



CITY COUNCIL WORKSHOP MEETING

WORKSHOP MEETING MINUTES

THURSDAY, JANUARY 26, 2023, 2:30 PM

201 S Cortez Street
Prescott, AZ 86303
Council Chambers

Phil Goode, Mayor

Brandon Montoya, Mayor Pro Tem

Cathey Rusing, Councilmember

Eric Moore, Councilman

Connie Cantelme, Councilwoman

Steve Sischka, Councilman

Clark Tenney, Councilman

MINUTES OF THE WORKSHOP MEETING OF THE PRESCOTT CITY COUNCIL WORKSHOP MEETING HELD ON JANUARY 26, 2023, IN THE 201 S CORTEZ STREET PRESCOTT, AZ 86303 COUNCIL CHAMBERS.

1. CALL TO ORDER

Mayor Goode called the meeting to order at 2:31 p.m.

2. ROLL CALL

Phil Goode	Mayor
Brandon Montoya	Mayor Pro Tem
Connie Cantelme	Councilwoman
Eric Moore	Councilman
Cathey Rusing	Councilmember
Steve Sischka	Councilman
Clark Tenney	Councilman

3. DISCUSSION

- A. Discussion and Training Presented by the City Attorney's and Clerk's Offices and Human Resources Department for Council and All City Boards, Commissions & Committees Regarding Open Meeting Law, Conflict of Interest, Council Rules of Procedure, BCC Code of Conduct, Harassment, and Public Records Request Law.

City Clerk Sarah Siep asked all present BCC Members to sign in so their attendance can be recorded.

City Attorney Joseph Young provided a presentation to Council and BCC Members regarding Open Meeting Law, Conflict of Interest and Public Records Request Law. The intent is to provide openness in government related to official deliberations and proceedings, maximize public access and participation and any uncertainty resolved in favor of openness.

In accordance with state statute all meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to deliberations and proceedings. If there is no

quorum of the body the meeting must be cancelled. Meetings must comply with notice, agenda and minute requirements, exceptions are actual emergencies and recess/resume properly noticed meetings to a later date or time.

Who Must Comply:

- * Public Bodies
- * Any entity, however designated, officially established on motion or order of a public body or presiding officer of a public body
- * Body whose members are appointed for specific purposes
 - Subcommittees, Advisory Committees
 - Standing Committees
 - Special Committees

Small groups of a public body should not meet to discuss city business even in the absence of a quorum. Recent caselaw from *Puente vs. AZ State Legislature* (2022).

Executive Sessions:

- * Require prior consent of city attorney
- * Seven legal reasons – personnel matters, discussion of confidential information, legal advice from city's attorney, discussion of settlement/contract/etc.
- * Who may attend – members of public body, staff who is reasonably necessary or persons subject to personnel discussion, auditor general
- * What happens in Executive Session stays in Executive Sessions
- * Cannot take legal action, all votes must take place in public

How to Avoid Pitfalls of Open Meeting Law:

- * Don't poll other members on commission business
- * Limit your discussions with other members to public meetings
- * Don't send emails to each other
- * Distribute information through staff
- * Disband meetings when a quorum is not in attendance

Circumvention:

- * Cannot use any device to circumvent the law
- * Splintering the quorum – serial communications polling, hub and spokes or daisy chaining

Prohibited 2-Way Communications:

- * Discussing
- * Deliberating
- * Taking Legal Action
- * Back and forth among a quorum
- * On a matter that could foreseeably come before the board

Prohibited 1-Way Communications:

- * Proposing legal action

- * It only takes one person to propose legal actions
- * Cannot propose legal actions outside of a noticed meeting

Staff Email:

- * Staff may send email to board members
- * Passive receipt of information from staff, without more, does not violate the open meeting law
- * Staff may not send opinion or substantive communication about board business from a board member to enough other members to constitute a quorum

Internet and Social Networking:

- * Blogs and social media like Twitter and Facebook can present the same issues as email regarding the amount board members
- * If a quorum of members is discussing board business using any technological means, a meeting may result
- * This type of communication may be considered a virtual meeting, requiring notice and access to technological equipment as it was discussed in the virtual meeting option
- * This type of communication results in the creation of an electronic public record which must be maintained, preserved and produced upon request

Councilmember Rusing asked if all Council emails are public record.

Mr. Young confirmed, he added it is important to note that it is about the content of the email or text message, if it relates to city business regardless of where it is coming from it would be pertinent. Established policy and procedure stipulates that your city email can be reviewed by IT to see if something is responsive, but if it is your personal number or email, you as the official are responsible to pull that information.

Meeting Etiquette:

- * No passing notes
- * Whispering to fellow board members
- * Privately using modern technology
- * Quorum talking to individuals before the meeting officially begins

Social Events:

- * If a quorum may be present a courtesy agenda or notice should be posted
- * Include a statement that no business of public body will be discussed

Mayor Pro Tem Montoya asked about one of the members of Council attending a Subcommittee meeting, and what are best practices around BCC meetings with a quorum or social event.

Mr. Young responded that they could if there is a quorum noticed posted. His recommendation as it relates to other meetings is that because there is already a notice posted, if there is a quorum don't sit

by each other and don't speak during the meeting. Best practices change based on the situation, so it depends on the conduct.

Mayor Pro Tem Montoya asked staff to address the role of the council liaison at a BCC Meeting.

Mr. Young responded that if the member wants to direct comments it needs to be done as an opinion and not the direction of Council.

Public Forums, Speeches & Community Events:

- * If a quorum might be present when one or more council members plan on speaking or discussing city business a special meeting agenda must be posted to include a description of the general topic and that no action will be taken

Public Rights:

- * Attend
- * Listen
- * Tape Record or Video Tape
- * The public may not – disrupt, not guaranteed a right to speak; the remedy for that is removal

Penalties:

- * Violation of OML carries the following potential enforcement – mandatory nullification of business transacted, civil penalties, equitable relief, removal from office, attorney's fees

Public Records Law:

- * Any record in the custody of government entity that has a substantial nexus to government activity is presumed a public record
- * The public has a right to view public records and receive a copy for a fee
- * Arizona imposes a presumption favor of disclosure of public records
- * Exception - when public disclosure and access is outweighed by confidentiality, privacy or the best interests of the state
- * Records reasonably necessary to provide an accurate accounting of their official activities and of any government funded activities
- * Important to follow retention schedules
- * Best interests of the state (rare) permit a public body to designate a record as confidential when release of information would have an important and harmful effect on the duties of the officials or agency in question

Mr. Young responded to a question regarding retention of emails for a BCC member stating that as long as the administrative need of the email remains the email should be kept. If it is pending business he would recommend keeping, after that it is safe to delete.

Conflict of Interest Law:

- * Applies to all public officers
- * All public employees

- * A public officer or who's relative has a substantial interest in a decision of the public agency or in any contract, sale, purchase, or service to such public agency must disclose that interest in the official record and not vote on or participate in the decision or transaction
- * Relative goes to the 4th degree of relation

Three Questions to Identify a Conflict of Interest:

- * Will my decision have a positive or negative impact on my interests or that of my relatives
- * Do I have a monetary or ownership interest in the matter
- * Is my interest other than one of the designated remote interests

What if I Have Substantial Interest:

- * Refrain from voting on or participating in the decision
- * Make the conflict of interest known in the official record
- * Leave the table or the room

Remote Interest:

- * Financial and property interests deemed to be so minor that it does not trigger the requirements
- * Member may still vote and participate in discussions
- * Examples – member of non-compensation or non-profit corporation, landlord or tenant of contracting party, attorney whose client is the contracting party, member of marketing association, owner of less than 3%

There is a lot of gray area between remote and substantial conflict of interests; Council, and members of BCCs will have dealings with members of the community that don't go beyond the bounds of conflict of interest. When in doubt ask the city attorney.

Ms. Siep addressed attendees regarding the City Council recently updating and adopting the Council Rules of Procedure as well as the BCC Code of Conduct. These documents outline the expectations of members of Council and volunteers on the City's BCCs. Additionally, the documents provide specific details related to the attendance policy.

Human Resources Director Branden Nunez provided a presentation to the attendees regarding Respectful Workplaces. He provided a series of examples of treatment of employees in the workplace.

Why is this Important:

- * Harassment harms us all
- * Integral part of our culture is to ensure all employees are treated with respect and dignity
- * Engaging in, condoning or not reporting harassment is in direct conflict with our policy
- * Remaining in compliance with Title VII of the Civil Rights Act, which prohibits discrimination, we want to remain in compliance with similar state civil rights laws and fair employment laws

City of Prescott Policy:

- * Applies to ALL – sexual harassment, anti-discrimination, harassment and hostile work environment

- * Zero tolerance policy - the city does not tolerate any form of unlawful discrimination or harassment which may create a hostile work environment including harassment or discrimination based on the race, color, gender, national origin, religion, age, disability or sexual orientation of any employee, by another employee, supervisory, manager, customer or non-employee
- * The city strives to maintain a workplace that fosters mutual respect and promotes positive and productive working relationships

Federal Law Refresher:

- * Harassment is a form of employment discrimination
- * Unwelcome conduct based on a protected class – race, color, religion, sex (including pregnancy, sexual orientation or gender identity), national origin, age (40 or older), disability and genetic information
- * Unlawful if enduring the conduct is a term of employment OR the conduct is severe, pervasive, intimidating, hostile or offensive to a reasonable person

Respectful Workplace Free From:

- * Offensive jokes, slurs, or name calling
- * Physical assaults or threats
- * Intimidation
- * Ridicule or mockery
- * Offensive objects or pictures
- * Interference with work performance
- * Rude gestures and more

Consequences:

- * Person who is the target of harassment - high stress level, possible absenteeism, possible decline in work performance, may leave the job
- * Person who harasses others - serious employment consequences and possible termination, likely ineligible for unemployment compensation, possible civil or criminal liability

What if an Employee Comes to You:

- * Gather the facts
- * Notify HR, City Manager or Legal Department to determine course of action
- * Can circumvent chain of command
- * Document your follow-through

Executives, Supervisors and Managers:

- * You are the supervisor in the eyes of the law
- * What you do or don't do reflects on the city as an employer
- * If harassment is ignored the employer can be liable
- * If it isn't handled correctly, the employer can be liable
- * If you engage in harassment, you and the employer are in big trouble
- * You can be sued personally
- * Harassment is serious and you must take obligations as an employer representative seriously

Retaliation is Strictly Prohibited:

- * There can be no retaliation against employees who complain to management about harassment even if they aren't the victim, or who participates or cooperates in an investigation
- * Retaliation is as serious as the actual harassment as are the consequences

Final Takeaways:

- * Lead by example
- * All employees should be welcomed and enabled to thrive based on diverse backgrounds
- * Don't fail to act

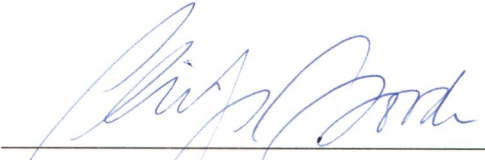
Councilmember Rusing asked for examples of hostile body language.

Mr. Nunez said pointing, shaking, or slamming of hands, proximity, pounding a desk, etc. anything that a reasonable person may find offensive.

This item was for discussion only, no formal action was taken.

4. ADJOURNMENT

There being no further business to discuss, Mayor Goode adjourned the meeting at 3:40 p.m.



PHILIP R. GOODE, Mayor

ATTEST:

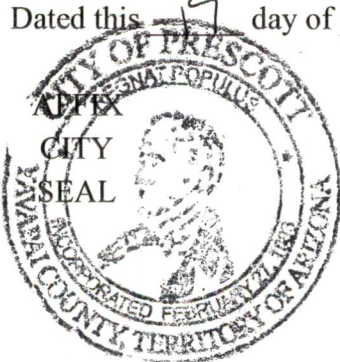


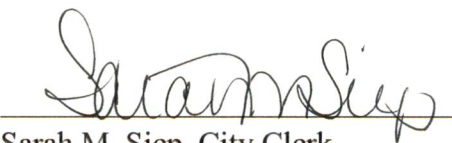
SARAH M. SIEP, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Workshop Meeting of the City Council Workshop Meeting of the City of Prescott, Arizona held on January 26, 2023. I further certify the meeting was duly called and held and that a quorum was present.

Dated this 17 day of February, 2023.





Sarah M. Siep, City Clerk