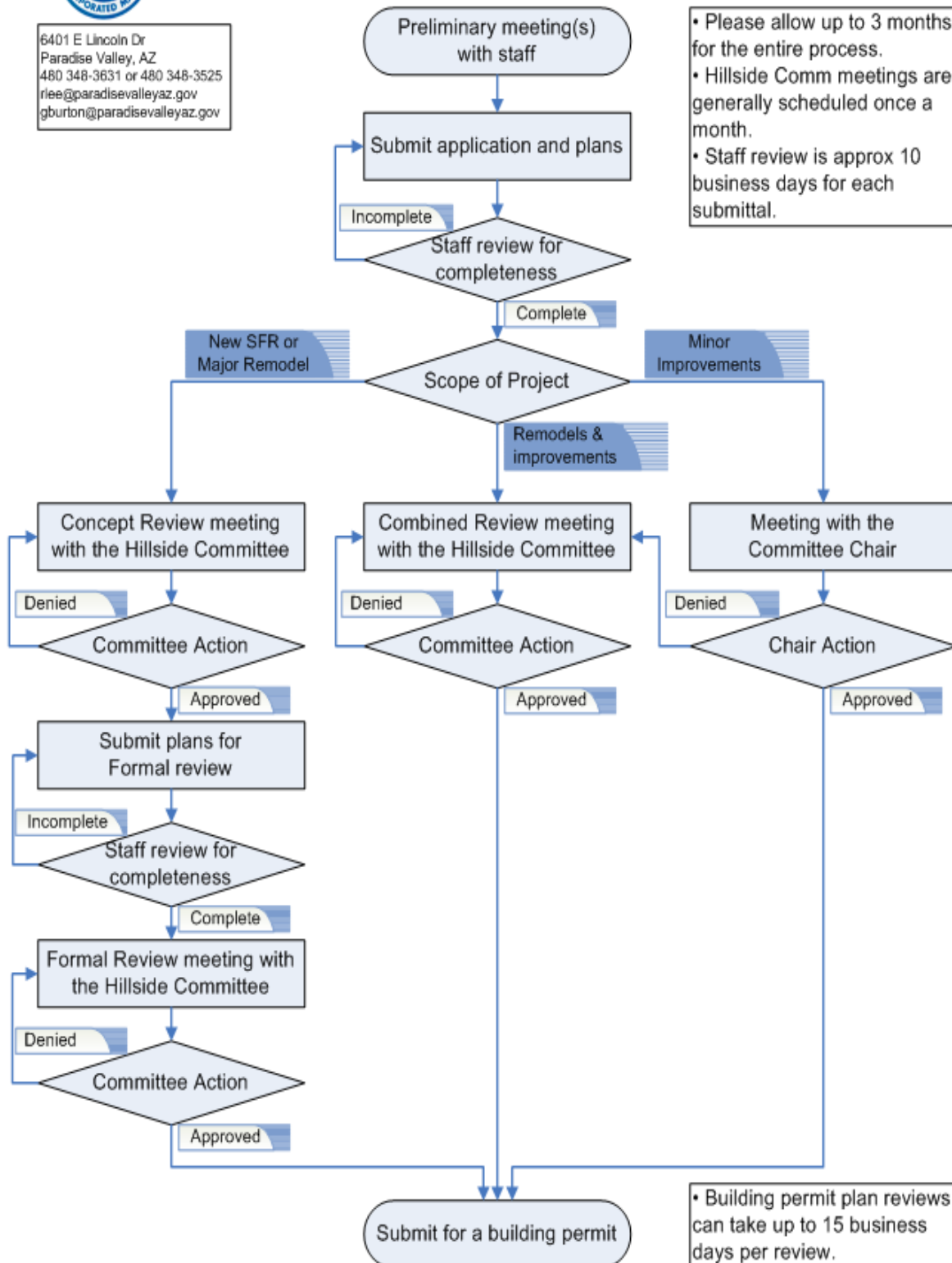
LAND USE BOARD RELATED DOCUMENTS

- Chapter 2, Section 5 of Town Code
- Enabling Ordinance of Committee
- Zoning Code
- Hillside Code
- Hillside Flow Chart
- A.R.S. Statutes pertaining to Planning Commission and Board of Adjustment
- Landscape Guidelines
- SUP Guidelines



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Hillside Code Process Flow Chart



TOWN OF PARADISE VALLEY

Governance #7
December 7, 2017



Appointments

- Key Question: Does Mayor and Council wish to alter and/or memorialize the appointment process currently in place?



Appointments

- Changes Proposed 11-16-17
 - Get all Committees on Same Cycle (MPC, Mummy)
 - Liaisons to Experience Scottsdale an Annual Appointment by the Council.
 - ES would prefer a July 1 – June 30 cycle
 - No Other Changes to Liaison Assignments



Governance

- Appointments
 - Boards and Commissions
 - Special Committees
 - ~~– Liaisons to Boards and Commissions~~
 - ~~– Representatives to Member Agencies~~



Appointments

NAME	LEGAL	MEMBERSHIP
	<u>AUTHORIZATION</u>	<u>APPOINTMENT</u>
Board of Appeals	TC Chap 5. 2012 IBC 113.1	Town Council Serves as members
Planning Commission	A.R.S. / TC Sec 2-5-2	Council Appointment
Personnel Appeals Board	TC Sec. 2-5-5	Council Appointment
Advisory Committee on Public Safety	TC Res. 1330/Res 2017-21	Council Appointment
Municipal Property Corporation	Articles of Incorporation	(1)Council Appt. or (2)MPC Board Appt/Council Confirm
Public Safety Personnel Retirement Board	A.R.S. 38-847	Mayor Appt / Council Confirm
Board of Adjustment	A.R.S./ TC Sec. 2-5-3	Mayor Appt / Council Confirm
Mummy Mountain Preserve Trust	Res. 923 /Articles of Incorporation	Mayor Appt / Council Confirm
Arts Advisory Committee	TC	Mayor Appt / Council Confirm
Hillside Building Committee	TC Sec. 2-5-6	Mayor Appt / Council Confirm
Historical Advisory Committee	TC	Mayor Appt / Council Confirm



Appointments

- Boards & Commissions – Variety of Methods
 - Mayor Appoint/Council Confirm
 - Council Appointments
 - Committee Nominates and Council Confirms
- Mid Year Vacancies
 - Alternates (How to engage those who weren't selected)
 - Any Process ideas for Mid-Year Vacancies



Appointments

- Key Question: Does Mayor and Council wish to alter and/or memorialize the appointment process currently in place?



Governance

- Next Steps – Remaining Topics
 - Conflict of Interest/Update Ethics Policy
 - Training Land Use Boards
 - Sequence regrading Board of Adjustments Variances versus Hillside Building Committee Review
 - Use of Statement of Direction
 - Parameters of Town Manager Work Groups
 - Supervising Structure
 - ~~How to Attract and Engage Volunteers~~



Conflict of Interest/Ethics Policy

- Proposed by Councilmember Pace
- Review what is covered by COI Statute and Not
 - Who is privileged to receive that information?
 - What if Council or public disagrees?
- Are there improvements to be made to the Ethics Code?



What falls under existing Ethics Policy?

Conflict of Interest/Ethics Policy

- Does Council want it aspirational or regulatory?
- Propose implementing a training module
- Town Attorney led item



Train Land Use Board Members

- Proposed by Councilmembers Moore and Pace
- Planning Commission, Hillside, BOA Focus
- Beyond Open Meeting Law
- Provided Governing Documents and Review
 - Process, Rules of Procedure, Jurisdiction
- Second Level Training
 - Case Law, Appropriate Questions, Roles, Public



Train Land Use Board Members

- Historically Base Level Training Done by State
 - Stopped, ULI now conducting but infrequent
- Manager has Secured a Trainer
 - Town Attorney of Marana
- Possible Town Manager Task Force
- Role of Staff, Possible Mayor or Council Liaison



Sequence of Hillside Application

- Discussed by Several Councilmembers
- What comes first, a variance or Hillside Building Committee review
- Currently variance comes first (but no rule)
- Justification is:
 - Variances have specific criteria diff from Hillside
 - Concern how HBC Comments used in BOA Hearing



Sequence of Hillside Application

- Reversing Sequence has Benefit of:
 - Public gets to see the full project
 - HBC can outline all requirements, ideas for no var.
- Propose
 - Application to HBC for Concept Review
 - Variance by BOA
 - Formal Review by HBC



Use of SOD's

- Proposed by Councilmember Moore
- Use of Statement of Direction when delegating work to a committee.
- SOD is a tool in the Zoning Code (1102.3(4))
- Mentioned in Section 2-5-2 of Town Code
- Suggest an Amendment to 2-5-1 (C).



Use of SOD's

2-5-1 (C.) Statement of Direction - A Statement of Direction is a document administered by the Town Council at the beginning of policy or project task assigned to a committee or commission. A Statement of Direction is not a final decision of the Town Council. Its purpose is to guide committees and commissions on policy aspects that are preferred or discouraged by Council in order to be most transparent and efficient in its development. It may address, but is not limited to, the following items:

1. Anticipated time frame for completion;
2. When and if drafts should be referred back to Mayor and Council;
3. Expectations for public participation;
4. Process for new policy considerations.

At any time during the review process the assigned Committee and Commission may request clarification and/or expansion of the Statement of Direction based on additional information that has evolved.

Parameters of Town Manager Task Force

- Proposed by Manager Burke
- Possible Parameters – In Rules of Procedure
 - Council Define Scope of Work for Task Force
 - Assigned Members won't participate in vendor selection, but can develop procurement docs
 - Task Force can decide process but not new policy
 - Town Manager retains directional authority over staff



Supervising Structure

- Proposed by Councilmember Pace
- Council has 3 primary employees
 - Town Manager
 - Town Attorney
 - Presiding Judge (kind-of Associate Judges)
- Reviews of TM and TA led by Vice Mayor (2-2-7)



Discussion about supervision of Town Attorney

Governance

Questions?

