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CALL TO ORDER

[Time: 00:00:05]

Mayor Lane: Good afternoon. I would like to call to order the January 14th, 2014, City Council meeting. This is a regular meeting. We start with the 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. Absent. Bob Littlefield.

Councilman Littlefield: Here.

Carolyn Jagger: Linda Milhaven.

Councilwoman Milhaven: Here.

Carolyn Jagger: Guy Phillips.

Councilman Phillips: Present.

Carolyn Jagger: Dennis Robbins.

Councilman Robbins: Here.

Carolyn Jagger: City Manager Fritz Behring.

Fritz Behring: 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.

Mayor Lane: Thank you. Some order of business here. We do have cards if you would like to speak on any item on the agenda or public comment. There are white cards that the clerk has over her head to my right and there are yellow cards for written comments for any items on the agenda that we will read through the proceedings.

This afternoon we have Scottsdale Dave Pubins and Tom Cleary directly in front of me, if you have any need for their assistance. And the area behind the Council dais is reserved for the Council and the staff and their access. There are rest rooms on the south side over here, right under that exit sign, and it looks like we have not already replaced our rest room sign there, but nevertheless, that's where they are for your convenience.

PLEDGE OF ALLEGIANCE

[Time: 00:01:22]

Mayor Lane: Today we have the great privilege of having the Girl Scout Troop 163 with their leader Kate Gookin to provide the Pledge of Allegiance. If you could, please stand. And ladies, if you would, when you can lead us in the pledge.

Girl Scout Troop 163: 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, ladies. We can turn that microphone around and go ahead and introduce yourself. Tell us where you go to school and what your favorite subject is.

Girl Scout Troop 163: I'm in second grade. My name is Taylor. I like art. My name is Cassie. I'm in third grade and my school is Pima. My name is Meg Washington, and I am in fourth grade. And my favorite subject is city government.

Mayor Lane: Thank you very much, ladies. Do you want to get that, Guy?

INVOCATION

[Time: 00:02:52]

Mayor Lane: Today we have the invocation and we would like to welcome Andre Wadsworth, who is the Executive Pastor of the Impact Church. Welcome, pastor. Welcome.

Pastor Andre Wadsworth: Good to be here. You know, if I was those Girl Scouts, when I saw them, I was thinking about getting some cookies. Do you have any cookies with you? Okay, January 27th. I have been on a diet but those Samoas. They are my favorite. I want to thank the Mayor and the Councilmembers to allow me to do the opening prayer. If you would bow your heads and join me in prayer. Father, God, I thank you for this wonderful day that you have given us. We thank you for this evening. Lord, as it says in 1 Corinthians, Chapter 12, we talk about the body and each part is very important. We understand that you care about the details, lie you know how many stars are in the sky, how many grains of sand are in the ocean. Lord, one thing we may not have to agree but it's one thing that you want us to be is unified. I continue to pray for our city of Scottsdale, pray for the leaders, for their protection, their wisdom, and the guidance, Lord, that we can all be unified. It doesn't matter all the different topics or subjects but we can be unified as a team Lord, that you can work through us so we can make a better community. Lord, bless this meeting that we have, and we give you all the glory and praise in Jesus' wonderful name. Amen.

Mayor Lane: Amen. Thank you very much, Pastor Andre.

MAYOR'S REPORT

[Time: 00:04:31]

Mayor Lane: Well, from the Mayor's report, I would just like to tell everyone that I'm very pleased to announce, to have this opportunity to do a little bragging, but Scottsdale has been once again recognized as one of the best run cities in the nation by 24-7 Wall Street. What's even better, for the past three years we have been in the top 10. We are striving to get to that top five but we are in the

top ten, and clicked up a couple of spots from last year. So we, they cite a number of things being of course, our low crime rate, our high bond rating, as well as educated citizenry and some of the other factors in selecting Scottsdale. And I have to say that it really has a lot to do with our citizenry but it has a lot to do with our management team and our Charter office and our staff, everyone here in the city working to make this the best city all the way around and that is reflected by good management and good structure. So congratulations to the management here in the City of Scottsdale. I would like to give them a hand.

Mr. Behring, I understand there's no manager's report. Okay.

PUBLIC COMMENT

[Time: 00:05:48]

Next item of business is our public comment. And the Public Comment period is reserved for citizen comments regarding non-agendized items with no official Council item taken on these acts and it's limited to five speakers of three minutes each and there will be another time at the end of the meeting for public comment as well, but we have one public comment card as far as I can see here and it's Mr. John Washington.

[Time: 00:06:15]

John Washington: Good evening, Councilmembers. My name is John Washington. My family and I live in the Peaceful Valley neighborhood just down the street and if there's any doubt I'm Meg Washington's father. So, you know, I was actually going to come this evening and speak on an agenda item, the Rockbar and I'm not going to do that. I will explain why. As is my custom when items come up that, where I feel I can be of assistance to the neighbors, I would say, hey, you would like me to speak for you and in this case, I sent an email to a couple of the neighbors of the Rockbar and I got back a message that is kind of sad and kind of funny at the same time. I wanted to share that with you. I'm going to leave the name out here, but this gentleman has had problems for a long time with noise issues and it's a real quality of life issue for us that live in the downtown area. He says, no, don't bother to go and speak for me tonight. I took the easy way out and I moved to New York City part-time. I lived in the middle of one of the largest areas of bars and clubs and you would not believe how quiet it is. For first time in 15 plus years, I get a good night's sleep. I dread the times I have to go back to Scottsdale, knowing that I will not get sleep. There are signs when you leave the bars in New York City that say, "please respect our neighbors and be quiet." Scottsdale could learn a lot from New York City. I'm going to hand this to the Clerk on the way out and I ask that you please keep in mind the quality of life of our citizens when you make decisions. Thank you.

Mayor Lane: Thank you, Mr. Washington. That concludes the public comment items. There are no further that have been submitted.

ADDED ITEMS

[Time: 00:08:10]

Next order of business is that we do have some added items. Consent item 28a was added to the agenda on January 9th and I need the, by virtue of our procedures and process the timing, I do need to have a motion to accept this agenda item as presented or continue the added item to the next scheduled Council meeting on January 27th. Do I have such a motion?

Councilwoman Milhaven: Mayor, I move that we accept the agenda as presented.

Councilman Robbins: Second.

Mayor Lane: A motion has been made and seconded. It doesn't appear to be any further comments on that. And so we are ready then to vote. Those in favor of adding, please indicate by aye and those opposed with a nay. Virginia? No. Slow. Motion passes, 6-0, obviously with one absent.

MINUTES

[Time: 00:09:11]

The next order of business is the approval of Minutes. Do I have a motion to approve the Regular/General Plan amendment meeting minutes of November 19th, 2013, Special Meeting minutes of November 20, and December 9th, 2013, and Regular meeting minutes of December 9th and 10th of 2013 and the Executive Session meetings of December 9th, 2013.

Councilmember Phillips: So moved.

Mayor Lane: A motion has been made.

Councilman Robbins: Second.

Mayor Lane: And seconded. Are they ready to vote? There's no other comment. All those in favor aye and opposed nay. The Minutes have been approved as received, unanimously, 6-0 with one absent.

ITEM 34 – ASSOCIATE JUDGE REAPPOINTMENT

ITEM 35 – PRESIDING JUDGE REAPPOINTMENT

[Time: 00:10:04]

Mayor Lane: One other change, we have a very long agenda tonight, or prospectively. The staff request that items 34 and 35, the Associate Judge and Presiding Judge reappointments be continued until January 27th. Do I have a motion to move those items to January 27th?

Councilman Littlefield: So moved.

Councilwoman Milhaven: Second.

Mayor Lane: Moved and seconded. Okay. We are ready to vote. All those in favor please indicate by aye and opposed with a nay. Aye. Councilman Phillips? Motion passes unanimously, 6-0 obviously with one absent.

CONSENT AGENDA

[Time: 00:10:54]

Mayor Lane: I move on to the Consent items. They are items 1 through 28a, but we do have items 18 and 29 to be moved to the Regular agenda prior to the meeting. So any questions on that item? Let me see what I've got here. Okay. The Consent items are as indicated, 1 through 28a, absent items 18 and 29, which were moved to the Regular agenda. Any further comments or requests on that? Otherwise, I will accept the motion.

Councilman Robbins: Move to approve.

Councilwoman Milhaven: Second.

Mayor Lane: Motion has been moved to approve and seconded. That was items 1 through 28a, absent items 18 and 29. So we will move right on to the Regular agenda items. Oops. That would be good. Okay. We voted and it's unanimous, 6-0 with one absentee. Consent items then have been completed. If you are here for Consent, you can certainly stay for the rest of the show or you can leave quietly.

REGULAR AGENDA

[Time: 00:12:57]

Mayor Lane: We move then next to, let it be known that Councilwoman Suzanne Klapp has joined us here. And we'll move on to the Regular agenda items and, of course, we will start with those items that were removed from the Consent agenda.

ITEM 18 – PCC, PRC, S-S ZONING ORDINANCE TEXT AMENDMENTS (1-TA-2013, 2-TA-2013, AND 3-TA-2013)

[Time: 00:13:07]

Mayor Lane: Those are items 18 and 29, and we'll start with item 18, and it's the PCC, PRC, S-S zoning text amendments and we have Kira here.

Project Coordination Liaison Kira Wauwie: Mayor Lane, members of City Council. I'm Kira Wauwie

with the Planning Department and this is a request for a zoning ordinance text amendment. There are three districts that would be affected. This slide just shows our schedule. We would like to share that so that you are aware of the steps that we take, and this slide was revised after we sent you a printed version of our presentation. Our first step is to roll out the concept for Planning Commission initiation and then share some conceptual ideas with the Planning Commission at a nonaction hearing, which is open to public discussion and comment.

And then we hold open house meetings which are advertised in the newspaper and we send postcards to an interested parties list, those people have asked to be notified specifically of text amendments. And we also include in the Planning and Zoning email mailing service information on the open house meetings. So in December, the Planning Commission forwarded a recommendation to the City Council and here we are today. These text amendments are part of the ongoing update to the zoning ordinance, and the goal is to improve the agreed ability and ease of use of zoning ordinance to simplify language and craft consistent style. These efforts are not to create any properties that become non-conforming, not to increase intensity, density and height and not to change the uses or the standards that have been demonstrated that have been designated important to the community. With the planned community center, this is a commercial district, and it's typically found where, with construction or development consisting of a grocery store and in-line retailers which might have some offices or even an out pad with maybe a restaurant or a bank use.

This also includes planned regional center update. That's another planned district. There are several planned districts in our zoning ordinance. This particular district typically developed with a regional mall and also can have a mixture of retail office and dwelling uses in a mixed use centers. There are eight sites with PRC on them today. And the details on this slide just demonstrate that the update might revise names to match other district use names to revise the order and group like parts with like parts for development standards. An example of a standard that is revised is the requirement of 2,000 square feet per dwelling unit and that's a land area measure. While density is more typically spoke to in terms of units per acre. So the conversion of that 2,000 square feet is 21 units per acre. And the support services district is a district that allowed outdoor uses like lumberyards and construction yards. There's one site with the S-S zoning on it and we looked at this district to assure that the purpose of the district with those outdoor types of uses aligned and that the uses that are listed in the district appropriately match the purpose. So I wanted to just give you a very quick presentation and overview of the proposal. Thank you.

Mayor Lane: Thank you very much. There are no cards to speak toward this. I'm not sure if there are questions but I have none indicated. So thank you very much for the presentation. It just appeared. Councilman Phillips?

[Time: 00:17:25]

Councilmember Phillips: Thank you, Mayor. Well, the reason I had this pulled to Regular Agenda is, number one, I got a card saying that this was the chance for the public to speak on it and I didn't see how they could speak on it in the Consent Agenda. I wanted to bring that out in the open. Although they say that there is no height or density changed in this, obviously there was because the City

Council voted to approve the text amendment to change the height and the density. And now we are going to 13 stories and it's basically allowing an infill incentive district across the city of Scottsdale to 13 stories. So while this doesn't add into this, it's, fact of the matter is those were changed. This was added into it, but if you looked over the ordinance text amendments that they did, they basically took all the old text amendments for the PCC, PRC, and S-S zoning and just struck them all out and wrote new ones. And I think that's way above and beyond. I think the way it was before was fine, except changing what the Council did, and I didn't approve of that. It's funny, just a few people left our General Plan Task Force because they were upset with the way things were going. They didn't feel they were being listened to and a lot of that has to do with the quality of life in Scottsdale, height and density issues. The thing is when the City Council approved text amendments allowing 13 stories across Scottsdale, what would you need a General Plan for? I mean, it's almost, it was almost just a waste of time for them, because, you know, as Mr. Hadder said at the last month's meeting, General Plan doesn't say anything about height and density. It does say something about quality of life and that's part of it. We have reasonable character area and height certainly plays into it. Though it doesn't say it specifically, it's there.

And this is just what's going on in the city, is that even though you have a General Plan and even if we have a, you go back to the 2011 or they write up a new one, it really doesn't matter because the City Council is going to change whatever they want to whenever it comes up by a vote. So it's just, it's very upsetting to me that, you know, people work so hard and tried so hard to be a part of something and have a General Plan that's good for the city, and then not be able to come to fruition because in the end, the City Council is going to change it anyway. So I would like to move this point not to adopt Resolution 9596, Ordinance 4123, Resolution 9599, Ordinance 4124, and Ordinance 4126.

Councilman Littlefield: Second.

Mayor Lane: A motion has been made and seconded. Would the second like to speak towards it?

Councilman Littlefield: Nope.

Mayor Lane: Okay. Any other comments from Council? Otherwise we do have a motion and a second on the table then. We are then ready to vote. All those in favor of that motion, please indicate by aye or nay if opposed. Nay. And register your vote. Motion fails, 5-2, with Councilman Littlefield and Councilman Phillips pro. So we have no action at this present time. Are there any other questions on this from the Council or of the presenter? Or a motion? Yes?

[Time: 00:21:18]

Vice Mayor Korte: I move to adopt Ordinance number 4123, Resolution number 9596, Ordinance number 4124, Resolution number 9599, and Ordinance number 4126.

Councilwoman Milhaven: Second.

Mayor Lane: A motion has been made and seconded. Would the second like to speak toward it?

Councilwoman Milhaven: No thank you.

Mayor Lane: I think we are ready to vote. Those in favor of the motion to approve, as has been indicated, say aye if you approve and nay if you oppose. It passes 5-2, with Councilman Phillips and Councilman Littlefield opposing. Thank you very much, Kira.

ITEM 29 – ROCKBAR INC. REZONING AND CONDITIONAL USE PERMIT (2-ZN-2001#1 AND 2-UP-2001#2)

[Time: 00:22:05]

Mayor Lane: The next item is another item moved from Consent is the Rockbar Inc. rezoning and conditional use permit, 2-ZN-2001 number 2, and 2-UP-2001 number 2. And we have Dan.

[Time: 00:22:25]

Senior Planner Dan Symer: Mayor, members of the Council, Dan Symer, Current Planning Services. The case before you is Rockbar. It's currently located south of the southeast corner of Craftsman Court and 5th Avenue. It's an existing bar with live entertainment. This is a close-up arrow. They do have a patio license agreement through the alleyway on that's on the north side of their property. The property is currently zoned downtown regional specialty district type one, downtown overlay and the request is to amend the stipulations for the use permit and zoning pertaining to sound and for doors and windows, excuse me, particularly the window on the north side. The applicant is asking to allow that window to be opened. These stipulations were put in prior to the city's noise ordinance, and pretty much no longer used in these cases. At the Planning Commission, no one spoke in opposition and they are recommending approval, and I turn it over to the applicant for their presentation. Thank you.

Mayor Lane: Thank you, Dan.

[Time: 00:23:46]

Alex Mundy: Mayor Lane, Vice Mayor Korte, Councilmembers. As Dan mentioned, something we are looking to at Rockbar is go back to allowing when we bought Rockbar, formerly Acme Bar and Grill, we did a lot of construction.

Mayor Lane: Pardon me, Alex, if you would identify yourself for the record.

Alex Mundy: My name is Alex Mundy, I'm the owner of Rockbar Inc., i.e. Rockbar Scottsdale. And what we are looking to do is the two service windows that have been in place since 2001, part of the previous building, that we bought, reconstructed and closed the front of it and built a roof top patio on, that were allowed previously to be opened via their live use permit, and I know some things have changed through city planning. What we are doing is looking to have it open. We find it a big appeal,

because our service ball does open out to that alley which goes to the space that we lease from the city of Scottsdale and to that, in that alley, knowing that we still need to adhere by noise ordinances and there are concerns from neighbors that we are always more than happy to address and we know we can't always keep everybody happy but we try to.

Our music is 99%, if not 100% of the time taking place after our surrounding businesses have not, are closed but realizing that in certain instances we did have neighbors who lived in their business, above their business, who were mentioned earlier today. But with everybody in mind and speaking with a few of you Councilmembers, I would love to address anything we can now, moving forward, you know, myself and my business partner are always very open to doing what is best for Scottsdale, whether, you know, just through what we have, which is Rockbar in Scottsdale. And, again, we are not looking at anything for the front window which we have closed and put a sound curtain on. All the doors are closed. It's simply the service window, which is about half of our service so we are not opening and closing during live entertainment and music. That's it thank you.

Mayor Lane: Thank you, Alex. Do we have any questions of the applicant? Seeing none, thank you very much for that information and thank you to Dan. So we have item 29. Councilman Littlefield?

[Time: 00:26:21]

Councilman Littlefield: Well, it's interesting. I got a call over the weekend from one of the gallery owners nearby and she was asking me to oppose this. She said, well, when there's loud music or when there's music during the daytime or the evening, and the galleries are open during the evening, some of the other businesses do have people living there, she said, music, loud music is bad for her business. And she asked me, she said, what's the matter with you people down there? Are you trying to drive away the last little bit of the gallery business? Well, I think that's a good question. And that's why I'm going to be opposing this. You know, we had the gallery business was at one time truly the art scene in Scottsdale and, of course, the recession hit those guys pretty hard and now they are coming back. And I have to ask, why would we do something that the gallery owners are opposed to down there? Galleries, bars, pretty easy calculation for me. Just to save time, I won't make a motion that we disapprove this because I know that would not pass and then we'll just have to turn around and make another one but when somebody up here does make the eventual motion to approve it, I will oppose it.

Mayor Lane: Thank you. Councilman Phillips.

Councilmember Phillips: Would they have to go through the new safety ordinance?

City Manager Fritz Behring: The safety ordinance will apply to them as well.

Councilmember Phillips: Okay. So wouldn't they have to do that first?

Dan Symer: Mayor Lane, Councilman Phillips, the security and the safety plan is in your packet that's been approved by the police department.

Councilmember Phillips: That's not the same one as the new one.

Dan Symer: Right, the PSD, they will have to go through that, yes.

Councilmember Phillips: Don't they have to go through that first?

Dan Symer: Not yet, no.

Councilmember Phillips: Not yet?

Dan Symer: The ordinance has not been updated. The live entertainment has not been updated for that. This portion has been updated.

Councilmember Phillips: Not yet. Okay. So, you know, I too got the letters and I imagine the rest of the Council about the problems they had in the past and I have seen the news reports of problems in the past of violating their C.U.P. and for that reason I can't see why we would approve this one. I will be voting no also.

Mayor Lane: Thank you, Councilman. Councilman Robbins.

[Time: 00:29:09]

Councilman Robbins: We have asked other establishments to keep their doors and windows closed and this one I would understand why you would ask for the windows to be open. It doesn't make sense to have everything else closed and a couple windows open. The noise still emits from the business and disturbs the neighbors. I would allow live entertainment if everything was closed but I don't see the, the sense in opening the windows. Then you might as well just open everything up. So I won't be supporting this in fact, I will make a motion that the Council not adopt Ordinance 4125.

Councilman Littlefield: Second.

Mayor Lane: The motion has been made and seconded. Would the second like to speak toward it?

Councilman Littlefield: No. I spoke.

Mayor Lane: Okay. Councilwoman Milhaven.

Councilwoman Milhaven: I have a question to staff. What members here alluded to violations of their existing C.U.P., could you elaborate?

Dan Symer: Mayor, members of the Council, Councilwoman Milhaven, the current stipulations require that they keep their doors and windows closed and that they have a sound attenuation. When the plans were approved for construction, those were on the plans. They were later found that they were

not installed. It was through the violation process we did get the sound attenuation installed and it is approved. The notice that I'm aware of was that there was a misunderstanding between the owner and the staff that all windows including the service windows had to be closed. Since then, that has, we have made that clear that all windows, including the service windows had to be closed. So it's my understanding that the violation was regarding the service window.

Councilwoman Milhaven: So they were in violation of what they are doing for what they are asking for permission to do going forward?

Dan Symer: That is correct.

Councilwoman Milhaven: And then it was my understanding there were parts of downtown that were exempt from the noise ordinance but it sounds like these folks would be responsible to adhere to the noise ordinance?

[Time: 00:31:37]

Current Planning Director Tim Curtis: Mayor and Councilwoman Milhaven, in terms of the noise ordinance, what that is intended to protect are residential districts, and there really aren't any residential zoning districts anywhere near this location, but if they were, then the police can respond to complaints and do a decibel reading at the residential district boundary lines. I guess theoretically that could happen as a result of this business playing loud music at a residential district property line but the practical reality is because there is not a residential district anywhere nearby, it essentially doesn't apply to this property.

Councilwoman Milhaven: Okay. And then, because I did, I also spoke with the gallery owners who had some concern. It was interesting as we chatted about it. He said imagine a neighborhood where we have restaurants and bars and galleries and folks decide to go downtown and eat and see what's going on in the galleries and go down in the galleries and say let's wander around and get something to eat. I could imagine a wonderful neighborhood where the two coexist but I do have concerns about this application for a C.U.P. and I heard from business owners who said that, and it may not be the Rockbar but some of the other bars in the neighborhood make their walls shake. So I would sort of look for an interim solution, which is maybe a one-year on the permit to see how it shakes out. My experience in the Council is we have always insisted that all the windows and the doors be closed and I think this is new territory. So I would want to go a little more cautiously. So I'm not inclined to decline the application to go as far as some of my colleagues but I'm not sure I want to approve it all together. So I would be inclined to approve it with a one-year. That's my thought on that.

[Time: 00:33:35]

Mayor Lane: Thank you, Councilwoman. Number one, one of the things to clarify, I suppose the fact that as Dan indicated there's not a residential community, any designated residential zoning in the area but we do have and have had a number of years the one individual that was referenced earlier in the public comment section, having moved to New York, but nevertheless lives under the tin roof of

the business across the street. So it's an interesting sort of situation that we have been working through for a number of years with regard to any of the bars that are on craftsman court because of that cohabitation if you will different types of businesses and it's always something we have counted on to a degree, that once those businesses are closed, that's when the other businesses bring some life down to that end of the street as far as that is concerned. Of course, we have a comedy club at the end of that street as well, which is another developing issue for that area.

My concern here would be that the Rockbar was quite an improvement over the bar that was there previously which was entirely open to the best of my knowledge, as I remember it, whether it was live music or just loud music. It was a bigger detriment to the community as far as peace and quiet is concerned than this is. I do share a bit of the concern of opening windows when it was sort of designated initially as being closed and we have certainly stipulated that on many instances with live music that the windows be closed and in this particular case, these server windows to the outside portion of the facility would keep the doors from being opened and closed and have a rather relatively narrow window available to the outside bar. And it also faces directly against to a wall that's, I'm going to say within 10 or 15 feet of it. So I too don't know what the bounce effect would be of that noise coming off of that, to whatever extent it is. It's also a different genre of music that's used in this particular facility and I think it's not quite the same as some that we have dealt with in the past in the entertainment district. So I'm inclined to support Councilwoman Milhaven's motion to consider this for a period of time and see how it shakes out because I don't believe that this is going to be detrimental in the long run and I think it's giving them an opportunity to prove it just that way.
Councilman Littlefield?

[Time: 00:36:17]

Councilman Littlefield: Well, it's certainly true that the Rockbar is an improvement over the previous tenant there, but that's sort of like saying that being hit over the head is an improvement over being shot with a shotgun. I mean, you know, if something is bad, it's bad. But, you know, I often wonder. I sit up here sometimes and I wonder what people who are watching this at home think when they hear some of this stuff. We hear that the noise ordinance is going to take care of things but then we hear the noise ordinance doesn't apply. You know, so I would, I, how people can actually watch this on television really amazes me sometimes. The bottom line is I wouldn't support doing this for a year. If it's a bad idea forever, it's a bad idea for a year too. And so I wouldn't be supportive of either motion. I would be supportive of Councilman Robbins' original motion to deny this. Actually, I guess you didn't actually make a motion.

Mayor Lane: Thank you, Councilman. Councilwoman Milhaven.

Councilwoman Milhaven: I would like to make an alternative motion to adopt Ordinance 4125 and define the conditional use criteria have been met and adopt Resolution 9600 for a period of one year.

[Time: 00:37:36]

Mayor Lane: And I will second that motion and I would like to speak a little bit further I suppose on

that, to say as we manage through the various businesses and bars, restaurants and entertainment centers within the areas of downtown, we do have to calculate through how we can co-mingle and how we can co-exist in certain areas in. This particular facility, irrespective of whether it's a bat over the head or otherwise, that we are making the analogy with, this certainly was considered, when Rockbar went in, and a conditional use permit was established at that point in time, one of those components was the closing in of the facility, which is what we are talking about right here, right now. So it's an important element, I think for us to consider when we think about any kind of change to it, whether or not it's going to modify, whether it's going to allow it to operate in a reasonable way within the confines of what is otherwise a commercial area. You know, one question I might ask Dan, I don't know if you've got the answer to this, but what's the time in the C.U.P., in those stipulations for the time for live music?

Dan Symer: Mayor, members of Council, the time is from 3 p.m. to 2 a.m., and I believe that's each day of the week.

Mayor Lane: So that does overlap with the operations of the businesses as was mentioned by Councilman Littlefield. Okay. Thank you. Vice Mayor Korte?

[Time: 00:39:22]

Vice Mayor Korte: Thank you, Mayor. Mayor, you asked the question I was going to ask. I would like a follow-up on the noise ordinance and where the noise ordinance is applied and where it's not and some discussion down the road, February, say, to really talk about the impact of the noise ordinance, not only on the residential community but on our surrounding businesses.

Mayor Lane: Thank you, Vice Mayor. If there's no further comment on this particular item. Oh, I'm sorry. Yes? Randy?

Randy Grant: Mayor Lane, just for clarification, the amendment would apply to the stipulation relating to the opening of doors and windows, not to the entire C.U.P. So if the motion could be specific, that the one-year trial period is to allow the windows to be open, it would not allow for the expiration of the C.U.P.

Mayor Lane: Thank you, Mr. Grant. Councilman Phillips?

Councilmember Phillips: Yes, I just want to get this straight, that what we are asking for now is giving them a conditional use for one year to allow the doors and windows to be opened, when the people right now are complaining when the doors and windows are closed. How can it possibly be quieter? So this is beyond me. So, again, I will still be voting no.

Mayor Lane: Thank you. Councilwoman Klapp.

Councilwoman Klapp: Just to clarify, we are not voting on the doors and windows to be opened. Just the service windows, correct?

Mayor Lane: Yes.

Councilwoman Klapp: I would clarify that.

[Time: 00:41:32]

Tim Curtis: Yes, Mayor Lane and Councilwoman Klapp. They have a conditional use permit for the live entertainment and that's running with the land and now there is a request to amendment that relative to the north windows and to allow those to be opened. So it's our understanding that the motion effectively is to approve the amendment as written and that the north windows would be closed in a year unless they come back and do another amendment, but, yeah, they would close in a year.

Councilwoman Klapp: So it was not as stated by Councilman Phillips that we are allowing the doors and windows to be opened, just the service windows.

Tim Curtis: Just the service windows to the north, but they would need to be closed in a year.

Mayor Lane: Thank you, Councilwoman Klapp. Councilman Littlefield.

Councilman Littlefield: First of all, we are going to approve opening more windows which is going to make it easier and more annoying to the neighbors, a bar, which is already noisy and annoying to the neighbors. So we are going to increase either for a year or forever the amount of noise the neighbors will have to put up with. How is that a good thing? Second of all, the noise ordinance doesn't apply. I would say that the noise ordinance was designed by Franz Kafka and it doesn't apply anywhere but that's another problem. So it will not protect the galleries or other property owners. Why are we doing this? Doing it for only a year, how does that help anybody? How does that help with the neighbors? They will have to put up with a year of annoyance then they have to deal with it in a year when it comes back up. It's a bad idea to do this and it's a bad idea to even do it for just one year.

Mayor Lane: Thank you, Councilman Littlefield. I think that goes understood. Councilwoman Milhaven.

[Time: 00:43:40]

Councilwoman Milhaven: My understanding, the violations were identified by city staff saying you are not following the rules which is different from folks complaining. So let me ask a different question which is, what if any complaints have we gotten about the Rockbar?

Dan Symer: Mayor Lane, members of the Council, Councilwoman Milhaven. We have received, most of those, including myself, has been out there and informed them of some of the stipulations. The individual who no longer lives across the street was the primary person who complained, who sent in a request for a code violation and investigation.

Councilwoman Milhaven: So it's somebody who lives in a nonresidential area who no longer lives there?

Dan Symer: Correct.

Councilwoman Milhaven: And the other concern I have with live music starting at 3 p.m. could interfere with other businesses in the neighborhood. That's another concern that I have, but rather than change that now, I'm thinking let's give it a year and see. If we come back in a year, we can either say you have to continue to keep the windows closed or we can change the hours of live entertainment. It is a commercial area. I am sensitive to the other neighbors but I also know, you know, when someone a block away says you are making my walls vibrate, I don't know that it's the Rockbar. I guess there are some other establishments along that road that have either not required to keep the windows closed or have external speakers which are pretty intrusive on the neighborhood. Maybe staff could confirm if that's so. Other establishments on the street don't have other similar conditions?

Dan Symer: Mayor, members of the Council, the, there is a bar down the street that's currently closed that has the same stipulations, to keep the windows and the doors closed. The use permit was also processed at approximately the same time. So similar stipulations. One thing I do want to make a note. During the week it's 3 p.m. and during the weekend they are asking for 10.

Councilwoman Milhaven: Someone told me that Dos Gringos does not have similar requirements?

Dan Symer: Mayor, members of the Council, Councilwoman Milhaven. They do not, nor do they have a live entertainment use permit. They are only a bar, a legal non-conforming bar.

Councilwoman Milhaven: A legal non-conforming bar because it was open prior to all of this.

Dan Symer: It was open prior to the requirement for bar use permit.

Councilwoman Milhaven: I'm still inclined to give them a year and see how it goes.

Mayor Lane: Councilman Littlefield?

[Time: 00:46:35]

Councilman Littlefield: So the fact that it's going to be open, that they want to open the windows at 10 a.m. on weekends, that just makes this even worse! That's gallery days, Saturday and Sunday. So once again, you know, this makes it, this makes it even worse. 3 p.m. is bad enough, but to have it start at 10 a.m. all day Saturday, all day Sunday, crazy. So I would suggest to Councilwoman Milhaven, how about adding to your alternative motion, since I can't make an alternative, because it's so many, why don't you add to that a stipulation that the windows be opened only after 8 p.m. That would be a nice touch. I bet the gallery owners would prefer that. And by the way, the one complainer moved away, that was the guy that Washington complained about. And the other one was the gallery owner,

the one who called all of us over the weekend.

Mayor Lane: Thank you, Councilman. Councilwoman Klapp.

Councilwoman Klapp: I don't know if there's any more comment. I was going to call for the question.

Mayor Lane: All those in favor of call for the question, indicate by saying aye.

Carolyn Jagger: Mayor, we didn't have a second on that motion but it doesn't appear there's any more comment anyway.

Mayor Lane: Okay. Very good.

Councilman Littlefield: What are we voting on?

Mayor Lane: You say we did not have a second on that? Oh, call the question. Sorry about that. Very informal on the call to the question.

Carolyn Jagger: That's right. We can have a second and call the question. It looks like you are ready to vote on the alternate motion proposed by Councilwoman Milhaven.

Mayor Lane: No further comments indicated on it. We are ready to vote. All those in favor of the alternative motion, please indicate by aye and those opposed with a nay. The motion passes 4-3 with Councilman Robbins, Councilman Littlefield and Councilman Phillips opposing. So thank you very much for the presentation and for the applicants' information on this. That completes that item.

ITEM 30 – PURE BLISS PREMIUM MEDIBLES CONDITIONAL USE PERMIT (10-UP-2013)

[Time: 00:49:00]

Mayor Lane: Next item is Pure Bliss Premium Medibles, conditional use permit is 10-UP-2013 and we have Greg Bloemberg here to give us a presentation.

[Time: 00:49:14]

Senior Planner Greg Bloemberg: Thank you, Mayor Lane, City Council. Greg Bloemberg with Current Planning. I'm here to indicate use case 10-UP-2013. Following my presentation the applicant will say a few words. The site is located, as I mentioned previously in the air park on Evans road east of the airport, surrounded by office, warehouse and light manufacturing uses. Closer true of the site, this particular use will occupy one suite in this building. The rest of the tenants in the building are either wholesale or manufacturing or office-type uses. The floor plan, as proposed, would be taken up pretty much about 60 to 70% of the floor area will be taken up by a kitchen space, which would be used for the manufacturing of the product for the infusion of the medical marijuana into edibles and topicals. There's also an office space and reception area proposed. Just a summary of how we got here.

The location was previously approved twice for a medical marijuana use in 2011 and 2012. And the facility will operate under an existing registration certificate for dispensary in Mesa and November 19th, the City Council, at the City Council hearing on November 19th, there was a motion to approve. That did not pass. And there was no alternative motion made. That concludes staff's presentation. I will turn it over to the applicant.

Mayor Lane: Thank you, Mr. Bloemberg.

[Time: 00:50:58]

Court Rich: Good evening, Mayor, members of Council, for your record, Court Rich from the Rose Law Group on behalf of the applicant. This is a location that you have seen, as Greg mentioned several times before, in fact, it's been approved twice for a retail center for the distribution of medical marijuana. The application that's before you is far less intense. It is for a bakery that would not be a retail location. And I'm happy to answer any questions. I know you have seen this as I mentioned a couple of other times before.

Mayor Lane: Thank you, Court. And I don't see any questions at this point in time, but we do have a request to speak on this topic. I only have one card and it is Mr. Craig O'Loughlin.

[Time: 00:51:54]

Craig O'Loughlin: Thank you, my name is Craig O'Loughlin. I represent Buyers Dispensaries Inc., which is a winner of one of the state's many licenses to sell and cultivate medical marijuana. On this slide show, just a moment ago, I believe the second line said that this location would be operating under a permit from a dispensary in Mesa. That's news to me because I have a little bit of a wrinkle to tell you about and that is first and foremost, Buyers Dispensary, the winner of a dispensary in Springerville, Arizona, the principal of which is in the audience and can speak if needed was under the impression up until just moments ago that it was going to be the facility for the license holder that was going to cooperate with this entity in order for it to be a licensed medical marijuana kitchen. It's the first time I have seen that it would be Mesa.

I was actually here today just to make sure that the Council understood that the dispensary Buyers Dispensary Inc. is no longer in a situation where it's giving any permission to this kitchen to use its license. If, in fact, there's a new license that's been procured in the last moments literally, I don't know. But that's my intent today, to make sure that the Council understands that any permission that you were aware of by the Springerville dispensary, Buyers Dispensary, no longer exists. I can't speak to the Mesa issue.

Mayor Lane: Thank you, Mr. O'Loughlin. Court, do you want to address that issue?

[Time: 00:53:55]

Court Rich: Mayor, members of the Council, I just want to really quick, if I could refocus everyone. First of all, that is completely irrelevant. You've never approved a medical marijuana dispensary that's already had a license in place. We have to go to the state to get our license. It has to be associated with another medical marijuana facility. I know it's a competitive business and I'm not sure what this is all about, maybe put someone out of business before they start. But your stipulations clearly indicate that this facility will never open whether it's with the Mesa entity or some other, unless it's properly accredited by the state and that's just the bottom line. So I appreciate that even though this was a bit of a surprise.

Councilman Robbins: Mayor, can I ask, can I ask a question? Can you explain then? I guess one of my problems I have with this, if the citizens when they passed this thought that this was going to be only a select number, a limited number of licenses per jurisdiction, per population, so Scottsdale, I think was going to get two. Well, now we have this kind of situation where we are borrowing licensing from other entities and from other cities. So it, it sounds like it's potentially we could have an unlimited number of facilities all across our cities with this kind of maneuvering. I don't think that's what the citizens had in mind when they passed this. We were expecting two facilities in Scottsdale. Now you are saying people can borrow a license from other entities and it could go anywhere they want. I don't understand how this is supposed to be a limited type of medical marijuana situation.

[Time: 00:55:18]

Court Rich: Sure, Mayor, Councilman Robbins, that's a good question. Thank you for the opportunity to explain. This establishment is not a retail establishment. State was divided up into I think 126 separate geographical areas each of which would receive the ability to host a medical marijuana dispensary. They allowed them to associate with a bakery, such as the one that's proposed for you today that's not a retail establishment. It's just going to be enclosed for the processing and the making of medical marijuana, edible products and then that will be taken to other locations. I will note that Scottsdale actually only ended up with one actual retail dispensary within its boundaries. The other one that could have fallen within Scottsdale actually ended up to the north of the city. So if this were approved tonight and this were to open, you would have one dispensary and then would you have this other non-retail establishment that, frankly, no one would know that it's there. No one would be visiting it for any reason associated with medical marijuana. And this is the way that the state law was designed to be implemented.

Councilman Robbins: So every licensee could have a bakery somewhere?

Court Rich: That's absolutely right. And the thing that your zoning ordinance did, which many of the cities did is you put requirements that these uses, whether it be a bakery or a retail establishment or a grow establishment, that they can't be within a certain radius of each other. So there's no risk of kind of a focused area where you will have a bunch of these together because your foresight and your zoning ordinance said we will limit where these things can be in proximity to each other.

Councilman Robbins: Thank you.

Mayor Lane: Thank you, Councilman. Thank you, Mr. Rose. Next would be Councilman Phillips.

[Time: 00:57:21]

Councilmember Phillips: Thank you, Mayor. Well this is almost laughable because here we go again, we haven't even voted on it and they are already fighting over who would make the money. It was funny, I was down at City Hall when they sold the Greasewood property and you would believe the lawyers are circling like vultures and arguing with the judge who should get the money and who should get the property and it's really sad and pathetic. I wanted to ask our esteemed City Clerk if, because we have already voted on this and it's already been voted down, someone has to change their vote. So if a Councilmember is going to change their vote, don't we have to vote to allow them to do that first?

Carolyn Jagger: The short answer is no. If you want the legal answer, I would defer to the parliamentarian, the City Attorney.

Councilmember Phillips: Because I have seen that in the past where the Council person wanted to change their vote and the rest of the Council had to agree.

[Time: 00:58:24]

City Attorney Washburn: Councilmember Phillips, if a Councilmember wanted to change their vote on the votes they had previously taken so that if you wanted to go back to when the vote was taken on this, before and actually change the vote at that time, you can do that with unanimous consent of the Council. However, that's not, this is not, this is not a redo of that vote. This is just a new vote on this item being brought forward again. So, no, you don't have to vote to allow someone.....

Councilmember Phillips: That's a way to look at it but it's really a redo of the vote. We are re-voting on the same issue.

City Attorney Washburn: You are revoting. I mean, it's, yes, it's the same question being brought before you. And you are voting again on it. The Council's rules do say, though, that any matter, Council can give consideration to any matter that's brought before it. The motion to reconsider, where you would have, where somebody was on the losing side would have to move to reconsider it so they could change their vote. That has to take place at the same meeting. That's a motion to reconsider. A motion to rescind, where you go back and change the action that you took retroactively to a prior date, would require notice of the vote that was going to be taken. This is neither one of those. This is just basically you are being asked to vote again on the same question you have been asked to vote on again, not to change what you did before, but just to see if you want to change from this date forward.

Councilmember Phillips: Just so see if we want to change from this date forward. And if we vote no again, it will be next month and then we will see if we want to change it again and it goes down again, then we will bring it back next month until we, it's just ridiculous to me. And I get this email and in it, it

basically insinuated if we don't vote for this, we will be sued. I feel like that is a threat to the Council and a threat to the city and I don't even think that's legal. And, you know, I don't know who is planning on changing their vote but it certainly isn't going to be me.

[Time: 01:00:34]

Mayor Lane: Thank you, Councilman. You know, this is a strange animal and something that I voted against because I share the concerns of Councilman Robbins had and stated last time on this, but I would also say that there's an underlying concern as to how this is all going to be implemented and, of course, the arbitrary non-enforcement on the federal drug laws at this point in time, because this is an awful lot of consternation overall. It's a difficult issue for most of us here on the Council but there is truly a situation where, and some precedent has been set, where we are now faced with the prospect that someone could sue us for this and the result of that would be a complete lack of control over any aspect of where these particular clinics or frankly cultivation or otherwise would be located anywhere within our city.

So it's a very difficult one for us. It does put us in a conundrum with regard to our ability to vote on something like this, without risking a great deal more on the city's level. Now, there's no clear cut indication, but there are some precedent, there are some issues that are out there that could certainly endanger the city's zoning and control over this issue and it has been communicated to us from various sources. So it's a, it puts us in an awkward position, for sure, depending upon how you feel about this, but there is one underlying or overriding concern, I guess, that I had at least in the last vote on this, and this issue is coming back to us again as a new question even though the same question is Councilman Robbins' position with the proliferation of these kinds of facilities under some additional maneuvering of licenses and I will leave it at that for right now. Councilman Robbins would like to speak again.

[Time: 01:02:36]

Councilman Robbins: Yeah, this is deja vu, we already had this discussion. So I will make the motion that the Council not approve Resolution 9554, that the use is not compatible with the other uses in the area and the C.U.P. criteria have not been met.

Councilmember Phillips: Second.

Mayor Lane: The motion has been made and seconded. Would the second like to speak toward it?

Councilmember Phillips: Well, you pretty much heard my comments except I think Councilman Robbins when he asked the question about can there be more? I think that question was kind of side stepped. The fact is there can be more. Maybe they are not next to each other but it doesn't mean that there won't be a lot more.

Mayor Lane: Thank you, Councilman. So the motion has been made and seconded. Seeing that there's no further comment on this item, I think we are then ready to vote.

Councilman Littlefield: What are we voting on?

Mayor Lane: Rejection. All those in favor of the motion as is on the table, please indicate by aye, those opposed with a nay. Okay. The motion has failed. I'm sorry. It's affirmed. The rejection has been affirmed. Councilman Robbins, myself and Councilman Phillips voting in the affirmative.

Vice Mayor Korte: No, it's been rejected.

Mayor Lane: The rejection has been rejected. Okay. Very good. So the vote was 3-4 as indicated. So that leaves it at that. We do have Councilwoman Klapp, who would like to make a motion.

[Time: 01:04:36]

Councilwoman Klapp: I would like to make a motion to find that the conditional use permit criteria has been met and adopted and Resolution number 9554, approving a conditional use permit for medical marijuana use located at 7655 East Evans Road Suite 5 with industrial park district.

Vice Mayor Korte: Second.

Councilwoman Klapp: I-1 zoning.

Vice Mayor Korte: Second.

Mayor Lane: Would the second like to speak to it? The motion is to accept, now we are on the positive side of this. So those in favor of accepting that motion, please indicate by aye and if you are opposed with a nay. The motion passes with the acceptance 4-3, with myself, Councilman Phillips and Robbins opposing. So that completes that item.

ITEM 31 – PUBLIC HEARING ON PROPOSED WATER AND WASTEWATER IMPACT FEES

[Time: 01:05:41]

Mayor Lane: Moving on to item 31, which is the Public Hearing on the Proposed Water and Wastewater Impact Fees. Brian Biesemeyer.

[Time: 01:05:51]

Water Resources Executive Director Brian Biesemeyer: Good evening, Mayor and Council. Here again to talk about impact fees. This is the next step of the process that I talked to you in October about, last October. Just as a reminder, the impact fees are one-time fees charged to offset costs associated with providing necessary public services to a new development. Impact fees must result in beneficial use to the development and in Scottsdale we have only adopted water and wastewater impact fees. The new impact fee process was started by state law, enacted and started January 1st of 2012, and it requires a

new process.

We posted land use assumptions and infrastructure improvement plans on our website in August. We had a public hearing in October. We, Council adopted the land use assumptions and the I.I.P. in December. Since that time, we then posted the impact fee report and the impact fees and this, now we are at the public hearing for impact fees as we go forward, pending your comments the proposed adoption of the reported fees in February, repeal of the old ordinance and adoption of a new ordinance and then the impact fees would be effective July 1st, 2014. Impact fees are basically, the components of the impact fees are three parts and I will talk about each of these on the following slides but there's a buy-in and interest expense with a debt credit and future expansion credit. The buy-in is really buying into capacity that already exists in our system.

There are only certain eligible assets that were allowed to contribute to the buy-in, and new development needs to buy into that existing capacity. Existing capacity is calculated based on our current capacity, less any reserve capacity through a contractual agreement, as such and then less level of service that we provide our current customers and that equals our existing capacity available for growth or what's available for buy-in. Projected interest expense and debt principal credit. This is really impact fees also recover interest expense on debt used to finance these assets. There's a debt principle credit so that you are not charging twice for the same asset. There's the asset value and the debt value are not, they are not double charged.

[Time: 01:08:38]

The third component is the future expansion component. With that component, we are only allowed, the state law only allows us to look 10 years into the future. So we looked 2013 to 2023. Our treatment capacity on the water side does not need to be expanded. We do have \$26 million in distribution system expansions that are needed as well as supply expansion of about \$3.2 million in recharge wells. On the wastewater side, again, we are looking at the same ten-year period. Our treatment capacity again does not need to be expanded and the collection system expansion is approximately \$4.7 million. Some of the other features that are looked at with this impact fee analysis, as I just mentioned, it's limited to a ten-year period by state law. It combines, we have elected to combine the water and the water resource impact fees that currently exist into a single fee.

[Time: 01:09:45]

So under our current structure, we have the water impact fee, a water resource impact fee and a wastewater impact fee and we're proposing here to have only a water impact fee and a wastewater impact fee. So we have simplified that structure somewhat. The new law eliminates the administrative fee charges and then all fees are based on meter size on this proposal which implies our structure, implies the administrative burden and associated level of service and the amount of water distributed to a facility, directly to the impact fee.

These are the proposed impact fees with the three major components, the buy-in, interest expense and the expansion. The interest expense, and there's a negative there, and, again, it's due to the

financing and the balancing of the financing of the debt and how much debt is actually there. And, again, these are based on an equivalent demand unit, which is basically the equivalent demand for a single detached family dwelling unit. And we talked considerable amount about that in October when we talked about the land use assumption and the impact, the land use assumption and the infrastructure improvement plan were developed.

The impact fee schedule as proposed, for water and wastewater fees. And, again, they increase with meter size or the amount of service provided. Our impact fees in general are lower with the new law and it's driven by several factors. One is the shortened planning period, the ten-year planning period, previously we planned out to 2035, and so well over 20 years. They are driven by a lower growth that we are seeing now. So the lower growth projections. And they are offset somewhat, although not totally by the amount of assets that are constructed into our system. Since 2008, when the last impact fee were adopted, we have invested over \$200 million into the infrastructure and so that adds to the buy-in component.

Mayor Lane: Excuse me, Brian, if we could, we have a couple of questions, and I'm not sure which slide it might apply to but, Councilman Phillips. Starting with Councilman Phillips.

[Time: 01:12:39]

Councilmember Phillips: Two slides ago. The water meter slides.

Brian Biesemeyer: Sure.

Councilmember Phillips: I know under one, it says most residential. One and a half inch, what would that.....

Brian Biesemeyer: One and a half generally, you could have a very large residential lot that could have a one and a half inch meter but generally, you would see those in multi, in apartments, in larger buildings.

Councilmember Phillips: Okay. All right. Thank you.

[Time: 01:13:15]

Mayor Lane: Thank you, Councilman. Brian, I was wondering. There was a slide you had with the elements within the impact fee. Yeah, that's it. And you may have said it and apologize if you did, but I was curious as to how the debt principal credit, could you explain that maybe for me and maybe for others that might have missed that, as to why that is a credit situation?

Brian Biesemeyer: I will attempt to and then if that's not sufficient, I have some finance folks who can give you a better idea of that. Generally it depends on the age of the debt. As you know, as debt ages, you are going to be paying more principal and less interest rate. So older debt will have a larger principal credit than younger debt. Also there's some balloon payments in there, that factors in and

then the interest itself, and what the interest on the debt factors into those. So those components add to the factors of whether or not the credit part overwhelms the interest payment.

Mayor Lane: Okay. I think I have a handle on that. So as the credit ages, obviously, if somebody is buying in at a point in time, on the interest component, it actually becomes less and less and they end one a credit towards that debt but I would presume that on the other hand, the future expansion component would increase at the same time as that debt credit decreases or rather the debt credit increases?

Brian Biesemeyer: It would, well, the future expansion is only on what additional expansion needs to be made. So that would, on growth would vary. The buy-in component, however, that's what you are buying into. So that also impacts it. I'm not sure I quite captured your question, Mayor.

Mayor Lane: Yeah. That's all right. I think I have got a sense for at least the debt principal credit. Future expansion is pretty self-explanatory. They don't necessarily have to relate. We are talking about what now going into the future is figured for the entire system, presumably?

Brian Biesemeyer: That is correct. What's needed for expansion in relationship to the entire system.

Mayor Lane: On a ten-year basis?

Brian Biesemeyer: Yes, sir.

Mayor Lane: Okay. And you did say that on the overall, and I don't know that there is a corresponding slide on this, from our last impact fees that these are lower in both water and wastewater?

Brian Biesemeyer: They are and I have some slides to show that further on in the briefing.

Mayor Lane: Very good.

[Time: 01:15:52]

Brian Biesemeyer: I think that's exactly where I got to. So on our single family residential, our water and wastewater fees were based on lot size, not on the meters and not really on the service level. So as you compare here, you can see that in general, for a 1 inch meter which would be standard for most single family units, the impact fees will be reduced, however, this could be circumstances where a 1.5-inch meter is required for a larger lot and then that would therefore increase the fees as compared to our current fees.

Mayor Lane: Okay. Thank you.

Brian Biesemeyer: On the multifamily residential, again, we're making some estimates here this is 100 unit apartment. They could use 1.5, 1.5-inch meters or they could use 2-inch meters depending on the demand and how they develop their units. Previously we used to, the impact fees were based on the

number of units. Again, we are basing it on the meter size, which is in the service provided, but as you can see there's a still a reduction in our impact fees collected. And then on commercial, there's also a reduction. These fees are currently assessed also on meter size. This is the one area where our current fees are on meter size, however, they were done on average use and not on, which is, not on the actual availability of flow provided to the unit. So this is a more standard assumptions used with the meter size in our current, our proposed fees.

Mayor Lane: Brian, I'm sorry, if I might. On that, and this may be just a process or administration or something like this, but as a property turns over, if they change their meter size, does that encumber them with a new impact fee? Or is there some carryover component when the property was initially sized?

Brian Biesemeyer: I believe it will, but let me, I will defer to Gina Kirklin, our financial manager.

[Time: 01:18:15]

Enterprise Finance Manager Gina Kirklin: Mayor Lane, members of Council, it depends on what meter size they are changing to and from. If they are upsizing their meter, they pay the difference between the existing development fee for that meter size and what they are expanding to. Now, if there's redevelopment for a multipurpose or a commercial development, they could be downsizing those meters and in that case they may receive a credit towards their fees, maybe for a larger footprint, but in no circumstances do they get refunds.

Mayor Lane: Oh, okay. I think that probably answers what I'm about to say and that's because the changes in the impact fees now, somebody could actually upsize and have already contributed, and, again, I haven't matched up the numbers but they may have contributed substantially more than the current size they are requesting when they initially put in the meter?

Gina Kirklin: Absolutely, yes.

Mayor Lane: But there would not be any refund. They may not be subject to any additional fees.

Gina Kirklin: Additional fees, yes, sir.

Mayor Lane: Thank you.

Brian Biesemeyer: So what's next? We are at the public hearing now. There's a proposed adoption of the impact fees would come in February. We would also need to repeal the existing fee ordinance and adopt a new fee ordinance, and then, again, the impact fees by law would need to be effective July 1st, 2014. Pending your questions, that concludes my presentation.

Mayor Lane: Thank you very much, Brian. I see no questions right now. There's no question from the audience. So I think, and I don't know if I will have any discussion, but thank you very much for the presentation.

Brian Biesemeyer: Thank you, Mayor.

Mayor Lane: I think everyone understands what's at work here. We have a request to conduct a public hearing which is what we have just done for the impact fees to be effective on July 1st. I'm presuming there's no other call to action or no other vote required here. So we have got that covered. Item 31 is then complete.

ITEM 32 – MONTHLY FINANCIAL UPDATE

[Time: 01:20:18]

Mayor Lane: And item 32 is the monthly financial update and we have our City Treasurer Jeff Nichols moving to the podium.

[Time: 01:20:27]

City Treasurer Jeff Nichols: Good evening, Mr. Mayor, members of Council. I'm happy to be here in front of you all today, if I could get the presentation up on the screen. Here we go.

As you know, there's been two months of financial data, November and December. I'm going to skip November since that data is incorporated into the December results and it hasn't changed much. They are positive. We will start with our General Fund operating sources. As you can see at the bottom right-hand corner, we currently have a favorable variance of about \$5.3 million. Some of that coming from the 1% general purpose sales tax and that's related to increased and motor vehicle sales that we're seeing. Some wholesalers are reporting large amounts of taxable sales and we're seeing a lot of increase in the construction sales tax related to single family homes and this will be, I will mention this several times through this presentation. Also if you look down under building permits, you will see the \$3.5 million. We are up 52% over last year in the permitting related to single family homes and so they are just doing better than was forecast during the budget process. We also, if you look across the Maricopa County region, our single family home construction is one of the top, as far as the growth from this fiscal year compared to last fiscal year. Drilling down into the sales tax area, again, you will notice some of the positive variances, the largest one down under business, under construction, and right there, \$400,000, again that's, most of that is related to single family construction and some multifamily building that's going on in the community.

[Time: 01:22:36]

Mayor Lane: Mr. Nichols, just a quick observation, I suppose, in addition to the building permit issue that you were mentioning, I don't know how aggressive you are getting with investments but 75% increase on the interest earnings is a little bit of a standout issue.

Jeff Nichols: And we don't have much control of that. We are not getting aggressive on our investment portfolios.

Mayor Lane: In oil wells or something like that, fracking?

Jeff Nichols: We are using PFN, an asset management company. They do watch our portfolio closely. Recently we got involved with a new institution, whereby we are making some short-term investments and we are getting about 12 basis points higher. We did several million dollars in that investments, but as far as the overall, we're still only seeing, even though our portfolio is rather large, we are not seeing a great deal of interest earnings on it in the neighborhood of 40 basis points. So it's on average.

Mayor Lane: Realizing we are talking about relatively small dollar amounts but it's still.....

Jeff Nichols: The percentage is large, but I wish the dollar amount was much larger.

Mayor Lane: Thank you.

[Time: 01:24:02]

Jeff Nichols: You look at the General Fund sales tax, 1% over from '07/08, when this started being presented to you, showing the decrease year over year. We since have been increasing month by month, compared to the previous month in the prior fiscal year. You see there we had the 4% forecast increase for the budget. I would just like to point out that in this, we are taking this growth into account as we start to prepare the '13/14 operating budget, '14/15 operating budget, excuse me. It's nice. It's an uptick. We don't know if it will continue. It seems to be continuing month over month and we hope it continues through the end of fiscal year because these are revenues that were unexpected in this positive variance will carry over and provide us with funding to do some things at the end of the year if the Council so approves. One thing I would certainly recommend would be to fund the C.I.P. a little bit heavier at the end of the fiscal year.

Here we look at our General Fund operating issues by category. As you notice, the first overtime, we are seeing the unfavorable variance and again, that's related to police and fire, about \$660,000 in police to continue with their staffing levels, that are mandatory staffing levels and about 227,000 of that is related to the fire department. In the area of contractual commodities and capital outlay, you see a large positive variance. I would just caution that a lot of this is just temporary in nature. The construction-related to repairing the garages, there's some disputes on the invoices, the invoices haven't been paid yet. So it's just timing issues.

We also have some timing issues related to the jail services contract. We haven't received some of the invoices from the Maricopa County and so we expect we will receive those. I would think at some point in time, and we could catch up on those bills as well. Also in the administrative area, I.T. is negotiating with the vendor regarding certain software and so, again, just timing issues.

We probably won't realize that type of savings by the time we close the books at the end of the fiscal year. If we look, at the General Fund operating uses by division we see the Mayor and the charter officers, there's a significant savings, about \$400,000. That's being driven by the City Attorney's office

is charging more to the Risk Management fund than they thought they would be doing. The City Auditor is having some salary savings and then again throughout those divisions, there's just some timing issues related to invoices being paid. So it's a budget spread if you will.

The other areas that you look, I would like to point out in the Public Safety Police you see a positive variance there. Some of those timing issues that I mentioned on the previous slide are masking the overage we had in overtime. So, again, at the end of the year, we may not have a positive variance. We more than likely won't in police, but maybe they will come in on budget. They will offset their overtimes with savings in other areas. But overall, for the General Fund, results you see there change in fund balance, a positive variance of 8.7 million. I would say that more than likely, the positive variance related to the sources will remain throughout the fiscal year and be there at June 30th. The positive variance in the uses will probably go away as some of these timing issues, we catch up with them and start paying those invoices. And with that, I would be happy to take questions from any of you.

Mayor Lane: Thank you, Mr. Nichols. I don't see that we have any questions at the present time. So I would, great presentation. You answered it all as we went along and we are set with that. So thank you.

ITEM 33 – BOARDS, COMMISSIONS AND TASK FORCE NOMINATION PROCESS WORKS

[Time: 01:28:45]

Mayor Lane: Next order of business that we have, of course, is our Boards, Commissions and Task Force nominations and we'll have Rachel do the presentation to the board. And I will turn it over to Vice Mayor Korte.

[Time: 01:28:56]

Vice Mayor Korte: Thank you, Mayor. This evening the City Council will be nominating Scottsdale residents interested in serving on eight citizen advisory boards and commissions. The eight with vacancies are: The Human Services Commission, the Library Board, the Loss Trust Fund Board, the Neighborhood Advisory Commission, the Planning Commission, the Tourism Development Commission, the Trails Subcommittee, and the Transportation Commission. Those nominated will be interviewed at the City Council meeting on Monday, January 27th, and appointments will follow each set of interviews. So let's get started. So turning to the page.

[Time: 01:29:44]

So Human Services Commission. We have one opening. Okay. The Human Services Commission provides advisory recommendations to City Council on human services, priorities and programs and funding allocations for Scottsdale Cares, CDBG Block Grants and HOME Funds and General Funds.

Don Nordlund is eligible for reappointment and has submitted an application. There is one vacancy

and three applicants. The applicants are: Don Nordlund, Harold Roth, Margaret Wieber. I will now entertain nominations for the vacancy on Human Services Commission. I believe you can vote for one and Mr. Phillips? Would you start, please?

Councilmember Phillips: Thank you, Vice Mayor. Mr. Roth.

Vice Mayor Korte: And I will nominate Mr. Nordlund.

Councilman Littlefield: No additional.

Mayor Lane: No additional.

Councilwoman Klapp: No additional.

Councilwoman Milhaven: No additional.

Councilman Robbins: No additional.

Vice Mayor Korte: Thank you so Mr. Donald Nordlund and Mr. Roth have been nominated for the Human Services Commission.

[Time: 01:31:14]

On to the Library Board. The Library Board advises Council on general policy with regards to future development of the library. The Board oversees the library's special revenue fund. Christine Naiman submitted her application today. There's one vacancy and two applicants. The applicants are Christine Naiman and Teresa Quale. We can nominate one, you can nominate one individual. So I will now entertain those nominations and start with Councilman Littlefield.

Councilman Littlefield: No nominations.

Mayor Lane: Teresa Quale.

Councilwoman Klapp: Christine Naiman.

Vice Mayor Korte: And that takes care of those nominations for the Library Board and Christine Naiman and Teresa Quale have been nominated.

Moving forward, the Loss Trust Fund Board. There's one opening. There's no applicants for that Board.

[Time: 01:32:23]

Neighborhood Advisory Commission. There are two openings. Neighborhood Advisory Commission

advises the City Council regarding implementation of programs that prevent the decline and the deterioration of neighborhoods. Todd Becker submitted his application today and it was placed on the dais for our review. There are two vacancies and two applicants. The applicants are: Todd Becker and Todd Mazon. I will now entertain nominations for those two vacancies for the Neighborhood Advisory Commission and each Councilmember may nominate two applicants. Mayor Lane?

Mayor Lane: Todd Becker and Todd Mazon.

Vice Mayor Korte: And that takes care of that nomination. Todd Becker and Todd Mazon have been nominated.

Mayor Lane: Thank you.

[Time: 01:33:16]

Vice Mayor Korte: Thank you, Mayor. Planning Commission, there's one opening. The Planning Commission makes recommendations to the City Council on all matters relating to the creation of zoning districts, the enforcement of zoning regulations and amendments to all zoning ordinances. Matthew Cody is eligible for reappointment and has submitted his application. There's one vacancy and two applicants and I will entertain motions, beginning with Councilwoman Klapp.

Councilwoman Klapp: Mr. Cody.

Councilwoman Milhaven: No additional.

Councilman Robbins: Robert Rogers.

Vice Mayor Korte: And that completes those nominations. Matthew Cody and Robert Rogers have been nominated for the Planning Commission's one opening.

[Time: 01:34:12]

Moving on, Tourism Development Commission. There's one opening. The Tourism Development Commission advises the City Council on matters concerning the expenditure of revenues from the transaction privilege tax on transient lodging, bed tax designated for tourism development. As specified in the Scottsdale city code, the seven members of the Tourism Development Commission shall consist of representatives of the tourism industry in Scottsdale, including a minimum of four hoteliers and one member of the Scottsdale Convention and Visitors Bureau and other elements of the tourism industry. This vacancy is for a non-hotelier. There's one vacancy and four applicants. Those applicants are: Richard Alt, Camille Hill, Paul Ng and Randal Ortiz. Councilmember Milhaven.

Councilwoman Milhaven: Camille Hill.

Councilmember Phillips: Randal Ortiz.

Councilman Robbins: Richard Alt.

Vice Mayor Korte: No further nominations.

Councilman Littlefield: No further.

Mayor Lane: No further nominations.

Councilwoman Klapp: No further.

Vice Mayor Korte: And that completes our nominations, Camille Hill, Randall Ortiz and Richard Alt will be brought forward.

[Time: 01:35:47]

Trails Subcommittee. The Trails Subcommittee of the Transportation Commission advises the commission on issues surrounding paths and trails. There's one vacancy and one applicant for the Trails Subcommittee. Councilmember Robbins?

Councilman Robbins: Michael Kouzel.

Vice Mayor Korte: Thank you. That completes our nominations. Michael Kouzel will be brought forward.

[Time: 01:36:15]

And Transportation Commission, there's one opening. The Transportation Commission advises the Council on transportation issues. There is, excuse me, Steve Olmsted is eligible for reappointment and has submitted an application. Barry Graham and Steve Olmsted have submitted applications. I will begin nominations with Councilmember Phillips.

Councilmember Phillips: Graham.

Vice Mayor Korte: And I will nominate Steve Olmsted. This concludes our nomination process this evening. City staff will contact those who were nominated and provide them with additional information about the interview process. I would like to take this opportunity to sincerely thank all who have applied to serve on a citizen advisory board or commission. Even if you were not nominated your application will remain on file for one year for consideration at a future date if there are additional vacancies. So thank you and I turn the meeting back over to Mayor Lane.

Mayor Lane: Thank you, Vice Mayor.

ITEM 33A – REQUEST TO AGENDIZE INITIATION OF A PROCESS TO DETERMINE WHETHER TO REVOKE

THE CONDITIONAL USE PERMITS OF SMASHBOXX, EL HEFE SUPER MACHO TAQUERIA, AND HI-FI KITCHEN AND COCKTAILS

[Time: 01:37:45]

Mayor Lane: As we complete this meeting, we do have an item, 33A and it's a request by Councilman Littlefield. It's a request to agendize, to revoke the conditional use permits of Smashboxx, El Hefe, Super Macho and Hi-Fi Kitchen and Cocktails. And on that basis, I guess I first turn it over to Councilman Littlefield.

[Time: 01:38:14]

Councilman Littlefield: Well, it's simple. All three of these, the fact that these three operations were planning to have after-hours celebrations on New Year's Day when they didn't have permits from that, actually, that was brought to my attention by various members of public who saw it on the Internet. So I then alerted the staff. Staff went out and told all three of these places that they did not have the permits and that would not be, it would be a violation to open up. Well, guess what, they did anyway. They went ahead, even though they knew it was illegal, they went ahead and they held their after-hours events. So clearly, they figured that the fines were so pathetically small that they could basically flaunt our rules. I think it's bad enough that we have not really enforced our rules about making the bars good neighbors in a number of ways but now, that is just, for them to actually just flaunt it and say, you know what, we know it's wrong and we are just going to do it anyway, they thumbed their nose at the city. I think that it requires some action above and beyond merely fining them, especially considering the fines are a tiny fraction of the profits that they made during these illegal after-hours events. So I would make a motion that we initiate the process of revoking the conditional use permits of these three establishments.

Councilmember Phillips: Second.

Mayor Lane: A motion has been made and seconded. Councilman Phillips, you would like to speak toward it?

Councilmember Phillips: Thank you, Mayor. Well, I think it does warrant a discussion by the City Council and that's what we are asking for. Thank you.

Mayor Lane: There is a motion on the table, obviously to, actually, it's to stipulate to agendize a meeting whether to consider a process and I will look to Mr. Washburn just to make sure that we are clear as to what it is that we are talking about here.

[Time: 01:40:27]

City Attorney Washburn: Thank you, Mayor. Yes, if the Council votes in favor of the motion, then staff will put on a future agenda an item as to whether the Council wants to initiate the revocation process and then if the Council votes to initiate the revocation process, then there is an actual hearing that is

agendized to determine whether or not to revoke the C.U.P.s.

Mayor Lane: All right. Thank you, Mr. Washburn. I personally think that this is not something that rises to the level of a discussion on revocation, which is a nuclear option in this case. There were apparently, there are alleged that there have been violations of a certain number of C.U.P. stipulations and code issues, each of these, each of these organizations have been cited in that regard. And I think that the system is actually indicating a showing that it's working. This is not something that generally would come to the point of a need and a dedication toward, or I should say a discussion towards revocation. So I just, personally, I think that it does not rise to that level. I think the system is working and I know there's a little bit more to this story than is stated here. Councilman Littlefield.

Councilman Littlefield: Well, if our staff went out to each of these establishments, told them in advance that these events were illegal, and were a violation, they clearly knew it. They went ahead anyway, then I would submit that that's clear evidence that the system isn't working. Because if their conditional use permits didn't allow them to do this, they didn't have the permits and they went ahead anyway, then that just says they are going to thumb their nose at us and flaunt whatever few pathetic rules we have, which are not enough to begin with. Is so I would say that this is clear proof that the system does not work and that's why we need to at least have that discussion.

Mayor Lane: Thank you, Councilman Littlefield. I want to stipulate, frankly that, we are not going to engage in discussion of the merits of this one way or the other. This is simply on the basis of the facts that have already been presented, as to whether or not it rises to the level of raising to a request to move toward any kind of hearing on revocation. Councilwoman Milhaven.

Councilwoman Milhaven: Nothing.

Mayor Lane: So if there's no other comment whatsoever on that, I guess we are ready then to vote for it as indicated. All those in favor, please indicate by aye. All those opposed with a nay. You did and it went away.

Councilwoman Milhaven: Now I have to remember what I was voting on.

Mayor Lane: The motion has been defeated 5-2 with Councilman Littlefield and Councilman Phillips in the affirmative. That completes items, yes? Yes. Vice Mayor.

[Time: 01:43:47]

Vice Mayor Korte: Thank you, Mayor Lane. Perhaps a discussion needs to be more around the penalties involved rather than using a hammer to insert a pin. We clearly, staff went out to these establishments and informed them that they were in violation of the conditional use permit. And yet that didn't stop them from violating those permits and that shows to me, a little disrespect for the city.

Councilman Littlefield: A little.

Vice Mayor Korte: And I agree with Bob, but I don't agree that it justifies a conditional use permit pulled. So maybe the discussion more is around the level of penalties to make it more painful.

Mayor Lane: Well, that may be a comment and a question for another day and it's not agendized right now. And so I would just indicate, I appreciate your point.

Vice Mayor Korte: Okay.

Mayor Lane: But I think it's something that would have to be considered otherwise as to whether this staging of penalty, it's been voted at this point in time and if I missed your comments before we voted, I apologize.

Vice Mayor Korte: No, you didn't.

Mayor Lane: Okay. That does complete the items we have on our agenda for this evening. We have no additional public comment items and no petitions presumably.

ADJOURNMENT

[Time: 01:45:24]

Mayor Lane: And therefore, I will ask that we have a motion to adjourn.

Councilman Littlefield: Move to adjourn.

Mayor Lane: Move to adjourn and it's seconded. All those in favor of adjournment, please indicate by aye. Thank you very much.