

SCOTTSDALE CITY COUNCIL  
WORK STUDY SESSION MINUTES  
TUESDAY, NOVEMBER 17, 2015



CITY HALL KIVA  
3939 N. DRINKWATER BOULEVARD  
SCOTTSDALE, AZ 85251

**CALL TO ORDER**

Mayor W.J. "Jim" Lane called to order a Work Study Session of the Scottsdale City Council at 6:10 P.M. on Tuesday, November 17, 2015, in the City Hall Kiva.

**ROLL CALL**

Present: Mayor W.J. "Jim" Lane  
Vice Mayor David N. Smith  
Councilmembers Suzanne Klapp, Virginia L. Korte, Kathleen S. Littlefield,  
Linda Milhaven, and Guy Phillips

Also Present: Acting City Manager Brian Biesemeyer, City Attorney Bruce Washburn, City Treasurer Jeff Nichols, City Auditor Sharron Walker, and City Clerk Carolyn Jagger

**PUBLIC COMMENT** – John Zoutendike and Jim Campbell spoke in opposition to a non-discrimination ordinance. Jake Bennett, Karen Bailey, Nelda Majors, and Tyler Kinnie spoke in support of a non-discrimination ordinance.

**1. Non-Discrimination Ordinance**

**Request:** Presentation, discussion, and possible direction to staff regarding recommended elements appropriate for a Scottsdale non-discrimination ordinance that may be the basis for subsequent public outreach.

**Presenter(s):** Brent Stockwell, Assistant City Manager; Bruce Washburn, City Attorney

**Staff Contact(s):** Brent Stockwell, Assistant City Manager, 480-312-7288,  
[bstockwell@scottsdaleaz.gov](mailto:bstockwell@scottsdaleaz.gov); Bruce Washburn, City Attorney, 480-312-2405,  
[bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

Assistant City Manager Brent Stockwell and City Attorney Bruce Washburn gave a PowerPoint presentation (attached).

**NOTE:** MINUTES OF CITY COUNCIL MEETINGS AND WORK STUDY SESSIONS ARE PREPARED IN ACCORDANCE WITH THE PROVISIONS OF ARIZONA REVISED STATUTES. THESE MINUTES ARE INTENDED TO BE AN ACCURATE REFLECTION OF ACTION TAKEN AND DIRECTION GIVEN BY THE CITY COUNCIL AND ARE NOT VERBATIM TRANSCRIPTS. DIGITAL RECORDINGS AND CLOSED CAPTION TRANSCRIPTS OF SCOTTSDALE CITY COUNCIL MEETINGS ARE AVAILABLE ONLINE AND ARE ON FILE IN THE CITY CLERK'S OFFICE.

Councilmembers provided the following direction regarding six key elements that might be appropriate for a Scottsdale non-discrimination ordinance:

- Who is to be protected by the ordinance?
  - Direction was given to use language consistent with existing Federal and State laws and that is consistent with the existing City of Scottsdale employment ordinance.
  - Some Councilmembers suggested adding protections that are not covered by the City employment ordinance, such as marital, familial, and veterans' status.
- In banning discrimination in employment, what size employer is included?
  - Direction was given to use language that is consistent with existing State law, covering only businesses with 15 or more employees, and focused on employers who are located in the City, with a Scottsdale address or City business license.
  - Direction was given to exempt other government entities, such as the Federal, Tribal, and State governments; religious organizations, including ancillary activities conducted by religious organizations, e.g., book stores, day care, and schools; and bona fide membership clubs, other than a labor organization, e.g., tax exempt organizations and political parties.
  - It was suggested that language should be added to exclude sole-proprietorship business and to deny exemptions for any organization that is created for the purpose of evading the non-discrimination ordinance.
- What types of housing are covered?
  - Direction was given to use language that is parallel with existing Federal and State laws, including the Fair Housing Act.
  - Councilmembers offered suggestions to exclude rental of housing accommodations with owner-occupied residents in single-family residences and two-unit and four-unit housing.
- How is public accommodation to be defined?
  - Direction was given to use the following language to define public accommodation: "Place of Public Accommodation' means facilities, establishments, accommodations, services, commodities, or goods offered to or for use by the general public, including public places where food or beverages are offered for sale, public places operated for temporary lodging, use or accommodation of those seeking health or recreation and all establishments and entities offering goods, services or facilities, and entities soliciting patronage from the general public. This does not include any dwelling, private club, or any place which is in its nature distinctly private or any religious organization."
  - A Councilmember suggested adding language to provide an exemption for facilities used by employers with less than 15 employees, e.g., small business owners.
  - Staff will solicit input related to size of facilities for public accommodations during the public outreach process.
- How will the non-discrimination ordinance be enforced?
  - Direction was given to add language to provide for the following complaint-driven process: (1) Complaints to be filed with the City Manager's Office; (2) the City Manager's office will conduct an initial review (mechanical) of the complaint to ensure the complaint is timely filed,

has been sworn to by the complainant, and that it is covered by the ordinance; (3) verified complaints will be referred to an independent investigator to determine the facts of the complaint; (4) the investigator will forward investigative findings to an independent mediator in an attempt to resolve the dispute; (5) if the dispute is not resolved through mediation, the mediator will forward findings to the City Attorney's Office for review and a decision on whether to file charges; and (6) City Court would have authority to impose fines of up to \$2,500.

- Three Councilmembers suggested taking verified complaints to mediation first, before an investigation is conducted.
  - A Councilmember suggested that civil remedies should include warnings and/or incremental fines.
  - A Councilmember suggested adding language that would impose sanctions against complainants who file a false or frivolous complaint.
- How will the individual rights and freedoms of all Scottsdale citizens, businesses, and organizations be protected?
- Direction was given to use language that is consistent with First Amendment rights and existing Federal and State laws.
  - Some Councilmembers suggested adding language to guarantee religious and freedom of speech rights.

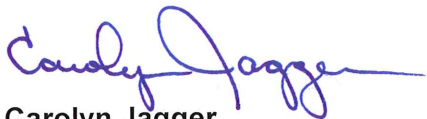
Councilmembers suggested having staff forward a list of deal points, a draft ordinance, and a public outreach plan to the Council for review. Any Councilmember that wishes to have further discussion on the draft documents or public outreach plan should notify the City Clerk. Upon the request of at least four Councilmembers, the draft documents will be agendized for further discussion.

There was general direction to conduct public outreach on the deal points and draft ordinance, including soliciting public comments on the Internet, newspaper advertisements directing the public to places where the draft ordinance can be reviewed and commented on, and using staging areas in libraries for public review and comments.

## ADJOURNMENT

The Work Study Session adjourned at 9:01 P.M.

## SUBMITTED BY:



Carolyn Jagger  
City Clerk

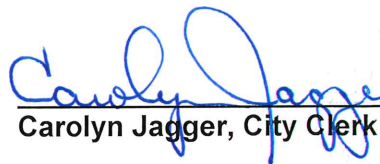
Officially approved by the City Council on January 11, 2016

### CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Work Study Session of the City Council of Scottsdale, Arizona held on the 17<sup>th</sup> day of November 2015.

I further certify that the meeting was duly called and held, and that a quorum was present.

**DATED** this 11<sup>th</sup> day of January 2016.

  
\_\_\_\_\_  
Carolyn Jagger, City Clerk

Item 1

**Non-Discrimination  
Work Study Session**

November 17, 2015

**The City Council asked the City Manager and  
City Attorney on August 31, 2015 to:**

- Investigate non-discrimination ordinances in other municipalities
- Determine the elements of a non-discrimination ordinance that would protect the LGBT community, while also preserving the rights and freedoms of all Scottsdale citizens, businesses and organizations
- Present to City Council recommended elements appropriate for a non-discrimination ordinance that may be the basis for subsequent public outreach

**Federal and state law prohibit discrimination based on race, color, religion, sex, national origin, age, or disability.**

Some jurisdictions have added additional protected classes, including sexual orientation, gender identity, gender expression, marital status, familial status and veteran status.

Non-discrimination laws typically include exemptions such as for religious organizations.

**Scottsdale does not have any ordinances that cover discrimination against anyone (including LGBT persons) in these areas**

- Private employment
- Housing
- Public accommodations

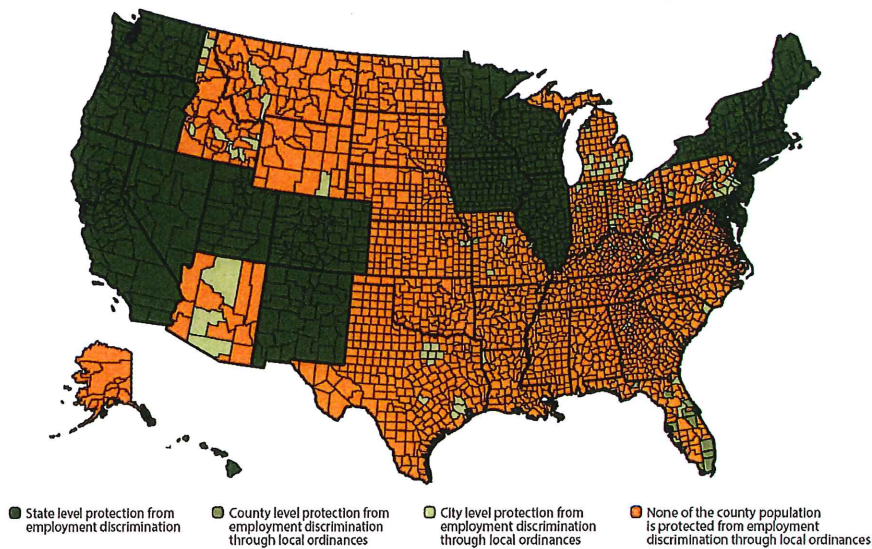
Scottsdale ordinances currently cover city employment opportunities (S.R.C. 14-2) and fair housing (S.R.C. 15-7 mirrors federal protections)

**215 cities/counties nationwide\* have non-discrimination ordinances that include LGBT protections**

- Phoenix, Sedona, Tempe, Tucson and Flagstaff (Mesa and Glendale currently considering ordinances)
- Miami, Florida; Orlando, Florida
- New Orleans, Louisiana
- Myrtle Beach, South Carolina
- Austin, Texas; Plano, Texas
- Alexandria, Virginia

\*in states without a statewide law

8b: Sexual Orientation Protections based on Existence of Protections within County Lines



Source: MAP analysis, Local Level NDOs, current as of October 1, 2015; MAP analysis, US Census Bureau, 2010. 2010 Census [Shape file]. Available from: <https://www.census.gov/geo/maps-data/data/tiger-line.html>

**Key issues:**

Who is protected?

What size of employer is included?

What types of housing are covered?

How is public defined?

How will it be enforced?

How are individual rights and freedoms protected?

**1. Who is protected?**

Does the city ban all discrimination, including against groups already protected, or does it just ban discrimination against groups that are not currently protected by other laws?

Most ordinances include all groups.



**Sedona Code § 9.30.020**

“Discrimination” means to exclude individuals from an opportunity or participation in any activity or to accord different or unequal treatment in the context of a similar situation to similarly situated individuals because of race, color, gender, gender identity, sexual orientation, religion, national origin or ancestry, marital status, familial status, age, disability, or veteran status.

**2. In banning discrimination in employment, what size employer is included?**

Some cities include any business with one or more employees, some require a greater number. Some cities use the number of employees that are used under state law, which in Arizona would be businesses with 15 or more employees.

**Sedona Code § 9.30.020**

“Employer” means a person doing business within the city who has one or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person. This definition excludes:

**Sedona Code § 9.30.020 (continued)**

1. The United States or any department or agency thereof, a corporation wholly owned by the United States or any Indian tribe;
2. The state of Arizona or any department or agency thereof, except for any political subdivision of the state of Arizona, including any community college district or high school or elementary school district;

**Sedona Code § 9.30.020 (continued)**

3. A bona fide membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended from time to time);

4. A religious organization with respect to the employment of members of the clergy to perform religious functions including leadership of worship services and teaching of religion, religious counseling, and inculcation of religious values.

**Sedona Code § 9.30.060 (religious exclusion)**

A religious organization except with respect to its employment of individuals to perform non-religious functions and unless such organization offers facilities, establishments, accommodations, services, commodities or goods to the general public

**3. In housing, are any sales or rentals excluded from protection?**

Some ordinances exclude rentals where there are only two units and one of them is owner-occupied. There are a number of other variations on this aspect of non-discrimination ordinances.

**Sedona Code § 9.30.060 (exclusions)**

D. The rental of housing accommodations in a building which contains housing accommodations for not more than two families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations, or the rental of a room or rooms in a single-family residential structure by an individual if he or a member of his/her family resides therein.

**4. In banning discrimination in public accommodations, how is “public” defined?**

“Private” clubs that generally let anyone join but exclude certain protected classes are often said not to be “private” because they are being used to circumvent the ordinance.

**Sedona Code § 9.30.020 (“public accommodation”)**

“Place of public accommodation” means facilities, establishments, accommodations, services, commodities, or goods offered to or for use by the general public, including public places where food or beverages are offered for sale, public places operated for temporary lodging, use or accommodation of those seeking health or recreation and all establishments and entities offering goods, services or facilities, and entities soliciting patronage from the general public. This does not include any dwelling, private club, or any place which is in its nature distinctly private or any religious organization which does not offer facilities, establishments, accommodations, services, commodities, or goods to the general public.

**Sedona Code § 9.30.020**

“Social club” means an organization composed of people who voluntarily meet on a regular basis for a mutual purpose other than for educational, religious, charitable, or financial pursuits. This includes any group that has members who meet for a social, literary, or political purpose. This definition does not include any club conducted for the purpose of evading this chapter.

**5. How will the ordinance be enforced?**

The primary decisions to be made in this respect are whether to have a violation be civil or criminal, and whether to offer mediation as a way to resolve issues before instituting legal proceedings.

**Sedona Code § 9.30.080**

- Verified complaint filed with City Manager's Office
- Investigation to determine possible validity
- Mediation
- Civil penalty not less than \$1,500 up to \$2,500

**6. How will the individual rights and freedoms of all Scottsdale citizens, businesses and organizations be protected?**

All ordinances make exceptions for religious organizations, although these exceptions differ somewhat in detail, and some ordinances also incorporate the federal and state law protections available to other groups.

**Sedona Code § 9.30.060**

Notwithstanding any other provision herein, nothing in this chapter is intended to alter or abridge other rights, protections, or privileges secured under state or federal law. This section shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding freedom of speech and exercise of religion.

**Sedona Code § 9.30.060 (voluntary associations)**

- B. A bona fide membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended from time to time), as defined in this chapter; or
- C. A social club, as defined in this chapter.



### **Tonight's Item**

Presentation, discussion and possible direction to staff regarding recommended elements appropriate for a Scottsdale non-discrimination ordinance that may be the basis for subsequent public outreach.

Possible direction could include the following:

- Begin public outreach process based on the direction received from Council, or;
- Take no further action

## **Non-Discrimination Work Study Session**

November 17, 2015

### **WORKPLACE FREE SPEECH**

An employee may express the employee's religious or moral beliefs and commitments in the workplace in a reasonable, non-disruptive, and non-harassing way on equal terms with similar types of expression of beliefs or commitments allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business-related interests of the employer.

### **RESTROOMS**

This ordinance shall not be construed to require that any person provide bathrooms, locker rooms or like facilities that are not segregated by gender.

or

This ordinance shall not be construed to require that any person provide bathrooms, locker rooms or like facilities that are not segregated by sex.

**ARIZONA'S FREE EXERCISE OF RELIGION ACT**

A.R.S. § 41-1493(B)

"Exercise of religion" means the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

**FREE EXERCISE PROTECTED**

A.R.S. § 41-1493.01

C. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:

1. In furtherance of a compelling governmental interest.
2. The least restrictive means of furthering that compelling governmental interest.

**Sedona Code § 9.30.100 (no private right of action)**

C. 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.