

CITIZEN PETITION

CITY CLERK DEPT.
2023 DEC -6 PM 5:54

December 6, 2023

Pursuant to Chapter IV, Section 22 of the Phoenix City Charter, I, Jeremy Thacker, a citizen and resident of the City of Phoenix, hereby petition the City Council to consider and enact within (15) days a resolution, ordinance, or measure to decide whether the incidents outlined below violate the Charter and OML to clarify how citizen petitions are handled, and to determine whether the current process for handling citizen petitions violates the City Charter.

CITY CHARTER CHAPTER IV, SECTION 22

How petitions to be submitted and acted upon

Any citizen of this City may appear before the Council at any regular meeting and present a written petition; such petition shall be acted upon by the Council in the regular course of business, within fifteen (15) days.

CITY CODE CHAPTER 2, ARTICLE 2, DIVISION 2, SECTION 2-60, RULE 3

Order of business for formal meetings

h. Action on citizen petitions previously submitted, if applicable;

BACKGROUND

On August 2, 2019, Mayor Gallego sent a private memo to all members of the City Council regarding subcommittee membership and assignments. In that memo, she assigned the handling of citizen petitions to the Land-Use and Livability subcommittee.

On July 23, 2021, the Mayor, again, in a private memo to all Councilmembers reassigned citizen petitions to the Transportation, Infrastructure, and Planning subcommittee.

On March 2, 2022, I submitted a citizen petition regarding the City's handling of citizen petitions. That petition was never heard by the full City Council but instead assigned to the April 20, 2022, meeting of the T.I.P. subcommittee. At that meeting, a motion to refer the

petition to the full City Council failed to pass with a 2-2 vote (Pastor, Guardado voted to approve. Stark, O'Brien voted against.) Chairperson Stark recommended that the T.I.P. Subcommittee ask the Mayor to add citizen petitions to a Policy Meeting for a larger discussion. With support from O'Brien, Chairperson Stark stated that with support from all four T.I.P. members, this should be added to an upcoming Policy Meeting.

At a July 1, 2022, City Council Formal Meeting, I made a public comment asking for 3 members of the Council to request my petition be heard at the next Formal Meeting of the Council. While no members requested the item be added to the next agenda, Vice Mayor (at the time) Pastor announced that citizen petitions would be part of the September Policy Meeting. Mayor Gallego confirmed what was said by the Vice Mayor. Citizen petitions were not included in the September Policy Meeting or any of the following meetings since.

On October 5, 2022, Mayor Gallego sent a non-public memo to all members of the City Council, in violation of Open Meeting Laws, removing citizen petitions from subcommittees and moving them back to Formal Meetings of the Council. The Mayor stated,

Rule 5 of the Rules of Council Proceedings authorizes the Mayor to establish subcommittees and charge them with their powers, duties, and responsibilities, and to refer matters to subcommittees for collecting information, providing analysis, and making recommendations to the Council.

The Mayor goes on to say,

After discussion with members of council regarding the procedure for citizen petitions, this memo amends the assignments to remove citizen petitions from the assigned focus area of the TIP Subcommittee.

On January 9, 2023, item number 5 on the Agenda of the City Council Executive Session was "Discussion and consultation re: Citizen Petitions, A.R.S. §38-431.03 A.3". Item 2 on the agenda for the Executive Session on January 24th, 2023, was another discussion regarding Citizen Petitions.

On April 19, 2023, I submitted a new citizen petition to the Council. The petition was placed on the May 31, 2013, agenda (item 178) of the Council. While the petition was heard by the full Council, no action or vote was taken on the item.

PRIOR ARGUMENTS BY CITY STAFF

In the weeks leading up to the April 20, 2022, T.I.P. subcommittee meeting, I had several interactions with the City's Chief Counsel, David Benton. The following are excerpts and takeaways from those conversations.

When asked how petitions being heard 60-plus days from submission meets the 15 day requirement, Mr. Benton tried to justify it in an email stating:

The action being taken is, once a petition is deemed qualified, the petition is referred to the TIP subcommittee. A staff file is prepared, and the citizen who prepared the petition is heard at TIP. The objective there is to take the time to get a better understanding of the petition. From there, further action can be taken, if needed. Sometimes the matter can be handled at the subcommittee level, while some matters (or parts thereof) may need to be referred to other departments or subcommittees, or may be referred to council.

While several issues exist with this response, the least obvious may be when Mr. Benton says, "the objective". To whose objective is he referring? Certainly not my objective. Nor do I believe it is the objective of any citizen that has gone through the process of researching, authoring, and submitting a citizen petition to the City Council. In fact, I am willing to assume that the original authors of the Charter meant for the citizen petition to avoid the "objectives" of subjective employees, bureaucratic processes, and long delays by giving citizens direct access to the City Council. Additionally, it was clearly intended to hold the Council accountable by requiring each member to vote on the petition, removing the ability to simply avoid issuing an opinion on a matter.

The more obvious issue with Mr. Benton's response is that it violates the laws included in the Charter. The Charter states that Council must act in 15 days. Nowhere does it state, "or if it's more convenient for Council and staff that the City Manager can delegate the issue to his subordinate who then asks the City Attorney to determine if it's 'qualified' before deciding if they may or may not send it to a subcommittee or Board containing no City Councilmembers and no ability to act within 90 days, give or take 90 days." The language is clear which is why Mr. Benton's response is so puzzling.

Equally as puzzling is the charge of the Transportation, Infrastructure, and Subcommittee which includes handling of citizen petitions. The TIC only meets once per month. So much for 15 days. The TIC includes only four City Council members. Short of a quorum of the City Council required to act on a petition. Since the Mayor is solely responsible for the charge and members of the subcommittees, either the rules for how citizens petitions are handled according

to the Charter and Code have been changed illegally or staff has been ordered to follow a process in direct violation of the Charter and Code.

The requirements are simple:

1. **Acted on by the Council:** Subcommittees, Boards, and Commissions are not the City Council. They do not have the same authority, influence, or members.
2. **Within fifteen (15) days:** Any number of days over 15 is a violation. Simple

If the City reasons that the Council is acting by allowing the item to be delegated to a subcommittee, they have several obstacles to overcome. First, an ordinance stating that citizen petitions are to be handled by TIP subcommittee instead of by the full City Council would need to be approved and changed in the City Code. No ordinance exists. The Charter would need to be modified with changes to who can handle the petitions and days allowed. This would require citizen approval via ballot initiative. The citizens have never voted on any such change to the Charter.

Without notifying the citizens much less getting their approval via ballot initiative, the City has significantly weakened the citizen's last line of defense by making unauthorized, unpublished, and unwanted changes to the citizen petition in violation of the Charter and Code.

CHARTER AND OML VIOLATIONS

Neither the Mayor nor City Council has the authority to change how citizen petitions are handled since they are included in the City Charter. To make changes to the Charter requires a ballot initiative. In addition to the numerous violations of the Charter, the Mayor and various members of Council have violated the OML on several occasions. Below is a list of violations that have occurred.

CHARTER VIOLATIONS

1. **Illegally Amended the Charter:** The Mayor illegally amended the Charter by unilaterally deciding to change how citizen petitions were handled by assigning them to a subcommittee instead of the full Council and ensuring petitions were not acted on within 15 days.
2. **Failed to Act Within 15 Days:** The Council violated the Charter on every citizen petition submitted between August 2, 2019, and October 5, 2022, by the full Council not acting on the petition within 15 days but instead assigning the petition to the T.I.P. subcommittee for discussion. While I do not know the exact number of citizen petitions heard during this span, I believe the number of Charter violations would be in the double digits as I alone submitted three petitions.

3. **Not Acted on by the Council:** On all citizen petitions submitted between August 2, 2019, and October 5, 2022, the Mayor and TIP Subcommittee violated the Charter and Rule 5 of Council Proceedings by allowing the Subcommittee to determine final action on all citizen petitions which is beyond the authority given to them in Rule 5 much less the Charter. Rule 5 states the Mayor can provide subcommittees with the authority of collecting information, providing analysis, and making recommendations to the Council. In the case of citizen petitions, the subcommittee did not perform the allowable actions but instead made decisions on behalf of the full council as to the final fate of citizen petitions.
4. **Prevented Action by the Council:** On April 20, 2022, councilmembers Stark and O'Brien, violated the City Charter by refusing to refer my citizen petitions to the full City Council despite the plain language of the Charter. We can assume that many other citizen petitions were prevented from reaching the full Council as well but I am unable to verify this at this time.

OML VIOLATIONS

1. **Private Communication to Council:** The Mayor violated OML on three occasions by sending three separate private, non-public memos to the entire Council regarding changes to the handling of citizen petitions.
2. **Private Communication Between Councilmembers:**
 - a. The Mayor and City Council violated OML by communicating privately, not in a public meeting, about adding citizen petitions to the September 2022 Policy Meeting. Citizen Petitions had not been on any agenda or discussed during any public meetings yet the Mayor and Pastor both publicly disclosed that citizen petitions would be discussed at an upcoming Policy Meeting. The only way they could have both known this information is by private, non-public communications.
 - b. The Mayor admits to violating OML in her October 2023 memo to the full Council when she admits, "**After discussion with members of the council regarding citizen petitions...**". There is no record of any discussions regarding citizen petitions taking place in public meetings so these discussions would have been in private and in violation of the OML. If the Mayor had discussions with "members" (plural), it was done in private and in violation of the OML.
3. **Improper Topic for Executive Session:** On January 9, 2023, the City Council violated OML by discussing citizen petitions in non-public Executive Sessions instead of during public Policy Sessions. All mention of citizen petitions in the Charter are contained in one single sentence. By 2023, over 50 petitions had been heard over decades. During 2022, multiple public meetings involved hours of discussions regarding the handling of

citizen petitions with much of that coming from David Benton, the City's attorney. The City's position legally and procedurally on citizen petitions was clear and public regarding this one sentence in the Charter. What possible reason could the City have for an Executive Session regarding citizen petitions that shouldn't have been included in a public meeting?

PETITIONERS REQUESTED ACTIONS

1. Clarify the City's current process for handling citizen petitions.
2. Clarify the specific requirements to qualify as a citizen petition.
3. Can a petition be disqualified for any of the following?
 - a. Lack of jurisdiction
 - b. Request illegal or unconstitutional action
 - c. Existing process for the request exists
4. Decide whether the instances described above were violations of the Charter.
5. Decide whether the instances described above were violations of the Open Meeting Laws.
6. If violations have occurred, what remedy is available to those who damaged by the violations?
7. If violations have occurred, what are the consequences for those responsible for the violations?



Office of Mayor Kate Gallego

To: Phoenix City Council Members

Date: August 2, 2019

From: Mayor Kate Gallego

Subject: SUBCOMMITTEE ASSIGNMENTS

The purpose of this memo is to provide updated subcommittee assignments. Annual budget issues, proposed city charter amendments, and text amendments must be heard by the full council.

Transportation, Infrastructure and Innovation

Thelda Williams, Chair
Betty Guardado
Laura Pastor
Debra Stark

This subcommittee will provide policy guidance on issues related to: infrastructure; transportation; transit; streets; aviation/ airport; water; technology; smart cities; innovation; sustainability

Workforce and Economic Development

Laura Pastor, Chair
Michael Nowakowski
Debra Stark
Jim Waring

This subcommittee will provide policy guidance on issues related to: economic development; downtown; workforce; procurement; equity; international issues; Sister Cities; tourism; convention center; finance; IDA; major events; volunteerism; biosciences



City of Phoenix
Office of Mayor Kate Gallego

To: Phoenix City Council Members

Date: July 23, 2021

From: Mayor Kate Gallego

Subject: SUBCOMMITTEE ASSIGNMENTS

The purpose of this memo is to provide updated subcommittee assignments for the City Council. The following will continue to be heard by the full council; annual budget items, proposed city charter amendments, and text amendments.

Transportation, Infrastructure, and Planning (TIP)

Debra Stark, Chair
Ann O'Brien
Laura Pastor
Betty Guardado

The focus on this subcommittee will be aviation, complete streets, water, finance, IT, and citizen petitions.

Economic Development and Equity (EDE)

Laura Pastor, Chair
Ann O'Brien
Debra Stark
Yassamin Ansari

The focus on this subcommittee will be downtown, historic preservation, affordable housing, and digital divide.

(continued on next page)



City of Phoenix
Office of Mayor Kate Gallego

Community and Cultural Investment (CCI)

Betty Guardado, Chair
Debra Stark
Yassamin Ansari
Carlos Garcia

The focus on this subcommittee will be sustainability/recycling, neighborhoods, parks, arts, libraries, education/head start, and homelessness.

Public Safety and Justice (PSJ)

Ann O'Brien, Chair
Jim Waring
Yassamin Ansari
Carlos Garcia

The focus on this subcommittee will be police, fire, emergency management, domestic violence, human trafficking, and courts.

Cc: Ed Zuercher
Jeff Barton
Toni MacCarone
Mario Paniagua
Karen Peters
Inger Erickson
Gina Montes
Ginger Spencer



City of Phoenix
Office of Mayor Kate Gallego

To: Phoenix City Council Members

Date: October 5, 2022

From: Mayor Kate Gallego

Subject: Citizen petitions

The purpose of this memo is to change the charge of the Transportation, Infrastructure and Planning (TIP) Subcommittee regarding citizen petitions.

Rule 5 of the Rules of Council Proceedings authorizes the Mayor to establish subcommittees and charge them with their powers duties and responsibilities, and to refer matters to subcommittees for collecting information, providing analysis, and making recommendations to the Council.

The current memo establishing Subcommittee Assignments, dated July 23, 2021, assigns citizen petitions that have been submitted at a Formal City Council meeting in compliance with Chapter IV, Section 22 of the City Charter to be heard by the TIP Subcommittee.

After discussion with members of council regarding the procedure for citizen petitions, this memo amends the assignments to remove citizen petitions from the assigned focus area for the TIP Subcommittee. As a result of this change, citizen petitions will no longer be assigned to a subcommittee and will be placed on a Formal Agenda to be heard by the full council.

This memo amends the July 23, 2021 Subcommittee Assignments memo regarding citizen petitions and will be filed with the City Clerk as required by Rule 5.

cc: Jeffrey Barton, City Manager
Lori Bays, Assistant City Manager
Ginger Spencer, Deputy City Manager
Mario Paniagua, Deputy City Manager
Inger Erickson, Deputy City Manager
Gina Montes, Deputy City Manager
Karen Peters, Deputy City Manager
Alan Stephenson, Deputy City Manager
Stephanie Bracken, Executive Assistant to City Council
Cris Meyer, City Attorney
Denise Archibald, City Clerk