



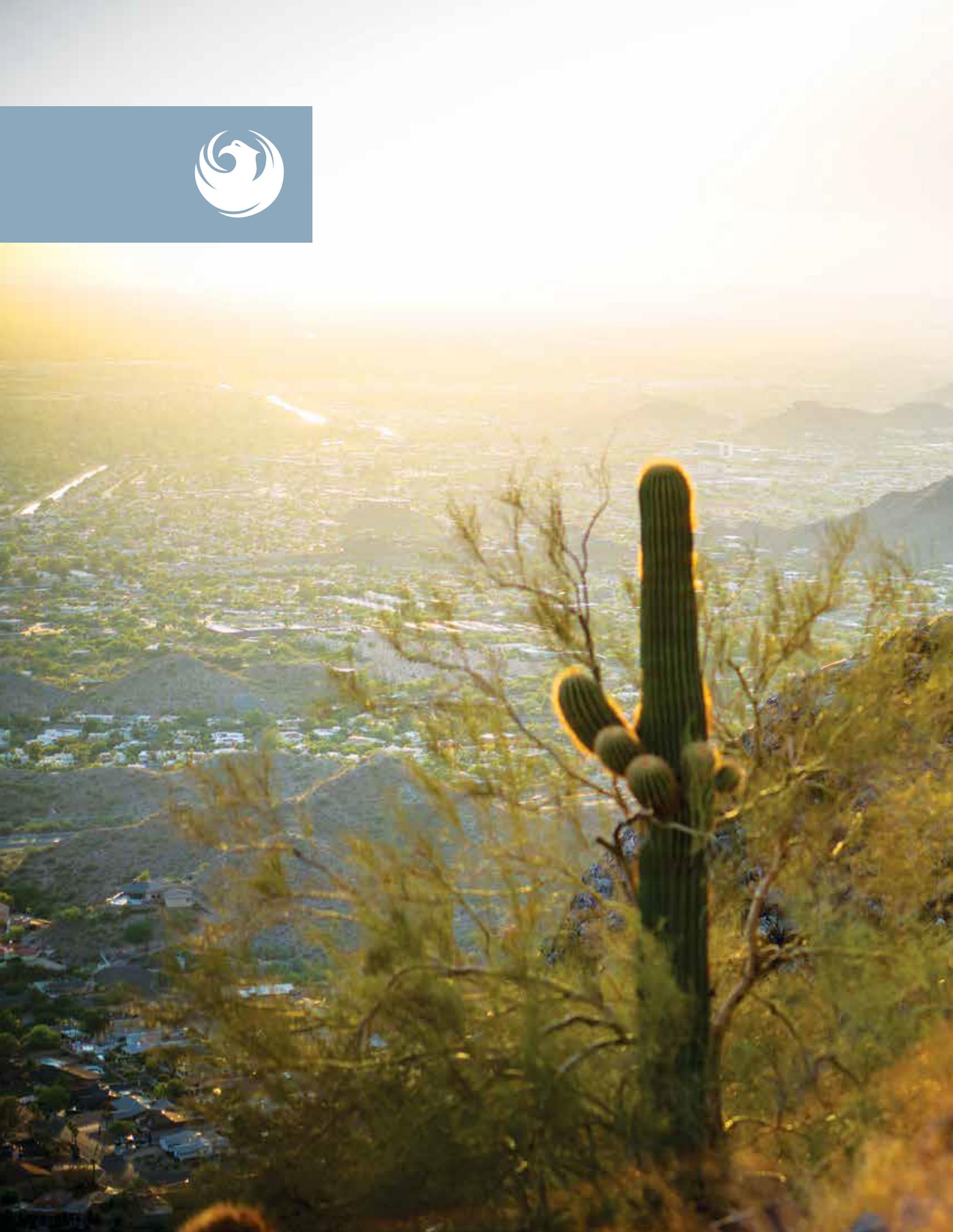
CITY OF PHOENIX

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# BOARDS & COMMISSIONS

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ETHICS HANDBOOK





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# Section I: Introduction and Overview

## A. How to Use This Handbook

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City of Phoenix board, commission, committee, and task force members (collectively referred to as “board members” throughout this handbook) must comply with City of Phoenix ethics policies and laws. Although this handbook is intended as a comprehensive resource, existing laws and policies may change and new laws may be adopted that are not reflected in this handbook. This handbook does not constitute legal advice. Instead, it serves as general guidance to help individual board members comply with ethics laws and policies. Specific legal consequences hinge on how the law or policy applies to circumstances. Board members are encouraged to seek guidance to help comply with applicable ethics policies and laws. For additional general information and guidance, board members should contact their board or commission liaison or refer to the ethics hotline.

## B. Why Ethics Matter

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Public trust in the City is built on the conduct of elected officials, employees, board members, and volunteers. Only when residents have confidence that their City elected officials, employees, board members, and volunteers will act fairly and honestly, can democratic government function properly. Therefore, it is imperative that all in public service perform their duties with the highest standards of personal integrity, fairness, and honesty, and never use their City position for improper personal gain.

## C. Sources and Enforcement of City of Phoenix Ethics Policies and Laws

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Although City ethics policies and laws are derived from several sources and standards, three significant policies and laws establish City ethics standards:

1. The City of Phoenix Ethics Policy, Phoenix City Code Section 2-52;
2. The City of Phoenix Gift Policy, also found in Phoenix City Code Section 2-52; and
3. Arizona law for conflicts of interest as adopted by Phoenix City Charter Chapter XI and found in Arizona Revised Statutes Title 38, Chapter 3, Article 8.

Violations of these ethics policies and laws by elected officials and board members are enforced through the City of Phoenix Ethics Commission. Violations of these ethics policies and laws by employees and volunteers are enforced through the City Manager. Although each of these policies and laws are generally uniform as applied to all in public service, some differences exist, and therefore, elected officials, employees, board members, and volunteers should look to guidance that applies to their specific public duty and role.

# **Section II: Applicable Ethics Policies and Laws**

## A. Definitions for City of Phoenix Ethics and Gift Policies

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The following definitions apply to this Section. The plural of the word or phrase includes the singular, and the singular includes the plural.

1. **“Board Member”** means a member, or the person’s relative or partner, of a City of Phoenix board, committee, commission, or task force.
2. **“City Business”** means an activity or enterprise for gain, benefit, advantage, or livelihood with a public entity, a research organization, a regulatory body, a business association, or a professional association, whose primary purpose relates to research, rulemaking, development, best practices, or regulations that affect or relate to the City of Phoenix.
3. **“Community Event”** means an event, activity, or function located in Arizona and sponsored by the City of Phoenix, a non-profit organization, a professional association, a business association, a charitable organization, a cultural/arts organization, or a community organization.
4. **“Compensation”** means money, a tangible thing of value, or a financial benefit.
5. **“Elected Official”** means a person, or the person’s relative or partner, elected or appointed as mayor or as council member of the City of Phoenix.
6. **“Employee”** means a person, or the person’s relative or partner, who is not an elected official, board member, volunteer, or City of Phoenix Municipal Court Judge, and who is employed full-time or part-time by the City of Phoenix.
7. **“Gift”** means direct or indirect compensation, other than as provided by law, for services, duties, or responsibilities rendered or to be rendered by a person in their capacity as an elected official, employee, board member, or volunteer.

**Gift does not mean:**

- a. Compensation received by an elected official, board member, or volunteer as part of the person’s employment outside of the City of Phoenix or as part of the person’s service as a member of a board of directors for a corporation or other elective office, and which compensation is unrelated to the person’s position or office as an elected official, board member, or volunteer; or
- b. A political campaign contribution as permitted by law; or
- c. Compensation received by an elected official, employee, board member, or volunteer from the person’s relative or partner; or
- d. Compensation in the form of a personalized plaque or similar personalized award received by an elected official, employee, board member, or volunteer for the person’s service to the City of Phoenix consistent with the duties and responsibilities of the person’s position or office; or
- e. Compensation in the form of admission, food, beverages, transportation, or accommodations received by an elected official or employee in the capacity as a City of Phoenix representative and related to City business; or
- f. Compensation associated with a relative’s or partner’s elective office; or
- g. Compensation in the form of admission, food, or beverages received by an elected official, employee, board member, or volunteer to attend a community event.

8. **“Partner”** means a person in a domestic partnership as defined in Phoenix City Code Sec. 18-401.
9. **“Relative”** means the spouse, child, grandchild, parent, grandparent, brother or sister of the whole or half blood and their spouse, and the parent, brother, sister, or child of a spouse as defined in Phoenix City Code Section 2-52(A).
10. **“Special occasion”** means an engagement or wedding involving a relative, partner, or relative of a partner, the birth or adoption of a child, or the death of a relative, partner, or relative of a partner.
11. **“Volunteer”** means a person, or the person’s relative or partner, other than a board member who provides their services to the City of phoenix without any express or implied promise of compensation, and serves as a hearing officer, intern, extern, contractor, vendor, or otherwise serves in the administrative offices of an elected official, the City Manager, or a City of Phoenix department or function head. A block watch captain is not a volunteer for purposes of the gift policy.

## B. City of Phoenix Ethics Policy

It is the policy of the City of Phoenix to uphold, promote, and demand the highest standards of ethics from all of its elected officials, employees, board members, and volunteers. Accordingly, all City of Phoenix elected officials, employees, board members, and volunteers must 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 power for improper personal gain.

**Comment:** The proper operation of municipal government requires that all board members remain independent, impartial, and responsible only to the public. Board members hold office for the public’s benefit, and must uphold the United States and Arizona Constitutions, and the laws of the State of Arizona and the City of Phoenix. In official acts, board members are bound to observe the highest standards of integrity, and discharge faithfully the duties of their office or position, regardless of personal considerations, recognizing that the public interest must be their primary concern. Democratic government can function properly only when the citizenry has confidence in how its government is run.

## C. City of Phoenix Gift Policy

A gift in any amount received by a board member is prohibited if the gift creates the appearance of undue influence, or if the gift creates a conflict of interest under Phoenix City Charter Chapter XI, Section 1 (Title 38, Chapter 3, Article 8, Arizona Revised Statutes).

A gift received by a board member, regardless of value, is permissible if the gift is not otherwise prohibited by law. Board members are not required to disclose gifts unless they are also employees.

**Comment:** Board members should not accept any gifts (monetary or otherwise, such as a service, loan, thing or promise), gratuities, or favors from anyone other than the City for the performance of acts within the regular course of official duties. Board members should refuse any gifts or favors that reasonably may be interpreted to be offered to influence a municipal decision. Compensation for performing public duty as a board member is generally limited to the personal satisfaction that board members may derive from doing a good job. While board members are the first to decide whether to accept any gift, board members must recognize that others will decide

if there is any appearance of undue influence for the board member's acceptance of the gifts. Finally, board members should be wary of accepting any gifts or benefits from individuals doing business with the City or whose financial interests are affected by City action.

**Special Occasion Waiver.** Board members may seek a waiver from the Ethics Commission to accept a gift that recognizes the special occasions listed in Section II(A)(10) but may otherwise violate the City's ethics or gift policies. If the special occasion gift waiver is approved by the Ethics Commission, the board member must file the waiver form with the City Clerk no later than 30 days after the close of the quarter in which the waiver is granted.

**Comment:** Board members are not required to obtain a waiver to accept normal and customary gifts such as flowers, food, or donations to charitable organizations made by others that recognize the special occasions listed in Section II(A)(10).

## 1. Gift Examples.

Because of the size and complexity of the City, it is impossible to list every circumstance that may occur to determine if a gift is permissible. Generally, several factors apply to determine if a gift creates the appearance of undue influence:

- the source of the gift;
- the setting in which the gift is received; and
- the motive for the gift.

For example, a gift from a source such as a vendor that does business, has contracts, or is regulated by the City is of greater concern than a gift from an entity with little or no relationship to the City.

The setting in which a gift is received may also affect the appearance of undue influence. For example, a board member's acceptance of a one-on-one dinner with a City vendor who

has business before the Board is perceived differently than the board member's acceptance of a dinner at no cost as part of a conference presented by the vendor in a group setting.

Finally, the motive for a gift is an important consideration. Motive can be determined by circumstances such as custom or prior established personal relationships. For example, a gift received by a board member at an occasion, such as a wedding involving a friend, when such gifts are customary, is less likely to create the appearance of undue influence.

The following examples apply to board members, their relatives, and their partners.

### a. Holiday Gifts from Persons with Business before the Board

Board members should not accept a gift from a contractor, consultant, vendor, person, or entity regulated by the City or who has or will soon have business before the board. Examples of such gifts include cookies, bouquets, candy, alcohol, money (in any form), gift certificates, or gift cards. A greeting card is not a gift and may be kept by a board member who receives it. Gifts such as cookies, snacks, or candy may be accepted by a board member from a person or entity who does not currently have or will not soon have any business before the board if the gift is made available to all members to share.

### b. Tickets or Entrance to Entertainment, Sports/Athletic, or Cultural Events from Persons with Business before the Board

Board members should not accept or keep any other entertainment, sports/athletic, or cultural event tickets under any circumstances from a person who has or soon will have business before the board. Additionally, board members may not accept tickets to entertainment, sports/athletic, or cultural events despite a charitable donation made by the board member for the value of the tickets.

**c. Meals and Refreshments**

Board members should avoid accepting offers of food or refreshment where it creates the appearance of undue influence or if it creates a conflict of interest. For example, a board member should not accept the gift of a one-on-one meal with a consultant who has pending business before the board, or reasonably will soon have business before the board.

Board members may, however, accept meals or refreshments at an event to celebrate the completion of a project or where the meals and refreshments are generally available to all persons attending the event.

**d. Admission, Food, Beverages to Attend Community Events; Incidental Items**

Board members may attend and consume food and beverages offered at community events as part of their responsibilities and duties. Board members are not required to disclose the amount for admission, food, and beverages offered at community events. Board members may also accept incidental items received at community events such as a coffee mug, t-shirt, or pen, when the reasonable estimated fair market value is \$50 or less.

**e. City-sponsored Events**

Board members may attend and consume food and beverages offered at City-sponsored events such as the annual Martin Luther King Jr. breakfast and the Mayor's State of the City speech.

**f. Board Members' Participation in Conferences, Events, or Activities Involving City Business; Incidental Items**

Board members may accept admission, food, beverages, transportation, and accommodations as a guest of another person or organization when the board member serves as a City representative

at a conference, event, or activity related to City business. These amounts do not require disclosure. Board members may accept incidental items such as coffee mugs, t-shirts, or pens, whose reasonable estimated fair market value is \$50 or less.

**g. Attending a Business Conference as a Board Member While Also a City Employee**

Employees who attend conferences for City business because they are a member of a City-affiliated board (e.g., COPERS, PEHP/DCP) must comply with the rules for gifts and disclosures that apply to both employees and board members.

**D. Conflicts of Interest****1. Conflicts of Interest.**

The City has adopted Arizona's conflict of interest laws under Phoenix City Charter, Chapter XI, Section 1. The full text of these statutes appears in Appendix A.

**Comment:** Board members must be constantly on guard against conflicts of interest. In short, board members should not participate in a decision or contract that may result in a direct or indirect monetary benefit to the board member or the board member's relative or partner.

**2. Declaring a Conflict of Interest**

If a board member determines the member has a conflict of interest on a matter before the board, the member should work with the board's liaison and the board chairperson to file a conflict form with the City Clerk, declare the conflict on the record at the board meeting, and refrain from voting or otherwise participating in the matter. See, Arizona Revised Statutes, Section 38-503(A) (reprinted at Appendix A).

### 3. Examples–Conflict of Interest

The following examples help give board members an idea how Arizona’s conflict of interest laws apply. Each situation will be decided on the unique facts and circumstances involved. The goal of these examples—and indeed this entire handbook—is to help develop greater sensitivity to ethical considerations. **If a board member is in doubt of what should be done, opt not to participate.** All examples assume the matter will come before the board for consideration and apply to the board member’s relative or partner as well as the board member.

#### a. Owns Property in Close Proximity

The board member owns property in close proximity to property subject to board’s approval of a zoning or license application that may affect the value of the board member’s property. It is important to note, however, particularly in zoning cases that the unique aspects of one property in one case may not impact the decision involving the property in another even if the two properties are in close proximity. Whether a conflict of interest exists in a given situation will therefore involve a case-by-case analysis of the facts.

#### b. Worked Previously for Firm

The board member has done work in the past for a firm that seeks a City contract and the board member anticipates doing further work for the firm in the future. A potential conflict exists regardless of whether the work involves the matter that is the subject of the contract. (However, mere past association does not of itself constitute a conflict if the business relationship is not a continuing one.)

#### c. Corporate Officer of Competitor

The board member is an officer of a corporation that operates a chain of stores. An application by a competitor seeks zoning approval for a store within the service area of one of the stores owned by the board member’s corporation.

#### d. Developer

The board member is a developer who files an application for approval of a project. Not only must the board member declare a conflict and disqualify oneself from consideration of the application, the board member also may not participate in any manner.

#### e. Realtor Listing Agreement

The board member is a realtor who has had discussions concerning a listing agreement with an owner of a property that is the subject of a zoning application. If the board member wishes to pursue the agreement, the board member should declare the conflict and refrain from considering the application. If the board member participated in consideration of the matter, the board member should not later enter the listing agreement.

#### f. Owner of Regulated Business

A proposed amendment to the City Code seeks to regulate a specific type of business activity. The board member has an exclusive or specific right to conduct the activity in the City.

#### g. Property Uniquely Affected by Land Use Plan

The board member has an interest in property that will be uniquely affected by a proposed land use plan, and the adoption of the plan may affect the value of the property (e.g., the plan confers special benefits on the property that are not applied to other similarly situated properties).

#### h. Contract of Close Relative

The close relative of a board member is in business with a person whose application or contract is being considered by the board.

#### i. Source of More Than 5% Income

The board member receives more than 5% of the member’s total annual income from a corporation that has an application or a contract pending before the board.

- j. Seeks a Contract with the City**  
Board member is prohibited from contracting with the City unless the contract is awarded through competitive bidding. The board member must declare the conflict and refrain from participating in the decision to award the contract.
- k. Employee of Organization Receiving Funds**  
The board member is a paid employee of an organization that receives funds appropriated by the board, including federal and State funds administered by the City.

#### 4. Examples—No Conflict of Interest Exists

The following are illustrative examples of situations that do not constitute violations of the conflict of interest laws. Again, all examples assume that the board will review the matter in question and apply to a relative or partner as well as the board member.

- a. Trade Association Member**  
The board member is a member of a trade association that has applied for an amendment to the City Code presented to the board for decision.
- b. Owns Property Within Area of Land Use Plan**  
The board member owns a property in an area that is part of a proposed land-use plan presented to the board for decision (unless that plan would uniquely affect the board member's property).
- c. Nonsalaried Corporate Officer**  
The board member is the nonsalaried officer of a nonprofit corporation that has an application presented to the board for decision.
- d. Tenant of Property Owner**  
The board member is a tenant of a property owner who seeks a City

contract (unless the contract affects the monetary or property interests of the board member).

- e. Attorney for Property Owner**  
The board member is the attorney for a contracting party (if the board member's legal representation does not include the contract).
- f. Owns Less Than 3% Corporation's Shares**  
The board member owns less than 3% of the shares of a corporation that has an application under consideration by the board. The board member does not have a conflict if the total annual income from dividends, including the value of stock dividends from the corporation, does not exceed 5% of the total annual income of the board member and any other payments made to the member by the corporation do not exceed 5% of the member's total annual income.
- g. Advocate for or Against Matter**  
The board member is an advocate for or against a matter before the board and has publicly stated the member will or will not support the matter (unless the matter will affect the monetary or property interest of the board member).

#### 5. Contracts with the City

Arizona law prohibits any board member who has "a substantial interest in any contract, sale, purchase, or service to such public agency" from participating in any way with the transaction. See Arizona Revised Statutes Section 38-503(A) (reprinted in Appendix A). Also, Arizona law flatly prohibits anyone who officially represents the City from providing certain goods and services to the City without competitive bidding. See Arizona Revised Statutes, Section 38-503(C). Two other statutes prohibit the personal involvement of municipal and public officers in housing or redevelopment projects. See Arizona Revised Statutes Sections 36-1406 and 36-1477.

**Comment:** As with other conflicts of interest, any board member under these circumstances must (i) make known the substantial interest involved and (ii) refrain from voting on or otherwise participating in the transaction or the making of the contract or sale. Also, a board member cannot provide certain goods and services to the City—even if the member does not participate in the process—unless a competitive bidding process is used. Other prohibitions may apply if federal funds are involved.

## 6. Disclosure of Confidential Information

Arizona law provides that during a person's employment or service with the City and for two years after, no board member may disclose or use confidential information without appropriate authorization. See Arizona Revised Statutes, Section 38-504(B) (reprinted in Appendix A).

**Comment:** Board members often have access to important non-public information regarding City property, operations, policies, and affairs. This information may concern real estate transactions, expansion of public facilities, or other City projects. The leak of this inside information may benefit a few at the expense of a possible monetary loss to the City and a deterioration of public confidence. If a board member is aware of confidential information, the member should not disclose the confidential information to anyone outside the City and should disclose it to other public employees only if appropriate.

## 7. Employment

### a. Incompatible Employment

Board members may be otherwise employed so long as it does not interfere with their service commitments to the City.

**Comment:** Board members should refrain from accepting employment or rendering service for private interests when the employment or service is incompatible with the proper discharge of board members' official duties, may impair their independent judgment, or may impair the performance of their duties.

### b. Representing Private Interests before City Agencies

Board members may be otherwise employed after leaving office if the employment does not interfere with any on-going duties to the City (for example, disclosure of confidential information).

**Comment:** For 12 months following a board member's service with the City, Arizona law prohibits board members from representing another person for compensation before a public agency concerning any matter in which the board member was directly concerned and personally participated in by a substantial and material exercise of administrative or legislative discretion. See Arizona Revised Statutes, Section 38-504(A) (reprinted in Appendix A).

### c. Employment of Relatives

Arizona law prohibits a board member's involvement in the appointment, hire, or supervision of a relative. See Arizona Revised Statutes, Section 38-481 (reprinted in Appendix A).

**Comment:** The hire and supervision of a relative is a special type of a conflict of interest that must be avoided.

### d. Discussion of Future Employment

A board member should disclose possible future employment to the board's liaison if the member has

been offered, or is discussing future employment, with a person, firm, or any other business entity that conducts business with the City.

**Comment:** Board members should be aware that they are vulnerable to offers of future employment in exchange for favors or information obtained through their positions.

Additionally, those who do business with the City, either as a contractor or subcontractor, must not discriminate against any worker, employee, or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, disability, or any other category covered by law. A contractor or subcontractor with more than 35 employees, is also prohibited from discriminating against any worker, employee, or applicant, or any member of the public because of sexual orientation, gender identity, or gender expression.

## E. Discrimination

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Phoenix City Charter Chapter XI, Section 2 provides: “No person shall be appointed to, removed from or in any way favored or discriminated against with respect to any City position because of race, color, ancestry, national origin, sex, political or religious opinions or affiliations.”

**Comment:** Public decisions must be fair and impartial. The City strives to serve the public and workforce in a productive manner, free from intimidation or hostility. The equality of opportunity to enter public service, besides being the object of various federal, state, and local laws, is a central factor to achieve efficient public service. Every consideration, treatment, advantage, or favor should be equally available to all residents and constituents. It is our shared responsibility to help create an environment where all members, employees, and residents are respected and valued. As such, the City prohibits persons and organizations from refusing to hire or promote any person or discriminate against any person in compensation, conditions, or privileges of employment based on their race, color, ancestry, national origin, sex, religion, age, disability, sexual orientation, or gender identity or expression, or any other category covered by law (“protected characteristics”). Persons and organizations are therefore prohibited from denying service(s) to any persons based on their protected characteristics.



# **Section III: Additional Applicable Laws and Policies**

## A. Political Activity

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The Phoenix City Charter Chapter XXV, Section 11 prohibits elected officials from soliciting or receiving, directly or indirectly, campaign contributions for City elective office from or through employees. In addition, Phoenix City Code Section 12-1503 prohibits elected officials from using any campaign funds for one's personal use (reprinted in Appendix B).

**Comment:** The City Attorney, in Opinion No. 90-012, has determined the provisions of Phoenix City Charter Chapter XXV, Section 11 do not apply to board members, and therefore, board members may participate in political campaigns for City elective office.

## B. Board Member Attendance Policy

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If a board member fails to attend three consecutive regular meetings or more than fifty percent of all meetings of a board during a calendar year (January 1 through December 31), the City Council may declare the seat vacant and appoint a replacement. See Phoenix City Code, Chapter 2, Article I, Section 2-14.

**Comment:** Board members are expected to attend all regularly scheduled meetings and should make every effort to do so. The City Council appoints board members for their experience, background, and perspective in a particular policy area, and wants the benefit of the members' consideration and judgment. The board, commission, committee, or task force cannot conduct any business unless a quorum is present. Accordingly, if a board member must miss a meeting because of business, vacation, or illness, the member should advise the board, commission, committee, or task force chairman in advance of the meeting.

## C. Removal of Board Member

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Except for an Ethics Commission member, a board member may be removed from office with or without cause prior to the expiration of the member's term by a majority vote of the Council. An Ethics Commission member may be removed from office with or without cause prior to the expiration of the member's term by an affirmative vote of seven Council members.

## D. City of Phoenix Lobbyist Ordinance

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### 1. Lobbyist Ordinance Overview

Two definitions are important to understand the lobbyist ordinance: *lobbying* and *lobbyist*. Lobbying means communication by a lobbyist with any City official to influence official action. Lobbyist means any person who is compensated to lobby for a person other than himself. See Phoenix City Code Section 2-1000. Generally, the lobbyist ordinance requires a lobbyist to register with the City of Phoenix when lobbying a City official, which includes board members. The ordinance includes eight specific exemptions from the registration requirements. See Phoenix City Code, Section 2-1002. Registration as a lobbyist triggers quarterly disclosure requirements for expenditures made by the lobbyist related to a City official, including a board member. A lobbyist's contributions to an elected official's campaign or when a lobbyist solicits a contribution that results in an actual contribution to the campaign must also be disclosed quarterly. There is no requirement that lobbyists must document their meetings with individuals such as a board member, a lobbyist registration is sufficient.

### 2. Practical Implications to Board Member

It is not the board member's responsibility to determine a person's status as a lobbyist, in fact, a board member should not advise anyone whether the person should or should not register. Because all obligations rest solely on the lobbyist the person should decide to

register for themselves. However, providing the information about the City Clerk's website is a quick and efficient way to help an individual make this determination.

### 3. Disclosure Requirement

When a lobbyist communicates with a board member in the lobbyist's capacity as a lobbyist, the lobbyist must disclose this capacity to the board member. Most lobbyists who lobby at the State level are familiar with this requirement because disclosure is also required at the State level.

### 4. Board Member's Reporting Obligation

All obligations imposed by the Lobbyist ordinance rest solely on the lobbyist. The ordinance does not impose any obligations on board members. If board members wish to confirm if a person or entity is registered to lobby, this information is easily accessible on the City Clerk's website, which lists registered lobbyists and entities. If a board member wishes to report a person who may be in violation of the ordinance, the board member should contact the City Clerk's office.

### 5. Violation

A lobbyist has five days to register after initially lobbying a City official. If the lobbyist fails to register within this period, the City will issue a letter that requests the lobbyist cure the violation within 15 days. If the violation is cured within the 15 days, no further action is taken. However, if the violation remains uncured on the 15th day by 5 p.m., the information is forwarded to the appropriate authority for possible enforcement.

## E. Public Access: Open Meetings and Public Records

Numerous Arizona and City laws require the meetings of public bodies to be open to the public and public records must be available for inspection. See Open Meetings Laws (Arizona Revised Statutes, Sections 38-431 through 431.09 and City Charter, Chapter IV, Section 5) and Public Records Laws (Arizona Revised Statutes, Sections 39-121 through 121.03 and City Charter, Chapter IV, Section 21). (Reprinted in Appendix B).

**Comment:** Arizona statutes require that meetings of public bodies be conducted openly. Also, Arizona law allows broad access to public records. Open government gives the public confidence that public affairs are performed properly. Brochures are available at [phoenix.gov/cityclerk](http://phoenix.gov/cityclerk).

## F. Use of City Equipment, Facilities, or Personnel for Private Gain

Board members should not use City facilities, equipment, personnel, or supplies for private purposes, except to the extent the facilities, equipment, personnel, or supplies are lawfully available to the public.

**Comment:** Public respect for government is weakened when City-owned facilities and equipment are used by board members for improper personal gain. City office supplies, work materials, vehicles and equipment are to be used only for City work. Taking City goods for private use is not a "fringe benefit"; it is stealing. See Arizona Revised Statutes Section 13-1802. Also, it is improper (and maybe unlawful) for supervisors to use subordinates for their personal benefit. Finally, a board member should avoid waste of public supplies and equipment.

## G. Software Management

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A board member should not make, use, accept, or install illegal copies of computer software, documentation, or templates.

Examples of software copyright violations are:

- (i) Installing a single-user copy of a software program on several computers;
- (ii) Allowing six or more members to concurrently use a five-user licensed LAN software package;
- (iii) Borrowing a copy of a single-user licensed program without that person removing it from their computer for the duration of the loan;
- (iv) Loaning a person a copy of a single-user licensed software program as an evaluation copy without removing it from the member's computer for the duration of the evaluation; and
- (v) Making more backup copies of the software than allowed in the license agreement. The City Auditor Department conducts periodic audits to insure compliance with City policies on software.

## H. Electronic Mail

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Electronic mail systems, including the internet, should be used only for City business unless otherwise authorized. All electronic mail is considered official City business and must be retained for a minimum of 90 days and in many cases longer, in accordance with the State's record retention schedule. In general, electronic mail communications are public records and subject to disclosure under the Arizona Public Records Act, Arizona Revised Statutes, Sections 39-101 and following.

**Comment:** The City will not read electronic message content as a routine matter, but reserves the right to do so without prior notification. The City may electronically scan email messages for the presence of specific content such as viruses or passwords and to maintain system integrity.

## I. Federal Transit Administration Standards of Conduct

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A board member must not participate in the selection, award, or administration of a contract supported by Federal Transit Administration funds if the member's participation involves a real or apparent conflict of interest. A conflict of interest arises when any of the following persons has a financial or other interest in the firm selected for award:

- (i) A board member;
- (ii) Any member of the board member's immediate family;
- (iii) Board member's partner; or
- (iv) An organization that employs, or is about to employ, any of the above.

## J. Procurement Ethics

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Board members must not represent any person or business for compensation related to any part of a City procurement, including any resulting contract, during the board member's term of office or where the board member played a material and significant role in the development of the solicitation, any other part of the procurement, or the contract award. Phoenix City Code Section 43-34.

Beginning on the date a solicitation is published and continuing until the contract is awarded or the solicitation is canceled, potential or actual proposers (including their representatives) may only discuss the solicitation with board members in a public meeting posted under Arizona law. Phoenix City Code Section 43-36.

# Section IV: Ethics Commission

## A. City of Phoenix Ethics Commission

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The Phoenix City Code establishes the Ethics Commission (Section 2-53). 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 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 Judicial Selection Advisory Board and approved by the City Council.

## B. Ethics Commission Rules and Procedures

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The City Manager will prepare initial rules and procedures for the commission's investigation and enforcement of an ethics or gift violation. All violations must be approved by an affirmative vote of four Ethics Commission members and an affirmative vote of seven Council members. These rules and procedures must address the process and procedures for the Ethics Commission to initiate proceedings, conduct the initial evaluation and investigation, proceed with a formal hearing after investigation by the Ethics Commission, if necessary, and recommend action, if

necessary, to Council related to an alleged ethics or gift violation. By an affirmative vote of four members, the Ethics Commission may refer changes to the initial Ethics Commission rules and procedures to the City Manager for review and recommendation to City Council. Any changes to the initial Ethics Commission rules and procedures must be approved by an affirmative vote of seven City Council members.

## C. Filing of Inquiry

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Any person who is a Phoenix resident or who is directly aggrieved by an act or the failure to act of an elected official or board member may file with the City Clerk a written inquiry containing specific allegations of violations of the City's ethics or gift policy by any elected official or board member.

## D. Consideration of Inquiry

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Within five days of receiving the inquiry, the City Clerk will forward the inquiry to the Ethics Commission and the inquiry will be placed on the agenda of the commission's next available meeting.

## E. Initial Evaluation by Commission

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

1. 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
2. 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

3. 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
4. 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 City Council impose a civil sanction in the maximum amount of \$500 against the person or entity for each frivolous inquiry. If the commission fails to make a determination by unanimous or the affirmative vote as required in subsections (1) through (4), the inquiry is deemed closed.

## **F. Ethics Commission Authority**

---

Upon a determination that an inquiry warrants additional evaluation or investigation, the Ethics Commission is authorized to 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 as may be necessary to assist the Ethics Commission in carrying out its purpose and responsibilities. In addition, the Ethics Commission may issue advisory opinions regarding ethics and gift policy issues upon request by an elected official or board member, and make recommendations to the City Council.

## **G. Inquiry Report**

---

After the conclusion of any hearing or fact finding related to an inquiry alleging a violation of the City's ethics or gift policy by an elected official or board member, the investigator will prepare a written report with findings of fact and recommendations. The report will be provided to the Ethics Commission for such action as the Ethics Commission deems appropriate. The report will not be available for public inspection under the Arizona Public Records Act until after final action by the Ethics Commission.

## **H. Commission Review**

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The Ethics Commission may review and discuss the inquiry and the report in executive session as permitted by law. In public session, by the affirmative vote of four members the Ethics Commission may recommend to the full Council to sustain the alleged violations in whole or in part, to impose sanctions, if any, permitted by this section, or to dismiss the inquiry. If there are less than four votes to make a recommendation to the full City Council or to dismiss the inquiry, then the inquiry is deemed closed.

## **I. Consideration of Recommendation**

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A recommendation from the Ethics Commission related to an inquiry will be placed on the agenda of the next available meeting of the full City Council. By the affirmative vote of seven members the City Council may accept the Ethics Commission recommendation in whole or in part, impose the same or different sanctions, if any, as permitted by this section, or dismiss the inquiry. If there are less than seven votes to accept the Ethics Commission's recommendation in whole or in part, or to dismiss the inquiry, the inquiry is deemed closed.

## J. Sanctions

---

By an affirmative vote of seven members, the City 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. Phoenix City Code Section 1-5 does not apply to action under this subsection. The penalties and remedies provided in Title 38, Chapter 3, Article 8, Arizona Revised Statutes, may apply and may be enforced as provided by law.

## K. Action for Frivolous Allegations

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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 City Council, the City 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 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.

## L. Removal of Board Member

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Compliance with this section is not required for the City Council to act under Phoenix City Code Section 2-51.

# Section V: Additional Procedures

## A. How to Declare a Possible Conflict of Interest

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If a board member believes a conflict of interest (or even a possible conflict) exists, the board member should make known this fact as soon as the possible conflict comes to the board member's attention. For example, as soon as a board member realizes a conflict exists on a given matter, the board member should fully disclose the conflicting interest on the record for the minutes. Once the possible conflict is made known, the board member should not participate in any manner (by discussing, questioning, or voting) in that matter. When the minutes of the meeting are available, the staff will send a copy to the City Clerk's Office with a note explaining that a conflict of interest was declared. If a board member is unsure whether a particular situation is considered a conflict of interest, the safest course of action is simply to declare that a conflict may exist that prevents the board member from participating in the matter. This course of action is better than the risk of an inadvertent violation of the law. Indeed, if there is a consistent theme to this handbook, it would be: "If in doubt, don't."

## B. Where to Report Others' Improper Conduct

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Board members have a duty to prevent any improper acts or failure to act in government. To report suspected wrongdoing, including but not limited to illegal or unethical behavior, a board member may call the Integrity Line at (602) 261-8999 or 534-5500 (TTY). Unethical behavior includes, but is not limited to, contract fraud, vendor kickbacks, loss or waste of City money or property, falsified documents, and specific danger to public health or safety.

Integrity Line callers are encouraged to provide a contact telephone number to permit investigators to gather additional information as the complaint is reviewed. Callers are encouraged to leave detailed information when contacting the Integrity Line to better assist the Committee with its review. The Committee requests the following information to assist the Committee with its review: (i) Circumstances of the incident and details of how fraud/inappropriate action took place; (ii) Names of all persons involved, including City division and department; (iii) Date(s), time(s) and location(s) the event(s) took place; (iv) If missing funds, identify source of funds and how much; (v) Identify any evidence or documentation that is available; (vi) Names of credible witnesses; and (vii) Any other information that may be helpful to review the matter.

The information gathered from the call is reported directly to the Integrity Line Committee, which includes the City Auditor, the City Attorney and the Assistant City Manager. The Committee maintains strict standards of confidentiality (to the extent permitted by law), and will not voluntarily release information about an inquiry. The Committee reviews all complaints received and will advise callers on the Committee's findings after their review.

## C. Ethics Hotline—Board Member's Conduct

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### 1. Possible Conflicts of Interest or Ethics Issues

If a board member is uncertain about whether a conflict of interest or other ethical problem exists, the board member should first contact the member's board liaison and board chairperson. The City of Phoenix Ethics Hotline is another resource if the member's board liaison is unavailable or unable to answer the board member's question.

## 2. Board Member's Future Conduct

All ethics information provided to board members through the Ethics Hotline is non-binding, does not constitute legal advice, and intended only to be informational. Ethics counsel will provide information solely related to the inquiring person's own future conduct. The Ethics Hotline does not address professionalism matters, legal issues, or past conduct, nor does it provide an opinion or information about the conduct of anyone other than the inquiring person. Ethics counsel does not provide information via email and cannot convey information through a paralegal or other assistant.

## 3. Number and Hours of Operation

The Ethics Hotline for board members may be reached at (602) 262-6761, 8:30 a.m. - 4:30 p.m., during regular City business days. To request a call back, please leave a voicemail message with the board member's name, contact telephone number, the best time to reach the member, and the name of the City of Phoenix board, commission, committee, or task force on which the member serves.

## 4. Ethics Hotline FAQ's

Q. Who answers Ethics Hotline calls?

A. A staff member answers Ethics Hotline calls and provides the caller's inquiry to ethics counsel. Ethics counsel will call the inquiring person within one to two business days, excluding holidays. If the board member's matter is time sensitive, ethics counsel will prioritize the member's call, but cannot guarantee an exact callback time.

Q. May the board member make an anonymous request for information from the Ethics Hotline?

A. No. An inquiring person is required to disclose the person's name and City of Phoenix affiliation when calling the Hotline.

Q. Are calls to the Ethics Hotline confidential?

A. No. Ethics counsel does not and cannot legally represent the board member nor does ethics counsel provide legal advice to the board member. Ethics counsel solely provides information to help inform a board member of City of Phoenix ethics policies and laws.

Q. Will the Ethics Counsel keep a record of the board member's call?

A. Yes. Ethics counsel will create a log of the call, including date and time of the call, a summary of the caller's question, and the information provided. These records are maintained by the City of Phoenix Law Department.

Q. Does the Ethics Hotline issue binding opinions?

A. No. Ethics counsel provides the information for the inquiring person's sole use.

Q. Can the board member's reliance on Ethics Hotline information serve as a defense to a City of Phoenix proceeding?

A. No. The ethics information is made available for the board member's use and consideration, but the board member maintains full responsibility for any of the board member's conduct.

Q. Can the Ethics Hotline provide a written opinion?

A. No. The Ethics Hotline provides telephonic information only. The Ethics Hotline does not provide informal written opinions or information via email.



# Section VI: Penalties and Sanctions

## A. Under City Laws and Policies

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Violations of the law and any of the policies set forth in this Ethics Handbook may expose a board member to a variety of penalties—including removal and civil and criminal penalties, as authorized by law.

**Comment:** For example, the penalties for a violation of Arizona’s Open Meetings laws include nullification of action taken (Arizona Revised Statutes, Section 38-431.05), removal from office, a civil penalty of up to \$500, an assessment of all costs and attorney’s fees incurred in the lawsuit, and such other equitable relief that the court deems appropriate. Arizona Revised Statutes, Section 38-431.07(A).

## B. Under State Policies and Laws

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Board members must recognize the serious consequences of violating some of the laws set forth in this Ethics Handbook. For example, intentional violation of the conflict of interest laws constitutes a Class 6 felony, which is punishable upon conviction by imprisonment for up to 1 ½ years and/or a fine of up to \$150,000. Negligent violation of the law constitutes a Class 1 misdemeanor, which is punishable by imprisonment for up to 6 months and/or a fine of up to \$2,000. In addition, a person found guilty of violating the law automatically forfeits their public office.

Ultimate responsibility for complying with the law rests with individual members of public bodies. Therefore, in situations involving potential conflicts of interest, doubts as to the application of the law should be resolved by disqualification rather than by participation.

# Appendix A: Applicable Ethics Laws and Policies

## Phoenix City Charter Chapter XI, Section 1 (Adopting State Conflict of Interest Laws)

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The provisions of the state law governing conflict of interest of officers and employees shall apply.

## Phoenix City Charter Chapter XI, Section 2 (Discrimination)

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No person shall be appointed to, removed from or in any way favored or discriminated against with respect to any City position because of race, color, ancestry, national origin, sex, political or religious opinions or affiliations.

## Phoenix City Code Chapter 2, Article II, Section 2-52(A) (Definitions for Ethics and Gift Policies)

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**Definitions.** The following definitions apply to this section. The plural of the word or phrase includes the singular, and the singular includes the plural:

1. “Board member” means a member, or the person’s relative or partner, of a City of Phoenix board, committee, commission, or task force.
2. “City business” means an activity or enterprise for gain, benefit, advantage, or livelihood with a public entity, a research organization, a regulatory body, a business association, or a professional association, whose primary purpose relates to research, rulemaking, development, best practices, or regulations that affect or relate to the City of Phoenix.
3. “Community” event means an event, activity, or function located in Arizona and sponsored by the City of Phoenix, a nonprofit organization, a professional association, a business association, a charitable organization, a cultural/arts organization, or a community organization.
4. “Compensation” means money, a tangible thing of value, or a financial benefit.
5. “Elected official” means a person, or the person’s relative or partner, elected or appointed as Mayor or as Council member of the City of Phoenix.
6. “Employee” means a person, or the person’s relative or partner, who is not an elected official, board member, volunteer, or City of Phoenix Municipal Court Judge, and who is employed full-time or part-time by the City of Phoenix.
7. “Gift means” direct or indirect compensation, other than as provided by law, for services, duties, or responsibilities rendered or to be rendered by a person in their capacity as an elected official, employee, board member, or volunteer. Gift does not mean:
  - a. Compensation received by an elected official, board member, or volunteer as part of the person’s employment outside of the City of Phoenix or as part of the person’s service as a member of a board of directors for a corporation or other elective office, and which compensation is unrelated to the person’s position or office as an elected official, board member, or volunteer; or
  - b. A political campaign contribution as permitted by law; or
  - c. Compensation received by an elected official, employee, board member, or volunteer from the person’s relative or partner; or

- d. Compensation in the form of a personalized plaque or similar personalized award received by an elected official, employee, board member, or volunteer for the person's service to the City of Phoenix consistent with the duties and responsibilities of the person's position or office; or
  - e. Compensation in the form of admission, food, beverages, transportation, or accommodations received by an elected official or employee in the capacity as a City of Phoenix representative and related to City business; or
  - f. Compensation associated with a relative's or partner's elective office; or
  - g. Compensation in the form of admission, food, or beverages received by an elected official, employee, board member, or volunteer to attend a community event.
8. "Partner" means a person in a domestic partnership as defined in Section 18-401.
9. "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.
10. "Special occasion" means an engagement or wedding involving a relative, partner, or relative of a partner, the birth or adoption of a child, or the death of a relative, partner, or relative of a partner.
11. "Volunteer" means a person, or the person's relative or partner, other than a board member who provides their services to the City of Phoenix without any express or implied promise of compensation, and serves as a hearing officer, intern, extern, contractor, vendor, or otherwise serves in the administrative offices of an elected official, the City Manager, or a City of Phoenix department or function head. A block watch captain is not a volunteer for purposes of this gift policy.

## Phoenix City Code Chapter 2, Article II, Section 2-52(B) (Ethics Policy)

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*B. Ethics policy.* It is the policy of the City of Phoenix to uphold, promote and demand the highest standards of ethics from all of its elected officials, employees, board members, and volunteers. Accordingly, all City elected officials, employees, board members, and volunteers must 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 power for improper personal gain.

## Phoenix City Code Chapter 2, Article II, Section 2-52(C) (Gift Policy)

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*C. Permissible and prohibited gifts.*

1. A gift in any amount received by an elected official, employee, board member, or volunteer is prohibited if the gift creates the appearance of undue influence, or if the gift creates a conflict of interest under Phoenix City Charter Chapter XI, Section 1 (Title 38, Chapter 3, Article 8, Arizona Revised Statutes).
2. A gift with a known or reasonably estimated fair market value of \$50 or less, received by an elected official, employee, board member, or volunteer, is permissible if the gift is not otherwise prohibited by law. The gift disclosure requirements provided in this section do not apply to a permissible gift under this subsection.
3. A gift with a known or reasonably estimated fair market value greater than \$50 received by an elected official or

employee is permissible if the gift is not otherwise prohibited by law and if the gift is disclosed by the recipient of the gift as provided in this Section. A gift with an unknown value should be disclosed as “unknown” if a reasonable estimate of the gift’s fair market value is greater than \$50.

4. A gift with a known or reasonably estimated fair market value greater than \$50 received by a board member or volunteer is permissible if the gift is not otherwise prohibited by law.
5. An elected official, employee, board member, or volunteer may request a gift waiver for a gift received in connection with a special occasion by filing a written request with the Ethics Commission. In addition, an elected official or employee who must file a disclosure form as provided in this section may seek a waiver of the disclosure requirements for a gift received in connection with a special occasion. If the gift or disclosure waiver is approved by the Ethics Commission, the waiver request form must be filed with the City Clerk as provided in this section.

## Phoenix City Code Chapter 2, Article II, Section 2-52(D) (Disclosure Requirements)

### *D. Gift disclosure requirements.*

1. If a gift must be disclosed by an elected official or employee as provided in this Section, the gift recipient must file a form with the City Clerk within 30 calendar days following the end of the quarter in which the gift is received.
2. The form must include the following information related to the gift:

- a. Gift recipient’s full name and status as an elected official or employee;
  - b. Value, including disclosure of unknown value as “unknown” if a reasonable estimate of the fair market value of the gift is greater than \$50;
  - c. Description of gift;
  - d. Date received; and
  - e. Gift giver’s full name and affiliated organization if applicable.
3. The City Clerk shall post the gift disclosure form and maintain the posting of each disclosure form on the City of Phoenix website and, when funding is authorized, in a searchable database:
    - a. For an elected official, three years after the end of the elected official’s term.
    - b. For an employee, five years from the date the disclosure form is filed by an employee.
  4. The disclosure requirements provided in this subsection shall not apply to a board member or volunteer.

## Phoenix City Code Chapter 2, Article II, Section 2-53 (City of Phoenix Ethics Commission; Ethics or Gift Policy Violations by Elected Officials or Board Members)

*A. Definitions.* The definitions in Section 2-52(A) apply to this section.

*B. City of Phoenix Ethics Commission.* The City of Phoenix Ethics Commission is hereby established to consist 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 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 Judicial Selection Advisory Board and approved by Council as provided in this section.

*C. Appointment of Commission members.* The Judicial Selection Advisory Board 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 through the use of questionnaires, personal interviews, and other means as the Board deems reasonable. When making recommendations for appointment to the Commission, the Board should consider the diversity of Phoenix's population. A candidate for appointment to the 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 Commission must be a Phoenix resident and may not serve as an elected official, a precinct committee person of a political party, or Phoenix employee on the date the candidate files an application with the Board. As provided in Section 2-96, the Board will recommend candidates for appointment to the Commission by the affirmative vote of seven Council members.

*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. Ethics Commission rules and procedures.* The City Manager will prepare initial rules and procedures for the Commission's investigation and enforcement of an ethics or gift violation. All violations must be approved by an affirmative vote of four Ethics Commission members and an affirmative vote of seven Council members. These rules and procedures must address the process and procedures for the Ethics Commission to initiate proceedings, conduct the initial evaluation and investigation, proceed with a formal hearing after investigation by the Ethics Commission, if necessary, and recommend action, if necessary, to Council related to an alleged ethics or gift violation. By an affirmative vote of four members, the Ethics Commission may refer changes to the initial Ethics Commission rules and procedures to the City Manager for review and recommendation to Council. Any changes to the initial Ethics Commission rules and procedures must be approved by an affirmative vote of seven Council members.

*F. Filing of inquiry.* Any person who is a Phoenix resident or who is directly aggrieved by an act or the failure to act of an elected official or board member may file with the City Clerk a written inquiry containing specific allegations of violations of the City's ethics or gift policy by any elected official or board member.

*G. Elected official participation.* An elected official must not participate in any discussion or vote in an inquiry involving the elected official's acts or failure to act except to respond to the inquiry or defend against any allegation related to the inquiry.

*H. Consideration of inquiry.* Within five days of receiving the inquiry, the City Clerk will forward the inquiry to the Ethics Commission and the inquiry will be placed on the agenda of the Commission's next available meeting.

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

1. 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
2. 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
3. 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
4. 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.

If the Commission fails to make a determination by unanimous or the affirmative vote as required in subsections (1)(1) through (4) of this section, the inquiry is deemed closed.

*J. Ethics Commission authority.* Upon a determination that an inquiry warrants additional evaluation or investigation, the Ethics Commission is authorized to 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 as may be necessary to assist the Ethics Commission in carrying out its purpose and responsibilities. In addition, the

Ethics Commission may issue advisory opinions regarding ethics and gift policy issues upon request by an elected official or board member, and make recommendations to Council.

*K. Inquiry report.* After the conclusion of any hearing or fact finding related to an inquiry alleging a violation of the City's ethics or gift policy by an elected official or board member, the investigator will prepare a written report with findings of fact and recommendations. The report will be provided to the Ethics Commission for such action as the Ethics Commission deems appropriate. The report will not be available for public inspection under the Arizona Public Records Act until after final action by the Ethics Commission.

*L. Commission review.* The Ethics Commission may review and discuss the inquiry and the report in executive session as permitted by law. In public session, by the affirmative vote of four members the Ethics Commission may recommend to the full Council to sustain the alleged violations in whole or in part, to impose sanctions, if any, permitted by this section, or to dismiss the inquiry. If there are less than four votes to make a recommendation to the full Council or to dismiss the inquiry, then the inquiry is deemed closed.

*M. Consideration of recommendation.* A recommendation from the Ethics Commission related to an 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 Ethics Commission recommendation in whole or in part, impose the same or different sanctions, if any, as permitted by this section, or dismiss the inquiry. If there are less than seven votes to accept the Ethics Commission's recommendation in whole or in part, or to dismiss the inquiry, the inquiry is deemed closed.

*N. 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. Section 1-5 does not apply to action under this subsection. The penalties and remedies provided in Title 38, Chapter 3, Article 8, Arizona Revised Statutes, may apply and may be enforced as provided by law.

*O. 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 City Council, the City 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 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.

*P. Removal of Commission member.* Compliance with this section is not required for the Council to take action under Section 2-51.

## **Phoenix City Code Chapter 2, Article III, Section 2-96 (Judicial Selection Advisory Board Selection of Ethics Commission Candidates for City Council Approval)**

A. There is hereby created a Judicial Selection Advisory Board to be composed of the Chief Presiding Judge of the City Court, who shall serve as a nonvoting member, and nine voting members, consisting of the following:

the Presiding Judge of the Superior Court of Maricopa County or his designee; an appellate court judge to be appointed by the Chief Justice of the Arizona Supreme Court; a member of the Maricopa County Bar Association who shall reside in the City of Phoenix and who shall be appointed by the Mayor from among three nominees recommended by the Association's Board of Directors; an active member of the State Bar of Arizona who shall reside in the City of Phoenix and who shall be appointed by the Mayor from among three nominees recommended by the State Bar's Board of Governors; and five nonattorney public members who are nominated by the Mayor and who are residents of the City of Phoenix. The diversity of the City's population shall be considered when making an appointment to the Board. None of the public members shall be an employee of the City of Phoenix. Voting members shall be subject to approval by the City Council. Voting members shall serve a term of three years and shall be eligible for reappointment for one additional three-year term. The members shall serve without salary or compensation.

B. The Board's officers shall consist of a chairman and vice-chairman, each selected from the Board's voting members. Officers shall serve one-year terms. No member shall serve more than two terms as chairman or two terms as vice-chairman, not including any term filled for the remainder of another member's unexpired term. Upon expiration of the chairman's first term or, if selected for a second term, upon expiration of the chairman's second term, the vice-chairman automatically shall become the chairman. If upon expiration of the chairman's first term, the chairman is selected by the voting members for a second term, the vice-chairman shall automatically continue in that office for a second term. A vacancy in the office of chairman caused other than by the expiration of a term shall be filled by the vice-chairman for the remainder of the unexpired term. The members shall determine operating procedures for the Board, which shall be kept in writing.

The vice-chairman shall preside whenever the chairman is absent or unable to act. The chairman will have the duty to prepare written reports as may be requested by the City Council.

C. The Board shall have the following powers and duties:

1. To seek out and encourage qualified individuals to apply for the office of judge of the City Court or the City of Phoenix Ethics Commission.
2. To conduct investigations into the background and qualifications of candidates for the office of judge of the City Court or for the City of Phoenix Ethics Commission, including but not limited to the use of questionnaires, personal interviews, and contacting such individuals and institutions as it deems reasonable to obtain as much background information on the candidate as possible.
3. To submit its recommendations for candidates for appointment or reappointment to the office of judge of the City Court or Chief Presiding Judge or to the City of Phoenix Ethics Commission to the Mayor, who thereafter shall convene the City Council for the purpose of interviewing all candidates recommended. When making recommendations for judicial office or for the City of Phoenix Ethics Commission, the Board shall consider the diversity of the City's population; however, the primary consideration shall be merit.

D. The meetings of the Board shall be held once each year for the purpose of reviewing operating procedures and on call of the chairman or a majority of the members. The chairman shall issue a call for a meeting promptly upon learning of the existence or anticipated existence of a vacancy in the office of judge of the City Court or in the City of Phoenix Ethics Commission. The Board shall,

whenever practical, hold public meetings designed to permit interested parties and groups to submit and recommend persons for consideration.

## **Phoenix City Code Section 43-34 Conflict of Interest (Procurement Ethics)**

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An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award.

## **Arizona Revised Statutes Title 36, Section 36-1406 (Interest of Municipal Officer in Housing Project)**

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A. An officer of a public housing authority, city, town or county shall not acquire any direct or indirect interest in a housing project or in property included or planned to be included in a housing project of the public housing authority, city, town or county or have any direct or indirect interest in any contract or proposed contract for materials or services to be furnished or used in connection with a housing project.

B. If an officer of a public housing authority, city, town or county owns or controls an interest directly or indirectly in property included or planned to be included in a housing project, the officer shall immediately disclose that interest in writing to the governing body of the public housing authority, city, town or

county, and the disclosure shall be entered upon the minutes of the governing body. Failure to disclose the interest is misconduct in office. After making this disclosure, the officer shall not participate in any action by the city, town or county affecting the property.

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### **Arizona Revised Statutes Title 36, Section 36-1477 (Employee Interest in Development Project)**

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A. A public official of a municipality, commissioner or employee of a housing authority or slum clearance and redevelopment commission to which the powers of a municipality have been delegated pursuant to this article shall not voluntarily acquire any interest, direct or indirect, in a redevelopment project or in any property included or planned to be included in a redevelopment project of the municipality or in any contract or proposed contract in connection with a redevelopment project. If an acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and the disclosure shall be entered upon the minutes of the governing body.

B. If any official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which the person knows is included or planned by the municipality to be included in any redevelopment project, the person shall immediately disclose this fact in writing to the local governing body, and this disclosure shall be entered upon the minutes of the governing body. The person shall not participate in any action by the municipality, housing authority or commission affecting the property. Any violation of this section shall constitute misconduct in office.

### **Arizona Revised Statutes Title 38, Section 38-481 (Employment of Relatives)**

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A. It is unlawful, unless otherwise expressly provided by law, for an executive, legislative, ministerial or judicial officer to appoint or vote for appointment of any person related to him by affinity or consanguinity within the third degree to any clerkship, office, position, employment or duty in any department of the state, district, county, city or municipal government of which such executive, legislative, ministerial or judicial officer is a member, when the salary, wages or compensation of such appointee is to be paid from public funds or fees of such office, or to appoint, vote for or agree to appoint, or to work for, suggest, arrange or be a party to the appointment of any person in consideration of the appointment of a person related to him within the degree provided by this section.

B. Any executive, legislative, ministerial or judicial officer who violates any provision of this section is guilty of a class 2 misdemeanor.

C. The designation executive, legislative, ministerial or judicial officer includes all officials of the state, or of any county or incorporated city within the state, holding office either by election or appointment, and the heads of the departments of state, county or incorporated cities, officers and boards or managers of the universities.

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### **Arizona Revised Statutes Title 38, Section 38-501 (Application of Conflict of Interest Laws)**

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

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

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

## **Arizona Revised Statutes Title 38, Section 38- 502 (Conflict of Interest, Definitions)**

Unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.
2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.
3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to Section 38-509.
4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
6. "Public agency" means:
  - (a) All courts.
  - (b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.
  - (c) The state, county and incorporated cities or towns and any other political subdivisions.
7. "Public competitive bidding" means the method of purchasing prescribed by Title 41, Chapter 23, or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.
8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.
10. "Remote interest" means:
  - (a) That of a nonsalaried officer of a nonprofit corporation.
  - (b) That of a landlord or tenant of the contracting party.
  - (c) That of an attorney of a contracting party.
  - (d) That of a member of a nonprofit cooperative marketing association.
  - (e) The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five percent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five percent of his total annual income.

- (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
  - (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
  - (h) That of a public school board member when the relative involved is not a dependent, as defined in Section 43-1001, or a spouse.
  - (i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment on the officer, the employee or his relative, of any of the following:
    - (i) Another political subdivision.
    - (ii) A public agency of another political subdivision.
    - (iii) A public agency except if it is the same governmental entity.
  - (j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.
  - (k) That of a relative who is an employee of any business entity or governmental entity that employs at least twenty-five employees within this state and who, in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.
    - (l) The ownership of any publicly traded investments that are held in an account or fund, including a mutual fund, that is managed by one or more qualified investment professionals who are not employed or controlled by the officer or employee and that the officer or employee owns shares or interest together with other investors.
11. "Substantial interest" means any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

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### **Arizona Revised Statutes Title 38, Section 38- 503 (Conflict of Interest, Exemptions, Employment Prohibition)**

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.
- C. Notwithstanding the provisions of subsections A and B of this Section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public

competitive bidding, except that:

1. A school district governing board may purchase, as provided in Sections 15-213 and 15-323, supplies, materials and equipment from a school board member.
2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.

D. Notwithstanding subsections A and B of this section and as provided in Sections 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

### **Arizona Revised Statutes Title 38, Section 38-504 (Prohibited Acts; Represent Another Party; Confidential Information)**

A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.

B. During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.

C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

### **Arizona Revised Statutes Title 38, Section 38-505 (Additional Income Prohibited for Services)**

A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending

before the public agency of which he is a public officer or employee.

B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

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### **Arizona Revised Statutes Title 38, Section 38-506 (Remedies)**

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

B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.

C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

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### **Arizona Revised Statutes Title 38, Section 38-507 (Opinions of the Attorney General, County Attorneys, City or Town Attorneys and House and Senate Ethics Committee)**

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be

confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

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### **Arizona Revised Statutes Title 38, Section 38-508 (Authority of Public Officers and Employees to Act)**

A. If the provisions of Section 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.

B. If the provisions of Section 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

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### **Arizona Revised Statutes Title 38, Section 38-509 (Filing of Disclosure)**

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

## Arizona Revised Statutes Title 38, Section 38-510 (Penalties)

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

## Arizona Revised Statutes Title 38, Section 38-511 (Cancellation of Political Subdivision and State Contracts; Definition)

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- A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political

subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by Section 37-289 and other lawful provisions of the lease.

C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.

D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

F. Notice of this Section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.

# Appendix B: Additional Applicable Laws and Policies

## Phoenix City Charter Chapter XXV, Section 11 (Political Activity)

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1. No officer or employee of the City shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution on behalf of any candidate for City of Phoenix elective office from any person holding a position with the City.
2. No person holding a position with the City, except elected officials, shall take any part in political management, affairs or campaigns in any election for City of Phoenix elective office further than to vote and privately express opinions.

## Phoenix City Code Chapter 2, Article I, Section 2-14 (Vacancies on Boards and Commissions)

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- A. The provisions of this Section shall apply to all City boards, commissions and committees.
- B. When an appointive member of any board, commission or committee fails to attend three consecutive regular meetings of such board, commission or committee, or fails to attend fifty percent or more of the regular meetings held by such board, commission or committee during the period of any calendar year, the Council may declare such member's seat vacant and his term expired.
- C. The Council shall fill such vacancies as soon as may be expedient to do so by the appointment of a new member to a full term.

## Phoenix City Code Chapter 2, Article II, Section 2-51 (Removal of Board, Commission, or Committee Member)

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Except for an Ethics Commission member, a board, commission, or committee member may be removed from office with or without cause prior to the expiration of the member's term by a majority vote of the Council. An Ethics Commission member may be removed from office with or without cause prior to the expiration of the member's term by an affirmative vote of seven Council members.

## Phoenix City Code Chapter 2, Article XXX, Sections 2-1000 and following, (Lobbyist Ordinance)

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### *Phoenix City Code Section 2-1000, Definitions.*

- A. *City official* means the Mayor and members of the Council of the City of Phoenix, whether serving by election or appointment, and any person who serves in the administrative office of either the Mayor or a Council member, or any person who serves on a City of Phoenix board, committee, or commission, or the City Manager, executive staff, and all City of Phoenix department and function heads.
- B. *Compensation* means money, service, facility, other thing of value, or benefit, including an interest in a business or an investment, which is received or will be

received in return for or in connection with services rendered or to be rendered.

*C. Expenditure* means any expense made in furtherance of a lobbying activity incurred by or on behalf of a lobbyist.

*D. Family gift* means a gift to a City official or a member of his or her household from a lobbyist who is a relative of the City official or a member of his household if the donor is not acting for someone not covered by this article.

*E. Gift* means a donation or transfer of money, real property, or tangible personal property. For purposes of this article, *gift* does not include:

1. A gift or inheritance from a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or any such person's spouse if the donor is not acting for someone not covered by this article and gifts of a personal nature were customarily received from such persons before becoming a City official.
2. The value of meals, entertainment, or lodging that is reported or exempt from reporting under this article.
3. Salary, compensation, or employer reimbursed expenses lawfully paid to a City official.
4. The value of professional or consulting services not rendered to obtain a benefit for any lobbyist or lobbyist's client.
5. Expenses relating to an event to which all members of the City Council or any Council committee or Council subcommittee, or all members who serve on a specific City of Phoenix board, committee, or commission, or the City Manager or all of the executive staff or all City of Phoenix department and function heads are invited.

6. A plaque or similar item given to a City official in recognition of service or notable accomplishment.
7. Informational material such as books, reports, pamphlets, tapes, calendars, or periodicals.
8. An unused item that is returned to the donor or delivered to a charitable organization within 15 days of receipt and is not claimed as a charitable contribution for tax purposes.
9. A campaign contribution that is properly received and reported as required by law.
10. An item given to a City official if an item of similar value is given by the City official at the same time, or on a similar occasion under similar circumstances.

*F. Lobbying* means communication by a lobbyist with any City official for the purpose of influencing official action.

*G. Lobbyist* means any person who is compensated to lobby for a person other than himself.

*H. Official action* means any action or nonaction by a City official.

*I. Person* means an individual, partnership, committee, association, limited liability company, or corporation and any other organization, or group of persons.

*J. Personal hospitality* means meals, beverages, transportation, or lodging furnished noncommercially by a person on his or her family's property or facilities.

*K. Public official* means a person holding an elected government office.

**Phoenix City Code**  
**Section 2-1001, Registration; reports**

A. Lobbyists must register before lobbying, or within five business days after first lobbying, by filing a statement that discloses the following:

1. If the lobbyist is an individual or organization, the lobbyist must provide a unique e-mail address and agree to accept all notices at that e-mail address. The lobbyist must ensure that the registered e-mail address is accurate and current at all times.
2. If the lobbyist is an individual, the name, business, and e-mail address of the lobbyist and any employee of the lobbyist who also acts as a lobbyist; provided, that an individual who is included as a lobbyist on the registration of an entity under subsection (A)(3) of this section need not register separately.
3. If the lobbyist is an organization, the name, business, and e-mail address of the entity, its chief executive officer and all its officers and employees who act as lobbyists (who must be notified by the organization in writing that they have been listed as lobbyists); provided, that the entity need not register as a lobbyist if all its officers and employees who act as lobbyists are individually registered as lobbyists under subsection (A)(2) of this section.
4. The name and business address of all persons who compensate the lobbyist to lobby and all persons on whose behalf lobbying is performed. Any change in the information required by this subsection must be reported to the City Clerk within 30 days of the change.

B. At the time of registration or any time thereafter, a lobbyist may file a statement certifying that the lobbyist intends to make

no expenditures reportable under this article. Upon filing this statement, the lobbyist is exempt from the expenditure reporting requirements of this Section, so long as no expenditures are made. If a lobbyist who has signed an exemption statement subsequently makes any reportable expenditure, the lobbyist must notify the City Clerk of the expenditure within ten days and will thereafter be subject to expenditure reporting requirements.

C. Lobbyists must report expenditures quarterly. Reports must be filed with the City Clerk no later than 5:00 p.m. on April 15, July 15, October 15, and January 15. If any due date is a Saturday, Sunday, or other legal holiday, the report must be filed on the next business day. Expenditures over \$25.00 must be itemized separately, listing the date, amount, and nature of the expenditure, the name of the City official receiving or benefiting from the expenditure, and the person on whose behalf the expenditure was made. Expenditures of \$25.00 or less for each City official may be reported in the aggregate. Expenditures for the lobbyist's personal sustenance, family gifts, personal hospitality, preparation or distribution of informational materials, campaign contributions, professional, or consulting services not made on behalf of another person for compensation, and not rendered primarily for the benefit of a City official, office expenses, filing fees, legal fees, employees, compensation, lodging, and travel are not required to be reported.

D. All expenditures for events to which all members of the Council or any committee or subcommittee of the Council or all members who serve on a specific City of Phoenix board, committee, or commission or the City Manager, or all of the executive staff or all City of Phoenix department and function heads, are invited must be reported pursuant to subsection C of this Section. Such expenditures need not be allocated to individual Council members, but the date, location, total expenditures incurred and a description of each such event must be reported.

- E. A lobbyist who makes no reportable expenditures during a specified reporting period may, in lieu of the report required by subsection C of this section, file a statement certifying that there were no reportable expenditures during the period.
- F. A person must not make a gift to, or expenditure on behalf of, a City official through another person to conceal the identity of the person making the gift or expenditure.
- G. A person must not give a gift to a City official for the performance of official duties or if it may reasonably be interpreted to be offered in order to influence any action or decision of a City official.
- H. Annually, all registered City lobbyists must re-register with the City Clerk by no later than 5:00 p.m. on January 15. If January 15 is a Saturday, Sunday, or other legal holiday, the re-registration must be filed on the next business day.
- I. Each registered lobbyist must provide the information and file the reports required by this section with the City Clerk, except individuals listed as lobbyists on the registration of an entity under subsection (A)(3) of this section may comply with this requirement through reports filed by the registered entity.

***Phoenix City Code  
Section 2-1001.01, Disclosure.***

Each lobbyist must disclose to each City official with whom the lobbyist communicates that he or she is acting in the capacity of a lobbyist.

***Phoenix City Code  
Section 2-1002, Exceptions.***

Section 2-1001 does not apply to:

- A. A person who is not compensated for lobbying activity other than reimbursement for actual expenses.
- B. A person, acting on his own behalf, who appears before the City Council, or a City of Phoenix board, committee, or commission, or contacts a City official to support or oppose official action.
- C. A public official, public employee, or appointed member of a State, County or local board, commission, or council acting in his official capacity on matters pertaining to his office, employment, board, commission, or council.
- D. An expert introduced or identified by a registered lobbyist or a public official who provides technical information, or answers technical questions, and makes no expenditure required to be reported by this article.
- E. A person who performs professional services in drafting legislation or in advising and rendering opinions to clients as to the construction and effect of proposed or pending legislation.
- F. An attorney who represents a client in any quasi-judicial proceeding.
- G. A person who contacts a City official solely for the purpose of acquiring information.
- H. A person who contacts a City official concerning any contract awarded through competitive bidding.

***Phoenix City Code  
Section 2-1003, Political  
contributions; reports.***

Lobbyists who contribute to, or solicit contributions on behalf of, political campaigns of City officials must file quarterly reports, which must be combined with expenditure reports when applicable, identifying the lobbyist and disclosing the dates and amounts of contributions made by or, if known, at the request of the lobbyist, the contributors' names, addresses, occupations and employers and the City officials to whom the contributions were made.

**Phoenix City Code  
Section 2-1004, Forms, filing.**

- A. All statements and reports required by this article must be made under oath, on forms prescribed by the City Clerk and filed in the office of the City Clerk.
- B. Statements and reports required by this article may be filed in electronic format approved by the City Clerk. The City Clerk may require that statements and reports be filed with an additional written or printed copy.
- C. Notwithstanding subsection A of this section, a statement or report filed in electronic format is not required to bear a notarized signature but is deemed to be filed under penalty of perjury.
- D. An electronic filing made under this section complies with the filing requirements of this article if the filing is properly formatted as prescribed by this article and if the filing contains complete and correct information.

**Phoenix City Code  
Section 2-1005, Violations; penalty.**

- A. A person violates this article if the person:
1. Fails to comply with any provision of this article; files any statement or report required by this article which contains materially false information; files any statement or report that omits material information; or fails to comply with any material requirement of this article; or
  2. Retains or employs another person to promote or oppose official action for compensation contingent in whole or in part on the passage or defeat of any official action; or
  3. Accepts employment or renders service as a lobbyist contingent in whole or in part on the passage or defeat of any official action.

**B. Penalty.**

1. A first violation of this article constitutes a civil offense with a mandatory minimum fine of \$1,000 per violation, not to exceed \$2,500 per violation, and either a suspension from lobbying or a prohibition from registering to lobby with the City for 90 days.
2. A second violation within 84 months constitutes a civil offense with a mandatory minimum fine of \$2,000 per violation, not to exceed \$2,500 per violation, and either a suspension from lobbying or a prohibition from registering to lobby with the City for 180 days.
3. A third violation within 84 months constitutes a Class 1 misdemeanor. Upon conviction of a misdemeanor violation under this subsection, and in addition to the Court's sentence, the lobbyist must either be suspended from lobbying or prohibited from registering to lobby with the City for one year.

C. Each violation of this article constitutes a separate and distinct offense to which a separate penalty or fine may apply.

D. Any civil action or criminal prosecution for a violation of this article must commence within one year after the date on which the violation is alleged to have occurred.

**Phoenix City Code  
Section 2-1005.01, Enforcement  
of lobbying violations.**

A. *Jurisdiction.* The City Attorney, under Section 2-10(B)(1), and the City of Phoenix Ethics Commission, under Section 2-53, possess concurrent jurisdiction to enforce violations of this article.

B. *Ethics Commission rules and procedures.*

1. The City Manager or his or her designee will prepare initial rules and procedures for the Commission's investigation and enforcement of violations of this article. All violations must be approved by an affirmative vote of four out of five Ethics Commission members. These rules and procedures must address the process and procedures for the Ethics Commission to initiate proceedings, conduct the initial evaluation and investigation, and proceed with a formal hearing after investigation by the Ethics Commission of an alleged violation of this article.
2. By an affirmative vote of four out of five members, the Ethics Commission may refer changes to the initial Ethics Commission rules and procedures to the City Manager for review and recommendation to the City Council. Any changes to the initial Ethics Commission rules and procedures must be approved by an affirmative vote of seven Council members.

*C. Filing of inquiry.* Any person may file with the City Clerk a written inquiry containing specific allegations of violations of this article.

*D. Consideration of inquiry.*

1. Once the City Clerk receives an inquiry and the City Clerk has reviewed the inquiry and it appears on its face that a person may have violated any provision of this article, the City Clerk must serve notice on the person by certified mail or at the registered e-mail address requiring compliance with this article within 15 days. If the person does not take corrective action by 5:00 p.m. on the fifteenth day, the City Clerk will forward the inquiry to the Ethics Commission for prompt review and action.
2. When the Ethics Commission receives the inquiry, the inquiry must be placed

on the agenda of the Commission's next available meeting.

3. When the Ethics Commission is not or cannot be assembled, the City Clerk will forward the inquiry to the City Attorney for prompt review and action.

*E. Initial evaluation by Commission.* The Commission will evaluate to determine if the allegations in the inquiry:

1. Are within the Commission's jurisdiction and are facially sufficient, in whole or in part, to warrant additional evaluation or investigation of the inquiry; or
2. Are outside of the Commission's jurisdiction or are facially insufficient to warrant investigation. If the allegations are outside the Commission's jurisdiction or are insufficient to warrant investigation, the inquiry will be dismissed. The Commission's dismissal of the inquiry is final and is not subject to review; or
3. May involve a crime, in which case the Commission must refer the inquiry to the proper authority for investigation and possible prosecution. If the Commission refers the inquiry 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.

A determination under subsection (E)(1) or (2) of this section requires an affirmative vote of at least four out of five members. If the Commission fails to make a determination by the minimum affirmative vote, the inquiry is deemed closed. This disposition is final and not subject to review.

*F. Ethics Commission authority.*

1. Upon a determination that an inquiry

warrants additional evaluation or investigation, the Ethics Commission is authorized to investigate, take testimony, subpoena, and engage in any other action to the extent permitted by law to oversee the investigation and enforcement of the lobbying requirements.

2. The Commission may appoint an independent investigator as necessary to assist the Ethics Commission in executing its purpose and responsibilities.

*G. Inquiry report.*

1. After the conclusion of any hearing or fact finding related to an alleged violation of the City's lobbying ordinance, the Commission or its investigator will prepare a written report with findings of fact and recommendations.
2. The report will be provided to the Ethics Commission for appropriate action under this article.
3. The report will not be available for public inspection under the Arizona Public Records Act until after the Ethics Commission's final action.

*H. Commission review.*

1. The Ethics Commission may review and discuss the inquiry and the report in executive session as permitted by law.
2. In public session, by the affirmative vote of four out of five members, the Ethics Commission may sustain the alleged violations in whole or in part and recommend sanctions permitted by this article, or the Commission may dismiss the inquiry. If there are less than four votes to sustain the allegations or to dismiss the inquiry, then the inquiry is deemed closed.

*I. Enforcement of a sustained violation.*

1. If the Ethics Commission finds any violation and recommends any sanction pursuant to this article, the information must be forwarded to the City Attorney to file a complaint.
2. Any inquiry reports, findings of fact, and hearing transcripts must be transmitted to the City Attorney to file a complaint if the Ethics Commission has found any violation and recommended any sanction.
3. When a complaint has been filed, the Court may conduct a hearing on the merits. If the Court sustains any violation, the Court must sentence the person according to Section 2-1005.

***Phoenix City Code  
Section 2-1005.02, Severability.***

If a court invalidates any provision of this article or its application to any person or circumstance, the remainder of the article and its application to other persons and circumstances, other than that which has been held invalid, shall not be affected. To this extent, the provisions of this article are declared severable.

**Phoenix City Code  
Chapter 12, Section 12-1503,  
(Prohibits Elected Officials  
From Using Any Campaign  
Funds For One's Personal Use)**

Campaign funds, including surplus campaign funds, shall not be used for, or converted to, the personal use of a candidate or any person related to the candidate by blood or marriage. This Section does not preclude a candidate from using campaign funds to repay a personal

loan the candidate made to the candidate's campaign. Prohibited uses of campaign funds include, but are not limited to:

- (1) Payment of a salary to a candidate or to a candidate's immediate family member;
- (2) Payment of mortgage or rental expenses for a personal residence;
- (3) Payment of country club or athletic club dues;
- (4) Payment of tuition expenses;
- (5) Payment of travel expenses unrelated to any political purpose;
- (6) Payment of home improvement or home furnishing expenses;
- (7) Payment of medical expenses;
- (8) Payment of clothing expenses;
- (9) Payment of grooming expenses; and
- (10) Payment of personal investment expenses.

## **Arizona Revised Statutes Title 9, Section 9-500.14, (Use of City Resources to Influence Elections; Prohibition)**

A. A city or town shall not spend or use its resources, including the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages, personnel, equipment, materials, buildings or any other thing of value of the city or town, for the purpose of influencing the outcomes of elections. Notwithstanding this Section, a city or town may distribute informational pamphlets on a proposed bond election as provided

in Section 35-454 if those informational pamphlets present factual information in a neutral manner. Nothing in this Section precludes a city or town from reporting on official actions of the governing body.

B. The prohibition on the use of public resources to influence the outcome of bond, budget override and other tax-related elections includes the use of city-focused or town-focused promotional expenditures that occur after an election is called and through election day. This prohibition does not include routine city or town communications.

C. This Section does not prohibit the use of city or town resources, including facilities and equipment, for government-sponsored forums or debates if the government sponsor remains impartial and the events are purely informational and provide an equal opportunity to all viewpoints. The rental and use of a public facility by a private person or entity that may lawfully attempt to influence the outcome of an election is permitted if it does not occur at the same time and place as a government-sponsored forum or debate.

D. Employees of a city or town shall not use the authority of their positions to influence the vote or political activities of any subordinate employee.

E. The attorney general or the county attorney of the county in which an alleged violation of this section occurred may initiate a suit in the superior court in the county in which the city or town is located for the purpose of complying with this section.

F. For each violation of this section, the court may impose a civil penalty not to exceed five thousand dollars plus any amount of misused funds subtracted from the city or town budget against a person who knowingly violates or aids another person in violating this section. The person determined to be out of compliance with this section is responsible for the payment

of all penalties and misused funds. City or town funds or insurance payments shall not be used to pay these penalties or misused funds. All misused funds collected pursuant to this section shall be returned to the city or town whose funds were misused.

G. Nothing contained in this section shall be construed as denying the civil and political liberties of any employee as guaranteed by the United States and Arizona Constitutions.

H. For the purposes of this section:

1. "Government-sponsored forum or debate" means any event, or part of an event or meeting, in which the government is an official sponsor, which is open to the public or to invited members of the public, and whose purpose is to inform the public about an issue or proposition that is before the voters.
2. "Influencing the outcomes of elections" means supporting or opposing a candidate for nomination or election to public office or the recall of a public officer or supporting or opposing a ballot measure, question or proposition, including any bond, budget or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition in any manner that is not impartial or neutral.
3. "Misused funds" means city or town monies or resources used unlawfully as proscribed by this section.
4. "Routine city or town communications" means messages or advertisements that are germane to the functions of the city or town and that maintain the frequency, scope and distribution consistent with past practices or are necessary for public safety.

## Arizona Revised Statutes Title 13, Section 13-1802, (Use of Equipment, Facilities for Personal Gain)

A. A person commits theft if, without lawful authority, the person knowingly:

1. Controls property of another with the intent to deprive the other person of such property; or
2. Converts for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use; or
3. Obtains services or property of another by means of any material misrepresentation with intent to deprive the other person of such property or services; or
4. Comes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to the person's own or another's use without reasonable efforts to notify the true owner; or
5. Controls property of another knowing or having reason to know that the property was stolen; or
6. Obtains services known to the defendant to be available only for compensation without paying or an agreement to pay the compensation or diverts another's services to the person's own or another's benefit without authority to do so; or
7. Controls the ferrous metal or nonferrous metal of another with the intent to deprive the other person of the metal; or
8. Controls the ferrous metal or nonferrous metal of another knowing or having

reason to know that the metal was stolen; or

9. Purchases within the scope of the ordinary course of business the ferrous metal or nonferrous metal of another person knowing that the metal was stolen.

B. A person commits theft if, without lawful authority, the person knowingly takes control, title, use or management of a vulnerable adult's property while acting in a position of trust and confidence and with the intent to deprive the vulnerable adult of the property. Proof that a person took control, title, use or management of a vulnerable adult's property without adequate consideration to the vulnerable adult may give rise to an inference that the person intended to deprive the vulnerable adult of the property.

C. It is an affirmative defense to any prosecution under subsection B of this section that either:

1. The property was given as a gift consistent with a pattern of gift giving to the person that existed before the adult became vulnerable.
2. The property was given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the adult became vulnerable.
3. The superior court approved the transaction before the transaction occurred.

D. The inferences set forth in section 13-2305 apply to any prosecution under subsection A, paragraph 5 of this section.

E. At the conclusion of any grand jury proceeding, hearing or trial, the court shall preserve any trade secret that is admitted in evidence or any portion of a transcript that contains information relating to the trade secret pursuant to section 44-405.

F. Subsection B of this section does not apply to an agent who is acting within the scope of the agent's duties as or on behalf of a health care institution that is licensed pursuant to Title

36, Chapter 4 and that provides services to the vulnerable adult.

G. Theft of property or services with a value of twenty-five thousand dollars or more is a class 2 felony. Theft of property or services with a value of four thousand dollars or more but less than twenty-five thousand dollars is a class 3 felony. Theft of property or services with a value of three thousand dollars or more but less than four thousand dollars is a class 4 felony, except that theft of any vehicle engine or transmission is a class 4 felony regardless of value. Theft of property or services with a value of two thousand dollars or more but less than three thousand dollars is a class 5 felony. Theft of property or services with a value of one thousand dollars or more but less than two thousand dollars is a class 6 felony. Theft of any property or services valued at less than one thousand dollars is a class 1 misdemeanor, unless the property is taken from the person of another, is a firearm or is an animal taken for the purpose of animal fighting in violation of section 13-2910.01, in which case the theft is a class 6 felony.

H. A person who is convicted of a violation of subsection A, paragraph 1 or 3 of this section that involved property with a value of one hundred thousand dollars or more is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

I. For the purposes of this section, the value of ferrous metal or nonferrous metal includes the amount of any damage to the property of another caused as a result of the theft of the metal.

J. In an action for theft of ferrous metal or nonferrous metal:

1. Unless satisfactorily explained or acquired in the ordinary course of business by an automotive recycler as defined and licensed pursuant to Title

28, Chapter 10 or by a scrap metal dealer as defined in section 44-1641, proof of possession of scrap metal that was recently stolen may give rise to an inference that the person in possession of the scrap metal was aware of the risk that it had been stolen or in some way participated in its theft.

2. Unless satisfactorily explained or sold in the ordinary course of business by an automotive recycler as defined and licensed pursuant to Title 28, Chapter 10 or by a scrap metal dealer as defined in section 44-1641, proof of the sale of stolen scrap metal at a price substantially below its fair market value may give rise to an inference that the person selling the scrap metal was aware of the risk that it had been stolen.

K. For the purposes of this section:

1. “Adequate consideration” means the property was given to the person as payment for bona fide goods or services provided by the person and the payment was at a rate that was customary for similar goods or services in the community that the vulnerable adult resided in at the time of the transaction.
2. “Ferrous metal” and “nonferrous metal” have the same meanings prescribed in section 44-1641.
3. “Pattern of gift giving” means two or more gifts that are the same or similar in type and monetary value.
4. “Position of trust and confidence” has the same meaning prescribed in section 46-456.
5. “Property” includes all forms of real property and personal property.
6. “Vulnerable adult” has the same meaning prescribed in section 46-451.

**Arizona Revised Statutes  
Title 38, Sections 38-431-  
431.09, (Open Meeting Laws).  
See Open Meeting Laws  
Handbook published by the  
Phoenix City Clerk Department**

**Arizona Revised Statutes  
Title 39, Sections 39-121-  
121.03, (Arizona Public  
Records Act). See Arizona  
Public Records Handbook  
published by the Phoenix City  
Clerk Department**

# Appendix C: Gift Disclosure Forms



# **Appendix D: Board Member Ethics Certification and Acknowledgement**

## Appendix D - Board Member Ethics Certification and Acknowledgement

Under penalty of perjury, I \_\_\_\_\_certify: (1) I received electronically and/or a printed copy of the City of Phoenix Ethics Handbook for Board & Commission Members; and (2) I have reviewed and understand the general principles of the City of Phoenix ethics policies and laws set out in the handbook; and (3) I participated in a video or other training related to City of Phoenix ethics policies and laws; and (4) as a member of a City of Phoenix board, commission, committee, or task force I agree to be bound by and follow City of Phoenix ethics policies and laws to the best of my ability. I understand this certification may be filed electronically or by hard copy in a format approved by the City of Phoenix. If filed electronically, I understand the City of Phoenix may require additional information by written or printed copy.

SIGNATURE(S): \_\_\_\_\_ DATE: \_\_\_\_\_

## NOTES



