

ROUGHLY EDITED TRANSCRIPT

Phoenix City Council  
Formal Meeting  
July 2, 2014  
1:00 p.m.

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Ballot Description Debate:

Next item is Item Number 43 which is to establish a form of the ballot for the November 4th, 2014 election.

I do have some cards on that item but we have our city manager and his team including legal counsel here to explain why they have proposed what they have proposed in the packet for the proposed form of the ballot.

So without further ado and without putting a motion on the table, I will ask the city manager to lead the discussion on Item Number 43.

>> City Mgr. Zuercher: Thank you, Mayor.

I'm here at the table with our retirement planner and our legal counsel in this matter, Wes Stockard.

The item before you today recommends language to refer to the November 4, 2014 ballot.

That election will be conducted by Maricopa County on behalf of the City of Phoenix and since the election is administered by Maricopa County, we must conform to their rules including a limitation of 50 words allowed in the descriptive title.

A citizens initiative has been properly submitted and certified by the city clerk to the ballot and today the council's duty is to refer a form of the ballot to Maricopa County.

And we have proposed some language for your review and action.

Staff and the city manager's office, the retirement office, budget and research, finance and city clerk have done significant review and study of the initiative through our actuarial and pension consultants at Kyron, Siegel and Buck.

We have also been advised from outside counsel.

At the direction of city council on June 10th we assessed all aspects of the initiative for costs or potential savings.

And according to the studies conducted, it is our best management estimate that assuming a 5% city contribution to the new defined contribution plan that will be formed by the initiative, this initiative would cost the city an additional \$358 million over 20 years.

The number reflects management's understanding of the constitutional and

contractual/legal issues raised by the proposed charter language of the initiative. The estimated cost does not include savings that are legally questionable and may be overturned if legally challenged.

Those are all contained within the report.

This is particularly as it relates to changes to pension terms for current employees and assumptions about compensation that is currently in employment contracts and agreements.

Again, this assumed a midrange 5% deferred compensation contribution rate for the plan described in the initiative, although the actual rate would be set by the city council if the initiative is passed and we would advise something between 3 and 7%.

State law requires the descriptive title to be no more than 50 words which is a significant constraint in drafting language.

The language presented to you is staff's management's best recommendation to describe the initiative content accurately and neutrally.

It is ultimately the authority of the city council today to refer specific language to the county.

Thank you.

And we are happy to answer any questions you might have.

>> Mayor Stanton: Thank you very much, Mr. City manager, for that information. Obviously what's got a lot of attention of people is the staff-proposed inclusion of language as it relates to our police officers and firefighters in city payment to PFPRS if the initiative was to best.

I was hoping you could do to the best of your ability to explain why you as city manager included that proposal in the proposed formal ballot language.

>> City Mgr. Zuercher: Thank you, Mayor.

I will try to explain as best I can here.

There are really two -- two places in the charter language proposed that we think leads to that and creates what we think is legal issues about including public safety, personnel retirement system or PSPRS which covers our police officers and firefighters.

Section 2.2C, which talks about current employees that do not enroll in the plan established shall not receive city contributions to any retirement plan other than contributions to the Phoenix Employees Retirement Plan.

That we think inadvertently or not includes PSPRS.

The other is Section 3.1 that says the adopted plan shall be the only retirement plan offered to future hires which we think also includes specifically future employees of the City of Phoenix, some of which will be police officers and firefighters.

It is really those two places that we think brings the police officers and firefighters into the restrictions of this initiative.

>> Mayor Stanton: Thank you very much for that information.

Obviously that was a lot of the questions that I think have come up over the last few days as the staff-proposed language has been made public, is that portion of it.

There were a lot of public statements about the fact that this was not supposed to include police and fire, but it is based upon your review of the actual language that is in the proposed initiative that led to that conclusion.

I don't want to speak for you.

>> City Mgr. Zuercher: Mayor, that's correct.

While there is a lot of discussion about a preamble that's included with the initiative.

What we've been advised is really the guiding language is the recommended language for the charter, and it is important that we are paying attention to the charter language because our successors 20, 30 and 40 and 60 years from now will only be able to depend what language is in the charter.

I will just give you an example.

This year we had to go to the charter for some language about city taxation related to the library system and CAPS.

That language is probably 50 years old.

I don't know what the intent was when it was first put in there, but we had to be guided by that specific language.

It is important that we focus on what the charter amendment language is more than a preamble.

>> Mayor Stanton: I will hope to members of the council to ask questions.

We do have some cards.

I wouldn't to make sure Councilmembers have an opportunity to ask questions to the city manager and his team.

>> J. Waring: You left out one statement.

You read a couple tracks from different pages.

I'm looking at the text of the proposed amendment, it is date stamped by the city clerk, January 10, 2014.

It says very clearly in Section 1, number 9, this act is not intended to affect individuals who are members of or eligible to join any other public retirement system in the state of Arizona such as the Public Safety Employees Retirement System.

A lot of people -- no offense Bill and Mayor, a lot of people make fun of lawyers not being clear.

What could be more clear than that sentence?

You are saying it doesn't count for anything.

I would take issue with that because it is right up front.

And unless you expected them to repeat this in every section, I don't know what else you would expect.

>> City Mgr. Zuercher: We can't advise the initiative writers how to do their work. We do acknowledge the preamble says that clearly.

You are correct.

Section 1, number 9 of their findings and intent.

But what is guiding to us according to what I have been told is the language starting under part 5, Phoenix Pension Reform Act of 2014.

The language in there is as I read, 2.2C and 3.1 do not reflect that intent in our

view.

>> Mayor Stanton: Vice mayor, do you have discussion?

>> J. Waring: I do.

I have heard that first statement that seems crystal clear apparently to both of us doesn't count, but I guess I haven't heard an explanation of why that doesn't count.

So, Wes, or somebody want to explain why that doesn't count.

It doesn't make a lot of sense to a lowly layman like me.

>> Thank you, Mayor, vice mayor.

So I wouldn't say that the preamble doesn't count because it does state intent.

However, what will be in the charter is not the preamble but will be part 5, all those things in capital letters.

So in the charter forever more, or until voters would change it again, should it pass, would not be the preamble but will be the actual words, all of them, but in particular 2.2C and 3.1.

As I said, we view as having significant issues that would encompass in our view -- or potentially encompass police officers and firefighters.

>> J. Waring: Thank you.

I guess I would just say you are saying that you are not saying it doesn't count, but you are saying that because you are saying you will include police and fire where clearly that says that's not the guess.

We can quibble about it all day long.

I am sure the courts will end up sorting it out.

We noticed in your presentation we didn't read Section 1, Item 9 sentence which, again, as we both agree could not be more clear.

So I guess I would say we are just going to differ.

Thank you.

>> Mayor Stanton: Thank you very much, vice mayor.

Councilman Gates.

>> S. DiCiccio: Mayor?

>> B. Gates: Thank you, Mayor.

Appreciate it.

I think that Vice Mayor Waring has been watching some lawyer shows at night.

>> J. Waring: I watched half of "Matlock."

[ laughter ]

>> B. Gates: You keep using this term "preamble."

Where does it appear on this initiative?

I didn't see it.

>> City Mgr. Zuercher: Councilman Gates, you are correct.

That's my laymen's term for it.

>> B. Gates: This is actually language that would be on the ballot, that the people of the City of Phoenix will be asked whether or not they want to vote in favor of it, right?

>> City Mgr. Zuercher: Yes, that's correct.

>> B. Gates: Okay.

So, in fact, that -- this language that Vice Mayor Waring was talking about, the heading over it is "text of proposed amendment."

Right?

>> City Mgr. Zuercher: That's correct.

>> B. Gates: What's it amending?

We don't know.

>> City Mgr. Zuercher: It is amending the city charter with part 5, Phoenix Pension Reform Act being the language that's in the charter.

>> B. Gates: It doesn't say up there text of proposed amendment and we don't mean the first page -- the first page and half of the second page.

It just says "text of proposed amendment."

Right?

>> City Mgr. Zuercher: That's correct.

>> B. Gates: I think what this discussion has illustrated is that reasonable minds can disagree on what the meaning is of this initiative.

And so to go into where I'm headed later, I think we're going to see that throughout this discussion that reasonable minds could disagree.

And before we commit to very conclusory language, we want to make sure that we as a council are comfortable that this says that this initiative actually says what the ballot language says.

Thank you, Mayor.

>> Mayor Stanton: Thank you very much, Councilman.

I think we had other -- vice mayor had some additional questions.

We have other members of the council that have questions first.

>> S. DiCiccio: Mayor?

>> Mayor Stanton: Please, go ahead.

Councilman DiCiccio.

>> S. DiCiccio: Thank you, Mayor.

Couple questions.

And I want to follow up on the same line of questioning as Councilman Gates.

Before I get into that, if I could ask City Manager Zuercher, hello, Ed, why did you not include the savings from the initiative in your presentation?

>> City Mgr. Zuercher: Mayor, Councilman DiCiccio, the language we provided is our best recommendation to describe the initiative as neutrally and as completely as we were able to in 50 words?

>> S. DiCiccio: No, no, no, I'm okay with the 50 words quite frankly.

I like the fact there is a neutral third party doing that.

That's a good thing for the city and we have done that for years.

The part I'm concerned about is the presentation you gave talking about the cost of the initiative being 350 million but you didn't say anything about what the potential savings could be.

How much of that is a potential savings?

And why was that not in your presentation?

>> Mayor Stanton: City manager, you gave a presentation, a discussion about your analysis, the staff's analysis as to the cost if this initiative were to pass.

How did you come to conclusions?

>> City Mgr. Zuercher: Our discussions included that a reasonable estimate of costs would be 358 million of costs over 20 years.

The council did direct us on June 10th to have our consultants go back and cost out each element of the program regardless of whether there were any legal concerns with it or not.

That is contained in the report that was issued last Thursday called "updated ballot initiative analysis."

It does go through each section and does refer to some savings.

The reason why I did not include them is that it is not management's opinion that those savings would be realized due to the legal issues surrounding each one of those individual items.

>> S. DiCiccio: Do you have a legal opinion on that or is that what you are doing, just talking to attorneys?

Do we have anything in writing saying that?

>> City Mgr. Zuercher: I have consulted with our attorneys on that, yes, Councilman.

>> S. DiCiccio: Can we provide something in writing?

>> City Mgr. Zuercher: We can have an executive session discussion on that advice.

>> S. DiCiccio: We are voting on it today.

I would recommend strongly that this council move forward with a legal or written opinion from the city staff that describes whether or not it can be legally justifiable or is it just something we're just saying.

I think there needs to be written documentation as to exactly what it says or it is all phony bologna.

That \$350 million cost, did you include in there any of the deferred compensation savings?

>> City Mgr. Zuercher: Mayor, Councilman DiCiccio, one of the assumptions we made as management in this is that the removal of deferred compensation which you are referring to, the contribution would limit to COPRS and PSPRS.

Because that is part of a total compensation package for employees that is contained in agreements or contracts, that we would have to reopen contracts and agreements with our labor groups and negotiate that in good faith and we did not feel that we could assume that would go away at a zero cost to the city, that there would be an exchange of value for removal of something as this relates to those contracts and agreements.

>> S. DiCiccio: That would be in the first two years.

I'm in agreement with you, in your first two years, you can't change those contracts around.

But you didn't include that in the contracts moving forward.

How come?

>> City Mgr. Zuercher: Mayor, Councilman DiCiccio.

No, we did not because, again, that is considered part of compensation and would certainly be part of negotiations moving forward as well.

>> S. DiCiccio: That's not a legal issue, is it?

It doesn't stop it legally.

What we heard last time from city staff was that there was -- you were making assumptions the council would never do this.

That's not necessarily true.

You don't know that.

It is not about a legal foundation, is it?

>> Mayor Stanton: Councilman, I will let city manager answer your question again.

>> City Mgr. Zuercher: Thank you, Mayor, Councilman DiCiccio.

I would just emphasize what I'm telling you does not have the force of legal recommendation because I'm not the city attorney.

It does have the force of the fact that I'm the city manager and my job is to report to you my best recommendations on the effect of policy.

So it is my assumption and recommendation that we could not assume a zero -- removing that compensation moving forward as a total savings because we need to manage that with our employees who today consider that to be a part of their total compensation package.

Certainly the council can make that decision and would have the opportunity to make that decision.

But that today is not my recommendation is how we view it moving forward.

>> S. DiCiccio: I totally agree with you, Ed, on that part.

I understand that is your assumption.

After the two-year period this council could do anything it wanted, couldn't it?

>> City Mgr. Zuercher: Yes, the council has the ultimate authority in deciding that issue.

>> S. DiCiccio: It doesn't have a legal foundation to exclude it from the cost savings then, does it?

It is basically based on an assumption of past history or what you think the council may do.

Is that correct?

It is not based on legal foundation after the contracts are up, is it?

>> Mayor Stanton: City manager, you want to once again explain the rationale -- or your recommended cost analysis.

>> City Mgr. Zuercher: Thank you, Mayor.

Councilman, DiCiccio, yes, the legal piece of it would be to relate to the contracts in the next two years.

Beyond that, it would need to be a negotiated item with our unions and associations and employees.

And ultimately the council does decide on that, so it is not a legal recommendation past these two years but it is my best management analysis that you cannot -- that we as management would not assume it to be -- to go completely away.

>> S. DiCiccio: Okay, clear.

I wanted to clear it up in your comments originally you said you did this because

the legal foundation.

But these are just based on assumptions then on what you think may or may not happen two years from now.

>> Mayor Stanton: Mr. Manager, if you want to respond.

>> City Mgr. Zuercher: The legal piece of it would be as it relates to the next two years of contracts.

Beyond that is my recommendation.

>> S. DiCiccio: Okay.

Thank you, Mayor.

>> Mayor Stanton: Thank you very much, Councilman DiCiccio.

>> S. DiCiccio: Mayor, I do have one quick thing on that.

That does bring it up.

When we look at staff recommendations on these positions, doesn't that impact our -- just alone because it is going to have an impact not just on the city manager but on all of the other city employees?

How does staff make a recommendation like that, on something that directly impacts their own contract?

How can I happen?

Can I ask that question about the conflict?

>> Mayor Stanton: I think the nature of the question, I want to make sure I get this right is, is the feeling that our professional staff is unable to make a professional recommendation because they're city employees as well.

Is that the nature of the question?

>> S. DiCiccio: I think it's because it has a direct impact on their own contract.

What we have seen, Mayor, we have seen city staff present the reports, hire the consultants, hire the attorneys, put together the entire plan on items that impact themselves and you can't expect people not to be thinking in their own interest on that.

I mean, so there's a clear conflict of interest on that.

So when I hear things like "this is the city staff recommendation," there shouldn't be one.

This should be from an outside entity.

This is more personal, too.

I just think there is a conflict that created this problem.

>> Mayor Stanton: I appreciate your perspective on that.

>> S. DiCiccio: Mayor, I'm not done.

I'm not done.

>> Mayor Stanton: Do you have questions?

Because we have questions.

>> S. DiCiccio: We are giving comments, too, Mayor.

>> Mayor Stanton: We will give comments later on.

>> S. DiCiccio: Mayor, let me -- okay. Mayor, you are always cutting me.

I would appreciate you --

>> Mayor Stanton: Councilman, no one talks more than you, my friends.

In this case, I'm asking if you have any questions for staff.

Other Councilmembers have questions, I want to get to them as well.  
You will give plenty of time to give comments.

>> S. DiCiccio: Let me ask a question about conflict of interest, Mayor.  
This is a question of staff.

Is there not a conflict of interest here giving recommendations on things that impact your own income?

>> Mayor Stanton: Obviously that's an impossible question for them to answer.

>> S. DiCiccio: I'm asking staff.

I'm asking the question, Mayor.

And I have the floor.

I'm sorry.

>> Mayor Stanton: I'm chair of this meeting.

I'm chair of the meeting.

>> S. DiCiccio: I'm allowed to ask a question related to something that's real important here.

>> Mayor Stanton: You have asked the question.

And now I'm saying -- I'm directing staff not to answer the question about their own conflict of interest because for obvious reasons, Councilman, they wouldn't have provided the information if they or council believed that there was a legal conflict of interest.

The point is well made.

>> S. DiCiccio: Go ahead.

That's fine.

>> Mayor Stanton: I will direct staff not to answer.

If you have additional questions, that's fine.

>> S. DiCiccio: If staff doesn't want to answer, that's fine.

>> Mayor Stanton: As chair, I'm directing them not to answer that question.

>> S. DiCiccio: As a Councilman, can I not ask that question?

>> Mayor Stanton: You can ask but I'm directing them not to answer.

>> S. DiCiccio: Mayor, you win.

You win the debate.

Go ahead.

>> Mayor Stanton: Are there additional questions of the council?

Councilman Gallego.

>> K. Gallego: Members of this council, we have said we are not comfortable saying this is going to be a cut in compensation if this is approved.

I think we have obligations including our existing contract, we have a collective bargaining process and we have to follow that.

And I would not be comfortable with those cuts, so it is unfair to tell staff to put those in when they are getting different recommendations from different members of this body.

I wanted to ask questions about other costs that weren't included.

The cost of the litigation, we had testimony from several parties that if this were to go forward, they would sue.

Do you estimate the cost of that litigation?

>> City Mgr. Zuercher: Mayor, Councilman Gallego, we did not include estimated costs of litigation in this number and it is impossible to know what it will be. I would just say this.

Two plus years ago the City of San Jose, California passed significant pension reform somewhat similar to this, some of the specifics were different but the idea was there.

City of San Jose is now two years later in the middle of ten separate pieces of litigation and it has cost them \$3 million in expense thus far and it is not resolved and they have not been able to fully implement their pension reform.

So that's one example of another city relatively close to our size that's had something happen.

But we did not include that in the \$358 million number, no.

>> K. Gallego: Did you include the cost of establishing a new system?

>> City Mgr. Zuercher: Mayor, Councilman Gallego, we did not include the cost of that either.

>> K. Gallego: I think that would also be a significant cost.

It seems like you focused mostly on actuarial costs based on contribution level which does have more definition to it than some of these other costs that are really up to policymakers, like ourselves here today.

>> City Mgr. Zuercher: Mayor, Councilman Gallego, Ms. Desiree has an estimate.

>> We looked at our current administrative costs for other deferred compensation plans we have and we expend \$2 million a year in fees that does not include any local costs, actuarial on other costs that are required to establish a new plan.

>> Mayor Stanton: Councilman, any additional questions?

Any other members of this council that have a question?

For professional staff?

Okay.

So the staff has made their recommendation.

It was included in the packet.

I know Councilman -- vice mayor has passed out some proposed language that he would like.

And I don't mean to mischaracterize, but essentially but his language does not include -- I think it tries to track staff reasonably closely recommendation but does not include the impact on city contribution to police officer or firefighter retirement system plans.

The only reason I want to make sure that as the members of the public come forward and provide testimony, that they can focus on anything they want but that may be of particular area of interest to this council in addition to the cost.

Vice mayor, go ahead.

>> J. Waring: To that point, I did provide an alternate -- I don't think it changes too dramatically.

I think it is as crystal clear as I thought the text language was, particularly in the number 9 that I cited.

But I would say I don't think we should be putting things in to the ballot language

when we only have 50 words that are clearly in dispute.  
We have a lawyer right here in Councilman Gates, Harvard educated, saying something else.  
Sorry, after Greta's comment, I had to throw that in.  
But, you know, I guess realistically it is clearly in dispute.  
You say you have got the two points that are crystal clear.  
Right up front, there's something that couldn't be more clear and probably to a lot of legal minds, I'm not a lawyer but I'm sure some lawyers, they would also say it is bulletproof.  
So I don't think we should be putting something in there that's clearly not clear.  
I understand why some people would want to have that in there, but I don't think that's appropriate in this 50 words.  
Mine does take that out among a couple other things.

>> Mayor Stanton:

All right.

I have a question for the city manager.

One more before I throw a motion on the floor.

Obviously I appreciate the time and effort that you put in to getting your analysis as precise as possible based on your professional judgment.

I happen to think we have an outstanding city manager who is unanimously supported by this city council and does a very good job under difficult circumstances.

We ask him to give his best judgment and analysis to this council.

We can choose to reject it.

We can say we have different numbers that we think, but in terms of the professionalism, I want to say thank you for doing that.

I know on this legal decision about the fact that the initiative itself, the language that would go in the charter, is not ambiguous.

There is an issue what we call the preamble or not, how it affects the language itself.

I hope we can agree it is not ambiguous.

I want to ask a separate question.

How would this affect your management of the city if this initiative were to pass?

Can you give your thoughts and analysis as the professional city manager of the city?

>> City Mgr. Zuercher: Thank you, Mayor.

I have spent a lot of time reviewing it and talking with our professional staff and in looking at particularly the experience in San Jose.

Of course, the people have the right to vote and decide.

And I think it is my duty, though, to talk about what I believe the impacts on the organization are.

There is a couple things that I have concerns about.

One is sort of minor but it is something operational I have to deal with. That is, there is an expectation in this language that says it will become operational in 30 days.

And I think an issue there is that to get the I.R.S. to approve any sort of plan the way it's described in here will take much, much more than 30 days.

So that's sort of a technical and financial piece that's important.

We have talked about the impact on labor contracts, particularly the next two years where we do have contracts and agreements that were this to pass, we would have to open that up and renegotiate.

We just concluded a very challenging negotiation as we all have been in this room in the last three months.

I'm worried and concerned about the impacts on our labor relations.

I'm also focused on a cloud of uncertainty around us as an employer.

When people would be seeking to come to the City of Phoenix to work and there would be uncertainty about what our compensation is, that is not something that attracts people here.

And if this passes, it would create -- we would be the only government entity in Arizona with this particular type of retirement system and so we would be at some sort of competitive difference, disadvantage, whatever it is, we would be at a competitive difference with other governments, the hiring uncertainty I have focused on.

Councilman Gallego asked about it.

I look to the experience of San Jose and the fact that they are two-plus years into ten pieces of litigation that has cost them \$3 million.

And beyond the money, it's the time and attention that gets drawn from our ability to manage, operate and provide services to the public that management, council, legal staff are consumed by litigation rather than improving services to the residents of Phoenix.

Just operationally aside from money, those are the things that I would raise as issues that we would have to deal with in the future.

>> Mayor Stanton: Thank you very much to our city manager.

Unless there is any comments, I will throw a motion on the table and see if it gets a second.

I know the vice mayor has a differing one so he may substitute me out and we can deal with that one and have a vote on his proposed language.

I would -- the language that I'm going to propose is very, very similar to what our professional city staff had proposed with some minor changes.

Amend the city charter, eliminate "participation" in the current retirement plan and establish a defined contribution plan for new employees, allow current employees to transfer, prohibit city contributions to any other retirement plan, including deferred compensation plans, post-employment benefit plans, and the police officer and firefighter retirement system.

The intent is to attract our professional city staff recommendation as closely as possible.

There is the addition of instead of police and fire, police officer and firefighter.

The reason why I included that in this proposal is that there are both civilian and non-civilian employees within police and fire.

I wanted to make sure it was clear that the issue about PSPRS and the city's inability to contribute to that retirement plan if this thing were to pass include police officers and firefighters not civilian staff of those departments.

The intent was to create as much clarity as possible relative to those two categories of employees.

Other than that, it tracks very closely with what our professional city staff proposed.

That would be my motion for the proposed ballot language.

Do I have a second?

>> Second.

>> Mayor Stanton: We have a motion.

We have a second.

As I mentioned vice mayor I know has a substitute at that takes away the police and firefighter.

>> J. Waring: I move a substitute motion, Mr. City Clerk.

I gave you all copies so you have it.

Should I read it?

>> T. Williams: Can you please read it.

>> J. Waring: Thelda, I think they were sending you one.

I have got a copy here, Chris.

Thank you.

So these words all count towards the 50.

The changes are not accepted depending how you look at it, taking out the police officer and firefighter retirement system.

There are a couple changes in nuance.

It goes like this.

Amend the city charter, eliminate new employee participation in the current retirement plan established a defined contribution plan for future employees, allow employees to transfer into this plan, allow current employees excuse me to transfer this plan.

Contribution to additional plans for current employees including deferred compensation or post-employment benefit plans.

The rest is the same.

>> Mayor Stanton: That is the substitute motion.

Is there a second on the vice mayor's proposed substitute motion?

>> B. Gates: Second.

>> Mayor Stanton: Are there any questions or comments relative to the proposed substitute motion that would not include to the initiative's impact on city contribution to police officer or firefighter retirement systems?

>> J. Waring: I would just say potential.

It is still in dispute.

>> S. DiCiccio: Mayor?

>> Mayor Stanton: Vice mayor, do you have any additional comments.

>> J. Waring: No.

Go ahead.

>> Mayor Stanton: Councilman Gates.

>> B. Gates: Thank you, Mayor.

First comment I would make obviously we are having a lot of legal -- there are a lot of legal issues in the air and I think that the council might have benefited from the ability to go into executive session at some point today.

But we didn't notice executive session, and I'm not blaming anyone in particular. I didn't ask for it.

I didn't suggest it to anyone.

But I think in the future, when we have a situation like this where we know is dripping with legal issues, we ought to at least reserve the right.

Put it out there, notice it, maybe we don't take advantage of it.

But personally I think it would have been beneficial.

I did second the substitute motion and I will be supporting it for a couple of reasons.

First of all, the first line clarifies where it says "eliminate new employee participation in the current retirement plan."

That clarifies for the voters that this is not pulling our current employees out of the current retirement plan.

I think that's a good clarifying change.

And then for the reasons that I've stated earlier, I think it is a good change to remove the reference to the police and fire retirement system.

Clearly there is a very on how this is going to -- I believe that reasonable minds could come up with different interpretations of whether or not this deals with police and fire and why would we be sort of potentially getting ourselves into litigation with this language.

That's why I would like to see police and fire retirement system removed.

I think that makes a lot of sense because the reality is what we're asking the interpretation that we've heard today, basically ignores the first page and a half of this thing that's called "text to proposed amendment" that will be put in front of the voters.

And so based upon that, I think that it would be in the best interest of the city -- look, however people feel about this initiative, it is going to be on the ballot.

And the only thing we're talking about is what's the best language for the interest of all of us, of the City of Phoenix to avoid as much litigation as possible.

And I personally believe that this substitute motion does that.

Thank you, Mayor.

>> Mayor Stanton: Thank you very much, Councilman Gates.

Other members of the council, comments or questions regarding the substitute motion?

Councilman DiCiccio, please.

>> S. DiCiccio: I have a question.

I would like to ask because it relates to both motions.

This is a question of staff.

Staff, have you reviewed both of these languages, changes?

>> City Mgr. Zuercher: Mayor, Councilman DiCiccio, no, we have not.

>> S. DiCiccio: Okay.

And is there a state law that governs what you can and cannot do with ballot language?

>> Mayor Stanton: Councilman DiCiccio, I think counsel is trying to pull it up as quickly as possible to provide it to the city manager.

>> S. DiCiccio: Pardon me.

There is state law.

There is an A.R.S. law.

>> Mayor Stanton: He's providing it to our city manager.

Just a moment.

>> City Mgr. Zuercher: Thank you, Mayor, Councilman DiCiccio.

Yes, it is A.R.S. 19-125 [d]

>> S. DiCiccio: And do both of these language changes meet that requirement?

>> City Mgr. Zuercher: I'm not a lawyer.

I don't play one on TV either.

Let me just ask Mr. Stockard.

>> S. DiCiccio: Mr. City manager.

I did not go to an Ivy league school.

I went to ASU and I know I'm not that smart.

>> City Mgr. Zuercher: I went to Kansas.

So I'm with you.

>> S. DiCiccio: I went to one of those schools.

I'm asking the question.

>> City Mgr. Zuercher: Mayor, Councilman DiCiccio --

>> S. DiCiccio: Go ahead.

>> City Mgr. Zuercher: I'm sorry.

Mayor, Councilman DiCiccio, I think our best answer there is the council has the authority to refer language to the ballot.

There is guiding state law which has got case law behind it and it talks about a descriptive title containing a summary of the principal provisions of the measure, not to exceed 50 words, stating essential change in existing law.

>> S. DiCiccio: Right.

But there's also -- go ahead.

I'm sorry.

Go ahead.

>> City Mgr. Zuercher: That's it.

>> Mayor Stanton: I think they are done, Councilman.

Do you have anything else, please?

>> S. DiCiccio: No.

Do any of these proposals meet the requirement of the law?

>> Mayor Stanton: The question is to the best of your ability without violating attorney-client privilege, does it meet the requirements of state statute?

>> S. DiCiccio: Either one.

>> City Mgr. Zuercher: I can't provide a legal opinion on that.

>> S. DiCiccio: Mayor, I'm going to be voting against both proposals. I just think it is a wrong thing for us to be doing right now. I mean, I just -- I can understand. I don't believe that the initiative at all includes police or fire at all. As a matter of fact, there was even a comment I think in the "Arizona Republic" from the fire union head saying it doesn't impact them and has nothing to do with them either. So I don't believe they think it impacts them. So I don't know if there needs to be any more clarification than that. This is one of those things that has to go forward as it is. I mean, it was written by a third party, a neutral third party on this. And I think that any changes at the last minute without a proper legal review -- and I think what Councilman Gates said was exactly correct, there should have been an eSession on this thing. It is kind of bizarre that there wasn't. Generally on something this big that there is. And everybody's been planning these changes for a while because you just don't write them overnight. So there should have been at least a legal presence from city staff somewhere somehow giving some guidance as to whether or not this should be moving forward. I understand why people want clarification on it. But I don't think that it does the taxpayers any good. It sets a very bad precedent. We have never done this before. The city has never changed at the last minute at all. The city has also never done anything else before. I mean, I have never seen as a matter of fact in our history, I have never seen two citizen-driven initiatives moving forward, one on pension and then we are starting to see one on police because this city council and Mayor and city council refuses to deal with these large issues. So the citizens are taking this into their own hands. So there has been unchartered territory throughout the city. I think it is just a bad idea, and I would recommend the council just vote all that language down and move forward with the language that was recommended by the neutral third party, even though I don't always agree with it, but I think it sets in place a very bad precedent. Thank you, Mayor.

>> Mayor Stanton: Thank you, Councilman. I just want to make sure it is clear my motion makes only two changes and that is change police and fire retirement system to police officer and firefighter retirement system and the point was to clarify in case there was any confusion between civilian and non-civilian employees in the department. I don't want to speak for the city manager.

I think his intent was to track staff language as closely as possible but to take away the reference to the impact of the initiative on police officer and firefighter retirements.

>> S. DiCiccio: Mayor, I understand that and I appreciate that.

The bottom line is you are still making changes and this is done in a non-transparent way.

It is being done without any real public debate other than what's occurring here today.

It wasn't done.

No one has seen any of this language until today.

No one saw it.

No one in the public saw it.

No one has had a chance to digest it.

No one has been able to look at this legally.

I understand the fact that everyone is trying to wish something to occur.

You can't just wish it.

That's what the neutral third party was about.

And I don't agree with them.

I think it is great that people are trying to take police and fire out of the language part.

But at the end of the day, it is the language in the initiative and the preamble that's on the ballot that will matter.

This only changes and puts in place something may or may not be true.

I don't think it is fair to the public.

>> Mayor Stanton: Thank you very much, Councilman.

I want to point out for the public that the proposed professional staff language that they recommended was available last week and obviously significant media coverage in advance of this meeting so in terms of the advantage itself, I think it is a mischaracterization that it was sprung on the last minute.

Vice mayor?

>> J. Waring: As you said, I don't think I'm changing anything fundamentally other than dropping police and firefighter.

This is not the first time that has come up.

Why take issue with Councilman DiCiccio's -- his legal interpretation of state law that I'm not looking at it.

So may be subject to interpretation.

But I guess bottom line I can't vote for the staff language because it includes police and fire.

I don't think that's doing the best effort to correctly inform the public because I don't believe that's actually affected.

I think we only have 50 words.

If any of the three proposals don't feel like they are spot on, you got to do it in 50 words which isn't that easy when you are dealing with complex items that deal with a few different things.

I tried to make sure that this was crystal clear.

We didn't change anything in the staff language except dropping the police and fire part and making a few other -- using those few words to sort of clarify some of the other stuff.

If I was doing an entirely different proposal, then I would have released earlier.

Point taken.

I can't vote for the other one.

I wanted to be a guy that proposes an alternative and not someone who criticizes and doesn't have their own ideas.

I tried to put something out there.

Council can take it or leave it.

But at least we will have this discussion.

Appreciate your thoughts.

Thank you.

>> S. DiCiccio: Mayor, it wasn't meant to be anything either in that direction, Jim.

I think both proposals make changes.

That's where I'm having difficulty.

I don't believe there should be any changes to the recommendations at all.

Not even one word.

>> Mayor Stanton: All right.

Councilman Gates.

>> B. Gates: Thank you, Mayor.

I guess for me -- what's the question for staff?

What's the drop-dead date that we have to agree on the ballot language on this initiative?

>> City Mgr. Zuercher: Looking to the city clerk, we must have something to the county no later than July 15th.

>> B. Gates: Okay.

I understand this is our last meeting before we go on council break.

But if there are issues here about having the opportunity to review things, I think we ought to take the time.

If we need time to review things, I'd rather do that than pass something that we don't think is right.

>> S. DiCiccio: Me too.

>> B. Gates: I guess -- I must be missing something.

And specifically -- this is exactly my point before.

I think what I'm picking up on is an allegation -- that's too strong a word.

I think Councilman DiCiccio is raising good questions about A.R.S. 19-125 [d].

I would love to have the opportunity to ask our legal council if he agrees with that.

I can't do that right now because we don't have a eSession noticed.

So I guess I feel like -- I don't know what the rush is to move.

Fair questions are being raised.

And I don't think we should just pass something because we think these other two that might be better, some people might think but we haven't had the opportunity to get legal counsel on it.

>> Mayor Stanton: Just to make sure it is clear, legal counsel has reviewed the

staff-proposed language.

Obviously he can't speak here today.

This council obviously has a eSession on the legal analysis of the initiative itself previously.

But in terms of the language that our city manager has proposed here today, it wouldn't have come to this council if it hadn't been reviewed by legal council in advance.

The only change I'm proposing is police to police officer and fire to firefighter retirement system and I think the intent of the vice mayor is simply to track staff language but eliminate the reference to police officer and firefighter retirement system.

Other comments or questions from members of this council?

I'm going to take -- the motion is a substitute motion.

Councilman Williams, are you still there?

>> T. Williams: I'm still here.

>> Mayor Stanton: The motion is Councilman Waring's substitute motion which tracks professional staff but eliminates any reference to police and fire retirement system.

I will not be supporting the motion.

Obviously I made the underlying motion for the reasons stated earlier.

Vice mayor?

>> S. DiCiccio: Mayor?

>> J. Waring: I have a question for Councilman Gates.

Are you suggesting we hold this item and have another meeting?

Because I think I would be okay with that.

>> B. Gates: I'm suggesting that if folks are going to vote for a measure that they don't think is as good as it could be and as accurate as it could be, that's not a good result.

And, instead, if people feel on this council they need to get legal advice with respect to both these -- both the motion on the table and the substitute motion, we ought to do that.

This is too important to move forward so we can all go on break.

>> S. DiCiccio: Mayor?

>> Mayor Stanton: Vice mayor had a question.

>> J. Waring: A procedural thing.

We are at the point we have a motion, substitute motion.

If, not saying everybody would, how would we work that back and would we have another meeting?

I assume we can, but ...

>> Mayor, vice mayor, because under the council rules you can only have one amendment which is yours, at this point you need to go ahead and move forward with the vote on that.

If you wish to come back for another meeting, then you would have to essentially vote both of them down and then so move.

>> J. Waring: Let me ask it this way, if my substitute fails, that's it, there's no

further motions.

Somebody can't make a withdrawal or anything else after that.

>> Mayor, vice mayor, that's correct.

In other words, under council rules, you can only amend the original motion once and your motion is that amendment.

So you could not amend it further.

>> J. Waring: So if mine failed, Mayor Stanton's motion passes, somebody -- but if there is a complaint about transparency, very sensitive to that and understand Sal's concerns, so I guess someone there could ask for reconsideration at which point would we have to have another meeting scheduled to do that, in advance of that?

>> Clerk: Mayor, Vice Mayor, yes, the council could seek a reconsideration that a special meeting can be called by the Mayor or three members of this council.

>> J. Waring: Thank you.

I wanted to make sure it is all even possible.

So thanks.

>> Mayor Stanton: Any other questions?

>> S. DiCiccio: Mayor?

>> Mayor Stanton: Go ahead.

>> S. DiCiccio: Just a couple quick things ta.

Both motions do make changes and I would like to know what's legal.

I think what Councilman Gates is talking about.

Why rush it?

Let's continue it because both motions on the tables are making changes that we haven't all completely reviewed.

I understand why we want to do it.

We want to keep police and fire out of it.

I totally agree with that.

But until there is a real foundation on it, we can't just say I'm only doing -- I mean, any one word change could change the significance of the entire language.

It doesn't have to be three words.

It could be one word that would make that change.

I don't know why we don't continue this and bring it forward in a week or less.

I mean, we've got until next week.

We can have another debate on this thing.

We can talk to staff about it.

It doesn't mean it has to be done today.

>> Mayor Stanton: Okay.

>> S. DiCiccio: I'm sorry.

>> Mayor Stanton: Thank you very much.

>> S. DiCiccio: The procedural part of it -- I want to ask staff if I could, if someone does ask for a reconsideration or three members -- I mean, I would be one of those three members that would ask for a special meeting.

I'm putting it out there if anybody wants to use that if they both go through or they both fail, I will be one of the three asking for a special meeting.

I don't have a problem with that.

As a matter of fact, I would agree with it.

So if someone does ask for a reconsideration and you can't get the Councilmembers to meet, let's say, for whatever reason, you don't get your quorum of five -- you have to get five to pass it.

It doesn't -- it is not just a simple majority.

Is that correct, staff?

You need five to pass it, is that correct?

>> Mayor, Councilman DiCiccio, yes.

You need a majority vote which would be five.

>> S. DiCiccio: What happens then if you don't have the five to get anything passed before the July 13th date?

What happens then?

We're breaking the law because by law we have to have it there?

>> Mayor, Councilman DiCiccio, if there is not five votes, then any motion would fail.

And so at this point, either the council would need to adopt proposed ballot language on or before July 15th.

If they do not, then there's other remedies that could be made.

>> S. DiCiccio: What would be the other remedies?

>> Well, the other remedies would be that certain legal action could be taken to force -- it is basically a writ of mandamus that language be placed.

That's one remedy.

>> S. DiCiccio: I got it.

It could be from the outside would have to force the council to act.

What happens if the language, if someone doesn't like the language, they could take it to court and then that ties it up and then what happens if the court says your language is not correct, what happens then?

>> Mayor, Councilman DiCiccio, of course, there's always -- under election law, any person could bring a special action.

And under state law, there is an expedited process to hear that because it is an election matter.

>> S. DiCiccio: Okay.

All right.

Again, I don't know enough about the legal stuff.

I'm just asking these questions because I am an ASU sun devil.

Thanks a lot, Mayor.

>> Mayor Stanton: Thank you very much.

We have right now the substitute motion, Councilman Waring's substitute motion that eliminates reference to the impact on police officer and firefighter retirement system.

Vice mayor, last question.

Then we vote.

>> J. Waring: So we cannot -- we cannot continue this at this point.

>> Mayor, vice mayor, no you cannot.

At this point, the council needs to vote on the substitute motion, the amendment. If that fails, then there would be a vote on the Mayor's original motion. If that fails, then at that point, the council could continue this matter because there's no pending motion.

But as it sits now, under council rules, would be to vote on the vice mayor's substitute motion and then the Mayor's motion.

That's as it sits now.

>> S. DiCiccio: Jim could change his motion.

>> Mayor Stanton: All right.

So the question is whether the vice mayor can change his motion now to something other than a substitute -- he can withdraw it, I'm assuming, I don't think he can change it.

>> Mayor, vice mayor, at this point, your amendment received a second and so you could not change it to another motion at this point.

It would need to be --

>> J. Waring: I can't change it and we can't continue it.

>> S. DiCiccio: Sure you can, if the second agrees to it.

>> J. Waring: Tell me what the rules are.

That's all I want to know.

>> Mayor, vice mayor, if you -- if the second agrees to change the amendment essentially and you want to change it at this point, you can do that.

>> S. DiCiccio: There you go.

>> Mayor Stanton: Okay.

So we have the motion from the vice mayor, we have a second.

Councilman Gates, do you have another question?

>> B. Gates: I have a point of order.

With respect to once we get beyond the substitute motion, make sure I understand what the city attorney is saying.

We're required to take a vote on the Mayor's motion?

>> City Atty.: Yes.

>> B. Gates: Why?

>> City Atty.: Excuse me, Councilman Gates, the rule as it is stated under the council rules is once the original motion has been amended, then there is a vote on the main motion if that amendment fails.

That's the council rule.

It is basically council rule 5.

Council rule 5E says no more than one amendment to a motion shall be permitted when an amendment to a motion has been made and seconded, the next vote shall be on that motion to amend.

If the motion to amend fails, the original motion remains on the floor and shall be voted on.

>> B. Gates: But it means that -- well, I would argue that that means that then the original motion is now to be decided upon.

But if there was a -- I guess -- as long as the maker of the motion and the second -- okay.

That's fine.

We're trying to -- this is a serious matter, so we want to take the time to walk through this.

I think that's what you would all want us to do.

>> Mayor Stanton: The issue is if we are going to vote today or set up a special meeting and vote on another day.

It is my strong belief that the motion I made, the underlying motion, is the staff recommendation with simple clarifying language from police to police officer and from fire to firefighter and so should be voted on today.

It has been out there.

There has been media articles written about it.

The public is well aware of the issue being voted on.

It is my belief we should vote today.

First we have to vote on the vice mayor's substitute motion.

I will try again.

The substitute motion is Councilman Waring -- vice mayor's motion does not refer to police or firefighter systems.

A yes vote supports the substitute motion.

And a no vote would then revert back to my vote on my motion.

Roll-call.

>> Clerk: DiCiccio.

>> S. DiCiccio: No.

>> Clerk: Gallego.

>> K. Gallego: No.

>> Clerk: Gates.

>> B. Gates: Yes.

>> Clerk: Nowakowski.

>> M. Nowakowski: No.

>> Clerk: Pastor.

>> L. Pastor: No.

>> Clerk: Valenzuela.

>> D. Valenzuela: No.

>> Clerk: Williams.

>> T. Williams: No.

>> Clerk: Waring.

>> J. Waring: Yes.

>> Clerk: Mayor Stanton.

>> Mayor Stanton: No.

I got confused there.

So the motion fails 7-2.

Now we're going to go to my motion that was seconded by Councilman Valenzuela.

I respect the fact there was a desire by some to have a further executive session and a special meeting of this city council to analyze the difference between police to police officer and fire to firefighter.

I respectfully disagree and suggest those are simply clarifying minor changes and that the staff has put out there is what's out there, obviously approved by legal counsel.

So let's have a motion --

>> T. Williams: Mayor?

>> Mayor Stanton: Councilman Williams.

>> T. Williams: I want to ask a question from staff and maybe from legal because I felt all along that the public needs to be aware of potential cost issues to the taxpayers, why that was not included in staff's recommendation.

I understand yours is simplification and more of a definition.

But it goes back to staff's recommendation, if you could have the city manager explain why there is no dollar value placed on this, I would appreciate it.

>> City Mgr. Zuercher: Thank you.

Mayor and Councilman Williams, our advice about the state law is to we are to provide a short, clear accurate statement of what the law does.

So the language that we have really focused on that piece and focused on what we our analysis of the law says it does.

In that regard, it does not include cost.

>> T. Williams: The lawyer doesn't care how much it costs.

It is just talking about the impact of what would happen.

>> City Mgr. Zuercher: That's one way to say it, yes.

>> T. Williams: Okay.

Thank you.

>> Mayor Stanton: Thank you very much, Councilman.

Thank you for your patience.

I know you are out of town today and been participating via phone.

All right.

So the motion is what I read and passed out to members of the council.

We have a second.

>> S. DiCiccio: Mayor?

>> Mayor Stanton: Councilman, please.

>> S. DiCiccio: I think any changes without a thorough public review and scrutiny for transparency, there are no minor changes on this.

Our legal staff hasn't even had an opportunity to look at it.

As a matter of fact, the council -- we didn't even see it until just now.

So nobody has seen the changes.

Granted you may think they are small but they may not at the end of the day be small issues.

So I think that's problematic to make any changes beyond what a neutral third party agreed should be the language.

It is a slippery slope for the City of Phoenix, and it does not put in place credibility in our electoral process because you may think it is small now.

It may be large later.

It doesn't matter.

What matters is that the public expects the high level of integrity and any

changes need to be done through a process that is transparent and open to the public.

I will be voting against it, Mayor.

>> Mayor Stanton: Thank you very much, Councilman.

Councilman Nowakowski.

>> M. Nowakowski: Just some clarifications.

Your changes are what exactly?

>> Mayor Stanton: It uses the phrase "police and fire retirement system" and the change is police officer and firefighter retirement system.

>> M. Nowakowski: The reason being that includes all, not just sworn officers but also employees that work --

>> Mayor Stanton: The key issue there is that PSPRS only involves sworn employees of those departments.

Unsworn are in the COPR system.

So it was an intent to make it clear that the city's -- the language in the initiative that would no longer allow the city to put money into the PSPRS is for firefighters and police officers, not other employees of those departments.

Thank you, Mayor.

>> Clerk: DiCiccio.

>> S. DiCiccio: No.

>> Clerk: Gallego.

>> K. Gallego: Yes.

>> Clerk: Gates.

>> B. Gates: No.

>> Clerk: Nowakowski.

>> M. Nowakowski: Yes.

>> Clerk: Pastor.

>> L. Pastor: Yes.

>> Clerk: Valenzuela.

>> D. Valenzuela: Yes.

>> Clerk: Williams.

>> T. Williams: Yes.

>> Clerk: Waring.

>> J. Waring: No.

>> Clerk: Mayor Stanton.

>> Mayor Stanton: Yes.

>> Mayor Stanton: That items passes on a 6-3 vote.

Thank you, everyone,  
for your patience.