CITY COUNCIL REPORT

Meeting Date:	November 17, 2015
Charter Provision:	***Provide for the orderly government and administration of the affairs of the City***
Objective:	***Enact local legislation***

STUDY ITEM

Non-Discrimination Work Study Session. 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.

BACKGROUND

On August 31, 2015, the City Council directed the City Manager and City Attorney to investigate non-discrimination ordinances in other municipalities and from this research determine the elements of a non-discrimination ordinance that would protect the LGBT community, while also preserving individual rights and freedoms of all Scottsdale citizens, businesses, and organizations. Based on this research, staff was directed to present to City Council, within 90 days, recommended elements appropriate for a Scottsdale non-discrimination ordinance that may be the basis for subsequent public outreach.

ANALYSIS & ASSESSMENT

Policy Implications

Different types of anti-discrimination laws can be found at all levels of government. These laws vary from jurisdiction to jurisdiction, sometimes significantly. Laws traditionally prohibit discrimination based on a person's race, color, religion, sex, national origin, age or disability. In general, discrimination is to afford a person less favorable treatment than others similarly situated because of that person's membership in a protected class.

Neither federal law nor state law currently specifically protects persons from discrimination based on their sexual orientation, gender identity or gender expression. Although some courts in limited circumstances have extended existing protections to such persons, other courts have declined to do so. Certain federal agencies have also taken the position that in some circumstances discrimination based on sexual orientation or gender identity may constitute sex discrimination. In addition, federal contractors are prohibited from discriminating based on sexual orientation or gender identity. Both federal and state laws include certain exemptions, such as for religious organizations.

Action Taken _____

Scottsdale currently has two ordinances that provide civil rights protections. Scottsdale Revised Code Section 14-2 provides employment opportunities with the city to all persons based solely on ability, regardless of race, color, religion, sex, national origin, age, sexual orientation, gender identity or disability. S.R.C. Section 15-17 relates to fair housing and is intended to mirror federal protections and does not cover sexual orientation, gender identity or gender expression.

Other than as noted above, there are not currently any Scottsdale-specific ordinances that cover discrimination against LGBT persons in these areas:

- private employment,
- housing,
- public accommodations

This means that people can be denied employment, fired from their jobs, denied service, or denied housing in Scottsdale based solely on their LGBT status. There is no way to know to what extent such discrimination occurs in Scottsdale because no such statistics are kept, nor is there any practical way for them to be kept since the discrimination is not illegal.

Some states have statewide prohibitions; others do not, as in Arizona. In some states where discrimination is not prohibited by statute, individual cities have adopted local non-discrimination ordinances. These include Flagstaff, Phoenix, Sedona, Tempe and Tucson, as well as 210 other cities or counties nationwide including Austin, Texas; Plano, Texas; Myrtle Beach, South Carolina; Miami, Florida, and Orlando, Florida.

Scottsdale has taken a number of steps to increase awareness and understanding of these issues, including hosting a Civil Dialogue on LGBT issues at the Civic Center Library in April 2014, and appointing LGBT liaisons for the city in general, and the police department specifically. The Council's adoption of the Unity Pledge was also a step taken by the city. Each of these steps helps encourage non-discrimination, but stops short of making discrimination on the basis of sexual orientation, gender identity or gender expression illegal in Scottsdale.

If the city wants to take this next step then the non-discrimination ordinances utilized by other cities would seem to be the appropriate way to do so. Such an ordinance would expand on the city's existing non-discrimination law that applies to its own hiring practices to include local businesses and employers. It would set forth what is required for compliance with the law, and would also provide a mechanism for responding to complaints of discrimination. Finally, if discrimination occurs, means to redress the violation, including possible civil prosecution, would be available.

Significant Issues to be Addressed

Our review of existing non-discrimination ordinances reveals that, while there are differences in detail, most of them in substance address essentially the same issues. At the work/study session we will be asking Council for direction on whether it wants staff to proceed with public outreach in developing an ordinance, and, if so, what provisions such an ordinance should contain for public comment. The basic issues fall generally into the following categories.

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.
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.
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.
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.
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.
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.

For the purpose of walking through these significant issues, we will use the Sedona Ordinance (Attachment 3) for reference.

Community Involvement

On March 31, 2015, the City Council held a work-study session on the city's current policies and possible future actions pertaining to discrimination on the basis of sexual orientation, gender identify or gender expression. The Council gave direction to staff to launch an outreach plan utilizing the UNITY Pledge, a unified effort to advance equality in the workplace, in housing and hospitality for lesbian, gay, bisexual and transgender citizens. This included direction to:

- Actively promote Scottsdale's UNITY Pledge to the public and the business and hotel communities, including, but not limited to, posting information on the City's website and using letters, flyers, and other communications to seek support;
- Provide the Council with an update on the City's activities to promote the UNITY Pledge and a status report on the number of businesses and individuals who support it, along with suggestions on how the City can garner greater acceptance of the UNITY Pledge;
- Evaluate the outreach program and provide recommendations to enhance the UNITY Pledge program's success

Since June 1, 2015, a total of 390 Scottsdale citizens and 131 Scottsdale-based businesses representing an estimated 6,650 employees, have signed the UNITY Pledge. In total, 281 Scottsdale businesses have signed since 2014 and represent 24,214 employees. The outreach efforts reached at least 66,000 Scottsdale households via a mailed letter, included in utility bill statements, from the Mayor and City Council asking citizens and businesses to endorse the UNITY Pledge (Attachment 1).

Outreach in other communities

Attachment 2 is updated to include the City of Sedona which passed an ordinance in September.

City of Sedona - On September 8, 2015, the Sedona City Council voted unanimously to adopt a non-discrimination ordinance protecting LGBT residents and visitors. Sedona as a population of about 10,000 people, but attracts between two and four million tourists annually. Sedona has not received any complaints since ordinance adoption, but has partnered with an organization for mediation services when a complaint comes in (Attachment 3).

City of Mesa - To date, the City of Mesa continues their efforts to work with stakeholders to ensure their perceptions and ideas are integrated prior to establishing a non-discrimination ordinance for Mesa. Mesa does not have a draft non-discrimination ordinance ready for review, although, elements will include veteran, marital status, and familial status protections.

City of Glendale - The City of Glendale recently completed a public outreach process and issued a "Community Conversations on an Anti-Discrimination Ordinance" report at a City Council work study session on Oct. 6, 2015. This was five months after the City Council had given direction to gather public comment on a possible local anti-discrimination ordinance in Glendale. The city hired a facilitator and hosted four community conversations in different parts of the community, and one dialogue promoted by the Chamber of Commerce to encourage business participation. On October 6, 2015, the City of Glendale City Council reviewed the report and by consensus directed staff to prepare a draft ordinance for Council review and discussion at a subsequent workshop.

OPTIONS

The City Council may want to provide 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:

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

RESPONSIBLE DEPARTMENT(S)

City Manager, City Attorney

STAFF CONTACT(S)

Sharon Cini, diversity liaison, SCini@ScottsdaleAZ.gov, 480-312-2727;
Brent Stockwell, assistant city manager, BStockwell@ScottsdaleAZ.gov, 480-312-7288

APPROVED BY

11/3/15

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Date

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Date

11/3/15

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Date

ATTACHMENTS

The PowerPoint presentation will be provided as part of the supplemental packet.

1. Unity Pledge Outreach Report
2. Arizona LGBT Non-Discrimination Ordinance Comparisons
3. Sedona Human Rights Ordinance

City Manager's Office

3939 N. Drinkwater Blvd
Scottsdale, AZ 85251

PHONE 480-312-2800
FAX 480-312-2738
WEB www.ScottsdaleAZ.gov

Date: October 23, 2015
To: Honorable Mayor and City Council
From: Sharon Cini, Diversity Liaison, City Manager's Office
Subject: Unity Pledge Outreach Effort

Background

On March 31, 2015, the City Council held a work-study session on the city's current policies and possible future actions pertaining to discrimination on the basis of sexual orientation, gender identify or gender expression. The Council directed staff to launch an outreach plan utilizing the UNITY Pledge, a unified effort to advance equality in the workplace, in housing and hospitality for lesbian, gay, bisexual and transgender citizens. This included direction to:

- Actively promote Scottsdale's UNITY Pledge to the public, the business and hotel communities, including, but not limited to, posting information on the City's website and using letters, flyers, and other communications to seek support;
- Provide the Council with an update on the City's activities to promote the UNITY Pledge and a status report on the number of businesses and individuals who support it, along with suggestions on how the City can garner greater acceptance of the UNITY Pledge;
- Evaluate the outreach efforts and provide recommendations to enhance the UNITY Pledge program's success

Summary of Results

Since June 1, 2015, a total of 390 Scottsdale citizens and 131 Scottsdale-based businesses[1] representing an estimated 6,650 employees, have signed the UNITY Pledge. In total, 281 Scottsdale businesses have signed since 2014 and represent 24,214 employees. The outreach effort reached at least 66,000 Scottsdale households via a mailed letter, from the Mayor and City Council asking citizens and businesses to endorse the UNITY Pledge, which was enclosed in monthly utility bills.

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[1] http://ScottsdaleAZ.gov/Assets/Public+Website/departments/City+Manager/Diversity/UNITY+Pledge+report/UNITY+pledge+businesses.pdf

Outreach

The Office of Diversity and Inclusion, the Office of Communications and ONE Community worked together to develop the plan. The elements of the plan include: Creating the goal of the outreach plan, the key message, the key measurement of the plan and identifying partners in the community. We also created timelines as well as a budget for the plan, as requested by council.

ONE Community updated the UNITY Pledge website, located at http://www.openaz.co/. These updates made it easier for Scottsdale residents and businesses to participate.

Outreach primarily took place through verbal encouragement, utility bill mailings, utilization of UNITY Pledge rack cards **(Appendix A)** and through social media (**Appendix B)**. Information was placed at city libraries and other public places. Emails were sent to the Human Relations Commissioners asking for their assistance in information sharing. The Human Services Commission and the Tourism Development Commission received staff presentations about the efforts. The city's executive team and the city's employee-based Diversity Advisory Committee received information and were encouraged to share.

In June, a letter **(Appendix C)** was created by the Mayor and all City Council members to Scottsdale residents, businesses and organizations. This letter was included in the July utility bill.

Response

The City Council's UNITY Pledge message states Scottsdale is "an open and welcoming community". The response rate from Scottsdale-based business and the utility bill mailings were less than one percent.

We received several emails and 57 handwritten comments[2] in response to UNITY Pledge utility bill letters. Seven positive responses were received, which included those who made a request to submit their pledges from those who did not have computers, or those who walked in to make their pledges. In total, 51 negative responses were received.

City staff from the Mayor's office, Office of Diversity and Inclusion, City Manager's office, Office of Communications and the Neighborhood Call Center received several phone calls from citizens with questions on what the UNITY Pledge was. For a consistent, objective response, staff prepared a Q & A sheet **(Appendix D)** with common questions that were being asked by callers. Some callers misunderstood what the intent of the Council's letter was by promoting the UNITY pledge and some callers thought it pertained to an LGBT nondiscrimination ordinance.

City staff sought community partners' participation as well. These partners included the Scottsdale Convention and Visitors Bureau, the Scottsdale Cultural Council, Greater Scottsdale Chamber of Commerce, Scottsdale Area Association of Realtors, Scottsdale Leadership,

[2] http://ScottsdaleAZ.gov/Assets/ScottsdaleAZ/Diversity/UNITY+Pledge+responses.pdf

Scottsdale Unified School District, Scottsdale Community College, HonorHealth, and Scottsdale Board and Commission members.

In addition to identifying outreach methods, the City Manager's appointed LGBT Liaison, David Simmons, actively represented the city and encouraged signing of the UNITY Pledge at outreach events during this three-month period. These networking events include:

- ONE community 1st Monday networking event -100 people were in attendance
- 1N10 quarterly affinity group mixer- 60 people
- ONE Community Multicultural Networking event – 80 people were in attendance

Cost, key activities and timeline

The total cost of the outreach effort was approximately $4,094, which does not include staff time and was paid by the City Manager's Office.

Date(s)	Activity	Completed	Cost	Responsible
July 2 - 30	Letter to Scottsdale residents from Mayor & Council via Utility Bills	Yes	$3,200	Communications / Diversity
July 2	Place Unity Pledge rack cards at service counters, libraries, rec centers	Yes	$144	Communications / Diversity
June	Provide UNITY Pledge window decal to business who have signed	Yes	$750	Diversity
July 7	News item (release, enews, social post)	Media/public	-	Communications
	Announce availability of window clings for participating businesses & organizations			
Ongoing	Showcase new signees on Twitter, Facebook, Instagram	Web	-	Communications
		Total	$4,094	

Data collected from Social media:

In combination, data shows activity using the city's social media

Total number of people reached (people who saw the posts): **1,468**

Total number of people who engaged and took action: **120**

Appendix B provides the data pertaining to Diversity Facebook page, City's Facebook page, ONE Community's social media post and Twitter.

Summary:

The UNITY Pledge provides the City of Scottsdale with an opportunity to demonstrate commitment to the community's diverse needs. During the three-month outreach effort, at least 66,000 households were reached, which represents a large portion of Scottsdale citizens. In addition, continued outreach with ONE Community to Scottsdale businesses resulted in an additional 131 pledges. Combined this represents a good faith effort to reach as many residents and businesses as possible, given the limited budget.

The UNITY Pledge supports the Council's desire to promote a "free and voluntary expression of our commitment for the equal, inclusive and fair treatment of all people in Scottsdale." By signing the UNITY Pledge, citizens and businesses pledge to celebrate diversity and support workplace equality. Within a three-month timeframe, a total of 521 signatures from Scottsdale were received (both from businesses and individual pledges).

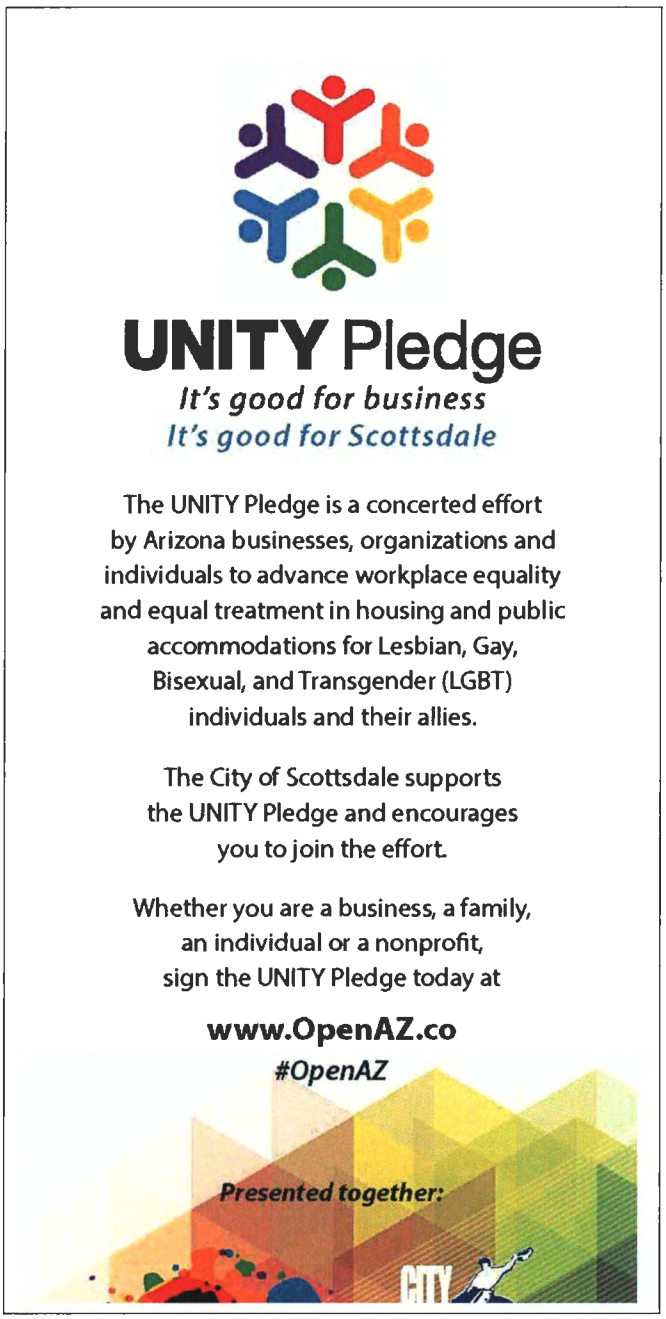
The outreach also provided a "sounding board" to gauge how many citizens oppose the outreach plan based on personal beliefs, as well as the appropriateness of this as a an outreach effort.

Next steps:

The Council can continue these outreach activities by authorizing funding for marketing material and other mechanisms of mass communication for an annual UNITY Pledge drive among Scottsdale businesses, or as outreach to all new business license applicants. For example, a Public Service Announcement video of the Mayor and Council could be created and used to continue garnering a "pledge" to the city's stance on nondiscrimination and the commitment to equal, inclusive and fair treatment to all people in Scottsdale.

The City of Scottsdale can also continue to share information with boards, commissions and task forces and follow up with the remainder of these groups to garner greater acceptance of the UNITY Pledge. In addition, outreach using available mailing and distribution lists used by staff in other city departments could be considered as well.

Appendix A: UNITY Pledge rack card and UNITY Pledge Window Decal



Appendix B: UNITY Pledge social media outreach data

Diversity page FB post:

Post Details

Reported stats may be delayed from what appears on posts

Office of Diversity, City of Scottsdale
June 25

Scottsdale has signed the UNITY Pledge – will you?

The Scottsdale City Council unanimously approved the city's signature on the Unity Pledge last August.

Now, Scottsdale's Mayor and City Council are asking residents, businesses and organizations to sign as well, and to work together to promote the UNITY Pledge among everyone in Scottsdale.... See More

UNITY Pledge
It's good for business
It's good for Scottsdale

81 people reached

Boost Post

2 Likes 1 Comment

Like Comment Share · Hootlet Buffer

81 People Reached

4 Likes, Comments & Shares

2 Likes	**2** On Post	**0** On Shares
1 Comments	**1** On Post	**0** On Shares
1 Shares	**0** On Post	**1** On Shares

8 Post Clicks

2 Photo Views	**0** Link Clicks	**6** Other Clicks

NEGATIVE FEEDBACK

0 Hide Post **0** Hide All Posts
0 Report as Spam **0** Unlike Page

City page Facebook post:

Post Details

Reported stats may be delayed from what appears on posts

ScottsdaleAZgov
June 25 ·

#Scottsdale has signed the #UNITY Pledge – will you? http://bit.ly/1Ig42f7

UNITY Pledge

307 people reached

Boost Post

6 Likes 1 Share

Like Comment Share Buffer Hootlet

307 People Reached

7 Likes, Comments & Shares

6 Likes	**6** On Post	**0** On Shares
0 Comments	**0** On Post	**0** On Shares
1 Shares	**1** On Post	**0** On Shares

20 Post Clicks

12 Photo Views	**3** Link Clicks	**5** Other Clicks

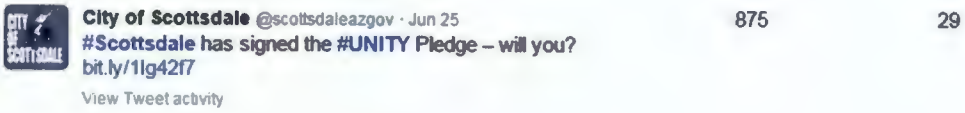
NEGATIVE FEEDBACK

1 Hide Post **0** Hide All Posts
0 Report as Spam **0** Unlike Page

City page Facebook share:

City Twitter post:

Tweet metrics:



Appendix C: Letter from Mayor and Council to businesses and individuals

June 8, 2015

Dear Scottsdale residents, businesses and organizations,

In August 2014, your City Council unanimously passed a resolution to endorse the Unity Pledge as presented by the Lesbian, Gay, Bi-sexual and Transgender (LGBT) community.

The Unity Pledge is a free and voluntary expression of our commitment for the equal, inclusive and fair treatment of all people in Scottsdale.

We, as your City Council, are committed to those principles and in demonstrating as a community that we live with those values.

By signing the Unity Pledge, we joined a growing number of Scottsdale businesses and organizations including Go Daddy, China Mist Tea Company, Mayo Clinic and Tallwave.

Now we are asking you to join the effort. Sign the Unity Pledge and work together to promote it among all businesses, organizations and individuals in Scottsdale.

To get started, visit ScottsdaleAZ.gov and search "Unity."

Thank you for your help in uniting our great community.

W.J. "Jim" Lane
Mayor

Linda Milhaven
Vice Mayor

Suzanne Klapp
Councilwoman

Virginia Korte
Councilmember

Kathy Littlefield
Councilwoman

Guy Phillips
Councilman

David N. Smith
Councilman

Appendix D: Unity Pledge questions and suggested responses

UNITY Pledge questions & suggested responses

NEWS RELEASE: Scottsdale has signed the UNITY Pledge – will you?
http://www.scottsdaleaz.gov/News/News-UNITY-Pledge-Outreach

Central point of contact (City of Scottsdale): Diversity Liaison Sharon Cini 480-312-2727 and Communications & Public Affairs Director Kelly Corsette 480-312-2336

Central point of contact (ONE Community): Bettina Nava 602-228-0105

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1. "Why has Scottsdale become involved?"

Last spring, the city was approached by the LGBT community and asked to pass a non-discrimination ordinance that would establish a protected class for individuals identifying as LGBT. The majority of the city council did not support the idea of passing an ordinance- a new local law. Instead, council directed staff to conduct community outreach to provide our residents a free and voluntary way for anyone who wishes to show their commitment to fair and equal treatment for all people. The letter in your utility bill is the most visible component of that outreach.

2. "Why a UNITY Pledge?"
The UNITY Pledge is a voluntarily expression of respect for members of the LGBT community's right to live their lives without threat of discrimination. It's a gesture that many of our residents and businesses have already made.

3. "Why are you singling out LGBT people, shouldn't all people be protected?"
We do believe that all people should be treated equally; however, sexual orientation, gender identity and gender expression are not among the protected classes established under the first amendment to the Constitution and federal Civil Rights laws.
LGBT individuals are not protected from discrimination the same way that these protected classes are: *race, color, national origin, sex/gender, religion, disabilities, age (40 and over), pregnancy, citizenship, familial status, veteran status, genetic information.*

4. "I think Scottsdale should have an LGBT inclusive nondiscrimination ordinance!"

- We can pass along your feedback to the Mayor and City Council as part of the follow-up report.
- Any suggestions, comments or questions you have about a nondiscrimination ordinance can be sent directly to the City Council members: http://www.scottsdaleaz.gov/council/contact

NOTE: Depending on the conversation, the following information may be helpful (in case they ask):

- The City of Scottsdale has a nondiscrimination policy for its employees (a legal protection for employment and hiring)
- The City of Scottsdale is aware of LGBT equality concerns and has made positive efforts to address these. The UNITY Pledge public campaign is part of this effort.
- Business owners and/or corporations may also have their own nondiscrimination policies already, so they can research this on their own.
- For questions about UNITY Pledge and equality efforts, contact ONE Community

5. "This is against my religion and I can't believe the city is endorsing this!"
It is not required to sign, it is voluntary. The city's message of encouraging businesses, organizations and individuals to sign the UNITY pledge is a public commitment to respect our city's diversity and inclusion of everyone who visits and/or lives in Scottsdale.

6. "Why is city tax payer dollars used for mailers?"
Scottsdale promotes an open and welcoming community, and staff was directed by the City Council to conduct this public outreach. Efforts that engage a respectful and inclusive community are part of the overall efforts listed in the General plan and within the scope of both the city's Office of Diversity and the Scottsdale Human Relations Commission.

7. "How much did this cost? "
Inserting the letter in the utility bills cost $3500. In addition, we spent $500 on UNITY Pledge window clings for businesses who sign the pledge.

8. "What does 'public accommodations' mean?"
Federal and state laws prohibit discrimination against certain protected groups in businesses and places that are considered "public accommodations". This term generally applies to both public and private entities that are used by the public (such as food, lodging, gasoline and entertainment). Examples include retail stores, rental establishment and service establishments, as well as educational institutions, recreational facilities and service centers.

Arizona LGBT Non-Discrimination Ordinance Comparisons

Here is a brief overview of the major differences and similarities between the ordinances.

1. SCOPE OF PROHIBITED DISCRIMINATION

   All of the ordinances prohibit discrimination in employment, public accommodations and housing except Flagstaff's, which only covers employment and public accommodations.

2. PROTECTED CLASSES

   a. All ordinances cover race, color, religion, sex, national origin, disability, sexual orientation, and gender identity. Phoenix and Flagstaff also prohibit discrimination based on "gender expression."
   b. Sedona and Phoenix – Also prohibits discrimination based on marital status. With respect to housing only, Phoenix prohibits discrimination based on familial status (defined as being pregnant or living with a child who is under 18 and for whom you have custody or are in the process of obtaining custody). With respect to employment only, discrimination based on genetic information is prohibited.
   c. Sedona and Tucson – also covers ancestry, marital status and familial status for employment, public accommodations and housing
   d. Flagstaff – also bars discrimination based on military Veteran's status for employment and public accommodations
   e. Sedona and Tempe – also prohibits discrimination based on Veteran's status and familial status for employment, public accommodations and housing

3. EMPLOYER COVERAGE

   a. Phoenix – Applies to employers with one or more employees
   b. Tucson – Applies to employers with at least one but no more than 100 employees, except sexual orientation, gender identity, marital status and gender identity provisions apply to all employers
   c. Flagstaff – Applies to employers with 15 or more employees
   d. Tempe – Applies to employers with one or more employees
   e. Sedona – Applies to employers with one or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year

4. CONTRACTORS

   a. Phoenix – construction contractors who anticipate establishing a business relationship with the City for contracts of $10,000 or more must adhere to a policy of nondiscrimination for race, color, religion, sex, national origin, age and disability. Contractors with more than 35 employees also must not discriminate based on sexual orientation or gender identity.

      Suppliers of goods and services to the City and lessees of City real property for six months or more must adhere to a policy of nondiscrimination regarding race, color, religion, sex, national origin, age and disability. Suppliers and lessees with more than 35 employees also must not discriminate based on sexual orientation or gender identity.

b. Tucson – all contractors with the City will not discriminate based on race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status, and/or marital status.
c. Flagstaff's and Tempe's ordinances do not cover contractors.
d. Sedona – all city vendor or city contractors will not discriminate based on race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability or veteran status

5. EXPERIENCE

Cities who have adopted LGBT non-discrimination ordinances were contacted to determine their experience. Below is a summary of Phoenix and Tempe responses:

- In November 2014, nearly 70 percent of Tempe voters confirmed their council's LGBT non-discrimination ordinance by approving a ballot initiative that included these protections in their city charter.
- Tempe and Phoenix have reported no negative reactions from businesses or residents. To date, there have been no lawsuits.
- Neither Phoenix nor Tempe has taken any enforcement actions against any businesses or individuals based on their LGBT non-discrimination ordinance.
- Both Phoenix and Tempe report receiving about 2-3 complaints per year. All have been screened are ruled out or handled through mediation. There is currently one case that the Phoenix is reviewing, but the outcome has not been determined yet.
- A letter was received from the City of Tempe which further outlines their experience.
- Sedona and Flagstaff report that they have not received any complaints since the adoption of their nondiscrimination ordinance.

City of Sedona Ordinance

Chapter 9.30
HUMAN RIGHTS

Sections:

9.30.010 Purpose.
9.30.020 Definitions.
9.30.030 Policy.
9.30.040 Administrative provisions.
9.30.050 Unlawful practices.
9.30.060 Exclusions.
9.30.070 Fair housing.
9.30.080 Complaint procedures.
9.30.090 Penalties, process.
9.30.100 Severability and legal effect.

9.30.010 Purpose.
The provisions of this chapter are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.020 Definitions.
The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Adult" means a person who has attained 18 years of age.

"Contractor" means any person who has a contract with the city.

"Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of that individual as described in the Americans with Disabilities Act.

"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.

"Employee" means an individual employed for pay to perform services for an employer covered by this chapter and whose activities are controlled and directed by the employer, for whom services are being performed.

"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:

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;

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.

"Familial status" means the state of having one or more minor children under the age of 18 being domiciled with: a parent, guardian, or another person having legal custody; the designee of such parent, guardian, or another person having legal custody with written permission; or a foster parent or other person with whom a minor child is placed by court order. This definition includes pregnant women and people securing custody of children under the age of 18 or disability.

"Gender identity" means the gender related identity, appearance, or mannerisms or other gender related characteristics of an individual, regardless of the individual's designated sex at birth.

"Investigator" means an individual, appointed by the city manager or his/her designee, skilled in reviewing facts and circumstances as applied to legal proscriptions and forming conclusions as to whether violations of law have occurred.

"Marital status" means being or having been unmarried, married, divorced, or in a domestic partnership, civil union, or another form of adult domestic relationship recognized under the laws of a state or country.

"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.

"Sexual orientation" means actual or perceived homosexuality, heterosexuality, or bisexuality.

"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.

"Vendor" means a person or firm in the business of selling or otherwise providing products, materials, or services.

"Veteran" means a person who was enlisted, drafted, inducted, or commissioned and who was accepted for and assigned to active duty in the armed forces of the United States. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.030 Policy.

It is declared to be the policy for the citizens of the city of Sedona, Arizona, to be free from discrimination in public accommodations, employment, and housing, and contrary to public policy and unlawful to discriminate against any person on the basis of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or veteran status, in places of public accommodation, employment, and housing; and contrary to the policy of the city and unlawful for vendors and contractors doing business with the city to discriminate, as set forth in this chapter. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.040 Administrative provisions.

A. Powers and Duties. Administration, authority and responsibility for administering this chapter shall rest with the city manager or his/her designee.

1. The city manager or designee may delegate functions, duties, and responsibilities for investigation, mediation, and conciliation and may otherwise act to assist the city in the administration of this chapter.

2. The city manager or designee shall administer programs and activities as authorized herein to further the purposes of this chapter in compliance with federal, state, and local laws, and shall work with and enter into agreements, as approved by the city council, with the United States Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and other agencies of the United States or state of Arizona that govern or affect discriminatory practices as defined by this chapter, including the acceptance of funds from such agencies and the

carrying out of such covenants and conditions of such agreements, in compliance with this chapter.

3. The city manager or designee shall cooperate with and render assistance to, as reasonably requested, other public or private agencies, organizations, and entities to formulate or carry out programs to further the prevention or elimination of discriminatory practices as defined in this chapter.

B. The city attorney shall be authorized to take such actions as authorized herein to carry out the duties as set forth in this chapter. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.050 Unlawful practices.
The following shall constitute a violation of this chapter:

A. For any owner, operator, lessor, manager, agent, or employer of any place of public accommodation to discriminate against any person, including to restrict or refuse access on the basis of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or veteran status.

B. For an employer, because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or veteran status, to refuse to hire, or employ, or bar, or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

C. For a labor organization, because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or veteran status, to exclude, expel, limit, or restrict from its membership any person, or to provide segregated membership or otherwise discriminate in any manner against any of its members, applicants, or employers.

D. For any owner or lessor to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities therewith, because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or veteran status.

E. For a city vendor or city contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or veteran status, to refuse to hire, or employ, or bar, or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment. Each city vendor and contractor shall provide a copy of its antidiscrimination policy to the city's procurement officer to confirm compliance with this chapter or attest in writing to compliance with this chapter.

F. For any person to coerce, intimidate, threaten, or interfere with any person in the exercise and enjoyment of, or on account of, any aid or encouragement of any right granted or protected under this chapter.

G. To discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, for assisting or participating in any manner in the investigation or in mediation of disputes. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.060 Exclusions.
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. This chapter shall not apply to:

A. 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; or

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.

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. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.070 Fair housing.
A. It shall constitute a violation of this chapter to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of residential real property to any person because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or veteran status, within the legal jurisdiction of the city.

B. It shall constitute a violation of this chapter to refuse or offer on discriminatory terms any provision of services or facilities, privileges, or conditions of the sale or rental of residential real property to any person because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or veteran status, within the legal jurisdiction of the city.

C. Nothing in this chapter shall exclude or deny housing designated for senior living or for the disabled, or as otherwise designated or directed by the United States Department of Housing and Urban Development or the state of Arizona. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.080 Complaint procedures.

A. Any person claiming to be aggrieved by an alleged violation of this chapter (hereinafter the "complainant") may file with the city manager's office ("CMO") a verified charge, in writing, within 90 calendar days after the alleged violation occurred. The charge shall set forth the facts upon which it is based, shall identify the person charged (hereinafter the "respondent"), and shall be signed by the complainant.

B. The CMO shall furnish the respondent with a copy of the charge via first class United States mail. The respondent may file, not later than 30 days following the CMO's mailing of the charge to the respondent, a written verified answer to the charge.

C. Within 30 days following receipt of the charge from the complainant, the CMO shall conduct an initial screening of the charge to determine whether the city has jurisdiction over the charge, whether the charge was timely filed, and whether the allegations, if true, would constitute a violation of this chapter.

D. If the CMO determines, based on a review of the charge, that the city does not have jurisdiction, that the charge is untimely, or that the allegations would be insufficient to show a violation of this chapter, the CMO shall dismiss the charge. The decision of the CMO to dismiss the charge, after conducting the initial screening, is final. The CMO shall provide the complainant, the respondent, and the city attorney with written findings concerning the CMO's determination to dismiss the charge and the charge will be considered closed.

E. If the CMO issues an initial determination that the city has jurisdiction over the charge, the charge was timely filed, and the allegations, if true, would constitute a violation of this chapter, the CMO shall refer the matter to a mediator.

F. The mediator shall review the matter. The mediator shall attempt to assist the complainant and respondent in reaching settlement of the charge in a cooperative manner using restorative justice principles, mediation, conference, conciliation, and persuasion. If the mediator deems that such an attempt is not practicable, the mediator shall refer the matter to an investigator. The investigator shall follow the process described in subsection (I) of this section.

G. If the mediation is successful, the mediator shall facilitate the drafting of an agreement with the complainant and the respondent for the purpose of eliminating the alleged discriminatory practice. The terms of the agreement may require the respondent to refrain in the future from committing discriminatory practices of the type stated in the agreement and to take such affirmative steps as the mediator may require to carry out the purposes of this chapter. If an

agreement is entered into, the mediator shall furnish copies to the CMO, the city attorney, the complainant, and the respondent at which time the charge will be considered closed.

H. To the extent permitted by law, except for the terms of the agreement, neither the mediator nor the city manager, nor any employee thereof, shall make public, without the written consent of the complainant and respondent, information concerning efforts in a particular case to eliminate a discriminatory practice through mediation or by conference, conciliation, or persuasion, whether or not there is an agreement. In addition, as stated under Rule 408 of the Arizona Rules of Evidence, such information may not be used as evidence in any judicial proceeding.

I. If the mediator, the complainant, and the respondent cannot reach an agreement, the mediator shall refer the matter to an investigator, who shall attempt to determine the facts relevant to the charge filed under this chapter. The investigator shall, pursuant to administrative policy direction provided by the city manager, conduct an investigation of the charge to determine whether the facts support a finding that a violation of this chapter has occurred. If the investigator determines that a violation of this chapter did not occur, the complainant's charge will be dismissed, and the matter will be considered closed. If the investigator determines that a violation of this chapter did occur, the investigator shall refer the matter to the city attorney for a determination of whether to file a complaint against the respondent in the Sedona magistrate court.

J. The city attorney's office will determine whether sufficient facts and evidence exist in order to warrant the initiation of an action in a court of competent jurisdiction. If the city attorney's office determines that the facts or evidence are insufficient to warrant the initiation of an action, the city attorney will provide written notification to the parties, and the charge will be dismissed. Charges may be dismissed for reasons including: the complaint was untimely filed, the location of the alleged practice was outside of the city's jurisdiction, insufficient evidence exists to conclude that the violation occurred, or a conciliation agreement has been executed by the parties.

K. In situations involving repeat offenses, the CMO shall immediately refer the matter to an investigator, who shall follow the process described in subsection (I) of this section. If, at the conclusion of the investigation process, the city attorney does not file a complaint in court then the city attorney may refer the charge back to the mediator. The mediator, in his or her discretion, may attempt to assist in resolution of the charge or may close the matter. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.090 Penalties, process.

A. Any person found to have violated any section or subsection of this chapter shall be punished by the imposition of a civil sanction of a fine of $1,500 and not more than $2,500, plus applicable surcharges, for each violation.

B. No actions or omissions undertaken pursuant to this chapter shall give rise to liability or legal responsibility on the part of the city or any of its employees, agents, or officials.

C. In connection with the investigation of any charge filed under this chapter, the city manager or designee shall seek the voluntary cooperation of any person to: obtain access to premises, records, documents, individuals, and other possible sources of information; examine, record, and copy any materials; take and record testimony and obtain statements as reasonably necessary to further the investigation.

D. Failure to remit payment of a fine imposed under this chapter shall result in collection efforts as with any other civil judgment. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

9.30.100 Severability and legal effect.

A. Nothing contained in this chapter shall be deemed or interpreted to alter, contravene, or supersede state or federal laws, including privacy laws.

B. Nothing in this chapter shall be deemed to confer rights or benefits in addition to what is described herein.

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.

D. If any provision, section, or subsection of this chapter is held to be invalid by a court of competent jurisdiction, then such provision, section, or subsection shall be considered separately and apart from the remaining provisions or sections, which shall remain in full force and effect. [Ord. 2015-10 § 1, 9-8-2015 (Res. 2015-24 Exh. A, 9-8-2015)].

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)

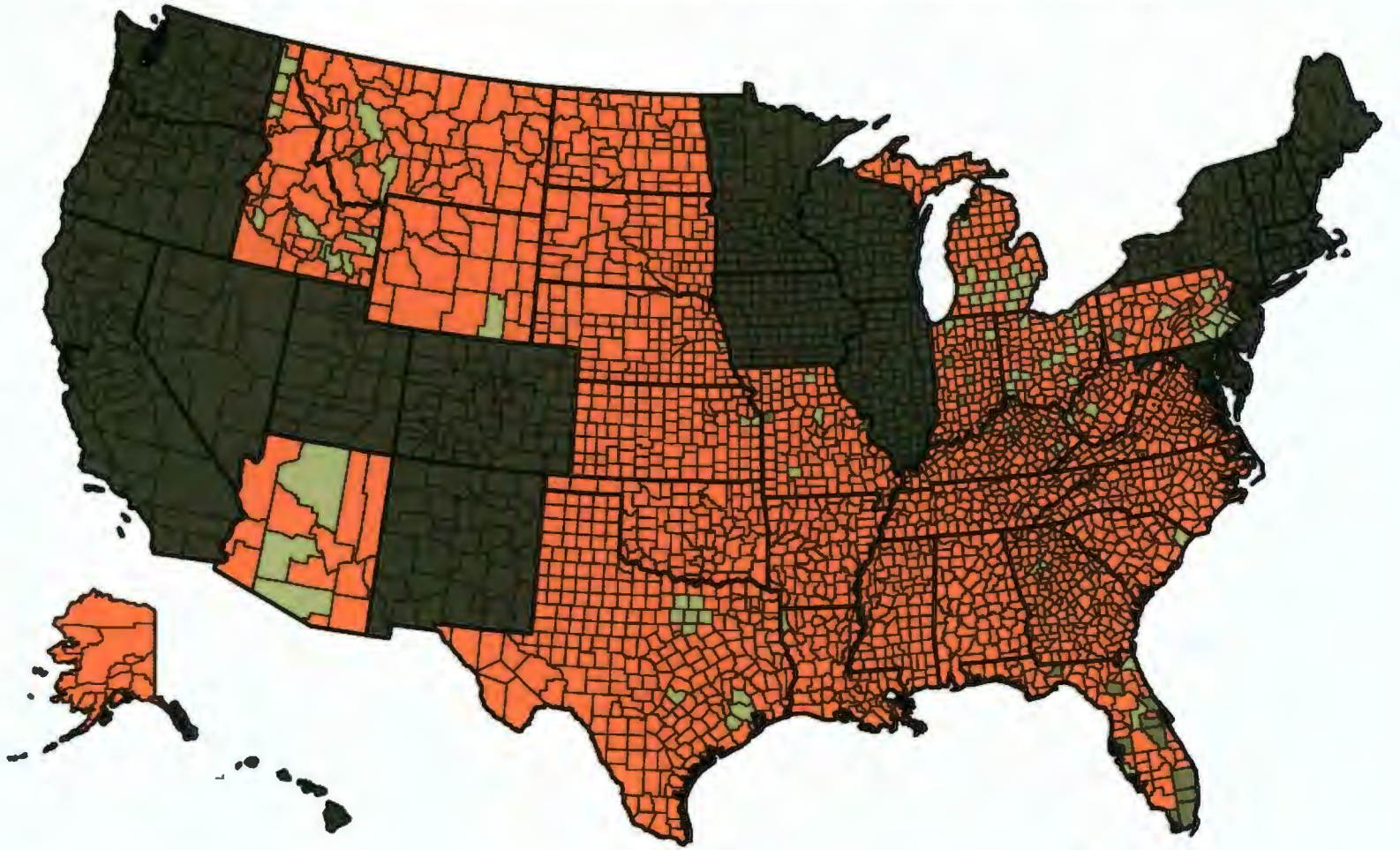
215 cities/counties nationwide* have non-discrimination ordinances that include LGBT protections

- 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

CITY OF SCOTTSDALE

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



- State level protection from employment discrimination
- County level protection from employment discrimination through local ordinances
- City level protection from employment discrimination through local ordinances
- None of the county population is protected from employment discrimination through local ordinances

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?

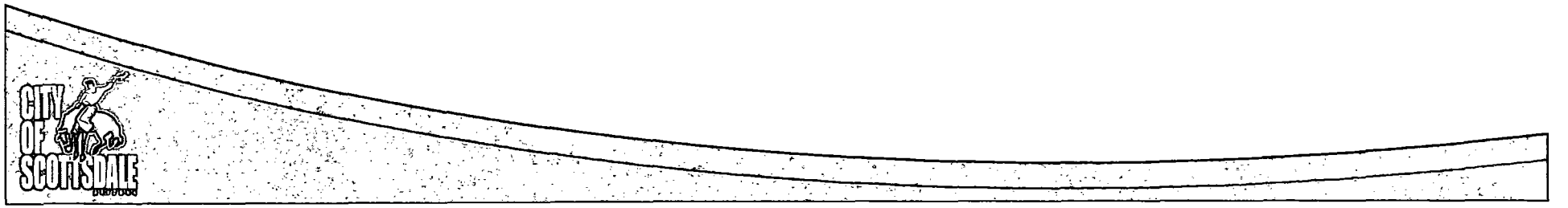
How will current exemptions be addressed?

CITY OF SCOTTSDALE

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.

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

"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

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 (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

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.

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.

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