PHOENIX MUNICIPAL CODE

CITY OF PHONEIX
PHOENIX, OREGON

ORDINANCE NO. 972

AN ORDINANCE OF THE CITY OF PHOENIX
AMENDING CHAPTER 2.28 OF THE PHOENIX MUNICIPAL CODE

RECITALS:

WHEREAS, the City of Phoenix has enacted an ordinance establishing rules of the City Council at Chapter 2.28 of the Phoenix Municipal Code;

WHEREAS, the City has enacted a new Charter, which requires the Council to adopt by resolution rules to govern its meetings, and the Council intends to adopt by resolution such rules as well as amend Chapter 2.28 of the Phoenix Municipal Code for consistency;

WHEREAS, the City of Phoenix determines it to be in the City's best interest to amend Chapter 2.28 amend the provisions in Chapter 2.28 of the Phoenix Municipal Code;

NOW, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

The following amends Phoenix Municipal Code: Chapter 2.28 – City Council Rules of Procedure:

2.28.010 - Authority and purpose statement.

The charter of the city of Phoenix provides that the city council shall adopt rules for governing its proceedings. The following set of rules shall be in effect upon their adoption by the council and until such time as they are amended or new rules adopted.

2.28.020 - Rules of the city council.

A. General Rules.

1. Meetings to be Public: The deliberations and proceedings of the council shall be open to the public, except as state law may provide otherwise (e.g., executive sessions).
2. Time: The time of six thirty p.m. will be set for all council meetings, except for extraordinary circumstances. Meetings will close at nine p.m.; require two-thirds approval of motion to extend until nine thirty p.m.; and then full council approval of a motion to extend until ten p.m.

3. Holidays: No city meetings will be held on city recognized holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

4. Quorum: Except as provided in Section 33 of the City of Phoenix Charter, four Council members shall constitute a quorum and be necessary to conduct business. If the Mayor's inclusion is needed to establish a quorum, he/she may become a voting member for that meeting. As set forth in Section 33 of the Phoenix Charter, a vacancy in the Council shall be filled by appointment by a majority of the remaining Council members, regardless of the actual number of remaining Councilors.

5. Minutes of Meetings:

   a. Scope: This rule is designed to meet the requirement of the Phoenix Charter that the council shall keep a record of its proceedings and it shall apply to minutes of all official meetings of the council.

   b. Purposes: The purposes of the minutes of the Council include the following:

      1) To comply with the Oregon Public Meetings Law (ORS 192.610—192.690) and the Phoenix Charter (Chapter 4, Section 15);

      2) To provide a historical record for information, future research and examination.

      3) To provide a record of directives, reports, and the like for use by the administration of the city; and

      4) To provide a record of the legislative intent of the actions of the council.

   c. Responsibility: The city recorder, or such other person the mayor may designate, shall have the responsibility for preparing minutes, correcting minutes to reflect council amendments, retaining minutes, and furnishing copies of minutes to persons desiring a copy.

   d. Content of Minutes: The minutes of meetings of the council shall comply with provisions of ORS 192.650 and amendments thereto, which specifically contain the following requirements:

      1) Minutes shall be taken for all meetings of the council;

      2) Minutes shall accurately reflect the matters discussed and views of participants;

      3) Minutes shall be available to the public within a reasonable time after the meeting, subject to subsection i., below, regarding a fee for copies;

      4) Minutes shall contain the following information at a minimum:

         a) The name of councilors and mayor;

         b) All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;

c) The result of any votes, including ayes and nays and the name of councilors who voted;

d) The substance of the discussion on any matter; and

e) Reference to any document discussed at the meeting.

5) The form of executive session minutes shall be either written minutes or a sound recording.

e. Preparation: Minutes shall be prepared with sufficient detail to meet their intended uses. Specifically, the following guidelines shall be used:

1) Verbatim minutes are not required;

2) Notes may be taken either in shorthand or in brief hand;

3) Sound recordings shall be made of each meeting. Equipment malfunction shall not negate the minutes. The city recorder may temporarily interrupt council proceedings in the event of equipment malfunction, change of tapes or other short-term loss of recording;

4) If a verbal staff report is a summary of an agenda bill and attachment, it may be so referenced in the minutes;

5) Names, and when furnished, addresses of each person testifying shall be included in the minutes;

6) If a citizen's verbal testimony is a summary of a written letter or other submission, it may be so referenced in the minutes;

7) All exhibits submitted and received by the mayor during hearings, and all other documents submitted, shall be incorporated into the minutes;

8) The minutes shall be prepared in final form and distributed with the next council meeting agenda packet;

9) Minutes are public records upon composition; however, if distributed to the public before prepared in final form for council approval or if less than a full set is distributed before council approval, "DRAFT" shall be noted on the cover page, unless the minutes are to be distributed piecemeal, in which case "DRAFT" shall be noted on each reproduced page.

f. Submittal to Council: After being prepared in final form by the city recorder or designee, the city recorder shall sign the minutes, and include them on the council's next agenda.

g. Amendment and Approval: The council may amend the minutes to more accurately reflect what transpired at a meeting. An individual councilor may call for additions or corrections to the minutes. Unless there is disagreement from other councilors, the motion to approve the minutes shall include the minutes as amended. If the council questions the minutes or is unsure they accurately reflect what transpired during a meeting, the council may postpone approval of the minutes until a transcript of the

portion of the meeting in question can be prepared. Information obtained subsequent to a meeting, which is relevant to discussions or action which occurred during that meeting, may be referenced into the record of the meeting at which the minutes are approved. The council is the final authority as to amendment of the minutes. After council approval, the city recorder shall incorporate any amendments approved by the council, the mayor shall sign the minutes, and the city recorder shall initial each page containing an amendment. Under no circumstances shall the minutes be changed following approval by the council, unless the council authorizes such a change.

h. Retention: When approved and fully executed, the minutes shall be kept on file in the city recorder's office for two years, and then transferred to city vault or other storage area for permanent retention. Sound recordings of council meetings shall be retained for a minimum of five years, subject to the council ordering retention for a longer time.

i. Public Access and Copies: Both written minutes and sound recordings shall be available for public inspection during office hours, excluding executive sessions (ORS 192.660). Copies of written minutes shall be available to the public. The fee for these copies will be the city's current charge for such services. Sound recordings and a transcriber shall be available to the public for use on city premises. Citizens may use their own tapes and recorders to make copies of sound recordings. The city recorder may implement additional reasonable rules and procedures to assure the preservation of original sound recordings. The city is not required to cause a transcript to be made of council meetings. Upon a citizen request, however, copies of transcripts made for other purposes shall be made available in the same manner and for the same cost as written minutes.

6. Right of Councilor to be Heard: Any councilor desiring to be heard shall be recognized by the presiding officer, but shall confine his or her remarks to the subject under consideration or to be considered.

7. Rules of Order:

a. The "Roberts Rules of Order Newly Revised" shall govern the proceedings of the council for decorum in all cases. The provisions of this ordinance and Oregon law shall govern the procedure of all meetings. The presiding officer shall be the parliamentarian for the council.

b. Types of Meetings.

1) Regular Meetings: The council shall meet in the designated council chambers for regular meetings unless another facility is needed to accommodate an anticipated increase of attendance by the public at any meeting. The regular council meetings are to commence at six thirty p.m. the first and third Mondays of each month, unless the council cancels a specific meeting.

2) Special Meetings: Special meetings may be called by the mayor or by three or more councilors. The call for a special meeting shall specify the day, the hour, and the location of the special meeting and shall list the subject or subjects to be considered. No special meeting shall be held until at least twenty-four hours after the call is issued, unless an emergency is declared by the caller(s) and approved by the Mayor. Only such business may be transacted at a special meeting as may be listed in the call for said meeting or as incident thereto.

3) Recessed Meetings: Any meeting of the council may be recessed to a later date and time, provided that no recess shall be for a longer period than until the next regular meeting.

4) Executive Sessions: Executive sessions or closed meetings may be held in accordance with the provisions of the state public meetings law. During executive sessions, the council may exclude all employees of the city from the meeting. Unless excluded, the city recorder and the city attorney, or their designate, shall attend, as well as staff members affected by the specific matter before the council. The mayor shall determine which members of the administrative staff shall attend, subject to some or all of them being excluded by the council. All other persons, including other members of the administrative staff, shall not attend executive sessions unless specifically invited by the council. Bona fide media representatives permitted by state law to attend shall be given an oral or written admonition by the presiding officer prohibiting disclosure of the substance of any discussion during executive sessions. Any individual representative of the media who violates this admonition may be barred by the council from subsequent executive sessions. The Council may, by resolution, establish criteria and guidelines by which to determine whether a media representative is qualified hereunder.

2.28.030 - Presiding officer and duties.

A. Presiding Officer. The mayor shall preside at all meetings of the council. In the absence of the mayor, the president of the council shall preside. In the absence of both the mayor and the president of the council the vice-president shall preside at the meeting.

B. Call to Order. The meetings of the council shall be called to order by the mayor, or in the mayor's absence, by the president or the vice-president of the council. In the absence of all three, the meeting shall be called to order by any councilor for the purpose of electing a councilor to preside at the meeting.

C. Preservation of Order. The presiding officer shall preserve order and decorum, discourage attacks on personalities or the impugning of councilor's motives, and confine councilor debate to the question under discussion. Except for official business and matters reasonably related and/or necessary respecting the matters

on the agenda or raised during the meeting, persons and council members in attendance of the meeting should refrain from the use of cell phones and/or smart phones. Excepting emergencies for personal reasons, no councilmember or city official shall use cell phones to contact third persons during such time. Persons in attendance at the meeting who become disorderly, abusive, or disruptive may be removed from the meeting. The presiding officer may summon the assistance of the police or other administrative staff to assist in maintaining order, and if an arrest of a person(s) is deemed necessary by the presiding officer to restore or maintain order, the presiding officer may sign a complaint or citation on behalf of the city.

D. Points of Order. The presiding officer shall decide all points of order, subject to the right of any councilor to appeal to the council. If any appeal is taken, the question shall be, "Shall the decision of the presiding officer be sustained?"

E. Questions to be Stated. The presiding officer shall state all questions submitted for a vote and announce the result. A roll call vote shall be taken upon the request of any councilor in the same manner as the final adoption of an ordinance.

F. Substitution for Presiding Officer. The presiding officer may call the president or vice-president of the council or, if both absent, any other councilor to temporarily preside over the meeting in order to take part in debate, to make a motion, or to cover a temporary absence, such substitution not to continue beyond adjournment.

2.28.040 - Order of business and agenda.

A. Order of Business. The general rule as to the order of business in regular meetings shall be as follows:

1. Call to order.
2. Pledge of allegiance.
3. Roll call.
4. Visitors/Citizen comments. Presentation of any matter not on the agenda, with discussion limited to three minutes. A majority of the Council may extend the time upon a showing of good cause.
5. Public hearings.
6. Consent agenda.
7. Attorney's report.
8. City manager's report.
9. Planner's report.
10. Engineer's report.
11. Special presentations to the council.
12. Action items, including unfinished and new business.
13. Ordinances, including reading and/or adoption.
14. Council items.

15. Staff items or reports.

16. Adjournment.

The mayor may, at his discretion, except for items 1 through 4, change the order of business on the agenda and omit items 7 through 10, unless he is specifically requested to place them on the agenda.

B. Agenda. The order of business of each meeting shall be as contained in the agenda prepared by the city recorder. The agenda shall be a listing by topic of subjects to be considered by the council. The mayor shall determine agenda items or cause any item requested by a councilor to be placed on the agenda in a timely manner. The agenda shall be delivered no later than the Friday preceding a council meeting.

C. Presentation by Councilors. The agenda shall provide a time when any councilor may bring before the council, subject to Oregon public meetings law, any business the councilor feels should be deliberated upon by the council. These matters need not be specifically listed on the agenda, but the council may decline formal action on such matters or the matter may be deferred by the council to a subsequent meeting if the matter(s) will require deliberation by the Council.

2.28.050 - City attorney.

A. Position.

1. The council shall annually review the contract of the city attorney.

B. Duties.

1. Provide legal advice and opinions orally and in writing to the council, mayor, any other person authorized by the council or any administrative staff authorized by the mayor to obtain such advice and opinions;

2. Prepare and negotiate contracts and other legal instruments as directed by the council. Review and approve, as to form, all written contracts, bonds, real property instruments and other legally binding documents to which the city is a party;

3. Prepare or have final approval over all ordinances, resolutions, orders or other documents of council decisions, prior to their submission to the council for adoption or approval;

4. Represent and defend the city and its boards, commissions, committees, officers and employees. The city attorney shall not represent persons who the council determines have acted outside the scope of their employment or duties, committed malfeasance in office, or willful neglect of duty.

5. Institute legal actions for the city in any court or tribunal as directed by the council. If approved by the council, the city attorney shall institute appeals on behalf of the city in any case in which another party has first appealed. The city attorney shall institute other appeals as directed by the council;

6. Submit written or oral reports to the council as frequently as required by the council concerning the status of all tort claims and legal actions in which the city is a party; and
7. Such other duties as the council shall, from time to time, assign to the city attorney.
8. Acts as prosecutor in municipal court.

C. Records. The city attorney shall maintain records of all significant written opinions furnished to the city or to any department, official, or employee, and at the city office.

D. Attorney-Client Relationship. The city and the office of the city attorney shall have an attorney-client relationship, and the city shall be entitled to all the benefits thereof.

E. Settlements. The city attorney may settle legal claims as decided by the council.

2.28.055 - Committees.

The council may create committees to assist in the conduct of its charter duties with such assignments as the council may specify. The mayor shall appoint members to such committees to serve until the special purpose for which the committee was created has been accomplished or the committee is abolished by the council. All committees so created shall be advisory to the council and shall conduct their meetings in accordance with the public meetings law. For the purpose of local budget law, the mayor is a member of the governing body of the city of Phoenix.

2.28.060 - Conduct of legislative and quasi-judicial hearings.

A. Nature and General Conduct of Quasi-Judicial Hearings.

1. The council, when conducting quasi-judicial hearings shall afford persons entitled under the codes of the city, such as the development code, notice of hearing, an opportunity to be heard, to present and rebut evidence to an impartial tribunal, to have the proceedings recorded, and to have a decision based on substantial evidence.
2. No person in attendance shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing. Any person may be removed from the hearing for such conduct.
3. No person offering testimony shall speak more than once without obtaining permission from the presiding officer.
4. No person shall testify without first receiving recognition from the presiding officer and stating his or her name and residence or business address.
5. No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence; provided, however, that reports and documents prepared by city personnel shall be deemed relevant, material and competent unless objected to by a party to the hearing with good cause and at the first available opportunity.

6. There shall be no audience demonstrations, such as applause, cheering, display of signs, or other conduct disruptive of the hearing.
7. The presiding officer, councilors, city attorney and, with the approval of the presiding officer, any other officer or employee of the city may question and cross-examine any person who testifies.

B. Challenging Participation by a Councilor.

1. Any proponent, opponent of, or other party interested in a matter to be heard by the council may challenge the qualification of any councilor to participate in such hearing and decision. Such challenge must state facts relied upon by the party relating to a councilor's bias, prejudgment, personal interest, or other facts from which the party has concluded that the councilor will not participate and make a decision in an impartial manner.
   a. Such challenge must be made prior to the commencement of the public hearing.
   b. Such challenge shall be incorporated into the record of the hearing.
2. No councilor shall participate in discussion or vote on the matter when for any reason the councilor determines he or she cannot participate in the hearing and decision in an impartial manner.
3. No other officer or employee of the city who has a financial or other private interest shall participate in discussion with, or give an official opinion to the council on the matter without first declaring for the record the nature and extent of such interest.
4. The general public has a right to have councilors free from prehearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, councilors shall reveal any significant prehearing or ex parte contacts with regard to any matter as early as possible under the circumstances in the hearing on the matter. If such contacts have impaired the councilor's impartiality or ability to vote on the matter, the councilor shall so state and shall abstain therefrom.
5. Notwithstanding any provision of this or any other rule: (1) an abstaining or disqualified councilor may be counted for purposes of forming a quorum; and (2) a councilor may represent himself or herself, a client or any other member of the public at a hearing, provided that councilor:
   a. Abstains from the vote on the matter;
   b. Removes himself or herself from the council area and joins the audience; and
   c. Makes full disclosure of his/her status and position at the time of addressing the council.

C. Burden and Nature of Proof. The burden of proof is upon the proponent, if any. The more drastic the change, or the greater the impact of a proposal in an area, the greater the burden upon the proponent.

D. Order of Procedure. The presiding officer, in the conduct of the hearing shall:

1. Commence the Hearing: Announce the nature and purpose of the hearing and summarize the rules for the conduct of the hearing.

2. Call for Abstentions:

   a. Inquire of the council whether any member thereof wishes to abstain from participation in the hearing. Any councilor then announcing a decision to abstain shall not participate in discussion of the matter or vote on the matter.

   b. Any councilor whose participation has been challenged by allegation of bias, prejudgment, personal interest, or partiality or who has been subject to significant ex parte or prehearing contact with proponents or opponents, may make a statement in response thereto or in explanation thereof, as part of his or her decision to participate in the hearing. This statement shall not be subject to cross-examination, except upon consent of that councilor, but shall be subject to rebuttal by the proponent or opponent, as appropriate.

3. Objections to Jurisdiction: Inquire of the audience whether there are any objections to the jurisdiction of the council to hear the matter. The presiding officer shall terminate the hearing if the inquiry results in substantial evidence that the council lacks jurisdiction or the procedural requirements of any code or ordinance provision were not met. Any matter thus terminated shall, if the defect can be remedied, be rescheduled by the council.

4. Staff Report, Planning Commission Recommendation, Etc.: Summarize the nature of the matter, explain any graphic or pictorial displays which are a part of the record, summarize the staff report, summarize the findings and decision of the planning commission or other appropriate board or agency and provide such other information as may be requested by the council. The presiding officer may request a representative of staff or any other city officer or employee to perform this duty.

5. Proponent's Case: The presiding officer shall determine whether the proponent will present the case in person or by representative. The applicant-proponent shall first be heard and persons in favor of the proponent's proposal shall next be heard.

6. Opponent's Case: Opponents shall be heard in the following order:

   a. Neighborhood associations, special organizations formed for the purpose of opposition, or other groups represented by council or a spokesperson shall be allowed by the presiding officer to first proceed.

   b. Persons who received notice of the hearing or who were entitled to receive notice of the hearing are presumed to have an interest in the proposal and shall next be heard.

   c. Persons who did not receive notice and who were not entitled to notice shall next be heard.

7. Public Agencies: The presiding officer shall allow representatives of any city, state agency, regional authority, or municipal or quasi-municipal corporation existing pursuant to law to next be heard.

8. Rebuttal Evidence: The presiding officer shall allow the proponent to offer rebuttal evidence and testimony and, if provided, allow the opponent or other interested party to rebut the new evidence or testimony offered by the proponent's rebuttal.

9. Written Communications: Written communications addressing a matter before the council at a hearing shall be distributed to the council before commencement of the hearing and considered for receiving into evidence.

10. Close of Hearing and Deliberation by Council: The presiding officer shall conclude the hearing and the council shall deliberate the matter. The council shall either make its decision and state its findings, which may incorporate findings proposed by the proponent, opponents, the staff, or the planning commission, or may continue its deliberations to a subsequent meeting, the time and place of which must then be announced. The subsequent meeting shall be for the purpose of continued deliberation, or to consider proposed findings and the presiding officer shall not allow additional submission or testimony, except upon approval by the council.

E. Official Notice.

1. The council may take official notice of the following:

   a. All facts which are judicially noticeable; and

   b. The charter, codes, ordinances, resolution, rules, regulations and official policies (if written) of the city.

2. Matters officially noticed need not be established by evidence and may be considered by the council in the determination of the proposal.

F. Record of Proceedings.

1. The city recorder, or other designee of the presiding officer, shall be present at each hearing and shall cause the proceedings to be stenographically or electronically recorded. It shall not be necessary to transcribe testimony unless required for judicial or administrative review or unless ordered by the council.

2. The presiding officer shall, where practicable, cause to be received all physical and documentary evidence presented which shall be marked to show the identity of the person offering the same and whether presented on behalf of proponent or opponent. Unless evidence is capable of being offered and incorporated in the record of the case, it shall not be received. All exhibits received into evidence shall be retained by the council until after any applicable appeal period has expired. At which time, the exhibits may be released, upon written request to the person identified thereon.

3. Any member of the public shall have access to the record of the proceedings at reasonable time, places and circumstances. Any member of the public shall be entitled to have copies of the record at his or her own expense.

G. Publication of Hearing Rules.

1. These rules governing conduct of hearings shall be placed on record with the city recorder.

2. A copy of these rules for conduct of hearings shall be available to the public. The fee for these copies will be the city's current charge for such services.

3. These rules are supplementary to any other rules of procedure adopted by the council, provided, however, these rules shall control where there are conflicting provisions, unless provided otherwise herein.

H. Legislative Hearings. All of the above rules shall apply to legislative hearings (comprehensive plan updates, development code updates, map amendments, etc.) except that city councilors are allowed to participate and vote on any matter regardless if a bias exists (refer to subsection B.2.); and may have prehearing ex parte; contacts (refer to subsection B.4.).

2.28.070 - Execution of contracts.

A. Purpose. This rule constitutes guidelines for executing certain contracts that the council has authorized through the contracts review process, the development process or the budget process. It does not affect the need for public bidding. It clarifies when a contract may be executed by the city manager or mayor (or in the absence of the mayor, the council president) without additional council approval of the contract itself.

B. The city manager or mayor (or in the absence of the mayor, the council president) may execute the following contracts without further council approval:

1. The resulting contract when the council acting as the contract review board selects a contract bid or proposal or authorizes an exemption.

2. Real property acquisitions, which are an incidental part of a public improvement project approved by council, or acquisitions, which are a condition of a development permit, unless the other party requires council approval.

3. Except for real estate transactions not covered by subsection B.2., above, and outside legal counsel's services which must be approved by the council, all other public contracts, providing any funds required to be paid by the city pursuant to the contract have been specifically identified in the budget and do not exceed the amount appropriated for the purpose.

2.28.080 - Reconsideration of actions taken.

Unless specifically governed by other provisions of the codes, ordinances, or other regulations of the city, any councilor who voted with the majority, or was not present at the time of the vote, may move for reconsideration of an action at the same or the next following regular meeting of the council. Once a matter has been reconsidered, no

motion for further reconsideration thereof shall be made without unanimous consent of the council.

2.28.090 - Councilor liaisons to committees, boards, and commissions.

The council has created the position of council liaison to maintain contact between the council and city committees, boards and commissions. Unless specifically provided otherwise in the codes, ordinances, resolutions or other regulations of the city, a councilor who is the liaison to any committee, board or commission of the city shall not chair that body. Nothing in this rule is intended to limit the councilor's right to take part in all discussion and debate in any matter before the committee, board or commission.

2.28.100 - Evaluation of contracted officers.

The council, by majority vote of the entire council, may appoint and remove all contracted officers subject to their contracts.

2.28.110 - Requests for administrative staff action; consensus of council.

This rule governs situations where, although no formal vote is taken on a matter discussed by the council at a meeting, at least one councilor requests some action from the administrative staff. The presiding officer shall determine if agreement exists among all present at the meeting. If consensus is established or a formal vote taken approving the request for action, the directive shall be made to the mayor rather than the individual staff member. This rule does not apply to matters directed to the contractual person.

2.28.120 - Suspension of rules.

Any provision of these rules not required by state law or the Phoenix Charter may be temporarily suspended by the council.

PASSED AND ADOPTED by the City Council and signed by me in authentication thereof on this 4TH day of JANUARY, 2016.

Mayor

ATTEST:

City Manager/Designee