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CALL TO ORDER

[Time: 00:00:05]

Mayor Lane: I would like to call to order the January 23rd, 2018, City Council meeting. This is a Regular Meeting. And we'll start with a roll call, please.

ROLL CALL

[Time: 00:00:10]

City Clerk Carolyn Jagger: Mayor Jim Lane.

Mayor Lane: Present.

Carolyn Jagger: Vice Mayor Virginia Korte.

Vice Mayor Korte: Here.

Carolyn Jagger: Councilmembers Suzanne Klapp.

Councilwoman Klapp: Here.

Carolyn Jagger: Kathy Littlefield.

Councilwoman Littlefield: Here.

Carolyn Jagger: Linda Milhaven.

Councilwoman Milhaven: Here.

Carolyn Jagger: Guy Phillips.

Councilman Phillips: Here.

Carolyn Jagger: David Smith.

Councilman Smith: Present.

Carolyn Jagger: City Manager Jim Thompson.

Jim Thompson: Here.

Carolyn Jagger: City Attorney Bruce Washburn.

Bruce Washburn: Here.

Carolyn Jagger: City Treasurer Jeff Nichols.

Jeff Nichols: Here.

Carolyn Jagger: City Auditor Sharron Walker.

Sharron Walker: Here.

Carolyn Jagger: And the Clerk is present.

[Time: 00:00:36]

Mayor Lane: Thank you. A couple of items of business. We do have cards if you would like to speak on any of the subject, or public comment, they are the white cards the city clerk is holding up over her head. And if you would like to give us any written comments there's a yellow card for any of those items that we would be reading those written comments during the course of the meeting tonight. Tonight, we do have Scottsdale police officers, Jason Glenn and Tony Wells who are directly in front of me at 12:00 in front of me if you have need for their assistance on any item. The areas behind the Council dais or reserved for Council and staff and we do have restrooms over here under

that exit sign over here to my left for your convenience.

PLEDGE OF ALLEGIANCE

[Time: 00:01:26]

Mayor Lane: This evening, again, we have the Scottsdale Bobcats who are here to lead us in the Pledge of Allegiance. Gentlemen, please move forward and if you can, please stand.

Scottsdale Bobcats: I pledge allegiance to the flag of the United States of America, and to the republic for which it stands: One nation under God, indivisible, with liberty and justice for all.

Mayor Lane: Okay. Thank you very much, gentlemen. I appreciate that.

INVOCATION

Mayor Lane: And this evening, we have Pastor Ken Montgomery of the Scottsdale Bible Church to lead us in the invocation.

[Time: 00:02:14]

Pastor Ken Montgomery: Thank you, Mayor Lane and City Councilmembers. Please join me in prayer. God of mercy and justice, as this new year begins, we ask for a blessing upon and wisdom for Mayor Lane and the Council gathered here tonight. Thank you for their important role and ability to be involved in this useful work and for the honor in bearing its responsibilities. We pray for continued direction and clarity to be the leaders that your people need and the ability and the wisdom to govern in a manner that benefits all people amid the conflicting interests and issues of our time. We ask that you would be with the people speaking at tonight's meeting, so their thoughts, opinions and concerns can be accurately represented and fairly considered. Wise and loving father, I pray for the agenda set before our Council tonight. Please give them an assurance of what would please you and what would benefit those who live and work in and around this city. It is in your most blessed name I pray. Amen.

Mayor Lane: Amen. Thank you, pastor.

MAYOR'S REPORT

[Time: 00:03:30]

Mayor Lane: I have one item to report that I'm saddened to have to report, but we have had a prominent, upstanding Scottsdalean leave us, passed away this past Saturday and that is Fred Unger, if you know the legacy he leaves behind here in Scottsdale and full of the work that he's done in the private sector with regard to great and quality developments he has produced but also in working with the city through the years and lending itself to a very, very positive aspect of what Scottsdale is all

about. So I just wanted to draw your attention to his passing, and his wife Jenny and the family, remember them in your prayers as well and certainly if we could, just take one minute, just a moment of silence, just for Fred's parting. Thank you. Okay.

PUBLIC COMMENT

[Time: 00:05:10]

Mayor Lane: Our next order of business is Public Comment, but we don't have any Public Comment cards at this point in time, but I will just mention the fact that we do have a point here in our meetings normally and it's for Public Comment, reserved for citizen comments regarding non-agendized items with no official Council item or action taken on these items. Comments are limited to issues within the jurisdiction of the City Council. There are some limits on that, but since we have no takers on it right now, there is another opportunity at the end of the meeting if, in fact, it comes to be.

CONSENT AGENDA

[Time: 00:05:47]

Mayor Lane: Next order of business is our Consent Agenda Items 1 through 24. I have one request to speak on Item 15. And pardon me, I'm not sure if I can make this out. Gally Hays. I'm sorry, Garry. I think the pen failed you on that "r."

[Time: 00:06:21]

Garry Hays: Good evening Mayor and Council, I guess I should have been a doctor rather than a lawyer. My handwriting is not great. I appreciate the opportunity to speak to you. I represent AT&T and some of you may remember, that I spoke about some of the AT&T issues in Scottsdale.

Item 15 is very important to the company, but it's also very important to the city of Scottsdale. This is the technology we have all been waiting for. It's the small cell technology that will allow the residents to get the best coverage while having the minimum impact on them. It's a very important piece of technology and it's one that I think that the city and the AT&T do well as we implement this.

We do have some concerns about the ordinance, and we understand you are under a statutory deadline to get this past. We would like to work with your staff to get some of those concerns addressed and some of those concerns are violation fees, compliance with the statutes and subcontractor insurance, so just the high level points. But I do want to take a moment to say we have worked with your staff on various issues in the past and we will continue to do so and we will hopefully have a much better ordinance for you in the very near future. That's all I have.

Mayor Lane: Well, thank you, Mr. Hays. That's the only request at this point in time to speak on any of the agenda, or rather the Consent Agenda items. But I have had a request from Councilman Phillips to pull for a separate vote but at the same time Councilwoman Littlefield has asked to have

Item 7 and 14 pulled and put to the Regular Agenda for a presentation and a vote. So we will go ahead and honor that, to pull those two items from Consent. So they will not be included in any approval of the Consent Agenda. Items 1 through 24. So any case it would be minus 7 and 14. Which we will move to the Regular Agenda. Do I have a motion to reflect that?

[Time: 00:08:21]

Vice Mayor Korte: I would like to move to approve Consent Agenda Items 1 through 24, with the exception of 7 and 14.

Councilwoman Klapp: Second.

Mayor Lane: The motion has been made and seconded, I believe, by Councilwoman Klapp. Since there are no further requests to speak. If you approve, please indicate by aye and opposed a nay. Register your vote. Aye. It's unanimous then to accept and approve those Items 1 through 24, absent 7 through 14. You are welcome to stay and spend the rest of the time of our meeting with us. Otherwise if you could please depart quietly.

REGULAR AGENDA

Mayor Lane: And we will then move Item 7 and 14 to the Regular Agenda, and so in moving to the Regular Agenda, we will start with Item 7, and it looks like we have Jesus here at the podium ready to go on that.

[Time: 00:09:32]

Senior Planner Jesus Murillo: Thank you, Mayor, Jesus Murillo. And today I'm in front of you, 11-UP-2017 often known as The Outpost. This is a conditional use permit for a gas station that is connected to a zoning case that the Council approved back in December of 2016, as a major General Plan amendment from the ESL/FO to the planned community center, ESL/foothills overlay designation as well. As you can see the site is located on the northwest corner of Pima and Dynamite.

We have the Dream Center Church to the north, and the state land, which a portion of it, the city has recently purchased is on the northeast corner of Pima, Dynamite and on the northwest corner and another on the south, southeast. You can see that there's a wash that dissects the property coming in as two different washes and then they intersect at the center, and exit the site on the west portion of the property. And there are some major power lines located to the south, southeast.

The site is, again, currently zoned PNC which is planned neighborhood center with the environmentally sensitive lands and the foothills overlay on top of that. This is the site plan that the picket is proposing with the conditional use permit. Currently it only addresses that portion that you see there in the red, and so the rest of the site will be developed at a later date, in order to move forward with the site plan, the applicant was first required to come in for the conditional use permit. The approved use is the zoning case back in 2015. If included a gas station, hardware store, some horse

barns and a tack and flower shop.

Currently the applicant is only looking to request the conditional use permit for 2.25 acres of the 8.6-acre site. The applicant is required to provide 12 spaces for the current proposal and is providing 29. As you can see, there's 190,000 of the required 220 required. The rest of the site, when developed will provide the additional NOAS. And the applicant was allowed through the zoning to develop, for 19,500 square feet. The current application is looking to develop 5500 of those.

This is the applicant's site plan for the general store. This is the site plan for the gas canopy. Originally, the zoning case allowed 18,000 square foot for the canopy. This is how the applicant proposes laying out the open space for the site. These are the elevations that are being requested for at least the okay from Council. They will be submitted as the zoning case is developed. Some of the key considerations for the site is that through staff analysis, we have found that all the gas station, additional information and criteria have been met. This took into consideration both the environmentally sensitive, and the scenic corridor guidelines.

We have found and have stipulated as part of the stipulations the original stipulations from the original case. Staff did not receive any public comment, and the planning commission recommended approval with the vote of 5-0 on December 13th. So that concludes staff's presentation. We are here to answer any questions from the Council, and the applicant is also here to provide their presentation.

Mayor Lane: Very good. Thanks, Jesus. There may be some questions of you, but we do have one request and I believe it's from the applicant. Paul Gilbert. That is correct, is it not?

[Time: 00:14:03]

Applicant Paul Gilbert: For the record, my name is Paul Gilbert, 701 North 44th Street. I have absolutely nothing to add to the staff's presentation, except to point out that we are coming back with just the same plan you approved at the zoning case. We have staff support. We have unanimous planning commission support and to my knowledge no neighborhood opposition. Therefore, I think it behooves me to keep quiet and answer any questions you might have.

Mayor Lane: Very good, Paul. So that, unless, we do have some questions and I will start with Councilwoman Littlefield.

Councilwoman Littlefield: Thank you, Mayor. The reason I wanted this pulled. When this came before us for consideration and approval, the Council added a great number of different stips. We added a lot of ways to do things and not do things. I wanted to make sure that all of those are included in every single one of these use permits that come through. Because that was the condition that this was originally approved and I want to make sure that all of them have been included in this.

Jesus Murillo: Mayor Lane and Councilwoman Littlefield. The staff had written up stipulations to

include them in the body and we thought to not make any mistakes and make sure that that happens we stipulated to the original stipulations so that everything carried over exactly as Council approved.

Councilwoman Littlefield: Thank you. This is still by the way, not wanted by the people up north. You may not have heard from them, but I have. They haven't been as vocal this time. I think they are kind of feeling ground down but they still do not believe this is an appropriate use of that land. Thank you.

Mayor Lane: Thank you Councilwoman. Councilman Smith.

Councilman Smith: Thank you, Mayor and to Jesus, I think my question may be a subset of what Councilwoman Littlefield asked. But you showed some elevations for what the facility would look like. I assume those elevations we are looking at on the screen are the same ones that we saw in the original stipulation?

[Time: 00:16:38]

Jesus Murillo: Again, Mayor Lane, Councilman Smith, they are similar in character and I do have them side by side with the previously approved if you would like to see those, so you can see comparably what they look like. Again, the final product will be held to the stipulation with the development review board because that is who will be approving but we did encourage the applicant, which they did provide us those elevations of what they thought they were going to look like so you could comment tonight on whether you felt they were headed in the right direction. So.....

Councilman Smith: If you have them, I think it might be instructive, so we keep track of what we are voting for.

Jesus Murillo: So Councilman Smith, these are the elevations provided at the conditional use permit, the fronts of the store elevation and this is the rendering of what the applicant is proposing this time around. And then the one after, and there were two elevations that were kind of provided because they said they might go in one direction or the other. I wanted to make sure that you had them both side by side this was one example and this was another. And then compared to what they are proposing to provide to the development review board.

And then the top two is what is presented at the zoning case and then the bottom two were being proposed now and this is for the gas station canopy. Because this application only takes into being the gas station and its canopy, the applicant did not provide elevation for the remainder of the buildings.

Councilman Smith: Thank you. I appreciate seeing the difference. I don't particularly have a problem with it, but I think it's important as we go through this project that we always keep reminding ourselves what the original deal was so to speak. Thank you, Mayor.

Councilwoman Klapp: I would like to make a motion to ensure that the conditional use permit was

adopted and adopt, Resolution 11000 on plus or minus 2.25 acres on environmentally sensitive lands foothills overlay, located on 8738 East Dynamite Boulevard.

Mayor Lane: The motion has been made and seconded. Councilwoman Milhaven, would you like to speak to it?

[Time: 00:19:02]

Councilwoman Milhaven: I know that some of the neighbors are really worried about what the lights will look like. I have heard stories about huge backlit lights. I know we have strict rules of what lights are allowed in this part of the city. Could you explain sort of what the lighting restrictions are to give them some comfort? It's not as bad as they imagined.

Jesus Murillo: Yes, Mayor Lane and Councilwoman Milhaven. The city has the light ambience zones. Depending where you are in the city, depending what the ordinance allows you to have. Within the environmentally sensitive lands none of those light fixtures can be seen offsite. And the way we control light spillage is limiting the foot candles how bright they are on the ground, because obviously that's what bounces down. With the photometrics that the politic has provided, the photometrics, it met the requirements.

Councilwoman Milhaven: You are saying they could not see the lights from the street?

Jesus Murillo: Correct. The lights connected to the structure and to landscaping and everything, that is correct. Now any additional signage that they would like to propose, that has to go before the development review board for additional scrutiny to make sure that all of those, all of those requirements are met. But as far as building lighting canopy lighting, landscape lighting, correct, the actual fixtures will not be seen from offsite and the foot candles were at or below what was allowed by ordinance for this site.

Councilwoman Milhaven: They will put a sign up saying this is the kind of gas we sell, right? And I think people think about in other cities there are big back lit signs. They are limited by height also, could you speak to that?

Jesus Murillo: Yes, that's correct. With the new signage ordinance that the Council just passed, there are now restrictions and regulations for signs located within. It will have a corridor on the southern and eastern portion of the site. It has to have a certain amount of setback and lighting requirements.

Councilwoman Milhaven: And is there a restriction to how tall the light poles can be.

Jesus Murillo: Well, as far as.....

Councilwoman Milhaven: Could they put a 150-foot light pole?

Jesus Murillo: Nothing can be above 24 feet for the actual pole itself. Light is, if I remember correctly now, light is 18 feet, I believe for an independent light piece on the site.

Councilwoman Milhaven: Thank you. So it should be pretty low impact on the area. Thank you.

Mayor Lane: Thank you, Councilwoman. Seeing that there are no further requests to speak, I think we are then ready to vote. All of those in favor, please indicate by aye, and register your vote, aye and opposed with a nay. Motion passes 5-2, with Councilwoman Littlefield and Phillips opposing. All right. That's Item 7. So thank you for your participation in that process. Thank you, Jesus.

ITEM 14 - GLO ABANDONMENT PROCESS

Mayor Lane: Our next item is another item moved from consent to the general and it's Item 14, a GLO abandonment process and it's a request to adopt Resolution, number 11014, simplifying the GLO abandonment process by eliminating the requirement for written liability releases from owners, lenders and tenants for the purpose of streamlining the GLO abandonment process. It looks like we have our City Attorney here, Mr. Washburn with us.

[Time: 00:22:55]

City Attorney Bruce Washburn: This is a legal and a land use issue. So I'm going to make the initial presentation and if there's any question on the land use side, Mr. Grant will be available to respond to those. Just to remind you what the GLO easements are, they are the government land office easements. They originated with the small tract act of 1939, basically when the federal government would transfer title of land, which is called patents, the federal government transfers land by patents, essentially, it's a federal word for deed, and when they would transfer land, in certain areas and many of those areas were in Arizona and a bunch in Scottsdale, they would retain, there would be easements on the land for access. They were access easements.

And it's the position of the City Attorney's office and I believe the position that's been well recognized as a general matter of law, when one governmental entity transfers jurisdiction over land to another governmental entity, then any easements that are owned are transferred to the new governmental entity. So, for example, when the city of Scottsdale annexes land from the county, all the easements that the county owns become the easements of the city of Scottsdale by operation of law. The county doesn't have to write us a deed to each one of those easements. They become the, they go to the ownership of the new governmental entity that has jurisdiction.

When the GLO was transferred as the land would be patented they became the land of whatever the new jurisdiction and a number of those went to the county and then they went to the city of Scottsdale and the city would annex the land. So the city had a practice and has always had a practice of abandoning easements that are no longer necessary for the city because the easements that the city is noting to use or the citizens are not going to need just impede development if they remain on land and they serve no good purpose.

So the practices have been, and not just in Scottsdale. The practice in every jurisdiction that I'm aware of is to abandon easements that are no longer necessary for the public good. They were some citizens who were concerned that after the easement was abandoned by the city, that third parties might claim some interest in that easement. Claim they had a right to use the easement, even after the city had transferred it to the property owner.

To address this concern, the city in 2006, the City Council in 2006, by Resolution, required that upon the transfer of a GLO easement that city staff obtain from the transferee an indemnification from the city in case some third party made a claim against, a claim for the use of that easement and they made some claim against the city for having abandoned the easement and so they required that the, I'm sorry, the Council directed staff to require the person who was receiving the abandonment to give us an indemnification and also anybody else that had an interest in the property that was, that was being acquired, also would have to acknowledge and execute the indemnification.

[Time: 00:26:42]

And now we're coming back to Council and say that, you know, in the 11 years, I think it's 11 years, going on 12 years now, that that has been in effect, it has done, it has provided no benefit to the city whatsoever. There's never been a claim. We have never made any use of it. It has served to be an impediment to the development of properties. Some of our citizens have had a very difficult time getting their banks, especially and their lenders to sign off on it, because you can imagine lenders have never seen these before and they show up on their task and it's probably not anybody's first priority to try to figure out what these are about and get back on them, because there's nothing in it for the lender to be doing this. And so it's caused some considerable delays.

And there's never been a case in Arizona and based on the research that we have done, there's never been a case anywhere in the country where any city has ever had a claim brought against it because of it abandoned a GLO easement, and some third party said they did them damage. It's not a guarantee of a title to the person who receives it. There have been cases in Arizona where before a GLO easement had been abandoned, the courts looked at what rights the third parties would have in those. But that's true of any easement. If an easement is necessary for someone to have access, then the city cannot abandon it and the city does not abandon it. That's the same whether it's the GLO easement or any other type of easement. Basically, we are coming to the Council tonight asking you tonight to remove that requirement so it no longer serves as an impediment. This seems to be consistent with the Council's often expressed opinion to not have unnecessary governmental regulation. I will be happy to take any questions.

Mayor Lane: Thank you, Mr. Washburn. I guess one thing that I would ask and it was a very good presentation as far as I'm concerned and made it clearer probably than we have been studying and talking about this and hiring people to explain this to us for at least the ten years that we were talking about, or the last ten years, and have of course, of course, resolved ourselves into a good position with the exact exposure you are talking about. The only question I would suppose and there's probably a very good and simple and direct answer to this, is that it is really the city's determination as to whether or not an easement is going to be necessary. The city's easement and if the city decides it's

not needed for access and/or utility or otherwise, that is an assessment the city makes.

Bruce Washburn: That's absolutely correct, Your Honor. And the fact is that some neighboring citizen or some other individual thought that they would be disadvantaged by the abandonment of the easement, there's a public process. We have four abandonment, easement abandonments on the agenda tonight, and if the citizen feels like they are being disadvantaged they can come in and make that presentation to Council and then Council decides whether or not they want to abandon the easement.

[Time: 00:30:07]

Mayor Lane: All right. Thank you. I don't believe we have any other requests to speak at this point in time, but I appreciate that. Randy, if you want to follow up on any other aspect of this, please feel free.

Planning and Development Director Randy Grant: I wouldn't attempt to follow that.

Mayor Lane: All right, well, that's fine. As I'm offering you the time, a couple of requests to speak have come up on it, starting with Councilwoman Littlefield.

[Time: 00:30:34]

Councilwoman Littlefield: Thank you, Mayor. The reason I pulled this is as I read through it and looked at it and knowing, firsthand, sitting up here, how often the city is looked at as a lovely target for lawsuits, I'm wondering why we want to abandon a process that has been working 100% of the time. We haven't had any problem with this. Any kind of possible interest that someone might have has been signed away and the city is standing free and clear of any future recognition of that. So I'm wondering why would we stop something that's working 100% of the time even in this atmosphere right now while everybody loves to see the city or any other governmental agency that might have money?

Bruce Washburn: Mayor, members of the Council, Councilwoman Littlefield, the reason why we brought this request to the Council for consider, it's served as an impediment and imposed extra burdens on people, many of whom are just landowners trying to develop their own properties, and so it has caused some disadvantage to the citizens and while you are correct that it's working 100% of the time in some sense, because it's not like we have ever used this indemnification to defend ourselves against a claim, there's never been a claim. So it's not like, there's no reason to believe that it's the indemnifications that's preventing the claims. I think what's preventing the claim is people don't have an interest in the GLO easements after the abandonment. There's no evidence that it's benefiting us. But there's some evidence that it's disadvantaging the citizens.

Councilwoman Littlefield: There was a gentleman who used to come up about the GLO easements, yes, it was Leon. What would be his change of legal status of someone else, like him came up and did something like this. Does this open the city in any way to court action, possible loss of funds from a

court suit?

Bruce Washburn: It does not create any rights in third parties that did not already exist, although in my opinion, those rights don't exist and we have never seen any evidence, either through the courts that the courts think they exist or from the citizens that any citizen felt strongly enough that such rights existed that they would pursue a claim.

Councilwoman Littlefield: Okay. I know Leon, he's the one I was thinking of. You are right, Councilwoman. He claimed that if we remove the GLO easements that he lost access to his property.

Bruce Washburn: It was not that he lost access to his property but his access was diminished because the right-of-way was diminished but he had adequate legal access to his property. He never demonstrated that it was inadequate. And I heard the description of his difficulties many times.

Councilwoman Littlefield: Thank you.

Mayor Lane: Thank you, Councilwoman. Councilman Smith.

[Time: 00:33:58]

Councilman Smith: Thank you, Mayor. And thank you, Bruce, for the presentation. I think this is an example where we created a burden to all interested parties, a regulation that serves no useful purpose and I will make a motion that we adopt Resolution 11014, simplifying the GLO abandonment process by eliminating the requirement for written liability releases from owners, lenders, and tenants for the purpose of streamlining the GLO abandonment process.

Vice Mayor Korte: Second.

Mayor Lane: Motion has been made to adopt the Resolution as indicated and seconded. Would the second like to speak toward it? All right. No further requests to speak on this item. We are then ready to vote. All those in favor, please indicate by aye and nay if you are opposed. It's unanimous, 7-0. In approval of that Resolution -- or adoption of that Resolution. So thank you, to those who presented. And for the discussion on that.

ITEM 25 - PUBLIC HEARING ON WATER AND WASTEWATER LAND USE ASSUMPTIONS AND INFRASTRUCTURE IMPROVEMENT PLANS

Mayor Lane: We will start with our regular, Regular Agenda items and that's number 25, it's a public hearing on water and wastewater land use assumptions and infrastructure improvement plans. We have Mr. Biesemeyer who is working his way not podium who is the water resource director to present on this.

[Time: 00:35:23]

Water Resources Director Brian Biesemeyer: Thank you, Mayor and Council, Brian Biesemeyer, your Scottsdale water director. I have a short presentation in front of the public hearing that you have before you. You are not asking for any decisions just giving you an information briefing right now. This is on land use assumptions and infrastructure improvement plans for water and wastewater.

It's part of the development fee process, state statute requires that we adopt a land use assumptions and infrastructure improvement plan prior to any adoption of development fees. This is the beginning of the process. So this is the public hearing. We will come to you in the March for the adoption of these two reports. And then we will have the development fee report and then in May we will request the adoption of the development fees should Council decide to adopt those fees, those fees would be enacted in September. The development fees are one-time fees that are imposed upon developments for providing necessary public services. They are designed for growth to pay for growth.

Development fees must result in the beneficial use of that development and in Scottsdale, the development fees are only, have only been adopted for water and wastewater. The land use assumption report covers a ten-year period from 2017 to 2027. It must be adopted every five years or updated every five years. Our last one was done in 2013. So really, we are currently on four-year period. It shows rejections of changes in land use density and population as pursuant to the General Plan. And it defines the service areas and exceptions. For service areas generally, it's the city limits. So within the water service area is our city limits with the exception of the EPCOR service area. On the wastewater, the two exceptions are a small area on the east side of the city, the Fountain Hills sanitary district, and the Black Mountain Sewer Company. And it too has to be updated every five years. Our last one was done in 2013. Defines equivalent demand units and levels of service and cost and I will get to those on prior, or next slides.

[Time: 00:38:10]

Equivalent demand units are exactly that, they are equivalent demand and they are equivalent for a single family house. The levels of service is required that we establish those and these are slightly different. On the water side, it's defined as peak day. And water demand varies seasonally and therefore, it's defined as the peak day demand to provide service to each individual developing unit. On the wastewater side, we design wastewater systems a little differently because the wastewater knows are very much less and so they are designed on average annual day demand per individual unit, and there is a safety factor, but it's designed on average annual demand. For the future facilities that we are looking at.

On the water planning side, we are looking at a central Arizona, our cap treatment plant expansion at the water campus, it's a 20 million-gallon a day expansion and that's a cost estimate of \$30 million. We have some water contribution expansion and several wells planned, and you might ask, well, since we are really a surface water treatment, we provide surface water for our residents, why do we need wells? We use wells for peaking and you might, then the other question would be, well, don't we need safe yield? Yes, we do need safe field, meaning we actually don't mind groundwater. We put more groundwater in the ground than we take out, however, we have an extensive aquifer that covers

a large part of the city and we use that for storage. So we put water in in the wintertime and we pull some out but not as much as we put in in the summertime to meet peak demand.

On the wastewater side, we have no facility expansion, but we do have a collection system expansion plans. These are estimates. We haven't done the development fee report. The water development fee would increase to \$3,900 per EDU and the wastewater would increase to around \$2,600 per EDU. To put that in perspective, this shows what we had in 2012. The stay law changed and became effective in 2014. We went through the new process and you can see that our fees were reduced considerably and then the proposal would be an increase around \$1,100 per EDU at the, at this new fee level. These are the estimates.

[Time: 00:41:10]

I would like to also say that part of the issue is the new, it's not a new, we have been operating under a state law for a number of years now, but it confines us to a ten-year outlook. And so what happens in that ten-year outlook is that outlook moves and we have a major facility such as the expansion of our cap water treatment facility come in to that ten-year window, it increases the cost per those EDUs. And so as that window is lessened or initially put in place we didn't have the cap treatment facility expansion, we now have to come into that window where the cap treatment facility is in there and is included in those fees.

On the commercial side, similarly, there's a dramatic decrease from 2012 to 2014. And you can see we're looking at the same \$1,100 increase per EDU for both water and wastewater combined. So what's next? The next product you will see from us is a development fee report. However, Brian, if you could bring up the Elmo. I guess not. I can go back. I can go back to the very beginning. This is what I have up on the Elmo. While our next product will be development fee report, the next time you will see me will be to ask for your adoption of the two reports that we're discussing tonight. And with that, pending your questions, that ends my presentation.

Mayor Lane: Thank you, Mr. Biesemeyer. We have some questions or comments and we'll start with Councilman Smith.

Councilman Smith: Thank you, Mayor. The land use assumptions report, you don't, your department doesn't prepare that, does it? How do we get that?

Brian Biesemeyer: Mayor Lane, Councilman Smith, our department does prepare that report but we work in conjunction with Randy Grant and the development department to ensure that it matches with the General Plan.

Councilman Smith: Okay. So it's a city-generated product and collaboratively done between the two of you?

Brian Biesemeyer: Yes, it is. Yes, sir.

Mayor Lane: Councilwoman Milhaven.

Councilwoman Milhaven: There's always a conversation in our community, about whether development pays for itself and your conversation has been about investments and infrastructure and the fees we will charge new development. Can you talk about how you balance, how the current ratepayers, versus new builds help to pay for future infrastructure improvements? Just basically, philosophically.

Brian Biesemeyer: Mayor Lane, Councilwoman Milhaven, yes, philosophically, we plan for these developments and so we need to put infrastructure in to make it ready for those developments to occur. All that was the cost that you see planned in here. So when we, when we spend the money to put that infrastructure in, we then collect that infrastructure from that development that comes in place and charges per each EDU equivalent. So that would be a single family, but then we work those per meter size, per se, the amount of volume of flow, a large building is much more than a single home, and then the charges are thus applied to those developers as they come in to pay for that development and the infrastructure we put in place.

[Time: 00:44:46]

Councilwoman Milhaven: So are you saying you took the total cost, the total expansion costs and you are dividing that out to what you anticipate the new development is going to be, so the new development is entirely paying for the expansion?

Brian Biesemeyer: That's exactly what was in that, and Brian, can you go back to the presentation? Okay. Let me get there. So when we do the planning estimates for that ten-year period of time, these what are we see as new facilities needed for that growth.

Councilwoman Milhaven: And that's being entirely paid for by new development.

Brian Biesemeyer: That's paid for out of the impact fees, yes, ma'am.

Councilwoman Milhaven: Thank you.

Mayor Lane: Thank you, Councilwoman. I see no further comments from here. We have no cards for the public hearing. This is specifically a public hearing at this stage for some input, which we have now heard from at least Councilmembers and there's no public comment that's requested on this. So hearing no further comment, I will now close the public hearing on this subject. So that leads us to the next item, which was, I would now like to open the public hearing on the city's infrastructure improvement plan. I'm not sure do we, is that a separate component or.....

Brian Biesemeyer: Yes, Mayor. There's two components of that. Yes, sir.

Mayor Lane: And you are to present on that?

Brian Biesemeyer: No, I presented on both.

Mayor Lane: We have the hearing and it's all on the water infrastructure. So no further comment on that and no other questions. So the hearing on that particular issue is now closed as well. Okay.

ITEM 26 - MONTHLY FINANCIAL UPDATE

Mayor Lane: And our next order of business is Item 26, and it's our Monthly Financial Update. We have Mr. Jeff Nichols our treasurer here to give us a presentation. He's at the podium. Welcome.

[Time: 00:46:53]

City Treasurer Jeff Nichols: Thank you, Mr. Mayor. Excuse me, members of Council, our monthly financial update as of December 31st, 2017, there was not a presentation given on the potentially financial updates on November but those numbers are baked into this report. I don't see any reason to go through two months. We will just take the last month that I closed.

Graphically you see represented here that the actuals are greater than budget on our revenue sources to date. And by numbers, I will start with the state shared revenues. We will get to the local taxes here in a little bit. State shared revenues a little bit more because of the figures we got, the budgeted figures. The state is doing better than the Arizona League of Cities and Towns gave us for the budget figures. Some of the other positive variances, property taxes, we budget, we spread out the budget for property taxes based on prior year collections. We are just receiving them differently. We don't expect that variance to remain at the end of the fiscal year.

Some of the building permit season charges we are doing better being driven by residential building, still out pacing demand. So a good thing for the city. Some of the other interest earnings I will point out, we were doing a little bit better. And every time they bumped up this irrelevant rates the mark moves a little bit. We base it on what we thought the interest earnings would be on our calculations. So we are doing it a little bit better than we thought.

When you look at the sales tax category, again the vast majority of sales tax category, not vast, but a number were above budget. One thing I want to talk about is the continued unpredictability in this. We just don't have a good base. We talked about maybe respreading the budget this fiscal year. We only have basically 12 months of history at this point in time and we don't have a good base to spread it on.

One area where there's a negative variance, I wanted to point out the food stores, you notice there the year-to-date CIP transfer of almost \$2 million. There's a slight negative variance in that. And, again, as staff is going through and looking at these figures on a monthly basis, we found one person, one entity that falls into that category, that had stopped reporting to us. They are still in business. So we are reaching out to them. We are working with the city that they changed their reporting to. We don't know why they did it.

But our staff remains on top of this, out of anything in this category, I think one thing that I saw favorable in Governor Ducey's budget is they are looking back at adding some of the audit staff that they cut in a previous fiscal year. We look at that as a positive because our staff has been taking up the yeoman's work on that and making sure that we receive all of our collections in this area.

General Fund uses by category, again some slight variations. You see personnel services. Talk about it last year, and still talking about it this year as we budget for staff, though staff retire, we fill those vacancies and we do it as a savings to the budget. We are seeing some part-time savings in both the Police department and the Community Services department.

[Time: 00:50:30]

Some of the programs they are not retiring as much as the demand for the services isn't as high and they are not hiring and we are seeing some savings there. Contractual services across the board within the departments, a lot of it is timing. We see as we get towards the end of the year, how that works out, capital outliers in the public works area, the public works department is ahead of their plan and they are beating their spread right now. We don't expect that to be a negative when we get to the end of fiscal year. And we talked about the transfers out that Council authorized for the two, from undesignated unreserved fund balance for the two flood control projects. We also had a transfer out for the interest payment on the Parker case. Which was just done recently. So those transfers were not budgeted for creating that negative variance.

You look at personnel services. Again, we calculated what we thought it would be. It was closer to \$1 million creating a negative variance and retirement count. Over time, I have talked to you before and we took action recently last fall to hire an additional six firefighters and get them in the academy to relieve some of the pressure in the fire department. They have 22 individuals that are not reporting to work for one reason or another, and because they are constant staff, that puts strain on the department and strain on their overtime budget. We know that's happening and the City Manager is addressing that.

You look by division, again, public safety fire, the only negative variance you really see, again most of it created by overtime and as I said public works, they are just doing a yeoman's job as far as getting their projects out and staying ahead of what they had planned to do. They also had some unplanned expenditures. They had some fire panels that they had to replace in the civic center across the industry and over the Civic Center Library. We had an OSHA inspection. They had to buy some fall protection equipment for certain buildings that was unexpected and were responding to OSHA's request to take care of those and in the interest of employee safety, we are doing that as well. So big picture at this point in the fiscal year, we thought we would see a negative hilt to our fund balance of approximately \$2.3 million, what we are actually seeing is a \$2.8 million surplus, creating a \$5.1 million positive variance at this point in time. What remains at the end of the fiscal year remains to be seen, but with that, I would take any questions related to my part of this presentation.

Mayor Lane: Okay. We will try not to step over the line, Mr. Nichols. I do have a quick question, when we talked a little bit, and, of course, we have been talking for the last couple of years with regard

to how DOR has responded to the privilege tax changes, the TPT, and one of the things that we were most concerned about was the elimination of so many positions to the point of almost eliminating the audit function with, on the state side. And as you mentioned, a positive aspect is bringing that back.

It was sort of a mixed blessing in the sense that previously the state was not known for, you know, a strong, strong audit approach, particularly as it related to some of the things that we have dealt with in the past directly as a matter of process. How do you see this affecting us with them bringing that on, maybe in stronger form that's yet to be seen? I don't believe it's a contract service debt is it?

[Time: 00:54:22]

Jeff Nichols: Mr. Mayor, my understanding is no, it will be David Abranovic of ADOR that they will be hiring. It will take some time to ramp that up and the other is, of course, you know, what level of expertise.

Mayor Lane: Once they are ramped up and they are on the job, but ultimately, will it have some impact on our staffing requirements on our side of it under the normal circumstances?

Jeff Nichols: Mr. Mayor, even when we were collecting those revenues, not ADOR, ADOR had audit staff and they looked at audits on a statewide basis but we still have a process in place whereby we can request an audit, firms within the city of Scottsdale and if those firms cross over jurisdictional boundaries, we can still make that request, ADOR can still grant that. I think this would give them an opportunity to maybe say if they get enough requests for certain businesses or certain business that's in multiple jurisdictions that they might take that audit over. But I still think they look at us as a partner in this process. So.....

Mayor Lane: And I completely understand that, bust when you did mention the fact that it put an additional strain on your staff with their absence from the field, for at least the year, at least a year and it may go beyond that, once they do ramp up and they are on, will there be some relief to what we have experienced over the last year and maybe a little bit further yet?

Jeff Nichols: I think Mr. Mayor, what it will allow us to do is do more analysis of the data that we are getting with the staff that we have. As I said, you can imagine we have approximately somewhere between 20 to 25,000 licenses in the city. The vast majority, a small percentage of those licenses generate the majority of the revenue, but for staff to go through on a monthly basis to make sure that the people in each category or filing on a timely basis and paying the taxes that they should be paying, it's an onerous tax. We will still be in the audit business but we will be looking at other job duties for them as well to make sure that we receive the revenues that we should.

Mayor Lane: So from what I understand, there will be some relief but it will go back to the various licenses within the city.

Jeff Nichols: Very well put, Mayor, yes.

Mayor Lane: Councilman Smith.

[Time: 00:56:44]

Councilman Smith: Thank you, Mayor. The last slide you had up, it indicates that the sources over the uses is adding \$5.1 million to our unreserved fund balance. Do you have a slide or do you have a recollection of where that unreserved fund balance is at the moment with another \$5 million on top of it?

Jeff Nichols: Councilman Smith, I believe right now with the transfers that have been done out, the payments to, you know, for the six firefighters that we took out of contingency, for the payment, for the interest payment this would bring it up into the neighborhood of 14 to \$15 million, and undesignated up reserved fund balance should it remain at this level.

Councilman Smith: And I wasn't trying to put you on the spot to come up with a number there. I have thought it was probably in that order of magnitude. In the future when you do the financial presentation, why don't you always tell us what the sort of rolling forward new number is for the unreserved fund balance for the benefit of the public. That number is supposed to be swept for CIP purposes unless, unless the staff or the City Manager, whatever has another identifiable use for it. But as we're looking for funds for CIP, I think we want to keep our eye on that number and what it's growing to.

Jeff Nichols: Mr. Mayor, Councilman Smith, we can certainly do that. We always talk about undesignated unreserved fund balance, for things that go bump in the night. One of the things that bumped, was the 68th Street bridge over the canal. I don't have an estimate on what those repairs may be, but that's something that just came up. So it's, it's useful for us to have the ability to respond to things like that. You could say contingency does that but I can have staff add that to the slide so we can keep that at the forefront.

Councilman Smith: Thank you, thank you, Mayor.

Mayor Lane: Thank you, Councilman. Just along that line, if I might. The, that balance that we're talking about rolling forward, I don't know how, and I will think you made mention of this, if this is what it becomes. How much of, when we say this, this is on the basis of actual versus budget, but do we know this has materialized? In other words if we decide that it is \$14 million, with the \$56.1 million, are we pretty well assured that that's where, within a reasonable range of error, I suppose, that that's where it will be?

Jeff Nichols: Mr. Mayor, at this point in time, we have don't because we have six more months of the fiscal year to go. A lot of these are timing differences on the expenses. A lot of them are timing differences on the revenues as well. So as we get closer in that April, May category, the number becomes much more.....

Mayor Lane: Yes. And I would like to say it goes to the point that I was just about to make. If we

are to portray that number, we need to make sure we have qualifiers on it so we are not planning on it. May be significantly slow a timing, significantly a timing difference.

Jeff Nichols: We could break it out by what has been realized to date and what we are estimating for the fiscal year and make a note that that's an estimate at this point in time.

Mayor Lane: Yes, I think that would be worthy, as long as we go that route. I think that would be good.

Jeff Nichols: Okay. And right now, I would like to introduce Dave Lipinski, he will give the quarterly CIP financial update as of December.

[Time: 01:00:36]

City Engineer Dave Lipinski: Good evening.

Mayor Lane: Good evening. Welcome.

Dave Lipinski: Thank you. So the C.I. P. subcommittee has been working tirelessly and most of their vision is forward on the future CIP. One the requests that came out of the subcommittee is tell us what's going on now. So the idea is this will be a quarterly update, this is the schedule we have now, just an update of where some of the high level CIP projects that are in the FY '17/18 CIP are, what their status is and how they are moving. I will start with a quick run through of the seven different program areas that the C. I.P. holds. They are subprograms and just a few project names that they currently have in the CIP and then we will run through some highlighted items, and where they are. If you have questions, feel free to ask.

The community programs they take library and library improvements, neighborhood and community projects and the parks and park improvements. Under libraries they have the story program. Neighborhood and community projects one of their big ones is the aquatic chemical system replacements, getting rid of the on-site chlorine it's much ciper and, safer and easier to handle.

And then the Indian Bend Wash. Drainage and flood control. They have a big range of projects currently. The Rawhide Wash, that we funded several months ago out of one of the undesignated, unreserved fund balance. The Reata Wash, that will be coming back to you for the next stage contract. We are hoping in February after meeting with our project partners on it to move it forward. And they also work in the neighborhood level. They can address small concerns that come up throughout the year.

Preservation, keeping the Preserve great, and providing controlled access to it, where needed. Currently they have three different trailheads. They are in the process of design on and hoping to get construction done soon. A lot of this goes to the creation of new trails, destroying and revegetating existing trails that shouldn't be used to try to control the access, where people are within the Preserve. A lot of this is also pipe rail. You may have seen a simple rail fence around the A lot of the Preserve,

really controlling those points of access so we can keep it pristine while allowing people to enjoy it.

Public safety, divided into police and fire. The fire department right now is very busy. We are delivering four fire station projects for them that were part of the bond 2015 package and the police is working on what they have this year is some ballistics glass updates within their facilities to protect their forward facing employees.

Service facilities, it breaks into two separate subgroups. Municipal, municipal facilities and improvements and then also I. T. falls underneath this category. On the municipal side, the fuel site upgrades, it's up at the transfer station up north, it helps a lot of the vehicle commute, they can actually fuel up north, much more efficient and their biggest one, obviously, the facility repair program, it keeps the lights on and keep the buildings we live and work out of up to date.

[Time: 01:04:17]

Technology, it's a payroll system replacement and then the network and server infrastructure, which are annual occurs costs to keep the system up and running. Transportation has four subprograms within it. The aviation, the airport terminal project is their biggest one right now, looking to wrap up this summer. Streets and street improvements, the funding agreement that you approved earlier tonight for Happy Valley falls underneath that road, underneath that subcategory, along with Pima and Pinnacle Peak. And traffic signal controller cabinet grants, it was awarded for controller cabinets and helps to coordinate the city throughout the city and newer technology. And then transit and transit improvements, bikeways, sidewalks and those sorts of improvements. Water management, both wastewater and water, wastewater is wrapping up their hydrogen sulfide minimization project. It helps to control some of the odors from the pump out stations.

And on the water side, the big one they are starting on now is the Chaparral pretreatment project and I can get into that in a few slides here. So these are the CIP expenditures. This is what is approved within the '17/18 CIP, the current CIP we are living under. The actuals in the first column is what has been expensed from October to December of 2017. The FY '17/18 exception to the budget is the CIP budget per program from the inception of the project whether it started in '17/18 CIP or prior to that, it's the budget up to the '17/18 CIP year.

And then the remaining budget by program moving forward. This is just a graphical representation. What this shows is we have to have the bum et cetera authority up front, the cash flow and the way we spend the money varies behind it obviously a little later in the design phase versus the construction phase, where your bills start to get much bigger and much faster.

Down the specific programs, the aquatics chemical system replacement, as I said, we are in design. We are hoping to get McDowell Mountain Ranch pool done this spring with the other three pool facilities done in the fall winter time frame next year. Civic Center Mall, the master plan is going to Planning Commission in February. And we're hoping to have the conceptual design report and 30% plans in June. Granite Reef water shed, it's a very large project. It's broken into three different pieces right now, phase one north is under construction today. It's the part that goes from Granite

Reef, to Pima Road and McDonald drive. And then it will be along Indian School.

Only some minor connections to existing storm drains within Indian School, but there are lines going north, one within Pima and one within Granite Reef. The Reata Wash as I said earlier, we are finishing up that scope and fee to move that forward to a 30% stage and a submittal on that. The Preserve trailheads, Brace Field and Granite Mountain are, yes. Municipal use is coming to Council February 13th for those two trailheads looking to start construction in May with a completion in mid-2019 and then the Pima Dynamite trail head is a little bit behind. The municipal use is started and they want to be complete late '19, early 2020.

[Time: 01:08:16]

The fire stations projects as we discussed earlier, these are asterisked because they were part of the bond program. Fire station 603 and 616 are both in design about 60% designed currently. We are looking to have those open around late 2019 early 2020 time frame. Fire station 605, we hope the fire department will be in there. That's a redesign. And the additional compressed natural gas station up in the north courtyard.

We had 90% plans and anticipation construction this summer in early 2019 and then the facilities repair, the maintenance program, they identify the projects to each building and facility that they own and operate throughout the year submitted as part of the CIP program and get as much done as they can.

Transportation, the airport terminal area redevelopment project, the hangers will be delivered early this summer with the office building being delivered late this summer. The cross cut Canal Bridge and path is going to break ground early next week. The Hayden Thomas safety improvements will be starting this summer. They want to start in summer of '18 and it will be about a six month project. The pavement replacement, this again, this piece was part of the bond 2015 program. To date, they have paved 127 lane miles and they are on schedule to get it all paved within the three-year time frame they had it laid out. This project is over 90% design phase.

We are finishing the acquisition of some small parcels that need to occur to make sure we have all the rights in place and then we will roll right into procuring a contractor for that work to start. Chaparral water pretreatment. This project, what it does is actually brings treatment in front of the plant itself. They have found out that the water shed has changed over time. They have a lot of issues with algae and snails and things. This addresses it before it enters the plant. It makes it much more efficient. They are working on design now. They are looking at how to handle the construction on site as a whole. Once they get through technologies and figuring out plan operations with it. And zone '14/16, water improvements they are being constructed to support the wildcat hill development up in the north part of town at Cave Creek and roughly Bartlett dam road and those are to be complete in August of this year. And with that, I can take any questions or any feedback or if you have future recommendations in how you would like to see this, please let us know.

Mayor Lane: Thank you, Dave. We do have a question or a comment to start with Vice Mayor

Korte. It disappears. Are you still.....

Vice Mayor Korte: Vice Mayor Korte.

Mayor Lane: But your request disappeared. I thought maybe you changed your mind.

[Time: 01:11:32]

Vice Mayor Korte: So to the significant projects thank you for the nice report, on these projects which one, which ones are General Fund CIP projects versus other sources of capital project funds?

Dave Lipinski: Your General Fund CIP within this fiscal year, your aquatics, the community facilities projects are, your drainage and flood control are partially, the next stage of the Reata wash is, and the other, ultimately when we go to construction we should have a partnership with the flood control district and funding of that ultimate project is still to be determined. The Granite Reef water shed is an unreserved, which that would still be considered General Fund, correct?

The undesignated unreserved, it's a General Fund transfer. The Preserve is out of the Preserve sales tax, the public safety is off of 9 bond proceeds. There is some General Fund to cover those expenses that are not bond eligible within each of those projects. It's a very, very small component. A few percent just to cover some administrative environment fees that are, administrative fees that are not bond eligible. And this is General Fund funded: The compression natural gas, I believe is of the fleet fund. The fleet and solid waste fund. And the transportation side, those are all transportation sales tax. And then water is out of water rate. So there's very few General Fund funding with them.

Vice Mayor Korte: Thank you.

Mayor Lane: Thank you, Vice Mayor. Councilman Smith.

Councilman Smith: Well, thank you, Dave, for the presentation, and we're sort of getting our sea legs here on how we want to communicate information. But this is a good start. I'm going to follow up really on what Vice Mayor Korte was asking you. And in future presentations, if you can in a summary sort of way indicate what projects are being done not by project, but what dollars are being demanded of the water department, the airport and so on and so forth. The schedules look like we are really busy, spending a lot of money and keeping ourselves well entertained here, but the reality is that many, if not most of these dollars are coming from other funding sources, other, other than what we have asked the voters to support through bond election or whatever. So some summary may amplify and clarify that for the listeners. Thank you.

Mayor Lane: Thank you, Councilman. If I were to say and I certainly want to draw upon what Councilman and the Vice Mayor just said too, I think it is important to break this out.

But even for a public consumption, the idea that we have enterprises that are self-funding with a different bonding mechanism all to go and a different source of debt service funding, those are critical

components, much less the transportation sales tax which goes into a separate fund, even though it sometimes is supplemented. So I think the break out is an important one, but for public consumption, I really do believe that there's some emphasis on those that, those departments, if you will, or areas of the city government that actually fund themselves through fees, from sources in some instances other than the taxpayers or the fee base here locally. Thank you very much, David, for the presentation. It was very much appreciated. Seeing we have no further questions on that, that is not an action item. And we have just gotten our update, as was indicated.

PUBLIC COMMENT

Mayor Lane: And we do have, the next item is our Public Comment and we do have a request to speak in Public Comment from I believe it's Bradley Tweit. Is that right?

[Time: 01:15:16]

Bradley Tweit: Thank you for giving me this forum. I never thought that I would be here. You might find this entertaining. I hope you don't. I hope you take it seriously. So let me, I have been writing my notes here. This is the first time I have ever done this. I'm a little nervous. So I live in, near 92nd Street, just north of Shea, and I have lived there since 1988. I have lived in Arizona my whole life. I was born in Phoenix in 1962.

And my parents moved, we moved to McCormick Ranch, and, and then I hence moved from there to my house, and bought that house there. And over the years, I have had experiences, I'm sure a lot of people have, anybody that has citrus trees probably will be able to identify with this, I hope. Roof rats. This is my issue here. I have been trapping them for years and I'm somewhat almost a professional at it. I have talked to a professional trapper in Prescott over the years when I had a squirrel problem. Now I love squirrels. I hardly ever see them, but I lived right near the wash and every once in a while, hardly ever, I will see a squirrel and I actually now welcome them.

But I had a mother squirrel that was trying to take up residence in my garage and I called this trapper in Prescott. He said, you will have a real problem in that squirrel lays its young. Well, that got taken care of, but what can't get taken care of is this roof rat that is, and I have trapped many roof rats in my day with snap traps and cage traps, and I have had very good luck, but I have one that is demonic. This one here is so smart that it goes into the gauge. It eats all the peanut butter off the trip trap, which I have set very hair triggered and how it does it is beyond me. And I'm, I don't know what else to do.

And I just wonder, is there anything, any resources, anything that the city of Scottsdale request do to help me because they spread diseases and I'm also concerned about this rat breeding in my backyard and then I will have a lot of problems. And so will my neighbors. I don't know what else to do. And I thought, I will go down to the City Council meeting. I have never been here before and I feel very privileged that you all are listening to me and I feel honored to speak to all of you. And I just hope that maybe you might have some suggestions. My neighbor.....

Mayor Lane: I'm sorry, this is the Mayor up on the dais. You have run out of time, and I know you have a little bit of a slow start, but at the same time, this period of time is for public comment, but this could be some direction that can be given if you were to call city hall as far as what resources would be available. We don't address the comments. We do appreciate you coming down here and frankly welcome you. This is one way to communicate it, but we can find out more specifically when we get some contacts for you.

Bradley Tweit: All right. Thank you.

Mayor Lane: In fact, if you want, I will just make sure, I will keep this card and we'll make sure that we reach out to you with regard to that. Okay? All right.

MAYOR AND COUNCIL ITEM 28 – ETHICS REFRESHER TRAINING

Mayor Lane: That, there are no citizen petitions and we do have one remaining item and that's Mayor and Council Item 28, which is our much anticipated and speaking of entertaining, ethics refresher training. We have Mr. Washburn at the podium which is an issue we get annually.

[Time: 01:21:09]

City Attorney Bruce Washburn: It's provided for in the city's ethics code and I'm here to provide the annual ethics refresher and on tonight's agenda, we're going to be talking about two different things.

We will be talking about the open meeting law and under the open meeting law and we will talk about the agenda language and what is covered by it and what is not and then I will talk about public forums and then as we do every year, I think or almost every year, we will talk about gifts because I think that's efficiently confusing that it's good to revisit it every year.

Let's get started on the open meeting law issue. The reason I wanted to do this specifically this year is because we had some recent guidance from the Attorney General's office, thanks to the city of Kingman. Kingman had an issue where they were considering to increase the TPT and they agendized the item for TPT for pavement preservation and then at the meeting, they expanded it to increase the capital improvement project. And then someone contacted the Attorney General's office, asking the Attorney General to investigate, which the Attorney General's office did and determined, in fact, there had been an open meeting law violation and sent a letter to the city of Kingman regarding that matter. And there is some good language in that letter, some instructive language in that letter and that's why I thought I would take this occasion to in address this issue.

So the Attorney General in looking at what had occurred in Kingman said that the agenda, which just was for pavement preservation, was not, the language was not broad enough to allow an action to be taken with respect to capital improvements. And Kingman had responded and said, well, there are other matters, there were other materials available to the public that would have informed them that these, that this broader topic would be discussed and I called the City Attorney and asked them what they were. He said it was things like the Council reports and some other things like that, that were

publicly available. And the Attorney General's office said, basically said, no. What else do you have available besides the agenda doesn't answer the question.

It's the agenda that you have to look at to determine whether or not, in fact, the matters that are being addressed have been properly noticed. And the specific statutory reference in this is A.R.S.43, no need to take notes. I will provide it to you later if you need it. And basically it says that the agenda has to have the specific matters to be discussed, considered or decided during the meeting. The specific matters. But there's, and the Attorney General's handbook goes on to say that it has to be sufficiently specific to actually inform the public about what it is that you are going to be talking about.

[Time: 01:24:26]

So, you know, very broad topics like new business or old business or other matters, things like that, those, when those appear on the agenda, they are basically worthless from a public notice point of view that. Doesn't tell people anything. It's required that the specific matters be listed. The statute goes on to say that only matters on the agenda or other related, or other matters related thereto can be discussed and that's another point that Kingman had raised this was another matter related no what we had on the agenda. And the Attorney General's office said, no. This was not sufficiently specific and pointed to a case from the Arizona court of appeals from 1988, Thurston vs. the city of Phoenix. I believe I discussed the Thurston case with you.

The city of Phoenix was considering doing an annexation, and on the agenda for the annexation, they had two maps drawn that showed the public the two possibilities, the two types of annexations that were going to be considered, and one of them was a, had a map that had, I think it was like 8 acres on it and then the other one was slightly larger and had 8.5 acres on it and then the City Council at the meeting got out a third map which I believe from reading the opinion actually existed when they put the first two maps on there and the third map was like 9.2 acres and had several hundred more people involved and that was the annexation that they approved and people opposed the annexation took it to court and the courts said, no, that's not a, that's not a related matter.

And basically what the courts said, and this may sound familiar to you, because sometimes when I'm asked whether or not I think something is properly covered by the agenda, this is the same test I used. Would your average citizen, you know, reasonably knowledgeable citizen, looking at that agenda item have anticipated that you would take the action that you took. We have two maps that say it will be this big or this big. It doesn't tell people that it could be this big and adding more land. The people would say, oh, we won't be affected because we are not on that map. So that's kind of the other matters reasonably related. It still has to be something that somebody reading the agenda would go, oh, yeah, they might actually do that. So that's what we need to keep in mind when we try to determine whether the agenda language is broad enough.

The Attorney General's handbook also says and I believe this is correct that the dollars have narrowing construed what the other matters is. Basically what they said is don't rely on that too much because it doesn't cover very much. So what happens if, in fact, do you take some action on a matter that's

not properly agendaized? Well, what's happened to Kingman is that the Attorney General in the letter, his letter to them said, okay, you have now been told that you did not, in fact, properly adopt the TPT increase. So under the statute, you have 30 days to go back and fix that.

And there's, there's details laid out in the statute on what you have to do if you are going to ratify something you have done previously. So if within 30 days of learning of the violation, you go back and ratify what you did, then what you did is valid from the time you did it. In other words it relates back. And I did think it was interesting that the Attorney General when they sent that letter said okay, now you have noticed that you violated the open meeting law. So you have 30 days from the date of this this letter, date of this letter. The City Council knew at the time that they took the action, what was on the agenda, they knew what they had done and they violated the open meeting laws and they know all the facts that underlay it. Essentially the Attorney General is saying okay, now that you have been told that you violated it, you still got 30 days to go back and fix it, which I have thought was, you know, beneficial definitely to the city, rather than finding out that your 30 days had already passed.

[Time: 01:29:13]

There are other penalties that could be applied. And so I want to remind you of what happens, in fact, if there's a violation of the open meeting law in that respect. The citizens can actually bring actions for open meeting law violations or the Attorney General or the county attorney can also enforce the open meeting law. And the Councilmembers can be taxed with the Attorneys' fees. Usually they are paid by the city. If there was a finding that the the Councilmember intended to intentionally deprive the citizens of information. It can be directly against them. There could be civil penalties and in most drastic situations and again, if there's a demonstrated intent, there's an authority to remove people from office. So that's what we learned with Kingman's encounter with the Attorney General. The focus we need to make on the agenda language. And my, you know, my rule of them is when in doubt, don't. Because it's easier to do it right later than it is to do it wrong and try to fix it.

Public forums. Since we are getting into election season, I suspect this will come up, although it can come up just about any time, and we have talked about this before, but I want to remind you about this and that is let's say that the Councilmembers are out some place not at a City Council meeting and this would most likely happen at a candidate debate or something like that.

And now you, there might even be a quorum of the Council present and if you know, if we ever know that a quorum of the Council will be present somewhere, that's not a general public, a regular public meeting, we like to agendaize those, what we call nonmeeting meetings and this is again at the recommendation of the Attorney General to say, yes, the Council will be there but no legal action will be taken.

Now we have a quorum of the Council in the room because it's a public forum, a debate, a candidate debate or anything like. That the state legislature has recognized that things like that will happen and that politicians are going to talk about matters of interest to their constituents and not only has

the legislature recognized that it will happen, they have recognized that it's a good thing. That's how democracy is supposed to work and the politicians are supposed to be able to talk to their constituents about that. And so they have put in this provision so you can do that at a public forum without any, even with a quorum of the Council present without violating the open meeting law.

And so the statute specifically says that it's not a violation of the article if you have that kinds of discussions, and they also did this for when people, Councilmembers are politicians would say to a newspaper, yeah, no, this is my position on this, and this is what I think we should do. And knowing that all the other Councilmembers are going to read that. And they said, yeah, no, we expect you to do that as well, but there's a couple of caveats. The opinion or the discussion is not principally directed at or directly given to another member of the public body and there's no plan to take legal action.

[Time: 01:32:49]

Foil two is there's no plan, you are not doing this in order to cheat the open meeting laws but Item one is, and I'm giving this example before. You know, if you are at a public forum, if you are in a debate with another Councilmember, just make sure that the statements that you are making are directed to the audience, and it's not a back and forth between you and that other member and the example I always like to give is you couldn't stand there and say to the other member, well, I disagree with you on that but if you would agree to do this, and I would agree to do this and then we could probably get something passed. Don't do that. Because that would be exactly, I think what this is talking about. I'm not saying you ever would, I'm just saying you never should. Okay? And, you know, if, as the season goes on, if you need me to help you out, I can give you all the assistance I can to make sure the open meeting laws are not violated.

All right. Let's talk about gifts again. Under the, the city's ethics code has its own gift policy that applies to the Councilmembers and the board and commission members. And basically, it prohibits listing, receiving or accepting gifts of any kind from, and there's two specific categories and that's people that are engaged in general practice in front of the Council all the time, or in the city all the time or that have a specific situation involves the city decision making or permitting processes. So I mean, you all know who all the people are that are down here on a regular basis, interacting with the city and for the most part, I think you have a pretty good idea if someone has a specific situation coming up in front of the Council. If you are in doubt, it's probably better to ask than to find out.

And basically, you can't take anything from, you can't take any gifts from those people. So don't let 'em buy you lunch. That's my advice to you. You know, buy your own lunch. It's not that you can't talk to them. But you can't let them buy you anything while you were talking to them. But there are exceptions.

These are entertainment, hospitality, meals, transportation, and token memos, directly associated with events that attending as a representative of the city. And the first point I want to make here is it's got to be an event. Lunch is not an event. Buy your own lunch. This is basically the idea when you go to a public event and you are there as a representative of the city, you are acting as a

representative of the city, then the ordinary things that come with that are not considered gifts, even if you are getting them from the prohibited gift givers. But, again, you have to be there as a representative of the city. And we have talked about this before.

There's no magic formula that says, yes, this you are a representative and here no, you are not a representative. It's up to you to make that assessment. You have to use your common sense on that. And, you know, the most obvious example is when you are there as a representative of the city, you go to some big public event and there's a dais and you are on the dais and you are recognized as Councilmember so and so from the city of Scottsdale. You know if you make a few remarks or something like that, I mean, clearly you are there as a representative of the city.

[Time: 01:36:42]

Kind of the other end of that spectrum is somebody is having a big party and you go to the party, and you are just kind of walking around and, you know, say, some asks you what you do, you say, oh, yeah, I'm a member of the City Council. That's probably the far end of the scale. I'm not so sure that you would be there as a representative of the city. And, you know, there's everything in between those. And, again, you have to use your own common sense. You know. You know whether or not you are representing the city when you are at an event.

But in any event, if you are there, and you are representing the city, then it's not a gift. You know, under the city's ethics code. I also want to make the point that a lot of times, a lot of times I'm sure you are invited to events that have absolutely nothing to do with your being on the City Council. It's, you know, I mean, probably the easiest example, I'm guessing most you joined your family members and friends in holiday events. The same people you were seeing before you got on the Council are the same people you are seeing after you got on the Council and I'm going to say that's not the kind of situation this is talking about.

There you don't have to, you can take a cup of cheer from a family member without worrying about whether or not you are there as a representative of the city because I'm hoping you are not. I'm hoping you are there because it's your family and friends. So we are talking about the kind of events where you are there because you are a member of the City Council, because you got invited to be there as a member of the City Council. Or, again, if it's one of those two prohibitive gift givers, those are the kinds of events where you have to think about, whether or not you are there as a representative of the city.

If you do accept a gift, and it's a permissible gift, then do you have to report it to, to, using the form that the city clerk can provide you and which is filed with the city clerk. But these are just for the, these are just for gifts that have to be reported and I remind you that these kinds of entertainment, hospitality things are by our code declared not to be gifts. Again, when in doubt, I think it's probably better to report than to have somebody figure out later that, oh, yeah, you should have reported that. I think that's usually the best way to go about that.

But even in the city's ethics code, it says that you do have to declare, if you get a personal gift, you do

have to declare it, unless Scottsdale revised code, 14-135 does not require reporting. Oh! What is that? What does 14-135. It's the Scottsdale revised code that applies to all of us. It's all the city employees, all the Councilmembers and it has its own list of gifts that you can and can't get. And its own approach to this. And both the ethics code and this code apply to the, apply to the Councilmembers.

So what does SRC14-135 prohibit. You can't go around asking people to give you things because you are on the Council. I guess you probably had that figured out. You can't get payment or reward for services. So somebody contacts you and says, you know, you have been doing such a great job on City Council, I want to give you an all expense paid trip to Apache Junction or something like, that you can't take that. You can't get extra payment for what you do. And you can't take something, that would be reasonably construed as an attempt to exert improper influence.

[Time: 01:40:40]

I'm not sure I know how to define that. I think kind in your heart of hearts, you know what that means. If somebody could reasonably say, think, well, I don't know if any of you followed the Robert Menendez trial. He had a long standing relationship with a doctor out of Florida. They tried the case once and the Congressman's defense on that is he and I have been friends all of our lives. Yes, he gives me huge gifts but he gave me gifts before I was in Congress and now he still gives me big gifts now.

And so the whole question there is... are those gifts, are they trying to improperly influence the Congressmen. If someone could construe it as a way to improperly influence you, then it's prohibited. However, now we are back to what is not considered a gift. Again, this is very similar to what we already discussed, if what you are doing reflects legitimate public duties or purposes, it's not a gift. This is attendance at events funded in part or in whole by the City. And on the dais I left you with a current set of events that can change. Other events can be added to that over the year. Steve Geigamah in the city and Economic Development is kind of keeper of that list. So if you have a question at that time, about whether an event is funded or sponsored in part or in whole by the city, you can contact me or contact Mr. Geigamah directly. He's the keeper of that list, like I said.

And if you do attend one of those events, then it's reasonable, I'm sorry. In addition to that, reasonable hosting expenses for official speaking engagements, ceremonies or appearances on behalf of the city when public or civil public purpose is occurred. If you are there doing city business, then the reasonable hosting expenses are not considered gifts. Gifts of goodwill are tokens of appreciation are accepted on behalf of the city. So if you are given something, you are not able to take it home. You take it home on behalf of the city. The food, the boxes of food, as long as those are shared with other city, other people in the city, it doesn't mean shared with the people at home, it means shared with other people in the city, other than that, it's not considered a gift or anything that's received and donated to charity.

And, again, I have given you this example before. I think this can come in very handy. When somebody gives you something that you shouldn't accept, but it would be embarrassing to turn them

down, and the example I have used is if you are, you know, if you are at a speaking event and then they come up and they, you know, you are in front of all the people and you are given this wonderful address and all of this warm fuzzy feeling and they hand you something that's clearly beyond, you know, token memento. And by the way, what is a token memento, the Attorney General's example of what is not acceptable is a \$25 gift card. So their idea of a token is, you know, very small. Anyway, so now you are up there in front of all the people and like I said there's the warm fuzzies and they give you something that you clearly can't accept. Just smile and say thank you very much. Bring it back. Donate it to charity and document that you did so. Problem solved.

And as we all know, there's lots of deserving charities that benefit from something like that. Like I said, the sponsored events have already provided you with the current list. I do want to point out that not all events on city property are sponsored by the city in whole or in part, which is why we have the list. And that's it for this year and I will be happy to try to answer any questions.

Mayor Lane: Well, thank you, Mr. Washburn. As usual, very thorough presentation and always gives us a little bit more to think about. I don't see that we have any questions, and that's just an indication of how thorough it was. Thank you very, very much for that. That does actually complete our agenda for tonight's meeting.

ADJOURNMENT

[Time: 01:45:12]

Mayor Lane: Unless there are any other notes, I will accept a motion to adjourn.

Vice Mayor Korte: So moved.

Mayor Lane: Motion has been made and seconded. All those in favor of adjournment, please indicate by aye. We are adjourned.