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CALL TO ORDER

[Time: 00:00:02]

Mayor Lane: Good afternoon, everyone. Nice to have you here with us today for our Regular Meeting. It's approximately 5:00. It's January 8th, 2019. I'd like to call this meeting to order.

ROLL CALL

[Time: 00:00:13]

Mayor Lane: We will start with a Roll Call.

City Clerk Carolyn Jagger: Mayor Jim Lane.

Mayor Lane: Present.

Carolyn Jagger: Vice Mayor Guy Phillips.

Vice Mayor Phillips: Here.

Carolyn Jagger: Councilmembers Suzanne Klapp.

Councilwoman Klapp: Here.

Carolyn Jagger: Virginia Korte.

Councilmember Korte: Here.

Carolyn Jagger: Kathy Littlefield.

Councilwoman Littlefield: Here.

Carolyn Jagger: Linda Milhaven.

Councilwoman Milhaven: Here.

Carolyn Jagger: Solange Whitehead.

Councilwoman Whitehead: Here.

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: 00:00:39]

Mayor Lane: Thank you. Just a couple of items of administrative business. We do have cards if you would like to speak for Public Comment or any of the agenda items, the white card that the city clerk is holding up over her head to my right and if you would like to give us some written comments on the same, that is the yellow card that you can get from her to give us some written comments that we will read throughout the course of the proceedings. We have this afternoon Scottsdale police

officers Eric Boles and Tony Wells, as well as Scottsdale fire engineer Ned Greenleaf here to assist if you need it. We have the police officers right here directly in front of me and I believe we have Ned right up over the TV, in back here, for your needs. Incidentally, I guess a small item, but it's a big item for Ned. He was selected as the 2018 Firefighter of the Year in Scottsdale. Congratulations, Ned.

PLEDGE OF ALLEGIANCE

[Time: 00:01:54]

Mayor Lane: So right now, if you can, please stand for the Pledge of Allegiance and I will ask our newly appointed and sworn in Councilwoman Whitehead to lead us in the pledge, please.

Councilwoman Whitehead: 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: Thank you.

INVOCATION

[Time: 00:02:13]

Mayor Lane: For the invocation, we have Chaplain Mark Yule. Chaplain, welcome.

[Time: 00:02:23]

Chaplain Mark Yule: Thank you very much, Mayor, and, again, it's my honor to be able to open tonight's meeting with prayer. Thank you for that honor. And I would like to invite all of you to join me as we pray. Father, we do give you thanks for so many good things from your hand. God, we live in a great city. We are surrounded by natural beauty. God, you have given us safe streets, a growing population, beautiful parks and Father, you have provided hundreds of people who work diligently with the city of Scottsdale.

And so, Father, you have also provided these men and women that sit before us now to manage and to steward all of these things from your hand. So Father, we come before you tonight, asking that you would be with them in a special way. Father, I would pray that they would be wise as they hear and judge on those things that need decisions. Father, I pray that they would be good listeners of those cases that are being presented as well as the opinions of all those that stand before them.

Father, give them understanding, give them the ability to communicate and God, again, I would just pray that you would help them to be the very best servants that they can be by putting aside self-interest to serve others and to serve our great city. So Father, help us to follow the words of the apostle Paul who say forgetting what lies behind, we look forward to what lies ahead, to press on. And so Father, I pray that you would allow them to press on in wisdom, press on in their abilities to

rule well, and press on to give them everything that they need to make this next year the very best year as the stewards of city of Scottsdale. So Father, thank you for this opportunity to pray. We ask your blessing on this meeting and I thank you, for all of this in the name of my Lord and Savior Jesus Christ. Amen.

MAYOR'S REPORT

[Time: 00:04:31]

Mayor Lane: Thank you, Chaplain. I have a bit of a report today. I would like to give a little bit of synopsis of the upcoming events here in Scottsdale. This is a busy month for us and moving into February as well. The start of each new year in Scottsdale brings with it our amazing special events season, as I was referring to, which gets underway this weekend with Barrett-Jackson. The world's great collector car auction opens its doors to WestWorld and Barrett-Jackson will welcome more than 300,000 visitors this year, as expected more than that last year as well. Raised millions for charities and see a record of 1800 vehicles auctioned before their annual flagship event wrapped up on January 20th.

Just a week later, Scottsdale welcomes the golfing world at Waste Management Phoenix Open January 28th through February 3rd, the greatest show on grass. Always lives up to the legend, showcasing Scottsdale to more than 600,000 spectators in attendance and millions more watching from around the world. Thanks to the volunteers who host the open, more than \$12 million was raised last year for local charitable organizations and we can expect to see a similar amount raised at this year's event.

Those are two of our biggest events, but, of course, there are lots more coming in 2019, including the Scottsdale Arabian Horse Show and the Parada del Sol and Cactus League Spring Training. While much of the country is hunkered down in winter, Scottsdale, we are getting the party started and you can find more information about Scottsdale special events on Scottsdaleaz.gov. So welcome any folks you may know from around the country or around the world, to come and spend some time with us here in Scottsdale. Even though we have been seasonally cool, and appropriately cool for the last month or so. But it's been great for most of us who live here.

PRESENTATIONS

[Time: 00:06:32]

Mayor Lane: So presentations, we have or information updates, we do have several. We will start with the American Heart Association. We have presenter Alissa McKersie, American Heart Association. Alissa, if you could, please come toward.

[Time: 00:06:50]

Alissa McKersie: Good evening. My name is Alissa McKersie, and I'm the Health Strategies

Coordinator for the American Heart Association and I'm honored to be here with you this evening. The American Heart Association launched an ambitious movement to build a culture of health throughout America's workplaces. Our goal is to provide employers solutions and best practices to improve the quality of workplace health programs and engage individuals where they spend most of their day, at work. This suite of evidence-based resources is called Workplace Health Solutions. As part of this initiative, we have workplace health achievement recognition for companies that are showing tremendous efforts in the improvement of health and wellness of their employees.

Today, I am here to recognize the city of Scottsdale for their work site wellness efforts. It takes a lot of hard work to receive recognition from the American Heart Association. In fact, only 18 companies received gold, silver, or bronze level recognition in Arizona for this last year. So congratulations to the city of Scottsdale for achieving bronze recognition this year. So thank you for your hard work and dedication to improving the health of your community. Congratulations. At this time, we would like to invite Mayor Lane to come and take photos with the award and the team.

Mayor Lane: Thank you, Alissa and the American Heart Association team for that award. We very much appreciate it. We do see Scottsdale as a healthy city, and it's an important kind of recognition to get. So thank you so very much for that. Now, the APS Peak Solutions Rebate, and we have a presenter, our very own Brian Biesemeyer, our Water Resource Director, Joel Fisher of Itron and Tammy Tepper-Cunningham of Arizona Public Service and Kathleen Prendergast of Pinnaclewest.

[Time: 00:11:12]

Water Resources Director Brian Biesemeyer: They will come up here and give you a great big check. Before they do so, I would like to say we are proud to be participating with APS in this program and it's a demand response program that allows APS to reduce demand in critical periods and as we voluntarily reduce our water demand at our campus. We have been doing this over nine years, an average over \$100,000 per year, and we just hit the \$1 million mark. And so with that, I will have Joel Fisher and Kathleen Prendergast, as well as Patty McLaughlin come up here to make the check presentation.

[Time: 00:10:59]

Joel Fisher: Thank you very much for having us this evening. I would just like to add, the city of Scottsdale has been a leader of this program for over nine years. With almost 700 participants in the program, Scottsdale is the largest municipality participating in this program. They are almost the second largest contributor to load reduction for this program. So we thank the city of Scottsdale for their continued support of the program. Thank you.

Mayor Lane: Thank you. Do you want to get a photo?

Brian Biesemeyer: I think we would like to get some pictures with you, Mayor.

PUBLIC COMMENT

[Time: 00:12:18]

Mayor Lane: Okay. Next is our Public Comment time, and we, Public Comment is reserved for citizens' comment regarding non-agendized items, with no official Council action taken on these items. Comments are limited to issues within the jurisdiction of the City Council. Speakers are limited to three minutes each. There's no combining of time. And we allow for five individuals to speak during that period of time in Public Comment. We happen to have five requests to speak. So we will start with Richard McCaughan. Please, if you would come to the podium, sir.

Richard McCaughan: I haven't been here before.

Mayor Lane: Well, welcome.

[Time: 00:13:11]

Richard McCaughan: Thank you. Boy, that's loud! So I have, I don't know the exact official record on this Council's turning down light rail for Scottsdale, and every great city in America, even the lesser ones along the highway 99 corridor are electing to install light rail. Now, I have heard mixed things on why the light rail was turned down by the City Council, but I'm urging the City Council at any opportunity and at the earliest possible time you can to reverse that mistake. It's clearly a mistake if Scottsdale is one of the greatest livable cities in America, it certainly would do what San Francisco does. It certainly would do what the city of Seattle is installing, massive extensions of the light rail.

This is a mistake for the city. The transportation for the public being buses forces the use of fossil fuels rather than, you know, green, friendly non-fossil fuels, electricity being one of them. So I am asking that this City Council, and I would like to know why this Council, who on this Council voted against light rail, because it's not a progressive. It's not a vote for the future.

Eventually, you are going to have to probably put in light rail, just like Mesa, Gilbert, Phoenix, parts of Phoenix that aren't quite as economically affluent as this city. City Councils that voted for it that didn't have the funds that might be available to this affluent city. So every time I talk to somebody about light rail, and I heard there wasn't enough support for it in the prior votes but people are actually shocked. Common citizens, not special interest groups. I heard it was turned down because of special interest groups along the Scottsdale corridor or businesses in Scottsdale used their influence to affect the Council.

The only thing this Council should really, really, really be concerned about is the interest of the people. And the people everywhere, I never have talked to a single citizen that had, when I say the City Council has voted this down, going 20 years in the future. They go, no, we need a light rail. Anybody that's ever used the light rail system along the Mesa-Gilbert corridor knows how great a system this is and how it causes increase in the economy. I don't know whether this is enough of a forum for me to affect this Council, but I'm praying that this Council gets smart like San Francisco, Seattle, almost every city along the highway 99 corridor, the big ones, Modesto, even these less after fluent communities

are installing the. affluent communities are installing the light rail. I'm begging this City Council to make this one of the greatest cities in America, not one of the most obsolete.

Mayor Lane: Thank you very much, Mr. McCowan. Next is Pat Shaler.

[Time: 00:16:46]

Pat Shaler: Hello, my name is Pat Shaler, address of record. Welcome, Councilwoman Whitehead. They told me that would show up there. There we go. Copies of this have been handed out to everybody. Okay, October 2nd, I submitted a citizen's petition alleging a gift clause violation. We were thrilled that all of the Council referred it to staff. What we didn't know at the time is that it's a dead-end street. November 1, there was a response from staff and the Council, I'm sure was pleased to know that we have a department of the city whose primary goal is not to maximize revenue. Apparently they have enough money that they considered the best interest of the city's citizens, which apparently is not building another school or another swim pool up north or opening up more competitive swimming, team swimming, and swim clubs to the use of Scottsdale which would also help the health and their hearts.

If you look at this chart, on the left-hand side, under resolution number 11120, where you said that the swim team only has to pay \$3 per lane. The pool rental you are not receiving, because you are only charging \$3 per lane per hour is \$434,640. The lost revenue to the city of Scottsdale per year, \$326,300. Now, this is money that staff says we don't need. Over five years, \$1,631,500. You have known about this gift clause violation for at least eight years, and to some extent going back before then. We could have another pool if the city would comply. Also apparently staff has extended the current contract with the current team for another year, from July 19th, 2019 to 2020. They said that they can do this on their own without coming back to Council. Apparently staff doesn't really think they have to account to you too much. If that is done, the city of Scottsdale will be losing \$1,100 a day for a total of \$326,300 that will be subsidized by the taxpayers for this swim club. Thank you.

Mayor Lane: Thank you, Ms. Shaler. The next is Alex McLaren.

[Time: 00:20:07]

Alex McLaren: Good evening, Mayor, members of the Council, my name is Alex McLaren, 7624 East Osborn. I'm here to thank you for the Osborn Park. I don't know if you recall, but about nine months ago, I appeared before you and asked in the exercise equipment in Osborn Park could be replaced and I know some other residents had approached the city as well, but I'm happy to tell you that over the last week, we have had new exercise equipment placed in Osborn Park. It's all in and all they have to do is do the concrete work. So I would like to thank the City Council and particularly, Bill Murphy and his staff for, for doing that and it looks awesome. Now I have to commit to, to using it, of course. And that I'm sure will help with my heart as well. Thank you.

Mayor Lane: Thank you, Mr. McLaren. Next is Sandy Schenkat.

[Time: 00:21:26]

Sandy Schenkat: Good evening, Mayor and Councilmembers and new member Whitehead. I'm Sandy Schenkat. You have my address on file. The Scottsdale Progress is a new paper that's doing a good job that's relaying what's happening in our city. I hope you have a chance to read it. I wanted to bring up the issue that we started discussing last month, related to campaign money, and just November 28th, 2017, David Smith made a motion to limit contributions to \$500 per individual donor. The motion to agenda and direct staff to write an amendment to the city charter to regulate campaign finance failed to pass by 4-3 vote. Councilman Smith was not able to get the idea to move forward because of the four people on the Council, Lane, Milhaven, Korte and Klapp voted it down.

Currently the campaign hundreds are \$6,250 per individual. As I said during the December 11th meeting, follow the money. When City Councilmembers collect large sums of money from certain bar owners and developers, their votes are obviously biased towards those individuals. It is human nature to show favors to those who support a candidate. It is not possible, it is possible to trace back those votes and the most recent vote on the Rock Bar typifies my supposition. The bar district owners weigh heavy on how the city is governed and I suggest we follow the money on future votes.

All campaign contributors are listed on the city website. It's not rocket science to look those campaign finance reports up. The absurdity of the vote for the patio, dining, smoking, drinking area, proved my theory. Why would the Council majority vote to lease city land for a mere pittance of \$3,105 annually if the Rock Bar vote was not so strong? If the bar district vote was not so strong. The small amount of annual rent shows favoritism to the Rock Bar property. The city owned land which is being leased so that patrons of Rock Bar have a place to smoke, drink, and eat pizza.

What will it take to reintroduce Councilman Smith's motion? Who will have the courage on the City Council to take a stand to eliminate big money? It would really be great if Suzanne Klapp would be that swing vote. I would greatly appreciate her taking a stand on this, as she has done on other issues to distance herself from the regular solid four majority. So I will hope that in 2019 we can move forward with this and in 2020, we will have a more equal election. Thank you.

Mayor Lane: Thank you, Ms. Schenkat. Next is Sonnie Kirtley.

[Time: 00:25:18]

Sonnie Kirtley: Good evening, Mayor Lane, Vice Mayor Phillips, members, I'm Sonnie Kirtley, I'm the chair of C.O.G.S. We focus on city policy and land issues. Today, we are focusing on four of our city publication covers. The first is Scottsdale Life. This is produced by our Parks and Recreation. It's an excellent example of a cover page for a publication that the city puts out. The panels show people that look like us, doing wonderful things that Alex and I would like to do more often. It's an excellent presentation of the Parks and Recreation.

The second one I would like to show you is on the Scottsdale Affair. This is our family event. These

are weekly concerts. Very often people go for picnics with their children. As you look at this, you have to search to find the guitar. The guitar is over here. Representing music. Guys did you miss that? We really questioned the leggy model that appears in the major part of the picture for this family event.

On the left is our 2,018 Official Visitor Guide selection. And I look at this and say where is it promoting Scottsdale? Well, if you turn the page, you can tell more about the cover. When you flip the page it says the Soleri bells are in the picture. A-ha. At the top under the word "Scottsdale." Now, I'm not sure that this model is still waking up or going to sleep because the photographer is taking, sleep because the photographer is taking so long.

What does this market? What does it promote? Scottsdale? We received a response from the Convention Bureau team and she said, they have received overwhelming positive feedback coming from our high value visitors staying in luxury resorts. What percentage stay in luxury resorts. Most of them stay with family and friends. So are we marketing to them appropriately? When you look at the one on the right, that's 2019. This is our current lady, and again our C.O.G.S. newsletter readers wonder what is she marketing? We don't find any art district in this? We don't find desert scenery. We don't find anything that's uniquely Scottsdale. It's a different kind of targeted market, apparently and it is our official visitors guide.

Our readers have asked and I'm combining comments, condition we do better, can't we do better at least surveying the locals with some optional covers before the 20/21 is selected or will marketing continue to skip totally those things that we love in our city? I want to add that our.....

Mayor Lane: Could you please wrap it up?

Sonnie Kirtley: Our Experience Scottsdale website is excellent, absolutely excellent. Don't miss seeing it but the official visitor guide not so much. Thank you.

Mayor Lane: Thank you, Ms. Kirtley. That completes the Public Comment at this time. There is a time at the end of the meeting if, in fact, it's necessary.

MINUTES

[Time: 00:29:10]

Mayor Lane: Okay. Our next order of business is request the approval of the Special Meeting minutes of November 26th, 2018, and Regular Meeting minutes of November 26th, 2018, December 11th, 2018 and December 12th of 2018. Do I have a motion to approve or any questions or adds or deletes?

Vice Mayor Phillips: Mayor, I move to approve the minutes.

Councilwoman Klapp: Second.

Mayor Lane: The motion has been made by Councilman Phillips and seconded by Councilwoman Klapp, I'm sorry, Vice Mayor. But in any case, we are then ready to vote on those minutes. All those in favor, aye. It's unanimous approval. So thank you very much.

CONSENT AGENDA

[Time: 00:29:56]

Mayor Lane: Moving on to our consent items, consent Items 1 through 7. I have no requests to speak on these items. Well, I know if you want to go ahead, Councilmember Korte if you would like to make the motion or have a comment.

Councilmember Korte: Thank you, Mayor. I would like to move to approve Consent Agenda Items 1 through 7.

Vice Mayor Phillips: Second.

Mayor Lane: The motion has been made by Councilwoman Korte and seconded by Vice Mayor Phillips. All those in favor, please indicate by aye and register your vote. Aye. It's 7-0. So all the Consent items are accepted, as has been posted. And we have no petitions.

MAYOR AND COUNCIL

ITEM 9 – ETHICS REFRESHER TRAINING

[Time: 00:30:50]

Mayor Lane: We have Mayor and Council items that would include one item and that is our Ethics Refresher training, and is presented by Mr. Bruce Washburn, our city attorney. Mr. Washburn.

[Time: 00:31:01]

City Attorney Bruce Washburn: Thank you, Mayor. So tonight is the night for the annual Ethics Refresher training. And this, hold on just a second. Let me find the keyboard here. We will be covering a couple of different items. There were some changes to the Open Meeting law statute made by the legislature this year. So we will be talking about those changes and then we'll also be touching on the perennial topic of gifts because it's one of the issues that most frequently arises in connection with the Council. At the conclusion of my presentation, I will be taking any questions and you should feel free to ask me about any matter relating to ethics, not just the matters touched on here if you have any questions.

So let's talk about the changes made by are the state legislature to the ethics, I'm sorry, to the Open Meeting law. And House Bill 2065, the first thing they did was they expanded the definition of

meeting to include one-way electronic communications by any member of the public body, the Council, to the rest of the public body, or to a quorum of the public body that proposes to take legal action. That is if one of you sent an email to the rest of the Council, saying, I think we should put a stop light in at x, y intersection and just by making that statement, making that proposal of legal action to the rest of the Council or to the quorum of the Council, that constitutes a violation of the Open Meeting law because it did not place at a public meeting. And they included exchanges of electronic communication that involves a discussion or deliberation or the taking of legal action by, basically by electronic means on any matter that's likely to come before the public body.

So that would mean that, you know, as you probably noticed whenever you get an email from me, on a matter that's likely to come before the body, up at the top it says "please don't hit reply all and please don't communicate with the other Councilmembers regarding this matter outside the public meeting" and that's because just having a conversation about what might be coming up in front of the Council, even without proposing a specific legal action would constitute a violation of the Open Meeting law. You may be saying to yourselves, this is a change because this is the same advice I have been giving you for the last five or six years and there's a reason for that.

And that's because these restrictions on electronic communications were first set forth in a 2005 A.G. opinion. I guess I have been talking to you about this for almost 15 years and this is the legal advice that has been given to the public bodies ever since the A.G. came out with that. And the fact that the state legislature has now put it into the definition of meeting in the Open Meeting law is basically the legislature's concurrence with the Attorney General that that's the correct interpretation of the Open Meeting laws. So no big new changes there, but just wanted to let you know that the legislature 14 years later is on board with what the A.G. said and has made it official now. So yes, that advice has always been correct and please continue to abide by it.

[Time: 00:34:39]

Mayor Lane: Mr. Washburn, if I might, just one quick question. Sometimes when we see that, I guess, advice on the email not to converse with any other members of the Council and so on and so forth, as has been indicated, sometimes it comes on information that comes from staff members that has nothing to do with any decision to be made on, by this Council, any policy and/or legislative action we may be taking. It's information. But that message always is added to any correspondence, just from certain agencies. So there a reason for that, or is that something that may be just overdo, leave it on this so that any time it applies, it applies, otherwise, we will be giving bad information? Or giving us an indication of some restriction that really isn't necessary?

Bruce Washburn: I prefer to think of it as an excess of caution. So, you know, yes, you are right. There may be occasions when it would be permissible to communicate to all the other Councilmembers regarding that matter, and staff is just being excessively cautious. And I guess in response to that question, Mayor, I would just add that it is the responsibility of the Councilmembers to make their own determination on their compliance with the Open Meeting law, because ultimately, and we will talk in a minute about enforcement, that responsibility does fall on the Councilmembers. And so, you know, what I give you is legal advice. If you look at the organization chart, you see that

you don't work for me. I work for you. So you govern yourselves as you see fit.

Mayor Lane: No, I understand and I appreciate that observation, but one thing, even as we now have a new member sitting with us now and even for the rest of us, I suppose, just yes, we need to make those on our own, our own judgments on that, but sometimes somebody could think, well, geez, I can't even talk about whether or not I want to take a seat at one of the tables the city might have purchased for an event.

Bruce Washburn: My only other piece of advice on that is if you get that admonishment and you have some questions whether it actually applies in any particular instance, please feel free to call on me or my office and we will be happy to work through that issue to assist you in making your decision.

Mayor Lane: Well, we will try to use our own discretion. I hate to bother you with it.

Bruce Washburn: If you wish. You have my home phone number. I will be happy to assist you at any time.

Mayor Lane: I guess a note just for file, that sometimes it appears and it doesn't necessarily apply.

Bruce Washburn: I'm sure that is true, Your Honor.

Mayor Lane: By your own judgment.

Bruce Washburn: I suspect an excess of caution does occur, yes.

Mayor Lane: Thank you.

[Time: 00:37:22]

Bruce Washburn: Yes, sir. Changes to requirements for meeting minutes, the legislature now requires that the minutes show a record of how each member has voted and they have to include the names of the members who propose each motion. As I'm sure you have probably noticed from reading our minutes that information is also, is already in there for all of the Council meetings. So I just bring this forward as a change that the legislature made, just like with the electronic communications for meetings, it's a practice that we already follow. The clerk's office is making any minor adjustments might be necessary to make sure that nobody can question our compliance with this, although I believe we have always been in compliance with this practice.

And probably where this will have more effect is working with boards and commissions and subcommittees on making sure that those minutes also accurately reflect this requirement. There's a new enforcement mechanism available to the Attorney General. Up until the, the new law went into effect, the Attorney General or other parties had, who had enforcement abilities, the county attorneys, anyway, could bring suit against the public body to enforce the Open Meeting law.

But now, the Attorney General has also been given the ability to bring suit against individual members of the public body for violation of an Open Meeting law for knowingly violating the Open Meeting law. If the court finds that there's a violation of Open Meeting law, by that individual member, there is a penalty, an unspecified penalty. These are civil penalties, not misdemeanor, just a civil penalty. The penalty is unspecified for the first offense, although the standard civil penalty for first offenses generally speaking is \$250. It's not required but that's kind of what frequently happens. Yes, sir?

Mayor Lane: Mr. Washburn, did this take the place of a previous, I guess, penalty?

Bruce Washburn: No, it's not. It's in addition to the existing enforcement.

Mayor Lane: So your position in the office has not ever been challenged by something on Open Meeting?

Bruce Washburn: I'm sorry?

Mayor Lane: Your seat on a Council or committee has never been challenged if you had violated an Open Meetings law?

Bruce Washburn: No, actually, that, that enforcement is available. If there's a....

Mayor Lane: This doesn't replace it?

Bruce Washburn: No, it does not replace that.

Mayor Lane: This is an add to.

[Time: 00:40:05]

Bruce Washburn: This is an add to. Yes. There's an unspecified penalty of first offense, probably \$250, although that would be up to the court. There's a cap on civil penalties. I think it's \$2,500 which is why the third one. There's no time limit on the sequencing of these offenses. It doesn't say first offense, second offense within a year or third offense within a year. It just says first offense, second offense, and third offense. It says that the public body cannot pay the penalty. So it would be up to the member of the public body who was found responsible. And there's also a safe harbor provision, if something is happening and a Councilmember believes that it's a violation of the Open Meeting law being they can state in the public record that it's a violation of the Open Meeting law and then they would not be responsible for these individual penalties.

So I'm going to go on and talk about gifts now. At the end of the presentation, there will be a chance for questions. So if you have any questions on the items I just went over, we can touch on them then. There's actually two different provisions in the Scottsdale city code that apply to Councilmembers regarding gifts, and one of those is found in the ethics code, that's the Revised Code, 2-50. And it prohibits soliciting, receiving or accepting gifts of any kind, close quote. And that's a

very broad categorization. Any benefit that you could receive could be determined a gift. It doesn't just mean receiving money.

And the prohibition and the ethics code for the Councilmembers is the, receiving gifts or assisting or receiving or accepting gifts of any kind from anyone engaged in a general practice in front of the public body, or engaged in a specific situation involving the city decision-making or permitting processes and who is engaged in the general practice, frankly, I think if they are engaged in the general practice, you know who they are, because you will see them all the time. Because they will be down here asking for their Council to exercise its discretion in favor of themselves or client.

Specific situations, involving the city's decision making or permitting processes, I think that's pretty self-explanatory. When somebody has an application that will be coming to Council and it doesn't have to be immediately pending from front of Council. If they are engaged in seeking to receive some benefit from the city, that's going to come in front of the Council, then they would be involved in the specifics of the city decision making or permitting process. So it's prohibited to solicit the, solicit or receive gifts of any kind under the ethics code but there are exceptions. And these exceptions are for entertainment, hospitality, including meals, transportation and token mementos directly associated with events, attending, that the Councilmember would be attending as a representative of the city. So this is the kind of situation where if there's some kind of an event that you are invited to or given a ticket to on behalf of the, you know, by one of these people from whom you are prohibited to receive gifts, if it fits into this exception, then you can accept the gift.

[Time: 00:43:26]

So let me make a few points about this. It has to be, it actually has to be an event. So I'm going to say, you know, going out to dinner with somebody is not an event. Although it's not a defined term, my advice would be that that's not an event. An event, I think usually means some sort of group interaction or group undertaking that would more fit the general concept of what constitutes an event and you are attending a representative of the city. I will give the same advice that I give every year on this, which starts with, this is a matter of judgment. There's a spectrum of when you are there as a representative of the city and when you are not, and again, it's up to the individual Councilmembers to make the determination of when they are there as a representative of the city.

You know, easy one is where there's a program and you are there on the program. The Councilmember X representing the city of Scottsdale, you are up on the dais. You are introduced by the host and you get up and give a few remarks, you know, clearly you are there as a representative of the city. You know, if you are just there seated at a table, but the, you know, but you have been invited there as a representative of the city, and, you know, you are recognized, you are acknowledged as a representative of the city, and you are interacting with people as a representative of the city, I think that's pretty clear. That would count.

We get to the other end of the spectrum where basically you get invited to some expensive gala event and you are just kind of walking around drinking and talking to people and somebody says, what do you do? And you say, well, during the day I'm a crime fighter but at night I'm a City Councilmember,

probably not so much. Anyway, there's a spectrum and it's up to the Council and it's up to each individual Councilmember to make a decision whether you are there attending as a representative of the city.

All kidding aside, it has to be this for a public purpose. You have to be there doing something for the city as a representative in order to fit into this exception. There's also another, well, let me see. So if you get a gift, and it is a gift, but it's permissible for you to take it, and it's over \$25, then there's a gift form that you get from the city clerk and you declare the gift on that gift form. So there's no secret about the fact that you got the gift, but you believe that it's permissible. You have determined that it's permissible for you to accept it. I want to make the point that if it's under \$25, that does not mean it is not a gift. It just means you don't have to report it if it's under \$25.

It's still a gift and you still have to determine that it's permissible for you to accept it; however, you don't have to report it if it's, if Scottsdale Revised Code Section 14-135 does not require reporting and that's the other Scottsdale code section that governs gifts with respect to the City Council. And 14-135 applies to everybody at the city, the employees, the officials and everyone. And it prohibits for personal gain, and the payment of reward for services, not just soliciting. We have this happen where somebody sends a gift to a Councilmember that says, I really appreciate all the work that you have done on whatever issue and so, here, I want you to know that, you know, this is a thank you for that. That is a reward for services. That's something for which you have already, that's your job is doing that. So those are the kinds of gifts, that's also considered a gift or considered prohibited.

[Time: 00:47:19]

And then anything that could be reasonably construed, it's a pretty broad term and, again, there's no definition of that. It's up to the Councilmembers to determine for themselves whether or not it fits into that category. But there are a lot of things, well, that are not considered gifts, and this top line is the, is the essence of this. We talk about the meanings of some of these things. This is the essence of this. Does it reflect a legitimate public duties or purposes? This gets back to what I just said when you are there as a representative of the city.

Are you really doing something for the city, that is, you know, you are there, I mean, all of these are going to be because you are there because you are Councilmembers. The fact that you are invited because you were a Councilmember, if that alone was enough to establish that you were a representative of the city, then the exception would devour the rule because, of course, you are always invited to places because you are, because you are members of the Council.

Then the question is: You know, are you there to do something for the city or are you just there because they want to have a Councilmember there? But the, you know, like I said, the touchstone is does your presence really reflect the general political duties. It's not considered a gift if you are attending an event that is sponsored or funded in whole or in part by the city. I will come back to that. Reasonable hosting expenses for speaking engagements on behalf of the city for a public or civil purpose is served. And this is a lot like what we just talked about when you are there as a representative of the city.

If you are going to do something for the city, it's an engagement that you are there on behalf of the city, and, you know, what you are doing reflects a legitimate public duty or purpose, then the reasonable coasting expense for you being there, the cost of the food and, you know, all of those sorts of things are not considered gifts.

Gifts of goodwill or tokens of appreciation accepted open behalf of the city, on behalf of the city. And to my mind on behalf of the city, it means you get it for the city. Say I thank you and then it belongs to the city. And so to me, that's the touchstone on that, because if it didn't belong to the city, then you might be receiving it on behalf of the city, but it would end up being for your personal benefit. Food is acceptable if you share it with others. That's why over the last holiday season, many of us had boxes of chocolates and whatever sitting out on our counters. Nobody had to bring dessert in my office for about a month. Because it was all sitting out there.

[Time: 00:50:04]

Or things that you donate to charity. I mentioned this in past discussions of this. You might be in some situation, where you are there for a legitimate public purpose, but then they want to give you something that's far outside the normal hosting sorts of things. Like, you have done, oh, thank you so much for coming. And here's a \$5,000 Tiffany whatever. I know this is probably not something you have to wrestle with on a regular basis. If you are ever given something and you are in a situation where you don't want to turn to your host, in front of all the people whom you have given this wonderful address, you say, wait, no, I think someone would consider this as an attempt to improperly influence me. Just take it, thank them very much, bring it back and donate it to charity and document that you did so. You have not run afoul of the law.

On your dais, there's a list of the, the current list of the events where the city is acting as a sponsor or cosponsor and therefore, tickets to these events are not considered gifts. This list can change over time. You can check with my office if there's some event that's not on there that you want to know about. Or Steve Geiogamah also is the keeper of this list, but either way, he will be happy to make sure that you are up to date if any events come up, like I said that are not on the list and you have a question about them.

I should just caution you that not all events on city property are events where a city is sponsor or cosponsor. And then the last thing I wanted to say is in addition to the listing of the sponsor and cosponsored events on the dais, there are your disclosure forms, personal interest disclosure forms and your Ethics Refresher acknowledgment forms and you can go ahead and sign the Ethics Refresher form because you just sat through that. And the personal interest disclosure form, that's ready for your review and signature. If there's anything you need to put on there and after you have completed those forms, please let the clerk's office have them. The clerk's office is the keeper of those forms. So that completes this year's Ethics Refresher. And I will be happy to take any questions.

Mayor Lane: Thank you, Mr. Washburn. I don't see any requests for any questions or comments. So very thorough. Thank you.

Bruce Washburn: Thank you, Your Honor.

ITEM 10 - INITIATE CITY COUNCIL REVIEW OF THE DEVELOPMENT REVIEW BOARD'S DECEMBER 20, 2018, DECISION REGARDING 58-DR-2018 (THE MAVERICK MURAL)

[Time: 00:52:56]

Mayor Lane: Our next item under Mayor and Council items is Item 10 which is initiate the City Council review of the development review board's December 20th, 2018 decision regarding 58-DR-2018, the Maverick Mural. The only Council action is just a note on this item, the only Council action to be taken on Item 10 is a decision on whether to initiate a formal still Council review of the development review board's decision regarding 58-DR-2018, which would then be scheduled for a future City Council meeting. Therefore no Public Comment will be taken at this time. I believe this request was made by Councilwoman Littlefield and therefore, I would just ask as to, if there is any, I'm looking the wrong direction. I'm sorry about that. If there's any comments you want to make, as far as the need for this review under the stated reasons for the DRB's decision.

[Time: 00:54:01]

Councilwoman Littlefield: Not really, except that I would like to say this has nothing at all to do with Senator John McCain. This is a question about policy and procedure and I believe that it is necessary to bring this back to the Council for review.

Mayor Lane: Okay. Thank you very much, Councilwoman. Mr. Washburn?

City Attorney Bruce Washburn: Thank you, Mayor. I went back and looked at the records and I think this is the first DRB review that we have had come up to the Council. The last one I could find was in 2000, early 2010, I think. So it's been almost getting on to a decade since we had one of these. So there might have been some others since then, but it's something that doesn't happen that often, let me just put it that way. And I was thinking it might be beneficial for the Council if I could kind of just take a couple of minutes to go over the ground rules on these, because it's a different creature from most of the things that come in front of the Council.

Mayor Lane: Very good.

Bruce Washburn: The DRB reviews are basically a two-step process after the DRB has rendered a decision and the first step is for the Council to determine whether or not, in fact, they want to review the decision and that's the matter that's in front of the Council tonight. This particular instance, DRB at its December 20th meeting did an approval for the color design on a wall in old town for what is now called the Maverick mural. And so now it's been placed on this agenda for the Council to consider whether or not to review it.

If the Council does decide to initiate the review, then this goes on the agenda for, it's the next

regularly scheduled Council meeting that's at least 30 days after the vote to initiate the review, which I think would be the February 19th meeting. And at that time, the Council sits just like the DRB. In other words, the Council gets the same, not the same presentation, but handles it the same way as the DRB does. There's a presentation from the applicant, a presentation from staff, public testimony, applicant gets another chance to respond to the public testimony. Council makes its deliberation and then the Council votes.

And the important point on this one is that since the Council is acting like the DRB, then the Council basically has the same criteria as the DRB does in deciding how they are going to handle that and what they are going to do because under the ordinance, the Council can either uphold the DRB decision, overturn the DRB decision or modify the DRB decision, but the important point is they have to do it based on the same matters that the DRB was allowed to consider. And the DRB is a body of limited scope, limited jurisdiction.

So in this matter, you know, there's been, I know there's been quite a bit of public discussion about concerns about an adjoining property owner and property rights of the adjoining property owner and things like that and I don't mean to minimize those concerns in any way, but I did want to just make the point that those were not concerns that the DRB was authorized to take into consideration and so the Council would be operating under the same limited scope of review. So I hope that's helpful to the Council in making a decision. I just wanted to, like I said, because it's something that doesn't come up that often, kind of go over the, the kind of ground rules and the parameters of what is involved.

[Time: 00:47:41]

Mayor Lane: And maybe most specifically, if I understood you specifically, as to the kind of things that are considered by the DRB, specifically related to those design areas of, and sometimes, well, I let's just concentrate on the design of a project.

Bruce Washburn: Yes, this particular.....

Mayor Lane: The colors and other applications that fit into the environment.

Bruce Washburn: Yes, I'm sorry, this particular decision looked at the color scheme or the colors that were going to be applied to the wall and didn't consider, you know, how they will get on the wall because that's not something that DRB gets to look at. That's not within their purview.

Mayor Lane: Thank you, Mr. Washburn. Councilwoman Littlefield.

Councilwoman Littlefield: Thank you, Mayor. I would just like to add to my request, I did not take this request lightly. This is not something that, excuse me, Council normally does. But I feel it's necessary. And I would also like to add that I would like to suggest that the appeal, if it's passed, that the art work on this project be suspended until after the Council has had a chance to review it and make their decision on it. Thank you.

Mayor Lane: Thank you, Councilwoman. By virtue of an appeal process would that not be the case? I mean, it's not actually been okayed in final form if we decide to take this up in appeal.

Bruce Washburn: The DRB ordinance says that the decision of the DRB board is final, unless a review is initiated. So if Mr. Grant is here, maybe he could weigh in on this too, but I believe the correct, the correct interpretation of the DRB ordinance is that if an appeal is initiated then the DRB decision is no longer final. And so they would not have a DRB approval at that point.

Mayor Lane: So to Councilwoman Littlefield's concern about it being suspended and frankly no further work being done that would be as a matter of course because it is no longer authorized? If that were to take place?

Planning and Development Director Randy Grant: Mayor Lane, that's correct.

[Time: 00:59:57]

Mayor Lane: I tell you what, Randy, I do appreciate you keeping things brief like that. That was perfect! Perfect! So in any case, I think it's been established, we are talking about the DRB's scope of vision on this thing, as to whether or not that is a reason to reconsider that decision. It has no bearing on some of the other issues that are at hand, which should, and should be handled at this point in time already under the law. I mean, if it's a trespass issue or otherwise.

Bruce Washburn: That's correct. Like I said, I don't mean to minimize those issues in any way, but they are not part of the DRB's, not part of the criteria that they apply.

Mayor Lane: Okay. Thank you. Any other comments? I see none. Then I think we are then ready to vote as to whether or not to move this forward. And Councilwoman Littlefield, are you satisfied as far as what we are talking about, as far as the suspension of any further work?

Councilwoman Littlefield: Yes thank you. I appreciate the clarification.

City Clerk Carolyn Jagger: Your Honor? I believe we need a motion and a second.

Mayor Lane: Oh, yeah. And I think that's where we are going. Very good. Thank you. So then I would accept a motion to do as has been indicated here by Councilwoman Littlefield and that is to seek a review of the development review board's December 20th, 2018 decision regarding 58-DR-2018, the Maverick mural.

Councilwoman Littlefield: I so move.

Councilwoman Klapp: Second.

Mayor Lane: The motion has been made and seconded. The motion was made by Councilwoman

Littlefield and seconded by Councilwoman Klapp. Would you like to speak to it?

Councilwoman Klapp: No thanks.

Mayor Lane: With that, we are ready to vote. All those in favor indicate by aye and those opposed with a nay. Motion passes 5-2, as we can see there on the board with Councilwoman Milhaven and Councilmember Korte opposing. So we have that on appeal then. All further action in that area would be suspended in accordance with the lack of an authority to move as it is right now. Okay. Do we, if I might just ask for, do we need to set a date or time? Okay. That's done. All right. Very good.

ADJOURNMENT

[Time: 01:02:37]

Mayor Lane: Well then, that completes our business for this meeting and tonight, unless there's any further comments or any other items, I would ask for a motion to adjourn.

Councilwoman Klapp: Move to adjourn.

Councilwoman Littlefield: Second.

Mayor Lane: The motion has been made by Councilwoman Klapp and seconded by Councilwoman Littlefield. All those in favor. We are adjourned.