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#### CALL TO ORDER

[Time: 00:00:07]

Mayor Lane: All right. Then we will go ahead and continue on to the work study session and we will -- I will now call to order the November 17<sup>th</sup>, 2015, city council meeting, but this is, in fact, the work study session. We will begin with a roll call, please.

City Clerk Carolyn Jagger: Your Honor, if you like, we can stipulate that all the members of the council are still present.

Mayor Lane: That will be just fine.

City Clerk Carolyn Jagger: Good to go.

Mayor Lane: Now, work study sessions provide a less formal setting for the mayor and the council to discuss specific topics as we are here to discuss at length with each other and the city staff. The work study sessions provide an opportunity for staff to receive direction from the council, and for public to observe the discussions. We do have an opportunity and it's not always been the case but nevertheless we do have an opportunity, we provide an opportunity for five three-minute requests to speak on the subject on the work study.

Before we get to that, I want to first explain a couple of things -- some may be the first time here. Maybe not. But the history a little bit. I will talk about what we are set to do here today, but also -- and there will be no decisions here. This is strictly a work study and so it is strictly a guidance

of the kind of provisions that might address the issues that are of concern to this full council and our full community. And so we will be looking to that and that alone.

I have not been an advocate of this proposal and I never, ever have been. There's a number of reasons for that and some of them have been stated even by some others here. But for the purpose of this, I just want to explain a little bit of what has come down from not only our perspective here but also perspective for the body. So we are here to consider such an ordinance, how it might be structured to meet the needs of Scottsdale's community. I embrace wholeheartedly and sincerely, when asked by the LGBT representatives from one community, regarding their inclusive unity pledge and that effort was represented to me and other as a voluntary expression of respect of the LGBT community's right to equality with everyone in America to live their lives by anywhere own standards, mores and values and beliefs. It was expressed to be inclusive, equal and united with the community.

I heard sympathy folks talk about the fact that there may somebody injury that the city of Scottsdale with that pledge, which was voted unanimously by the council so endorse the pledge that somehow or the other that the city of Scottsdale was being tagged by something other than what we believe it to be. We thought the pledge truly meant one community, but that really wasn't the case as it was. It quickly became a problem as it being not enough and also was labeled as window dressing. But the council did decide to reinvest for a period of time in the pledge in an effort to try to bring the community together.

Divisiveness is a concern for us, as a council. It has to be. We have to concern ourselves with what the effect is on all parties within our community. So approximately 90 days ago the majority of council voted to consider the development of a proposed ordinance with some very special considerations. So we are here, as I said before, to give guidance today, to the staff, on how to regulate individuals, businesses and social and religious organizations, given the designation of the LGBT identified community members as a protected class from discrimination on that basis. And then also preserving the individual rights and freedoms of all Scottsdale citizens, businesses and organizations. That specifically is the language that brought us to this -- this work study.

The intent is ultimately to craft language for the inclusion in the prospective ordinance to legally prohibit discrimination against members of the LGBT community based on their sexual relationship, lifestyle and/or their gender identity and protects everyone from any infringement of their right to freedom of speech, freedom to practice their faith and religion and the court interpreted privacy rights and their freedom and right to contract for personal performance, artistic and/or interpretive services. So we are here to discuss with the staff to find what the language might be to meet those objectives, and to give guidance on what will move forward. So at this point, I just -- I thought it was important to make sure that we're all understanding what the objective is here today.

We do want to hear from those people who would like to speak, but under different circumstances, we sometimes go through a presentation first and at our work studies we frequently have the comments from public comment made first. So that those considerations, and those thoughts can be put on the table before we even have a presentation from our staff. From there, we will have the

presentation from the staff and then we will be in a discussion stage as to how we see these meetings, the concerns or the fears of our community on either side.

I would like to just say, I guess from just a personal note, that there's a lot of fear involved with this and I know some of it has been more or less put aside by some, but obviously some of what we are talking about here is driven by fear on one side and that creates a fear on the other side. But we, in our eternal wisdom here on the council find a way to be attentive and responsive on both sides. Nobody is to be marginalized in their potential concern.

**PUBLIC COMMENT**

[Time: 00:06:35]

Mayor Lane: With that, I will go ahead and start with the public comment and I do have, as I mentioned before, five cards for this session, and there will only be one opportunity in this work study for five speakers and we have them in hand. So they won't go any further than that. So I will start with John Zoutendyk. Come on, give it to me now.

John Zoutendyk: Forgive me, I left my hearing aid the at home.

Councilwoman Littlefield: You and my husband.

John Zoutendyk: My name is John Zoutendyk. It rhymes with mountain bike. I moved here to be with my daughter and four grandchildren. My son-in-law is a professional golfer and is on the road constantly. My wife and I -- my wife of 55 years and I have a large part in our grandchildren's lives.

The first thing I would like to point out is that my response to your letter asking for people to pledge to this LGBT directive, and the first thing that I got from this letter is unanimous and as a scientist, any time you -- the only way to get unanimity in anything, is to act in some way in a coercive community. I wondered if there was any part of the community that was applying undue pressure to the city council or was the city council really trying to test the waters as it were to see if they could proceed and unbeknown to me at the time I didn't attend the meeting on August 31<sup>st</sup>, indeed there is a -- a desire to change the law or what do we call it, the city ordinance, right. Our, there already is an ordinance, as I understand it, that covers race, color, religion, sex, national origin, disability, how would the LGBT fit into that as a component of that act that was meant to -- to prevent discrimination?

Okay as I mentioned, I'm a scientist and I looked to things, when you look at them objectively, you say, how do you measure something? And so the question that comes to my mind in talking to some wonderful people here tonight, how do you measure the LGBT whatever? It is not in the human genome and therefore, it -- my way of thinking has to be behavioral and learned. Okay? And that's the only explanation you can have.

So -- boy, three minutes goes fast! Is that really three minutes? Okay.

Mayor Lane: Yeah.

John Zoutendyk: Okay. So obviously I am -- would speak out that I was very impressed with the heartfelt talk that was given by Stanna. And I feel for Stanna as a Christian, and when I saw Janice reaching out for was affirmation. And so you are not going to get affirmation from any law that gets passed. You are going to get that from people who really believe that they should people equally. No law will provide that. Thank you.

[Time: 00:10:33]

Mayor Lane: Thank you, sir. Next is Jake Bennett.

Jake Bennett: Honorable mayor and council, thank you for the opportunity to speak this evening. My name is Jake Bennett and I'm the regional director of the Arizona Office of the Anti-defamation League. I'm here tonight to speak to the importance of Scottsdale passing a fully inclusive nondiscrimination ordinance, and also would like to address some of the myths surrounding fully inclusive nondiscrimination ordinance, what they do and what they don't do. A.D.L. was founded -- the anti-defamation league was founded to secure justice and fair treatment for all. We have 100-year history of defending freedom of religion with 500 amicus briefs. It provides equal protection not special protections, as some have asserted. They ensure that all people are provided the same protections and access to recourse should they face discrimination, nothing more, nothing less.

A fully inclusive nondiscrimination ordinance would not hinder anybody's freedom of religion. Freedom of religion is important, that's why it's already protected by first amendment of the Arizona constitution and Arizona State law. This is not affected by nondiscrimination ordinances, including ones that contain sexual orientation and gender identity protections. It won't force a church or synagogue to perform a same-sex wedding or hire a gay pastor if doing so violates their beliefs. What a fully inclusive ordinance would do is update existing protections to include sexual orientation and gender identity. Nondiscrimination ordinance laws in Arizona require all business owners regardless of their business beliefs to serve all people. Businesses that are open to the public should be open to everyone on the same terms. Nobody should be turned away from a business, denied service in a restaurant or evicted from their apartment simply because of who they are or who they love. A fully inclusive ordinance will not bring frivolous litigation or costs to business or the taxpayers. Phoenix, Tucson, Tempe and Flagstaff reports that the cost of enforcing their ordinances has been insignificant and not a burden. They found it to be positive for attracting tourism and conducting new business.

Time to talk about what this ordinance won't do and start talking about what it will do and I brought a quick little show and tell. It's a document that I had at home. It's 120 years old from 1896 that is a good reminder of what freedom of religion is about. This was my great grandpa's naturalization document, 1896 from Vienna, Austria. He brought his family to America because in the late 1800s, Vienna, Austria, a lot of doors were closed to Jews. There were strict quota systems and certain trade guilds were closed completely. I think this is a reminder that freedom of religion is about not

having doors slammed in your face because of who you are. Thank you.

[Time: 00:14:20]

Mayor Lane: Thank you, Mr. Bennett. Next, would be Nelda majors and apparently combined with Karen Bailey.

Karen Bailey: Honorable mayor and council, thank you for the opportunity to speak this evening. My name is Karen Bailey and this is my wife, Nelda Majors and Nelda and I are Scottsdale residents. We have lived here for 11 years, and have raised two wonderful girls. We have been together for almost 58 years, but we are also newlyweds. And we are here to speak about the importance of a fully inclusive nondiscrimination ordinance for the city of Scottsdale.

Nelda Majors: When Karen and I could finally commit to each other in front of our family and friends it was a day of overwhelming joy, to have marriage -- to have our marriage and our commitment recognized in the eyes of the law, was a day that we never, ever, thought we would see. But there's still a shadow hanging over our joy and the joy of so many gay and transgendered people. In most of Arizona, and in our beloved city of Scottsdale, it is still legal to discriminate against us in employment, housing, and public accommodations simply because we are gay and this is just not right. It's not right that we can get married on Saturday and fired on Monday. Celebrate our first anniversary but be refused service in a restaurant or a hotel. This lack of basic protections sends a message that Scottsdale is not welcoming or inclusive.

We are not asking for special or new protections. We are only asking for equal protection. We don't want special protections, just equal protections. Nothing more, nothing less. It's what is fair and what is right. Not just for Karen and I, but for everybody who lives and works and plays in our beautiful city of Scottsdale. Thank you for letting us speak tonight. Thank you.

[Time: 00:16:58]

Mayor Lane: Thank you, Nelda and Karen. Next is Tyler Kinney.

Tyler Kinney: Good evening, honorable mayor and councilmembers. Thank you for the opportunity to speak tonight. My name is Tyler Kinney and I'm here tonight to express my support for a fully inclusive nondiscrimination ordinance that would protect all people in Scottsdale, including members of the gay and transgender community. As a corporate recruiter at Go Daddy and the chair for Go Daddy United, our LGBT and allied employee resource group, I'm proud to work for an organization that has a fully inclusive nondiscrimination policy. At Go Daddy our employees know they are judged on their performance, nothing more, nothing less. They don't have to fear being fired for who they are. In fact, our nondiscrimination policy is one of our significant recruiting tools.

However, the fact that we are located in a city without a fully inclusive ordinance, puts us at a disadvantage when we are recruiting top talent. Employees want to know that they are protected both in and out of the workplace. They don't want to have to worry about being denied housing or

refused service at restaurants simply because they are gay or transgender.

Go Daddy is located in Scottsdale for many reasons, the beautiful climate, the landscape and the vibrant culture among them. Now it's time to add another reason that you are a city that is truly open for business to everyone. As we say at Go Daddy, it's go time! It's go time for a fully inclusive nondiscrimination ordinance here in Scottsdale. Thank you for your time.

[Time: 00:18:52]

Mayor Lane: Thank you, Mr. Kinney. Next and final is Jim Campbell.

Jim Campbell: Good evening, Mr. Mayor, members of the city council. Thank you for allowing me to speak with you tonight. My name is Jim Campbell. I'm a Scottsdale resident and an attorney with Alliance Defending Freedom which is an organization headquarters in Scottsdale that focuses on religious freedom issues.

I can tell you firsthand that these nondiscrimination laws threaten the religious freedom of many of our neighbors because in my role as an attorney, I represent many great people who are being punished as a result of them. None of these individuals declined to serve or hire gays or lesbians. In fact, all of them have and will continue to serve and hire everyone, including gays and lesbians but they cannot promote messages or participate in expressive events that conflict with their deeply held religious convictions about marriage and human sexuality. For that they have been punished and threatened with loss of their business as a result of this law.

Consider my friend Blaine Adamson, one of my clients. He is in Kentucky. He declined to print one shirt promoting a gay pride festival because he could not in good conscience print the words on that shirt. And in response to his action, the local human rights commission, declared him to be in violation of the law. Now thankfully, a Kentucky court has since concluded that the application of that law violated his constitutional rights, but the case continues to be litigated at taxpayers' expense. Also consider Barronelle Stutzman. She owns a floral design shop in Washington a state that enacted a law like what the council is considering. Although she served Rob Ingersoll, a gay man in her community for more than five years, a court in her state found that she engaged unlawful discrimination by declining one specific request from him, to design flowers for his same-sex wedding. And if the Washington Supreme Court does not reverse that decision against her, she stands to lose her business and all of her assets, in order to pay hundreds of thousands of dollars to the attorneys who have been prosecuting her.

Thankfully this Congress has recognized the need to protect these people. It directed city council to identify ways to preserve individual rights and freedoms of all Scottsdale citizens and organizations. But the report that the city officials recently produced doesn't do this. All it does is point to a law recently enacted in Sedona but that law, I can promise you, does not protect people like Blaine or Barronelle. So know that by voting for a law like Sedona's you are voting to drive out of business people like Blaine and Barronelle. Worse yet, the Sedona law doesn't provide sufficient protection for religious organizations like churches. Indeed, the law's exception for religious organizations is so

limited that it would require a church, for example, to hire a secretary that either disagrees with the church's stance on these issues or acts inconsistent with the church's stance on marriage and human sexuality and for those reasons we would caution against this ordinance.

[Time: 00:22:42]

#### **ITEM 1 – NON-DISCRIMINATION ORDINANCE**

Mayor Lane: Thank you, Mr. Campbell. That completes the public comment in the work study session. All right. So the one and only order is the nondiscrimination ordinance, and presentation, discussion and possible direction to staff regarding recommended elements appropriate for a Scottsdale nondiscrimination ordinance that may be the basis for subsequent public outreach. So we will go ahead and start with the presentation on the subject with Mr. Brent Stockwell.

Assistant City Manager Brent Stockwell: Good evening, mayor, members of the city council. Back on August 31<sup>st</sup>, you asked the city manager and the city attorney to do a research project. We have completed that work and are reporting back to you tonight. Here's what we are asking you to do. Provide us direction on what you want to include in a nondiscrimination ordinance and how you want to get public input on that ordinance.

So we have investigated nondiscrimination ordinances in other municipalities while we have looked broadly across the country, and focused on Arizona communities hasn't that's because the laws of each state make a difference on how ordinances should be constructed. We have determined some key elements of a nondiscrimination ordinance that he would protect the LGBT community and others from discrimination, while preserving the rights and freedoms of all Scottsdale businesses and organizations.

So tonight we are presenting to you some recommended elements appropriate for a nondiscrimination that could be the basis of subsequent public outreach. Federal and state laws currently prohibit discrimination on a number of items commonly referred to as protected classes. These are race, color, religion, sex, natural origin, or age. Various governments have added additional classes, including sexual orientation, gender identity, gender expression, marital status, familial status and veteran status. These laws also typically include exemptions listing those who don't have to build a law such as for religious organizations carrying out their duties.

Currently Scottsdale does not have any ordinances that cover discrimination in the three commonly covered areas, private employment, housing, or public accommodations. Scottsdale's current ordinances only address nondiscrimination in the area of city employee, opportunities for or city-run housing program such as the federal funding, commonly called Section 8 housing. In states like Arizona that don't have nondiscrimination laws that extend the LGBT protection, cities and counties have adopted their own.

Here is a list who added these protections. This is a visual aid. You see that Colorado, Utah, New Mexico, Nevada, California, already have state level protections, of one sort or another that covers

LGBT individuals. Individual does not have cities in three counties Coconino, Maricopa and Pima have adopted their own ordinances. 42% of Maricopa County of Arizona residents are covered by LGBT inclusive nondiscrimination. So you do the math.

Scottsdale, Mesa and Glendale are three communities currently considering those and if those three communities would pass that, that would take the percentage of residents in Arizona and in Maricopa County that are protected over 50%. When you think about, you know, why this has become such an important issue here in some of the other communities it's precisely that issue. So if the city wants to take the next step, then nondiscrimination ordinance such as those used by other cities would seem the appropriate way to do. So such an ordinance would expand on the city's existing nondiscrimination law that applies to its own employees and hiring practices to include local businesses and employers.

On the screen are six key issues that we identified in our research that covered the key elements that a nondiscrimination ordinance would cover. We thought it would be helpful if Bruce Washburn, the city attorney would go over each one of these one by one and then I will jump back in when we get to talking about next steps and how you want to go about the public outreach.

[Time: 00:27:22]

City Attorney Bruce Washburn: Thank you, Brent. Mayor and members of council. First, let me explain why we have taken the approach that we have taken to presenting this to you tonight. The direction was to go out and look at ordinances from other cities and then come back with some suggestions of an ordinance if the city wanted to adopt one that would be suitable for Scottsdale. And so I'm going to talk a lot about the city adopting an ordinance and I'm not going to start every sentence if the city wants to adopt one, we can do this. Can we just stipulate that every one of my sentences starts with "if the city wants to."

But moving on from there. It turns out as Brent pointed out there are 215 local jurisdictions, cities and counties that have ordinances and there's no one model standard ordinance. They are all over the place, with respect to the terms. There's some basic concepts that are embodied in most of them but how they approach those concepts vary widely. I thought rather than coming up with lists of different ordinance provisions that vary some drastically but some only slightly in their provisions and having the council sit here and try to work through those, that the better approach was to try and identify the major areas where it seems like the -- the ordinances differ and get the council's input on how you want to have those issues addressed, because remember, we are not adopting an ordinance tonight. We are not even necessarily coming up with specific language tonight, although the extent the council can agree on specific language, of course, we will take that forward.

And, I hasten to add that you are not being asked to adopt or approve the Sedona ordinance tonight. I use the Sedona ordinance as an example, not a model, but an example of the ordinance because I do think that it also the elements in it that would be appropriate for a city like Scottsdale in the sense that it's a -- it's an ordinance that has fairly -- it's -- it covers a fairly broad group of different categories of people, which is -- which is pretty typical and we'll talk in a minute about the different approaches of



that. It covers a broad group. It's largely complaint driven, in other words it doesn't -- while it would be theoretically possible to have the government officials out looking to see if there's discrimination it's largely triggered by people who that they have been discriminated against. So it's complaint driven which seems to be appropriate. It has a mediation provision in it, which I think was a good approach for Scottsdale. We usually like to try to get people to comply rather than -- so our actions are usually compliance driven rather than punitive driven. We have an ordinance where the city attorney makes the determination whether or not there's going to be any action taken. So there's not something like a commission that would decide that they violated the ordinance. We use the existing city court procedure. It has protections in it for religious freedom and other protections for --

[Time: 00:30:35]

Mayor Lane: Pardon me, Mr. Washburn. Are we combining who is protected with how it will be enforced? Or is that a natural -- I only thought because maybe we were going through this step by step. I don't mean to interrupt your stream of thought here but I wanted to make sure that --

City Attorney Bruce Washburn: I will go through every one of these individually.

Mayor Lane: Yes. So if we are starting with who is protected, I suppose -- and, again, I'm not trying to disrupt your stream of thought on it. It seems like we would get into how it would be enforced and what the mechanisms would be and that. I thought --

City Attorney Bruce Washburn: Well, I'm sorry. I may have gone on longer than necessary. But I wanted to outline the appropriate elements of a Scottsdale ordinance and then we'll go through the different questions.

Mayor Lane: So you are not going through these right now?

City Attorney Bruce Washburn: No, sir.

Mayor Lane: Okay.

City Attorney Bruce Washburn: And then finally, it has -- it's a civil enforcement provision rather than a criminal enforcement provision which I think is appropriate for the city of Scottsdale.

So now let's take a look at who is promoted and -- who is protected, rather. And the question, does the city ban all discrimination, including groups that are already protected, or just those not currently protected by other laws and if it's going to cover groups not currently protected by other laws do we limit it to the LGBT community or do we go broader than that? Let's take a look, for example, at what Sedona did. In their definitions of discrimination, they talk about what groups are protected. It starts out with race, color, gender, gender identity, sexual orientation, religion, national origin, ancestry, marital status, familial status, age, disability or veteran status.

Now a number of those protected by federal and state law, race, color, religion, national origin or ancestry. And age -- disability and age is protected by federal law and employment. Although not in housing and public accommodation. So it also adds gender, gender identity and sexual orientation which would get at the LGBT protections but then to add marital status which is whether you are married or single and familial status, whether you have children, age covering the others not covered by existing law and veteran status which is a different category.

That's the first discussion, how broadly would you like to have the city's ordinance go? And let me just point out that to the extent that the city covers groups that are already covered, that would mean that, for example, somebody that had a claim that they had been discriminated on the basis of race, that they could take to the civil rights division, of Arizona Attorney General's Office, they could -- they would also have the choice of bringing it to the city. And for the groups that are not currently protected by state or federal law, such as, for example, veterans, the city would then basically be in the business of providing protections for those groups as well as the LGBT groups that we would be adding to the existing protections.

[Time: 00:34:14]

Mayor Lane: Mr. Washburn, if I might just -- I question, I suppose, you -- you have the comment at least in our council report that most ordinances do include all groups, it doesn't really define how that is, whether it's all that are unprotected or just those that unprotected but all groups, but all groups, particularly when we start talking about identity groups can get into a fairly sizable groups of people. We -- we -- of dividing folks up into different category of things to be protected.

One of the things that we have talked about in the testimony that's been given and we have talked about ever since we have begun this conversation, whether it was with the pledge or whether any consideration of other cities that were implementing ordinances and that's how do we -- I realize this has been dismissed by some, but I'm concerned about it myself because of some of the dialogue that has risen to a head as we have entered into this, in the last few weeks but actually even before that where there are direct attacks and challenges to religious believes and feelings and such. So it's -- it's interesting and it's important to me, even though some may feel that it's not intended to invoke fear of someone practicing their faith outside the confines of the walls of a church or otherwise, but also that they be able to speak freely about what their feelings or belief might be. I know that there's a major sensitivity to sort of acknowledging a specific philosophy or sense of history or any of those things that they will might still hold as their own belief, whether it's religious belief or just their own particular mores.

In some ordinances they have a list of exceptions rather than inclusions. And I wondered if we looked at any of those.

City Attorney Bruce Washburn: Right. Yes, we -- we did look at the ones that went it the other way. This is the more typical way where you basically cast nets. Most ordinances include a large group and may include both the LGBT community, plus all of the groups already protected and some of them add in other groups that are not already protected but also are not LGBT and then as we'll see -- as we

go through this ordinance, they then make exceptions for religious organizations and social clubs and things like that and say, okay, you are not covered by this ordinance, you are not covered by this ordinance and certain activities.

Mayor Lane: Well -- I think this is an interesting conversation. It will always leave somebody out, eventually somebody else will probably be identifying themselves a group that needs to be protected against other's opinions of them. So the exclusion to protect the very folks in their free speech and their freedom of religion and the freedom to contract, you know, artistic development of that saying we have this exclusions rather than creating a laundry list of folks that need to be in protected classes. So that was my thought on it.

So I'm just -- I didn't know whether we had looked at just trying, let's address the issue at hand and that's the nondiscrimination for -- but in these particular cases, this will be understood and accepted. I would rather see that go that direction. I think it's simpler, plainer and can be a little bit more defined for most people as they go through it and I don't want a 2,000 page nondiscrimination ordinance -- and I'm exaggerating to make a point.

I have said before, my mother told me a billion times not to exaggerate. But in any case, that's some of the thinking I would like to see taken forward. Unless you have something immediate, the Vice Mayor wanted to weigh in on this.

City Attorney Bruce Washburn: Thank you.

[Time: 00:39:08]

Vice Mayor Smith: Thank you, mayor. I was just going to say, I think we will probably get to the exclusions when we get to Section 6 or whatever your discussion.

City Attorney Bruce Washburn: We will visit a few of them on the way and then get some others when we get there, yeah.

Vice Mayor Smith: The other thing is a procedural matter, do you -- or do you want, Mr. Mayor, comments on each question or each section as you present it? You sort of paused as if you wanted feedback on each section or do you want to scoot through the whole thing and get comments at the end or --

Mayor Lane: Well, if you are asking me, and that's how it came and don't get me wrong. I mean, you should be here, frankly to present, and we are to discuss, but to try to keep it orderly, and that's the reason I try to -- I made the comment that they incorporated how it would be enforced. I know you were not addressing the first item. I think we need to gather up individually, even though there may somebody crossover, Vice Mayor and the idea that the last item is how our individual rights and freedoms are protected, that actually could be used to sort of determine who is protected. We can keep it very simple and say who is protected, but the only qualifier we might have to that is how are the rights and the freedoms of everyone else protected in that we can do that with an exclusion.

at's the reason I crossed over on to it.

Other than that, I think going one by one is a more orderly way. In the past when we tried to do a full wash of the whole thing and then try to assemble our thoughts, I think it's become a little bit more difficult. But --

Vice Mayor Smith: Well, then, I'm with you and I'm fine there. So then I will comment open this for my two cents. I think there's some merit to include a great number of categories in the sample or the model that you have given us from the Sedona, familial status, marital status and so on and so forth. But I do think it -- I'm not sure I -- I think I'm with the mayor on this, my two cents, I would rather keep it simple and directed. Many of the other status of discrimination issues are covered by either federal or state statute. I don't particularly want to repeat them here, and -- and give folks a duplicate forum for filing a complaint if I don't get what I want at the federal level, I will come to the city. I think the reason for having this discussion is because of a particular group of citizens that are not protected at the state and federal level and so I would like this ordinance as it may be written to cover that group of people, LGBT community, however it's defined. And eliminate duplicates and eliminate if you found groups to cover. So that's my thought.

Mayor Lane: One thing, just to add to that, because I think we are on the same line of thinking, as far as keeping the list of who is on -- who is included in this, it may make -- it may keep it simpler, but the other is, if we tried to include a number of things that already covered, we do end up duplicating and we take some ownership in a system -- this is new to us. We don't have any bureaucratic system. We don't have any real system to be able to process this or if we have to design one, we will. But nonetheless the fact if we do this -- but the fact remains for us to start picking up groups that are already covered, just now puts it in our bastion of consideration and thus grows our involvement in something that we don't need to be involved in. So that's consistent with what the Vice Mayor is thinking.

[Time: 00:43:24]

Councilmember Korte: Mr. Washburn, so we are not here creating the wheel, right? And when you say most ordinances include all groups, there must be a reason for that. Can you help us with that?

City Attorney Bruce Washburn: And, again, when I said most include all groups, what I was -- I was -- I was a little bit vague about that, because some have groups that others don't have, but most of them have broad coverage. There's very few ordinances out there that cover just the LGBT community. And I -- I'm -- I have not been privy to the decisions for why they did it that way. It's possible that it was because you would gain broader support if you -- the more groups you were protecting, the more people that would have a buy-in on it. The other possibility is because the -- if, in fact, at the local level you have the opportunity to seek redress, sometimes you can get more attention at the local level than you can, for example, going to the federal government. They have, you know, a large number of cases and can take a long time, the federal government to get done whatever they want to get done so people might feel that if they are going to address discrimination and their city ordinance, that they will make opportunities available to their citizens more readily than

if they have to rely on state and federal level.

Councilmember Korte: Perhaps it's a point of perception. So when we look at data, that over 70% of Arizonans believe that the LGBT community are protected under the U.S. constitution, we know that that is false. So if communities adopt a nondiscrimination ordinance, perhaps it's an issue of perception to be more inclusive than exclusive so that the community perceives it as good for all and maybe that's just a matter of political expediency.

[Time: 00:45:36]

Mayor Lane: Thank you, Councilwoman. Yes, Councilwoman Littlefield.

Councilwoman Littlefield: Thank you, mayor. I took a little bit different step on this. I went back and asked for a copy of our current ordinance for the city of Scottsdale and its protections and it reads it is the policy of the city to provide employment opportunities to all persons based solely on ability, regardless of race, color, religion, sex, national origin, age, sexual orientation, gender identity, or disability. Equal employment opportunity applies to all human resources related activity. To that, looking at some of the other information that we have been given on ordinances and stuff, for the city to use this and add to it, marital status, military veteran status and familial status seems it would be inclusive and it would also be consistent with what we currently have. And going from that point on, so who is protected, I would add those three.

[Time: 00:46:49]

Mayor Lane: Yes, Councilwoman Klapp?

Councilwoman Klapp: Doesn't the current ordinance encompass the employment practices of the city. Isn't that what the ordinance is for?

City Attorney Bruce Washburn: Yes.

Councilwoman Klapp: So we are talking about a totally different thing now. We are going out into the community to place certain requirements on employers and on housing which has nothing to do with the city. So I don't think we can use exactly the same language that we used in our internal employment practice ordinance to write an ordinance that is going to affect a lot more people externally. So I don't know if I would agree with that. I think the current ordinance is really only internal for the internal use of the city of Scottsdale for employment. It's nothing to do with housing. So I'm tending to believe, based on what I'm hearing that maybe we should be looking for in restricting what is in the ordinance, as far as what's included because it's going to apply to external employers, not to the city of Scottsdale and its employment practices.

Mayor Lane: Thank you, Councilwoman. Councilwoman Littlefield.

Councilwoman Littlefield: I wasn't trying to suggest that we use the city ordinance that we use for

our own internal hiring for all the city, I was just saying if we start with that, and make it consistent with whatever we decide to do, for the rest of the city, then we are not at loggerheads with, well, we have this here and we have this over there and they don't match. And that's where I'm trying to make a starting point of who do we want to include? Well, if we want to include these other issues, they ought to also be included in the city ordinance. So that we are together, and so we don't have to say, well, you don't do it here but do you it over here and you don't do it here but you do it over there. So it ought to be one and -- one and the same, inclusions of people that are part of this policy.

[Time: 00:48:51]

>Mayor Lane: Yes. Councilman Phillips.

Councilman Phillips: That brings up another point. The city already has their nondiscrimination policy and most big companies already have their nondiscrimination policy. So if we wrote one up, we are doing it for the small business community; is that correct?

City Attorney Bruce Washburn: I don't have information on what percentage of large companies have it. You are certainly right, a number of them do. So with respect to the employment, you are right, it would be a limited number of employers that we would be impacting.

Councilman Phillips: I think it's mostly small business and I think that's putting a hardship on the mom and pop businesses is really what we are talking about doing.

[Time: 00:49:40]

Mayor Lane: Thank you, Councilman. Councilwoman Milhaven.

Councilwoman Milhaven: So we are talking about who? Councilwoman Littlefield in reading your list, it sounded like your list pretty much closely matches that list?

Councilwoman Littlefield: Pretty close, yes.

Councilwoman Milhaven: You are suggesting that all of them be included to be kept consistent.

Councilwoman Littlefield: From what we have, marital and familial status and veterans.

Councilwoman Milhaven: I would inclined to say that this definition is agreeable to me, if the majority would prefer to leave out groups covered by state or federal, then I would be agreeable to that, this would be my preference but I would go along with the majority to exclude groups that are already protected.

City Attorney Bruce Washburn: Mayor, if I could make one other point and that is just to remind you that when you include a group and make it illegal to discriminate based on, for example, veterans status, that would theoretically make it -- not theoretically that would make it illegal to discriminate

both for and against veterans. So for example, some business wanted to give veterans, you know, free coffee on Tuesdays or something like that, it would also fall under the ordinance so that's another reason to think about which groups you want to add in and which groups you want to have out.

[Time: 00:51:01]

Mayor Lane: Yeah, and I think that's a good point, but I was also going to say that are these groups -- does this mirror what we have here? Does this mirror federal protections or state protections?

City Attorney Bruce Washburn: That list up there doesn't mirror either one of those. It's inclusive of those but it goes beyond them.

Mayor Lane: Okay. So there are some things that would be duplicated and the concern I expressed earlier, I would rather not take ownership with more things than are already covered but this may be something in between in the concern, but to your point, and there are a lot of conditions, we run into it almost every day, where veterans are preferred hires. They voice that openly and frankly, they could easily be an implication that they do it openly and it might be more of a problem.

Vice Mayor?

[Time: 00:51:50]

Vice Mayor Smith: A procedural question that maybe you know the answer to. But if -- if someone -- if we were to have an ordinance that had these inclusions of coverage, and someone said that they were discriminated against because of race, would we as a city simply bump that issue up to the higher governing authority, be it the state or federal or would we really try to administer justice at the local level?

City Attorney Bruce Washburn: It's -- let me start by saying that the city would have the discretion to decline to prosecute under its ordinance and to refer them to the state or the federal authority. What the practice would be, it's impossible for me to say at this point. Does that answer your question?

Vice Mayor Smith: I think. So we are not necessarily taking duplicate ownership or not necessarily giving someone two bites at the apple, by including a local ordinance, if they try for two bites at the apple, one could simply say you had your day in court at the federal level or at the state level or whatever we decline to take it further. Could we do that?

City Attorney Bruce Washburn: Yes. Not only could we do that but there's also some legal doctrines which I won't go into how exactly they apply but there are legal doctrines that basically say if you already tried your case in federal court, you can't go to a state or local level and pursue exactly the same case.

Vice Mayor Smith: So based on that understanding, I don't think I have a problem with duplicating items that are in federal or state statute, and I would probably be with the language that was suggested from our existing city hiring policies as being a reasonable list to go with. I probably wouldn't add the additional items, familial status, veterans and whatever the third one was, marital status, was that the third one? Just because I don't want it to look like we are really trying to think of everything including left-handed people here, but -- With the possible exception of councilwoman Littlefield. But -- so stating it again summarily, I would probably go with the same list that we are gleaned from of the existing city ordinance adding the LGBT coverage.

Mayor Lane: Thank you, Vice Mayor. Councilwoman Korte.

Councilmember Korte: I agree with Councilwoman Littlefield and Milhaven and Councilman Smith. My preference is to be inclusive rather than exclusive.

[Time: 00:54:40]

Mayor Lane: Thank you, councilwoman. The only caveat I would say, I have no real problem with that, but I don't want to compound the issue and compound charges. So if, in fact, we end up taking ownership on any level at all, I would like it to be investigated as to whether we end up becoming responsible for some items that may already be covered under other issues. All right. I think -- yes, I think we will move on to the second item. What size of employer is included?

City Attorney Bruce Washburn: Mr. Mayor, some cities such as Sedona, basically, you have one employee, you are covered. It's not uncommon practice to have the local ordinance track whatever the state law is on what size employers are covered. One advantage of that is you don't have the gap where you are providing protections that, you know -- that would otherwise be duplicated by state but you cover employers that they don't, that you are going to create discrimination in employment on all the different bases which is what we are talking about doing. So, you know, looking at the Sedona ordinance, they have a person doing business within the city who has one or more employees for each working day and 20 or more calendar weeks.

Another issue that -- another issue that this brings up is whether you are talking about covering employers who actually have employees in the city, in other words, of businesses that would be licensed in the city of Scottsdale as opposed to everybody who does any sort of business in the city of Scottsdale which would be just about everybody that sells a product on our shelves they are doing business here in some sense. I think general understanding that you are talking about employers who actually have businesses located in the city, employees located in the city. The one last thing I wanted to add, Arizona, the state limit is -- it's up through 15 employees are not covered. You have to have more than 15 employees. I think 15 -- 15 is the breaking point. I'm trying to remember if it's below 15 or including 15. But 15 is the breaking point.

Mayor Lane: Just to clarify that. If it's 15 or more, where there is absolute -- there's a specific operation within the city of Scottsdale?



City Attorney Bruce Washburn: That would be my recommendation that we have it apply to employers who actually have a presence in the city, just because we have very little ability to police the activities of people who are not here.

Mayor Lane: Well, one of the things that -- we are always looking to try to simplify things, though as it relates to regulation. We are not necessarily on a national level, but to simplify and to make sure that they are clear, one of the things I would be concerned about is the complexity of, you know, various different ordinances. We have every different municipality for businesses that cross borders, that the rules would be different in a lot of different cases. And so it creates obviously administration, compliance issue, all matter of that. I'm not sure how we can define it, but I would want us to be sensitive to the definition that what happens in Scottsdale is what -- you know, at this -- if this were to be passed or used, it would be Scottsdale operations strictly. And that's -- that's not going to be an easy thing, I don't believe, to really define but nevertheless, it's on your plate now. I'm sorry, Virginia, did you have something?

[Time: 00:58:40]

Councilmember Korte: Thank you. I support, of course, that this covers employers with the presence -- with their presence in Scottsdale. So Scottsdale address doing business here in Scottsdale business license and I also believe that excluding those employers with 14 or less or 15 or less, and I believe that that number is aligned with the American disability act or some Arizona laws around discrimination, the A.D.A., there's a 14 employee cutoff or 15 or whatever that is. The last thing we want to do is burden small employers, the mom and pops, and Councilman Phillips certainly represents that size of employer. So that's what -- again, the 14 or less or 15 or less, I'm not sure but aligned with that American disabilities act seems to make sense.

Mayor Lane: Thank you, councilwoman. Vice Mayor?

[Time: 00:59:54]

Vice Mayor Smith: Thank you, mayor. And I think -- well, I don't think I'm in agreement with Councilmember Korte's recommendation of the 15 person limit, again, however you figure out Mr. Washburn, however you figure out this is in the state statute, because I don't think we want to make something more restrictive here, particularly as we are putting in these other categories. We don't want to make more restrictive things than what we have at the state level but there's a more important -- two other reasons and one of them was touched on and that is we don't want to unduly burden small business and make it somehow more cumbersome than it may already be for entrepreneurs to develop in our community and grow their business.

But I think one of the biggest reasons and the argument is oftentimes made that when a business owner opens their doors to the public, they have a civic and legal responsibility to uphold the civil rights of all the customers that come forward, and I don't think I agree with that. Carried to the extreme, we would simply argue that a single proprietor must somehow check all of his beliefs and religious convictions at the door when he embarks on making a living when holding himself out to the

public. I think to argue that a small business owner has to surrender their beliefs when they undertake to earn a living in a manner that incidentally serves the general public, I think is an undue restraint of individual freedoms but then there is a point when this proverbial small business grows up and becomes a business entity and personal corporation, partnership, whatever it may be.

Whether that magic number is 15, I don't know. I'm happy with that as anything, but there is a point when this entity becomes something other than a person and you can't -- you can't protect that entity saying that the entity has beliefs. So I'm willing to say that small business owners who are, in fact, the face and the reality of their business may have beliefs that they are bringing to the table and they may -- they may have great trouble violating those beliefs in serving the public, but we are here, I think to provide a plan of protection from discrimination in employment and it's primarily for businesses of a size that do not have, if you will, a religious conscience. So a long way of saying I also agree with the 15 employee limitation. Thank you.

[Time: 01:02:49]

Mayor Lane: Thank you, Vice Mayor. I would want to add to that a little bit too, when we talk about employers, this may be a category where we need to consider exceptions to the employers, not just by size, but by the kind of work that they do. When you talk about an individual who is personally performing or creating a service, whether this is artistic or it's interpretive or otherwise, those are kinds of things that to the individual might even extend to the employee. I mean I don't understand necessarily why a business person might have the opportunity to uphold the values but an employee may not. Then it goes, of course, to hire or not hire.

And that's -- but what I was going to say with regard to the size of employee with this particular question and this box, whether or not there are or not organizations that are religious affiliated or specifically have a -- either they are a religious institution, an organization, or whether they operate in support of that, with specific set of guidelines that they individually and also as an institution hold, whether or not they would be forced to hire people that were not necessarily in line with their dogma, their beliefs, you know, their actions.

City Attorney Bruce Washburn: That's on the next slide. I'm sorry.

Mayor Lane: Well when we are talking about employers this does cross over, Mr. Washburn. When you are talking about what size of employer. I realize you are talking about size here. We are talking about employer.

City Attorney Bruce Washburn: But the next slide is a list of possible exceptions of employers and it includes religious organizations and so -- and I -- that's not to say that they are not -- you are welcome to talk about it at this time.

Mayor Lane: Well, honestly, I'm looking at the six boxes. One is the exceptions. I'm sorry if I'm on that simple six box program, but --

City Attorney Bruce Washburn: I'm sorry.

Mayor Lane: And that's fine. I'm sure it is as we go down through it, I'm just marking my way through this.

City Attorney Bruce Washburn: I assure you we will have that conversation.

Mayor Lane: That's fine. Well, then let me ask you this, is it right to consider we are going into what types of housing are covered? Would that be the next one or is it --

City Attorney Bruce Washburn: No, the next two slides we are going to be talking about which employers to exempt, if any.

Mayor Lane: Okay. So we are still -- and if I were to categorize it, what size of employer is included. We are still in that?

City Attorney Bruce Washburn: At this moment we are, but when we get done with five, then we will go with what kind of employer.

Mayor Lane: I didn't mean to jump ahead. I'm anticipating it.

City Attorney Bruce Washburn: That's fine.

[Time: 01:05:49]

Mayor Lane: Councilwoman Klapp.

Councilwoman Klapp: My comment is the same that has been stated, I would prefer that we have what is in the ordinance, which is the number of employees that are used under state law, which is businesses with 15 or more employees would be what we use to apply in our ordinance as well, 15 people or more would apply but not less than that. And then the next section obviously says an employer means the person doing business within the city has 15 or more employees, we would cover it and I would believe that would be the best approach to take for all the reasons we have stated and primarily because it is a preferable way of handling really being really small businesses in my mind. Thank you.

Mayor Lane: Okay. Thank you Councilwoman. Councilwoman Littlefield.

Councilwoman Littlefield: I know from running small business for many years, you can very quickly hit 15 part-time employees. You can very quickly have a turnover. How is that counted? Is it continuous? Or is it in a quarter or how does that work?

I also went in the -- in the direction of sole proprietorship versus corporation, versus limited partnerships, other, different kinds of business entities and I kind of feel 15 -- I understand the

rationality for that as being the state number, I kind of think it's a little low, and I went 15 to 35, somewhere in there, if there's a break of sole proprietorships versus corporations I would kind of like 35 more than 15, just because you cover seasonal employment. You have a sole proprietor who does flowers and all of a sudden during Christmas, they have to hire more people and you can get over 15 people on a part-time basis and that concerns me. As councilman Smith said, this is for businesses that have moved a little beyond the small mom and pop shops and into the corporate world of business where you are no longer a single person making these decisions, but a corporate board. And so that's I didn't kind of thought it should be more than that. Most Fortune 500 companies do have this.

I did go to some meetings with my husband several years ago talking to people who are looking to transfer companies into Arizona or California and various places and this is one of the things that they look for because a lot of times, especially high-tech businesses a lot of their top employees are LGBT and they won't come here, because Arizona for whatever reason -- and not just Scottsdale but Arizona as a whole, has a reputation for not being friendly to the LGBTs. So I think that does carry weight, but I don't think that 15 is really a high enough number for a sole proprietorship to be limited to before it falls under this regulation.

City Attorney Bruce Washburn: If I can comment, the way that Sedona dealt with the seasonal work, they have the employees in 20 or more calendar weeks in the calendar year. Therefore if you had your big rush at Christmastime, something like, that but you just had 10 employees the rest of the year, you would not be covered. I don't know if that would satisfy your concerns.

Councilwoman Littlefield: That's one way of doing it, I would like to say sole proprietorships are exempt because most of them are much smaller than 15 but some can go a little over that.

[Time: 01:10:00]

Mayor Lane: Yes, thank you, Councilwoman. Councilman Phillips.

Councilman Phillips: Thank you, mayor so what we are doing here and number one, we are talking about what we are going to put in the ordinance. We can talk about what will be in an ordinance, but we haven't decided if we will have an ordinance. Number two, 15, 30, 20, 10, are we the ones to decide who will be subject to a law and who isn't? If I have a restaurant with 14 guys, and I can say, well, transgenders aren't allowed in the women's bathroom but if I hire one more guy, then I have to let them in. I'm not going to hire one more guy. I mean, how do you arbitrarily pick out a number like that and say, you are going to obey the laws and most big businesses, the big corporations they already have their own nondiscrimination laws. How do you bring down to, well, 1,000 employees are under or an s corporation, or a c corporation or a sole proprietor. How do you pick out which ones have the burden of this law and which ones don't?

City Attorney Bruce Washburn: Just to clarify, the employer limitation would only apply to the section of on employment. Whether or not the person owning the restaurant would have to let transgender people in the bathroom, the ordinance would apply to them because it's a public

accommodation. How do we make the decision, you are right. That's -- the people would make the laws make that decision. That's what the council does. There's no formula I can give you that says, yes this is the correct way to do it.

[Time: 01:11:53]

Mayor Lane: Thank you, Councilman. Councilwoman Korte. Okay. You didn't know you were now you are.

Vice Mayor Smith: Well, two things. Can you -- can we just pump this to you and say that we want language that parallels what the state has? I mean, I find this Sedona language complex to figure out. I mean, I don't know whether -- you have to have a calculator to figure out whether you have 20 employees in 20 calendar weeks or whatever the thing is. My objective would be to parallel with the state language, not because it's right but just because that -- it's a template that I don't have any basis for doing something different. So my first question is can we just p.m. than to you and you come up with the language -- pump that to you, and you come up with the language with whatever the state says?

City Attorney Bruce Washburn: Yes, if you want to mirror the state language, we can to that, when we are doing our public outreach.

Councilman Smith: I want to clarify for anybody that's listening here, the mayor said or somebody said we are not adopting an ordinance, and that's certainly true. All we are doing is trying to put together, I think what might be a document that would eventually go to public outreach and get public reaction to whatever we come up with here as a term sheet or --

Mayor Lane: Let me add one thing to that, Vice Mayor, if I may, and that is what is decided here is sort of overall guidance on it. It is going to have to come back to this body in some form, not necessarily in final language form, but some form that would outline what you perceive to be the consensus of thinking here toward the application of the original guidance in our council report and that is to make sure we have an ordinance but to provide and preserve protections for rights and freedoms of businesses and individuals and organizations. I think a's the overall guide line but nonetheless what we do here eventually is going to have to come back to this body before there's a public outreach of it.

City Attorney Bruce Washburn: When I get through with my portion, it will go back over to Brent and he will ask the council, how do you want us to go from here. And so certainly if that's the direction of the council to bring something back to you yet again before we go out to public outreach, we can do that.

Mayor Lane: All right.

Vice Mayor Smith: And I had one other follow-up question, based on something you said Mr. Washburn and that is everything we are talking about here, 15 employees, 35, 20, only applies to

the employment coverage of this in your mind?

City Attorney Bruce Washburn: Yes. In most ordinances this is the employer faction only has to do with the discrimination of employment.

Vice Mayor Smith: So will we later get to a section that talks about individuals, businesses, parties, whatever that may be excluded, the proverbial florist, if you will. >> City Attorney Bruce Washburn: Yes, we will talk about public accommodation which would cover those areas.

Vice Mayor Smith: Very good.

[Time: 01:15:18]

Mayor Lane: Thank you, Vice Mayor. Councilwoman Korte.

Councilmember Korte: I would like councilman Smith's suggestion to move forward with number of employees to reflect Arizona law. And perhaps that's full-time employees and maybe that goes to councilwoman's Littlefield's concern as far as number. Maybe it's FTEs and I think that would be perfectly clarify it a little bit better for you. That's all I have. Thanks.

Mayor Lane: Thank you, councilwoman. Oh, I'm sorry.

Councilwoman Milhaven: I agree.

Mayor Lane: I'm sorry. What was the message? Oh, you agree?

Councilwoman Milhaven: I agree with mirroring state law. Thank you.

[01:16:12]

City Attorney Bruce Washburn: All right. Are we ready for the next item then? Now let's start talking about who would be excluded. I think the first one on here is probably a very good idea that we try not to regulate the United States. They don't much care.

Mayor Lane: Or the state for that matter. These are easy ones.

City Attorney Bruce Washburn: Yes, we will get to the state and the -- and the community -- the Indian communities, and then the next one is the state of Arizona. Now, Sedona says that they -- they did -- they do apply the ordinance to community colleges, high school and elementary school districts. I guess I would like to direction if the council is interested in applying the nondiscrimination ordinance to the other governmental entities.

Mayor Lane: You know, I think really when we start talking about this area of things we ought to be punting this whole thing to the state to have some consistency in an ordinance or to the feds.

Personally, my feeling is there's no future in trying to apply a municipal law to either the state or the feds.

Vice Mayor Smith: I agree.

Mayor Lane: Well, which come under the jurisdiction of the state, actually not us. And then, of course, I notice that the tribes are involved here too. I can imagine how they would feel about that. But to now, since we are in that broad scope of area which I think is somewhat of a given, but nevertheless, of exclusions, I will go back to the comment that I made before. And this is in order now in what box we are in, if it's corresponds to the section that we are in, how are individual rights and freedoms protected? But when we are talking about an employer at this point in time, this is one of the things that certainly has raised its head because of its concern of its individual operations, as a religious institution, but also the extension beyond that to an operation that supports a religious institution that requires some adherence, I suppose, to the beliefs and the ideals of a religious institution. So one of the exceptions that I have seen is -- well, number one, I think overall, not intended to alter or abridge other rights exempt from -- moreover this chapter does not apply to the employment of those who perform functional administrative and/or ministerial duties for organizations that primary purpose is religious.

Councilwoman Milhaven: Excuse me, mayor, I don't know if you looked at the slide. Does number 4 address your concerns?

Councilmember Korte: Page 13.

Mayor Lane: Well, if this is -- yes, no and I see it here as well. But nevertheless --

City Attorney Bruce Washburn: I'm sure there's more.

Mayor Lane: No, what I just read is more inclusive of things that go a bit beyond just ministerial services and teaching or religious counseling, and inoculation of religious values.

[Time: 01:19:52]

City Attorney Bruce Washburn: There's actually more that goes with that and -- but let's have the religious discussion now. I what tonight come back to the membership organizations and the social groups to see what the council's desire -- let me show you the next slide too, because this is a religious exclusion from the Sedona ordinance. The other one that we -- the other one that we were just looking at this is just employers but there's also a broad religious exclusion, a religious organization except with respect to individuals to perform nonreligious functions unless such organization offers facilities, accommodations, services or goods to the general public. So Sedona exempts religious organizations from all three components, housing, and employment under this these circumstances. But the -- the --

Mayor Lane: That combined with the other one does come far closer no what I was just reading.

City Attorney Bruce Washburn: Right. But, for example, the -- the speaker who said that this -- this ordinance would apply to hiring a secretary that is not performing religious duties there's a good argument that that is true. And so the question for the council is, do you want to have religious organizations just, you know, whatever they do, they are exempt and so that would include -- a lot of religious organizations, they have day cares and pre-Ks and do all kinds of things. They do all sorts of things. Or do you want to have it more limited?

Mayor Lane: I --

City Attorney Bruce Washburn: To me, this is a very broad topic.

Mayor Lane: Personally what I'm looking for and what I'm talking about here, it goes directly to the concerns that in some cases were voiced here this evening and have been voiced to us on a number of different levels and that is the more extraneous type of operations and frankly, that would be inconsistent with what they are all about. So whether it's a gift shop or otherwise, I would go for the broader inclusiveness as far as that exemption is concerned. But, yes, Vice Mayor.

[Time: 01:22:01]

Vice Mayor Smith: I would agree with you, mayor. When -- now that we are on this section of the Sedona code, when I read through this, I'm not inclined to have all of these -- I guess they are exceptions to the exclusion which is an odd way to say it, but it puts us in an awkward position of saying that a religious organization is excluded within the confines of the church or the temple but not if they are going to have a religious book store or school or child care or whatever. Most of these, I am just say this as a statement, but my suspicion is most of these ancillary activities for any religious organization are customarily done in -- for the purpose of promoting to a further extent their religious beliefs and it may look like a store to the rest of us, but it oftentimes is done consistent with and for a purpose of promoting the religious organizations. So I would not have these exceptions. I think the religious organization, including whatever ancillary businesses they undertake would have an exemption.

Mayor Lane: Thank you, vice mayor. Councilwoman Littlefield.

Councilwoman Littlefield: Yes, I would agree with that. Their activities should be included in the exception, I guess is the way you would put it.

Mayor Lane: All right.

Councilwoman Milhaven: That's agreeable to me.

[Time: 01:23:41]

City Attorney Bruce Washburn: Okay. Now I will circle back to the bona fide membership clubs and



then there's also in here an exemption for the -- what are called social clubs, social organizations and so I guess -- like, the bona fide membership clubs, except the labor organizations they are exempt from taxation, exempt from -- the groups that are exempt from taxation are generally the ones that provide what are thought of as social goods and so political organizations or generally exempt from taxation, you know, a lot of people that do educational charitable work, those sorts of things. So this is a pretty broad exemption, and then social clubs are -- they are defined, I think we get to had a later on in here. But they are basically, like your book club, things like that.

So I welcome whatever direction you might care to give on how broad you would like to have the exemption if at all, for basically membership organizations of one sort or another.

Mayor Lane: You know, I will just -- just from the standpoint of what I read there, I -- you know, without considering where it might go from off this page, but nevertheless it seems to be a reasonable exemption, new will. I'm talking about now three -- number three. Bona fide membership club that's exempt from taxation, as amended from time to time. Those are exemptions for such groups.

City Attorney Bruce Washburn: To clarify this particular exemption applies to them as an employer to the extent that they were engaged in public accommodation activities or housing activities, they would still be covered by the ordinance. But this just allows them to hire what they want to hire.

Councilmember Korte: Mayor, I'm fine with that too.

Councilwoman Milhaven: Me too.

Mayor Lane: Anything -- any silence is an affirmative. Vice Mayor?

[Time: 01:26:12]

Vice Mayor Smith: And then I immediately speak up. I think my only hesitancy is I don't know -- I have no idea what kind of organizations may be exempt from taxation. That's kind of a peculiar way to give someone an exemption from this coverage. I really preferred the language that occurs much later in the document, in the Sedona document they talked about, you know, the definition does not include any club or whatever, conducted for the purpose of evading this ordinance or circumventing this ordinance or whatever. It, to me, that would be -- maybe it's more restrictive but it's more to the point. I just -- I don't think any club deserves to be exempt, unless -- well, certainly not if they creates themselves for the purpose of evading this and I wonder if we couldn't just put that language in rather than just saying their tax status is the determinant.

City Attorney Bruce Washburn: I mean, I think that this was used in this ordinance to, you know, sweep in a very broad range of organizations just with respect to there being employers, like I said political parties. A lot of charitable organizations fit within this definition, and, of course, they are all -- they are all nonprofits, they pretty much have to be that by definition. But you are right. We couldn't -- and we'll talk about social clubs in a minute. We could just use the social club definition, which is an exemption for all parts of ordinance and have that apply to the employer.

Mayor Lane: Well, considering both positions, Mr. Washburn, as we have advanced it, there's that one caveat that the Vice Mayor has talked about.

[Time: 01:28:13]

City Attorney Bruce Washburn: All right. So housing. The question with housing is how broad do you want to make this in -- in the Sedona ordinance, it's basically a duplex, if you live one part of it or if the owner lives in one part of it, some other ordinances had things like -- if the person doing the renting had three or fewer units, but a lot of them are basically owner occupied. Either if you are renting the duplex or if you are renting a room in your own home.

So the question is: You know, how -- who do you think should be exempted from the requirements with respect to rental of properties?

Councilmember Korte: Mayor, I'm fine with the -- the suggestion that excludes rentals where there are only two units and one of them is owner occupied.

Mayor Lane: Are there any exemptions under federal or state law with regard to the size of rental units?

City Attorney Bruce Washburn: Yes, there are. There are in the fair housing act. I'm sorry I don't -- and there are in -- in other laws and I'm sorry I don't have a compendium of those for you, but there are some exemptions.

Mayor Lane: You know, as many different laws as we're going to have, wherever we can have some consistency between things, I think it would be better so I would at least ask that you look towards that and see if there's not something that would be considered there. I think we are going to have a myriad of different laws with different conditions and different numbers and different cutoff points and everything else, for builders, managers, management companies, all of these things are going to just really -- are going to complicate it. You know, on the overall, you know, I joked about it a little while ago but this is really something. I think it will be much better served if it were on a larger scale on the state and the federal level.

City Attorney Bruce Washburn: We can certainly go back and look at the Fair Housing Act and other federal and state laws and when we come forward with final language, see if there is something that would meet the existing laws.

Mayor Lane: Yes.

Vice Mayor Smith: Even though silence is affirmative, I will still state it, I agree with the language that is here where the only exclusion where there are two units and one of them is owner occupied. I really don't see -- if we are going to have an antidiscrimination ordinance, I don't see any reason for having exclusions that involve property that you have to be renting and you are not even living there.

So you are not influenced by who lives this. I would agree with this.

[Time: 01:31:20]

Mayor Lane: Councilwoman Littlefield.

Councilwoman Littlefield: I would appreciate your researching what the fair housing laws and the state of Arizona laws are. However, I kind of looked at this to exclude privately owned homes and rentals. Where there are only two to four units, we might have a quadruplex where the owner is living in one of those units, that is still kind of same thing as the duplex, where I think you should have the right to say what -- who you want to live in your privately owned apartment. And so I would say up to four units to go. Definitely if you are renting a room in your home, because you want to make a little extra money, you should have the right to say would you want to live in your home with you. Duplex is definitely -- and I would go up to four units because there are quadruplexes. I guess that's what you call them.

City Attorney Bruce Washburn: When you are saying privately owned, you mean if the person who owns the unit also lives this?

Councilwoman Littlefield: Mm-hmm.

City Attorney Bruce Washburn: Okay.

Mayor Lane: Thank you, councilwoman. All right.

[Time: 01:32:32]

City Attorney Bruce Washburn: Now let's talk about public accommodation. In this ordinance, where they basically look at the private clubs and -- and try to exempt private clubs but only if they are truly private and not just there to get around the law. I did -- in the state where I grew up in Kentucky, there were like 100 counties and 96 of them were dry and every one of those dry counties there were multiple private clubs that you joined by walking in and paying 50 cents and then they would serve you liquor in the private club. I think they were clearly designed -- and very successfully designed to circumvent the law.

So Sedona has the public accommodation, and this is a slide I added to the set that I added to you, but I thought this was -- but I thought this was a good way to get at this issue. Basically the first sentence was very broad, just about everything, any facility establishment, whatever service commodity that are offered to use for the general public. Basically in you are offering what have you to the general public, you are a public accommodation and then in the second sentence takes away a lot of it and says it doesn't include dwelling, private clubs or anything that is nature.

It's distinctly private and religious organizations that don't offer their facilities or goods to the general public. And I guess that this brings us back to the religious question again because let's say, for

example, that you have a church that rents out its hall to anybody that comes along, and they don't -- you don't have to be a member of the church. You don't have to be using them for religious purposes and they are only uses them on Sundays and they will rent it out to anybody. Would they be permitted to say, but we won't rent it out to a member of the LGBT community? Because that would fall into the definition of an organization, a religious organization which it does offer its establishment to the general public and so that's -- that's a question which way the council would want to go on that.

[Time: 01:35:06]

Mayor Lane: Just to address your comment there, Mr. Washburn, I don't know that -- you know, I know that there are religious institutions that rent out their halls. But they are somewhat discerning about it, that there's some consistency with their look and feel of their organization and they are not going to -- I don't know exactly what example to draw but nevertheless, I know that there are things that they reject. Now, I don't know if that falls upon the religious deal, but they are making some -- some judgment as far as that is concerned. And notwithstanding LGBT. I'm talking about in other areas of things. I don't know that -- if this is a careful one, even though on the overall, I'm thinking what is the corresponding federal or state requirements as it relates? I realize it doesn't include LGBT at the present time, but how do they word private clubs and discrimination.

City Attorney Bruce Washburn: Yes, no, this is pretty much consistent with the federal law and what constitutes a public accommodation. If you, in fact -- and state law. There is a case from 1991 about the Fraternal Order of Elks and whether or not they had to admit women and in the Arizona court of appeals and the court went through in great detail what they did and they -- you know, they have bingo games. Anybody could come to and they had a bar that anybody could -- well, that almost anybody could go to and then they would have the few hours every week they would have private meetings and the court kind of on balance said, okay, you are a public accommodation because for the most part, you are holding yourself out to the public. So that's exactly this kind of analysis, whether you for the most part allow anybody to come in without regard to whether or not they meet your organization's goals.

Mayor Lane: Okay. Yes, Councilwoman Korte.

Councilmember Korte: Mayor, Mr. Washburn, I like this language and I would retain the religious exclusion, the religious organization exclusion, to retain it.

[Time: 01:37:23]

Mayor Lane: Yes, I'm sorry. Vice mayor.

Vice Mayor Smith: You know, this slide is interesting. I didn't -- it's helpful because I realized there's a broader discussion, rather than just a private club or a social club, it's a place of accommodation. And in reading this, I will tell you what I would do and that is three lines from the bottom after the word "religious organization," I would put a period. And what I mean to do by

putting a period there is to say that this does not include any of these following things. It doesn't include dwellings, private clubs or any place which is in its nature distinctly private or my religious organization, period. Because all the words after that seem to modify everything there. We are excluding religious organization, provided they don't offer their facilities accommodations or commodities or goods nor the general public.

And it brings us back to the question of, you know, what ancillary activities are the religious organization are we going to include or exclude and I don't -- I don't know whether others feel as strongly as I do about these groups should not -- I also think that this language should have something in there about the -- the small providers, and I thought that's what they were capturing when we were talking about employee size earlier until you clarified that that was only for purposes of enforcing the employment aspect of it.

I think there needs to be a size consideration even for the places of public accommodation, because that's where the bakeries and florists and such institutions occur. They are in this section, not the earlier section. I think the places of public accommodation need to exclude the places that you have identified there, and they also need to exclude on some size determination the very small businesses that are offering their services to the public and the reasons are all of what I stated before. Thank you.

Mayor Lane: Thank you, Vice mayor. Councilwoman Littlefield.

Councilwoman Littlefield: I agree with that. I think that's a good way to go. Mostly when I was reading this -- this whole section, I -- I was looking at it as I don't want to exclude private clubs if they are only in operation because they want to dodge the rules, and so that's basically the way I would look at it, as let's not let that happen. But I kind of like what Councilman Smith said. I think that -- that pretty much covers it. Thank you.

[Time: 01:40:27]

Mayor Lane: Thank you, Councilwoman. Councilwoman Milhaven.

Councilwoman Milhaven: So religious organization has a hall and they say anybody who wants to show up and rent our hall can rent our hall, you are saying there's precedent or case law or federal law that says that is not protected? Is that right?

City Attorney Bruce Washburn: Yes, there's -- there's case law -- I mean, there are tons of cases on these issues but, you know, just going back to the 1991 Arizona court of appeals case, that basically looked at the primary function was private and so if you -- right. If you basically say, yes, you know, here's our price list. Come in and rent our hall. That's generally considered a public accommodation, even if you are a religious organization.

Councilwoman Milhaven: So if we were to put a period after religious organization, that would be inconsistent with the state law -- with the case law?

City Attorney Bruce Washburn: Well, the city can write its own ordinance. So it would be -- the ordinance that the -- that the court was looking at back in 191 didn't have a period after that. It did not do that but we could write an ordinance that says that religious organizations are exempt no matter what.

Councilwoman Milhaven: All right. I like the way this is worded now but I will defer to the group to the majority if they prefer the period.

Mayor Lane: Thank you, Councilwoman. Councilwoman Klapp?

Councilwoman Klapp: I -- I believe the best way to handle that last sentence is to put a period after religious organization and exclude the use -- exclude having problems with religious organizations using their facilities as they see fit. I think that would be a better way to go for the city. I don't think we have to pay attention to state law at this point because there is no state law. So I like that way.

Mayor Lane: Great. Yes. Councilwoman Korte.

Councilmember Korte: I am concerned to include in this section an exclusion because of size of business. I believe that an individual that opens an - operates a business for the public has responsibilities to serve the public and it doesn't matter how -- what color they are, or what race or if they are gay or transgender. I think they have a responsibility to serve the public. So I would really oppose putting a size exclusion in this places of public accommodation.

Mayor Lane: Thank you, Councilwoman.

Vice Mayor Smith: Mr. Mayor.

Mayor Lane: Yes, Vice Mayor.

Vice Mayor Smith: Since we seem to have an expression of distinct difference on this point, would this be one where we could simply as we are coming one a document to go out to the public say either or? I mean, solicit public opinion in that regard?

City Attorney Bruce Washburn: Yes, certainly during public outreach we can get public input on that, absolutely.

Mayor Lane: You know, we are not doing a count but there is some precedent for us to figure what is the -- what's the weight of opinion and direction on this. And it would seem to me that it probably -- that, again, I didn't take official count. I know that's generally challenged by Councilwoman Korte if I do but nevertheless -- well, when we are not voting, of course, but when we try to assemble what the consensus is. I don't have really any opposition to bringing back to us, you know, both languages, but I think at some point in time, we are probably going to have to make a

decision before we present it to the public. I think that's our obligation. But whatever the majority would sense in that regard. And I -- right now, for whatever it's worth, I don't know that everybody has recorded their feelings about it, but I agree with Councilwoman Klapp which I think is consistent with what the Vice Mayor said.

Vice Mayor Smith: Mr. Mayor, I think the -- maybe one other point for consideration, it will -- to me, it seems a bit odd that we would have an employer size limitation if we are talking about discrimination on hiring but have no employer-sized discrimination if we are talking about the service to the public. Part of what I was trying to do with having the 15 in both places is having the uniformity of coverage.

Mayor Lane: All right. I hope it's clear.

City Attorney Bruce Washburn: Truthfully, everything was very clear up until about two minutes ago. I think it may not be bad for the council to mull over what we want to do.

Councilmember Korte: Bruce, and perhaps some better clarification of what other communities, what other municipalities have done with this, in some type of matrix so we can really compare easily. Thanks.

[Time: 01:46:11]

City Attorney Bruce Washburn: I don't know if this is something you want to address at this point but I do want to make the point that the public accommodation part, it's also the part that says someone refuses to make flowers for a gay wedding that the ordinance applies to them. When we talk about the enforcement, I think you will see that what we are proposing is probably most consistent with Scottsdale's approach to things is to not have it so that somebody can be bankrupted by the city ordinance. But it still would be a violation, I think, it's the -- if the -- it's nothing else is done. It's part of the public accommodations.

Mayor Lane: How is a noncompliance or how is a complaint driven? And I know that on a number of the ordinances, on the basis of perception, are implied violation or bias and one of the things that has struck pretty hard in those instances where people have been sued within an inch of their financial life is N.D.O. and Consumer Protection Act. And under just the consumer protection act, they don't have the -- at least under current law, they don't have that avenue, but coupled with an N.D.O. is where the -- the exposure and the risk and frankly the penalty gets multiplied.

City Attorney Bruce Washburn: Well, I don't see that Arizona's Consumer Protection Act, even if there was an N.D.O. would -- that any violation of this ordinance would -- the one case I do know of is in the state of Washington the consumer protection, it automatically included the N.D.O. The consumer protection act has to do with misleading people in Arizona, but one thing is to add language to the city's ordinance and this is a quote from the Sedona ordinance, nothing in this chapter shall be construed to give rise to civil or legal liabilities greater than those already existing under law or to create private causes of action other than to be remedied as set forth herein. In other words, you

say that the only remedy that we intend anybody to have, under this ordinance is the remedy that's set forth in this ordinance and does not give rights under any other laws. We could do something like that to make it absolutely clear, but we do not intend to create rights any place other than in the ordinance.

Mayor Lane: I think that would be an important provision to have.

[Time: 01:49:20]

City Attorney Bruce Washburn: This is getting back to what is not included as a public accommodation and this is getting back to the social club, which is exempted from all acts of it. It's the voluntary -- the people who meet voluntarily for social literary or political purposes. And this -- this covers a lot of groups, and I think it gets at a lot of the things that should never be subject to an ordinance like this, basically people's voluntary associations together and I think that this helps -- I mean we already have -- we already have constitutional protections for freedom of assembly and association, and it's an important value in this ordinance.

Now let's talk about how the ordinance would be enforced. You know, my recommendation is I think this is consistent with the way Scottsdale generally does things. We make it civil and not criminal, that the focus be on getting compliance rather than penalizing anyone, or coercion, I think mediation would be a good way to go.

Mayor Lane: Councilwoman Korte?

[Off microphone comment ]

City Attorney Bruce Washburn: If we follow the Sedona, first there's a verified complaint and then there's an investigation and then there's a mediation and then it goes to the city attorney's office, which I happen to think is a very important element, that the -- I think it's good to have the city attorney as office making the determination, you know, so -- the people who are going to have to prosecute it should be the ones who decide whether or not it's a case worth prosecuting. And the civil penalty, in Arizona, the maximum amount that you can penalize somebody for a violation of an ordinance is \$2,500. The council can set the amount of the penalty on or they can leave it up to the court's discretion. This is the way I would recommend going.

There are other ways to do it. Some places have commissions that make these decisions and then there's the question of who would do the investigation and the mediation, but we can -- if you want to have a -- you know, a body -- if you want to go that route, we can determine who would actually conduct those activities.

Mayor Lane: I don't know where the line gets drawn between administrative versus say judicial proceeding as far as due process is concerned. You mentioned your office as obviously one the steps and I think I'm looking at the same one on this particular case, but verification of a complaint with the city manager's office, what does that include if you don't mind me getting down to it? So complaints



filed with the city manager's office, they verify it in what sense?

City Attorney Bruce Washburn: Well, they are sworn to. This is a lot like with what we do under the -- under our own ethics ordinance. When someone wants to make a complaint under the ethics ordinance, they have to come in and be specific and say this person did this at this time and violated this, and they have to swear that it's true. And under penalty of perjury. If it turns out they made false statements just like anybody else who makes false statements under penalty or perjury, they can be referred for -- I mean perjury is criminal. So there can be sanctions. That's usually the reason -- well, you require verification to make sure that they are very, very serious and don't make loose accusations and the other is that if it's really egregious, you can penalize somebody. It's not perjury to be mistaken. It's not perjury to misunderstood. It's perjury to make false -- materially false statements about things.

Mayor Lane: You know, you mentioned our ethics code and we do have a provision in the ethics code that if something is cited to be frivolous and without basis or otherwise, whether it's verified or not, there is a penalty for that. Are you suggesting a penalty for frivolously filed complaint?

City Attorney Bruce Washburn: We can do that.

Mayor Lane: We all know sometimes how ordinances are used, and frankly, where government's power is used against someone in less than a legitimate way. But any time a complaint like this is filed, the ramifications even beyond what the ordinance might hold are significant and I think that's an important point to make sure that we are -- that there's a very serious concern about something being filed and it is legitimate and it's not just an attempt to harass or cause problems for someone far beyond even this ordinance would hold. I think that's an important component, but that's not -- the next step in this question was, and you say verify, okay, they swear to it. That's the first step. So that's something that happens within the city manager's domain. Investigation. To determine possible validity.

City Attorney Bruce Washburn: Well, the way that Sedona ordinance lot of the ordinances are set up, is the city managers sets it up to go out and investigate it.

Mayor Lane: Who investigates ordinances?

City Attorney Bruce Washburn: Criminal are done by police department and civil are done by code enforcement.

Mayor Lane: The intrinsic step before any civil action may be taken.

City Attorney Bruce Washburn: I think that's consistent with the way that Scottsdale tries to do things where you are aiming at compliance and not just penalizing people and frankly, it -- you know, kind of my gut tells me that if you had a chance to have the two parties sit down and explain themselves, you could, you know, get a lot of clarity about what occurred and maybe get the matter resolved short of having to, I'm sorry, constitute the civil proceedings.

Mayor Lane: And the penalty levels arbitrary, this is from Sedona 9.30.080.

City Attorney Bruce Washburn: Yes, the minimum fine is \$1500. That's what they have.

Mayor Lane: It would all depend, I suppose, but as a minimum, if, in fact, you are looking to put somebody in a position as I mentioned before, the penalty will go far beyond, I think in most cases, it will go far beyond any kind of dollar amount that might be assessed here. I think it seems high -- not high on the upside but high on the low side as the beginning number.

City Attorney Bruce Washburn: And the upside is set by state law. You can do the penalties any way you want to up to \$2,500. You can do it so they increase if there are successive violations or you can leave it up to the court's discretion.

Mayor Lane: I haven't considered this aspect of it. I think something that needs to be put into it is some kind of recognition of -- and, again, it becomes a little subjective and this is where I don't know who would make the decision as to whether or not something might be frivolously filed and I know with our code of ethics, we employ retired judges to not only review the cases but also to, frankly, adjudicate them. So I -- I don't know whether or not that's a better or worse. Now, I say that aloud here, but I think I know where you are on it.

City Attorney Bruce Washburn: Well, let me make this point. If you were going to actually impose a penalty on somebody for having filed a frivolous complaint, again would you have to go to court to do that because the city doesn't have the power to assess people with fines. That's why we have a city court and judges that would do that. Could you write an ordinance that says if you -- if you file a false or frivolous complaint you can be prosecuted for that. If you just rely on the perjury statutes those are state law crimes and then we have to go to the county attorney and refer them to the county attorney for prosecution.

[Time: 01:59:03]

Mayor Lane: All right. Yes, vice mayor.

Vice Mayor Smith: I agree with the mayor. The civil penalty, and it should be civil. I would take out these words not less than \$1,500 for the civil penalty and just be up to \$2,500 and it could theoretically less depending on the circumstances.

The more substantive comment I have on this section, though, I would like to see the city manager's office removed from the chain of command here and for two reasons. Number one, I want to -- if someone has a complaint, I want to make it as citizen-friendly as we can, not have four hoops to jump through but only three or whatever the number might be. Equally, I think in -- and this is no reflection on the city manager as a person, it's organizationally, I don't think the city is in a position to police this ordinance. It's going to be very subjective.

And maybe your only intent is the city manager would stamp and date the complaint and if that's all he's doing, I suppose that's fine, but if someone genuinely has a complaint, I would like them to receive the most objective decision and this is referring to mediation where the mediation is perhaps selected by the city but nonetheless a person with experience and expertise in this area and if it can't be mediated then it goes into investigation to determine whether there is cause for civil prosecution by your office, but -- I would like to remove the city from this because I don't think we have the skill set to --

City Attorney Bruce Washburn: It's a good idea to have someone do an initial review to see on the face of the complaint, is it timely filed. We will have a time limit on these. I think they have 90 days. You know, you don't want people filing complains for things that happened three years ago. You know, it's a timely file. Is it properly verified. Does it meet all the filing requirements and if all of the allegations in the complaint are true, without making any determination of the -- of whether they are really true but just on the face of the complaint, if it's true, would it constitute a violation? And those are pretty mechanical. It's a little beyond date stamping it, but not much and you can weed out a lot of stuff that way without having to, you know, start down the road of getting a mediator in.

Vice Mayor Smith: I think I was with you until the last part of your comment. Certainly was it filed timely and so on. You had words was it appropriate?

City Attorney Bruce Washburn: No. If you assume every factual statement in the complaint is true, would it be a violation of the city ordinance?

Vice Mayor Smith: Okay. I guess if the city manager's office is making a mechanical decision like that. I don't want to do a subjective decision like that.

City Attorney Bruce Washburn: They would all be mechanical.

Assistant City Manager Brent Stockwell: Vice Mayor, I think in the event the council is going to put restrictions on what is covered and what is not covered then that initial evaluation of the complaint would say, well, how many employees does that employer have? Well, if it's under the threshold, then that complaint would be rejected on that basis. I think that's the type of things that the city attorney is talking about. The basis of the fact, would that complaint go forward or not? And so that way, we wouldn't be forwarding something to an independent mediator that isn't really even a violation of the ordinance to begin with.

City Attorney Bruce Washburn: And I would also like to add, you can't really start with mediation, I don't think. I think you need to have some investigation, you know, at least an outreach to the accused to get their side of the story. That would be my recommendation that there be some investigatory mechanism and that the mediation happened separately from the investigation, in other words, if you have the investigator also being the mediator, the investigator usually has a view point that they have gotten as a result of the investigation and one or the other parties -- one of the other parties is likely to see them as not being completely neutral.

[Time: 02:04:02]

Mayor Lane: There is going to have to be some investigation, even to determine the mechanical aspects of whether or not it falls in under the ordinance. Someone will have to make the call and someone will have to check the records somewhere, even if it's the number of employees and various other qualifiers.

Assistant City Manager Brent Stockwell: There is that issue and the issue outlined in the ordinance or whatever process that council wants to come up with. And that gives the person that has been complained against the opportunity to respond to that complaint and so I think you would want that to be included in it as well before something would go to mediation.

Mayor Lane: All right.

Councilmember Korte: Mayor, I think the important thing is that the mediation involves and independent mediator, not staff or department or commission. Is that -- does that help, David?

Vice Mayor Smith: That's what I intended, yes.

Mayor Lane: Yes, Councilwoman Littlefield.

Councilwoman Littlefield: I say in general that I agree with that. You need to make sure that there's a problem before you try to solve it, no criminal charges. I agree with that part too. This is purely civil. Mediation. I would remove the minimum of 1500. I know in our previous thing that we looked at, there were different escalating ranges. I liked that better and I would start, depending on what happened, and what was found to happen from a mere warning to -- on to financial civil penalties. I think I would drop that down a bit. For first offense, and the second offense, you escalate. I would not want the 1500 as the minimum.

[Time: 02:06:00]

Mayor Lane: Thank you, Councilwoman. Councilwoman Klapp.

Councilwoman Klapp: Does your department do mediation?

City Attorney Bruce Washburn: No. Do you mean do I have mediators?

Councilwoman Klapp: No.

City Attorney Bruce Washburn: We go to mediations on a regular basis and I know tons of mediators.

Councilwoman Klapp: They are all independent mediators.

City Attorney Bruce Washburn: Yes. About 90% of the retired judges go into mediation. The day after they leave the bench. Some of them are very good. So if we wanted to -- if we are going to use those mediators there are lots of them out there who are very knowledgeable and very experienced. I will need a budget, though.

Councilwoman Klapp: Okay. The process that's outlined here is fine with me. The city manager's office handling the initial complaint and who will be doing the investigation, there needs to be an investigation step followed by mediation and I would agree with civil penalty, up to \$2,500 and leave out the \$1,500 in the center. It depends on the case.

Mayor Lane: Just to come back around, I think dropping off the 1500 is an interesting -- is something I think that ought to be happening whether it's tiered on second or third complaints, that's another thing all together. Investigation, I think what was offered and it seemed to be at least received reasonably well is whether or not this' a third party that we deal with, as far as the investigation is concerned. I don't know exactly what the structure is this, but if we can look at how we get that investigation into the hands of somebody who will be an independent investigator of it. Mediation, I think is certainly the first avenue to solve something, hopefully with the idea of getting everybody resolve odd on whatever complaint was involved.

City Attorney Bruce Washburn: Okay. Could I ask then are we talking about having two people outside the city, one being the investigator and the other being the mediator? Or would we have somebody in the city do the investigation and just have a mediator outside?

Mayor Lane: A mediator outside, I think is an absolute given. I don't know that we define what we can do to try to keep it away from city manager's office, as far as that's concerned. And give a -- someone who has been found to be in violation reasonable assurance that they have independent review of this thing in the investigation. I don't know what the answer to that is. I'm not even sure if you suggested something in that area or not.

Vice Mayor Smith: Well, Mayor, I was going to refer back to not the slides here but the actual document that you shared with us, which I think is replicated from the Sedona ordinance and in the ordinance, 9.30.080, the complaint procedures and it's on page 7 of 8, it was item I. And that's what I was following and I was comfortable with that, but their process is that they select a mediator and then number I says if the mediator, the complainant and the respondent, the three parties involved cannot reach an agreement, then the mediator refers the matter to an investigator who shall attempt to determine the facts relevant to the charge and so on and so forth. And then the investigator goes on and provides -- eventually it's up to litigation. So I think the sequence is somewhat different and you have shown it on the slide and I'm frankly more comfortable with it and that is the city manager would go through the procedural stamp, date, verify, whatever. Then it goes to a mediator, your third bullet and picking your second bullet up then, if you can't solve it in mediation, then as the Sedona ordinance -- then you go to someone who puts the facts to go and determines whether we go to court.

Mayor Lane: I think that's a good clarification. I think -- I had not seen that particular provision.

You are saying that this sequence -- no, I don't need to see it. I'm just -- in Sedona, the sequence is mediation first, before you invest in any kind of investigation for potential court case?

Vice Mayor Smith: Exactly.

Mayor Lane: I think that's certainly consistent with the way the city of Scottsdale would handle this.

Assistant City Manager Brent Stockwell: Mayor, to be more clear. The verified complaint is filed. The city manager's office investigates to determine the possible validity of that complaint and so that's -- that's on a initial investigation as it says here on page 6 of 8 of the Sedona ordinance. Then it goes to mediation and then the Vice Mayor is correct, after -- if mediation does not resolve it, then there's an investigation that's done based on administrative terms set out by the city manager's office. And then that is recommended by the city attorney's office and then the city attorney's office files the charges. We did leave out two bullet points that are really important after mediation and before civil penalty.

Vice Mayor Smith: And your second bullet point really is a subset of the city manager's activity to verify the complaint?

Assistant City Manager Brent Stockwell: That's correct.

Mayor Lane: Okay. All right. Mr. Washburn. I'm sorry. Councilwoman?

Councilwoman Littlefield: I wanted to confirm I agree mediation ought to be the first step after verification.

City Attorney Bruce Washburn: Very good.

Mayor Lane: So noted then. So if we move on then to six?

[Time: 02:12:06]

City Attorney Bruce Washburn: And we have already talked quite a bit about the -- basically protected classes visions in the ordinance that try to make carve outs for religious organizations. Then a lot of the ordinances will have language similar to this, that basically says that the ordinance will not be interpreted to violate any laws that it couldn't violate anyway. And there's certainly no harm in making reference to that. The ordinances always have to be construed to be consistent with, you know, federal -- with the federal constitution.

Mayor Lane: You know, you know a few -- if you apply this to the individual now, rather than the employer or -- an employer, that's what we were talking about before, but to an individual, some of the things that have been developing recently is a challenge to people's ability to even voice in free speech, to be able to say or do anything now that may offend or otherwise. In our observations before, you had mentioned something about the idea of some assurances that free speech in and of

itself would not be considered a violation. It sounds ridiculous to have to say but as we concern ourselves sometimes with the sensitivity of issues, and statements, our constitutional assurances of free speech seem to be challenged a bit more.

We had a -- something that -- now this goes to the individual. That just a blanket statement that nothing in this ordinance is intended to alter or abridge other rights, protections or privileges secured under state or federal law. I mean -- okay. Yeah. You know, it's not -- yeah, it's -- well, 24 --

[ off microphone comment ]

City Attorney Bruce Washburn: Mayor, if I can respond as you are looking at that. Again, the -- the ordinance can't -- I mean -- it goes without saying that the ordinance doesn't abridge people's right to the constitution under free speech. If you wanted to have more robust protection, you know, it might put language in there that goes beyond the protections the first amendment or at least doesn't require people to litigation over what is done by the first amendment. The idea of the ordinance is to -- is to say what people's actions are supposed to be, what actions are permissible and what actions are not permissible. The idea of your ordinance is not to tell people what they have to think, ever, and it's not to tell people, you know, what they can and cannot say, as long as -- you know, when they are saying it they are not also discriminating in violation of the ordinance.

Let me give you an example from the Utah state statute, where they put in some language -- now this just has to do with workplace discrimination, in other words discrimination of employment, but this is language that they added in their statute, an employee may discuss the religious or moral beliefs in the workplace in a reasonable non-disruptive and non-harassing way on equal terms, allowed by the employer in the workplace, and what's the expression. And again, I wasn't privy to the decision that put this in there but I'm assuming what this meant is that, you know, if you are an employee in the workplace, and you -- you know, you find certain lifestyles to be disagreeable to the extent that you are -- that the workplace, you are allowed to permit -- you are permitted to express other opinions -- regarding certain political parties or you don't like certain football teams, you know, your free speech rights are not curtailed. And, again, as long as it's not done in a harassing manner.

So this is -- this kind of language gives more robust protection now also to a certain extent limits some of the prophylactic effects of the ordinance. It does -- it would allow actions in the workplace that might not otherwise be allowed. But there are ways that you can give a more robust protection to free speech rights -- I'm sorry -- protections to people's speech if you wanted to include language like that.

Mayor Lane: Well, I guess I would favor more protective language in an ordinance that protects people's rights to maybe even think or express themselves in ways that they -- that -- their beliefs but unfortunately, and we have talked about this too, a violation is on the basis of an act. You do something. You know, in a discriminatory type of way, but the implication or the perception can easily by something you said and that's where this gets touchy, are you free to speak your mind but then your decision has to be construed to be biased. You know -- in the way this may be enforced. Yeah?

[Time: 02:18:28]

Vice Mayor Smith: I wanted -- thank you, Mayor. I wonder if -- well, there's a statement, overriding statement, I think what we are trying to create an ordinance to deal with here are as you said, acts and not statements. The act of firing somebody, the act of denying somebody, the act of refusing to rent housing or whatever. It's beyond the scope of our authority and beyond the scope of what I think we should be doing trying to regulate human behavior in terms of what people say. We'll never get there.

I wonder, in this language that we have seen in this -- in the -- you know, notwithstanding anything blah, blah, blah, when you get down to the tail end of it, it says that, you know, we are going to be -- everything is going to be consistent with the first amendment jurisprudence regarding freedom of speech and exercise of religion and maybe we should add words there that say, you know, by organizations or individuals because we are trying to -- we are not trying to legislate against individual first amendment freedoms of speech. Everything that we are putting in here is talking about, as I said, trying to control the -- the acts of the people as they -- as their words become actions.

I think if we -- you know, the whole -- a lot of the discussion, a lot of what we are hearing from people has to do with the fact that the individual business owners, they want to follow their conscience in the matters of the faith and pitting that against the right of citizens to be free from discrimination whether it's employment or housing or service. We have to distinguish in here between -- that all we are trying to control is the acts and not -- and not the words. We can't control the words.

And maybe adding a couple of words there guaranteeing their rights the exercise of religion and speech by individuals, as well as organizations would -- would articulate that more definitively.

Mayor Lane: And I appreciate where you are going with that Vice Mayor but I think when we think of some of the rhetoric that's out there right now with regard to incriminations of bigotry, by people of faith, the accusation that they are biased just by virtue of their faith. So that any announcement of their personal convictions or feelings -- frankly even by being a member of -- some type of religious institution, they are automatically, it's implied that they are bigoted and therefore it's a matter of their speech, or their religion, that they may become a product of a complaint because the decision may -- may not have been based upon a bias but it is reflected -- and it's reflected on the basis of the fact that it's in -- it's just implied that they hold that position. I don't know that we can get around that one, but that, is I think, some of the things that have been said, you know, and in the process of coming to this meeting as far as that is concerned. It's at least an area of concern.

Councilmember Korte: Mayor?

Mayor Lane: Yes.

Councilmember Korte: I kind of like where David -- where councilmember Smith was going. We're talking about legislating acts. We can't legislate morality. We can't legislate how people think.



And what they say. And this freedom of speech and exercise of religion, I believe, is -- provides the protection for those organizations and those individuals. I do not want to see anything more restrictive regarding this because you can't legislate what people say.

Mayor Lane: I don't think I took any exception to what the Vice Mayor said. I'm completely online with that, maybe there's an underlying concern when we get the kind of reports from the local activists and spokespeople on the LGBT side that really are terribly incriminating against and frankly, anti-religion but anti-Christian and then, of course, deeming them bigots. So it is one of those areas -- and it's not something we can legislate on either side of this, and I don't think anybody's intention is to do it, but it becomes a difficult one to overcome when you think about how easy it is to make a complaint and what the consequences of a complaint can be. So that's -- you know, there's not an answer in that, Councilwoman Korte, but it's just on observation and I'm -- and I have a concern with. Now, I don't disagree whatsoever. If we are doing anything, it's acts, it's not anything about trying to -- we certainly don't want to be on the part of trying to stifle free speech or comment, frankly, association or any of those things. So anyhow. It's just my thought.

[Time: 02:24:24]

City Attorney Bruce Washburn: All right. The next couple of slides that I have basically go back to kind of over the ground that we have already trod, another way in which people's rights are protected, it's the exceptions to the ordinance. So that kind of completes the issues that I wanted to raise. I think we have good direction and we have a pretty good idea of where we will go and a few items need to be cleaned up. So now I will turn it back over to Brent to find out what happens next.

Assistant City Manager Brent Stockwell: So mayor, members of the city council, this is the point where we figure out what the next steps and where do we go from here. And I think there's some points that we do need to think about as we move forward. This is actually the -- I think the third time that we have talked about this issue. We had a discussion in March and then one in August and now and we want to get some clarity on if we go out to public outreach, what are we going out to public outreach on. We have been listening carefully to what you said. I think we can quickly put together some deal points, I think as the Vice Mayor said earlier, that would be included or that you would like to get public outreach on in each one of these six areas that we talked about.

There's a couple of different ways we can do that. We can draft an ordinance for public outreach that includes those deal points so then you are actually getting public outreach on that -- those specific language, or you can take concepts out, like these points out and get public outreach on that. The thing that I think we want to be cautious, whenever we ask for public outreach on something is be very clear on what we are asking for public outreach on, and it's -- I think where -- the point that you are at is not on the concept of how you feel about this issue, but the specific issues about if this ordinance were to go effect in Scottsdale, how would that impact you as an individual, as an employee, as an employer, as a person that is a human being.

And so to be more clear on that, and it's also clear -- it's helpful for us to get some clarity around this, because there's two ways to go about. This you can ask staff to go out and hold a bunch of public

meetings on this and collect all of that comment and come back to you. Here's what we heard out in the community and here's those ideas. You can go the route that we identified that the city of Glendale went through, and they hired a facilitator to hold these conversations and come back. You actually seem to be farther along than Glendale was when they actually did that public outreach effort before they had the conversation about what type of deal points might you have in an ordinance. To say all of that together, I'm looking for some direction from you on what you want to do.

[Time: 02:27:56]

Mayor Lane: Brent, one of the things I suppose -- and in what you just said -- one of the things that was important before we get into public outreach, and you are saying -- I think you might have used these words being more defined than less defined will be an important component so that we are not trying to just open up to a vast new array of things and options and differences of opinion. I think if -- if it's possible on the basis of what we have discussed here, and I still think it would behoove us. I hope that this is being proposed that it come back to us in a form that you are talking about going to an outreach on. I don't think anything necessarily changes but it's a true reflection of what we are talking about here. And, again, there's no incriminations when I say -- I just want to make sure that it is what we all understand it to be, or at least it's very, very close.

Assistant City Manager Brent Stockwell: Mayor, one way that you can get public outreach, you can ask us to come back with some deal points and we can get public comment on those deal points during -- you know, before, during and after that meeting and that can be part of your public outreach process, and then from that point, you can direct the creation of an ordinance. There's some efficiency gained through that, because that's one meeting where we outlined those deal points. You get all the feedback on that and then you give direction on how you want it done at the next meeting. So I will leave it at that.

Mayor Lane: Yes, Councilwoman?

Councilwoman Milhaven: What I would like to suggest is some hybrid of that, which is to put together the deal points, and send it to us for review. If there are four or more of us that thinks it requires additional discussion after reviewing the document, then we could come back and ask for it to be agendaized. If there are not four or more of us that requires additional discussion, you can then take that document for comment and then come back with -- come back to us as an agenda item with that public comment. That would be my suggestion.

Mayor Lane: If I might for clarity, I think that sounds like a reasonable process, but you are talking about after -- after it comes to us, the fact is that a majority, say, that we can move forward with it, then does it then go into some more permanent form to come back to this full body?

Councilwoman Milhaven: Right, it need not come back to an agenda item, before public outreach unless there are four of us who think additional discussion is required after reviewing the deal points. So rather than saying bring it back as an agenda item, let us review it, if you think we need further discussion and unless there are those who think it's required, it would not come back to us after

additional public comment.

Mayor Lane: I think I get what you are saying. Ultimately some package of these things -- if you are talking about each item coming to us, and each item say, hey, we need to vote. We need to discuss this further or not, I'm talking about each item or we are talking about a full package.

Councilwoman Milhaven: I guess what I'm saying they put the deal points to go and we say this sort of represents what we agreed to. And, yes, we are okay to go for outreach for this. There would be no reason to hold it up for another meeting unless there were four of us who think additional discussion on any particular points or the whole package is necessary.

City Attorney Bruce Washburn: Just to clarify, when you say -- we say that, you mean you say it to yourselves because clearly you cannot be saying it in quorum. So the mechanism would be that we --

Councilwoman Milhaven: That we would agendize agendizing the item.

City Attorney Bruce Washburn: Right. And we would circulate what we are planning to go out, with and if nobody agendizes anything, here we are going out and if nobody agendizes anything --

Councilwoman Milhaven: Right, thank you.

City Attorney Bruce Washburn: And being very careful not to say anything about the merits of the matter.

[Time: 02:32:13]

Councilmember Korte: Mayor.

Mayor Lane: Yes, Virginia?

Councilmember Korte: I like that idea. Brent, you intimated another process. This is the third public meeting we had on this ordinance, correct? And if we were to consider these three public meetings as part of the public process, is it necessary to go through additional public process after -- you know, after we set these deal points and we agree that these are the deal points in whatever way? Or can we say, okay, then maybe the next public process is to review those deal points for -- and then direct staff at that point?

Assistant City Manager Brent Stockwell: So what I was trying to do was lay out a number of different options and certainly what you have is a public outreach process. So when you say you want to talk about the possible of a nondiscrimination ordinance in March and then when you send out information about the unity pledge, that was also public outreach and you received public comment on the issue both ways on that item, and then you came back and said we want agendize that. I'm trying to think about how to be efficient at this point as well. Up until this point, we talked about the general concept of a nondiscrimination ordinance. Tonight's discussion helped us get some clarity

around what some of those deal points would be in an ordinance. We can post that out there and say here's the deal points and then collect additional feedback on that.

The case I was talking about earlier, is if there's no objection to getting public outreach on that, we can kind of post that out there and say, it's the intent of the council to solicit public feedback from the community on these pieces, and then say we want to receive that by a certain time, and then at that point in time, we could -- we could put together a -- an ordinance for your consideration that includes and tries to address those concerns that have been solicited by community and agendized.

Councilmember Korte: I would like some discussion here. There's not an intention to circumvent public process but really this is the fourth discussion we had on this, we had robust public process to this point. So perhaps we do it -- you know, we are all kind of thinking, so what does this public process look like? And do we go out and have three public forums one in each area of the city, whatever that is, and is that the best use of -- is that the best way to reach out on this? Are there other mechanisms? Are there other strategies to be utilized?

Assistant City Manager Brent Stockwell: So typically when we go out to different parts of the community to do outreach, there's likely to be distinct steps in different parts of the community. So an ordinance might impact, you know this part of the community differently than in other parts of the community and so you want to get kind of broad outreach on those because it might differ. I think on this issue that's not really the situation that we are talking about. What you are trying to do is you are trying to make it very clear to the public what the draft language might be so that you give a wide opportunity for anyone that is interested in this subject to provide feedback.

And -- and so -- and I just want to make sure that it's clear what you are intending to get from that. If it's to make sure that nobody is surprised by this, that the entire community knows, you know, this is and you are able to provide specific feedback on those items so that you can take that into consideration, we can take that into consideration in drafting the ordinance. I think that's -- you know, that's kind of what I'm thinking at this point in time.

The other opportunity is to -- the other thing that -- to take into consideration on this is that the opportunities for public outreach and involvement have evolved over time. So it used to be that people in the community may not know about something unless you scheduled a neighborhood meeting or did a whole bunch of door hangers and did that. That's not really the environment we live in today. So people are able to broadly find out about things that are going on, all of our meetings are broadcast live, and anybody can go back and take a look at any of it. They can look at closed captioning later. They have a lot of that.

But I would also say that we wouldn't preclude the ability, if a particular group wanted to have a dialogue around this, that we would offer that. And so, you know, one of the groups exists out in the community, wants to have a particular forum around all of that, we can schedule. I'm trying to figure out what you want to do. I realize this is a larger discussion because we really haven't had the discussion with the council about what your public engagement and community involvement strategy is.

Mayor Lane: Brent –

[Time: 02:37:50]

Acting City Manager Brian Biesemeyer: I'm sorry, not to interrupt you sir, but just to kind of put a flavor on this, if I may.

Mayor Lane: Certainly.

Acting City Manager Brian Biesemeyer: I think -- I think from a staff perspective, it would be best to do most of this online, because as just a -- kind of cap off Brent's statement there, the -- to put the topping on it is we have invested an amount of time and we can do this online and let people know, as Brent said. If someone wants to meet with us, we have done that and we will continue to do that but reaching out for community outreach, I think is -- it delays the process and also I'm not sure if adds value.

So I can make a recommendation for staff is that we would take this, put this online and give it a substantial time period, a number of weeks online to get that and then we can report back to you what we found and put that in a consolidated way that keeps the process going and then certainly there will be another public meeting as you just mentioned, to bring that about. I think that's another public outreach right there. So to kind of put a -- a little cherry on top of what Brent said. We can do it online unless a specific group wants to police department with us.

Mayor Lane: Mr. Biesemeyer, I appreciate that. I don't think there's any intent to circumvent outreach on this, but the fact remains this is the first meeting we really have had to consider an ordinance. Previously we were talking about a pledge. We were not talking about an ordinance. We specifically spoke about reinvesting in the pledge and try to move forward in that direction. And so an awful lot of invested time in the pledge, as far as the outreach is concerned. So as far as the ordinance is concerned, I wouldn't want to fast track it but at the same time, I'm not looking to drag it out.

I do think that there may be an efficient way to do it but I do think that this body, our council, needs to get together again with -- with more closely a final assessment of what we have talked about here. Somewhere along the line. If you want to do an outreach in the meantime, and that can be done efficiently online, and then come back with the results of that --

Acting City Manager Brian Biesemeyer: Well, Mayor, I was not trying to actually -- I thought Councilwoman Milhaven mentioned that as one of the mechanisms. So it would go out to you. And if you wanted to agendize a further discussion, then that could happen and if you don't --

Mayor Lane: Oh, okay.

Acting City Manager Brian Biesemeyer: Then we would continue to do it online and then bring it

back for another session but more -- but in a more comprehensive manner than the agendaized meeting.

Mayor Lane: Maybe with more specific language but not necessarily in a final form necessarily?

Acting City Manager Brian Biesemeyer: Exactly.

Mayor Lane: I don't have any difficulty with the idea of getting it out to the council to consider. Now, how we do that is a careful thing and I think it was Bruce that mentioned the fact that we do have to be careful about making those decisions even by email or otherwise and the conversation that may ensue about what we have done in the past, obviously is use the clerk's office in order to facilitate some of those things. I'm not sure that's a better way or not, that will be an important aspect to make sure that we are not bypassing open dialogue and report on this. So, yes, Councilwoman Klapp.

[Time: 02:41:30]

Councilwoman Klapp: What I would prefer is if we are going to be given deal points, which I think that's what we have been discussing tonight these are the deal points and I think we have already made decisions on pretty much all of them. I'm okay with listening to deal points again but I want to see the language.

I want to see an ordinance, a draft ordinance that includes the deal points, if you want to list them separately as these are the deal points we have discussed, but here is a draft ordinance that incorporates those deal points, that would make me happier because I don't want to look at a list of stuff. That has what we just did.

And so my feeling is give us a document that I realize is in draft form and could be altered and I can tell you whether this incorporates in that document the things that I feel we expressed or at least what I expressed an intention of wanting to see in the document. I'm kind of hung up on what you are going to give me for me to make a decision on whether we have another meeting.

Mayor Lane: So deal points plus language?

Councilwoman Klapp: Yes, I want to see the language.

Mayor Lane: I don't have a problem with that. I'm sorry, David. Councilman Phillips.

[Time: 02:42:39]

Councilman Phillips: Well, like I said at the beginning of this meeting, it sounds like we are drafting up an ordinance, and that's exactly what we did this entire meeting. We drafted up an ordinance. So we are just pretending -- we are just pretending to the public we want to hear what they have to say. We will draft up an ordinance and four or five people will vote for one and you will have one. If wanted to be honest and open to this why not put it in the utility bill rather than people pushing it

through whether the people want it or not.

Mayor Lane: There may be room to do just exactly that. I mean, we went through this process but it still would formulate what it is we are talking about. Vice Mayor?

[Time: 02:43:37]

Vice Mayor Smith: Thank you, mayor. Well, taking issue, I don't think we drafted an ordinance tonight. I have think we at least speaking for myself, I -- what I tried to do was identify what some of -- what we are calling the deal points that would be responsive to the concerns that we are all hearing from a variety of discerns.

We started out with the objective, and we gave the city manager and the city staff, to protect the LGBT community while also preserving the rights and freedoms of all of Scottsdale citizens, businesses and organizations. That was the mandate. That was the request and what they have come back to us for -- what we have been wrestling with tonight is coming up with the elements to do that. I think it's far from drafting an ordinance.

What we have done is tried to listen to our constituents and address their concerns and I think now it's incumbent upon us to give this document to them. I wouldn't give them the whole ordinance that would be a little bit intimidating but I would certainly give them the deal points and say, have we did -- have we heard you? Have we addressed your concerns because so much of what all of us are hearing in the barrage of emails are concerns that hopefully we have addressed, hopefully we have listened to. If we haven't, tell us and we will go back to the drawing board.

I think this public outreach, whatever form it takes will be quite different because -- or should be different, because people should be responding to the specific document and to the way that we tried to address their concerns. I like what the city manager said, let's figure out whether we've got a document to go out with ordeal points or whatever form it takes, but the simpler the better. To go out to the public and whether we do that online or how we do it, but then come back and we will -- as everybody knows, you will have one more public session if we actually have a document that comes back with consensus from the public. So I'm -- I'm interested in moving this along as quickly as we can, just because we have labored with it for a long time, and there are any other issues that we need to be talking about here. Thank you, mayor.

Mayor Lane: Thank you, Vice Mayor. Yes, Councilwoman Littlefield.

[Time: 02:46:17]

Councilwoman Littlefield: I think we can all agree that this particular issue stirs up a great deal of emotion from just about everybody in Scottsdale. This is one of the most contentious things we've had to deal with in a long time. Because of that, I would be very hesitant to limit public outreach in any way. I think doing it online is fine, if you are going to do that, then you will ought to also put an ad in the paper and say, go to this website. This is where the document is. You can read it. You

can study it. You can give us your input. Because some people don't go to the computer and look up what Scottsdale said today and they may need to get that information in another manner.

I have think this may be at least one or two maybe centrally located outreach programs where people can go and see it -- and see the deal points and write comment cards and send them back. And then the council should get a consolidation of those comments and mostly a consolidation of those concerns because I think those are the things that are left at this point for us to address. So that would be my suggestion. I don't think I would have dozens of outreach all over. City but there ought to be somewhere physically where people can go and look at this and study it because some people in our community don't use computers, even today. So I think that needs to be addressed too. Thank you.

Mayor Lane: Thank you, Councilwoman. Councilwoman Milhaven.

Councilwoman Milhaven: I think Councilwoman Littlefield makes a good point. Make when you come back to us with the deal points you can say here's the outreach plan, to see if there's any suggestions that the outreach is as comfortable and if it gives Councilwoman Klapp comfort to have a draft ordinance, I would be happy with that.

[Time: 02:48:16]

Councilmember Korte: Just a suggestion, we could perhaps set up in our libraries for a given time a -- a staged area where people can come in and express their opinions on it.

Mayor Lane: Thank you, Councilwoman. Well, you have got it. And I think it's a pretty comprehensive conversation and I appreciate everybody's participation and certainly all the people who spoke towards the topic earlier as well.

You know, this is not an easy process. I mean, we -- we are not used to dealing with this kind of ordinance, really, and frankly in establishing a new mechanism, really for compiling a complaint or to enforce it and prosecute it if necessary.

You know, my only hope, and Councilwoman Littlefield spoke a little bit towards this, it is a contentious issue. It is a difficult issue. I mentioned earlier, there's a lot of fear on both sides of this thing, and we can't dismiss it on either side. One is trying to regain some sense of security and the other one feels that they may be losing some. And so it's -- it's a balancing act as we often talk about around here.

My only hope is that the cost to the fabric of our community does not pay for it and I hope we can come forward with something that will not become a hammer, a sword or a mechanism to somehow cause greater harm and division in our city. I think we are a great city. I think we have always been a great city. I know it's not shared by some, but nevertheless, I think we frankly are as often and inclusive as any city I know of and I think we strive to be good, western hospitality, and certainly good people for everybody. So we'll see what come up with. We will see where we go from here.



There's still some question marks that undoubtedly have to be dealt with as far as the outreach is concerned.

Again, thanks to everybody for all the input and all the work we put into it. It's a long evening and again, thank you everybody for being here and listening to this process. What do they say, it's like making sausage or something.

Wait a minute. No, I have got one -- I was slipped a note. I just wanted to make sure that we congratulated our city treasurer Jeff Nichols who finally graduated from the Citizens Fire Academy. I understand he was held back a year. I'm teasing on that. But very good work, Jeff.

**ADJOURNMENT**

[Time: 02:51:06]

Mayor Lane: Anyway, thanks and I will accept a motion to adjourn.

Councilmembers: So moved.

Councilmembers: Seconded.

Mayor Lane: Moved and seconded. We are adjourned. Thank you.