

ORDINANCE NO. 4538

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, TO APPROVE AMENDMENTS TO THE ETHICS CODE IN CHAPTER TWO, ADMINISTRATION, OF THE SCOTTSDALE REVISED CODE, BY AMENDING SECTIONS 2-47, 2-49, 2-50, 2-54, 2-56, 2-57 AND TO APPROVE AMENDMENTS TO SECTION 14-135.

WHEREAS, a recent Ethics Panel Report interpreted portions of the Ethics Code and recommended making clarifying revisions to the Code; and

WHEREAS, the City Council desires to clarify and amend the Ethics Code as applicable to elected and appointed officials of the City;

NOW, THEREFORE, be it ordained by the Council of the City of Scottsdale that the following amendments to the Scottsdale Revised Code are hereby approved:

Section 1. Section 2-47, Definitions, of Chapter 2 of the Scottsdale Revised Code is amended as follows, with strikethroughs indicating deletions and shading indicating additions:

**Sec. 2-47. - Definitions.**

The following words, terms and phrases, when used in divisions 3 and 4 of this article of the Code shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City official* means the mayor, members of the city council, and individuals appointed to serve on the city's boards, commissions, committees, task forces, and other appointed advisory groups.

*City of Scottsdale Code of Ethical Behavior* means the provisions set forth in divisions 3 and 4 of this article.

*Engaged in a general practice* means working in a profession or business, such as external lobbyists, attorneys, consultants, development and land use professionals or similar representatives, on matters that could regularly involve the decision-making process of the city council, a board, or a commission. Those with a property interest in land in the city or doing business with or within the city, including their agents and representatives, are considered to be engaged in a general practice if it is reasonably foreseeable that they could come before the city on more than one matter during a year in an effort to influence a city action or decision in which they have a direct or indirect financial interest greater than that of a general taxpayer.

*Engaged in a specific situation* means having a direct or indirect financial interest in an upcoming or pending item requiring action by the city council, a board, or a commission. This does not include a citizen activist or other community member with a strong interest in a matter

that could be presented for a decision by the city council, a board, or a commission and whose only financial interest is that of a general taxpayer.

*Ethics code* means the City of Scottsdale Code of Ethical Behavior.

*Gifts of any kind* means anything of value that could reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action. Examples would be money, services, loans, travel, entertainment, hospitality (including meals), promises of any future gifts, personal gifts or donations including, but not limited to: (a) the purchase, sale, or lease of any real or personal property by the city official, that official's relative, or an entity in which that official has a financial interest at a value below or above that available to the general public, and (b) employment and/or services, contracts, direct or indirect, by a city official, that official's relative, or an entity in which that official or relative has a financial interest. Items of de minimis value (such as a cup of coffee, a soda, a snack, etc.) are presumed to be items that could not be reasonably construed to be an attempt to exert improper influence.

*Relative* means the spouse, child, child's child, parent, grandparent, brother or sister of whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

Section 2. Section 2-49 of Chapter 2 of the Scottsdale Revised Code is amended as follows, with strikethroughs indicating deletions and shading indicating additions:

**Sec. 2-49. Conflicts of interests.**

(a) Arizona law prevents local governments from imposing different conflicts of interests laws than state law. To provide guidance to city officials, Scottsdale interprets Arizona's conflicts of interests laws as follows.

(b) A conflict of interests arises when a city official, a relative of that official, or an entity in which a city official has a substantial interest is actively engaged in an activity that involves the city's decision-making processes. "Decision-making processes" is broader than just voting and includes being involved with any aspects of any decisions the city makes, such as contracting, sales, purchases, permitting, and zoning.

(c) When a conflict of interests arises, the city official involved must immediately refrain from participating in any manner in the city's decision-making processes on the matter as a city official, including voting on the matter or attending meetings with, having written or verbal communications with, or offering advice to any member of the city council, or any city employee, contractor, agent, charter officer, or member of a city board, commission, committee, task force, other appointed advisory group, or agency (other than the city attorney when the city official is seeking legal advice regarding a possible conflict). In addition, within three (3) business days the city official must declare the specific nature of the interest on the public record by updating her or his personal interest disclosure form in the city clerk's office.

(d) During a public meeting when an agenda item in which a city official has a conflict of interests comes up for consideration, the city official shall state publicly that he or she has a conflict, recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

(e) In situations where a city official has a question about the applicability of this ethics code or the provisions of Arizona's conflicts of interests laws, the City Charter, or any city ordinance, a ruling may be sought from the city attorney on whether an actual conflict of interests exists. ~~City officials are strongly encouraged to avoid involvement in situations where a ruling declares no~~



~~technical conflict of interests, but where active participation might raise the perception of undue influence or impropriety.~~

(f) As a prerequisite for exercising any power of office, a city official is required to read, complete, and submit to the city clerk the personal interest disclosure form, shown below, before participating in her or his first meeting and before January 31 of every year of continued service to the city.

**Section 3.** Section 2-50 of Chapter 2 of the Scottsdale Revised Code is amended as follows, with strikethroughs indicating deletions and shading indicating additions:

**Sec. 2-50. - Gifts; prohibited; ~~exceptions~~ exemptions.**

(a) **Prohibition.** City officials are prohibited from soliciting, receiving, or accepting:

(1) any anonymous gift of any kind made either directly or indirectly, except as specifically exempted below; or

(2) gifts of any kind made either directly or indirectly from anyone who is engaged in a general practice or engaged in a specific situation that involves the city's decision-making or permitting processes, except as specifically exempted below; or

~~The term "gifts of any kind" includes money, services, loans, travel, entertainment, hospitality (including meals), promises of any future gifts, or anything of value that might be construed as an attempt to create a more favorable relationship than that enjoyed by any other citizen, including: (a) the purchase, sale, or lease of any real or personal property by the city official, that official's relative, or an entity in which that official has a financial interest at a value below or above that available to the general public, and (b) employment and/or services, contracts, direct or indirect, by a city official, that official's relative, or an entity in which that official or relative has a financial interest.~~

(3) gifts of any kind made either directly or indirectly where acceptance might reasonably be construed as an attempt to: (a) create a more favorable relationship than that enjoyed by any other citizen; (b) exert improper influence on any municipal action; or (c) reward any official action, except as specifically exempted below.

(b) **Exemptions include.** The following are exempted from subsection (a) of this section and are not considered gifts of any kind:

(1) entertainment, hospitality (including meals), transportation, related expenses, and token mementoes or symbolic gifts directly associated with events or meetings that an official is attending, including with a spouse or companion guest, where a civic or public purpose is served ~~as a representative of the city~~;

(2) admission to events which are sponsored or funded in whole or in part by the city, if furnished by the city or the producer(s) or the sponsor(s) of such events;

(3) gifts of food or other small items of appreciation under \$50 in value, accepted on behalf of the city and shared with others in the workplace;

(4) items received and donated to a charitable organization; or

(5) personal gifts given by the city official's friends or relatives provided they are not engaged in a general practice or a specific situation that involves the city's decision-making or permitting processes at the time the gift was given.

(c) **Declaration.** If any gift of any kind or personal benefit is permissible and exceeds twenty-five fifty dollars (\$250.00) in value, then the city official must declare it to the city clerk as provided in the Scottsdale Revised Code Section 14-135, unless reporting is not required by the Code provision within ten (10) business days of acceptance, which for admission to an event or other engagement must be calculated from the day it was attended. The declaration shall be made on a form designated by the clerk.

**Section 4.** Section 2-54 of Chapter 2 of the Scottsdale Revised Code is amended as follows, with strikethroughs indicating deletions and shading indicating additions:

**Sec. 2-54. Undue influence on subordinates.**

(a) Under the city's charter, administrative authority is vested solely in the city manager and other charter officers. Members of the city council may make inquiries to city staff. Members of the city council may not interfere with the city manager's authority of the charter officers, however, by giving orders or explicit directions or demands requests, publicly or privately, regarding city matters to any subordinates of the city manager and other charter officers, and they shall not attempt to exert influence on the city manager and other charter officers on issues relating to the hiring or removal of persons employed by the city.

(b) All city officials shall respect the orderly lines of authority within city government.

**Sec. 2-55. Filing complaints.**

(a) **Contents.** Any person who believes a city official in her or his official capacity has violated a mandatory requirement or prohibition in the City of Scottsdale Code of Ethical Behavior, set forth in division 3 of this article, above, or violated any state or city law may file a sworn complaint with the city attorney identifying:

- (1) The complainant's name, address, and telephone number;
- (2) The name and position of the city official who is the subject of the complaint;
- (3) The nature of the alleged violation, including the specific provision of the ethics code or law allegedly violated;
- (4) A statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred;
- (5) All documents or other material in the complainant's possession that are relevant to the allegation, a list of all documents or other material relevant to the allegation that are available to the complainant but not in the complainant's possession, and a list of all other documents or other material relevant to the allegations but unavailable to the complainant, including the location of the documents, if known;
- (6) A list of witnesses, what they may know, and their contact information, if known; and



- (7) If the alleged violation occurred more than ninety (90) days before the sworn complaint is filed with the city attorney, then the complaint must identify the date the complainant learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation, a list of the persons with knowledge about the date the violation was discovered, and a summary of the information they possess about the discovery.

The complaint shall include an affidavit stating that the information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the ethics code. If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those sources. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

(b) *Time for filing.* A complaint must be filed on or before the 365th day after the violation is alleged to have occurred or the 90th day after the violation was discovered, whichever date is earlier.

(c) *False or frivolous complaints.* A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and potential civil liability for, among other possible causes of action, defamation. If after reviewing an ethics complaint it is determined that a sworn complaint is groundless and appears to have been filed in bad faith or for the purpose of harassment, or that intentionally false or malicious information has been provided under penalty of perjury, then the city attorney may refer the matter to the appropriate law enforcement authority for possible prosecution. A city official who seeks to take civil action regarding any such complaint shall do so at her or his expense.

(d) *Elections complaints.* Any complaints relating to city elections shall be filed with or referred to the city clerk for review and disposition as provided by law.

Section 5. Section 2-56 of Chapter 2 of the Scottsdale Revised Code is amended as follows, with strikethroughs indicating deletions and shading indicating additions:

**Sec. 2-56. Complaints against members of boards, commissions, committees, task forces, and other appointed advisory groups.**

(a) *Initial screening of complaints.* The city attorney shall review each complaint filed alleging a violation by a member of a city board, commission, committee, task force, and other appointed advisory group and within fifteen (15) days either:

- (1) Return it for being incomplete;
- (2) Dismiss it for being untimely;
- (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition - as opposed to an aspirational or administrative provision - of the ethics code or any laws;

- (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the city attorney determines the complaint was false, misleading, frivolous, or unsubstantiated;
- (5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or
- (6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the City's Code of Ethical Behavior or a city law, (a) notify the subject public officer(s) of the complaint and provide them with time to submit a written response with a copy to the complainant and (b) within 10 days of its receipt, consider the response in determining whether the complaint should be summarily dismissed as part of the initial screening process;
- (7) If the complaint is not dismissed during the initial screening process, take action as set forth below.

In all circumstances, the city attorney shall simultaneously notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(b) *Additional review and findings.* For ethics complaints alleging violations of the City's Code of Ethical Behavior or a city law that proceed for additional review, the city attorney shall investigate the allegations and, within thirty (30) days (unless the city attorney requests a fifteen-day extension that is granted in writing by the mayor or vice mayor), submit to the city council, the complainant, the official who is the subject of the complaint, and the city clerk a report with findings of fact, conclusions of law, and a recommendation. The city council shall consider the city attorney's report at a public meeting, if the city attorney finds that an ethics violation likely occurred. If the city council finds an ethical violation, then it may remove the member from the city board, commission, committee, task force, or other appointed advisory group. In resolving a complaint, the totality of the circumstances shall be taken into consideration, including the intent of the person accused of wrongdoing.

Section 6. Section 2-57 of Chapter 2 of the Scottsdale Revised Code is amended as follows, with strikethroughs indicating deletions and shading indicating additions:

**Sec. 2-57. Complaints against the mayor and members of the city council.**

(a) *Independent ethics reviewers.* The city shall use independent, non-city personnel to handle ethics complaints lodged against the mayor and members of the city council (and to handle any ethics complaints filed against a member of a city board, commission, committee, task force, or other appointed advisory group if the city attorney would have a conflict of interests in handling that complaint). The city attorney, in compliance with applicable provisions of the City Procurement Code, shall select a pool of ~~ten (10) to twelve (12)~~ **five (5) to six (6)** individuals who could serve as the city's independent ethics reviewers to handle ethics complaints lodged against the mayor and members of the city council. To be eligible for selection, individuals must be retired federal or state judges, ~~or~~ **or qualified attorneys** faculty members at the law schools at Arizona State University or the University of Arizona, **or qualified attorneys** who do not live in Scottsdale and do not work for firms or employers that regularly have business in Scottsdale or represent clients in Scottsdale. ~~In the~~



~~event the city attorney cannot select a sufficient number of eligible people who can perform the necessary services, then the city attorney may complete the pool by selecting independent qualified attorneys who do not live or office in Scottsdale and whose firms or employers do not regularly have business in Scottsdale or represent clients in Scottsdale. The city's preference is that the majority~~ At least two-thirds ( $\frac{2}{3}$ ) of the independent ethics reviewers shall be retired judges or law school faculty members. Individuals who serve as the city's independent ethics reviewers shall do so as the city's agents and enjoy the city's full liability protection and immunity as allowed by law. ~~Each year t~~ The city attorney shall nominate one person from the independent ethics reviewers to serve as the city's "independent ethics officer," and the other independent ethics reviewers will either confirm the nominee or select another reviewer from the pool. The independent ethics officer shall not serve in that role for more than one five consecutive years. The city attorney can consider making a new nomination at any time in his or her discretion.

(b) *Initial screening of complaints.* The city attorney shall immediately transfer any complaint filed against the mayor or members of the city council to the city's independent ethics officer, who will conduct the initial screening of the complaint and within fifteen (15) days issue a report of findings and conclusions and recommend that the city attorney handle the complaint as follows:

- (1) Return it for being incomplete;
- (2) Dismiss it for being untimely;
- (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition as opposed to an aspirational or administrative provision of the ethics code or any laws;
- (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the independent ethics officer determines the complaint was false, misleading, frivolous, or unsubstantiated;
- (5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or
- (6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the City's Code of Ethical Behavior or a city law, provide the subject public officer(s) of the complaint time to submit a written response, which must also be provided to the complainant, and can be taken into consideration in determining whether the complaint should be summarily dismissed during the initial screening process;
- (7) If the complaint is not dismissed during the initial screening process, refer the matter to an independent ethics panel for further action as set forth in subsection (c) below.

In all circumstances, the city attorney shall follow the independent ethics officer's recommendation and notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(c) *Review and findings.* If the independent ethics officer recommends referral of a complaint to an independent ethics panel for further review, then the city attorney shall immediately transfer

the complaint to an ethics panel consisting of three (3) independent ethics reviewers selected by the independent ethics officer from the pool of eligible individuals. The members of the ethics panel shall investigate the complaint and report to the city council, the complainant, the official who is the subject of the complaint, the city attorney, and the city clerk its findings of fact and conclusions of law within sixty (60) days (unless the panel requests a thirty-day extension that is granted in writing by the independent ethics officer). The city council shall consider the ethics panel's report at a public meeting if it is determined that a violation likely occurred and either accept or reject the ethics panel's report as submitted.

**Sec. 2-58. Review of complaints.**

(a) *Presumptions.* The city attorney's recommendation to refer a complaint for further review does not mean that any of the complaint's allegations are true or that any city official has violated this ethics code or any law.

(b) *Procedures.* The city attorney will adopt written rules of procedure to govern the review process, including the right of a city official against whom the complaint has been lodged to respond to the complaint, attend any hearing, and present witnesses and other evidence on her or his own behalf.

(c) *Expedite.* The timelines for handling complaints set forth above set the outer limits. Reviewers and decision-makers are strongly encouraged to make their findings, recommendations, and decisions as expeditiously as possible for the sake of the public and the city officials against whom complaints have been filed.

(d) *Public information regarding action taken and reports issued.* On the same day the city attorney notifies a complainant of the action taken on a complaint as set forth in subsections 2-56(a) and 2-57(b) of this Code, above, and on the same day the city attorney issues a report to the city council regarding complaints against members of city boards, commissions, committees, task forces, or other appointed advisory groups as set forth in subsection 2-56(b) of this Code, above, or an ethics panel issues a report to the city council regarding complaints against the mayor or a member of the city council as set forth in subsection 2-57(c) of this Code, above, copies of those notices and reports shall be filed with the city clerk and made available to the public as public records.

(e) *Inapplicable provisions.* The provisions of section 1-8 of this Code are inapplicable to divisions 3 and 4 of this article.

Section 7. Section 14-135 of Chapter 14 of the Scottsdale Revised Code is amended as follows, with strikethroughs indicating deletions and shading indicating additions:

**Sec. 14-135. - Gifts and gratuities.**

(a) The provisions of this section are intended to promote ethical conduct and public trust in the integrity of Scottsdale municipal government and therefore, shall apply to all city employees, ~~elect~~~~ed and appointed officers, including members of boards and commissions,~~ in the course of their employment or the performance of their official duties with the city. This section does not apply to elected or appointed city officials whose conduct is covered by the Ethics Code as provided in Scottsdale Revised Code Section 2-50.



(b) No gifts, gratuities, and other benefits or items of value shall be solicited by a city employee or officer for personal benefit.

(c) Monetary gratuities, tips, honoraria, or other payments for services rendered for performing city employment or official city duties, other than compensation from the city or that which is otherwise provided by law or city policy, shall not be accepted.

(d) Gifts and other personal benefits or items of value shall not be accepted if acceptance could reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action.

(e) If, after consideration of the ethical standards expressed in this policy, a gift, personal benefit, or other item in excess of ~~twenty-five~~ fifty dollars (\$~~250.00~~) in value, is accepted, it must be declared in writing with the city clerk's office within ~~five (5)~~ ten (10) business days of acceptance, which for admission to an event or engagement must be calculated from the day it was attended. The declaration shall be made on a form designated by the clerk.

(f) The following items reflect legitimate public duties or purposes, or are otherwise not considered gifts to an employee or officer for personal benefit and need not ~~that must~~ be declared pursuant to 14-135(e):

- (1) Admission to events which are sponsored or funded in whole or in part by the city, if furnished by the city or sponsor(s) of such events;
- (2) Reasonable hosting, including meals and refreshments, travel, and related expenses, furnished in connection with official speaking engagements, ceremonies or other work-related appearances on behalf of the city, when public or civic purposes are served;
- (3) Gifts of goodwill or other tokens of appreciation accepted on behalf of the city, or in the case of food, accepted and shared with others in the work place.
- (4) Items received and donated to a charitable organization.

Section 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 29 day of March, 2022.

ATTEST:

Ben Lane

Ben Lane, City Clerk

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

David D. Ortega  
David D. Ortega, Mayor

APPROVED AS TO FORM:

Sherry R. Scott  
Sherry R. Scott, City Attorney