

**NOTICE OF PUBLIC MEETING
CITY OF PHOENIX
ETHICS COMMISSION**

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **ETHICS COMMISSION** and to the general public, that the **ETHICS COMMISSION** will hold a Hybrid meeting open to the public on **April 18, 2024, at 3:00 p.m.**

OPTIONS TO ACCESS THE MEETING

- **Call-in to listen** to the live meeting: Dial 1-415-655-0001, Enter meeting access code 2634 928 0507, and press # again when prompted for the attendee ID.
- **Observe the live meeting virtually**, by clicking on the following link and registering to join the meeting online:
<https://cityofphoenix.webex.com/weblink/register/r7940feeea22a01e9e57ff1b15cd38b5b>
- If you would like to attend in person at Phoenix City Hall, 12th Floor, Central Conference Room 200 W. Washington St., Phoenix, Arizona, **please RSVP to ethics.commission@phoenix.gov**.
- **Para solamente escuchar la reunión en español**, llame a este mismo número el día de la reunión (602-666-0783; ingrese el número de identificación de la reunión 2631 421 9345#).
- **Register to speak and/or submit a comment** on an agenda item:
 - Contact: Rebecca McCarthy
 - At: (602) 262-7526
 - Email: ethics.commission@phoenix.gov
 - By: 11:00 a.m. on April 18, 2024

Public Comment: If you wish to provide a written comment or speak at the meeting virtually or by phone, please submit a request to ethics.commission@phoenix.gov or call (602) 262-7526 no later than 11:00 a.m. on Thursday, April 18, 2024. The email or phone call should include your first and last name, email address, the item number(s) and whether you would like your comment read into the record or if you wish to speak.

Additional information can be found at <https://www.phoenix.gov/ethics>.

Executive Session

The Ethics Commission may vote to convene into executive session (which will not be open to the public) pursuant to A.R.S. Section 38-431.03(A)(2) or (A)(3) for discussion or consideration of any items on the agenda, at any time during the meeting. The Ethics Commission must take action on an agenda item in open session. Items on the agenda may be discussed out of order unless they have been specifically noted to be set for a certain time.

The agenda for the meeting is as follows:

1.	Call to Order/Roll Call	Staff
2.	Approval of Meeting Minutes from March 21, 2024 Discussion and Possible Action	Staff/Commission
3.	Introduction of City Counsel and Outside Counsel Information and Discussion	Staff
4.	Review and Adopt Bylaws Discussion and Possible Action	Staff/Commission
5.	Elect Chairperson and Vice Chairperson Discussion and Possible Action	Staff/Commission
6.	Review and Adopt Initial Rules of Procedure Discussion and Possible Action	Staff/Commission
7.	Call to Public	Staff/Chair
8.	Future Agenda Items and Meeting Dates	Chair
9.	Adjournment	Chair

For further information or to request a reasonable accommodation, please contact Rebecca McCarthy at (602) 262-7526 or TTY: 7-1-1 as early as possible to coordinate needed arrangements.

4/11/2024

Agenda Item 2

CITY OF PHOENIX ETHICS COMMISSION Summary Minutes March 21, 2024

Virtual Meeting (Webex)

Committee Members Present

Cheryl Pietkiewicz
Patricia Sallen
Jose Samuel (Sam) Leyvas III
Peter Schirripa

Committee Members Absent

1. Call to Order/Roll Call

Ms. Inger Erickson, Deputy City Manager, called the meeting to order at 3:02 p.m. with Commission Members Patricia Sallen, Sam Leyvas and Peter Schirripa present.

Ms. Erickson opened the meeting with introductions of both staff and Commission members.

2. Open Meeting Law Training

Mr. Davvid Welch, Management Assistant II with the City Clerk Department, provided a training on Open Meeting Law.

Ms. Erickson asked if there were questions from the Commission. The Commission had no questions.

3. City of Phoenix Ethics Training

Mr. David Benton, Chief Counsel, provided a training on City of Phoenix Ethics, Gifts and Conflicts of interest.

Ms. Erickson asked if there were questions from the Commission.

Mr. Schirripa asked about accepting gifts for his work position from current or perspective customers, outside of his role as a Commission member.

Mr. Benton stated it is acceptable as it is part of his job and not as a Commission Member. He cautioned the Commission to consider the optics of accepting gifts and to consider if the organization providing the gift has any matters before City Council. He stated the Commission may discuss any concerns with the Commission's Counsel, Ms. Beth Nillen.

Ms. Erickson asked if there were additional questions from the Commission. The Commission had no additional questions.

Ms. Erickson stated there was one member of the public here to speak and asked Mr. Benton to read a statement about public comments.

Mr. Benton stated that during public comment for agenda items, members of the public may speak for up to two minutes on agenda items. Comments must be related to the agenda item or action being considered. General comments that go beyond the scope of the agenda item must be made during the Call to Public period. Any member of the public who appears before the Commission in their capacity as a lobbyist is required by City Code to disclose that fact. During Citizen Comment, members of the public may address the Commission for up to three minutes on their particular issue or concern. Open Meeting Law permits the Commission Members or staff to listen to the comments but prohibits Commission Members from discussing or acting on the matters presented.

Ms. Erickson asked Mr. Benton to confirm that the public will have two minutes on agenda items and three minutes during the Call to Public.

Mr. Benton responded yes.

Ms. Erickson introduced Mr. Jeremy Thacker for comment.

Mr. Thacker expressed his thanks and excitement for the Ethics Commission. He expressed his concerns about the City's seriousness about ethics and accountability, through a series of questions. He stated the City needs an Ethics Commission and urged the Commission to take the role seriously. He stated he has submitted several ethics complaints, and none have been closed out.

4. Review and Adopt Bylaws

Ms. Erickson asked if the Commission has reviewed the Bylaws and if there are questions or concerns. She stated the Commission will need to approve and adopt the Bylaws.

Mr. Leyvas stated he has thoughts and proposals for some edits. On page 2, Article 3.02, he proposed a correction to update Phoenix City Code Section 2-53(C) to 2-53(B). He asked staff to verify his proposed correction.

Mr. Leyvas asked to clarify the term for the current Commission. On page 2, Article 3.02, the article states the term will begin on or about January of the first year served and expires Dec. 31. He questioned if the Commission is in year one or year two, since they were sworn in Dec. 13, 2023. He proposed an edit to the article to state January 2024 as the first year. Mr. Leyvas suggested to add a statement about the corresponding City Code to Article 3.03, for consistency with Article 3.02.

Mr. Leyvas asked if he should make a motion with his proposed edits.

Ms. Erickson suggested to hear the feedback from the remaining Commission Members. She asked Mr. Benton and Ms. Nillen if there are concerns with the proposed edits from Mr. Leyvas.

Ms. Nillen stated there is a modification provision under Article 6.01 stating that the Commission can only modify if the proposed amendments have been provided to the Commission no less than seven days prior. Ms. Nillen suggested to submit all proposed edits to the draft Bylaws to staff so staff can determine next steps. Ms. Nillen suggested adopting the Bylaws and submit the proposed edits to staff so they can be posted before the next meeting in accordance with Article 6.01 in the Bylaws.

Mr. Leyvas asked for clarification.

Ms. Nillen suggested adopting the Bylaws during the meeting, submit the information to staff, and making amendments in the future. She stated the Bylaws are only a draft, and they cannot be amended until they are adopted.

Mr. Leyvas thought because they are still in draft, the Commission has room to make corrections prior to adopting.

Ms. Nillen stated not everyone has the proposed edits in writing and the final proposed language has not been shared. She stated the compiled proposed edits would not be available until next meeting for the Commission.

Mr. Leyvas stated he did not have serious objections.

Mr. Leyvas proposed changing the title of "Secretary" to "Recording Secretary", for Article 4.03, to be consistent across City Boards and Commissions.

Ms. Erickson asked for feedback from Ms. Sallen and Mr. Schirripa.

Mr. Schirripa asked if a fifth Commission member has been found.

Ms. Erickson stated that one application has been submitted and is eligible per the requirements. The application processed closed as of March 18 and the City is considering opening the application again to allow for more applications.

Ms. Cheryl Pietkiewicz joined the meeting virtually at 3:44 p.m.

Ms. Sallen asked for clarification for the first statement in Article 3.05 on what number constitutes a quorum.

Ms. Nillen clarified a quorum is the majority of the members as a whole, appointed or not appointed. A quorum would be three out of five.

Ms. Sallen asked for clarification on the second statement in Article 3.05 on what constitutes a majority vote by the quorum.

Ms. Nillen clarified that the Commission will need to have three out of the five members present to hold a meeting. The Commission will need a majority vote of members who are present.

Ms. Erickson stated items will need an affirmative vote of four members to move forward to City Council.

Ms. Erickson asked if there are additional questions. There were no additional questions from the Commission.

Ms. Erickson asked the Commission if they want to vote on the Bylaws, as they are, and to compile the amendments for posting and approval at the next meeting.

Mr. Leyvas moved to adopt the draft Bylaws of the City of Phoenix Ethics Commission, version 1 dated Dec. 31, 2017. Ms. Sallen seconded the motion.

Ms. Erickson opened the public comment portion and introduced Mr. Thacker.

Mr. Thacker stated he submitted a public records request for names and contact information for the Commission Members and he has not received a response. He stated he did not see the Bylaws posted. He referenced a report from the Campaign Legal Center titled "Principles for Designing an Independent Ethics Commission". Mr. Thacker read from sections of the report and stated all the best practices recommended for independent and successful Ethics Commissions are being violated in the structure of the City of Phoenix Ethics Commission.

Ms. Erickson stated staff will follow-up on Mr. Thacker's public records request.

Ms. Erickson asked for a vote.

Mr. Leyvas asked if the draft documents were available in the posting of the meeting notice.

Ms. Erickson said the draft documents were not posted in the meeting notice.

Mr. Leyvas asked if this was a standard practice.

Ms. Erickson stated that not posting the documents was an oversight. The documents are available to the public through a public records request.

Mr. Leyvas stated with this information, he will be voting no on the adoption, to ensure the public has access to the draft documents.

Ms. Erickson asked for a vote. The motion failed 0-4.

5. Elect Chairperson and Vice Chairperson

Item five was not discussed, as Item four was not approved.

Ms. Erickson asked for the Commission Members' resumes to share with the Commission prior to the next meeting.

6. Review and Adopt Initial Rules of Procedure

Ms. Erickson opened the discussion for the Initial Rules of Procedure. She stated the Initial Rules of Procedure are set by the City Manager and any changes would need a vote of approval from four Commission Members to take to Council. Seven of the nine City Council would need to approve.

Mr. Leyvas asked if the City Manager has recommended the initial set of Rules of Procedure to the City Council or are they currently in draft.

Ms. Erickson stated the Initial Rules of Procedure have not been adopted by City Council.

Ms. Nillen clarified, per Section 3.E of the Initial Rules of Procedure, the Commission may refer changes to the Initial Rules of Procedure to the City Manager for review.

Ms. Erickson confirmed the City Manager approved the Initial Rules of Procedure.

Mr. Leyvas noted that the version presented to the Commission for review and discussion is marked as "draft" and asked if staff could seek clarification on whether the Initial Rules of Procedure are still in draft form.

Ms. Nillen stated that if the Commission requests amendments to the currently set Initial Rules of Procedure, the Commission would need to approve the amendments by a four-person vote of approval, and the City Council would need to approve by a seven-person vote of approval.

Ms. Nillen stated the Commission can provide recommendations during the meeting.

Mr. Leyvas referenced Section 2 paragraph 1 of the Initial Rules of Procedure. He stated there are two definitions that differ in the Initial Rules of Procedure and the Phoenix City Code, Section 2-52. He recommended amending the definitions

for “Board Member” and “Elected Official” in the Initial Rules of Procedure to be consistent with Phoenix City Code, Section 2-52.

Ms. Erickson asked for additional comments from the Commission.

Ms. Sallen referenced Rule 6.d of the Initial Rules of Procedure, second sentence. She stated regardless of whether the Commission chooses to use an outside investigator, the Commission should have the final decision on setting a Request for Inquiry for a formal hearing.

Ms. Sallen expressed concern if there was a mechanism to ensure respondents and complainants comply with Commission and Investigator requests for information. She questioned how to deal with non-compliance of requests for information.

Ms. Nillen stated the Commission has no subpoena power, per the City Code and Initial Rules of Procedure. Ms. Nillen stated she can act as the outside investigator if the Commission chooses.

Ms. Erickson asked for additional comments from the Commission. Mr. Schirripa and Ms. Pietkiewicz had none.

Ms. Erickson opened the public comment portion and introduced Mr. Thacker.

Mr. Thacker stated the City does not make it a policy to include documents with the posted meeting agenda, with the exception of City Council Formal meetings and Subcommittee meetings. He would need to submit a public records request. He expressed concerns that the rules, bylaws and staff were already developed and provided to the Commission.

7. Call to Public

Ms. Erickson opened the Call to Public and introduced Mr. Thacker.

Mr. Thacker expressed his appreciation to the Commission. He recommended the Commission review and address all ethics complaints submitted in the last seven years.

Mr. Leyvas asked about how the complaints, collected since 2018, will be addressed if they are not in the format required by the procedures.

Ms. Erickson indicated staff intends to bring all eight complaints, collected since 2018, to the Commission for their review and decision on how to address the complaints.

Mr. Leyvas asked if the procedures allow for the Commission to review the current complaints, if they do not follow the format required by the procedures, such as the requirement to be notarized.

Ms. Erickson stated the staff will review them as provided.

Mr. Leyvas recommended making a provision in the procedures to clarify the requirements do not apply to complaints submitted prior to the approval of the procedures.

Ms. Pietkiewicz and Mr. Schirripa support the recommendation.

8. Future Agenda Items and Meeting Dates

Ms. Erickson requested to send revisions to the Bylaws and Initial Rules of Procedure to Ms. McCarthy.

Ms. Nillen confirmed the agenda and amended documents should be posted and shared with the Commission seven days prior to the next meeting.

Mr. Benton recommended following the foundation of the amendment requirements whether or not the bylaws have been adopted.

Ms. Nillen agreed.

Ms. Erickson confirmed agenda items four, five and six on the agenda will be added to the next agenda.

Ms. Erickson stated the Commission is required to set a schedule of dates during the first meeting. She stated the intent is to have meetings on the third Thursday of each month, at 3 p.m. She asked if that would be agreeable to the Commission.

The Commission confirmed the schedule would work.

Ms. Erickson stated the schedule will be set, with the understanding that dates may be revised in the future.

Mr. Leyvas asked for a more formal introduction from Ms. Nillen and Mr. Benton and their roles for the Commission at the next meeting.

Ms. Erickson thanked the Commission and asked for any final comments.

The Commission did not have additional comments.

9. Adjournment

Ms. Erickson adjourned the meeting at 4:14 p.m.



SpencerFane

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Overview

Elizabeth Nillen began her career as the city attorney in Fitchburg, Wisconsin while also representing various other local Wisconsin municipalities as an associate and shareholder at a Wisconsin law firm. As city attorney, Beth provided legal counsel to the mayor and council members regarding day-to-day legal issues impacting the city and was the lead negotiator for a contentious tripartite boundary agreement that resulted in the voluntary dissolution of a town.

Currently, Beth combines more than 16 years of employment law background, her recent experience as an ICU nurse, and knowledge as a health care lawyer and workplace investigator to investigate and resolve employment claims for various health care companies and other local businesses. Beth also handles day-to-day legal affairs for her clients, representing them in all facets of the employment relationship in addition to their health care law-related concerns.

Beth has first-hand clinical understanding of health care through her recent in-hospital experience as a stroke-certified Registered Nurse. She has previously worked several units throughout the hospital system, including in the Intensive Care Unit (ICU), Emergency Room, and Neuro, Trauma and Orthopedics Unit. Her focus was working with patients who were suffering from neurological deficits, stroke, and catastrophic and traumatic brain injuries. During the pandemic, she worked on the front lines in the ICU treating COVID-19 patients. Beth also served on a large Arizona hospital's ethics committee as well as recently completed two terms on the Arizona State Board of Nursing's Scope of Practice Committee.

In 2020, Beth founded a private practice that became a unique one-stop-shop for health care facilities to resolve their healthcare and legal concerns. Through her vast experiences, Beth brings a rare combination of real-world knowledge that allows her clients to achieve their legal goals.

Education

- Arizona State University, 2016 (B.S.N.)
- University of Wisconsin-Madison, 1997 (J.D.)
- Marquette University, 1994 (B.A.)

Bar Admissions

- Arizona

Court Admissions

- Arizona Supreme Court
- Wisconsin Supreme Court

Community Involvement

- Legends FC Arizona, LLC, Vice President; Co-Founding Director

Distinctions

- Association of Workplace Investigators Certificate Holder (AWI-CH)
- Marquis Who's Who in America Arizona Magazine, Top Employment Lawyers
- Madison Magazine, Top Lawyers

Presentations and Publications

- *"When Should a Health Care Organization Hire an Independent Investigator for Employment-Related Issues?"* American Health Law Association, Health Law Weekly, October 2023
- *"Inside View of the Pandemic – and Tips to Nurture Employee Mental Health,"* Greater Phoenix In Business Magazine, October 2022
- *"We Need to Talk About it in the Workplace: Addressing Mental Health Issues at Work,"* Association of Corporate Counsel (ACC) Arizona Chapter Meeting, 2022

Related Experience

- Represented various municipalities as city attorney and village counsel regarding open meeting laws, drafting and enforcing ordinances, and day-to-day governmental matters
- Resolved numerous allegations of fraud and misconduct through an extensive outside investigation involving a nurse assigned to a large third-party hospital client of one of the country's leading travel nurse companies
- Navigated licensing and regulatory concerns on behalf of a large health care facility
- Conducted various discrimination investigations

BYLAWS OF
THE CITY OF PHOENIX ETHICS COMMISSION

ARTICLE I
AUTHORITY AND PURPOSE

1.01 **AUTHORITY**. The City of Phoenix Ethics Commission (“Commission”) is hereby established by the Mayor and Council of the City of Phoenix on February 15, 2017, pursuant to Ordinance G-6274, Phoenix City Code Sections 2-52 and 2-53.

1.02 **PURPOSE**. The Commission is established to initiate proceedings, conduct an initial evaluation, and if necessary, investigate, proceed with a formal hearing, and recommend action to the Mayor and City Council (collectively “Council”) related to alleged ethics or gift policy violations by a Council member or a City of Phoenix board, commission, committee, or task force member (collectively “Board Member”). In addition, the Commission is established for such other purposes as approved and adopted by Council.

ARTICLE II
POWERS AND DUTIES

2.01 **POWERS AND DUTIES**. The Commission shall have full power to conduct, manage, and direct the business and affairs of the Commission, subject to the express limitations set forth in Phoenix City Code Sections 2-52 and 2-53, and other limitations imposed by applicable law, including such other limitations as may be imposed by the Council. The Commission may:

(a) Adopt bylaws that will govern the day-to-day operations of the Commission and establish such other offices as the Commission deems appropriate;

(b) Establish committees and subcommittees as necessary to carry out the Commission’s purpose;

(c) Investigate, take testimony, and engage in any other action to the extent permitted by law to oversee the investigation and recommend enforcement of ethics or gift policy related to Council or a Board Member, or for such other purposes as approved and adopted by Council;

(d) Appoint an independent investigator as necessary to assist the Commission in carrying out its purpose and responsibilities;

(e) Issue advisory opinions regarding ethics or gift policy issues upon request by a Council member or Board Member; and

(f) Undertake such other powers, duties, and responsibilities as may be authorized and adopted by Council.

2.02 INITIAL RULES AND PROCEDURES. The Commission will adopt Initial Rules of Procedure (“Initial Rules”) prepared by the City Manager to assist the Commission with its purpose, powers, and duties. The Commission may refer changes to the Initial Rules to the City Manager for review and recommendation to Council. Any changes to the Initial Rules must be approved by an affirmative vote of seven Council members.

ARTICLE III MEMBERS

3.01 NUMBER AND QUALIFICATION OF MEMBERS. The Commission will consist of five appointed members as provided in Phoenix City Code Section 2-53. Each member will hold office for the term for which the member is appointed until the member’s successor is appointed and approved by Council, or until the member’s earlier death, resignation, or removal. Any member may resign at any time upon written notice to the Chairperson.

3.02 TERM. Members first appointed to the Commission will serve an initial term as provided in Phoenix City Code Section 2-53(~~C~~~~B~~). Three Commission members will serve an initial term that begins on or about January 1, 2024, of the first year served and expires on December 31st of the fifth year served. Two Commission members will serve an initial term that begins on or about January 1, 2024, of the first year served and expires December 31st of the third year served. Thereafter, all members will serve a term of five years that begins on January 1st of the first year served and expires on December 31st of the fifth year served. A member appointed to fill a vacant position will serve for the balance of the prior member’s unexpired term.

3.03 TERM LIMITS. As provided in Phoenix City Code Section 2-53(B). ~~No~~ member of the Commission may serve more than one full five-year term unless: (a) the member is initially appointed to fill the remainder of an unexpired term created by a vacancy; or (b) the member served an initial three-year term when the Commission is first established. A member who fills the remainder of an unexpired term created by vacancy or who serves an initial three-year term when the Commission is first established may serve up to, but no more than one full five-year term after the expiration of such term.

3.04 REMOVAL OF MEMBERS. A Commission member may be removed with or without cause by Council as provided in Phoenix City Code Section 2-51, or for the member’s failure to attend three consecutive meetings without prior written notice to the Chairperson, or for the member’s failure to attend half of the meetings in a calendar year, or for a conviction of a crime involving moral turpitude, or repeated disruptive behavior after warning, or when in the opinion of the Council removal is in the best interests of the Commission.

3.05 QUORUM; VOTING. A quorum of the Commission will consist of a majority of appointed members. Any action voted on by a majority vote of the quorum present will be considered an action of the Commission unless otherwise required by law or rule. If a

quorum is not present, the Commission is prohibited from discussing or voting on any items from the agenda and the meeting will be rescheduled. In the event a quorum is present at the beginning of a meeting and is not maintained throughout the meeting, no discussion, votes, or action requiring a vote may be taken after the loss of a quorum.

3.06 ORGANIZATION. The Chairperson of the Commission, or in the Chairperson's absence, the Vice Chairman, or in the absence of the foregoing, a Chairperson appointed by the members present, will call the meeting to order and will act as Chairperson. The Recording Secretary of the Commission will act as secretary for all meetings of the Commission, or in the Recording Secretary's absence, the acting Chairperson of the meeting may appoint a person to act as secretary.

3.07 VACANCIES. In case of any vacancy among the members through death, resignation, disqualification, or other cause, a successor will be appointed and approved by the City Council to hold office for the unexpired portion of the term of the member whose place will be vacant and until the appointment and approval of the member's successor.

3.08 COMPENSATION. Commission members will not receive a salary or otherwise be compensated except for reimbursement of parking fees near Phoenix City Hall.

3.09 MEMBER CONFLICT OF INTEREST. Arizona Revised Statutes Sections 38-501, *et seq.* apply to members. A Commission member who has a substantial interest in the outcome of any matter brought before the Commission as defined under Arizona law must make known that interest and the minutes of the meeting must reflect that the member made such fact known. The member must refrain from voting or participating in that matter in any way.

3.10 CITY OF PHOENIX ETHICS AND GIFT POLICY. It is the policy of the City of Phoenix to uphold, promote, and demand the highest standards of ethics from all of its employees and officials, whether elected or appointed. Accordingly, all City officers and employees, members of City boards, commissions, and committees, and members of the City Council should 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, and never use their City position or powers for improper personal gain. Commission members must comply with the Phoenix gift policy under Phoenix City Code Section 2-52.

3.11 PROXY VOTING, TELEPHONIC PARTICIPATION. Proxy voting will not be permitted. Telephonic participation by a member may be permitted where, in the opinion of the Chairperson, a member can participate fully by speaker phone. In addition, a member participating by telephone will be provided information on the meeting's agenda items in advance of such meeting.

ARTICLE IV OFFICERS

4.01 CHAIRPERSON. At its initial meeting the Commission will elect a Chairperson by a majority of the appointed members for an initial one-year term that begins on or about January of the first year served and expires on December 31st of the first year served. For all subsequent terms, the Chairperson will be elected by a majority of the appointed members. The Chairperson will:

- (a) Establish a regular meeting schedule;
- (b) Approve the agenda for each meeting;
- (c) Preside over Commission meetings, including deciding upon all points of order or procedure;
- (d) Appoint members to serve on committees and subcommittees;
- (e) Prior to Commission meetings and other such mutually convenient times review with the staffing department agenda items for future Commission meetings;
- (f) Consider other such matters and concerns of the Commission as set forth in these Bylaws or as directed by the Council.

4.02 VICE CHAIRPERSON. The Vice Chairperson will be elected by a majority of the appointed members. In addition to such other duties, if any, as may evolve upon the Vice Chairperson by virtue of the office, or as assigned by the Chairperson, the Vice Chairperson will preside over meetings of the Commission in the absence of the Chairperson. A vacancy in the office of Vice Chairperson will be filled for the unexpired term by a new election at the next regular meeting of the Commission.

4.03 RECORDING SECRETARY. The City Manager will appoint an individual or individuals from among City staff to serve as Recording Secretary to the Commission. Neither the Recording Secretary nor staff may be members of the Commission. The Recording Secretary will take all minutes of Commission meetings and keep all Commission reports in accordance with applicable City ordinances and Arizona statutes. The minutes of all Commission meetings will be provided to the Commission in summary form. All documentation will be kept and maintained as directed by the City Manager.

4.04 LEGAL COUNSEL TO COMMISSION. The City Attorney, or designee, will provide legal representation and advice to the Commission as necessary. When issues of parliamentary procedures arise, legal staff will be available to advise the Chairperson as necessary.

4.05 ELECTION AND APPOINTMENTS. The Chairperson and Vice Chairperson will be elected by a majority of the appointed members of the Commission for a term of one year respectively. All officers, except for the Recording Secretary, will be elected from among the membership of the Commission. Nominations for Commission offices will be made no later than December 31st of each calendar year. Nominations do not require a second. Election of officers will be conducted no later than December 31st of each calendar year. An officer's term shall be for one year starting on January 1st and ending on December 31st. An unsuccessful candidate for Chairperson may be nominated and may be elected Vice Chairperson at the meeting.

4.06 COMMITTEES, AD-HOC COMMITTEES, AND SUBCOMMITTEES. The Commission may establish such committees, ad-hoc commissions, and subcommittees as the Commission deems necessary and appropriate for carrying out the Commission's purpose. The Chairperson may appoint the members of the committees, ad-hoc committees, and subcommittees created. Committees, ad-hoc committees, and subcommittees report to the Commission in an advisory capacity and such body will exist only if necessary to fulfill such said purposes as established by the Commission for which they were created.

4.07 REMOVAL OF COMMITTEE MEMBERS. A committee, ad-hoc committee, or subcommittee member may be removed with or without cause by the Chairperson or by a majority of appointed members of the Commission for the member's failure to attend three consecutive meetings without prior written notice to the Chairperson, or the member's failure to attend half of the meetings in a calendar year, or a conviction of a crime involving moral turpitude, or repeated disruptive behavior after warning, or when in the opinion of the Chairperson or majority of the appointed members of the Commission removal is in the best interest of the Commission. Removal under this subsection will not affect a member's appointment as Commission member.

ARTICLE V MEETINGS

5.01 SCHEDULE. The Commission will meet at such times when called by the Chairperson after consultation with Commission members and the staffing department. At the end of each calendar year, the Chairperson will set the Commission's meeting schedule for the following year setting forth the date, time, and location for each meeting. Meeting times, dates, and locations may be changed, or a meeting may be cancelled by the Chairperson or a majority of the members of the Commission.

5.02 OPEN MEETING. The Commission must hold all meetings and conduct all business in accordance with Arizona Open Meeting Laws, Arizona Revised Statutes Sections 38-431, *et seq.* All meetings of the Commission, except in executive session as authorized by Arizona Revised Statutes Section 38-431.03, will be open to the public.

5.03 SPECIAL MEETINGS. Special meetings of the Commission may be called either by the Chairperson, or by a majority vote of the Commission members at any previous meeting. The minutes of the special meeting must record how the special meeting is called.

5.04 BRIEFING SESSIONS, WORKING SESSIONS, PUBLIC HEARINGS, OR MEETING. If deemed necessary by the Chairperson or a majority of appointed members of the Commission, the Commission may conduct in accordance with Arizona Open Meeting Laws briefing sessions, work sessions, public hearings, or meetings on matters within the scope of the Commission's authority.

5.05 MEETING PROCEDURES AND RULES. Rules 1, 5, 6, and 7 of the Rules of Council Proceedings, Phoenix City Code Section 2-60 as amended, and Guidelines

for Speaking at Council Meetings are hereby adopted and apply to all Commission proceedings.

**ARTICLE VI
AMENDMENT**

6.01 MODIFICATION OF BYLAWS. These Bylaws may be altered, amended, or repealed, or new Bylaws may be adopted, at any meeting of the Commission after not less than seven (7) calendar days notice has been given to all members of the Commission and a copy of the proposed amendment sent with notice. Any change to these Bylaws requires an affirmative vote of four appointed members present.

**ARTICLE VII
CONFLICT OF LAW OR AMBIGUITY**

7.01 CONFLICT OR AMBIGUITY. If a conflict of law or ambiguity exists between these Bylaws and the Phoenix City Charter and City Code, as the City Charter and Code are amended from time to time, the provisions of the Phoenix City Charter and City Code shall prevail and control.

CERTIFICATE OF RECORDING SECRETARY

I hereby certify that the foregoing copy of the Bylaws is a true and correct copy of the Bylaws of the City of Phoenix ~~Citizens Transportation~~Ethics Commission, as the same were adopted by the Commission.

Dated as of _____

_____,
Recording Secretary

**INITIAL RULES OF PROCEDURE
CITY OF PHOENIX
ETHICS COMMISSION**

January 2018



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I. BACKGROUND INFORMATION

The City of Phoenix Ethics Task Force, which was comprised of community representatives, attorneys from a broad range of practice areas, and judges from several courts, issued a report in January 2013 related to the Task Force's review of City of Phoenix ethics and gift policies. The Task Force report proposed a set of rules and procedures to review, evaluate, investigate, and make recommendations related to alleged ethics and gift policy violations by Elected Officials and Board Members.

In February 2017, by ordinance the Council established the Ethics Commission to review, evaluate, investigate, and make recommendations to the full Council related to alleged ethics and gift policy violations by Elected Officials and Board Members. As part of the ordinance, the Council adopted rules and procedures to permit the Ethics Commission to carry out the Commission's powers, duties, and responsibilities. These rules reflect the rules and procedures adopted by Council as supplemented by consistent Task Force recommendations.

II. GLOSSARY

The definitions described and listed in Code Section 2-52 are incorporated and made a part of this glossary by this reference. For purposes of these Initial Rules of Procedure, the following terms shall have the meaning ascribed as follows. The singular of the term shall include the plural, and the plural of the term shall include the singular. The following glossary terms govern and control to resolve any conflict or ambiguity created by reference to the definitions in Code Section 2-52.

"ARS" means Arizona Revised Statutes, as amended from time to time.

"Board Member" means a member, or the person's relative or partner, of a City of Phoenix board, committee, commission, or task force.

"Charter" means the Phoenix City Charter.

"Code" means the Phoenix City Code, as amended from time to time.

"Complainant" means a Phoenix resident or a person who is directly aggrieved by an act or the failure to act of an Elected Official or Board Member.

"Council" means the Phoenix City Council.

"Elected Official" means a person, or the person's relative or partner, an elected or appointed Phoenix official, as Mayor or as Council Member of the City of Phoenix.

"Ethics Commission" or "Commission" means the City of Phoenix Ethics Commission.

"Ethics Handbook" means the Phoenix Ethics Handbook adopted by the Council in June 1991, as amended from time to time that provides guidance to Elected Officials or Board Members.

“Ethics Policy” means Phoenix ethics policies and standards codified in Chapter XI, Section 1 of the Charter; Section 2-52 of the Code, and the Ethics Handbook.

“Investigator” means the person appointed by the Ethics Commission to investigate a Request for Inquiry as necessary.

“Judicial Selection Advisory Board” or “JSAB” means the Phoenix board whose establishment, membership, powers, and duties are defined in Code Section 2-96.

“Partner” means a person in a domestic partnership as defined in Phoenix City Code Section 18-401.

“Relative” means the spouse, child, child’s child, parent, grandparent, brother or sister of the whole or half blood and their spouse, and the parent, brother, sister, or child of a spouse.

“Request for Inquiry” means a specific allegation of an Ethics Policy violation by an Elected Official or Board Member.

“Respondent” means the person who must respond to a Request for Inquiry.

“Task Force” means the Phoenix Ethics Review Ad Hoc Task Force established September 10, 2012.

III. CITY OF PHOENIX ETHICS COMMISSION MEMBERS, AUTHORITY, RULES AMENDMENT

A. Ethics Commission Members. The Ethics Commission consists of five members who each serve a term of five years unless otherwise specified. Two Commission members must be registered members of the Democratic Party, two Commission members must be registered members of the Republican Party, and one Commission member must be registered with no party affiliation. All members must be Phoenix residents and must not be elected officials, precinct committee persons of a political party, or City of Phoenix employees. A member may not serve more than one full term. One Democratic member, one Republican member, and the unaffiliated member will each serve a full initial term. One Democratic member and one Republican member will each serve a three-year initial term. Each Commission vacancy must be filled by a candidate recommended by the JSAB and approved by Council. At the initial meeting, the Ethics Commission will adopt bylaws, elect officers, and set a regular meeting schedule to conduct business as may be presented to the Commission.

B. Appointment of Ethics Commission Members. The JSAB will seek out and encourage qualified individuals to apply for appointment to the Ethics Commission and may conduct investigations into the background and qualifications of candidates by questionnaires, personal interviews, and other means as the board deems reasonable. When making recommendations for appointment to the Ethics Commission, the board should consider the diversity of Phoenix’s population. A candidate for appointment to the Ethics Commission must be a registered Arizona voter who has been continuously registered with the same political party or registered as unaffiliated with a political party for five or more years preceding the date the candidate files an application with the board. A candidate for appointment to the Ethics Commission must be a Phoenix resident and may not serve as an elected official, a precinct committee person of a political party, or City of Phoenix employee on the date the candidate files an application with the board. As provided in Code Section

2-96, the board will recommend candidates for appointment to the Ethics Commission by the affirmative vote of seven Council members.

C. Ethics Commission Authority. The Ethics Commission is authorized to receive allegations of ethical violations, investigate, take testimony, and engage in any other action to the extent permitted and established by law to oversee the investigation and enforcement of the Ethics Policies and City of Phoenix Ethics Handbook for Elected Officials and Board Members. The Ethics Commission may appoint an independent investigator as may be necessary to assist the Ethics Commission in carrying out its purpose and responsibilities.

D. Ethics Commission Compensation. Ethics Commission members will not receive a salary or otherwise be compensated except for reimbursement of parking fees near Phoenix City Hall.

E. Amendments to Initial Rules and Procedures. By an affirmative vote of four members, the Ethics Commission may refer changes to these Initial Rules and Procedures to the City Manager for review and recommendation to Council. Any changes to these Initial Rules and Procedures must be approved by an affirmative vote of seven Council members.

IV. RULES AND PROCEDURES

Rule 1. Scope and Purpose.

These rules govern the procedure in all actions and proceedings presented before the Ethics Commission. They should be construed, administered, and employed by the Ethics Commission and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 2. Adoption of Local Rules of Practice and Procedure City of Phoenix Municipal Court—Civil Cases.

The Ethics Commission adopts the Local Rules of Practice and Procedure for the City of Phoenix Municipal Court—Civil Cases (Local Rules) to the extent the Local Rules are consistent with these rules and procedures. These rules and procedures govern and control to resolve any conflict or ambiguity created by the application of the Local Rules.

Rule 3. Review Limitation.

The Ethics Commission may only review, evaluate, or recommend action for an act, error, omission, or failure to act by an Elected Official or Board Member first occurring on or after January 1, 2018. All Requests for Inquiry filed against an Elected Official or Board Member must be brought within one year after the cause of inquiry accrues and not afterward.

Rule 4. Initiation of Proceedings.

- a. A Complainant may file with the Phoenix City Clerk a written, notarized Request for Inquiry

containing specific allegations of an Ethics Policy violation by any Elected Official or Board Member. A Complainant must certify to the truth of the allegations under penalty of perjury, and acknowledge that a frivolous Request for Inquiry may result in the award of sanctions against the Complainant. The Phoenix City Clerk must not accept the submission of an anonymous Request for Inquiry.

- b. Within five business days of receiving the Request for Inquiry, the City Clerk will assign a matter number to the Request for Inquiry, refer the Request for Inquiry to the Ethics Commission for initial evaluation at the Ethics Commission's next available meeting and send a copy of the Request for Inquiry to the Respondent.
- c. For the period that begins with the assignment of the matter number by the City Clerk through the Ethics Commission's recommendation for action to Council, the Request for Inquiry must solely be referenced by matter number, and the Request for Inquiry, investigation and any Ethics Commission proceedings related to its evaluation must remain confidential. The Ethics Commission may discuss the Request for Inquiry in executive session as provided by law. All records related to the Request for Inquiry will be made public in accordance with Arizona law after the Ethics Commission votes in open session to: (i) dismiss the Request for Inquiry in whole after an initial evaluation; or (ii) makes a final recommendation to Council related to the Request for Inquiry.

Rule 5. Initial Evaluation by Commission.

Each inquiry received by the Commission will be initially evaluated to determine by the affirmative vote of four members if the allegations in the inquiry:

- a. Are within the Commission's jurisdiction and are facially sufficient in whole or in part to warrant additional evaluation or investigation of the allegations in the inquiry; or
- b. Are outside of the Commission's jurisdiction or facially insufficient to warrant investigation, and therefore, dismiss the inquiry. The Commission's dismissal of the inquiry is not subject to review; or
- c. May involve a crime, in which case the Commission must refer the inquiry to the proper authority for investigation and prosecution. If the Commission refers the inquiry to another authority for criminal investigation or prosecution, the Commission must stay all action related to the inquiry until the criminal investigation and any related proceedings are resolved; or
- d. Are not well grounded in law or fact and are interposed for an improper purpose, such as to harass or cause unnecessary delay or expense to the elected official or board member. The Commission may recommend that the Council impose a civil sanction in the maximum amount of \$500 against the person or entity for each frivolous inquiry.
- e. If the Commission fails to decide by unanimous or the affirmative vote as required in subsections (a) through (d), the Request for Inquiry is deemed closed.

Rule 6. Investigation by Commission; Inquiry Report; Commission Review.

- a. Upon a determination that an inquiry warrants additional evaluation or investigation, the Commission may investigate, take testimony, and engage in any other action to the extent permitted by law to

oversee the investigation and enforcement of the ethics or gift policy related to an elected official or board member. The Commission may appoint an independent Investigator to assist the Commission in carrying out its purpose and responsibilities.

- b. The Respondent will be given written notice of the investigation and the nature of the Request for Inquiry. The Respondent may submit a written response to the Commission or Investigator within 20 days of the notice requesting a written response. For good cause, the Commission or Investigator may grant an extension of time to respond to the Request for Inquiry.
- c. The Commission will forward a copy of the Respondent's response to the Complainant. The Commission or the Investigator may ask the Complainant to provide additional information.
- d. The Commission and its Investigator may conduct interviews, obtain records or other necessary information and undertake appropriate research. As part of the investigation, the Commission ~~or Investigator~~ may set the Request for Inquiry for a formal hearing. The Complainant and Respondent may or may not be represented by legal counsel, in their respective discretion.
- e. All Respondents and Complainants must cooperate with the Commission and its Investigator. All Respondents and Complainants must provide requested information unless the request violates Arizona law. A Respondent or Complainant who fails to cooperate with the Commission or Investigator must cite the specific legal basis for doing so. If the Commission finds there is no legal basis for the Respondent's or Complainant's failure to cooperate, the uncooperative party shall pay for all costs incurred by the Commission directly related to that party's failure to cooperate.
- f. After the conclusion of any hearing or fact-finding related to a Request for Inquiry, the Commission or Investigator will prepare a written report with findings of fact and recommendations for such action as the Commission deems appropriate. The report will not be available for public inspection under Arizona law until after final action by the Commission.
- g. The Commission may review and discuss the inquiry and report in executive session as permitted by law. In public session, by the affirmative vote of four members the Commission may recommend to the full Council to sustain the alleged violations in whole or in part, to impose sanctions, if any, as permitted under Code Section 2-53, or to dismiss the Request for Inquiry. If there are less than four votes to make a recommendation to the full Council or to dismiss the Request for Inquiry, the Request for Inquiry is deemed closed.

Rule 7. Consideration of Recommendation.

A recommendation from the Commission related to a Request for Inquiry will be placed on the agenda of the next available meeting of the full Council. By the affirmative vote of seven members the Council may accept the Commission's recommendation in whole or in part, impose the same or different sanctions, if any, as permitted by Code Section 2-53, or dismiss the inquiry. If there are less than seven votes to accept the Commission's recommendation in whole or in part, or to dismiss the inquiry, the inquiry is deemed closed.

Rule 8. Sanctions.

By an affirmative vote of seven members, the Council may impose any of the following actions or civil sanctions for a violation of the ethics or gift policies by an Elected Official or Board Member: censure, a maximum civil sanction in the amount of \$500 for each violation, or removal from office if the violation relates to a Board Member. Code Section 1-5 does not apply to action under this subsection. The penalties and remedies provided in Title 38, Chapter 3, Article 8, A.R.S., may apply and may be enforced as provided by law.

Rule 9. Action for Frivolous Allegations.

Upon a finding and recommendation by an affirmative vote of four members of the Ethics Commission and by an affirmative vote of seven members of the Council, the Council may direct the City Manager through the City Attorney to file a complaint in municipal court against a person, or other entity recognized by law, for the filing of allegations of ethics or gift violations that are not well grounded in law or fact and are interposed for an improper purpose, such as to harass or cause unnecessary delay or expense to the Elected Official or Board Member. A person found liable for violating this section by a preponderance of the evidence may be subject to a maximum civil sanction in the amount of \$500.00 for each violation and may be ordered to pay the reasonable attorney's fees and costs incurred by the Elected Official or Board Member to respond to and defend against the improper allegations.

Rule 10. Additional Authority.

- a. As provided by law, the Commission may review, evaluate, investigate, and make recommendations under these rules to the proper authority for alleged violations of the Lobbyist Ordinance, Code Sections 2-1000, *et seq.*
- b. Consistent with these rules, the Commission may issue advisory opinions regarding ethics and gift policy issues upon request by an Elected Official or Board Member, and may make recommendations to Council related to Phoenix ethics and gift policies.
- c. Consistent with these rules, the Commission may review, evaluate, and issue a special occasion waiver as requested by an Elected Official or Board Member.

APPENDICES

Exhibit 1 – Request for Inquiry Form