



Legislation Text

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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 there 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