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**OPINION NO. 94-05**

**TO:** Peter C. Harvey, City Manager  
**FROM:** Stephen M. Kemp, City Attorney  
**DATE:** August 15, 1994  
**SUBJECT:** Videotaping of City Council Meetings

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**QUESTION:**

You have raised several questions regarding videotaping of City Council meetings as listed below:

1. May individual citizens bring their own equipment into the City Council Chambers to videotape Council meetings?
2. May the City use its equipment to videotape Council meetings?
3. Assuming the City uses its equipment to videotape Council meetings, must a copy of the tape be kept as a public record?
4. Who decides the retention period for keeping a videotape of a Council meeting as a public record?
5. If the City adopts a policy of not taping meetings, could we require a person seeking to use city taping equipment to bring two tapes, one for a copy and one for an original?
6. Can we charge a fee for the City videotaping meetings and providing copies of the videotapes?

**OPINION:**

The starting place for the answer to the above questions is A.R.S. §38-431.01, which provides in part:

§ 38-431.01. Meetings shall be open to the public.

- A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings . . .
  
- E. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder camera or other means of sound reproduction, provided there is no active interference with the conduct of the meeting.

Although the statute makes reference to sound and not video reproduction, it would be the opinion of this office that the statute applies to video reproduction as well. First, at the time of adoption of A.R.S §38-431.01 in 1962, video reproduction of events by individuals did not exist, except in a professional context. In today's context where personal video cameras are smaller than the tape recorders of the 1960's, a court would interpret the statute to allow their use. This reasoning is consistent with the decisions of other jurisdictions who have more recently reviewed this issue.<sup>1</sup>

It should be noted that there is a limitation on the use of any sound or video reproduction equipment. The use of the equipment may not interfere with the conduct of the meeting. For example, the Council could adopt policies designating that certain locations be used for the placing of such equipment and that it not interfere with citizen, staff and Council ingress and egress. Other policies that could be adopted may require pooling, if numbers of videocameras become an issue or a minor sum for payment of electricity used.

Obviously, it goes without further analysis that the City could videotape its Council meetings if chose to do so. The real issue becomes whether the videotape made becomes a public record. Arizona law does not define a public record. However, the Arizona Supreme Court in Matthews v. Pyle, 75 Ariz.76, 251 P.2d 893 (1953)

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<sup>1</sup>See, Mich.Comp.Laws Ann. §15.263(1), West, 1993, videotaping of governmental bodies permitted. Tex.Rev.Civ.Stat.Ann., art. 6252-17, §2(i), Vernon, 1993, reversing Texas Attorney General opinion prohibiting videotaping of meetings.

defined a public record as any of the following:

1. A record required to be kept by law.
2. A record necessary to discharge duties imposed by law.
3. A record directed by law to serve as a memorial and evidence of something written, said or done.

There is no Arizona Law on videotapes of governing bodies and whether they are a public record.

Clearly videotapes made by private parties on their equipment do not become public records. However, when city owned and operated equipment is used to create the record, does it become a public record. First, it must be noted that private persons do not have a right to use city property for a private non-governmental purpose. Second, is it a legitimate governmental purpose to reproduce a record of the City Council meeting on videotape.

Under A.R.S. §38-431.01 and Article I, Section 16, Peoria City Charter, the City Council is mandated to maintain records of its meetings. Pursuant to A.R.S. §39-121 and Article XIII, Section 1, Peoria City Charter, making copies of a public record is a governmental function that the City is required to perform. Therefore, it must be concluded that while the City is not mandated to use videotaping equipment to create a record of its meeting, once it elects to do so, the videotape becomes a public record, subject to reproduction.

Once the City has a legal obligation to reproduce the record, it must maintain the original record available until it may be destroyed in the manner provided by law. See, A.R.S. §39-101. Destruction of public records is under the jurisdiction of the Arizona Department of Library, Archives and Public Records. See, A.R.S. §41-1331, et. seq. Under this statute, the designated records management officer for the City<sup>2</sup> must submit to the Arizona Department of Library, Archives and Public Records a retention schedule for such videotapes. The length of the retention schedule is based on the on-going historical value of the Record. See, Ariz. Adm. Code, Title 2, Sec. 3.

In regard to question No. 5, the answer is yes. Arizona law does not mandate how the Council must create the record of its meetings. Certainly, the City could impose a requirement that if an individual desires to use city equipment to videotape a Council meeting, they must provide the videotape at their expense.

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<sup>2</sup>In the case of Peoria, the City Clerk has been designated the records management officer for the city.

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In regard to question No. 6, the answer is yes. For private non-commercial purposes, the City may charge the reasonable cost of reproducing a public record. See, A.R.S. §39-121.01. This cost can include cost of the tape, equipment depreciation, electricity and staff time. The public records law does not require the City, for a private non-governmental purpose, to subsidize the cost of public records. In the commercial context, the City must receive full monetary compensation for the commercial value of the use of the public record, lest it make an unconstitutional gift to a private part. See, Ariz. Const. Art. IX, Section 7.

I trust that this opinion answers your questions regarding this matter. If you should have any questions, please do not hesitate to contact me.

cc: Honorable Mayor and Council  
City Clerk