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CALL TO ORDER

[Time: 00:00:05]

Mayor Lane: Good afternoon, everyone. If you are here for the 5:00 regular meeting, it's January 27th, of 2014, and I will ask for a call, as we are calling this meeting to order, I will ask for a roll call, please.

ROLL CALL

[Time: 00:00:10]

City Clerk Carolyn Jagger: Mayor Jim Lane.

Mayor Lane: Present.

Carolyn Jagger: Vice Mayor Virginia Korte.

Vice Mayor Korte: Here.

Carolyn Jagger: Councilmember Suzanne Klapp.

Councilwoman Klapp: Here.

Carolyn Jagger: Bob Littlefield.

Councilman Littlefield: Here.

Carolyn Jagger: Linda Milhaven.

Councilwoman Milhaven: Here.

Carolyn Jagger: Guy Phillips.

Councilman Phillips: Here.

Carolyn Jagger: Dennis Robbins.

Councilman Robbins: Here.

Carolyn Jagger: Acting City Manager Brad Hartig.

Brad Hartig: 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.

[00:00:38]

Mayor Lane: Thank you. Some items of business. We do have cards, if you would like to speak on any of the items on the agenda. They are the white cards that the City Clerk is holding up over her head to my right and there are yellow cards if you would like to give some written comments on either of the same which we will read during the proceedings and before those items are heard. We do ask Scottsdale police officer, Jason Glenn and Tom Cleary who are slightly off to the left of me here. They are here for your assistance if you have any need for that type of help. The areas behind the Council dais are reserved for Council and staff. We have facilities over that exit sign, which they still have not put rest room sign over there yet, but that's where they are at if you have a need for those for your convenience.

PLEDGE OF ALLEGIANCE

[Time: 00:01:33]

We will start with the Pledge of Allegiance and I ask that Guy Phillips lead us in the pledge. Please rise.

I pledge allegiance to the flag of 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, Councilman.

INVOCATION

[Time: 00:01:59]

Mayor Lane: Our invocation this evening is, will be from Paula Sturgeon with Bethany Lutheran Church and she's here to provide that invocation. Thank you for being with us.

Paula Sturgeon: Thank you, Mayor. Would you pray with me? Gracious and ever present God, we give you thanks for the opportunity to serve together, to provide for the common good, and to exercise our civic responsibility. We ask that you would bless our proceedings this night, our hearts and minds to be wise and our actions to be in good nature. Bless us now and always, as we know you do, because the sun shines and know that you love us. Amen.

Mayor Lane: Amen. Thank you, Paula.

MAYOR'S REPORT

[Time: 00:02:52]

Mayor Lane: Well, once again, the city prepares for the Hashknife Pony Express and the Parada del Sol and Rodeo. And to that end, I have a proclamation that I will read for the record and formalize the occasion.

This proclamation reads, whereas the old west will come alive during the 61st annual Parada del Sol and reminding us once again that Scottsdale is the West's Most Western Town. Lest there any doubt. And whereas over the years the Parada del Sol has grown from a small town rodeo to one of the most popular rodeos in the southwest sanctioned by the Professional Rodeo Cowboys Association and became known as the world's longest horse drawn parade. And whereas the Parada del Sol brings Scottsdale residents and visitors together for a variety of events celebrating the mettle, the courage and the wit of the original explorers and founders the American west and the volunteers involved in these events devote thousands of hours coordinating the parade, the rodeo and western weeks in the generous effort to reflect their love of Scottsdale and the western way of life. I therefore, now therefore I Jim Lane Mayor of the City of Scottsdale proclaim February 2014 as Parada del Sol month in

Scottsdale and encourage everyone to participate in the Parada activities and to warmly welcome the visitors who come to enjoy the spirit of the old west and extend the deepest thanks to the Parada del Sol for carrying forward this tradition. Furthermore, I Jim lane, Mayor, proclaim all Wednesdays in February, as Western Wednesdays and urge all citizens to show their support for the Parada by donning western attire on Wednesdays through the month of February and for the city staff to do so. In witness whereof, I have here affixed the seal. Whatever you need to do, whether it's hats or boots or belts, gun belts, no, no: To bolo ties on western Wednesdays, it's a great reflection on our city. Thank you.

Brad, I'm presuming there is no manager's report.

Acting City Manager Brad Hartig: That is correct.

Mayor Lane: Brad is sitting in for the City Manager tonight. Okay.

PRESENTATIONS/INFORMATION UPDATES

[Time: 00:05:49]

Mayor Lane: We do have a presentation and announcement. We are going to have Erin Perreault with the General Plan 2014 Update. Erin, please.

[Time: 00:06:02]

Long Range Planning Manager Erin Perreault: Mayor and Councilmembers, I just have a brief update for you, with regard to the process and the progress on the Scottsdale General Plan 2014. If you remember, last time about this time last year, Council gave unanimous direction for staff to create the process, the adoption calendar, and establish a citizen task force to create a Scottsdale General Plan 2014. Per that direction, we visited with you in May of 2013 with resolutions to establish that process, to establish that adoption calendar and establish the task force and appoint 25 citizen members to that task force. With regard to the task force, they have been working on the Scottsdale General Plan 2014 drafting since June of last year. They have been utilizing the existing 2001 ratified General Plan and the non-ratified 2011 plan as some of the content consideration for the draft that they are working on currently. They have also been working with staff to engage the community on the 2014 General Plan. A number of task force members have devoted extra time, to attend the public workshops that the city has held and I do believe that the folks that have attended those have appreciated seeing those task force members at those workshops. They will soon be recommending a draft document to the Planning Commission and then, of course, just a reminder that this task force will sunset at the time that Council takes action on a General Plan for voter consideration.

In terms of task force meetings they have generally been meeting since last June, twice a month, sometimes three times a month. They have had to add a few extra meetings to stay on track. The two highlighted dates that you see in January and February of this year highlighted in red on the right are joint Planning Commission meetings. The task force and the Planning Commission met on

January 13th and they are scheduled to do a joint meeting at the end of February as well. In addition, you will see on the slide all of the different topics that we have hosted public workshops on. They include neighborhoods and housing, character, economic vitality, growth areas, land use, of course, major amendments, criteria associated with changing land use have all been completed in November of last year, and then we will hold three open houses on the draft plan at three locations in the community in the south, central and north in March of this year.

In terms of progress, this is the main reason to come to you tonight. So you can see the progress of the task force is making in drafting the plan. Those items you see under the state mandated elements header that are highlighted in red are all the elements that they have created a draft of and have released to the city's website. So those are out on the city's website currently. Anyone can access them and provide content on those elements, or comments on the content of those elements. Tonight, they will discuss land use, cost of development in growth areas and they have completed circulation and bicycling. They just haven't been put up to the city's website yet, but we expect that to happen this week.

In addition to those state mandated elements, the community also had three elements that we included in our General Plan. They aren't state mandated but important to the community. Those include character and design, economic vitality and community involvement. As you can see, they have drafts of two of those three out on the website already and we'll be talking about economic vitality this evening. In addition, the task force has decided to add two new community-created elements to this draft plan. First is an arts and culture element. We do have goals with regard to arts and culture already in the existing plan but they decided to make that a standalone element in the plan and a healthy community element. That's been released to the website. Art and culture will be discussed tonight and potentially released after tonight's meeting. But you see on the right of this screen is a screen shot of what the citizens will see when they go into access and comment on any of those. So you can see which ones are highlighted. They are underlined, actually, and it says open for comment next to them. So that's where the citizens can go and comment.

[Time: 00:10:43]

In addition to elements, two important items for the plan, the vision statement and the implementation chapter have yet to be discussed by the task force and will be discussed a little bit tonight, if they get to it on their agenda and at their next meeting as well which is February 3rd. In terms of adoption calendar, we are working on the same calendar that you saw last March, or excuse me, last May. The task force is set to release a draft plan by the end of February. In March, we will be holding those open houses that I referred to earlier. We have also scheduled on the agenda plan, our work study session with City Council to have direct dialogue between staff, City Council and also task force members will be invited to attend that as well and participate. In addition, we will have, we will work into the public hearing process, which is state required, with two meetings in May for the Planning Commission and then be, of course, back to Council in June. We originally were going to come to you on June 10th. We pushed that back to June 24th. So we will be doing a second study session with you. And then, of course, holding an adoption hearing on June 24th, which is currently scheduled on the agenda planner as well. That concludes my presentation.

I just wanted for your benefit, but also for the community's benefit, it's very easy to get to all the content of the General Plan on our main web page, on the city's website. There is a General Plan button or S.G.P.2014 button and that will take you to all the content, the task force meetings and everything else with regard to the General Plan. We look forward to coming back with a work study session in March to discuss the content of the plan at that time and that concludes my presentation. Thank you.

PUBLIC COMMENT

[Time: 00:12:43]

Mayor Lane: Thank you very much, Erin. That completes the presentations and announcements and we do move to public comment. The public comment is reserved for city comments on non-agendized items. Speakers are limited to three minutes and a maximum of five. There's just one card to speak in public comment at this point in time. There will be another opportunity at the end of the meeting if there is a requirement. So we have got that one public comment card, it is Jim Torgeson.

[Time: 00:13:20]

Jim Torgeson: Mayor, Council, my name is Jim Torgeson, I live in Gilbert, Arizona. I own Sign King of Arizona. What I wanted to bring to your attention is an odd enforcement of an old city code. It's 16-353 subsection c. It's something I was cited for about six years ago. And a state law, A.R.S. 9-499.913 was drafted to basically stop the Scottsdale city code. Since December 31st, 2008 when that law took effect, specific instructions were given to my employees that hold signs for various businesses in the community, that they should stand just behind the sidewalk as to not ,as to not impede pedestrian traffic and that was the instruction for approximately five years. There has been an occasional asking for I.D.s, running people through the system, making it very difficult at times. But the standard was staying behind the sidewalk.

In the last couple of months, that's changed to rather than observing state law, which says that you are allowed reasonable time, place manner restrictions, it has grown to no public land -- what they are told is nowhere in Scottsdale. People are being stopped and said if you don't get out of Scottsdale, I can take you to jail or cite you. Then it was -- we thought moving them somewhere would alleviate that a little bit. So I will be engaging my attorney to defend their four ticks and pay finds or whatever is necessary at that point. The change of enforcement is not within the reasonable time place manner restriction. Outside of Scottsdale is, period, illegal and when pushed very hard, well, if you stand behind that wall, and hold it, we'll allow it. It makes it de facto illegal and ineffective. The dozens of employees who are hassled are just mine. As I went through on Martin Luther King weekend and my people were cited, I found dozens of people within eyesight of my employees doing the same thing. Actually, probably a little recklessly instead of my people are pretty tame.

So I would love for you to take an opportunity to look at your policy and come and help get to a nice

reasonable place, something that works for the people that are working for me. They are members of this community. These are the same people, some of them even work the PGA for security. I mean, these are not, these are people that live here, work here, spend here. They should have the right to continue to work here, specifically when state law came in to clarify that. If you take the time later, I would really appreciate it.

Mayor Lane: Thank you, Mr. Torgeson. That's the only public comment card we have at this time.

ADDED ITEM

[Time: 00:17:06]

Mayor Lane: So going to the next order of business, we do have an added item that's supporting materials for item number 12 were added to the agenda less than ten days to the meeting and require a separate vote. I would ask a motion to accept the agenda as presented or continue the item to the February 4th Council meeting.

Councilman Robbins: I move we accept the agenda as presented.

Councilwoman Klapp: Second.

Mayor Lane: The motion has been made and accepted to accept it. All of those in favor of that, indicate by aye and those opposed with a nay. All right that vote is unanimous. So the item will remain with our materials today.

CONSENT AGENDA

[Time: 00:17:48]

Mayor Lane: Next order of business is our consent items 1 through 24. Unless there are comments from the Council, I have no cards or testimony on any of those items, 1 through 14, 1 through 24. Seeing none, I would accept a motion to accept consent items 1 through 14.

Vice Mayor Korte: Mayor, I move to accept consent items 1 through 24.

Councilmember Phillips: Second.

Mayor Lane: A motion and a second has been made to accept Consent items 1 to 24. All of those indicate by aye. And register your vote by aye. That completes the Consent items. If you happen to be here for Consent items, you are certainly welcome to stay with us for the rest, otherwise, please, if you could exit quietly.

REGULAR AGENDA

[Time: 00:18:38]

ITEM 26 – ASSOCIATE CITY JUDGE REAPPOINTMENT

[Time: 00:18:42]

Mayor Lane: Moving to the Regular Agenda items which are items 25 and 26, the first item is item 25 and that's the Associate City Judge reappointment and Mr. Davis is already in place and ready to present. Mr. Davis?

[Time: 00:18:54]

Human Resources Executive Director Bruce Davis: Good evening, Mayor Lane and members of the Council. I'm here to introduce item 25. Tonight, you will be considering Judge Statia Hendrix's reappointment to April additional four-year Associate City Judge term. This four-year term in accordance with city ordinance will begin on March 9th, 2014, as we indicated in the Council action report, the Judicial Appointment Advisory Board unanimously supported the reappointment of Judge Hendrix. In accordance with city ordinance, the Judicial Appointments Advisory Board makes recommendations to the Council about appointment and reappointment of city judges. The seven-member board is comprised of two active judges, two attorneys, and three members from the public, all appointed by Council. It is my pleasure to introduce board chair Donald Alvarez, who will describe the process in more detail, as well as provide additional comments about Judge Hendrix's qualifications. Thanks.

Judicial Appointments Advisory Board Chair Donald Alvarez: Mr. Mayor, honorable Councilmembers, as far as the, we did unanimously vote to approve Judge Hendrix's reappointment. With respect to the process we go through. We obtained surveys from the city that conducts, or sends out questionnaires to attorneys, witnesses, parties to cases, and court staff and Judge Hendrix got very good or excellent, actually, reviews from all on those surveys and I think you all had copies of those. Next, the members are provided a list of attorneys' names, most of which are defense attorneys to contact by telephone or in person, and to get their comments on Judge Hendrix. Most of these attorneys had appeared in front of Judge Hendrix, probably within the past three to six months. Sometimes we get people that have not been in front of Judge Hendrix for a while, but basically, we interview those people by telephone, question them thoroughly on their comments, and then bring those comments to a meeting. We have a meeting where the public is, anyone from the public is welcome to attend and provide comments. The comments that we received at the meeting were from the other judges on the court and all of those comments were favorable. We had some comments from attorneys and that were less than favorable, however, after questioning those people, we determined that the issue there was, involves these D.U.I. cases that the Phoenix crime lab blood analyzing machine, there was something wrong with it. I'm not quite sure what it was. I think Judge Olcavage can explain it if you so ask them about it.

But as I understand it, a lot of the attorneys that had less than favorable comments about it were upset because Judge Hendrix ruled against the defense in those types of cases. I think most of her

calendar, about 60% of her calendar involves D.U.I. cases. Some of those defense attorneys appealed her rulings, which by the way, were the same rulings as the other judges made on those cases. The Supreme Court reversed Judge Hendrix, which gave rise to some fodder about the substantiated in their minds the complaints they had. Well, I have been advised that recently the Arizona Court of Appeals has affirmed Judge Hendrix, reversed the Superior Court and as it stands right now, she was correct in those legal rulings. There were some other comments by attorneys but most of the comments were favorable. Very favorable, in fact. One person said she should be on the Supreme Court.

But let me just read you some of the comments that I received. I interviewed eight attorneys. Two of them made adverse comments. Basically the adverse comment, I should say, was she's prosecution oriented and she couldn't take off her prosecutor hat. When I cross examined them, it was one case that they were dissatisfied. Some of the other JAAB members also questioned attorneys would make adverse comments. Most of the comments were favorable but because we had some adverse comments we took that seriously. The comments that were favorable, being fair, flexible, bright, handles her courtroom very well, renders good rulings, professional, great calendar management skills, should be on the U.S. Supreme Court.

Last one, of course, was by somebody who is over zealous, but this tells you what she's like as a judge. One other thing that the Council should recognize, Judge Hendrix was a prosecutor for I think 12 years prior to applying for a judge. She's been a judge for less than two years. She's thrown into one of the busiest courts in the valley, which by the way, as I always do, I ask every single one of the attorneys, what do they think of the Scottsdale court and all eight that I interviewed said it's one of the best in the valley. We should be very proud of that and thank our staff and judges for allowing that to happen and I will keep asking that question, until you tell me you don't want to hear it anymore. Judge Hendrix was thrown into this situation without any further experience as a neutral and practicing law for almost 40 years and being an arbitrator with the AAA for almost that long, I know how difficult it is from going from being an advocate to being a neutral. I think from the information we received and we questioned and we went through, I think Judge Hendrix is making that transition very well. And the best people who she can talk to are the people who observe her work ethic and observe how she handles herself in court.

[Time: 00:26:30]

Now obviously defense attorneys, they want to win all the time. I understand that, because I practiced criminal law many years ago. You have to question when adverse comments are made by a judge. We had similar comments made by Judge Blake, that he's prosecution oriented. He used to be a prosecutor. When we question those people, it's usually one case because most of these attorneys don't practice every day in Scottsdale. They go to all the different courts. We've had comments by prosecutors that Judge Jejna favors the defense. Well, Judge Jejna was a defense council and Judge Olcavage who gets tremendous ratings, he was both a prosecutor and a defense attorney. So we have a judge, a young judge just starting out who is doing a good job, according to her peers and surveys and according to most the attorneys we interviewed. So we have made a recommendation unanimously to have her reappointed. Do you have any questions for me?

Mayor Lane: Yes, we do. We will start with Councilman Littlefield.

[Time: 00:27:44]

Councilman Littlefield: I appreciate that you got up here and made those comments. Usually we just vote on it. This case is exactly, it's like a poster child for my complaints about this process. All right? What we saw in the packet does not match up to what you guys said in your interviews. I had to listen to five hours of the audio to finally see that. And what I heard there was completely different picture than what we saw in the, in the packet. And that bothers me. It's always bothered me, because I think that this judicial reappointment process has been a kind of rubber stamp kind of thing. I believe for one thing, we should be able to, we should have some type of transcript of this so we wouldn't have to listen to it all.

But there's another problem of it here, one of things I voted against was extending the judge terms from 2 years to 4 years and when I was listening to this audio, one of the board members, and I can't tell who, that's another problem with listening to this audio, you don't know who is making the comment. They don't put their name before it, so you don't know if it was this person or this board member or another board member who made the comment. Wait a second, if we reappoint this judge, we won't see her for four years. What if she doesn't take the suggestions, I guess, that you guys made. What if she doesn't improve and what if she doesn't get better in these areas. Now she's appointed for four years. There really is no opportunity to do that. I think it was a mistake to make it four years. At least you got up here this time. I appreciate the fact that you got up and responded to the concerns that you knew I was going to have, but we need to do something about this process so it's not a rubber stamp any more.

Donald Alvarez: I agree with you. And I think that you, you, we put a lot of time into this process.

Councilman Littlefield: I know, I listened to every minute of it.

[Time: 00:29:56]

Donald Alvarez: I listened to it. And I agree, you can't tell who is speaking unless you recognize their voice. We had two very capable judges who made a lot of comments about these things and the vote at the end was unanimous, after reviewing everything. One thing that was not discussed at length, at that meeting, all the good things and we were more concerned with the adverse comments. The majority of people that we interviewed by telephone made favorable comments about her. And the things I try to look at are integrity, abilities and things like that. I think our board does as well. And that is the process we have and I would be willing to talk about, to anyone about how to better the process. But this is what we have and when you ask the attorneys who practice here, the defense attorneys, what do they think of the court? And they give us a great review of the court itself, that says something for what you all do in this process and what staff does and what the judges are doing. I understand that people are upset because they don't get a favorable ruling.

A lot had to do with the D.U.I. cases because she was overruled and now the Supreme Court said she was right. The issue was this was a malfunction with the machine. The defense wanted all D.U.I.s thrown out what they didn't provide proof of, as I understand it, did that malfunction affect the reading? And they don't prove that from what I understand and that's why the Court of Appeals reinstated Judge Hendrix's rulings on those. And what is not also known is that a lot of these other, or all three other judges ruled the same way but they are not getting heat for it. So we took that into consideration as well. I appreciate your scrutiny, Councilman Littlefield and as well you should have a lot of scrutiny on all of this. This is an important position and we have a lot of things going on in Scottsdale and we have a lot of traffic that goes through that court and these judges work hard and it, and so you want to get the right people in there. I understand that. I agree with you on that.

Councilman Littlefield: Well, the first thing we should do is we should start providing transcripts of these hearings so somebody can read it and somebody can find out who said what.

Donald Alvarez: Or videotapes.

Councilman Littlefield: Yes. Just a transcript would be fine, either way. But the other thing is, and I repeat again, it's moving people from two-year terms to four-year terms makes them less accountable and, you know, I hear all the time from not attorneys, I don't hardly know any attorneys, but from the public that our court is too inbred and too public unfriendly. And we need more accountability, not less. It was a mistake to move people from two to four years because then there's very little accountability and very little opportunity unless the judge does something completely off the wall to do anything about a problem judge. That's why I object to this. I think the whole process is resident unfriendly.

Mayor Lane: Thank you, Councilman. Councilman Robbins.

[Time: 00:33:49]

Councilman Robbins: Mr. Alvarez, thank you for your service. I know you spent a lot of time on this. I know in an adversarial system that we have within the court, when one side loses and one side wins, you will have some unhappy people, but it sounds like the negative comments in these instances were about a specific case. So I have just a couple of questions. None of the negative comments that you are talking about related to any unprofessional behavior by Judge Hendrix. I guess one of the things I would ask is none of these things have anything to do with her professional behavior and how she presents herself as a judge on a day-to-day basis.

Donald Alvarez: That's correct. Most of the, what the comments were, a perception of favoring the prosecution. It's a perception issue, mainly and getting through it all when we talk and the five-hour meeting that we were at, I guess it was. That's what it appeared to be and I think Judge Cohen talked to her extensively about that. Because it is, you have a perception, if you go in the court and even though you get dinged, even though you lose, if you have a perception that the judge treated you fairly, you are happy. But if you, whether you win or lose, if you feel the judge, the perception, the appearance, the demeanor doesn't show that you are, treated fairly, then you have a problem with

the judge. So a lot of that, I think had to do with perception and talking with all the board members, it was nothing to do with her capability or integrity, no it was that type of thing about the appearance of being favorable to the prosecution.

Councilman Robbins: So then, just a generalized question, is justice served in your mind by having Judge Hendrix as a member of the Scottsdale City Court?

Donald Alvarez: Absolutely.

Councilman Robbins: Okay. Thank you.

Donald Alvarez: Thank you.

Mayor Lane: Thank you, Councilman. Mr. Alvarez, thank you very much for the work that you do and frankly to the entire board that you represent here before us.

Donald Alvarez: My pleasure.

[Time: 00:36:08]

Mayor Lane: And realizing that there has been fairly extensive adjustment in the process over the last five years, since we instituted some questioning of the process that many years ago and no system is absolutely without flaw and I know that there may some refinements but I'm here to say that I applaud the increased scrutiny that JAAB puts into this process as well. So I would like to say that, because I know that you have instituted a number of things that have given us more information than we once had and whether we can improve on, that that's certainly positive too.

We look for that too. But one of the careful areas and it's been a conversation between us for a long time, and that is the general concern about prosecution and frankly the judicial side of this, and whether, and in combining one person in a judge, so with that background and that background alone, so we are always concerned about that and certainly, I think that's been addressed rather extensively. But for our point, I mean, we really have to be as a Council, and this is something we have been reminded of from the past too, is if it's careful ground where we start talking about how a judge adjudicates things, and those decisions that are made. That's more to the conduct and the performance and their ability than it is a questioning of a particular item or particular case. So I just always want to be reminded of that. It looks like I may have said something that sparked Councilman Littlefield to action again here, so he wants to follow on that.

Councilman Littlefield: You did.

Mayor Lane: In any case, before I, maybe I can cover it again before he gets a chance to speak here, but, but, no, I do want to say that this system has been refined rather extensively. We made some significant moves about four and a half years ago and I know that we have improved the process immensely. And to one point that was made and I think this is an important one, whether it's a

transcript or whether it's a video or an audio, the identification of who is asking a question is a good one.

Donald Alvarez: I agree.

[Time: 00:38:27]

Mayor Lane: And when we reviewed the videos, you know, some months ago now, of course, you know, the little trick of that is double speed time on reviewing them and still being able to understand them. But that's the one thing you wouldn't be able to recognize who might have initiated the question. But I thought that was a comprehensive way to go and a reappointment. I think it's probably a reasonable way to handle it as well.

Donald Alvarez: And Councilman Littlefield, that's a great idea because maybe one way I can conduct the meetings a little better is have everybody say their name prior to speaking.

Mayor Lane: Yeah.

Donald Alvarez: Like we do if we are tape recording a deposition or something like that. That's a great idea, because when I was listening to, it I could understand it, because I recognized the voices but that would be better.

Mayor Lane: And with that, I'm going to move that we do reappoint the judge here for a four-year term as is stipulated now in the code.

Councilwoman Klapp: Second.

Mayor Lane: Would the second like to speak toward it at all?

[Time: 00:39:29]

Councilwoman Klapp: Just that we appointed her to this position two years ago. She proved to be the best candidate for the position and we put her in the position and beyond that point, as the Mayor mentioned, it's not our decision whether she makes the right decision on an actual case, but whether or not she's performing her duties as a judge, the conduct of her businesses are concerned and we have to rely on the JAAB to tell us that, because you are the ones who are interviewing her and making decisions. And the fact that you had a unanimous decision, does not tell me that you are a rubber stamp. It tells me that you all felt comfortable with the work that she's doing as the Associate Judge. So my feeling is that I rely on you. I chose her initially for the job. I don't have any reason to remove her. And I believe she's performing the duties as we expected and I cannot believe that I would have to listen to a, an adverse comment from someone who lost a case and decide that would be my decision for removing a judge. It has nothing to do with that. It has to do with her conduct and the way she runs her position. So I appreciate the work that she's done for the last two years. I appreciate the work of JAAB and what you do and the professionals on that board. I attended your

board meetings and it's absolutely a great group of people that we have to rely on. I adamantly second her for this position.

Mayor Lane: Thank you. Vice Mayor Korte.

[Time: 00:41:00]

Vice Mayor Korte: Thank you, Mayor and thank you for your time and commitment to this, I think it is a robust process. I don't know how many total interviews and surveys. I don't know in I would have passed the muster with all of the judges and, and Ms. Hendrix's position. So I totally support reappointing Ms. Hendrix. My question, what happens if we have a bad judge? So two years down the road, you know, things happen, personal life, whatever that is. What process do we have in the city to deal with something like that?

Donald Alvarez: Well, I don't want to talk out of school, but the City Attorney might be able to tell us the proper process but you do have, I believe, the ability to remove a judge for cause, if the judge is not performing his or her duty properly, and I don't know what all the for cause items might be or if it's a general for cause statement in the city charter.

Donald Alvarez: You can remove, the Council, the Council can take action and remove the judge. Is that correct?

Bruce Washburn: That's correct. There is a procedure for doing it.

Vice Mayor Korte: Thank you. Thank you, Mayor.

Mayor Lane: Thank you. Mr. Littlefield.

Councilman Littlefield: So esteemed City Attorney, under exactly what circumstances could we remove a judge? What would the judge have to do for us to be able to remove him or her?

[Time: 00:42:46]

Bruce Washburn: Councilman Littlefield, I'm not sure I know all of the, the complete answer to that question. I'm not sure I know all of the items that would constitute just cause for removal, but it's generally the kinds of things for misfeasance or malfeasance in office, which is to say corruption, things like that, but not things like disagreement with the nature of the decisions being made. And if you need further information on that, I can provide it to you later.

Councilman Littlefield: Disrespect for defendants. Would that be a reason to remove somebody?

Bruce Washburn: Councilmember, that covers a lot of territory.

Councilman Littlefield: I'm guessing not.

Bruce Washburn: Well, I don't know. I can't definitively say one way or the other. I know that judges have been disciplined by the courts for the ways in they interact with the defendants and with parties in court.

Donald Alvarez: If I can speak to that. It depends on how much and how often, I think, and if it gets to be a habit, the complaints can be made to the City Council and can be made to the Supreme Court, is it that handles the discipline of the judges, I believe? Complaints can be made and things can be done to discipline judges or to remove judges if the conduct is too bad.

Councilman Littlefield: Well.....

Donald Alvarez: In other words, there are procedures available, and the conduct has to be bad conduct, just like for any office holder, conduct has to be bad conduct.

[Time: 00:44:31]

Councilman Littlefield: Well, I don't want to drag this on forever. I think the change from two to four years made it less transparent and made judges less accountable, but somebody made a comment up here that did rattle my cage, that we should trust you guys. Well, no. If that's the case, why are we taking a vote? We are supposed to look at what they do. It's called a recommendation, all right? A recommendation to us, but then we are supposed to apply our judgment and I will repeat again why I don't think this is any more transparent. The average citizen looking at the agenda and agenda comments would never know what your concerns about this judge were, unless they listened to those five hours of recording. And even then they wouldn't know. So I don't think the process is transparent. I think it needs a lot of improvement.

Donald Alvarez: Well, and that may very well be but how do you make it more transparent? The meetings are open to the public. People very rarely show up. Sometimes we've had people and I have only been there three years but sometimes we have had people. And the people are welcome to go into the court and view the judge's conduct on a daily basis. The court is open. It's public. Anybody who has a concern or just wants to do it can go over there and view and judge how the judge conducts him or herself during the course of their caseload.

Councilman Littlefield: Transcribe the proceedings.

Donald Alvarez: I agree with you on that. I totally agree with you on that.

[Time: 00:46:13]

Mayor Lane: Thank you, Councilman. I just have to say that when you come down to the idea of a two-year term versus a four-year term, that has little to do with transparency, but one thing I will agree with and that is the fact that any time our Council report does not reflect the similar kind of information, one way or another, and what's made available to us, it does give us cause for concern as

far as that is concerned. But there isn't, there probably are few citizens across our city that are going to watch five hours of tape or anything remotely close to that. But a transcript within our, within our Council report here on the topic would certainly be beneficial and I think it's already come to an agreement on that, but there were some significant refinements that were made four years ago that brought us to the point of tapes and frankly, additional information from Jack and we much appreciate that. Councilwoman Klapp.

Councilwoman Klapp: Just one other comment that we do have a Presiding Judge who works with all the associate judges. So I am assuming that if there was a problem judge, that we would hear something from the Presiding Judge related to this, as well. He's a Charter Officer. He works for us. So if we have, I think, a number of processes available here, I don't think there's any lack of transparency at all. We have to rely on the Presiding Judge as well to let us know if there's a problem that we need to address. So I'm comfortable with the, with the process that we're following right now. The process we are following is the process you all gave to the JAAB to follow and we will do whatever you want us to do. And I, the written transcript is a great idea, I think, and if, I would also like to see a video of it done so that somebody can view it, if they would like to. But that's a matter of what the Council wants to spend on getting that all taken care of. So we'll do whatever you want us to do.

Mayor Lane: Thank you, Councilwoman. I think we are ready to vote on the motion. All those in favor, please indicate by aye, and those opposed with a nay. It's 6-1 with Councilman Littlefield opposing. Thank you very much, Mr. Alvarez.

ITEM 26 – PRESIDING JUDGE REAPPOINTMENT

[Time: 00:48:40]

Mayor Lane: That moves us on to the next item which is the Presiding Judge reappointment, and I would like to note for the record that we reserve the right for Executive Session here and it could be given during the course of this presentation or afterwards, but I would like to see the presentation certainly, but the Council can vote to move into Executive Session to complete this.

[Time: 00:49:05]

Human Resources Director Bruce Davis: Good evening Mayor, members of the Council. I'm here to introduce the second judicial item, item 26. This item is a potential reappointment, including terms of employment of Joseph Olcavage, Presiding Judge. The Presiding Judge is being considered for a term of four years, set forth in the city ordinance and the term would begin March 9th, 2014. The Judicial Appointments Advisory Board has completed the comprehensive review of Judge Olcavage's materials and voted unanimously to recommend a second term. Should Judge Olcavage be reappointed, we ask that Council provide direction to staff regarding the presiding judge's salary as well as terms of employment for the next four-year appointment. Once again, chair Alvarez will share information concerning the process as well as Judge Olcavage's qualifications.

Judicial Appointments Advisory Board Chair Donald Alvarez: Judge Olcavage had outstanding scores on the surveys, we use the same process. And no one had a bad word to say about him, everybody just loves him. Except for one person said that I wish I could have all of my cases in front of him and I wish he didn't spend so much time doing administrative stuff. So that's pretty much it. I mean, there's nothing else to talk about unless you all have questions about Judge Olcavage.

Mayor Lane: That's a pretty quick synopsis, but we sometimes appreciate that. But I will say, and I'm sure that the judge does too, if the judge wants to speak for himself on this, as well, we would certainly love to hear as far as what your experience has been and in the process and your desire to continue on. But one thing I would also say before we do that, and just briefly, if you would like, judge, please, and that is that I just want to reiterate if we make changes or requests of J.A.A.B. in this process, we probably should formalize that through some kind of administrative or otherwise. Before we get an investment of a full transcript of everything that came in, I would look for name recognition for those type of things. I think we don't want to get down a path that may or may not be utilized and we could do it more simply. It's something we've got. So judge, if you would like to just say a few words.

[Time: 00:51:48]

Presiding Judge Joseph Olcavage: Mayor, members of the Council, when I took over this position, I took a long, hard look at how we did business and I decided we needed to do a couple of things. Number one, the court really is a business. And if you get steeped in traditions of how a court used to work, then we are doing things that have been done for the last 400 years, we never look at new ways to do things and get new ideas. I said, first, look at two areas. Utilize the people that work for us, and our customers, our customers are the defendants, witnesses, jurors, defendants, defense attorneys. In terms of including our staff, they have the best knowledge of what we should do. They actually do the job. As supervisors and administrator, and they think we know best, we are assuming something because we are not actually doing the work, and we invited court staff to participate in the process. We have a number of focus groups and the judges volunteered to be on them and the court staff volunteered to be on them. Some of them were as simple as training. How do you train a new employee? How do you make sure that a current employee has a proper training and is able to go to certain areas of the court. The employees stepped up and gave us some great suggestions on that. Cojet, we have 16 hours a year.

We invited the employees to participate in that and they stepped up and have been teaching some of the classes with the judges or on their own. In terms of customers, what we have done, it's very hard to get feedback from them, but really, we are now for a couple of weeks, we have about 300 survey cards in order to try and get some feedback from the customers. And on top of that, one of our committees was a website design. How can we better make the court website that's easy to read, how can we solicit comments from the public and we do have a little gavel, if you ever looked at it. You be the judge and so they can comment and tell us how we are doing. Not that we get a lot of responses but at least it's there for them to do it. One of the suggestions we had from the citizens, actually, they were a litigant in court and they got defaulted on the civil case and they said the reason we are defaulted is because we couldn't read the photo radar ticket. It confused us. So we

changed it and they still had complaints and we have to get permission from the Supreme Court to do this. Nevertheless, based upon their comments we made the ticket easier to read so they avoided being defaulted and having to pay fees. We also had some comments regarding our website. A person, not that we are always not changing it and trying to make it better. One suggestion was I would like to see how much I owe and I would like to print a receipt. We have done that. The other suggestion was I would like to get a D.D.C. extension without having to come to court. So you don't have to come to court now, you can go online and get one extension for D.D.C.

[Time: 00:54:48]

A few other things we have done, I.A. Court, the Initial Appearance Court. We now on the weekends have the prosecutor there, so we can have them try to contact the victim. Typically if you have domestic violence on the weekend, the person has to be held in jail. Now if we can, the case may be resolved and therefore, we save some money for the jail.

We have also gone to a fileless system. Meaning before you have files, you bring them to the courtroom and now everything is going online. So, for example, somebody comes in and wants to file a motion with the court, we don't have to have a staff member pulling files anymore. Leaving their station and then going to the courtroom and coming back and looking at the file and updating it. It's scanned in. The whole file is digital and we can proceed without anybody bringing us a file. The paperwork is still around and the file system is now gone and that was recently implemented.

We also participate in the Veterans and the Homeless Court. It's being held once a month in Phoenix and the Veterans Court at the Veterans Coliseum for veterans and the homeless people that are having trouble paying fines. It's obviously not a mandatory fine. They can do community service to try to work that off. Scottsdale is a participant in that.

[Time: 00:56:14]

Looking to the future, some of the things we are looking to do are on our website, and we have talked to Channel Cable 11 about this is educational videos, very short, very quick so you can learn something about it, but do I have to appear in court? What is an arraignment? What is a trial like? And actually show briefly what a trial is so the defendants that are there representing themselves and that's what most of the people are, don't feel intimidated. They can actually see and understand how the process works. And we have had conversations with Cable 11. They tell us it can be done and we will be working on this.

As far as the finances go, we are starting to establish a recurring billing process. So that if somebody owes a fine and worked out a plan they don't have to constantly come in or forget about it. If they forget about it, they can be in default and put in the collection system. This way they, just like if you have a regular bill, once a month from the electrical, the utility service, you can put it on your credit card or put it on your savings or bank account and that will be taken care of and you are not going to forget about it. So that's just kind of an overview of what we have been doing the past two years.

Mayor Lane: Well, thank you, Judge. I appreciate that summary of the accomplishments and refinements in the system and certainly in some cases, the firsthand knowledge of the process and how it's been improved in timeliness of justice and the due process, as I watch the statistics continue to work their way through on the caseload basis. So thank you very much for what you have done there and certainly congratulations on the kind of reports that you received from everybody who loves you and wants to see you in front of them, or yes, in trying any one of their cases. Thank you for that. We do have a comment, Councilman Littlefield.

Councilman Littlefield: So you being the chief judge, what options are available to you to hold a judge accountable, one of your sub-judges once they have been reappointed? So we just appointed this judge for another four years. If she doesn't measure up, if she doesn't do the things that the board suggested she do, what options are available to you to hold a judge accountable?

Judge Olcavage: The normal process that you would go through, through Human Resources. In other words, although the judge is subject for review by the Council and they can be removed by cause and the Supreme Court Judicial Conduct Committee can also take action, as the presiding judge, you do the same process. If the judge is yelling or screaming at defendants or is not showing up for court or other type of misfeasance in office, the first thing you do is sit down and what's going on and have counseling. As a Presiding Judge, other courts, if it gets severe enough can suspend the judge and refer to the Supreme Court or Council for other action.

Councilman Littlefield: The other thing I would like to point out, everybody up here who talked about this process admitted we need to transcribe these proceedings and then I heard the Mayor say we don't want to get into that unless we have to. I think it's pretty clear that that's an absolute necessity at a minimum. So do we need a Council action to do that?

[Time: 00:59:42]

Bruce Washburn: No, the board sets its own rules and procedures and I believe, I would have to go back and look, but I believe it would be within their ability to do that. It would probably be more of a budgetary issue to tell you the truth because it's an expensive process and if it's not in their budget, it might be possible for them to do.

Councilman Littlefield: Since they are committed to transparency up here, I think that would be money well spent.

Mayor Lane: I'm not sure how much more transparent you can be than to have a video with the identification of speaker rather than reading through dozens of pages of transcript for a five-hour meeting. I think it may be more informative and better. I will reserve this point. I do think that this Council needs to, if we are going to give J.A.A.B. direction in this regard, I think it's something we will need at least to consider as a body for the vote. I don't think it's on the agenda tonight. I will not necessarily take the action until we make that decision collectively. Vice Mayor?

[Time: 01:00:56]

Vice Mayor Korte: Thank you, Mayor. Thank you, Judge Olcavage, for representing the city with integrity. We appreciate that. And with that I would like to make a motion to go into Executive Session.

Mayor Lane: You may, if you want to read exactly why we are going into Executive Session because I did not delineate that earlier.

Vice Mayor Korte: Let's see if I can find it.

Mayor Lane: It's under the possible Executive Session and the wording that you will need to follow.

Vice Mayor Korte: Yes, I'm just looking for the page. What page is it? Thank you. Thank you, Councilman Phillips. So request, I move to recess into Executive Session to discuss and consider the employment, reappointment, compensation and benefits of presiding judge and/or to discuss and consult with the attorneys for legal advice regarding same, according to A.R.S. 38-43.03 a1 and a3.

Councilman Robbins: Second.

Mayor Lane: There is a motion and a second to move to Executive Session. We will take a vote in just a moment because I want to say one thing. Obviously, Judge, we will be talking with you in Executive Session as well. So you will be here, but certainly thank you very much for that presentation. It was very well done. And I appreciate the position that you hold and how you execute on all of that. But I also would like to address Ms. Hendrix and say, because I failed to before, congratulations on the reappointment and we are glad to have you with us. So thank you very much on that. And so let's go lead and vote on the Executive Session. Entering into Executive Session, all those in favor, please indicate by aye. Register your vote. It's unanimous that we will go into Executive Session. And we will be reconvening upon our exit from that. So thank you very much.

RECESS REGULAR MEETING

[Time: 01:02:45]

RECONVENE REGULAR MEETING

[Time: 01:06:05]

Mayor Lane: Okay. I would like to reconvene our meeting of , our regular Council meeting of January 27th, 2014. All are present who have been here. We are coming back from Executive Session, and we have discussed further the item with regard to the presiding judge reappointment. And following our conversations and deliberations over our consideration of contract terms. Councilwoman Klapp.

Councilwoman Klapp: Yes, I would like to recommend that we approve a four-year term with a base salary of \$160,000 with subsequent annual salary adjustments to take effect at the beginning of the city's fiscal year, on July 1, 2014, and also to direct staff to prepare a resolution and contract setting forth these terms to be approved by the Council prior to March 8th, 2014.

Councilwoman Milhaven: Second.

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

Councilwoman Milhaven: Just to thank the judge for his service and doing such a great job to the city and its citizens. Thank you, Judge.

Mayor Lane: Mr. Washburn?

Bruce Washburn: Just to make sure I understand the motion clearly. That the raises are to take effect at the beginning of each subsequent fiscal year during the four-year term of the contract in the amount recommended for the general employees?

Councilwoman Klapp: Yes, with subsequent annual salary adjustments to take effect at the beginning of the city's fiscal year on July 1st, 2014.

Bruce Washburn: Thank you.

Mayor Lane: Thank you, Mr. Washburn. Councilman Robbins.

[Time: 01:07:50]

Councilman Robbins: Judge, I want to thank you for your service as well and I fully support your reappointment as the Presiding Judge, but I will be voting against this motion because I have some disagreements about the contract itself and how we arrived at the compensation, but don't let that reflect my favorability of how you have done your job and how you continue to run the court system. I think you are doing a great job. Thank you.

Mayor Lane: Thank you, Councilman. I too would like to just weigh in certainly on the standpoint of thanking you for your service and all you have done with the court systems to this point in time. I very much appreciate your efforts to refine the system and make it more efficient and frankly your leadership has been appreciated in the entire court system. Thank you very much for that. And with that, we do have a motion on the table. And a second. So I think we are now ready to vote since there's no further comments on that. All those in favor, please indicate by an aye, those opposed with a nay. The motion passes 4-3, with Councilman Robbins, Councilman Littlefield and Councilman Phillips voting no. So thank you very much, and, Judge, congratulations. Good to have you aboard. Okay.

ITEM 27 – ETHICS REFRESHER TRAINING

[Time: 01:09:40]

Mayor Lane: The next item we have been looking forward to for quite some time and it is the ethics refresher training, maybe a refreshing experience as well. We do have our City Attorney Bruce Washburn to give us that.

Bruce Washburn: Thank you, Mayor. I know it's late and you have been hard at work, so I will try and get through this as expeditiously as possible. I don't think I have ever been accused of speaking too slowly so I will try and make this, like I say as effective as I can. This year, we are going to talk about in the ethics refresher two different topics. I'm sorry, Brian, what do I need to do to get to the next slide? Thank you. This year, we are going to talk about conflicts of interest, and we're going to talk about gifts. And the gifts we are going to talk about how to analyze them and reporting required and then there will be time for questions, actually at the end of each topic. So first talking about conflict of interest.

The requirements for, regarding conflicts of interest are established by state law. State law makes it explicit that the city cannot have a different conflicts of interest policy from what is established by state law. The city policy can be neither more restrictive, nor less restrictive. Under state law, there are two prohibited types of conflict, A.R.S. 38-503, when his relative has a substantial interest in any contract, sale, purchase or service provides to the city and the terms that are in bold, we will be talking about in a minute, they are defined terms in the statute. A.R.S. 38-503b applied when a certain or relative has an important in the decision. For the contracts and the like, you do not have to be involved in the decision making process.

[Time: 01:11:38]

You notice that under b, it's when you have an interest, a substantial interest in any decision, under a, it's just when you have a substantial interest in any contract. This is important because there are a lot of contracts that are awarded administratively where the Council never makes the decision on them, except the decision that was made when the procurement code was passed and the contracts could be awarded administratively under the code. So basically, if you or a relative has an interest in any contract that is going to be awarded by the city, then you need to make sure not to have any involvement in that process in any way.

We'll talk about what that means. Even if it's not something you will be voting on. So now let's talk about who is a relative. A.R.S. 38-502-9 states that a relative means the spouse, child, child's child, parent, grandparent, brother or sister of a whole or half blood, and the parent, brother, sister or child of a spouse. There's a bunch of people that I think ordinarily you would think of as your relative, aunts come to mind, grandparents, who are not covered by this definition. But my advice to you is that if you do, in fact, have a relative, something that people would normally be thought of as relatives, in your family that's not covered by one of these, that is involved in a decision or to contract, that you might want to consider using the provision that we are going to talk about in a minute, where you can voluntarily recuse yourself from the situation where there might be an appearance of

impropriety and that there's no technical conflict.

So that's one of the two defined terms, two important defined terms and that's relative. Next important defined term is what is substantial interest. A.R.S. 38-502-11 defines a substantial interest of any pecuniary or proprietary, pecuniary means opinion and proprietary means ownership. For many years I thought why do they put proprietary in here. If you have proprietary interest that's not a pecuniary interest, why does that matter? They put proprietary in here, if you own a company, you can't make the argument, well, it's not me making money off the contract with the city, it's the company. I own the company. So if you have that interest, it's covered by the proprietary. And as you will notice, the substantial interest is defined more by what it isn't than what it is. It basically is everything, except a remote interest, what are remote interests?

There's actually 10 different remote interests that are listed in the statute, A.R.S. 38-502-10, but there's really four of them that actually usually would be most likely to come into play. Nonsalaried officer of a nonprofit corporation, this comes up not infrequently because a lot of Councilmembers belong to, and become, you know, prominent in all sorts of nonprofit charitable organizations and things like that. And those organizations are frequently in front of the city, with various, because we have various relationships with them. But as long as you are a nonsalaried officer of the nonprofit corporation, there's not a conflict and you can go ahead and act. Ownership of less than 3% of a corporation. This means if you have stock in OfficeMax and we do business with OfficeMax, as long as it's less, you own less than 3% of OfficeMax, if you own more than 3% of OfficeMax, that would suck. Also it has to be less than 5% of your income. I didn't put that on here, because I was running out of room. But in any event, just ownership in a corporation doesn't matter as long as it's in that kind of situation.

[Time: 01:15:56]

Recipient of republic services generally offered. This is how you get to vote on water rates and things like that, even though you are customers of the city. You have to get them on the same terms and conditions as all the other citizens do.

And then the rule of ten. And this is the one that applies very frequently. The rule of ten says that if you are a member of a trade business occupation, profession, or class of persons with at least ten members, and your interest is no greater than any other member, then you do not have a conflict. But no greater, of course, is a matter of degree. So my advice is if you have to wonder whether or not you have a greater interest than the other people in that trade class, class, profession or other group, then you really need to be clear, and if you really have to wonder, then you probably do have a greater interest and here's the example I like to give.

Completely hypothetical example. When we were out condemning land for the preserve, if we were, if we were going to, if you were going to authorize the city to go out and acquire a tract of land and you owned a house that was near that tract of land, then when the city acquires that land for the preserve, it increases the value of your house. It absolutely does, if you are close enough to it. But if you are in a subdivision, and your house is just like every other house in the subdivision and there's

more than ten houses there, then I think you are okay. However, if you are in the house that's right next to the preserve and you have a house that's, like, on a, you know, an acre lot, and then there's nine other houses that are on, you know, 7,000 square foot lots, then I would say that you do have a greater interest, even though arguably that's a class of ten. So it's a matter of degree and you have to be careful in each instance to make sure that, in fact, your interest is not any greater than anybody else's.

[Time: 01:17:55]

With respect to being the employee of some, of a company that does business with the city, I think this is a difficult issue because if you are an employee in a large corporation, and the corporation has some business with the city, and nobody in the corporation would ever even know that you are in any way involved, does that constitute a conflict? My common sense would tell me not, but I will tell you this, the Attorney General has taken a very strong position that if you are an employee of a corporation, even though there does not have to be a showing that you personally are going to directly benefit from the contract between that corporation and the city. So I think that's one of those instances where you need to be very careful about when you would need to declare a conflict.

So what do you do if there is a conflict? The law is very clear about this. The interest has to be made known by updating your Personal Interest Disclosure Form within three business days of when you learn of the conflict and you have to refrain from participating in the decision. And participating in any fashion goes far beyond just not voting on it. You can't have any conversations about it. You can't speak to anybody. You can't talk to the other Councilmembers. You can't talk to the city employees about it. You are not supposed to attend meetings where it's being discussed and as you know, under our rules, if you have a conflict, you are supposed to announce the conflict from the dais and get up and literally remove yourself from the area where the deliberations are taking place.

So what happens if you get this wrong? A.R.S. 38-506 states that any affected person can sue, have the contract voided and can recover costs. There's not been much litigation on who an affected person is, and so that could be interpreted broadly. But in any event, the contract can be voided, but for you personally, an intentional violation of the conflict statute is a class 6 felony. Negligent violation of a class 1 misdemeanor. Yeah, and also your public office is forfeited.

There is a provision in the law that allows you to request an opinion from the City Attorney about whether or not you have a conflict and the way in which that works is if you think you have a conflict, you can come to me, you will describe to me generally and I will tell you that I need more fact because these are very fact intensive. If I don't need more facts, you probably won't need to ask me. I will get all the facts and do an analysis for you and provide you with my opinion informally of whether or not you have a conflict. That is not a public record. That's an attorney-client communication from me to you.

On the other hand, if you want, I will give you a formal legal opinion and then it is filed with the Clerk. And having a formal legal opinion basically proves that you were acting in good faith at the time that you, you know, assuming you provided me with the facts and the opinion is not, you know, is within

reason, which I try to make all of my opinions somewhere around there. That that would, that that would establish that it was not intentional on your part. To have entered into the conflict. It helps, especially helps when you are looking at whether or not you committed a felony.

[Time: 01:21:51]

We also have in our code the appearance of impropriety standard. This is not in state law because it's not technically a city ordinance regarding an actual conflict. This is a city ordinance regarding what is not an actual conflict. And under the city code, we don't have abstentions. Everybody votes on everything that comes before the Council. There's no provision for abstentions in our code. This is the one exception so that. This is where if you believe there's an appearance of impropriety, you can declare it as a conflict and declare it from the dais and not act in any way to influence the decision or the contract and you can do that even if there's no technical conflict. I think this, you know, our whole ethics code says that we try and meet the highest standards. So I strongly urge you that if you think there's a conflict or if you think it's, people are going to think there's a conflict, it looks like there's a conflict, you have this to take advantage of.

[Time: 01:23:03]

Mayor Lane: Mr. Washburn.

Bruce Washburn: Yes.

Mayor Lane: At one point earlier in your slide presentation, you were talking about the disclosure of a conflict, having three days to make that disclosure from the point in time that you discovered that you might be in conflict. Is that, is that correct?

Bruce Washburn: Three business days to file it with the City Clerk.

Mayor Lane: Do you in any way, shape or form, by virtue of declaring an appearance of impropriety, I know you don't declare an appearance of impropriety, but coming in under this ethical rule that we put upon ourselves at the city level, you somehow open the door to a conflict that might be redefined then and you didn't disclose it within some prescribed period of time?

Bruce Washburn: Well, that would occur if, in fact, you were incorrect that it wasn't just an appearance of impropriety and it actually was a conflict. And if what you are asking is might this alert people to take a hard look at the, at whether or not you actually had a conflict? Yes, it might, I suppose, but I still think it's better to air on the side of caution and be on the safe side. You know, we are going to talk about gifts in a minute. There are a lot of gifts, there are a lot of things that would ordinarily be thought of as gifts that you don't have to declare and they are the official capacity and that sort of thing. My advice on that is it's better to declare it than not declare it, if you have any doubt, and, you know, hopefully, not hopefully and I think it would be very hard for somebody to come back later and say, well, you know, since you declared this as a gift, that means that you disagree with everybody else who didn't declare it because I think it's better for you to err on the side of

caution and what you think and what you declare doesn't prove anything. It just proves that you are being cautious.

Mayor Lane: Almost the same thing would apply, suppose the gift, the gift issue, certainly declaring it, you know, covers the base, no matter what and there's a presumption at that point in time, that you are taking, you are siding on the side of caution, when you go ahead and do that. In this case, though, I wonder if it back reflects just by saying, you know what, I think this appears to be, you know, an impropriety. If I said that and somebody says, well, let's look at that and if that's the case, should he not have declared it? He or she should have declared it sometime prior. Is there any consequence to just the timing the declaration?

Bruce Washburn: You know, again, I'm going to say, you know, people can try to make out of it what they will. It's either a conflict or it isn't a conflict. And frankly, I think saying, okay, I don't think this is a technical conflict, but I'm going to declare it as an appearance of impropriety makes it a lot harder for someone to come back and say you were trying to get away with something because you are the one that brought it up. Before I go on to gifts, are there any other questions on conflicts?

[Time: 01:26:08]

Okay. State law on gifts is fairly broad. There's a very strange provision in the lobbying ordinance that basically says you cannot accept tickets to sporting or cultural events from people who are, for compensation in an attempt to influence you in the passage of legislation. It's a strange provision in the law and I won't go into the details on it right now because it uses defined terms in this provision in the statute and if you literally apply the terms as defined, you could never violate the statute. I don't think that's what they meant to do, but it's what they did. But the bottom line is the thing, I want to give you a heads up on this one. If anyone is going to give you a ticket to a cultural or sporting event, then you really need to ask yourself, who is this person? Why are they giving it to me? And if you think there's any chance that there's somebody who for compensation attempts to influence the outcome of legislation of your, of your legislation, legislative activities, give me a call and let's talk and I will help you do the analysis.

I don't think it comes up that often, and I'm not sure, I don't think you guys get a lot of people handing you tickets to, you know, football games and, oddly enough it never comes up with tickets to the Phoenix ballet. It's almost always football games. If that happens and you have any concerns at all, give me a call and let's try to work through it.

Other than, that you cannot accept compensation for performing your duties other than what's already been provided to you by the citizens, and you cannot use the position to secure anything of value, quote, of such a character as to manifest a substantial and improper influence. There's not a lot of case law or litigation on what that means either. So I think, again, common sense has to prevail and the city, the city has, in fact, in the ethics code given guidelines in this area which I hope will, if you follow those guidelines also meet the requirements of state law. That's certainly the intention.

Mayor Lane: Excuse me, Mr. Washburn. We have a question or a statement from Councilman

Robbins.

Councilman Robbins: Thank you, Mayor. So Mr. Washburn, these are state law gift bans, you haven't gotten to the city code yet?

Bruce Washburn: Right, the city code is a gloss of what the state law requires. It says in the code, this is our understanding of how best to comply with the state law, but it's not separate from the state law.

Councilman Robbins: Okay. So then something that you said just caused me to have a question about from lobbyists, because what if somebody who is not a lobbyist or doesn't have any business with the city gives you a ticket to something?

Bruce Washburn: Well, that would be covered by our code.

Councilman Robbins: Okay.

Bruce Washburn: And that would fall under the, are you using your position to secure anything of value of such a characters to manifest the substantial and improper influence. That's why we have guidelines that we think try to meet that definition.

[Time: 01:29:27]

Councilman Robbins: And how does this not apply to state legislators because they have, they get tickets to things all the time.

Bruce Washburn: Yes. The whole thing has been written for state legislators and let me just say this, I'm glad I'm advising you guys and not them. It applies to them big time. How effective is it? Different issue.

Okay. So our ethics code, this is where we try and get at the, this is what you, this is what we think you need to observe in order to stay out of trouble with the gifts is city officials are prohibited from soliciting, receiving or accepting gifts of any kind of anyone who is engaged in a general practice or a specific situation that involves the city's decision making or permitting process as excepted as below and we will get to the exceptions exempted below in a second.

The thing I always say to you about this, you have to look at who is giving you the gift. Are they someone who is engaged in a general practice, of trying to, that involves the city's decision making or permitting processing? And I will say that's the attorneys who are in here on a regular basis, on land use matters, for example. I think those, that's the most obvious example or is it somebody who is involved in a specific situation that involves the city's decision making or permitting processes? And that's somebody who you know has something or is soon going to have something in front of the City Council to act on. So those are the, you know, that's first thing you have to look at is who is giving you gift and it's from one of those people, then you can't take it unless, come on. Thank you. Third

time is a charm.

The exceptions include entertainment, hospitality, including meals, transportation and token mementos directly associated with events that officials retain as a representative of the city. Unless not otherwise required and I will talk about that. Here are the exceptions actually in this part of the code.

Entertainment, hospitality including meals, transportation and token mementos. So those are the kinds of things that you would ordinarily expect to get if you are going to an event. To my mind, token mementos means really that. It just means token mementos. The A.G., when they were dealing with a similar issue, the Attorney General, in their guidance said that if you got a \$25 gift card, that's not a usual hosting expense, that that's something you would not be able to accept. So the A.G. thinks that \$25 is not a token memento. Also it has to be associated with an event. In other words if they are giving it to you for any other purpose, for example, you know, Christmas gifts and that sort of thing, that's not an event. There has to be an event that you are attending as a representative of the city. And we have talked about this in the past. You know, representative of the city is not a defined term. To me, there are two ends of the spectrum and one end of the spectrum, you are on the dais, you are up there recognized in the program, you know, here's Councilmember so and so, speaking on behalf of the city. You give a little address. Clearly you are there as a representative of the city. The other side of the that, the other end of the spectrum, you are at some big gala party and you have a name tag that says hi, I'm so and so. And if somebody asks you, yes, I'm a Councilman. You are probably not there as a representative of the city. And somewhere in between, you know, is the line.

[Time: 01:33:17]

And, again, if you have to wonder whether you are over the line, then there's a good chance that you are over the line and you should not be accepting the gift. If any gift or personal benefit is permissible and exceeds \$25 in value, then the city official must declare it to the City Clerk who has provided S.R.C., unless not required by the code provision. This is where the \$25 comes in. This is when you have entertainment, hospitality, token mementos and you are there was a representative of the city.

Now, let's talking about when reporting is not required by Section 14-135. 14-135 says if after consideration of the ethical standards expressed in this policy, to give personal benefit or other item in excess of \$25 in value is accepted, it must be declared in writing with the City Clerk's office within five business days of acceptance. The declaration should be made on a form designated by the Clerk. I don't know why they did five days on this, one or three days on the other. Hopefully that won't cause too much confusion. So that's, that's still, it still has to be reported if it's given to you by one of those people that's not supposed to give you something and it's entertainment or something like that, that you can't accept and it's worth more than \$25, and then come the exceptions.

The following items reflect legitimate public duties and are not considered gifts and therefore, they don't have to be reported. Admission to events which are sponsored or funded in whole by the city,

if furnished by the city or sponsored. I will talk about the sponsored events. Reasonable hosting, including meals, refreshment, travel, whether for work related appearances on behalf of the city. So I'm going to say that this is when you are there, exacting as a representative of the city, here's an exception that says that that doesn't have to be reported.

There's an argument that this exception swallows the rule because if all you can accept is things where you are there as an official representative of the city, but if you are there as an official representative of the city, it doesn't have to be reported and then what do you have to report? My advice is report it. I'm just saying, it's easier than trying to, you know, find out later that somebody interprets this so that the exception does not swallow the rule. Other things that you don't have to report are gifts of goodwill or other tokens of appreciation accepted on behalf of the city, and by the way, or items received and donated to a charitable organization. And I have used this, I have used this example for you before, let's say you are at some event, you know, like I told you a minute ago, the A.G. says anything over \$25 is not a token memento.

Goodwill is being spread around so that people at the event think really well of the city and they walk up at the end and say thank you so much for being here and by the way, here's a gold watch with your initials on it, you know? And it would be awkward to that time say, oh, wait, you are trying to bribe me. I can't take this. So you can take it. Thank them very much and then promptly make a record of the fact that you have either accepted it on behalf of the city and it's like putting a case somewhere for everybody to look at or make a record of the fact that you have accepted it and promptly turn it over to a charitable organization. The process might come in handy someday.

[Time: 01:36:56]

So here's the city-sponsored events that I'm aware of that are remaining for this fiscal year. The Arabian horse show, the Russo & Steele Scottsdale auction, Arizona Bike Week, Sun Circuit Quarter Horse Show, Scottsdale Culinary Festival, Celebration of Fine Art, oh, Rock and Roll Marathon, that's already done it. Wasn't done when I did this list. Parada del Sol and the Hashknife Pony Express. The rule is the event sponsored or paid for by the city. These are the ones that I'm aware of. So if there's some other event, for which you received tickets and you are wondering if it fits within that exception, please feel free to contact me and we will help you find out. So that's my discussion on gifts and I would be happy to take any questions.

Mayor Lane: Thank you very much, Mr. Washburn. We have a question or a comment from Councilman Robbins.

Councilman Robbins: Mr. Washburn, on that list, what about Barrett-Jackson, spring training

Bruce Washburn: Barrett Jackson was on the list but the event was already over. So I didn't include it, but, yes, Barrett Jackson qualified. Spring training, since that is at our stadium, I believe we have, in the past we have treated that as acceptable because basically the tickets come from the sponsored event.

Councilman Robbins: And then Phoenix Open?

Bruce Washburn: I think we have sponsorship with the Phoenix Open. I can double check on that.

Councilman Robbins: Okay. Thank you.

Mayor Lane: Thank you, Councilman. Mr. Washburn, it sounds like it was pretty thorough and complete and we very much appreciate this refresher. And I think we are complete with it. Thank you very much.

Bruce Washburn: Thank you.

Mayor Lane: That's the last item of business that we have on tonight's meeting. There was no further public comment items. There are no citizen petition items that have been turned in to us. Do we have any Mayor or Council items?

ADJOURNMENT

[Time: 01:39:13]

Mayor Lane: I see none and therefore, I will accept a motion to adjourn. We got a first and a second out of that one. So all those in favor of adjournment please indicate by aye. Thank you very much, everybody, for your participation and presentations.