

THE CITY OF SCOTTSDALE AS A “MODEL OF FREEDOM”

THE LOCAL LIBERTY CHARTER

From the Goldwater Institute Policy Report, “A New Charter for American Cities”*

* * *

Ideas for Reform Presented by:

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Letters of Support Furnished by:

Hon. Mayor Stephen Goldsmith (former), Indianapolis, Harvard Kennedy School
Hon. Mayor Charles Heron (retired), Star Valley, Arizona
Prof. David Cuillier, Ph.D., University of Arizona, School of Journalism
Dr. John Danforth, Ph.D., Danforth Consulting, Consulting Economists

*Ten Ideas for Reform:**

1. Local Liberty Charter Bill of Rights
2. Managed Competition
3. Performance-Based Policing
4. Subsidy Prohibition
5. Closing TEL and Tax Cap Loopholes
6. Genuine Local Sovereignty
7. Freedom-Friendly Land Use Regulation
8. Timely Regulatory Processing
9. Prohibition on Evading Prop. 207
10. Transparency and Accountability

*Policy report and additional model legislation available at <http://www.goldwaterinstitute.org/article/2745>



Nick Dranias, J.D.

Director, Center for Constitutional Government

Nick Dranias holds the Clarence J. and Katherine P. Duncan Chair for Constitutional Government and is Director of the Joseph and Dorothy Donnelly Moller Center for Constitutional Government at the Goldwater Institute.

Prior to joining the Goldwater Institute, Dranias was an attorney with the Institute for Justice. In law school, Dranias served on the Loyola University Chicago Law Review, competed on Loyola's National Labor Law Moot Court Team, and received various academic awards. He graduated *cum laude* from Boston University with a B.A. in Economics and Philosophy.

Dranias has authored numerous articles, including *Past the Pall of Orthodoxy*, which challenges bar admission restrictions limiting the practice of law to graduates of ABA-accredited law schools, and *Consideration as Contract*, was published in the Spring 2008 edition of the Texas Review of Law and Politics. He is also the author of *The Land Of 10,000 Lakes Drowns Entrepreneurs In Regulations*, a study that shows how regulations block the path to the American Dream, and how those barriers can be removed. His last work, *A New Charter for American Cities: 10 Rights to Restrain Government and Protect Freedom*, available at <http://www.goldwaterinstitute.org/2745>, argues that applying principles of limited government to cities, counties and towns is not only the right thing to do, but a practical necessity.



Byron Schlomach, Ph.D.

Director, Center for Economic Prosperity

Dr. Byron Schlomach is an economist and works as the Director of the Center for Economic Prosperity at the Goldwater Institute. He has 15 years of experience working in and around state government. He has researched and written on tax and spending policy in two states in addition to studying transportation, health care, and education policy. Byron's writings have appeared in National Review Online, Business Week online and numerous Texas and Arizona newspapers. He is a graduate of Texas A&M University.



HARVARD Kennedy School

JOHN F. KENNEDY SCHOOL OF GOVERNMENT

August 27, 2009

Charter Review Task Force
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, Arizona 85251

Dear Task Force Members,

Scottsdale's upcoming move to evaluate its city charter is an encouraging sign in these times of economic turmoil. It provides a crucial opportunity to demonstrate how to reform municipal governance, ensuring that policy and regulation generate real public value.

Many city and state governments are responding to the current crisis by increasing taxes, creating fees and expanding government oversight. But merely criticizing the pitfalls of this unfortunate trend is not likely to reverse it. To make a real difference, we need tangible examples of the positive impact that entrepreneurship, innovation and fiscal responsibility can produce in our nation's cities.

Communities like Scottsdale that undertake charter reform to streamline regulation and enforce fiscal responsibility can provide that example—attracting talent and investment and positioning themselves to turn this economic crisis into an opportunity for growth, reinvention and innovation.

There is much I would personally commend in the Goldwater Institute's proposed changes to the city's Charter. Robust accountability and transparency requirements, compensation incentives to improve public safety, prompt regulatory approval deadlines and the sunrise and sunset regulatory review processes can all play a role in ensuring that government action in Scottsdale is targeted, timely and effective. Closing loopholes in existing tax and spending limitations and prohibiting shifting spending and taxing decisions to new special districts that lack accountability is also an encouraging reform proposal.

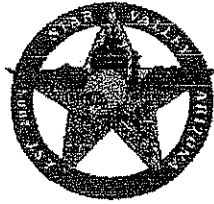
In particular, amending Scottsdale's charter to require managed competition would advance Scottsdale's effectiveness. When I was Mayor of Indianapolis, our approach to managed competition saved taxpayers over \$400 million in just eight years, created private sector jobs, and improved performance and morale among city workers (who, incidentally, won city contracts more than half of the time). A principled approach to managed competition cultivates innovative partnerships with local businesses and social entrepreneurs, and helps ensure that public resources are spent effectively.

Scottsdale's charter review process provides a great opportunity for the city's citizens to assess the role of government in the emerging 21st Century economy. Your example will also serve as a model for communities nationwide that are seeking opportunities to meet the increasing demand for public services with ever-declining public resources. My hope is that Scottsdale will seize this opportunity by implementing many of the innovative ideas in municipal governance suggested by the Goldwater Institute.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Goldsmith', with a long horizontal flourish extending to the right.

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Town of Star Valley Arizona
Office of the Retired Mayor
Charles J. "Chuck" Heron

As the letterhead states, I am the retired Mayor of the Town of Star Valley, AZ.

When asked by the Goldwater Institute to comment on the charter reform proposals available at <http://www.goldwaterinstitute.org/article/2745>, I am happy to pass on the knowledge I learned from my mayoral experience.

The Town of Star Valley was one of the few municipal governments that did not start the 2009-2010 budget year with a deficit. We obviously did some things right. Today's economics have been the worst since the depression era.

It is my firm belief that the fiscal challenges most cities face result from overinvestment in infrastructure, including employees, over and above what it takes to keep a government focused on the people's public health and safety. Governments were never designed to be large employment centers, and yet they often are pushed by political forces to become just that. When this type of "upside down" government is in place and the economy is down, cutbacks are inevitable and necessary. But the consequences of making cutbacks when government is already supersized are far worse than if government were kept slim and trim all along.

The best way to keep cities and towns no bigger than necessary is to competitively outsource services as much as possible. In our town, we debated on creating a law enforcement department and finally decided to utilize, or should I say outsource, something already in place. We first contracted with our neighbor, Payson, and have since contracted with the Gila County Sheriff's Office. Additionally, we have franchised with a private water company, rather than incur the significant expenses involved in establishing and maintaining a water department. The City of Maricopa offers another good example in their partnership with Global Water.

What have we learned? Outsource, by the competitive bid process, everything you can. Every community has private industries that are doing things that you need. Parks and Recreation can be served by a contracted landscaping and maintenance company. Even street maintenance can be contracted on an "add needed" or annual service contract. How many people are in the payroll department? There are companies

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that do nothing but payrolls and their employees are not part of the Town's budget except for the cost of the contract.

Of course, the problem is that internal politics and human nature make these reforms very difficult. I think the Goldwater Institute's suggestion of establishing managed competition in a city charter is a great way to get competitive outsourcing in place as a permanent policy. And it also makes a lot of sense to streamline local regulations through sunrise and sunset review.

Somewhere governments decided to duplicate what was available as a private enterprise. We all need to follow the advice of the many diet vendors. "Slim is in...How to cut the fat". In doing so we will have a more healthy government, whether it is on a Town basis, City basis or a National basis.



Charles J. Heron
Mayor, Retired
Town of Star Valley, AZ

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August 24, 2009

Charter Review Task Force
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

Dear Task Force members,

The right to transparency, one of the components of the local liberty charter under consideration by the task force, is key to fostering trust among citizens, and I believe that the proposed policies would help create a more engaged community and stronger government.


Research indicates that people who use the Internet for information gathering are highly supportive of open government and access to public records.¹ Proactive dissemination of useful public records online should appeal to these information seekers and potentially attract disengaged citizens to community issues.

Further, public opinion surveys indicate that people strongly support access to government records regarding public finance, operations and safety.² These charter amendments are a major step forward toward making this kind of information more easily accessible to the public.

These policies would go beyond the basic minimum requirements of the state public records act, which would make Scottsdale a leader in transparency not only in Arizona but in the nation.

I encourage you to consider these changes, as well as other actions that would increase transparency while balancing competing interests such as personal privacy. If you would like more information about research in the field of freedom of information – my focus in teaching and research – please do not hesitate to contact me.

Sincerely,



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¹ See Cuillier, D., & Piotrowski, S. J. (2009). Internet information seeking and its relation to support for access to government records. *Government Information Quarterly*, 26(3), 441-449.

² Cuillier, D. (2008). Access attitudes: A social learning approach to examining community engagement and support for press access to government records. *Journalism and Mass Communication Quarterly*, 85(3), 549-576.

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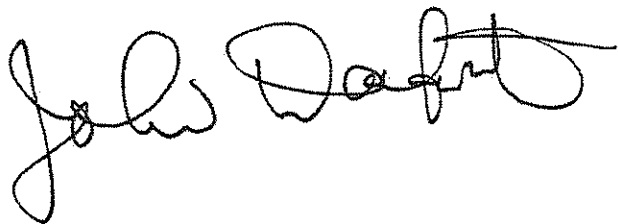
JOHN P. DANFORTH, PH.D.

August 26, 2009

Scottsdale Charter Review Task Force:

I have just read the Model Charter Amendments to Restrain Government and Protect Freedom in the City of Scottsdale. What an absolute tour de force! I am quite simply staggered by all the positive changes being proposed. In my opinion, these reforms would help transform Scottsdale into a Model of Freedom and would help unleash the local entrepreneurial forces we need to rebuild our economy.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Danforth". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

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pc

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August 25, 2009

City of Scottsdale
Scottsdale Charter Task Force
7447 E. Indian School Rd.
Scottsdale, AZ 85251

RE: Scottsdale Task Force Charter Revision

Dear Members of the Scottsdale Charter Task Force:

I received the model amendment to the Scottsdale Charter as proposed by the Goldwater Institute and think it is a good basis for your discussion. In working with many Municipalities over the years in my capacity as a land use attorney, I think the Charter revisions Nick Dranias proposes will be very beneficial to the City. The Goldwater revisions seem to affirmatively resolve many of the issues that I have seen Cities struggle with in the past.

I am available to comment specifically on any of the proposed changes or offer additional comments if that is desired or appropriate. Thank you for the opportunity to comment on these suggested revisions.

Sincerely,



Jordan R. Rose

FRED KELLY GRANT

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August 30, 2009

Nick Dranias
Director, Center for Constitutional Government
Goldwater Institute
500 East Coronado Road
Phoenix, Arizona 85004

Re: Local Liberty Charter

Dear Nick:

I apologize for being so late with this letter, but first travel commitments and then health complications have prevented earlier submission. Even though late, I want to lend my support to the Local Liberty Charter draft which you are submitting to the Scottsdale Task Force.

The drafts which I have reviewed are remarkable statements of the philosophy of freedom to be initiated at the local government level. As you know, I have been working for the past several years trying to convince local elected officials that they have the authority to refurbish and revive local sovereignty which was so important to our Founders. But, often at the local level of government, those freedoms so important to our way of life are missing, and, where present, are often overlooked as local officials carry on the daily work of delivering services.

The comments of support which are attached hereto specify some of the reasons I commend these drafts to the Scottsdale Task Force. Over the past four decades, I have worked with, for, and against local governments throughout the nation, and have seen some tragic examples of freedom lost in city hall. The drafts you propose will prevent those losses, and will preserve freedom while allowing effective local government.

Thank you for allowing me to comment. Even though these comments are late, I hope they may be of some use to the Task Force, and to you in the future of your project, which is one of the most important constitutional projects to be implemented in decades.

Cordially,

Fred Kelly Grant

COMMENT IN SUPPORT OF MODEL CHARTER AMENDMENTS TO RESTRAIN GOVERNMENT AND PROTECT FREEDOM IN THE CITY OF SCOTTSDALE

Please allow me to introduce myself. I graduated from the University of Chicago School of Law in 1961. After admission to the Maryland Bar, I served as assistant United States Attorney for the District of Maryland, then assistant State's Attorney and later Chief of the Organized Crime Division of the State's Attorney's office of Baltimore City. When I returned to Idaho, I served as counsel in the administrations of Governors Cecil Andrus and John Evans. As deputy clerk to the Board of Canyon County Commissioners, I served as chief of research for the Third Judicial District headed by Administrative District Judge Edward J. Lodge. For three decades I have served as Hearing Officer in personnel disputes, zoning cases and road validation cases. I also consult with Owyhee County, Idaho as its Planning Coordinator, and I have helped the County develop a coordination system with federal agencies to protect private property rights throughout the County. I began consulting with American Stewards of Liberty (formerly Stewards of the Range) in 1997, and I currently serve as President of the private property organization.

Over the past five decades, my work in the law has predominately involved work with, for and against government at all levels---federal, state and local.

For the past two decades I have urged local government officials to exercise the authority they have, pursuant to federal and state statutes, to require state and federal government agencies to coordinate their plans and actions with those of the local government, thus returning local sovereignty that was so important to our Founders.

When a local governmental unit uses the coordination authority, it puts that government at the table on even bargaining terms with the federal and state agencies. It gives them the local elected officials an opportunity to regain some control over how funds must be used, over how regulations must be applied in such a way as to protect, rather than restrict, private property rights. It gives them the opportunity to return to themselves the police powers i.e. protect the public health and safety, which the Tenth Amendment to the United States Constitution promises. It gives them the opportunity to rein in officials and employees who have gone overboard

with arbitrary regulatory processes which choke off local incentive and economic stability.

But, when I find a local government unit which does not itself believe in individual liberty, in the right to own and control private property, in the right of the people to be SERVED by its local government even more fairly than by federal and state government, then I know that my time will be wasted on that unit. So often, in my five decades of experience, I have found that local government can be, and is, the worst culprit in the organized attack on individuals' rights and privileges. For some reason, local officials who decry federal and state autocratic exercise of power, think themselves immune from the same criticism. Quite often they consider themselves above the need for restraint on government. They live with and among the citizens and begin to believe that they know what is best for themselves, their neighbors and the local jurisdiction as a whole. They quit listening to the people and would rather talk and tell the citizens what they need rather than listening to what they want.

When local government takes this path, a path away from the openness of the town meetings that dotted our eastern shore during the pre-revolutionary days, a purist form of autocracy sets in. It is much more difficult for a citizen to overcome the tyranny of local government than it is to take on such tyranny at the federal or state level. Why? Because there are normally structures of the law in place by which citizens can force more openness at those higher levels. There are laws requiring transparency; there are statutes setting forth specific procedures that must be followed.

At the local level too often there are no such restraints. There are no restrictive directives to limit eminent domain, to require transparency of records. Today in the state of Idaho an organization is testing the openness of governmental records at the local level, and finding that towns and counties are far more reluctant to provide open records than the state. Because there is no specific mandate to the city and county, as there is to the state.

The golden opportunity which the Goldwater Institute now provides is for local government to adopt policies, promises of liberty, that will provide the restraint and openness for local government than is lacking. I commend Mr. Dranias for this remarkable work. I commend you as a Task Force for undertaking to revolutionize local government in a way which will end the

type of local tyranny which I see every day in planning and zoning, building code, eminent domain, business license and other restrictive practices applied without a second thought by those officials who walk most closely with the people.

In my experience, quite often one of the most offending levels of government from the standpoint of the citizen's level of freedom is the local government. There are constitutional and statutory restrictions on federal and state governments that often do not restrict local governments.

The value of the model charter amendments proposed to the Task Force is that they provide the restraints on government necessary to protect the citizens' freedom at the level of government with which they most often come in contact. While an average citizen may never have personal involvement with a state or federal agency, he will always have such involvement with a city or county agency on an almost daily basis.

City and county agency functions can, and often do, deny elements of liberty on a daily basis.

The model charter amendments provide the structure for protecting the elements of due process of law at the local level which are already protected at the federal and state level.

I commend to the Task Force the elements of restraint contained in the model amendments. These amendments will rectify the violations of rights which I most often have witnessed.

My comments apply to the entire set of amendments, available at <http://www.goldwaterinstitute.org/2745> but I want to especially point out the value of certain specific amendments.

Separation of Powers----the amendments to Article 1, Section 2 guarantee the separation of powers in local government which will provide the check and balance system locally which we have at the federal and state level.

Through my work in planning and zoning, and application of building codes, I have witnessed combination of powers at the local level which deprives the citizens of a check by one level of power against abuse by the other levels.

For example, when a city council serves as legislative authority in passing a building code or zoning ordinance, and also serves as the judicial authority (quasi-judicial) to hear requests for discretionary permits under the ordinance or to hear disputes arising under the ordinance, there is no independent legislative authority to check the performance of the judicial, and no independent judicial authority to check the performance of the legislative. The merging of the legislative and judicial powers in one council removes independent checks and balances.

When a county board, which is legislative from the standpoint of enacting a zoning ordinance, serves as the executive authority to enforce the ordinance, and then the judiciary to hear disputes as to implementation of the ordinance, there is no independent check and balance. The right to due process of law is virtually non-existent when local authority is not exercised in such a way that judicial can check executive, and legislative can check all.

I have seen building projects desirable to the economic stability of a community held up because the three elements of authority are merged so that the same body of government exercises complete authority.

The draft amendment as to separation of powers is one of the most important protections which can be provided to citizens who depend on local government on a daily basis.

Tenth Amendment Powers----the amendment to Article 1, Section 3 guarantees that local powers are limited by the parameters of the Tenth Amendment provisions which guarantee to the local government the “police powers”, i.e., those which provide for the public health and safety. These were and are the traditionally intended powers for local government.

I have witnessed local governments which depart from the restrictions stated in the amendment expand their powers to a point at which the citizen has no effective protection. I have witnessed local governments exercise authority to join into regional government financing projects over which the citizen voters of the local jurisdiction have no control. Local governments which use so called “implied powers” can expand their authority, and their financial obligations, far beyond the parameters appropriate for local government, and far beyond any possible control by the citizens.

Private Property Protections---the amendments to the powers of the city regarding private property rights are essential to protect property rights at the local level where too often they are ignored and defiled.

Again, it is at the local level where eminent domain can be most devastating to property rights. It was local government at fault in Kelo and in thousands of “urban renewal” and “urban restructuring” cases each year where local government sacrifices private property rights to commercial interests of businesses trying to benefit themselves at the expense of individual citizens.

Most of the cases in which I have been involved to help resist “takings” actions have arisen from local government’s actions in zoning, building code implementation or eminent domain. The amendments provided in these model amendments provide guaranteed restrictions and restraint on local government which will protect private property interests of citizens.

Coordination for consistency---the amendments to Sec. 3-1 “intergovernmental relations” mandate that the city demand coordination of federal and state actions and plans with any less restrictive local plans, policies and regulations.

The coordination called for by this amendment has been used effectively in more than 30 jurisdictions with which I am now working. The most notable success is in Texas, where four small towns (combined population of 6,000) demanding coordination under a Texas statute brought to a halt the development of highway corridor that would have wiped out the towns and the farm and rural economy of the citizens of the towns. This amendment is a method of allowing local government to regain sovereignty by which it can restrict over-zealous regulation.

Timely regulatory processing---the amendment which is section 6 of Article 3 requires timely processing.

In Michigan, I witnessed a case in which a citizen lost his property to the state because of endless delays in acting on permit applications, including a decision that the application was incomplete long after the deadline for filing an application had passed. As a result, the citizen was left with an application denial which was not appealable, and left with no

recourse because the time for filing a new application or more complete application had passed. The loss was a complete financial loss because the courts decided that the state had no time limits for making its regulatory decision, and that the effective blocking of the citizen was not a taking. By the time I was called into the case, all statutory deadlines and timelines had run. Had there been a timeline required for regulatory decision, the citizen's property would have been protected.

The amendment language would also protect the citizen against the zoning abuses evidenced in the case of *Monterey Dunes v. City of Monterey* in which the United States Supreme Court allowed a jury trial for damages as a result of local government unduly delaying and restricting use of private property.

Expenditures of Special Districts----the amendment to section 18 of Article 6 will protect citizens against one of the most popular of the methods for evading limitations on local taxation and spending which have been imposed by the voters.

From early in my career, I have seen constant abuse by local governments of the taxing power, in spite of limitations imposed by the voters. The use of special districts, created outside the normal city authority, has been used repeatedly to evade the citizen imposed limits on taxation. In Idaho, for example, special health districts are beyond the limitation on taxation, and the district boards assign to each county within the district a fixed amount to be financed, and the county commissioners have no power to alter that amount or to refuse to pay it.

A favorite special taxing district is now becoming a "justice district" or "justice fund" to be financed outside the tax limitations; you can imagine the enormity of the abuse which would be possible under such an umbrella which would put sheriff (or police department), jail, probation, courts, and clerks of courts outside the tax limitations.

The amendment will assure citizens that local governments will not be able to evade citizen imposed tax and spending limitations.

Land use regulation restraint----the amendment to section 6 of Article 13 guarantees to the citizens their vested property rights and will restrain the

city from “taking” property through regulation in a manner that deprives the citizen of even the right to claim lost value.

One of the worst abuses of local power that I have witnessed as a hearing officer and in cases in which I have represented property owners is the “taking” through regulatory action that deprives the citizen of value, but is not recognized by a taking by the courts.

A secondary, but equally dangerous, threat to property rights is the extortion that city or county can use against a citizen to take a portion of his or her property in exchange for processing a discretionary permit. The amendment to section 6 would prevent both of these abuses.

Article 15---the Local Liberty Charter

I commend to you the Local Liberty Charter as the most fundamental protection that can be enacted to protect the citizens of this country. If the rights of citizens are protected at the local level by adoption of the Charter’s provisions, the great majority of abuses of power against citizens will be prevented. Through my experience, I believe that citizens are most often deprived of their rights, if at all, at the local level and by local government. The provisions of this Charter will be the most important step in restraining government since the adoption of the United States Constitution.

If we start the reformation of government by protecting citizens at the local level, we have a chance at regaining control of run-away government. Reformation will not work to the advantage of the citizens if we await action by the federal or state governments to restrain themselves. But, if we start at the local level where restraint is possible, the return to the limited government sought by our Founders is not beyond our reach.

1 **MANAGED COMPETITION**

2 ***

3 Art. 8, City of Scottsdale Charter, is amended by adding Section ____, to read:

4 Sec. ____ . Managed Competition.

5
6 A. As soon as practicable and no later than July 1, 2011, the city shall furnish city
7 services other than core public safety services through transparent, open competitive
8 bidding for service contracts by independent contractors and city departments
9 (“Managed Competition”). However, core public safety services provided by police
10 officers and firefighters may be made subject to Managed Competition if the city
11 manager first determines that the responsible city departments have failed to meet
12 performance standards for an unreasonable period of time and the mayor and a majority
13 of the council approve this determination. The city manager shall have the sole
14 responsibility for administering and monitoring any agreements with contractors. The
15 city manager shall be required to produce annual performance audits for contracted
16 services, the cost of which must be accounted for and considered during the bidding
17 process. In addition, the city manager shall seek an independent audit every five (5)
18 years to evaluate the city’s experience and performance audits. In the event a service is
19 awarded to an independent contractor through Managed Competition, impacted city
20 employees will not be precluded or hindered from accepting employment with the
21 independent contractor.

22 B. As soon as practicable and no later than January 1, 2011, the council shall by
23 ordinance provide for standards and processes ensuring transparent, open competitive
24 bidding for contracts to furnish public services, as well as safeguarding against
25 corruption and conflicts of interest.

26 C. The Managed Competition Independent Review Board. As soon as practicable and
27 no later than July 1, 2010, the city manager shall appoint seven (7) members to the
28 Managed Competition Independent Review Board. Four (4) shall be private citizens
whose appointments shall be subject to council confirmation. Each shall have
professional experience in one or more of the following areas: finance, law, public
administration, business management or the service areas under consideration by the city
manager. Three (3) shall be city staff including a city manager staff designee, a city
council staff designee and the city auditor and comptroller or staff designee. Such
appointees shall not have any personal or financial interests which would create conflict
of interests with the duties of a Board member. Members of the Board shall be
prohibited from entering into a contract or accepting employment from an organization
which secures a city contract through the managed competition process for the duration
of the contract. The term of service for initial members of the Board shall not end
before January 1, 2011, and thereafter shall be determined by ordinance.

1 D. Pre-competition assessment. As soon as practicable and no later than July 1, 2010,
2 and thereafter as determined by ordinance, the city manager will prepare an initial
3 preliminary written Statement of Work for each city service to be put into Managed
4 Competition. This report will be transmitted to the Managed Competition Independent
5 Review Board for its consideration and recommendations relative to request for proposal
6 and contractual standards and contractor qualifications. In determining its
7 recommendations, the Board shall consider such factors as the type of service provided,
8 the abilities of the current and projected competitive market, potential efficiencies that
9 could be achieved and the capacity of the city to deliver essential services in the event of
10 contractor default. The Board shall issue its initial recommendations as soon as
11 practicable and no later than January 1, 2011, and thereafter as determined by ordinance.

12 E. Minimum contract standards and contractor qualifications. In addition to standards
13 and qualifications recommended by the Board, the city manager shall require that any
14 independent contractor providing services to the city meet minimum contract standards
15 to be contained in the solicitation for services or request for proposal. The minimum
16 contract standards shall include the following: (1) that the independent contractor
17 provide proof that it maintains an adequate level of liability insurance consistent with
18 city risk management requirements; (2) that the independent contractor has appropriate
19 safety polices and procedures in place to protect the public and its employees in
20 providing the service; (3) that the independent contractor will comply with all applicable
21 employment and labor laws; (4) performance standards and consequences for non-
22 performance, up to and including termination of the contract; (5) that the independent
23 contractor designate appropriate personnel to monitor contract compliance; (6) that the
24 independent contractor's employees must maintain the same certifications as will be
25 required of city employees performing the same service; (7) that if background checks
26 will be required of city employees performing a particular service, the independent
27 contractor will perform background checks on employees performing those same
28 services; (8) the same regulations and requirements of service delivery necessary to
maintain service quality that will apply to a city department shall also apply to any
independent contractor; (9) that the city shall unilaterally and immediately terminate the
contract if the independent contractor enters into a contract with or employs a member
of the Independent Review Board during the term of the contract with the city; and (10)
that the city shall unilaterally and immediately terminate the contract if the independent
contractor enters into a contract with or employs a former member of the Independent
Review Board during the term of the contract with the city, if that former Board member
participated in the selection process for that contract.

1 **PERFORMANCE-BASED POLICING**

2 ***

3 Art. 13, City of Scottsdale Charter, is amended by adding Section ____, to read:

4 Sec. ____. Performance-Based Policing.

5
6 A. For each fiscal year beginning on July 1, 2010, the city police department shall adopt performance benchmarking that targets and measures desired crime rates, crime
7 clearance rates, public complaint rates, and response times both for individual precincts
8 and for the city as a whole. The performance standards for such benchmarking shall
9 require benchmarked statistics in each precinct and for the city as a whole to improve
10 every month and also set an ultimate statistical fiscal year performance goal for each
11 benchmarked statistic for each precinct and the city as a whole based on what is
12 determined by the department to be a reasonable state of security. Fiscal year
13 performance goals must be approved by the mayor and a majority of the counsel.

14
15 B. Benchmarked standards, goals and statistics shall be published online as soon as
16 practicable in a conveniently accessible and searchable, user-friendly public website
17 format and updated frequently, as well as made immediately available for inspection and
18 copying by the general public.

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20 C. Priority access to overtime benefits shall be given to police officers working in
21 precincts where performance standards have been met. Police officers receiving such
22 priority access to overtime shall perform overtime services in precincts where
23 performance standards have not been met.

24
25 D. If the city police department fails to meet performance standards in the majority of
26 precincts or for the city as a whole for two consecutive fiscal years, then the council
27 enact an appropriate ordinance offering tax credits by general law to any person who
28 furnishes qualifying security services in the precincts in which performance standards
have not been met in proportion to their public benefit as determined by uniform,
objective and quantifiable standards.

E. If the city police department fails to meet performance standards in the majority of
precincts or for the city as a whole for five consecutive fiscal years, then the provision of
city policing services shall become subject to Managed Competition.

1 **CLOSING TEL AND TAX CAP LOOPHOLES**

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3 Art. 6, City of Scottsdale Charter, is amended by adding Sections ____, to read:

4 Sec. ____ . Expenditures of New Special Districts Included in Expenditure Limitation.

5
6 For purposes of calculating the city’s expenditure limitation under article IX, section
7 20(1) of the Arizona Constitution for the fiscal years beginning July 1, 2010, any
8 authorization for the payment of monies, revenues, funds, fees, fines, penalties, tuitions,
9 property and receipts of any kind whatsoever received by or for the account of any
10 special district (or equivalent political subdivision), organized on or after January 1,
11 2010, which exist, furnish services or operate primarily within city boundaries, shall be
12 included as a component of the city’s “expenditure” under article IX, section 20(3)(c) of
13 the Arizona Constitution.

14 Sec. ____ . Taxation of New Special Districts Limit the Local Ad Valorem Tax.

15 The maximum amount of ad valorem taxes levied by the city for the fiscal years
16 beginning July 1, 2010 shall not exceed an amount two per cent greater than the
17 difference between the amount in the immediately preceding fiscal year of ad valorem
18 taxes levied by the city and ad valorem taxes or assessments levied by all special
19 districts (or equivalent political subdivisions) organized on or after January 1, 2010,
20 which exist, furnish services or operate primarily within city boundaries.
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1 **GENUINE LOCAL SOVEREIGNTY**

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3 Art. 1, Sec. 3-1, City of Scottsdale Charter, is amended by adding the underscored language, to
4 read:

5 Sec. 3-1. Intergovernmental relations.

6 . . .

7 B. In the event the state of Arizona or the United States or any department or agency
8 thereof proposes or acts to implement, enforce, expand or extend any regulation or
9 regulatory policy within city boundaries, the city shall exercise all lawful means of
10 demanding such action be coordinated with less restrictive city plans and policies.

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SUBSIDY PROHIBITION

Art. 6, City of Scottsdale Charter, is amended by adding Section ____, to read:

Sec. ____ . Prohibition on subsidies.

A. The city shall not subsidize private enterprise. A subsidy to private enterprise is an economic benefit, direct or indirect, granted by the city with the primary purpose or substantial effect of encouraging or maintaining particular or specific classes of ventures in which private persons have a substantial financial or ownership interest.

B. Safe harbor. Economic benefits to private enterprise from the following shall not be considered a subsidy:

(1) Benefits from the city's performance of essential governmental functions; specifically, benefits from: (a) the city's provision and maintenance of public infrastructure for general public benefit and for actual public use; (b) the city's performance of functions without which the city would cease to exist as a governmental body; (c) the retention of private enterprise to perform functions of the type without which the city would cease to exist as a governmental body after a process of transparent, open competitive bidding; and (d) the procurement of supplies and services from private enterprise for the city's ordinary business operations after a process of transparent, open competitive bidding.

(2) Benefits from lower taxes and less regulation; specifically, benefits from: (a) the general and uniform relaxation or repeal of regulations; (b) the general and uniform reduction or repeal of taxes, assessments or fees; (c) the relaxation or repeal of special regulations, which, if not relaxed or repealed, would otherwise subject specific individuals, entities or classes of individuals or entities to regulatory burdens in excess of those imposed generally and uniformly; and (d) the reduction or repeal of special taxes, assessments or fees, which, if not reduced or repealed, would otherwise subject specific individuals, entities or classes of individuals or entities to taxation, assessments or fees in excess of those imposed generally and uniformly.

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FREEDOM FRIENDLY LAND USE REGULATION

Art. 13, City of Scottsdale Charter, is amended by adding Section ____, to read:

Sec. ____ . Freedom-friendly land use regulation.

The city shall exercise its zoning and land use regulatory authority as if all lawful uses of real property existing at the time of such exercise are vested property interests of the owner of record.

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PROHIBITION ON EVADING PROPOSITION 207

Art. 13, City of Scottsdale Charter, is amended by adding Section ____, to read:

Sec. ____ . City Prohibited from Seeking Waivers of Proposition 207 Rights.

Advance waivers of claims and covenants not to sue under Proposition 207 (A.R.S. § 12-1134), or the equivalent, shall not be sought by the city from any person as a condition of approving or processing any application seeking regulatory approval. And no covenant not to sue or advance waiver of claims under Proposition 207 (A.R.S. § 12-1134), or the equivalent, shall be enforceable by the city without proof beyond a reasonable doubt that it was supported by an exchange of valuable consideration unrelated to the exercise or forbearance of any regulatory authority.

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TIMELY REGULATORY PROCESSING

Art. 3, City of Scottsdale Charter, is amended by adding Section ____, to read:

Sec. ____ . City manager’s responsibility for timely regulatory processing.

At the outset of each fiscal year, the city manager shall determine and publish online in a conveniently accessible and searchable, user-friendly public website format processing deadlines for all completed applications requesting regulatory approval of any kind. Deadlines shall be set for the shortest feasible period of time given the nature of the regulatory approval sought and the resources available to the city. No deadline shall be longer than one hundred twenty (120) days. The failure of the city to approve or deny any application seeking regulatory approval within the published deadline shall result in the application being deemed approved by the city as of the date of submission. The city shall not seek waiver of any such deadline from any applicant. The city is prohibited from claiming that an application for regulatory approval is incomplete unless it gives notice of the same to the applicant no later than the midpoint of the applicable processing deadline.

1 **TRANSPARENCY AND ACCOUNTABILITY**

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3 Art. 4, City of Scottsdale Charter, is amended by adding Section ____, to read:

4 Sec. ____ . Accountability of unelected city employees, appointed officers and department
5 heads.

6 The city shall maintain public records in a conveniently accessible and searchable, user-
7 friendly website format for public viewing of formal and informal written complaints
8 brought or submitted by residents of the city against unelected city employees, city
9 officers and department heads for the duration of their employment with the city.
10 Additionally, the city shall maintain an interactive, conveniently accessible and
11 searchable, user-friendly website allowing for residents of the city to evaluate the
12 personal performance of each unelected city employee, city officer and department head
13 for the duration of their employment with the city.

14 Art. 6, City of Scottsdale Charter, is amended by adding Section ____, to read:

15 Sec. ____ . Public Online Posting of City Expenditures.

16 No expenditure may be made by the City of Scottsdale by cash, check, promissory note,
17 warrant, IOU or other similar means, unless the amount of the expenditure, the purpose
18 of the expenditure and the identity of the recipient of the expenditure is concurrently
19 published online in a conveniently accessible and searchable, user-friendly public
20 website format.

21 Art. 13, Sec. 1, City of Scottsdale Charter, is amended by deleting the stricken language and
22 adding the underscored language, to read:

23 Sec. 1. Publicity of records.

24 A. All records . . . of the city shall be open for inspection . . . ~~except records and~~
25 ~~documents the disclosure of which would tend to defeat the lawful purpose which they~~
26 ~~are intended to accomplish~~ as guaranteed under the Arizona Public Records law, A.R.S.
27 §§ 39-101, et seq. Further, the city shall respond to all written public records requests in
28 writing and with specific reference to each records request. The city shall fully comply
with any written public records request within the compliance deadline specified in the
request, or otherwise as soon as practicable. If there is a lawful basis for extending the
time of compliance, partial compliance or noncompliance, the city shall within the
deadline specified in the request, if one is specified, or otherwise as soon as practicable,
furnish a written statement to the requestor signed by the city manager or authorized
designee detailing the reasons for the city’s partial compliance, noncompliance, or
requested compliance deadline extension, which specifies a reasonable alternative
deadline, with specific reference to each records request.