

1 Jeremy Thacker
2 4520 N 2nd Ave
3 Phoenix, AZ 85013
4 (480) 410-1923
5 jeremythacker@gmail.com
6 *Plaintiff Pro Se*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 JEREMY THACKER

10 Plaintiff Pro Se,

11 v.

12 CITY OF PHOENIX, a municipal
13 corporation,

14 Defendant.

Case No: CV2025-026278

**PLAINTIFF JEREMY THACKER'S
MOTION FOR SUMMARY JUDGMENT**

(Assigned to the Honorable Scott Minder)

15
16
17
18
19 Plaintiff Jeremy Thacker respectfully moves for summary judgment under Ariz. R. Civ. P.
20 56. As shown below, the material facts are undisputed and the City of Phoenix is liable as a
21 matter of law for violating Arizona's Open Meeting Law ("OML"), A.R.S. §§ 38-431–431.09,
22 and Public Records Law ("PRL"), A.R.S. §§ 39-121–121.02.

23 This Motion is supported by the accompanying Plaintiff's Separate Statement of Facts
24 ("PSOF"), all pleadings and papers on file, the exhibits previously submitted in this matter, and
25 such additional evidence as may be submitted with this Motion or at hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INTRODUCTION AND SUMMARY

This case presents a narrow, purely legal challenge to the structure of the Phoenix City Council’s 2024–2025 executive-session practice and to the City’s refusal to justify its privilege claims.

Three core facts, drawn from the City’s own filings, are not disputed:

1. On November 13, 2024, the City Council purported to “pre-authorize” a series of executive sessions for the 2025 calendar year by a blanket vote covering multiple future meetings, including executive sessions held on January 28 and February 11, 2025. (PSOF ¶ 1.)
2. The agendas for January 28 and February 11, 2025 described the relevant executive-session item only as “Discussion and consultation for legal advice re: Community Citizen Comment, A.R.S. § 38-431.03(A)(3),” without identifying any subject matter. (PSOF ¶¶ 3-4.)
3. The City withheld all executive-session records responsive to Plaintiff’s public records request, asserted attorney-client and “legislative privilege,” and provided no privilege log or index of withheld records. (PSOF ¶¶ 11-17, 21.)

Relying on these facts, the City has asked this Court to endorse three propositions:

1. **“Zombie Vote”** — that a blanket vote taken on November 13, 2024 can satisfy A.R.S. § 38-431.03(A)’s requirement of a public majority vote “upon” which a public body “may hold an executive session” months later, with a different quorum.
2. **“Agenda Vagueness”** — that describing an executive-session item only as “Community Citizen Comment” satisfies A.R.S. § 38-431.02(I)’s requirement of “more than just a recital of the statutory provisions authorizing the executive session.”
3. **“Agency Loophole / Privilege Trap”** — that a city may (a) notice an executive session solely for “legal advice” under § 38-431.03(A)(3), (b) later withhold the same

1 records under “legislative privilege,” and (c) avoid providing any privilege log
2 because it is not an “agency” under A.R.S. § 39-121.01(D)(2).

3 Each position conflicts with the plain text of the statutes, with controlling precedent, and
4 with the policy of broad openness codified in A.R.S. § 38-431.09(A). When the facts are
5 undisputed and the only disputes are legal, summary judgment is appropriate.

6 **UNDISPUTED MATERIAL FACTS**

7 Plaintiff incorporates his Separate Statement of Facts (“PSOF”) by reference and
8 provides only a brief overview here.

- 9 a. **Parties and public bodies.** Plaintiff is a Phoenix resident. The City of Phoenix is a
10 municipal corporation and political subdivision of the State of Arizona. The Phoenix
11 City Council is a “public body” subject to the OML and PRL. (A.R.S. § 38-431(5); §
12 39-121.)
- 13 b. **November 13, 2024 blanket vote.** On November 13, 2024, the City Council
14 conducted a public meeting and took a single vote purporting to authorize, in
15 advance, multiple executive sessions for the 2025 calendar year, including sessions
16 scheduled for January 28 and February 11, 2025. The City relies exclusively on this
17 November 13 vote as the predicate authorization for the January 28 and February 11
18 executive sessions. No public vote was taken immediately before those executive
19 sessions. (PSOF ¶¶ 1–2.)
- 20 c. **January 28 and February 11, 2025 agendas.** The agendas for January 28 and
21 February 11, 2025 listed the challenged executive-session item as:
22 “Discussion and consultation for legal advice re: Community Citizen Comment,
23 A.R.S. § 38-431.03(A)(3).”
24 The agendas did not identify any subject, policy question, case, project, department,
25 or other matter to be discussed. (PSOF ¶¶ 3–4.)
26

1 d. **Public records request and withholding.** Plaintiff submitted a public records
2 request seeking, among other records, the executive-session materials and related
3 documents for the January 28 and February 11, 2025 meetings. The City refused to
4 produce the requested executive-session records, asserted attorney-client privilege
5 and later “legislative privilege,” and produced no privilege log, index, or affidavit
6 itemizing or describing the withheld records. (PSOF ¶¶ 11–17, 19–21.)

7 e. **City’s admissions.** In its Answer, Motion for Summary Judgment, and Separate
8 Statement of Facts, the City admits:

- 9 • that no public vote was taken on January 28 or February 11, 2025 to enter
10 executive session;
- 11 • that the agenda items at issue were described solely as “Community Citizen
12 Comment” under § 38-431.03(A)(3); and
- 13 • that the City did not furnish an index or privilege log identifying the withheld
14 records or the bases for nondisclosure. (PSOF ¶¶ 2–4, 13, 21.)

15 No material fact necessary to resolve the legal issues presented in this Motion is
16 genuinely disputed.

17 **LEGAL STANDARD**

18 Summary judgment is proper when “there is no genuine dispute as to any material fact
19 and the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a). Courts
20 view the evidence in the light most favorable to the nonmoving party, but “when the facts are
21 not in dispute and the issue is the interpretation of a statute, summary judgment is appropriate.”
22 *Hodai v. City of Tucson*, 239 Ariz. 34, 39 ¶ 14 (App. 2016).

23 Arizona’s OML is to be “construed in favor of open and public meetings.” A.R.S. § 38-
24 431.09(A). Courts construe the statutory exemptions to open meetings “narrowly in favor of
25 requiring public meetings.” *Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd.*, 199
26 Ariz. 567, 569 ¶ 14 (App. 2000).

1
2 Similarly, Arizona’s PRL embodies a “strong policy in favor of open and accessible
3 public records.” *Griffis v. Pinal Cnty.*, 215 Ariz. 1, 4 ¶ 8 (2007). Public bodies bear the burden of
4 justifying nondisclosure and must provide courts with sufficient information to evaluate
5 privilege claims. *Id.*; *Hodai*, 239 Ariz. at 40–41 ¶¶ 19–23.

6 ARGUMENT

7 **A. The November 13, 2024 “Zombie Vote” Cannot Authorize Executive Sessions** 8 **Months Later Under A.R.S. § 38-431.03(A)**

9 A.R.S. § 38-431.03(A) provides that “[u]pon a public majority vote of the members
10 constituting a quorum, a public body may hold an executive session” for the limited purposes set
11 forth in the statute.

12 The City concedes that no public vote occurred immediately before the January 28 or
13 February 11, 2025 executive sessions. Instead, the City contends that its November 13, 2024
14 blanket vote sufficed to authorize those closed meetings. (PSOF ¶¶ 1–2.) That theory fails for
15 three independent reasons.

16 **1. *Desert Mountain* confirms that “legal action” must be contemporaneous and** 17 **cannot be approved by generic prior authorization**

18 In *Desert Mountain Energy Corp. v. City of Flagstaff*, the Court of Appeals held that a
19 city council violated the OML by voting in executive session to authorize litigation,
20 emphasizing that “all legal action of public bodies shall occur during a public meeting” and that
21 exceptions must be construed in favor of openness. 566 P.3d 333, 340–42 ¶¶ 21–32 (App. 2025).
22 The court rejected attempts to “jam” multiple subsections together to justify nonpublic legal
23 action, stressing that authorizing litigation is itself a “legal action” that requires a public vote. *Id.*
24 at 341–42 ¶¶ 23–31.

25 *Desert Mountain* restates several principles directly applicable here:
26

- 1 • “Legal action” is defined broadly to include “a collective decision, commitment
2 or promise made by a public body.” A.R.S. § 38-431(3).
- 3 • Executive-session exceptions must be narrowly construed to avoid “budget[ing]
4 around the open-meeting law.” *Desert Mountain*, 566 P.3d at 341–42 ¶¶ 25–28.
- 5 • Once deliberation ends and a public body reaches a final, binding decision, that
6 decision must be made in public. *Id.* at 341–42 ¶¶ 24–27; see also *Johnson*, 199
7 Ariz. at 570 ¶¶ 15–17.

8 Here, the City’s November 13, 2024 blanket vote is a “collective decision, commitment
9 or promise” that purports to authorize a year’s worth of future executive sessions by a different
10 quorum. (PSOF ¶¶ 1–2.) Allowing such “generic standing authorizations” to substitute for
11 contemporaneous votes at the time of the meeting would contradict *Desert Mountain’s* insistence
12 that legal actions be taken in public when they bind the public body and commit public
13 resources, and would create precisely the type of structural end-run around the OML that the
14 court condemned.

15 **2. The plain text of § 38-431.03(A) requires a vote of the sitting quorum “upon”**
16 **which the executive session is held**

17 **The statute’s text is dispositive. Section 38-431.03(A) states that a public body “may hold**
18 **an executive session” “[u]pon” a public majority vote of the members constituting a quorum.**
19 **“Upon” connotes immediacy and causation, not a blanket pre-authorization that spans multiple**
20 **future meetings.**


21 Moreover, a “quorum” is defined with reference to the members of the public body
22 “present” at the meeting in question, not a prior or different quorum. A.R.S. § 38-431(4), (5). A
23 quorum in November 2024 cannot lawfully delegate to a different quorum in January or
24 February 2025 the power to exclude the public without a contemporaneous vote.

25 Reading § 38-431.03(A) to allow a public body to vote once each year to close any
26 number of future meetings would nullify the requirement that legal action occur at public

1 meetings and be preceded by a public vote, A.R.S. §§ 38-431.01(A), 38-431.03(D), and would
2 violate the policy command that the OML be interpreted “in favor of open and public meetings.”
3 § 38-431.09(A).

4 **3. Policy and precedent reject blanket standing authorizations**

5 The Arizona Supreme Court and Court of Appeals have repeatedly emphasized that OML
6 exceptions must not swallow the rule of openness. See, e.g., *City of Prescott v. Town of Chino*
7 *Valley*, 166 Ariz. 480, 483 (1990) (OML effectuates “important public policy” of informing
8 public of matters to be discussed or decided); *Fisher v. Maricopa Cnty. Stadium Dist.*, 185 Ariz.
9 116, 124 (App. 1995) (“our charge is to promote openness in government, not to expand
10 exceptions which could be used to obviate the rule”).

11 A blanket  **mbie Vote** that purports to approve all executive sessions for an entire year
12 is precisely the kind of structural exception the OML prohibits. No reasonable construction of §
13 38-431.03(A) allows a public body to avoid public votes at the time it actually excludes the
14 public and holds executive sessions.

15 Because the City concedes that no public vote preceded the January 28 and February 11,
16 2025 executive sessions (PSOF ¶ 2), those sessions violated § 38-431.03(A) and § 38-431.01(A)
17 as a matter of law.

18 **B. The Agenda Item “Community Citizen Comment” Is Insufficient Under A.R.S. § 38-** 19 **431.02(I)**

20 The OML requires that “[n]otice of meetings and the agenda shall provide such
21 information as is reasonably necessary to inform the public of the matters to be discussed or
22 decided.” A.R.S. § 38-431.09(A). For executive sessions, § 38-431.02(I) further provides:

23 “The agenda shall provide more than just a recital of the statutory provisions
24 authorizing the executive session, but need not contain information that would
25 defeat the purpose of the executive session, compromise legitimate privacy
26 interests, or compromise the attorney-client privilege.”

The agendas at issue describe the executive-session topic only as “Community Citizen

1 Comment, A.R.S. § 38-431.03(A)(3).” (PSOF ¶¶ 3–4.) The phrase identifies no subject matter
2 — no case, policy, project, department, claim, ordinance, or other matter — and simply recites
3 that some unspecified “comment” by an unspecified citizen or citizens will be discussed.

4 Under controlling precedent and the Attorney General’s Open Meeting Law guidance,
5 this description is legally insufficient.

6 **1. *Shelby School* requires identification of a subject, not merely a source of**
7 **information**

8 In *Shelby School v. Ariz. State Bd. of Educ.*, the Arizona Supreme Court upheld an agenda
9 item that noticed “consultation for legal advice regarding charter school applications,”
10 emphasizing that the item identified a subject area (charter school applications) and that the
11 meeting’s context made the subject of the executive session reasonably clear. 192 Ariz. 156, 168
12 ¶ 35 (1998).

13 *Shelby School* does not stand for the proposition that any generic phrase will suffice. The
14 Court made clear that an agenda must “reasonably inform” the public of the matter to be
15 discussed, and that the executive-session description must be more than a bare statutory citation.
16 *Id.*; see also *Karol v. Bd. of Educ.*, 122 Ariz. 95, 97 (1979) (agenda violated OML where it
17 “fail[ed] to apprise” the public of the true subject).

18 Here, “Community Citizen Comment” identifies only a source (comments from some
19 citizen or citizens), not any subject matter. By contrast, “charter school applications” in *Shelby*
20 *School* identified a concrete subject area. A reasonable member of the public reading
21 “Community Citizen Comment” would have no way to discern whether the Council planned to
22 discuss a zoning matter, personnel issue, ethics complaint, litigation, or any other topic.

23 **2. *Karol* and *Thurston* require sufficient specificity to alert interested members of**
24 **the public**

25 In *Karol*, the Arizona Supreme Court invalidated a school board’s action where the
26 agenda failed to sufficiently describe the subject of a teacher-evaluation policy. 122 Ariz. at 97.

1 The Court emphasized that agendas must give the public “some indication” of the matters to be
2 discussed so that interested citizens may attend and observe. *Id.*

3 Similarly, in *Thurston v. City of Phoenix*, the Court of Appeals rejected a city’s attempt to
4 rely on overly vague descriptions and stressed that the OML is intended to prevent public bodies
5 from “hiding the true nature of the business being transacted.” 157 Ariz. 343, 345–46 (App.
6 1988).

7 “Community Citizen Comment” fails both standards. It does not describe any subject; it
8 merely labels the item by the form of input (a comment) rather than by the matter to be
9 discussed. A resident concerned about a particular policy, complaint, or case would have no
10 basis to recognize the relevance of this agenda item.

11 **3. The City’s own agendas show it can be specific without compromising privilege**

12 On the same agendas as the challenged item, the City included other executive-session
13 items described with far greater specificity — such as items identifying specific complainants
14 and case numbers, and an item described as “Phoenix Proposed Tax Increase.” (PSOF ¶ 4.)
15 Those descriptions provide concrete subject matter while still preserving confidentiality as
16 required by § 38-431.02(I).

17 The disparity underscores that vagueness was not compelled by privilege; the City simply
18 chose a description that omitted any subject matter at all. Under § 38-431.02(I), *Shelby School*,
19 *Karol*, and *Thurston*, that choice renders the notice insufficient as a matter of law.

20 Because the City admits the agendas used only the “Community Citizen Comment” label
21 with a statutory citation (PSOF ¶¶ 3–4), Plaintiff is entitled to summary judgment on his claim
22 that those executive sessions were improperly noticed.

23 **C. The City’s Inconsistent “Legal Advice” and “Legislative Privilege” Positions** 24 **Confirm OML Violations and Underscore PRL Breaches**

25 The challenged executive sessions were noticed solely under A.R.S. § 38-431.03(A)(3)
26 — “discussion or consultation for legal advice with the attorney or attorneys of the public body.”

1 (PSOF ¶¶ 11–14.)

2 An (A)(3) executive session must be confined to legal advice. The Attorney General’s
3 OML materials emphasize that “an attorney’s mere presence in the meeting does not convert the
4 conversation into ‘legal advice.’ The session must be limited to legal advice,” and once the
5 public body begins discussing “what action to take based upon the attorney’s advice,” the
6 discussion must occur in public.

7 Despite this, the City now asserts that the withheld records reflect “legislative acts”
8 subject to legislative privilege. (City MSJ at 8-9) Both positions cannot simultaneously be true.

9 **1. If the sessions involved “legislative acts,” they exceeded the scope of § 38-**
10 **431.03(A)(3) and violated the OML**

11 Arizona courts apply legislative privilege to “legitimate legislative activity” — acts that
12 are integral to the process of legislating. See *Ariz. Indep. Redistricting Comm’n v. Fields*, 206
13 Ariz. 130, 136–37 ¶¶ 15–18 (App. 2003); *State ex rel. Montgomery v. Mathis*, 231 Ariz. 103,
14 123–24 ¶¶ 79–80 (App. 2012).

15 Legislative privilege, by definition, applies to legislative deliberation and decision-
16 making, not to the receipt of legal advice. The City’s assertion that the records reflect
17 “legislative acts” thus concedes that the Council engaged in legislative deliberation or policy-
18 making during sessions noticed only for legal advice, in violation of § 38-431.03(A)(3) and §
19 38-431.01(A). See *City of Prescott*, 166 Ariz. at 485 (once discussion moves beyond legal
20 advice into what action to take, it must be public); *Johnson*, 199 Ariz. at 570 ¶ 15 (same).

21 If the Court credits the City’s legislative-privilege characterization, it necessarily follows
22 that the executive sessions were unlawfully broadened beyond legal advice and violated the
23 OML.

24 **2. If the sessions were confined to legal advice, legislative privilege cannot apply**

25 Conversely, if the executive sessions were properly limited to “discussion or consultation
26 for legal advice with the attorney or attorneys of the public body” under § 38-431.03(A)(3), then

1 legislative privilege does not apply. Legislative privilege protects legislative acts, not ordinary
2 attorney-client communications or administrative/legal advice functions. *Fields*, 206 Ariz. at
3 136–37 ¶¶ 15–18; *Montgomery*, 231 Ariz. at 123–24 ¶¶ 79–80.

4 Recent Arizona appellate and Supreme Court decisions elaborating legislative privilege
5 — including the *Fann v. Kemp* line of cases concerning the Arizona Senate’s “audit” records —
6 reiterate that the privilege does not extend to administrative or political acts and still requires the
7 assertion of specific, context-based justifications. *See Fann v. Hon. Kemp*, 252 Ariz. 413, 425 ¶
8 25 (2022); *Fann v. Kemp ex rel. Cnty. of Maricopa (Fann II)*, 252 Ariz. 508, 517–18 ¶¶ 26–32
9 (App. 2022).

10 Here, the City has offered only a conclusory invocation of “legislative privilege” without
11 specifying which communications (if any) reflect legitimate legislative activity as opposed to
12 legal advice. (PSOF ¶¶ 18–21.) Under *Griffis* and *Hodai*, that is insufficient.

13 **3. The inconsistency itself is probative of misuse of executive session and misuse of**
14 **privilege**

15 The City’s inconsistent positions underscore the structural concerns at the heart of this
16 case:

- 17 • If the sessions truly were limited to legal advice under § 38-431.03(A)(3), then
18 they cannot be shielded by legislative privilege and must be evaluated under
19 ordinary attorney-client and work-product standards, with appropriate segregation
20 of non-privileged material.
- 21 • If the sessions involved legislative deliberation, policy-making, or other
22 “legislative acts,” they violated the OML’s requirement that legal action and
23 substantive deliberation occur in public and that only legal advice be considered
24 in executive session.

25 Either way, the City’s privilege assertions cannot defeat Plaintiff’s claims as a matter of
26 law.

1 **D. The City’s Failure to Provide a Privilege Log or Equivalent Index Violates Arizona’s**
2 **Public Records Law and Prevents Judicial Review**

3 The PRL codifies Arizona’s strong policy in favor of open records. A.R.S. § 39-121.
4 When a public body withholds records based on privilege, the Arizona Supreme Court has held
5 that the determination is a judicial function and that the public body bears the burden of
6 establishing the privilege. *Griffis*, 215 Ariz. at 4–5 ¶¶ 8–9.

7 **1. *Griffis* and *Hodai* require sufficient information to evaluate privilege claims**

8 In *Griffis*, the Court held that emails claimed to be private or personal are still “public
9 records” and that courts must evaluate privilege and confidentiality claims based on evidence,
10 not conclusory assertions. 215 Ariz. at 4–5 ¶¶ 8–9.

11 In *Hodai*, the Court of Appeals applied these principles to the City of Tucson and held
12 that when a city withholds records based on privilege or confidentiality, it must provide
13 sufficient detail (through a log, index, or affidavits) to permit meaningful judicial review. 239
14 Ariz. at 40–41 ¶¶ 19–23.

15 *Hodai* squarely rejected arguments that cities may withhold records without meaningful
16 explanation, emphasizing that courts must be able to evaluate whether the public interest in
17 disclosure outweighs any asserted confidentiality. *Id.*

18 **2. A.R.S. § 39-121.01(D)(1)–(2) does not create an “agency loophole” for cities**

19 The City has argued that because § 39-121.01(D)(2) refers to “agencies” as defined in
20 Title 41, it need not provide a privilege log. That argument fails. Section 39-121.01(D)(1)–(2)
21 requires “agencies” to maintain indexes of certain records and to provide an index of withheld
22 records and reasons for withholding upon request.

23 Nothing in § 39-121.01(D) abrogates *Griffis* or *Hodai*, nor does it limit courts’ ability to
24 require cities and other political subdivisions to provide sufficient information (through logs,
25 indexes, or affidavits) to evaluate privilege claims. If anything, the statutory indexing
26 requirement reflects legislative approval of the indexing practice that *Griffis* and *Hodai* assume.

1 The Attorney General’s Public Records Law materials likewise state that public bodies
2 must provide information sufficient for requesters and courts to understand what is being
3 withheld and why.

4 Recognizing an “agency loophole” for municipalities would create a de facto black-box
5 exception to public records law for the level of government that directly affects most citizens’
6 daily lives. That outcome cannot be reconciled with either the text or the policy of the PRL.

7 **3. The City’s complete failure to log or index its privilege claims violates PRL as a**
8 **matter of law**

9 Here, it is undisputed that the City has not produced any privilege log, index, or affidavit
10 describing the withheld executive-session records, identifying the basis for each claimed
11 privilege, or segregating non-privileged material. (PSOF ¶¶ 13, 21.) Notably, while the City
12 initially claimed ‘work product’ in its denial, its Motion abandons that claim, confirming no
13 litigation was pending.

14 Under *Griffis* and *Hodai*, that failure, standing alone, is sufficient to warrant relief: the
15 City has not met its burden of justifying nondisclosure, and the Court cannot perform the
16 judicial function of assessing privilege without a record-specific presentation.

17 Plaintiff is therefore entitled to summary judgment on his PRL claim, including an order
18 requiring the City to produce a privilege log and submit any contested records for in camera
19 review.

20 **E. The City’s Failure to Segregate Non-Privileged Material Violates the PRL and OML**
21 **Enforcement Scheme**

22 Even when portions of a record are privileged, Arizona law requires the segregation and
23 disclosure of non-privileged, reasonably segregable portions. See, e.g., *Griffis*, 215 Ariz. at 4–5
24 ¶¶ 8–9; *Hodai*, 239 Ariz. at 40–41 ¶¶ 19–23.

25 The OML itself contemplates remedial orders that tailor relief to the particular violation.
26 See A.R.S. § 38-431.05 (nullification and ratification); § 38-431.07(A) (mandamus and

1 injunctive relief).

2 By asserting blanket privilege over all executive-session materials without explaining
3 whether any portions are purely factual, administrative, or otherwise non-privileged, the City
4 has failed its duty to segregate. (PSOF ¶¶ 12, 16–17, 21.) The Court should order the production
5 of all non-privileged portions and require the City to justify, record by record, any redactions or
6 withholding.

7 **F. The City’s Affirmative Defenses Fail as a Matter of Law**

8 **1. “Substantial compliance” cannot cure the complete absence of a required public**
9 **vote or adequate agenda description**

10 Arizona courts have occasionally applied “substantial compliance” to minor technical
11 deviations from OML procedures, but they have refused to apply it when the core requirements
12 of notice, agenda, and public action are violated. See *Johnson*, 199 Ariz. at 569–70 ¶¶ 11–17
13 (board’s private decision to appeal violated OML; notice of appeal null and void).

14 Here, the City seeks to treat a November 13, 2024 blanket vote as “substantial
15 compliance” with the requirement that each executive session be authorized by a public vote of
16 the sitting quorum and preceded by an agenda reasonably describing the matters to be discussed.
17 A.R.S. §§ 38-431.02(I), 38-431.03(A).

18 This is not a minor defect; it is a structural failure to take the required legal action at the
19 required time and in the required manner. Substantial compliance cannot validate what the
20 statute does not permit.

21 **2. Mootness does not bar relief**

22 The City may argue that the January 28 and February 11, 2025 meetings have passed and
23 that any OML violations are therefore moot. Arizona courts have repeatedly rejected similar
24 arguments in OML cases, recognizing that violations are “capable of repetition yet evading
25 review” and that courts may grant declaratory and injunctive relief to prevent future violations.
26 *Fisher*, 185 Ariz. at 121–24; *Johnson*, 199 Ariz. at 570 ¶ 17 n.1; *Desert Mountain*, 566 P.3d at

1 340–42 ¶¶ 17–32.

2 Moreover, the PRL violations are ongoing: the City continues to withhold records
3 without a log or index, and its position would empower it to continue doing so indefinitely.

4 **G. Remedies**

5 Under A.R.S. § 38-431.05(A), “[a]ll legal action transacted by any public body during a
6 meeting held in violation of any provision of [the OML] is null and void unless ratified” as
7 provided by statute. Under § 38-431.07(A), any person affected by an OML violation may
8 commence an action in superior court to enforce the law, and the court may order that a meeting
9 be open to the public, nullify action taken, or “enter such orders as are necessary” to ensure
10 compliance.

11 Under A.R.S. §§ 39-121.01 and 39-121.02, the Court may order the prompt production of
12 wrongfully withheld public records and may award attorneys’ fees and legal costs when a public
13 body wrongfully denies access.

14 Given the undisputed facts and the legal analysis above, appropriate remedies include:

- 15 1. Declaratory relief that the November 13, 2024 blanket vote cannot satisfy § 38-
16 431.03(A) for executive sessions held on January 28 and February 11, 2025, or any
17 other later date without a contemporaneous public vote.
- 18 2. Declaratory relief that describing an executive-session item solely as “Community
19 Citizen Comment” with a citation to § 38-431.03(A)(3) fails to satisfy § 38-431.02(I)
20 and the OML’s notice and agenda requirements.
- 21 3. Declaratory relief that the City’s inconsistent invocation of “legal advice” and
22 “legislative privilege” violates the OML’s limitations on executive sessions and
23 cannot justify blanket nondisclosure of all executive-session records.
- 24 4. An order directing the City to produce all executive-session minutes, notes, materials,
25 and related records for the January 28 and February 11, 2025 meetings, subject only
26

1 to properly supported, record-specific claims of attorney-client privilege or work
2 product, with non-privileged portions segregated and produced.

- 3 5. An order requiring the City, within a time specified by the Court, to:
- 4 • provide a detailed privilege log or index describing each withheld record or
5 portion thereof, the date, author, recipient(s), general subject matter, and specific
6 privilege claimed; and
 - 7 • submit contested records to the Court for in camera review as necessary to resolve
8 disputes.
- 9 6. Prospective relief enjoining the City from relying on blanket “pre-authorization” votes
10 to satisfy § 38-431.03(A) and from using agenda descriptions that fail to identify any
11 subject matter for executive sessions.
- 12 7. Costs and fees, including Plaintiff’s taxable costs and, to the extent permitted by law,
13 reasonable attorneys’ fees incurred or to be incurred in enforcing the OML and PRL,
14 pursuant to A.R.S. § 38-431.07(A) and § 39-121.02(B).
- 15 8. Such other and further relief as the Court deems just and proper.

16 Prospective relief enjoining the City from relying on blanket “pre-authorization” votes to satisfy
17 § 38-431.03(A) and from using agenda descriptions that fail to identify any subject matter for
18 executive sessions.

19 CONCLUSION

20 The material facts in this case are not in dispute and are established largely by the City’s
21 own filings. The legal questions are purely statutory and are controlled by the OML, PRL, and
22 the Arizona appellate decisions discussed above.

23 Under those authorities, the November 13, 2024 blanket vote, the “Community Citizen
24 Comment” agenda language, and the City’s refusal to log or justify its privilege assertions are
25 unlawful. Plaintiff is entitled to summary judgment as a matter of law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RESPECTFULLY SUBMITTED this 1st day of December 2025.

/s/ Jeremy Thacker
Jeremy Thacker
Plaintiff Pro Se

EXHIBIT A

*Phoenix City Council Formal Meeting Agenda for November 13, 2024
(Agenda Item No. 21)*

City of Phoenix

*Meeting Location:
City Council Chambers
200 W. Jefferson St.
Phoenix, Arizona 85003*



City of Phoenix

Agenda

Wednesday, November 13, 2024

2:30 PM

phoenix.gov

City Council Formal Meeting

*****REVISED November 12, 2024***
Request to Continue: 74; Items with
Additional Information Added: 75, 77-79**

City Council Formal Meeting



City of Phoenix

Report

Agenda Date: 11/13/2024, **Item No.** 21

Request for City Council to Call to Meet in Executive Session on Specific Dates January through December 2025 - Citywide

Request for the City Council to call meetings for the purpose of holding an Executive Session pursuant to Arizona Revised Statute Section 38-431.03.A, on the following dates at noon in the Central Conference Room, on the 12th Floor of Phoenix City Hall, located at 200 W. Washington Street:

- January 14
- January 28
- February 11
- February 25
- March 18
- April 15
- April 29
- May 6
- June 10
- July 1
- September 9
- September 23
- October 7
- October 28
- November 4
- November 25
- December 9

Public Outreach

The Notice and Agenda for these Executive Sessions will be posted no later than 24 hours before each scheduled meeting.

Responsible Department

This item is submitted by City Manager Jeffrey Barton and the Law Department.

EXHIBIT B

Phoenix City Council Executive Session Agenda for January 28, 2025

NOTICE OF MEETING
PHOENIX CITY COUNCIL EXECUTIVE SESSION
January 28, 2025

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **PHOENIX CITY COUNCIL** and to the general public that the **PHOENIX CITY COUNCIL** will meet in Executive Session on **January 28, 2025 at Noon located in the Central Conference Room, 12th Floor, Phoenix City Hall, 200 West Washington, Phoenix, Arizona**, for the purposes of discussion or consultation regarding the items listed on the agenda, all as authorized by A.R.S. §38-431.03, A.1 through A.7.

AGENDA

1.	Discussion and consultation for legal advice re: Dallas Sauer and Trisha Ford , RM # 23-0593-001 and 002, A.R.S. §38-431.03 A.3 and A.4
2.	Discussion and consultation for legal advice re: Phoenix Proposed Tax Increase , A.R.S. §38-431.03 A.3 and A.4
3.	Discussion and consultation for legal advice re: Federal Directives on Immigration and DEI , A.R.S. §38-431.03 A.3
4.	Discussion and consultation for legal advice re: Oct. 17, 2020 Investigation Status , A.R.S. §38-431.03 A.3
5.	Discussion and consultation for legal advice re: Camping and Trespass Enforcement , A.R.S. §38-431.03 A.3
6.	Discussion and consultation for legal advice re: Claim Settlement Authority Limits , A.R.S. §38-431.03 A.3
7.	Discussion and consultation for legal advice re: Community Citizen Comment , A.R.S. §38-431.03 A.3

For further information, please call Dava Hall, Law Department at 602-262-4456. For reasonable accommodations, call Stephanie Mortensen 602-262-7069 (voice) or dial 7-1-1 (TRS), as early as possible to coordinate needed arrangements.

EXHIBIT C

Phoenix City Council Executive Session Agenda for February 11, 2025

**NOTICE OF MEETING
PHOENIX CITY COUNCIL EXECUTIVE SESSION
February 11, 2025**

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **PHOENIX CITY COUNCIL** and to the general public that the **PHOENIX CITY COUNCIL** will meet in Executive Session on **February 11, 2025 at Noon located in the Central Conference Room, 12th Floor, Phoenix City Hall, 200 West Washington, Phoenix, Arizona**, for the purposes of discussion or consultation regarding the items listed on the agenda, all as authorized by A.R.S. §38-431.03, A.1 through A.7.

AGENDA

1.	Discussion and consultation for legal advice re: Carla Truman , RM # 23-0723, A.R.S. §38-431.03 A.3 and A.4
2.	Discussion and consultation for legal advice re: <i>State of New York et al. v Trump, et al. Amicus Brief</i> , A.R.S. §38-431.03 A.3 and A.4
3.	Discussion and consultation for legal advice re: Claim Settlement Authority Limits , A.R.S. §38-431.03 A.3
4.	Discussion and consultation for legal advice re: Community Citizen Comment , A.R.S. §38-431.03 A.3
5.	Discussion and consultation for legal advice re: Camping and Trespass Enforcement , A.R.S. §38-431.03 A.3

For further information, please call Dava Hall, Law Department at 602-262-4456. For reasonable accommodations, call Stephanie Mortensen 602-262-7069 (voice) or dial 7-1-1 (TRS), as early as possible to coordinate needed arrangements.

EXHIBIT D

Plaintiff's Public Records Request submitted to the City of Phoenix on May 19, 2025



Jeremy Thacker <jeremythacker@gmail.com>

[Records Center] Public Records Request :: R021635-041125

1 message

CityOfPhoenixAZ Support <cityofphoenixaz@govqa.us>
To: "jeremythacker@gmail.com" <jeremythacker@gmail.com>

Mon, May 19, 2025 at 9:53 AM

--- Please respond above this line ---



RE: PUBLIC RECORDS REQUEST of April 11, 2025, Reference # R021635-041125.

Dear Jeremy Thacker,

The City of Phoenix received your public records request, dated April 11, 2025, for the following information:

“Pursuant to the Arizona Public Records Law, A.R.S. § 39-121 et seq., I respectfully request access to and copies of all records related to the March 26, 2025 meeting of the City of Phoenix Judicial Selection Advisory Board. Specifically, I request the following:

- 1. Official minutes of the March 26, 2025 meeting (draft or approved);**
- 2. Video recording of the meeting, if available;**
- 3. Audio recording of the meeting, if available;**
- 4. Any written materials or presentations distributed to board members or attendees during the meeting;**
- 5. A copy of the meeting agenda and any accompanying attachments.**

If any portion of these records is exempt from disclosure, please provide the specific legal justification for the redaction or withholding pursuant to A.R.S. § 39-121.01(D)(2), and release all reasonably segregable portions of the records.

I prefer to receive the records electronically via email or secure download link if available. Please confirm receipt of this request and advise if there are any fees associated with processing it.

Thank you for your attention to this matter. I look forward to your prompt response in accordance with Arizona’s statutory timelines.

**Sincerely,
Jeremy Thacker”**

The City has located responsive records to your request. Please log in to the Public Records Center at the following link to retrieve the documents. This completes your request.

[Public Records Request - R021635-041125](#)

Sincerely,

Phoenix Communications Office

To monitor the progress or update this request please log into the [Public Records Center](#)



EXHIBIT E

City of Phoenix's response to Plaintiff's Public Records Request, dated July 9, 2025

[Records Center] Public Records Request :: R022550-050925

CityOfPhoenixAZ Support <cityofphoenixaz@govqa.us>
To: jeremythacker@gmail.com <jeremythacker@gmail.com>

Wed, Jul 9 at 4:44 PM

--- Please respond above this line ---



RE: PUBLIC RECORDS REQUEST of May 09, 2025, Reference # R022550-050925

Dear Jeremy Thacker,

The City of Phoenix received your public records request, dated May 09, 2025, for the following information:

"Public Records Request – Executive Session Agenda Item #7 (January 28, 2025) and #4 (February 11, 2025)

Submitted via Phoenix Public Records Request Portal

Pursuant to A.R.S. § 39-121 et seq., I respectfully request access to and copies of the following public records related to the Phoenix City Council's Executive Sessions held on January 28, 2025 specifically Agenda Item #7 and February 11, 2025, specifically Agenda Item #4, titled:

"Discussion and consultation for legal advice re: Community Citizen Comment, A.R.S. § 38-431.03(A)(3)"

Records Requested:

- 1. The underlying "Community Citizen Comment(s)" that served as the basis for the legal advice discussed in executive session. This includes, but is not limited to:**
 - Written submissions,
 - Audio or video recordings,
 - Transcripts, summaries, or internal write-ups of oral citizen comments from recent meetings.
- 2. Any communications or documentation referencing the legal risk or issue arising from the identified citizen comment(s), including:**
 - Internal emails, memos, or briefings among City Council members, City Attorney's Office, and City Manager's Office;
 - Legal analyses, claims of liability, or staff summaries explaining the legal nature of the issue that justified invoking A.R.S. § 38-431.03(A)(3).
- 3. Executive Session minutes for both executive sessions. If access is denied under A.R.S. § 38-431.03(B), please cite the specific statutory exemption relied upon and provide a privilege log or summary.**
- 4. Any City Attorney memorandum or certification affirming that the discussion under Agenda Item #4 was confined to legal advice and fell within the permissible scope of A.R.S. § 38-431.03(A)(3).**
- 5. All records and communications related to the preparation or review of Agenda Items #7 and #4, including:**
 - Draft agenda versions,

• Notes or comments from the City Clerk's or City Attorney's offices regarding wording, subject matter, or scope.

Date Range: January 1, 2025 – February 29, 2025

Preferred Format: PDF or native electronic format

Delivery Method: Email or electronic download

If any portion of this request is denied, please provide a written explanation citing the specific legal authority for each withheld record and whether redaction, rather than full withholding, is possible.

Thank you for your assistance in this matter!"

The City has reviewed its files and has determined there are no responsive documents to your request except for those protected under attorney client privilege or work product privilege.

Sincerely,

Phoenix Communications Office

To monitor the progress or update this request please log into the [Public Records Center](#)



EXHIBIT F

Plaintiff's demand letter to the City of Phoenix, dated July 11, 2025

Jeremy Thacker
4520 N 2nd Ave
Phoenix, AZ 85013
(480) 410-1923
jeremythacker@gmail.com

July 11, 2025

RE: IMMEDIATE CURE DEMAND – Public Records Request Reference # R022550-050925
(Dated May 09, 2025)

Dear Phoenix Communications Office:

This letter serves as a formal demand for the City of Phoenix to immediately cure the legally insufficient response to my public records request, Reference # R022550-052550, submitted on May 09, 2025. My request sought specific records related to the Phoenix City Council's Executive Sessions held on January 28, 2025 (Agenda Item #7) and February 11, 2025 (Agenda Item #4), both titled "Discussion and consultation for legal advice re: Community Citizen Comment, A.R.S. § 38-431.03(A)(3)."

Your response, stating "The City has reviewed its files and has determined there are no responsive documents to your request except for those protected under attorney client privilege or work product privilege," is fundamentally flawed and fails to comply with Arizona Public Records Law (A.R.S. § 39-121 et seq.).

Specifically, your response is deficient for the following reasons:

1. **Lack of Specificity and Legal Justification (A.R.S. § 39-121.01(D)):** Arizona law explicitly requires that any denial of a public records request be supported by a **specific statutory exemption**, and the public body must provide a **written explanation citing the legal authority for each withheld record**. Your generic claim of "attorney client privilege or work product privilege" is a conclusory statement and not a specific legal justification that explains *how* each requested category of documents falls under these privileges. This blanket assertion provides no basis for meaningful review.
2. **Failure to Provide a Privilege Log as Best Practice for Transparency:** While A.R.S. § 39-121.01(D)(2) explicitly mandates privilege logs for state agencies, providing such a log is widely recognized as a **crucial best practice for all public bodies**, including municipalities like the City of Phoenix, to ensure transparency and allow requesters to assess the legitimacy of claimed exemptions. Your response completely omits this essential component, making it impossible to meaningfully review your assertions of privilege. Without a detailed privilege log, describing each withheld document by date, author, recipients, and the specific basis for the privilege asserted, your denial is unreviewable and undermines the public's right to challenge improper withholdings.
3. **Contradictory Statement:** The statement "no responsive documents... except those protected under attorney client privilege or work product privilege" is inherently

contradictory. If documents exist that are purportedly protected, they are by definition "responsive." This phrasing appears to be an attempt to circumvent the City's obligation to provide a privilege log and specific justification for withholding.

4. **Ambiguity of "Community Citizen Comment" and Burden of Justification:** While the phrase "Community Citizen Comment" most commonly implies a specific comment made by a citizen at a public meeting, providing the basis for my initial request, it is possible it refers to something else. Unfortunately, these three generic words, without further context or explanation, are insufficient to determine the true subject matter or to assess the legitimacy of holding the discussion in executive session under A.R.S. § 38-431.03(A)(3) or the subsequent claim of privilege over related records. The Arizona Open Meeting Law (A.R.S. § 38-431.02(H)) requires agenda items to be "sufficiently specific to apprise the public of the matters to be discussed." Vague or overly broad agenda descriptions, such as "Citizen's Legal Action" or "Generic Community Issues" would clearly violate this requirement. To properly evaluate the City's claims of privilege and ensure compliance with OML, my first demand regarding this item is a clear and specific explanation of what "Community Citizen Comment" refers to in the context of both the January 28, 2025 (Item #7) and February 11, 2025 (Item #4) Executive Sessions. Without this necessary clarification, the public is left entirely in the dark as to the nature of the City Council's discussion, making any challenge to the executive session or records denial impossible.

Please note, this request is for a non-commercial purpose.

DEMAND FOR IMMEDIATE COMPLIANCE:

Pursuant to A.R.S. § 39-121.01(D), I demand an immediate, specific explanation of what "Community Citizen Comment" refers to in the context of the executive sessions on January 28, 2025 (Item #7) and February 11, 2025 (Item #4). **This explanation must be provided by the close of business on July 15, 2025.** Failure to provide this minimum level of clarity within this extremely tight timeframe will be considered a continued act of obstruction and will result in my immediate escalation of this matter to appropriate external oversight bodies and public forums, without further notice.

Furthermore, I demand that the City of Phoenix cure all aforementioned deficiencies and provide a complete, revised, and legally compliant response to my public records request within **seven (7) business days** of the date of this letter (by **July 22, 2025**). This response must include:

- A **specific statutory exemption** for each record or category of records withheld, and a detailed explanation of how it applies.
- A **detailed privilege log** for all withheld documents, describing each document by type, date, author, recipients, and the specific legal basis for the privilege asserted (e.g.,

attorney-client privilege, work product). This log is requested as a standard practice for transparency and to allow proper assessment of any claimed exemptions.

- A commitment to **redact any exempt or privileged information while disclosing all remaining segregable, non-exempt public portions** of documents, rather than withholding entire documents. Any such redactions should be clearly indicated.
- All non-privileged responsive documents, particularly any underlying "Community Citizen Comment(s)" that are not subject to a legitimate privilege, in their requested formats.

Be advised that failure to provide a legally sufficient response, including the immediate explanation and the full cure within the stipulated timeframes, will compel me to pursue all available legal remedies, including but not limited to, filing a new legal action to compel disclosure of public records and/or addressing Open Meeting Law violations, and seeking an award of attorney's fees and costs as provided by law.

Thank you for your prompt attention to this matter.

Sincerely,

Jeremy Thacker

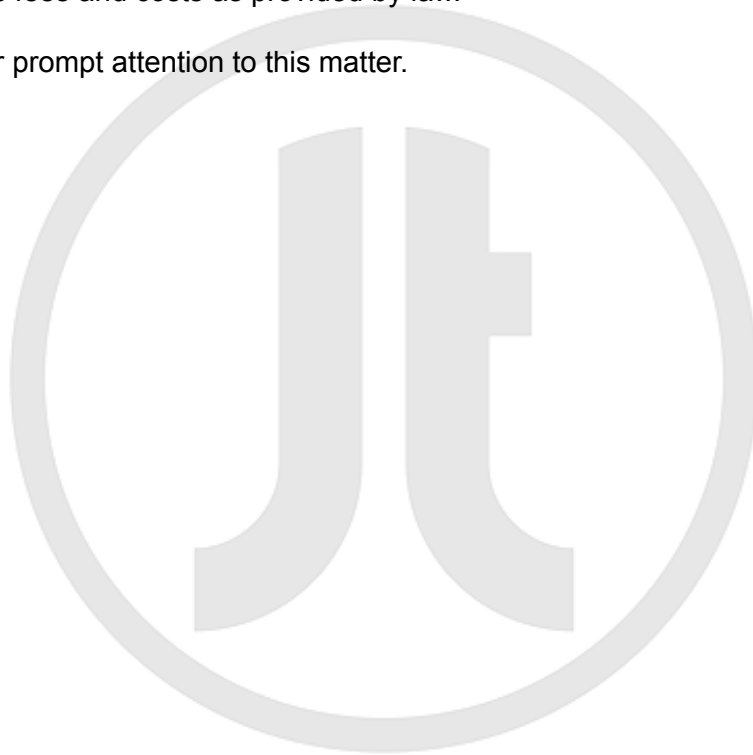


EXHIBIT 7

Court's Minute Entry Requiring Affidavit and In-Camera Review, Dated October 22, 2025.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-026278

10/22/2025

HONORABLE SCOTT MINDER

CLERK OF THE COURT
M. R. Diaz
Deputy

JEREMY THACKER

JEREMY THACKER
4520 N 2ND AVE
PHOENIX AZ 85013

v.

CITY OF PHOENIX

BILL C SOLOMON

JUDGE MINDER

ORDER REGARDING MOTION FOR ORDER TO SHOW CAUSE

On September 9, 2025, Mr. Thacker filed his *Motion for Order to Show Cause*. The Court conferred with the parties a few days later and discussed the expected schedule for this case. Of note, the parties agreed that the case would be resolved through (1) dispositive motions which were scheduled to be filed on December 1, 2025, and/or (2) an *in camera* review of the various meeting materials as requested in the *Motion for Order to Show Cause*. The Court set the December date for dispositive motions specifically to permit briefing and resolution on the *Motion for Order to Show Cause*.

The Court has reviewed the show cause motion, the response, and the reply. Before the Court may consider the relief requested, Mr. Thacker must comply with the procedural requirements. Namely, Rule 7(c) of the Ariz. R. P. Spec. Actions permits a request for an order to show cause “as provided in Rule 7.3 of the Rules of Civil Procedure.” Rule 7.3 requires Mr. Thacker to support his argument with an affidavit. No affidavit has been provided. Or at least this Court has not found one.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-026278

10/22/2025

The Court will allow Mr. Thacker an opportunity to provide an affidavit and a brief period for the City to supplement its response in case the affidavit addresses new items. After that, the Court envisions doing exactly what the parties discussed at that September 15, 2025, conference: receiving the meeting materials (complete, unredacted minutes, along with any recordings, and any materials related to those meetings that were withheld from Mr. Thacker's public records request on the ground of privilege) for an *in camera* review. Given the short time before the deadline for dispositive motions, the Court believes that providing this expectation now will permit the City to gather the appropriate materials so as to avoid further delays.

IT IS ORDERED that Mr. Thacker shall comply with the Ariz. R. Civ. P. 7.3 requirement for an affidavit by **October 31, 2025**.

IT IS FURTHER ORDERED that, should Mr. Thacker provide his affidavit, and should that affidavit raise issues not previously described in the September 9 motion, the City shall have until **November 7, 2025**, to file any supplement to its brief.

IT IS FURTHER ORDERED that the City shall provide the requested items for *in camera* review no later than **November 14, 2025**, unless Mr. Thacker submits no affidavit, or the Court orders otherwise. The requested items are: (1) complete, unredacted minutes of the City Council executive sessions held on **January 28, 2025**, and **February 11, 2025**, (2) any recordings (video or audio) of those two executive sessions, and (3) any materials related to those two executive sessions that were withheld from Mr. Thacker's public records request on the ground of privilege.

EXHIBIT 8

*Defendant's Notice of Lodging Materials for In-Camera Review, Dated
November 13, 2025.*

EXHIBIT 9

Phoenix City Council Executive Session Agenda for July 9, 2025

**NOTICE OF MEETING
PHOENIX CITY COUNCIL
SPECIAL MEETING
NOTICE AND AGENDA**

Pursuant to Arizona Revised Statutes, Section 38-431.02, notice is hereby given to the members of the **PHOENIX CITY COUNCIL** and to the general public, that the **PHOENIX CITY COUNCIL** will hold a special meeting open to the public on **July 29, 2025, at 12:00 p.m. located in the 12 Central Conference Room, 12th Floor, Phoenix City Hall, 200 West Washington Street, Phoenix, Arizona, 85003.**

In accordance with a request from the Mayor of the City of Phoenix, received and filed with the City Clerk on July 25, 2025, pursuant to Chapter IV, Section 20, of the Charter of the City of Phoenix, a Special Meeting of the Phoenix City Council is hereby called.

The July 29, 2025, Special Meeting will be held for the purpose of calling an Executive Session of the Phoenix City Council, to be held at the same time, for discussion and consultation. The agenda for the meeting is as follows:

Roll Call

Item 1 Vote to call for Executive Session.

If authorized by the majority of the members, the Executive Session will be held immediately after the vote and will not be open to the public.

Item 2 Executive Session - Agenda

Discussion and consultation for legal advice re: Federal Guidance for Public Benefits, A.R.S. §38-431.03 A.3 and A.4

An electronic copy of the agenda will also be available online at:

<https://www.phoenix.gov/cityclerk/publicmeetings/notices>

Adjourn

For further information, please call Dava Hall, Law Department at 602-262-4456.

For reasonable accommodations, call Stephanie Mortensen at 602-262-7069 (voice) or dial 7-1-1 (TRS), as early as possible to coordinate needed arrangements.

4935-6316-8344, v. 1

EXHIBIT 10

Declaration of Jeremy Thacker

1 Jeremy Thacker
2 4520 N 2nd Ave
3 Phoenix, AZ 85013
4 (480) 410-1923
5 jeremythacker@gmail.com
6 *Plaintiff Pro Se*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 JEREMY THACKER

10 Plaintiff Pro Se,

11 v.

12 CITY OF PHOENIX, a municipal
13 corporation,

14 Defendant.
15

Case No: CV2025-026278

**DECLARATION OF JEREMY
THACKER**

**IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

(Assigned to the Honorable Scott Minder)

16
17
18 1. I, Jeremy Thacker, declare:

19 2. I am the Plaintiff in this action. I am over eighteen years of age, reside in Phoenix,
20 Arizona, and am competent to testify to the matters stated in this declaration. I have personal
21 knowledge of the facts set forth below, and if called as a witness, I could and would testify
22 competently to them.

23 3. I have reviewed the agendas, correspondence, and court filings that are attached as
24 Exhibits 1 through 9 to Plaintiff's Separate Statement of Facts in Support of Motion for
25 Summary Judgment ("PSOF"). They are true and correct copies of the documents they purport
26 to be, obtained either from the City of Phoenix, from the public records posted on the City's

1 website, from filings in this case, or from my own correspondence.

2 **A. Public Records Requests and Responses**

3 4. In May 2025, I submitted a public records request to the City of Phoenix seeking
4 records relating to the Phoenix City Council executive sessions held on January 28 and February
5 11, 2025 under the "Community Citizen Comment" agenda item. My request sought, among
6 other things, minutes, notes, presentations, communications, and other records of those
7 executive sessions.

8 5. The City responded by email on July 9, 2025. In that email, the City stated that it had
9 reviewed its files and determined there were no responsive documents to my request except for
10 documents it asserted were protected by attorney-client privilege or work-product doctrine. The
11 City did not identify any specific record by date, author, or description, and it did not provide
12 any privilege log or index describing the withheld records.

13 6. On July 11, 2025, I sent a follow-up letter to the City objecting to its July 9 response.
14 In that letter, I asked the City to identify the specific statutory bases for withholding, to provide
15 a privilege log or index describing the records and the claimed privileges, and to segregate and
16 produce any non-privileged portions of the records.

17 7. After my July 11, 2025 letter, the City did not send me any further written response
18 substantively addressing my objections. The City has never provided me with a privilege log or
19 index identifying the records it withheld in response to my request for the January 28 and
20 February 11, 2025 executive session materials.

21 8. The City has also never produced to me any redacted or segregated versions of the
22 executive-session records that omit allegedly privileged content while disclosing non-privileged
23 material. To my knowledge, the City's position has remained that all responsive records are
24 withheld in their entirety on privilege grounds.

25 **B. Council Agendas and Procedures**

26 9. I obtained and reviewed the City Council Formal Meeting agenda for November 13,

1 2024, which is attached as one of the exhibits to my PSOF. On its face, that agenda shows that
2 the Council approved a list of 2025 executive-session dates and times in a single item, without
3 identifying the subject matter of any particular executive session to be held on those dates.

4 10. I obtained and reviewed the City Council Executive Session agendas for January 28,
5 2025 and February 11, 2025, which are attached as exhibits to my PSOF. On their face, those
6 agendas include an executive-session item described as "Discussion and consultation for legal
7 advice re: Community Citizen Comment, A.R.S. β 38-431.03(A)(3)" (or substantially similar
8 wording).

9 11. The January 28, 2025 and February 11, 2025 agendas I reviewed do not include any
10 separate public-meeting item for a vote to enter executive session on the "Community Citizen
11 Comment" topic immediately before the executive session. The only place that "Community
12 Citizen Comment" appears on those agendas is as an item listed under the executive-session
13 portion of the agenda.

14 12. I have searched the City of Phoenix's publicly available agendas and minutes for
15 January 28, 2025 and February 11, 2025. I have not found any agenda item or public minutes
16 showing that the Council discussed the "Community Citizen Comment" subject or took any
17 public vote on that matter after returning from the executive sessions on those dates.

18 13. I obtained and reviewed the notice and agenda for a Special Meeting of the Phoenix
19 City Council held on July 29, 2025, which is attached as Exhibit 9 to my PSOF. On its face, that
20 notice and agenda show that the Council called a special public meeting for the purpose of
21 voting to enter an executive session to be held at the same time and location, and that the agenda
22 contemplates a public vote to go into executive session at that meeting.

23 14. The July 29, 2025 notice and agenda I reviewed demonstrate that the City of Phoenix
24 can and does call a public meeting on the same day as an executive session and take a
25 contemporaneous public vote to enter that executive session.

26 **C. Court Orders and Lodged Materials**

1 15. I received and reviewed the Court's October 22, 2025 minute entry regarding my
2 Motion for Order to Show Cause. In that order, the Court directed that the City lodge complete,
3 unredacted minutes of the January 28 and February 11, 2025 executive sessions, along with any
4 materials related to those meetings that were withheld from my public records request on the
5 grounds of privilege, for in camera review.

6 16. I also received and reviewed the City's November 13, 2025 Notice of Lodging. In that
7 notice, the City represented to the Court that it had lodged (a) the complete, unredacted minutes
8 for the January 28 and February 11, 2025 executive sessions, and (b) all materials related to
9 those two executive sessions that had been withheld in response to my public records request
10 "on the grounds of the attorney-client and legislative privileges." The City further stated that no
11 audio or video recordings of those executive sessions exist.

12 17. Despite lodging materials with the Court for in camera review, the City has never
13 provided me with any privilege log or index describing the documents it lodged, the dates or
14 authors of those documents, or the specific privileges it claims for each record.

15 **D. General**

16 18. All references in this declaration to City agendas, notices, emails, letters, and court
17 orders are based on documents either produced to me by the City, posted by the City on its
18 official website, or filed in this case, and I have attached true and correct copies of those
19 documents as Exhibits 1 through 9 to my PSOF.

20 19. I declare under penalty of perjury that the foregoing is true and correct.

21
22 EXECUTED on this 1st day of December, 2025, in Phoenix, Arizona.

23
24
25 
26 _____
 Jeremy Thacker

EXHIBIT 11

Defendant's Answer to First Amended Complaint

1 OFFICE OF THE PHOENIX CITY ATTORNEY
JULIE M. KRIEGH, City Attorney, State Bar No. 021175
2 200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
3 Telephone (602) 262-6761
law.civil.minute.entries@phoenix.gov

4 Bill C. Solomon, Chief Counsel, State Bar No. 020012
5 Les S. Tuskai, Assistant Chief Counsel, State Bar No. 012582
Attorneys for Defendant City of Phoenix

6
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 Jeremy Thacker,

10 *Plaintiff Pro Se,*

11 v.

12 CITY OF PHOENIX, a municipal
corporation,

13 *Defendant.*

Case No. CV2025-026278

**DEFENDANT CITY OF PHOENIX'S
ANSWER TO PLAINTIFF'S [REDLINED]
FIRST AMENDED COMPLAINT FOR
SPECIAL ACTION (A.R.S. § 38-431.07)**

(Assigned to the Honorable Scott Minder)

15 Defendant City of Phoenix (“Phoenix” or the “City”) for its Answer to Plaintiff’s Redlined
16 First Amended Complaint for Special Action (A.R.S. § 38-431.07) (“FAC”) admits, denies,
17 and asserts as follows:¹

18 **INTRODUCTION**

19 1. Phoenix admits this Court has jurisdiction over the subject matter of this suit, the
20 parties, and that venue is proper.

21 2. Phoenix admits that Plaintiff seeks declaratory, injunctive, and mandamus relief against
22 the City. Phoenix denies it has violated Arizona’s Open Meeting Law (“OML”), *A.R.S. § 38-*
23 *431 et seq.* Phoenix denies the remaining allegations in Paragraph 2.

24
25 ¹ For an unknown reason, Plaintiff never filed a “clean” version of the FAC . To expedite this
26 proceeding, the City hereby answers the redlined FAC that appears on this Court’s docket
with an unsigned verification.

1 3. Phoenix lack sufficient information to form a belief as to the motivation for Plaintiff’s
2 filing of the FAC and, therefore, denies the allegations in Paragraph 3.

3 4. Phoenix lacks sufficient information to form a belief as to the truth of the matters
4 alleged in Paragraph 4 of Plaintiff’s FAC and, therefore, denies those allegations.

5 5. Phoenix lacks sufficient information to form a belief as to the truth of the matters
6 alleged in Paragraph 5 of Plaintiff’s FAC and, therefore, denies those allegations.

7 **PARTIES**

8 6. Phoenix admits that Plaintiff is a resident of the City of Phoenix, Maricopa County,
9 Arizona. Because Phoenix lacks sufficient information to form a belief as to the truth of the
10 remaining allegations in Paragraph 6, it denies them.

11 7. Phoenix admits it is a chartered city under the laws of the State of Arizona that is subject
12 to Arizona’s OML.

13 **JURISDICTION AND VENUE**

14 8. Phoenix admits this Court has jurisdiction over this matter.

15 9. Phoenix admits that venue is proper.

16 **FACTUAL ALLEGATIONS**

17 10. Phoenix admits that on November 13, 2024, the Phoenix City Council (“City Council”),
18 on a public majority vote of its members constituting a quorum, approved Agenda Item 21 to
19 schedule 17 specific dates during the 2025 calendar year on which to hold Executive Sessions,
20 pursuant to A.R.S. § 38-431.03(A). Phoenix admits the specific agendas, topics, or an
21 indication of the subject matter for those meetings was not provided at the time the meetings
22 were scheduled. Phoenix avers that Agenda Item No. 21 informed the public the “Notice and
23 Agenda for these Executive Sessions will be posted no later than 24 hours before each
24 scheduled meeting.” Because public notices were subsequently posted in a timely manner
25 with the agendas for each of those meetings, in accordance with A.R.S. § 38-431.02 (G) and
26

1 (I), Phoenix denies the public’s right to meaningful notice regarding the Council’s future
2 executive sessions was undermined.

3 11. Phoenix admits that Agenda Item 21 contained a request “for the City Council to call
4 meetings for the purpose of holding an Executive Session pursuant to Arizona Revised Statute
5 Section 38-431.03A.” Phoenix admits that the agenda item listed 17 meetings dates. Phoenix
6 denies the remaining allegations in Paragraph 11.

7 12. Phoenix admits that the City Council met in executive session on January 28, 2025, and
8 that agenda item number 7 for that meeting was listed as “Discussion and consultation for legal
9 advice re: Community Citizen Comment, A.R.S. § 38-431.03 A.3.” Phoenix denies the
10 description of this agenda item was vague. Instead, Phoenix avers the description of this
11 agenda item fully complied with A.R.S. § 38-431.02(I), which provides that “notice of
12 executive sessions shall be required to include only a general description of the matters to be
13 considered.” Phoenix further avers the description of the agenda item provided “more than
14 just a recital of the statutory provisions authorizing the executive session” and did not need to
15 “contain information that would defeat the purpose of the executive session ... or compromise
16 the attorney-client privilege,” all in accordance with A.R.S. § 38-431.02(I). Phoenix admits
17 that neither a public meeting nor a vote immediately preceded the executive session.

18 13. Phoenix admits that the City Council met in executive session on February 11, 2025,
19 and that agenda item number 4 for that meeting was listed as “Discussion and consultation for
20 legal advice re: Community Citizen Comment, A.R.S. § 38-431.03 A.3.” Phoenix denies the
21 description of this agenda item was vague. Instead, Phoenix avers the description of this
22 agenda item fully complied with A.R.S. § 38-431.02(I), which provides that “notice of
23 executive sessions shall be required to include only a general description of the matters to be
24 considered.” Phoenix further avers the description of the agenda item provided “more than
25 just a recital of the statutory provisions authorizing the executive session” and did not need to
26 “contain information that would defeat the purpose of the executive session ... or compromise

1 the attorney-client privilege,” all in accordance with A.R.S. § 38-431.02(I). Phoenix admits
2 that neither a public meeting nor a vote immediately preceded the executive session. Phoenix
3 admits that Councilmember Anna Hernandez took office in April 2025. Phoenix admits
4 Councilmember Hernandez was not a member of the City Council when the City Council
5 approved Agenda Item 21 on November 13, 2024, to schedule 17 specific dates to hold
6 Executive Sessions during the 2025 calendar year, pursuant to A.R.S. § 38-431.03(A).
7 Phoenix admits that Councilmember Hernandez was not a member of the City Council when
8 the Council met in Executive Sessions on January 28, 2025, and February 11, 2025. Phoenix
9 admits that Councilmember Hernandez has met in Executive Session meeting scheduled in
10 2025, and that she may attend additional Executive Sessions this year. Phoenix denies that its
11 scheduling of executive session dates was problematic.

12 14. Phoenix avers that the Special Meeting held on July 29, 2025, was not one of the 17
13 Executive Session dates listed on Agenda Item 21 that the Council approved at the November
14 13, 2024, meeting. Instead, Phoenix avers that Exhibit I contains notice and an agenda for a
15 Special Meeting wherein the City Council would meet “for the purpose of calling an Executive
16 Session of the Phoenix City Council, to be held at the same time, for discussion and
17 consultation.” Phoenix avers the notice further provided the Council would first “Vote to call
18 for Executive Session,” then “[i]f authorized by the majority of the members, the Executive
19 Session will be held immediately after the vote and will not be open to the public.” Thus,
20 Phoenix denies that Councilmember Hernandez was compelled to participate in a session
21 without a contemporaneous public vote for its specific authorization. Phoenix denies there
22 was a procedural deficiency in how the Special Meeting on July 29, 2025, was noticed or held.
23 Phoenix denies that it employs any practice that denies Councilmember Hernandez or any new
24 councilmember a clear mechanism for protesting a procedural deficiency on the public record
25 prior to participation. Phoenix denies it employs any practice that undermines the ability of
26

1 all current councilmembers to ensure real-time OML compliance. Phoenix denies it employs
2 any practice to expose councilmembers to potential liability under A.R.S. § 38-431.07(A).

3 15. Phoenix denies the allegations contained in Paragraph 15.

4 16. Phoenix denies that its agenda descriptions are vague. Phoenix denies there is any
5 requirement in Arizona’s OML that it provide information on the duration of Executive
6 Session meetings. Phoenix lacks sufficient information to form an opinion as whether Plaintiff
7 attempted to attend a public meeting to object to items on an agenda but was told that he would
8 not be able to even sit outside the room/area where the Executive Session was held and,
9 therefore, denies those allegations. Phoenix denies the remaining allegations in Paragraph 16.

10 17. Phoenix admits that on May 19, 2025, Plaintiff submitted a public records request
11 (“PRR”) for records related to Agenda Item #7 of the January 28, 2025, Executive Session and
12 for records related to Agenda Item #4 of the February 11, 2025, Executive Session. Phoenix
13 further admits that both items were titled “Discussion and consultation for legal advice re:
14 Community Citizen Comment, A.R.S. § 38-431.03 A.3.”. Phoenix further admits that it
15 responded to Plaintiff’s PRR on July 9, 2025, stating that it had “reviewed its files and has
16 determined there are no responsive documents to your request except for those protected under
17 attorney client or work product privilege.”

18 18. Phoenix admits the response provided no specific statutory exemption or privilege log.
19 Phoenix avers Arizona law does not require it to provide a specific statutory exemption or
20 privilege log. Phoenix denies the remaining allegations contained in Paragraph 18.

21 19. Phoenix denies its reply was deficient. Phoenix admits Plaintiff issued a letter dated
22 July 11, 2025. Phoenix denies the remaining allegations contained in Paragraph 19.

23 20. Phoenix denies the allegations contained in Paragraph 20.

24 21. Upon information and belief, in 2023, Plaintiff filed complaints with the Attorney
25 General’s Office (“AZAG”) asserting claims nearly identical to the claims he asserts here,
26 namely that “the City Council cannot approve more than one executive session in a single vote

1 and the City Council must approve an agenda containing the items to be discussed in executive
2 session before that session can be held.” *See* FAC, Exhibit G, p. 1. Phoenix avers that the
3 complaints also took “issue with the January 10, January 24, and February 21, 2023 executive
4 sessions themselves, claiming that certain topics were insufficiently disclosed in the agenda
5 for that session and/or identify topics which do not qualify for an executive session.” *Id.* At
6 pp. 3-4. Phoenix admits that on November 2, 2023, the AZAG issued a letter finding no OML
7 violation in relation to the City Council’s approval and notice of its 2023 executive sessions
8 or with respect to the substance, posting, or retention of the January 10, January 24 or February,
9 2023, executive session agendas.

10 22. Phoenix admits that after the AZAG found the Phoenix City Council did not violate the
11 OML, Plaintiff sent a letter dated November 3, 2023, arguing that the Disposition Letter’s
12 conclusions were contradicted by the Arizona Attorney General Handbook, specifically
13 regarding the requirement for a public vote immediately prior to entering executive session.
14 Given the AZAG’s findings, and the apparent lack of response to Plaintiff’s November 3,
15 2023, letter, Phoenix denies there is an ongoing dispute regarding the City’s OML compliance.

16 23. Phoenix admits the City Council noticed a Special Meeting for July 29, 2025, “for the
17 purpose of calling an Executive Session of the Phoenix City Council, to be held at the same
18 time, for discussion and consultation.” Phoenix avers the notice further provided the Council
19 would first “Vote to call for Executive Session,” then “[i]f authorized by the majority of the
20 members, the Executive Session will be held immediately after the vote and will not be open
21 to the public.” Phoenix denies the remaining allegations in Paragraph 23.

22 24. Phoenix admits the allegations contained in Paragraph 24.

23 25. Phoenix admits Plaintiff filed a Supplemental OML Complaint in February 2025, in
24 which Plaintiff made the allegations set forth in Paragraph 25. Phoenix denies there is
25 evidence of intentional OML violations by the Phoenix Ethics Commission and City Staff
26 during the February 6, 2025, Special Meeting.

1 26. Phoenix admits that a member of the City of Phoenix Law Department stated a
2 preference “not to communicate directly” with Plaintiff because the Department “previously
3 tried that approach only to discover one of our attorneys being named and misquoted in a news
4 article which involved Mr. Thacker.” Phoenix denies the remaining allegations in Paragraph
5 26.

6 27. Phoenix admits that the AZAG stated, “Open Meeting Law Investigation #OML2025-
7 0014 City of Phoenix (Ethics Commission) was opened in response to your January 2025
8 Complaint.” Phoenix avers, however, that the AZAG also stated the “matter has been assigned
9 to an Attorney and you will be contacted once the investigation has begun.” Because Plaintiff
10 does not allege he has been contacted regarding the complaint, Phoenix avers that it appears a
11 number and an attorney were assigned to Plaintiff’s complaint, but no investigation has begun.
12 Phoenix denies the remaining allegations contained in Paragraph 27.

13 28. Phoenix admits Councilmember Anna Hernandez took office in April 2025 and was
14 not a councilmember when the City Council approved Agenda Item 21 on November 13, 2024,
15 thereby scheduling 17 Executive Session dates in 2025. Phoenix avers, however, that the
16 Special Meeting held on July 29, 2025, was not one of the 17 Executive Session dates listed
17 on Agenda Item 21. Instead, Phoenix avers that Exhibit I contains notice and an agenda for a
18 Special Meeting wherein the City Council would meet “for the purpose of calling an Executive
19 Session of the Phoenix City Council, to be held at the same time, for discussion and
20 consultation.” Phoenix avers the notice further provided the Council would first “Vote to call
21 for Executive Session,” then “[i]f authorized by the majority of the members, the Executive
22 Session will be held immediately after the vote and will not be open to the public.” Thus,
23 Phoenix denies that any aspect of the July 29, 2025, Special Meeting and Executive Session
24 transforms the hypothetical impact on new councilmembers into an actual impact. Phoenix
25 denies that Councilmember Hernandez was compelled to participate in a session without a
26 contemporaneous public vote for its specific authorization. Instead, Phoenix avers, a public

1 vote to call for Executive Session immediately preceded the Executive Session on July 29,
2 2025. Phoenix denies there was a procedural deficiency in how the Special Meeting on July
3 29, 2025, was noticed or held. Phoenix denies that it employs any practice that denies any
4 councilmember a clear mechanism for protesting a procedural deficiency on the public record.

5 **COUNT 1: VIOLATIONS OF OPEN MEETING LAW**

6 29. Phoenix reasserts it answers to Paragraphs 1 through 28 of Plaintiff’s FAC as if fully
7 set forth herein.

8 30. Phoenix admits A.R.S. § 38-431.02(I) requires “only a general description of the
9 matters to be considered” in the notice of Executive Sessions. Phoenix denies the remaining
10 allegations contained in Paragraph 30.

11 31. Phoenix denies the allegations contained in Paragraph 31.

12 32. Phoenix denies the allegations contained in Paragraph 32.

13 33. Phoenix denies the allegations contained in Paragraph 33.

14 34. Phoenix lacks sufficient information to form a belief regarding the allegations contained
15 in Paragraph 34 and, therefore, denies them.

16 To the extent the remainder of Plaintiff’s FAC (**REQUEST FOR RELIEF** and
17 **Preservation of Additional Issues**) contains allegations, Phoenix denies each of them.

18 **DEFENSES**

19 Phoenix reasserts its answers to Paragraphs 1 through 34 of Plaintiff’s FAC as if fully set
20 forth herein.

21 Phoenix denies each and every allegation of Plaintiff’s FAC not heretofore expressly
22 admitted.

23 Phoenix asserts any and all affirmative defenses available to it under Arizona law.
24 Because affirmative defenses may subsequently come to light, Phoenix reserves the right to
25 amend its Answer to include these affirmative defenses as Arizona law provides.
26

1 WHEREFORE having answered Plaintiff's FAC, Phoenix asks that it be dismissed, that
2 Plaintiff take nothing thereby, and that the relief requested be denied. Further, Phoenix seeks
3 the following affirmative relief from the Court:

- 4 1. For an award of its taxable costs incurred in the defense of this suit.
- 5 2. For other relief the Court deems just and proper.

6 RESPECTFULLY SUBMITTED this 6th day of October, 2025.

7 OFFICE OF THE PHOENIX CITY ATTORNEY
8 JULIE M. KRIEGH, City Attorney

9 By: Les S. Tuskai
10 Bill C. Solomon
11 Chief Counsel
12 Les S. Tuskai
13 Assistant Chief Counsel
14 *Attorneys for Defendant City of Phoenix*

13 Original of the foregoing e-filed via
14 AZTurboCourt and served via email/mail this
15 6th day of October, 2025.

15 Jeremy Thacker
16 4520 North 2nd Avenue
17 Phoenix, Arizona 85013
18 jeremythacker@gmail.com
19 *Plaintiff Pro Se*

19 By: /s/ M. Elena Sandoval
20 4925-6722-6735, v. 3

EXHIBIT 12

Defendant's Motion for Summary Judgment

1 OFFICE OF THE PHOENIX CITY ATTORNEY
2 JULIE M. KRIEGH, City Attorney, State Bar No. 021175
3 200 West Washington, Suite 1300
4 Phoenix, Arizona 85003-1611
5 Telephone (602) 262-6761
6 law.civil.minute.entries@phoenix.gov

7 Bill C. Solomon, Chief Counsel, State Bar No. 020012
8 *Attorneys for Defendant City of Phoenix*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 JEREMY THACKER,

12 *Plaintiff Pro Se,*

13 v.

14 CITY OF PHOENIX, a municipal
15 corporation,

16 *Defendant.*

Case No. CV2025-026278

**DEFENDANT CITY OF PHOENIX'S
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Honorable Scott Minder)

17 **I. INTRODUCTION**

18 Generally, in Arizona, “[a]ll meetings of any public body shall be public meetings and
19 all persons so desiring shall be allowed to attend and listen to the deliberations and
20 proceedings.” A.R.S. § 38-431.01(A). Arizona law, however, permits public bodies to hold
21 executive sessions on “a public majority vote of the members constituting a quorum.” A.R.S.
22 § 38-431.03(A). The law requires that “[m]inutes of and discussions made at executive
23 sessions shall be kept confidential,” with limited inapplicable exceptions. A.R.S. § 38-
24 431.03(B).

25 The executive session confidentiality requirement makes sense, given the sensitive
26 nature of the specific purposes for which a public body may meet in executive session. *See*
A.R.S. § 38-431.03 (A)(1-9) (permitting public bodies to hold executive sessions for 1)
discussion or consideration of employment, assignment, appointment, promotion, demotion,

1 dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any
2 public body; 2) discussion or consideration of records exempt by law from public inspection,
3 including the receipt and discussion of testimony that is specifically required to be maintained
4 as confidential by state or federal law; 3) discussion or consultation for legal advice with the
5 attorney or attorneys of the public body; 4) discussion or consultation with the attorneys of the
6 public body in order to consider its position and instruct its attorneys regarding the public
7 body's position regarding contracts that are the subject of negotiations, in pending or
8 contemplated litigation or in settlement discussions conducted in order to avoid or resolve
9 litigation; 5) discussions or consultations with designated representatives of the public body in
10 order to consider its position and instruct its representatives regarding negotiations with
11 employee organizations regarding the salaries, salary schedules or compensation paid in the
12 form of fringe benefits of employees of the public body; 6) discussion, consultation or
13 consideration for international and interstate negotiations or for negotiations by a city or town,
14 or its designated representatives, with members of a tribal council, or its designated
15 representatives, of an Indian reservation located within or adjacent to the city or town; 7)
16 discussions or consultations with designated representatives of the public body in order to
17 consider its position and instruct its representatives regarding negotiations for the purchase,
18 sale or lease of real property; 8) discussion or consideration of matters relating to school safety
19 plans or programs; and 9) discussions or consultations with designated representatives of the
20 public body in order to discuss security plans, procedures, assessments, measures or systems
21 relating to, or having an impact on, the security or safety of buildings, facilities, operations,
22 critical infrastructure information and information technology maintained by the public body).

23 Plaintiff asserts he brought this action "to restore transparency and public accountability
24 to the City's use of closed-door meetings." *See* First Amended Complaint, ¶ 2. But, closed-
25 door meetings, by definition, are not transparent; nor are they meant to be. Arizona law
26 specifically allows a public body to hold closed-door meetings, in the form of executive

1 sessions—not to thwart transparency and public accountability—but to protect the interests of the
2 public body in discussing and considering the enumerated sensitive areas for which executive
3 sessions may be held. The City of Phoenix (the “City”) complied with Arizona law and
4 properly held the executive sessions at issue here on a public majority vote of the members
5 constituting a quorum of the Phoenix City Council, with timely notice to the public of those
6 meetings, and with general descriptions of the matters to be considered at those meetings. The
7 City had no intent to block transparency or public accountability by lawfully holding executive
8 sessions permitted by law.

9 **II. FACTUAL BACKGROUND**

10 **The Executive Sessions**

11 On November 13, 2024, the Phoenix City Council approved Item No. 21 on the Agenda
12 of the Formal Council Meeting, a request for the City Council to call meetings for the purpose
13 of holding an Executive Session pursuant to Arizona Revised Statutes, Section 38-431.003A,
14 on 17 specific dates in 2025, including January 28 and February 11. (DSOF ¶ 1). Agendas,
15 topics, or an indication of the subject matter for those 17 meetings was not included in Item 21.
16 (DSOF ¶ 2).

17 At least 24 hours before the January 28 and February 11, 2025, executive sessions, the
18 City posted notice of the meetings, indicating Item 7 and Item 4, respectively, would be for
19 “Discussion and consultation for legal advice re: **Community Citizen Comment**, A.R.S. §38-
20 431.03A.3.” (DSOF ¶¶ 3-4). At least 24 hours before the July 29, 2025, executive session, the
21 City posted notice of the meeting, indicating Item 2 would be for “Discussion and consultation
22 for legal advice re: **Federal Guidance for Public Benefits**, A.R.S. §38-431.03 A.3 and A.4.”
23 (DSOF ¶ 7).

24 **The Public Records Request**

25 On May 9, 2025, the City received Plaintiff’s Public Records Request (“PRR”), through
26 which he sought records related to Item 7 on the January 28, 2025, executive session Agenda

OFFICE OF THE CITY ATTORNEY
200 W. Washington Street, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 and Item 4 on the February 11, 2025, executive session Agenda. (DSOF ¶ 5). In response to
2 the PRR, the City informed Plaintiff it had “reviewed its files and there are no responsive
3 documents to your request except for those protected under attorney client privilege or work
4 product privilege.” (DSOF ¶ 6). The City did not provide a privilege log. (*Id.*).

5 **III. ARGUMENT**

6 **A. The City Complied with Arizona’s Open Meeting Law.**

7 **1. The City Properly Scheduled 17 Executive Sessions for 2025.**

8 “The open meeting law, A.R.S. § 38-431, *et seq.*, was enacted in 1974, although it was
9 preceded in 1962 by a statute declaring that it was the public policy of the state that
10 proceedings of government bodies be conducted openly.” *Cooner v. Board of Educ.*, 136 Ariz.
11 11, 15 (App. 1982). The open meeting law requires that all “meetings of any public body shall
12 be public meetings and all persons so desiring shall be allowed to attend and listen to the
13 deliberations and proceedings.” A.R.S. § 38-431.01(A). The open meeting law also provides,
14 however, that on “a public majority vote of the members constituting a quorum, a public body
15 may hold an executive session” for nine enumerated purposes. A.R.S. § 38-431.03(A).

16 Where a public body “intends to meet for a specified calendar period, on a regular day,
17 date or event during the calendar period, and at a regular place and time,” the public body
18 “may post notice of the meetings at the beginning of the period.” A.R.S. § 38-431.02(F). If
19 an executive session is scheduled, a notice of the executive session must state the provision of
20 law authorizing the executive session and be provided to the members of the public body and
21 the general public. A.R.S. § 38-431.02(B). Meetings of a public body “shall not be held
22 without at least twenty-four hours’ notice to the members of the public body and to the general
23 public.” A.R.S. § 38-431.02(C).

24 Here, the City Council’s scheduling of 17 specific dates in 2025 on which to hold
25 executive sessions fully complied with the open meeting law. First, a majority of the members
26 of the City Council voted during the November 13, 2024, public meeting to hold executive

1 sessions on 17 specific dates in 2025. (DSOF 1). This vote effectively posted notice of the
2 meetings at or near the beginning of the calendar year, as A.R.S. § 38-431.02(F) requires.
3 Then, as A.R.S. § 38-431.02(C) requires, at least 24 hours before each of those executive
4 sessions, the Phoenix City Clerk posted notice of the meetings, stating the specific provisions
5 of law authorizing the executive sessions. (DSOF ¶¶ 3, 4, 7). As the meeting minutes
6 submitted for *in camera* review show, the executive sessions were held for the purposes
7 designated in the public notices. Thus, the City properly scheduled, noticed, and held these
8 meetings in full compliance with Arizona law.

9 Plaintiff correctly asserts the City Council held executive sessions without holding a
10 “vote immediately prior to” the executive sessions. *See* FAC, ¶¶ 12-13. But § 38-431.03(A)
11 does not require a public body to vote to go into executive session immediately prior to the
12 executive session; it simply requires, instead, “a public majority vote of the members
13 constituting a quorum.” § 38-431.03(A). Because there is no temporal requirement for the
14 timing of the vote to go into executive session, the City did not violate Arizona law by failing
15 to vote to go into executive session immediately prior to those sessions.

16 **2. The Executive Session Notices Properly Included General Descriptions of**
17 **Matters to Be Considered at Those Meetings.**

18 While agendas for public meetings generally must “list the specific matters to be
19 discussed, considered, or decided at the meeting” A.R.S. § 38-431.02(H), “notice of executive
20 sessions shall be required to include only a general description of the matters to be considered.”
21 A.R.S. § 38-431.02(I). The agenda for an executive session must “provide more than just a
22 recital of the statutory provisions authorizing the executive session.” *Id.*

23 In *Shelby School v. Arizona State Bd. of Educ.*, 192 Ariz. 156, 168, (App. 1998), “the
24 Board voted to go into executive session to review records exempt from public inspection and
25 for consultation for legal advice related to charter school applications.” The Arizona Court of
26 Appeals found the Board adequately satisfied the general description requirement of section

OFFICE OF THE CITY ATTORNEY
200 W. Washington Street, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 38-431.02(I) where the “motion for the Board to go into executive session used language
2 similar to that used in A.R.S. section 38-431.03(A)(2)-(3) to describe what would be
3 considered in the session.” *Id.* at 167.

4 Like the agenda description at issue in *Shelby*, the agenda descriptions at issue here
5 fully comply with the general description requirement of section 38-431.02(I). Not only does
6 each of the agenda descriptions at issue here include a general description of the matters to be
7 considered at the meeting, but each provides more than just a recital of the statutory provisions
8 authorizing the executive sessions. The agenda descriptions for the January 28 and February
9 11, 2025, executive sessions both stated the meetings would be held for “Discussion and
10 consultation for legal advice re: **Community Citizen Comment**, A.R.S. §38-431.03A.3.”
11 (DSOF ¶¶ 3-4). The agenda description for the July 29, 2025, executive session stated the
12 meeting would be held for “Discussion and consultation for legal advice re: **Federal Guidance**
13 **for Public Benefits**, A.R.S. §38-431.03 A.3 and A.4.” (DSOF ¶ 7). While these agenda
14 descriptions may not be perfect, because they provide general descriptions of the matters to be
15 considered at the respective executive sessions and provide more than just a recital of the
16 statutory provisions authorizing the sessions, they comply with the open meeting law.

17 **B. The City Complied with the Public Records Law.**

18 **1. The City Properly Withheld Executive Session Meeting Minutes.**

19 Executive sessions of the Phoenix City Council are recorded only by written meeting
20 minutes. (DSOF ¶ 8). Written meeting minutes that accurately reflect the proceedings that
21 took place on January 28, 2025, February 11, 2025, and July 29, 2025, have been submitted to
22 the Court for *in camera* review. (DSOF ¶ 9).

23 A.R.S. § 38-431.03(B) requires that “[m]inutes of and discussions made in executive
24 session” be kept confidential with four limited exceptions that do not include releasing the
25 minutes in response to a public records request. Because Arizona law prohibits the release of
26

1 executive session meeting minutes, the City properly withheld those minutes in response to
2 Plaintiff's public records request.

3 **2. The City Properly Withheld Privileged Records.**

4 **a. The Records Were Protected by the Attorney-Client Privilege.**

5 The attorney-client privilege protects communications from the client and advice to the
6 client. A.R.S. § 12-2234; *Granger v. Wisner*, 134 Ariz. 377, 379 (1982). The privilege extends
7 to those who assist an attorney, such as the "attorney's paralegal, assistant, secretary,
8 stenographer, or clerk." A.R.S. § 12-2234. "The purpose of the attorney-client privilege is to
9 encourage a client to confide in his or her attorney all the information necessary in order that
10 the attorney may provide effective legal representation." *Id.* "The attorney-client privilege
11 exists to encourage free exchange of information between the attorney and the client and to
12 promote the administration of justice." *Robert W. Baird & Co. Incorporated v. Whitten*, 244
13 Ariz. 121, 125 (App. 2017) (internal quotation marks and citation omitted).

14 "A government lawyer's duties may include an obligation to render advice to elected
15 and appointed representatives of a government organization," where "the government
16 organization, rather than an individual government client representative to whom the advice is
17 given, is the client." *See*, Rule 42, Rules of the Supreme Court of Arizona, ER 1.13, Editor's
18 Note 10. Because the records plaintiff sought in his public records request constitute
19 communications and advice between the City's attorneys (and their staff) and its client, the
20 City, through its elected representatives, those records squarely fall under the protections of
21 the attorney-client privilege. For this reason, the City properly withheld those privileged
22 records in response to plaintiff's public records request.

23 **b. The Records Were Protected by the Legislative Privilege.**

24 "The legislative privilege has deep historical roots that the Supreme Court has traced
25 back to 'the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.'" *Lee v. City*
26 *of Los Angeles*, 908 F.3d 1175, 1186 (9 Cir. 2018) (quoting *Tenney v. Brandhove*, 341 U.S.

1 367, 372 (1951)). “[T]he privilege extends to matters beyond pure speech or debate in the
2 legislature only when such matters are ‘an integral part of the deliberative and communicative
3 processes relating to proposed legislation or other matters placed within the jurisdiction of the
4 legislature.’” *Arizona Independent Redistricting Commission v. Fields*, 206 Ariz. 130, 137
5 (App. 2003) (quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972)). “The privilege is
6 not intended to protect legislators’ individual interests, but to support the rights of the people,
7 by enabling their representatives to execute the functions of their office” *Arizona*
8 *Independent Redistricting Commission*, 206 Ariz. at 137 (internal quotation marks and citation
9 omitted).

10 “The rationales for according absolute immunity to federal, state, and regional
11 legislators apply with equal force to local legislators.” *Bogan v. Scott-Harris*, 523 U.S. 44, 52
12 (1998). In fact, any “public official who acts in a legislative capacity may assert the privilege
13 regardless of his or her particular location within government.” *Arizona Independent*
14 *Redistricting Commission*, 206 Ariz. at 138 (citation omitted); *see also Tenney*, 341 U.S. at
15 369, 379 (finding that a civil rights suit could not proceed against a California senate
16 committee and a local mayor due to legislative privilege). “Regardless of the level of
17 government, the exercise of legislative discretion should not be inhibited by judicial
18 interference” *Bogan*, 523 U.S. at 52.

19 “[T]he legislative privilege protects against disclosure of documents in appropriate
20 circumstances.” *Arizona Independent Redistricting Commission*, 206 Ariz. at 140.
21 Documentary evidence of a legislator’s conduct in performing legislative acts and
22 communications between a legislator and his or her aides during their term of employment and
23 related to any legislative act can be as revealing as oral testimony. *Arizona Independent*
24 *Redistricting Commission*, 206 Ariz. at 140. “Even though such documents will not be used
25 in any evidentiary proceeding, their mere disclosure could ‘chill’ legislators from freely
26 engaging in the deliberative process necessary to the business of legislating.” *Id.* “Therefore,

1 to the extent the legislative privilege protects against inquiry about a legislative act or
2 communications about that act, the privilege also shields from disclosure documentation
3 reflecting those acts or communications.” *Id.* at 141.

4 The documents plaintiff sought through his public records request pertain to matters
5 that are placed within the jurisdiction of the City Council, which is Phoenix’s legislature.
6 Because those documents reflect legislative acts or communications about legislative acts, the
7 legislative privilege shields them from disclosure. For this reason, the City properly withheld
8 these privileged documents from disclosure in response to plaintiff’s public records request.

9 **3. The City Was Not Required to Provide a Privilege Log.**

10 Plaintiff claims the City violated the law by failing to provide specific statutory
11 exemptions and a privilege log for the records it withheld from him. *See* FAC, Request for
12 Relief, ¶ C. Plaintiff asks this Court to “[m]andate the City’s compliance with A.R.S. § 39-
13 121.01(D)(2).” *Id.* at ¶ D. That statute, however, does not require the City to provide specific
14 statutory exemptions or a privilege log for withheld records.

15 A.R.S. § 39-121.01(D)(2) provides that, “[i]f requested, the custodian of records of an
16 agency shall also furnish an index of records or categories of records that have been withheld
17 and the reasons the records or categories of records have been withheld from the requesting
18 person.” The statute clarifies that for “the purposes of this paragraph, ‘agency’ has the same
19 meaning prescribed in § 41-1001” A.R.S. § 41-1001(1.) defines “agency” as

20 any board, commission, department, officer or other administrative
21 unit of this state, including the agency head and one or more
22 members of the agency head or agency employees or other persons
23 directly or indirectly purporting to act on behalf or under the
authority of the agency head, whether created under the
Constitution of Arizona or by enactment of the legislature.

24 A.R.S. § 41-1001(1.) specifically provides, “Agency does not include a political
25 subdivision of this state or any of the administrative units of a political subdivision.” *Id.*
26 Phoenix, as a city, is a political subdivision of the state. *See, e.g.,* A.R.S. § 38-431(5); A.R.S.

1 38-382(3.); 41-563(E)(3); *see also*, *City of Tucson v. Fleischman*, 152 Ariz. 269, 272 (App.
2 1986) (“The general rule is that cities are political subdivisions of the state”). Because Phoenix
3 is a political subdivision of the state, not an agency, section 39-121.01(D)(2) does not require
4 the City to furnish an index of records, categories of records, or the reasons the records or
5 categories of records have been withheld. The City, therefore, did not violate the law by failing
6 to provide specific statutory exemptions and a privilege log for the records it withheld from
7 Plaintiff.

8 **IV. CONCLUSION**

9 The City did not violate the open meeting law. The City Council properly voted to hold
10 executive sessions on 17 dates in 2025 and effectively provided notice of those meetings at or
11 near the beginning of 2025. Notice to the public with a general description of the topics to be
12 discussed at each meeting and the specific reason for holding the executive session was
13 properly posted at least 24 hours before each meeting.

14 The City complied with the public records law. The City maintained the confidentiality
15 of the executive session meeting minutes and preserved the attorney-client and legislative
16 privileges by withholding documents related to the executive sessions in response to Plaintiff’s
17 public records request. For these reasons, the City respectfully requests the Court find Plaintiff
18 is entitled to no relief.

19 RESPECTFULLY SUBMITTED this 1st day of December, 2025.

20 OFFICE OF THE PHOENIX CITY ATTORNEY
21 JULIE M. KRIEGH, City Attorney

22 By: /s/ Bill C. Solomon
23 Bill C. Solomon
24 Chief Counsel
25 *Attorneys for Defendant City of Phoenix*
26

1 Original of the foregoing e-filed via
2 AZTurboCourt and served via email this 1st
3 day of December, 2025, upon:

4 Jeremy Thacker
5 4520 North 2nd Avenue
6 Phoenix, Arizona 85013
7 jeremynthacker@gmail.com
8 *Plaintiff Pro Se*

9 By: /s/ M. Elena Sandoval
10 4920-9977-9965, v. 1

11 OFFICE OF THE CITY ATTORNEY
12 200 W. Washington Street, Suite 1300
13 Phoenix, Arizona 85003-1611
14 (602) 262-6761
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT 13

Defendant's SOF in Support of MSJ

1 OFFICE OF THE PHOENIX CITY ATTORNEY
2 JULIE M. KRIEGH, City Attorney, State Bar No. 021175
3 200 West Washington, Suite 1300
4 Phoenix, Arizona 85003-1611
5 Telephone (602) 262-6761
6 law.civil.minute.entries@phoenix.gov

7 Bill C. Solomon, Chief Counsel, State Bar No. 020012
8 *Attorneys for Defendant City of Phoenix*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 Jeremy Thacker,

12 *Plaintiff Pro Se,*

13 v.

14 CITY OF PHOENIX, a municipal
15 corporation,

16 *Defendant.*

Case No. CV2025-026278

**STATEMENT OF FACTS IN SUPPORT
OF DEFENDANT CITY OF
PHOENIX'S MOTION FOR
SUMMARY JUDGMENT**

(Assigned to the Honorable Scott Minder)

17 Defendant City of Phoenix (the "City") respectfully submits the following Statement of
18 Facts in support of its Motion for Summary Judgment.

19 1. On November 13, 2024, the Phoenix City Council approved Item No. 21 on the
20 Agenda of the Formal Council Meeting, a request for the City Council to call meetings for the
21 purpose of holding an executive session pursuant to Arizona Revised Statutes, Section 38-
22 431.003A, on 17 specific dates in 2025, including January 28 and February 11. (Plaintiff's
23 First Amended Complaint ("FAC"), Exhibit A).

24 2. Item No. 21 did not include agendas, topics, or an indication of subject matter for
25 those meetings. (*Id.*)

26 3. At least 24 hours before the January 28, 2025, executive session meeting, the
City posted notice of the meeting, indicating Item 7 would be for "Discussion and consultation
for legal advice re: **Community Citizen Comment**, A.R.S. §38-431.03A.3." *See* FAC, Exhibit
B; *Exhibit 1*, Declaration of Denise Archibald, ¶ 3).

1 Original of the foregoing e-filed via
2 AZTurboCourt and served via email this 1st
3 day of December, 2025, upon:

4 Jeremy Thacker
5 4520 North 2nd Avenue
6 Phoenix, Arizona 85013
7 jeremynthacker@gmail.com
8 *Plaintiff Pro Se*

9 By: /s/ M. Elena Sandoval
10 4905-4991-9613, v. 1

11 OFFICE OF THE CITY ATTORNEY
12 200 W. Washington Street, Suite 1300
13 Phoenix, Arizona 85003-1611
14 (602) 262-6761
15
16
17
18
19
20
21
22
23
24
25
26

Exhibit 1

ATTACHMENT 1

2025 JAN 27 AM 9:59

NOTICE OF MEETING PHOENIX CITY COUNCIL EXECUTIVE SESSION January 28, 2025

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **PHOENIX CITY COUNCIL** and to the general public that the **PHOENIX CITY COUNCIL** will meet in Executive Session on **January 28, 2025 at Noon** located in the **Central Conference Room, 12th Floor, Phoenix City Hall, 200 West Washington, Phoenix, Arizona**, for the purposes of discussion or consultation regarding the items listed on the agenda, all as authorized by A.R.S. §38-431.03, A.1 through A.7.

AGENDA

1.	Discussion and consultation for legal advice re: <i>Dallas Sauer and Trisha Ford</i> , RM # 23-0593-001 and 002, A.R.S. §38-431.03 A.3 and A.4
2.	Discussion and consultation for legal advice re: Phoenix Proposed Tax Increase , A.R.S. §38-431.03 A.3 and A.4
3.	Discussion and consultation for legal advice re: Federal Directives on Immigration and DEI , A.R.S. §38-431.03 A.3
4.	Discussion and consultation for legal advice re: Oct. 17, 2020 Investigation Status , A.R.S. §38-431.03 A.3
5.	Discussion and consultation for legal advice re: Camping and Trespass Enforcement , A.R.S. §38-431.03 A.3
6.	Discussion and consultation for legal advice re: Claim Settlement Authority Limits , A.R.S. §38-431.03 A.3
7.	Discussion and consultation for legal advice re: Community Citizen Comment , A.R.S. §38-431.03 A.3

For further information, please call Dava Hall, Law Department at 602-262-4456. For reasonable accommodations, call Stephanie Mortensen 602-262-7069 (voice) or dial 7-1-1 (TRS), as early as possible to coordinate needed arrangements.

ATTACHMENT 2

NOTICE OF MEETING PHOENIX CITY COUNCIL EXECUTIVE SESSION February 11, 2025

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **PHOENIX CITY COUNCIL** and to the general public that the **PHOENIX CITY COUNCIL** will meet in Executive Session on **February 11, 2025 at Noon** located in the **Central Conference Room, 12th Floor, Phoenix City Hall, 200 West Washington, Phoenix, Arizona**, for the purposes of discussion or consultation regarding the items listed on the agenda, all as authorized by A.R.S. §38-431.03, A.1 through A.7.

AGENDA

1.	Discussion and consultation for legal advice re: Carla Truman, RM # 23-0723, A.R.S. §38-431.03 A.3 and A.4
2.	Discussion and consultation for legal advice re: <i>State of New York et al. v Trump, et al. Amicus Brief</i>, A.R.S. §38-431.03 A.3 and A.4
3.	Discussion and consultation for legal advice re: Claim Settlement Authority Limits, A.R.S. §38-431.03 A.3
4.	Discussion and consultation for legal advice re: Community Citizen Comment, A.R.S. §38-431.03 A.3
5.	Discussion and consultation for legal advice re: Camping and Trespass Enforcement, A.R.S. §38-431.03 A.3

For further information, please call Dava Hall, Law Department at 602-262-4456. For reasonable accommodations, call Stephanie Mortensen 602-262-7069 (voice) or dial 7-1-1 (TRS), as early as possible to coordinate needed arrangements.

ATTACHMENT 3

NOTICE OF MEETING PHOENIX CITY COUNCIL SPECIAL MEETING NOTICE AND AGENDA

Pursuant to Arizona Revised Statutes, Section 38-431.02, notice is hereby given to the members of the **PHOENIX CITY COUNCIL** and to the general public, that the **PHOENIX CITY COUNCIL** will hold a special meeting open to the public on **July 29, 2025, at 12:00 p.m. located in the 12 Central Conference Room, 12th Floor, Phoenix City Hall, 200 West Washington Street, Phoenix, Arizona, 85003.**

In accordance with a request from the Mayor of the City of Phoenix, received and filed with the City Clerk on July 25, 2025, pursuant to Chapter IV, Section 20, of the Charter of the City of Phoenix, a Special Meeting of the Phoenix City Council is hereby called.

The July 29, 2025, Special Meeting will be held for the purpose of calling an Executive Session of the Phoenix City Council, to be held at the same time, for discussion and consultation. The agenda for the meeting is as follows:

Roll Call

Item 1 Vote to call for Executive Session.

If authorized by the majority of the members, the Executive Session will be held immediately after the vote and will not be open to the public.

Item 2 Executive Session - Agenda

Discussion and consultation for legal advice re: Federal Guidance for Public Benefits, A.R.S. §38-431.03 A.3 and A.4

An electronic copy of the agenda will also be available online at:
<https://www.phoenix.gov/cityclerk/publicmeetings/notices>

Adjourn

For further information, please call Dava Hall, Law Department at 602-262-4456.
For reasonable accommodations, call Stephanie Mortensen at 602-262-7069 (voice) or dial 7-1-1 (TRS), as early as possible to coordinate needed arrangements.

Exhibit 2

1 Jeremy Thacker
2 4520 N 2nd Ave
3 Phoenix, AZ 85013
4 (480) 410-1923
5 jeremythacker@gmail.com
6 *Plaintiff Pro Se*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 JEREMY THACKER

10 Plaintiff Pro Se,

11 v.

12 CITY OF PHOENIX, a municipal
13 corporation,

14 Defendant.

Case No: CV2025-026278

**PLAINTIFF’S SEPARATE STATEMENT
OF FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

(Assigned to the Honorable Scott Minder)

15 Pursuant to Rule 56(c)(3) of the Arizona Rules of Civil Procedure, Plaintiff Jeremy
16 Thacker submits this Separate Statement of Facts (“PSOF”) in support of his Motion for
17 Summary Judgment. Each of the following facts is undisputed and is material to the resolution
18 of this case:

19 1. November 13, 2024 Blanket E-Session Approval: On November 13, 2024, the
20 Phoenix City Council voted to approve Agenda Item 21, which pre-scheduled 17 specific
21 executive session meetings for dates in 2025 (including January 28, 2025 and February 11,
22 2025). The Agenda Item 21 did not include any agendas, topics, or indication of the subject
23 matters to be discussed at those future executive sessions. (Uncontroverted – *see Defendant’s*
24
25
26

1 Answer ¶10 admitting approval of 17 e-sessions without topics.) (Ex. 1; Ex. 11).

2 2. No Public Vote Immediately Before Jan. 28 & Feb. 11 E-Sessions: The City Council
3 did not hold any separate public meeting or take a contemporaneous public vote immediately
4 prior to entering the executive sessions on January 28, 2025 or February 11, 2025. In other
5 words, the Council convened directly in closed executive session on those dates without first
6 convening a public session for the purpose of calling and voting on the executive session. (Ex. 2;
7 Ex. 3; Ex. 11 (Answer) ¶ 13; Ex. 12 at 5.)

8 3. Agenda Descriptions for Jan. 28 and Feb. 11, 2025 Executive Sessions: The public
9 notices for the January 28, 2025 and February 11, 2025 executive session meetings each listed a
10 single agenda item described only as: "Discussion and consultation for legal advice re:
11 Community Citizen Comment, A.R.S. § 38-431.03(A)(3)". The agenda provided no further
12 explanation or detail about the "Community Citizen Comment" topic beyond that generic phrase
13 and the statutory citation. (Ex. 2; Ex. 3)

14 4. Specificity of Other Agenda Items: On the same agendas (January 28 and February
15 11, 2025), the City described other executive session items with specificity, including "Dallas
16 Sauer and Trisha Ford, RM #23-0593" and "Phoenix Proposed Tax Increase," demonstrating the
17 City's ability to identify subject matter without waiving privilege. (Ex. 2; Ex. 3.)

18 5. Contrast with *Shelby School* Description: The agenda description approved in *Shelby*
19 *School v. Arizona State Bd. of Educ.* was "consultation for legal advice related to charter school
20 applications." (*Shelby School*, 192 Ariz. at 168.)

21 6. New Councilmember Not Part of Initial Vote: Councilmember Anna Hernandez took
22 office in April 2025, after the January 28 and February 11, 2025 executive sessions had already
23 occurred. Councilmember Hernandez was not a member of the City Council at the time of the
24 November 13, 2024 blanket approval (Agenda Item 21) and did not participate in that pre-
25 authorization vote. She likewise was not on the Council during the January 28, 2025 or February
26 11, 2025 executive sessions. (Ex. 11 (Answer) ¶¶ 13, 28.)

1 7. Hernandez Attended Later 2025 Executive Sessions: After joining the Council, Anna
2 Hernandez did attend executive sessions scheduled later in 2025 under the blanket pre-approval.
3 The City admits that Councilmember Hernandez “has met in Executive Session meeting[s]
4 scheduled in 2025, and... may attend additional Executive Sessions this year” (i.e. 2025). (Ex.
5 11 (Answer) ¶ 28.)

6 8. Public Notice Timing and Posting: The City had informed the public (via Agenda
7 Item 21 on Nov. 13, 2024) that notice and an agenda for each executive session would be posted
8 at least 24 hours before each meeting. In accordance with this promise and statutory
9 requirements, the City did post timely public notices and agendas at least 24 hours in advance of
10 the January 28, 2025, February 11, 2025, and July 29, 2025 executive session meetings. (Ex. 11
11 (Answer) ¶ 14.)

12 9. No Public Session or Action After Closed Meetings: The City Council did not
13 reconvene any public meeting after the executive sessions on January 28, 2025 or February 11,
14 2025 to discuss or take action on the “Community Citizen Comment” matter. No public votes,
15 motions, or decisions related to the subject of those executive sessions were made on those dates
16 outside of the closed sessions (i.e. any Council deliberation on that topic occurred entirely
17 behind closed doors). (Ex. 10 (Thacker Decl.) ¶¶ 11–12.)

18 10. Special Meeting with Public Vote on July 29, 2025: The executive session held on
19 July 29, 2025 was not among the 17 dates pre-scheduled in 2024; it was an additional executive
20 session that the City noticed via a separate Special Meeting. For the July 29, 2025 meeting, the
21 City’s notice explicitly stated that the Council would meet “for the purpose of calling an
22 Executive Session... to be held at the same time,” with the Council first voting in public to call
23 the executive session, and if approved by a majority, then immediately holding the executive
24 session closed to the public. In this instance, unlike January 28 and February 11, the City
25 Council provided a contemporaneous public vote immediately before entering the executive
26 session (as reflected in the July 29, 2025 Special Meeting notice). (Ex. 9; Ex. 11 (Answer) ¶ 14.)

1 11. Plaintiff’s May 19, 2025 Public Records Request: On May 19, 2025, Plaintiff Jeremy
2 Thacker submitted a written Public Records Request (“PRR”) to the City of Phoenix seeking
3 records related to the executive sessions held on January 28, 2025 and February 11, 2025. In
4 particular, the request sought any records concerning Agenda Item 7 of the January 28, 2025
5 Executive Session and Agenda Item 4 of the February 11, 2025 Executive Session (the items
6 labeled “Community Citizen Comment”), and it expressly asked that the City provide a privilege
7 log for any records withheld under A.R.S. § 38-431.03(B) (the executive-session confidentiality
8 provision). (Ex. 5; Ex. 11 (Answer) ¶ 17.)

9 12. City’s July 9, 2025 Response Withholding Records: The City responded to Plaintiff’s
10 records request on July 9, 2025. In its response, the City stated that it had “reviewed its files and
11 has determined there are no responsive documents to your request except for those protected
12 under attorney client or work product privilege.” In other words, the City acknowledged that
13 responsive records exist but refused to produce them, claiming they were protected by attorney-
14 client privilege or work-product doctrine. The City did not cite any specific statutory exemption
15 in this response and did not produce any record or portion of a record for inspection. (Ex. 5; Ex.
16 11 (Answer) ¶ 18.)

17 13. No Privilege Log Provided: The City’s July 9, 2025 response did not include any
18 index or privilege log identifying the withheld documents or the basis for withholding each. The
19 City admits that its response “provided no specific statutory exemption or privilege log” for the
20 records it declined to release. (Ex. 5; Ex. 11 (Answer) ¶ 18; Ex. 10 (Thacker Decl.) ¶ 6.)

21 14. Plaintiff’s July 11, 2025 Objection Letter: On July 11, 2025, Plaintiff sent a written
22 letter to the City’s Public Records unit (Phoenix Communications Office) objecting to the
23 sufficiency of the City’s response and demanding that the City cure the deficiencies. In this
24 correspondence, Plaintiff requested that the City cite a specific legal exemption for each
25 withheld record and provide a proper privilege log or summary of the documents withheld.
26 Plaintiff also asked the City to segregate any non-privileged or factual content from the records

1 and disclose those portions, rather than withholding everything in full. (Ex. 6; Ex. 11 (Answer) ¶
2 19.)

3 15. City's Lack of Subsequent Response: After Plaintiff's July 11, 2025 demand letter, the
4 City did not provide any further written response, clarification, or privilege log prior to the
5 initiation of this lawsuit on July 28, 2025. The City's position and withholding remained
6 unchanged up until court proceedings, effectively requiring Plaintiff to file suit to obtain review
7 of the withheld records. (Ex. 10 (Thacker Decl.) ¶ 6.)

8 16. Records Withheld in Entirety (No Segregation): The City's withholding was total – it
9 did not release any portion of the requested records. By stating “no responsive documents...
10 except those protected under privilege,” the City declined to disclose even portions of
11 documents, and provided no non-privileged content such as dates, titles, or factual sections of
12 the executive session records. The City made no attempt to redact or segregate allegedly
13 privileged material from any record; instead, it treated each responsive record as entirely exempt
14 from public inspection. (Ex. 5; Ex. 11 (Answer) ¶ 18; Ex. 10 (Thacker Decl.) ¶¶ 6–7.)

15 17. Contradictory Initial Privilege Assertion: The City's July 9, 2025 response effectively
16 acknowledged the existence of responsive records while simultaneously stating that “no
17 responsive documents” existed except privileged ones. This phrasing was inherently
18 contradictory – it confirmed that responsive documents did exist (since they were being deemed
19 “protected”) but provided no inventory or description of them. In practice, the City's response
20 meant that the only responsive records identified were being withheld under broad claims of
21 privilege, without further explanation. (Ex. 5; Ex. 11 (Answer) ¶ 18.)

22 18. Court-Ordered In Camera Submission (Nov. 2025): Pursuant to this litigation, the
23 City was later ordered to submit the executive session materials to the Court for in camera
24 review. On November 13, 2025, the City lodged with the Court the sealed meeting minutes from
25 the executive sessions of January 28, 2025, February 11, 2025, and July 29, 2025, along with
26 certain other documents related to those executive sessions that the City had withheld from

1 Plaintiff. The City did not provide these materials to Plaintiff, but only to the judge for
2 confidential review. (Ex. 7.)

3 19. New “Legislative Privilege” Claim in Court Lodging: In its November 13, 2025
4 Notice of Lodging, the City stated that it was withholding certain executive-session documents
5 on the basis of “attorney-client and legislative privileges”. Legislative privilege had never been
6 cited by the City in any of its prior communications or responses to Plaintiff’s records requests.
7 The City’s original July 9, 2025 denial mentioned only attorney-client and work-product
8 privilege, and the word “legislative” did not appear in any correspondence to Plaintiff until the
9 Notice of Lodging during this lawsuit. (Ex. 8.)

10 20. City’s Admission of "Legislative Acts": In its Motion for Summary Judgment filed
11 December 1, 2025, the City explicitly asserted that the withheld executive session records are
12 protected by "legislative privilege" because they reflect "legislative acts" and "communications
13 about legislative acts." (*Ex. 12 at 8–9.*)

14 21. No Privilege Log or Index Even in Litigation: As of November 2025, the City still has
15 never provided Plaintiff with any privilege log or index of the withheld records. Even when
16 asserting a new legislative privilege in court, the City did not itemize which specific documents
17 were being withheld under which privilege. Plaintiff remains uninformed of the number of
18 documents withheld, their dates, authors, recipients, or the specific privilege basis for each,
19 aside from the broad labels asserted. (Ex. 8; Ex. 10 (Thacker Decl.) ¶ 16.)

20 22. Executive Sessions Not Recorded (Minutes Only): Phoenix City Council executive
21 sessions are not audio-recorded or video-recorded by any means; the only official record of an
22 executive session’s proceedings is the written minutes prepared by the City Clerk (or her
23 designee). The City’s Clerk’s office confirms that no recordings exist for the January 28, 2025,
24 February 11, 2025, or July 29, 2025 executive sessions – only written minutes were created for
25 those meetings. (Ex. 13, Def. SOF ¶ 8.)

26 23. Accuracy of Executive Session Minutes (City’s Representation): The City has

1 represented to the Court that the confidential minutes submitted in camera “accurately reflect the
2 proceedings” that took place during the executive sessions on January 28, 2025, February 11,
3 2025, and July 29, 2025. In other words, the City asserts that its written minutes are a full and
4 truthful record of those closed-session discussions. (Ex. 8; Ex. 13, Def. SOF ¶ 8.)

5 Each of the foregoing facts is supported by the cited portion of the record. Because no
6 genuine disputes exist as to these facts, they should be deemed established for purposes of the
7 Motion for Summary Judgment.

8
9 **RESPECTFULLY SUBMITTED** this 1st day of December 2025.
10

11
12 /s/ Jeremy Thacker
13 _____

14 Jeremy Thacker

15 *Plaintiff Pro Se*
16
17
18
19
20
21
22
23
24
25
26