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CALL TO ORDER

[Time: 00:00:03]

Mayor Lane: Good afternoon, everyone. It's nice to see you here. I want to call to order our September 19th, 2016, it's approximately 5:00, our city council work study session. And I would like to start with a roll call, please.

City Clerk Carolyn Jagger: Mayor Jim Lane.

Mayor Lane: Present.

City Clerk Carolyn Jagger: Vice Mayor Kathy Littlefield.

Vice Mayor Littlefield: Here.

City Clerk Carolyn Jagger: Councilmembers Suzanne Klapp.

Councilwoman Klapp: Here.

City Clerk Carolyn Jagger: Virginia Korte.

Councilmember Korte: Here.

City Clerk Carolyn Jagger: Linda Milhaven.

Councilwoman Milhaven: Here.

City Clerk Carolyn Jagger: Guy Phillips.

Councilman Phillips: Here.

City Clerk Carolyn Jagger: David Smith.

Councilman Smith: Present.

City Clerk Carolyn Jagger: Acting City Manager Brian Biesemeyer.

Acting City Manager Brian Biesemeyer: Here.

City Clerk Carolyn Jagger: City Attorney Bruce Washburn.

City Attorney Bruce Washburn: Here.

City Clerk Carolyn Jagger: City Treasurer Jeff Nichols.

City Treasurer Jeff Nichols: Here.

City Clerk Carolyn Jagger: City Auditor Sharron Walker.

City Auditor Sharron Walker: Here.

City Clerk Carolyn Jagger: And the Clerk is present.

Mayor Lane: Thank you. First and foremost, I suppose just a little bit of order of business. We do have facilities available for you under the exit sign right over there to my left, for your convenience. We do have Officer Glenn, Officer Cleary and Officer Sure that are here in the audience for us in a triangle around us if you have a need for their services. And we have our quota of cards to speak. So we are set with that.

MAYOR'S REPORT

[Time: 00:01:08]

Mayor Lane: I would like to say we would like to recognize the passing of Governor Rose Mofford. She was the 18th governor of Arizona and she served between 1988 and 1991 and her primary goal was to return stability to Arizona, after the impeachment of her predecessor. Among many accomplishments she was instrumental in keeping the cactus league here in Arizona. And she passed

away Thursday, September 15th at the age of 94. So I would ask for just a moment of silence, in memory or in prayer, whichever you would like to do, just in thinking about her great service to our state. Thank you.

For everyone's information we have overflow seating at the civic center library auditorium where you can watch the meeting streamed live and additionally we have -- I'm not sure to what extent it may already be utilizing, that but we have audio equipment outside in front of city hall so that those outside, they can hear the meeting.

[Time: 00:02:22]

Mayor Lane: I would like to make certain it's very clear, because this is very different than a council meeting where there are action items. There's no official, really action, taken on anything that we talk about tonight, other than to give guidance to staff, as to the direction we would take or not take in pursuant of petitioners request for us to consider. And so it provides a less formal environment for us to be able to speak and talk to staff primarily and to have that conversation and to make clear what the consensus of opinion is with regard to whatever guidance we give in moving forward or not with the agenda item tonight. We only have just the one item.

I would also like to say that we will -- I will be asking for motions and so there be an element that will look like a regular meeting when we take a vote. These are not actionable votes. These would be votes only to try to make sure that it's clear to the staff what it is the consensus of majority of council is on moving forward on a mar direction to get the staff to develop an actionable item or not in the future. So it's not to be mistaken for something that would necessarily be cast and be done situation because it won't be. It would simply be the guidance for future meeting for them to come back with their professional guidance as to how things need to be -- the language that needs to be employed, the timing and various other things that we have to look at and they have to look at and advice and put together any type of legislation or any kind of change.

PUBLIC COMMENT

[Time: 00:04:19]

Mayor Lane: So with that said, we have a total of 15 minutes that's set aside at the beginning of each work study session for public comment and agendized item. I would want to say that this too is a bit different than it is in a regular meeting, because of the nature of a work study, historically -- in fact many communities still hold to this, there is no public input at work studies. It is meant to be a conversation. But we have for a number of years provided for just a set amount and that is five cards, five individuals to speak for three minutes each. We have done our best to make sure that the sides are heard in this, but this is just -- that is the only public comment that we will receive.

I didn't mention this because we don't normally get involved with this either, but if you would like to give us some written comments on this, there's a yellow card that the city clerk has over her head here to my right that you can give us comments on it, that we would -- all the councilmembers will see. So

with that, we will go ahead and start with the requests to speak on the subject. And we'll start with Christine Kovach.

[Time: 00:05:43]

Christine Kovach: Mayor Lane, members of the city council, my name is Christine Kovach, I am chair of the Desert Discovery Center Scottsdale. Tonight you are discussing a petition brought before the council last May to consider requesting public vote. While they are looking at the expressed terms it's premature to be considering any type of vote. The process is underway and should be allowed to be completed. When the final design is completed, then the council can decide if it's an appropriate enhancement of the Preserve or not, and how to proceed but you cannot make an informed decision before having the final design.

There's so much misinformation about the project that it's impossible for anyone to know what they would be voting on in any public vote. The DDC under design is not the 2010 plan, not 30 acres of scraped desert, not 72,000 square feet, not \$75 million, not a commercial use, not a corporate events center, not in violation of the Preserve ordinance, not going to have outdoor rock concerts, and the contract did not get written behind closed doors. It is not any of these things. The project being vilified by opposing voices is not the project being designed. We are not designing anything like the MIM or the Pentagon, so if you hear people say that, it's just false.

The point is we have listened to concerns about size and cost, and the design team is responding to them, and is designing a mace that honors and respects the Preserve. Since the first Preserve report in 1993, over 20 years in educational center, a visitors center have been envisioned as part of the Preserve. It's in the Preserve published planning documents, was approved by the council in 2007, and anyone who follows the Preserve effort knows its history. Just because a real estate agent or developer didn't disclose the project, or because someone has moved here recently doesn't mean that it was a secret. We had a 1997 study, a 2006 study, a 2008 study, a 2010 study, a 2013 study and now the current project planning. What can be secret about that?

So we are here tonight to ask that the council follow its normal process and projects such as this one. Let the contracted design process continue and not undertake actions that could stop it, just as it gets underway which is essentially what you are being asked to do with this petition. Instead, give the community a chance to see the real project when we are finished, not all the lies and exaggerations. We are on schedule, on budget and have raised our required private sector match. Our experienced designers have been working incessantly. Deserves the chance to be completed and the community given a chance to see the final design. Thank you so much.

[Time: 00:08:38]

Mayor Lane: Thank you, Ms. Kovach. Next, if you would, Mr. Howard Myers.

Howard Myers: Thank you, Howard Myers 6631 East Horned Owl Trail in Scottsdale. A big thank you to the four of you who at least got this study session and to consider this petition. One major

point to clear up. There's nothing in the petition about the DDC, it's not mentioned at all. It is not specifically a vote on the DDC. While a threat of the DDC going into the Preserve may have prompted the petition, the petition is about voting on anything built in the Preserve, not just the DDC.

Citizens want control over their Preserve and it is really their Preserve. They formed it and they paid for it and now they are using it. To give citizens control, this has to be a charter amendment because that can't be easily overturned. That requires the public vote to build anything in the Preserve, not just the DDC. If limited to trails and trail heads, the trail head has to be designed and it can't be defined by a dollar amount. A dollar amount, essentially allows the council to build anything they want that's under that dollar amount, anywhere, anytime they want. You don't even have that power in the charter now, and that would give you power to build anything you want, and the whole idea of the Preserve was to prevent development.

A trail head should be defined by both use and size, if it's going to be defined at all. It should be contained bathrooms, water stations, information panels, a small staff and maintenance room, but with a total building size and all buildings of the trail head, which there may be two or three of them, not to exceed 2,000 square feet in a two square mile area and not to exceed 24 feet in height. If do you it at all. However, since most of the trail heads we need are already built are under construction with the possible exception of Pima and dynamite which could be approved before this charter amendment is even voted on.

What I'm recommending instead is an amendment that simply says no manmade facilities or structure others other than what was already exists whether this amendment was adopted shall be constructed in the Preserve without a public vote. Further no public funds should be used for any facilities or structures without a public vote. Very simple statement doesn't require any interpretation, and that's the problem with all the other languages, people can interpret anyway they want, making a trail head something that it isn't.

The timing of this relative to the DDC, would you probably also have to pass something that says we won't vote on building the DDC before this charter amendment gets before the voters. A lot of you said that you would support a public vote and you have claimed to represent the citizen of Scottsdale, which are on the very top above the council. Now is time to back up those words. If the DDC is such a good thing as claimed, it will pass public support. If it isn't, it will fail. Implementing a public vote, does, though, require that the charter amendment be done right, not left open to interpretations, as I mentioned before. It's the right thing to do even Joan Fudala's book is called "The People's Preserve," and it really is, it's the people's Preserve. Let the people decide what goes in it. Thank you.

Mayor Lane: First warning, we do not either cheer or clap or boo. And if you continue and we have that kind of situation, you will have to be removed. So please, I ask you to honor the protocol of this body.

[Off microphone comments]

Mayor Lane: Mr. Stuart, I'm not going to engage with you, but you do need to control yourself. Otherwise you will have to leave. It is not a matter of first amendment. It's a matter of order in this body. So I'm asking you plain and simply to try to respect that. We're trying to get some things accomplished today. I appreciate the sentiments but that's not the way we run this body.

Thank you, Mr. Myers. Next is D. Patrick Lewis.

[Time: 00:13:19]

D. Patrick Lewis: Good evening, Mayor and Council thank you for the opportunity to speak. My name is Patrick Lewis. Born and raised in Phoenix. I reside at 8662 east Bonnie rose in Scottsdale. I'm here speaking on behalf of myself and the Scottsdale Area Association of Realtors.

Twice now this council has voted to fund a study for the Desert Discovery Center. We -- we urge you to allow that study to move forward. For as long as I have lived here, the DDC has been something that's been a source of conversation. At this point, the reason we elect city council is to make these decisions. And by putting -- by changing the charter, you are essentially asking the citizens to make the decision that the council has not been able to make for the last 30 years. And I -- you are our elected officials. All of these citizens have a vote when they elect you.

I raised two young children here. I have a 6-year-old and a two and a half-year-old and I raised them in Scottsdale. I want to make darn sure that my great grandchildren have the same appreciation for the Preserve and for the desert that I grew up with. I think the DDC is a great way to move that forward. One thing that I would caution is that this is going to create a roadblock, not just for the DDC, but for any project or issue that is dealing with the Preserve down the road. So if improvements want to be made to the Preserve, God forbid there's a natural disaster within the Preserve, it will take a lot of time and energy to get those things repaired or rehabilitated to where they should be. Decisions that could be made easily by a council.

I'm a big fan of agile government. For me this adds a layer of bureaucracy and does nothing but muddies the waters for the DDC. So just to clarify, we are in favor of you moving forward with the study and allowing the accurate, most current information be presented so a decision can be made. Not a decision made on fear and misinformation. Thank you very much for your time.

[Time: 00:15:47]

Mayor Lane: Thank you, Mr. Lewis. Next is Mr. Jason Alexander.

Jason Alexander: Thank you. My name is Jason Alexander 9976 East Jasmine Drive, 85260. I'm one of the principals of the community No DDC. This past week, we achieved almost 2,000 followers, and broke 50,000 hits on our website. We are opposed to the Desert Discovery Center. You can find information about our group at noddc.org.

We support this petition. We support this petition because there are three things very wrong with

the desert discovery center. First, the citizens do not have a vote over it. Second, it is a violation of the Preserve ordinance, and a violation of the city charter. And, third, it would utilize funds that the citizens have expressly voted to go towards preservation and the purchase of land, not building a museum. We support this petition but we don't believe this petition is even necessary.

This council received a brief from our legal team yesterday, it was also printed in the "Scottsdale independent" and in it, it showed very clearly that the city charter already grants us voting rights over this project -- over anything built in the Preserve. We want this council to recognize the supremacy of our voting rights as expressed in the city charter already. We support this petition because there are things very, very wrong with the D.D.C.s and how this plan is coming together. We revealed on our Facebook page and on our blog through Freedom of Information Act requests excessive spending, lavish salaries, helicopter trips. We have revealed the process this project came together with was conducted in closed meetings behind closed doors. We have revealed so many things that are just abuses of the taxpayers trust, and their faith in the government and process.

We believe this petition is absolutely necessary. The citizens demand a right to vote over this project them demand that their city charter recognize that this that this council recognize the supremacy of the vote in the city charter. We also know that best case it would take over 140 days for a vote to be implemented. We demand that you pull the plug on this project. It's a legal opinion and the charter can be modified to explicitly guarantee our right to vote over the project. Scottsdale will be a leader in promoting open government processes that are fair to all citizen participants. Pull the plug on the DDC and guarantee our right to vote on this. Thank you.

[Time: 00:18:58]

Mayor Lane: Thank you, Mr. Alexander. That's the final warning on it. We will be taking people and we'll have people removed if you continue with it. In the process of identification right now. So I ask you to refrain from that.

Mr. Steve Helm.

Steve Helm: Mayor Lane, Vice Mayor Littlefield, members of Council, my name is Steve Helm and I'm the current chairman of the board of the Scottsdale chamber of commerce, but you knew me better as manager of Scottsdale fashion square where I was for ten years. I met a lot of visitors there who came to Scottsdale for the environment, the outdoors, and I do believe that the Desert Discovery Center is going to be an asset for not only residents but visitors.

Now, when I was younger, I had a mentor, and the mentor told me when you need to make a decision, the first decision you need to make is when do you have to make it. And my feeling is this decision should be something that happens after the design process is done. We've got this elaborate design process that will define and design a Desert Discovery Center. So I urge you to forestall any action on anything in the Preserve until that design study is done.

A little bit of personal information. I never really knew much about western art. And one night

shortly after the Museum of the West was opened, I went there for an event and fell in love with the place. Then I took docent classes and I read books and I take tours through the museum. I'm not a hiker or a biker and I'm disappointed to say I have never been to the Preserve because that's just not what I do. If we had a discovery center, where you could learn about the Flora and the fauna of the desert, that would be something I would go to. And who knows, I might even take a hike. So I urge you to delay any decision until the process is complete and thank you very much for your time.

[Time: 00:21:24]

Mayor Lane: Thank you Mr. Mr. Helm. That completes the comments that we have at this point in time. I would want to say that we do have a number of requests, with some written comments that we will be reading through the proceedings as well.

You know as has been said on a couple of things, I just want to open with a couple of remarks on the overall. Obviously it actually has been said, but this is a work study and this is our job here today is to determine how or if or what we might include in any kind of guidance to their staff with regard to this petition's request. And I would -- this petition was submitted in May and I have talked no Mr. Myers since then and I talked to countless other people on their concerns and, of course, it really gets down to a couple of things that are within that petition, but most of it goes to the idea of a concern. Number one, of the location, the other is the use of Preserve funds and construction of such a project, but also then the -- just the transparency and the process that we employ. Those all have been challengeable items and there's an awful lot of information one way or the other about this.

This is a process that been in place for quite some time and there's probably not been -- there's probably more than a hiccup or two in that -- in that -- in those proceedings. But all of the items within the petitioner's suggestions and recommendations do address those items. They do address those concerns. And that's why four of us did vote to consider a work session and that's why we're here today.

Personally, I think one of the things that has to be considered is not only that, what is currently going on? This is not a vote about the DDC but we have something on deck that has brought this crowd to us this evening, and so that is one of those items that we can't deny, that there is a current project that's in process. So one of the -- the way the petitioner worded the suggestions was that the city council was to pass a resolution or to submit to the voters a change to the charter -- to the charter. And I'm wondering, it does indicate or, but I have had many conversations where there are real concerns as to whether or not both need to be employed. And this is a process within our charter as far as us moving something that we have legislative right to vote on, to the electorate. It's a normal process that we can do and we can -- that's one thing that we could commit to and that's one of the things that I may -- I am suggesting, a resolution in the meantime.

But there is also a vote for a change to the charter, and that is something that is much more far reaching and much more permanent. It institutionalizes some major components as to how this may come together.

Anyway, this petition goes on to say, that it would require either of the following to occur only with the approval of a public -- by the public vote and that's construction of anything in the facility, trails, use for trail access and land bridge over Dynamite Boulevard. If this were to be considered as something, that kind of language is something we would have to talk with staff as far as that is concerned.

The second item is to use the Preserve tax funds for anything other than land acquisitions and the building of trails and minimal facilities just as we indicated there too. And it does talk about the access of the land bridge over dynamite boulevard and that's just a matter of trying to maintain the pathways for wildlife and that. Personally, I believe that both are probably something that we need to be considering. Not to couple a resolution with a public vote -- I should say, a resolution calling for public vote, which is something we could facilitate immediately. And then, of course, a vote for a charter amendment that would require public vote under the same circumstances. The use of Preserve land or Preserve funds. I think that covers the -- any current proposal and also future considerations on a permanent basis.

So those are the -- those are the items that we have before us, a publicly voted charter amendment would, if passed by voters institutionalize as I mentioned require -- the requirement for a public vote for each of the future -- any future proposed projects that fall outside the standard criteria for Preserve infrastructure. I proposed the use of Preserve lands and funds. Under the resolution, the voters would vote on whatever proposals come before the council that meets the criteria for requiring such a public vote.

And one of the things that was said in the course of some of the commentary is we are -- we -- it's against the state statute for us to vote anything in an advisory capacity, something we don't know what it is. But that's not what's being suggested by this petition. But it is -- it's illegal to send to the voters something that doesn't exist quite yet. So it's going to be -- that's not the direction we are going even with this petition. So I just wanted to reiterate that, and so it also is not a vote on the DDC because the DDC not, at least by current contract, it is not yet defined. So after the define process is done, certainly, you could vote on it specifically, but that's not what we are talking specifically with this particular petition.

So the other thing is any resolution that would call for -- that we might entertain to put to the voters would be suggest to anything that comes back to us would actually have to fulfill our need within the contract. And there's a number of provisions within the contract that would have to be satisfied before it would even qualify for that outreach, because if it doesn't -- if it doesn't meet mustard even with the contract, then it -- with the stipulations in the contract, then it wouldn't go forward to a vote. It wouldn't be necessary. So I think it's the fairest and the most transparent and the most democratic way to handle this kind of thing.

And it would not -- I should say it would respect the city's process. We have been in the process for a long time on this. It would just add that one additional criteria and that is for the -- a public vote. So it adds to the public's voice and therefore, I'm for that.

We will be listening to the staff, but I just wanted to make it clear on a couple of counts. One is that this is a work study. I do ask and frankly will end up demanding that we maintain control here. Otherwise we do not have true protocol and control over our governance process. This isn't theater. So I would ask that you respect that for everyone's sake. Those type of the outbursts don't lend to a positive outcome because we may end up with nothing, simply because we are not able to get through the evening. So let me leave it at that for the present time.

CITIZEN PETITION REGARDING CONSTRUCTION ON THE PRESERVE AND USE OF TAX FUNDS

[Time: 00:29:41]

Mayor Lane: We will go to the presentation by -- a presentation, actually, to start the discussion with our city attorney. But I do see that Councilwoman Milhaven, do you have a question that --

Councilwoman Milhaven: Yes thank you, Mayor. Before we hear from the staff presentation, I wanted to ask the city attorney to comment some the speakers today made comment about in their opinion the charter already requires a public vote and we got several emails to that. I would like to clarification from the city attorney about what his opinion is about what the charter requires in terms of public vote on this issue.

City Attorney Bruce Washburn: Thank you, Councilwoman. My understanding of the argument is that since -- since Article 8, Section 8 of the charter, which addresses designating land for the Preserve contains certain language that we will address in a minute, regarding the -- what kind of land can be designated, that -- that portion of the charter, therefore, requires that before any improvements can be built on Preserve land, the land has to be removed from the Preserve under Article 8, Section 11.

I have taken a careful look at this, and in my opinion, there is absolutely no support in the law for that position, and, in fact, it's directly contrary to the charter and the actions of the voters. Let me address that a little further here. Brian, can I have the Elmo, please? All right.

This is Article 8, Section 8 of the charter, the one that's relied upon for establishing that all land in the Preserve -- that improvements cannot be built on land on the Preserve, that it has to be left in its natural condition. However, if you read the plain language of this provision, the first sentence basically says that the council may designate certain land as Preserve land that's suitable for mountain or desert preservation. It doesn't say it has to be designated as Preserve land and it doesn't say that it can only be used for any specific purpose. It just says that kind of land can be designated as Preserve land and the second sentence says if the council does that, it has to do it by resolution.

Third sentence goes on to say that the land purchased directly with the proceeds of the tax -- of the Preserve tax shall be deemed as designated Preserve land on the acquisition. That's any land required by the Preserve tax and it doesn't say anything about what kind of land can be acquired with the Preserve tax and it doesn't say that the land after it's acquired with the Preserve tax has to be left in its natural condition.

Then the four sentence goes on to say the land that may -- may be designated as Preserve land is any land opened by the city in fee title. So clearly that could be a land that's not in its natural condition. Any other real property interest gives the city possession or use of land.

Again it doesn't say anything about whether or not that land has to be in its natural condition or that the city has the power to cause land to be left in its natural condition. Again, it says that the land can be designated as land for the Preserve or it can be land for the Preserve, if the city has the power to cause it to be left in its natural condition. Nowhere in that section does it say that the land in the Preserve has to be left in its natural condition. Therefore, there's no basis for saying that in order to build on the land, that it has to be removed from the Preserve.

Now we have other reasons to know that that's correct because, in fact, voters have already voted on this issue. This is the ballot language from 2004. And the voters were asked to increase the Preserve tax and in this ballot language, they were asked to approve the use of the Preserve tax for acquiring land for the Preserve and also for building improvements on the land in the Preserve. And it's quite clear in here, that says that the Preserve tax will provide funds to be used solely for the general purposes after acquiring land and the interest in hand in constructing improvements thereto for the McDowell Sonoran Preserve. It makes it quite clear can we use the Preserve tax to use items in the Preserve. So the voters already spoke on this issue and you can build on Preserve land. It doesn't have to be taken out of the Preserve in order to build on it. In fact, if you take it out of the Preserve, you can no longer Preserve tax to build on it. So it's pretty clear that this is what the voters already approved.

Now, there's another reason why we know that's true. The city, for going on 20 years now has built hundreds of miles of trails and a number of trail heads and other improvements in the Preserve. And those trails and trail heads have all been approved by numerous city councils, and they have all been approved or recommended to the council by the McDowell Sonoran Preserve commission and as we all know, the McDowell Sonoran Preserve commission has been filled with people who the Preserve is -- one of the most heartfelt endeavors. People -- probably people in Scottsdale are absolutely the most knowledgeable about the Preserve. The people who have supported all of the Preserve bond elections and tax election, including the one in 2004, that said improvements could be built in the Preserve.

And if a court were to look at this, one thing a court looks at strongly in trying to interpret any provision in the law and that is how do the people who know about it, who are responsible for implementing it, what position are they taking on what it means? Every McDowell Sonoran Preserve commission, has taken action that you can build improvements on the land, without taking the land out of the Preserve. The question has never even come up.

In my opinion, there's no basis in law for saying that land has to be taken out of the Preserve, before improvements can be built on it. The voters are, in fact, approved doing exactly the opposite and the court looking at it, I think would interpret it to be consistent with what the city's practice has been approved by council and the McDowell Sonoran Preserve commission for, say, going on 20 years. Thank you.

Councilwoman Milhaven: Thank you.

[Time: 00:36:35]

Mayor Lane: Thank you, Councilwoman, and thank you, Mr. Washburn. Councilman Phillips, do you have an early comment?

Councilman Phillips: Yes, Mayor, well, one, I think we need to reiterate that this has nothing to do with the DDC or its project. Any project can still be studied and at the end of the day it just requires a public. Go ahead and go with your DDC study and bring it back to council. At the end of the day it would require a public vote. That's the only difference.

And the other thing, I would like to ask the city attorney that the council refrain from speaking about the DDC because that's not what we are here to speak this evening. I think that's a violation of the open meeting law.

City Attorney Bruce Washburn: I'm sorry, was that a question?

Councilman Phillips: Yes, sir.

City Attorney Bruce Washburn: In my opinion, any extensive discussion of the DDC or of the DDC -- the contract with the DDC S.I. would not, in fact, be comprehended by this agenda. Certainly, the -- you know, some reference to the DDC itself, I think would not necessarily be out of bounds. It depends on the context in which it takes place because we are here to talk about the petition. So I can see some circumstances where references to the DDC would not be completely off topic with the agenda, but -- so I'm going to say for the most part, I agree with you. That's not what we are here to talk about.

Councilman Phillips: Thank you.

Mayor Lane: Thank you, Councilman. Thank you, again, Mr. Washburn. Okay. We don't have any further comments at this stage. If you could go ahead and give us some information.

[Time: 00:38:21]

City Attorney Bruce Washburn: Thank you Mayor, as you stated earlier and as Councilman Phillips just pointed out, the purpose is to discuss the petition that has been filed which asks that the council either pass a resolution or bring to the voters a charter amendment to require that only certain construction take place in the Preserve or only certain expenditures of the Preserve funds be made without a vote of the citizens. So we're going to do kind a two-part presentation for you tonight.

First Kroy Ekblaw will give what I call a status report. Talk about what is actually in the Preserve right now and the kinds of activities and the kinds of things that take mace in the Preserve and what we

spend money on and then I'll come back and talk about the legal aspects of different possibilities that the council might want to consider if they decide to proceed with some action requested by the petition.

I do want to make one point first, and that -- well, yeah. One point first and that is while we are going to discuss things that are going on and I'm going to have some discussion of the merits of -- let's say the different aspects of the different possibilities, nothing that Mr. Ekblaw or I says is intended to any way convey any opinion on what the appropriate response is to this petition. That obviously is completely up to the council, but I'm also not going to preface every sentence that I make by saying, well, could you choose to do nothing but if you choose to do something, here are your options. Let's just say that it's a given that you can, of course, choose to take no further action or take action later on. I want to make it clear even when I say, you could do this option, could you do this option, I won't preface each sentence if you choose to do something.

With that type of ground rules, I will let Mr. Ekblaw talk about what the status of the Preserve is now.

[Time: 00:40:22]

Mayor Lane: Thank you, Mr. Washburn.

Preserve Director Kroy Ekblaw: Good evening, Mayor, members of the Council. Kroy Ekblaw, Preserve director for the city of Scottsdale. Very quickly, I will just walk through what are some improvements that we have within the Preserve, this first graphic identifies the overall boundaries of the Preserve and indicates that at this point we have 180 miles of trails within the Preserve. We expect another 20 to 30 to be developed in the next few years. And at this point, we have 11 trail heads within the Preserve.

I'm going to look specifically at trailheads we have, our four largest trailheads, those are Gateway, Lost Dog, Brown's Ranch and Tom's Thumb. We also have sunrise and several others that don't have restrooms and things like, that but for the purpose of talking about what are the improvements that we would typically have at a trailhead, these all have parking. The driveway access to the parking lot. They all have equestrian parking stalls located with them. They all have some form of building or buildings within them, that include restrooms for visitors that include covered, shaded waiting areas as the case may be.

We have some form of interpretive space be education, interpretive space, and amphitheater and in some cases we have interpretive trails. We have office space and pathfinder, our volunteer space, and that includes storage of materials, that may be utilized for information maps, et cetera. We also, of course, have the utility service maintenance yard facilities that come with that and provide opportunities for storage of signs, sign posts, things of that nature that are included at these larger trail heads that we have.

In addition to the trail heads, we have other improvements and some of this is very typical common sense. We have fencing. We have access control, be it gates or other things. In some areas we do

restoration work, be that old roads or trails or old scars, disturbance areas, and keeping in mind that in the past, we have had wildland fires and in the future that's a potential, and that could require restoration work to be done based on the impact of mother nature. We also have wildlife watering sites. Some of those were established in the years of ranching, others through game and fish to provide watering sites for the wildlife. We have the opportunity and in some cases absolute protection of existing cultural sites that could be older ranch sites and old Native American locations or old trails as the case may be. And sometimes that involves restoration. Sometimes that's interpretation and sometimes that, again, may be reconstruction.

We have safety considerations. There are some old mines. There are some -- some of the water holes and dams. We have actually don't corrective work or closure work that occurs. So those have been included and, again, mentioned in the petition is the consideration of the wildlife land bridge and that's been proposed along dynamite boulevard to connect the north to the south, to provide for wildlife habitat corridor.

With that, I believe -- yes.

[Time: 00:44:16]

Mayor Lane: Mr. Ekblaw, on the allowable infrastructure as used on your last slide, I did not see and I wonder whether or not if, in fact, this was going to be stipulated things that could be built and paid for from Preserve funds, including on this list. What about the rebuild of existing structures? And I mean just over the course of time, it may be way early, as far as that is concerned. Is that something that we should be considering as well as a matter of normal course?

Preserve Director Kroy Ekblaw: We certainly have facilities, maintenance. In most of these trailheads we have done expansion of the parking within the boundaries of the approved master plans and original site design, we typically do not build the full parking at the time we open a trailhead for the first time but gateway, in particular, we have expanded from, I think roughly 225 parking stalls to now 383 in the course of a couple of expansions and some renovations of some of the parking surface there. So, again those are things that we would anticipate are allowed right now or improvements.

Much of the long-term maintenance as far as replacement of -- recently we replaced an air conditioning handler. That's done through the facility maintenance, not the Preserve tax itself but that would be just whether this building needs some new paint or things of that nature, that's part of the budget process that the Preserve is part of, just like any other facility in the city.

Mayor Lane: Well, you are talking about somewhat routine maintenance and I'm not trying to pick this apart very much, but in -- you know, we're talking about something that is going to be there for a long time. On the rebuild side of it, is there any provision for -- on the rebuild side?

Preserve Director Kroy Ekblaw: Specifically, that would be considered to be part of the approved master plans if it's a rebuild or if -- be it 50 for 100 years from now something different is envisions. We have for trail heads what we call the access area master plan that was developed and

recommended by the Preserve commission and accepted by the city council, as much as we have the trails master plan. And so the opportunities in the future for those to be -- to evolve, to be amended, the work we have done up to this point in time has been consistent with those original approvals and we have not had a major amendment per se.

We have had a couple of tweaks along the way, I would call it, but for the most part, we have been very much in consistency to those approved master plans. But certainly, if there were -- if a trailhead master plan calls for 200 parks and the future is deemed through use activity, the 300 would be proposed, that would be something we could bring back.

Mayor Lane: Okay, but if we were to include it as a provision for things that could be considered, it would need to be added to this list.

Preserve Director Kroy Ekblaw: We could add that to the clarification, yes.

Mayor Lane: Councilman, thank you. Councilman Smith.

[Time: 00:47:34]

Councilman Smith: Thank you, Mayor. Kroy, can you explain what the process is that you go through to determine any one of these items that you are going to -- that you are going to proceed with this capital project, building a parking lot or trailhead or whatever?

Preserve Director Kroy Ekblaw: Starting with a trailhead, again, we have as mentioned, before an access area, master plan that speaks to all the access areas or trailheads throughout the city that was originally approved in the late '90s. We have been operating with that document and as -- as we have acquired land within those areas, and then identified the trail master plan and improvements we come forward with trailhead with a municipal use site plan proposal and that includes hiring, putting out an RFP for an architect and design team, that's put out in the standard protocol for putting out those items. That's identified in the budget process that's approved by the council on a yearly basis.

Funds the from the Preserve tax has been the primary support for those -- I think I accidentally moved the slides. The -- so we go through the design process. That includes a municipal use master site plan. That includes review by the Preserve commission, by the planning commission and ultimately approval by the city council.

That then leads to construction documents. The construction documents go through a bid process and an award of the construction document, all of that again under a budget allocation and the capital management program award of that -- those dollars are all reviewed from the Preserve tax. In years past, some were actually done with matching dollars from state parks heritage grants or other things as well. For the most part all of that goes through a public review process of the budget process, through the public hearing process.

The trails, similar but it doesn't have the municipal site use plan. It has the trails master plan and the

consistency to that, we have been using a working team with citizens from all user groups and from the conservancy, the wildlife habitat protection and we have a similar construction process.

Councilman Smith: Frankly, if that seemed like a long answer to everyone, that is probably appropriate. My takeaway is that we have a fairly extensive governance process in place involving a lot of different constituencies, whether it's the McDowell Sonoran Preserve commission or planning commission in some cases. Obviously council, and in some cases citizen groups, but it's -- it's something other than just Kroy sitting in his office and deciding this is what we are going to do next year and I appreciate the explanation of the governance that we have over how we spend the taxpayer money. Thank you.

Mayor Lane: Thank you, Councilman. Are you complete?

[Time: 00:51:14]

City Attorney Bruce Washburn: As advertised, I will talk about the legal parameters of doing what is requested by the petition and I want to start by elucidating a little bit more what exactly it is that this petition is requested. It's looking at doing two things. It's -- it's proposing a method for accomplishing its purpose and the method in the petition is either a resolution or a charter amendment by the council and then it's also -- it has the substance of what it's requesting and that is that a public vote be required for construction to take place in the Preserve or for the use of Preserve tax funds with the -- serving limited exceptions for which no public vote would be required.

What is it that it's requesting about construction in the Preserve? Basically the petition requests that construction of anything other than trails, minimal facilities required for trail heads used for trail access or the land bridge over Dynamite Boulevard would require that the matter be submitted to the citizens for a vote. And I understood from Mr. Myers tonight, that apparently he has some concerns or something about whether this language is actually what should inbound there or some suggestions on proceeding in a different way, which, of course, he's perfectly welcome to bring forward. But petition was signed by a number of people. So this is basically the petition that the council is talking about tonight.

[Time: 00:52:45]

Mayor Lane: Mr. Washburn, if I might, when you are talking about -- and I realize this is what's in the petition, but one of the things that we will be discussing, of course, is the completeness or the -- the completeness of this list or whether this is too much. I guess one of the things on the land bridge that sort of strikes -- or just hits me in a way that I wonder whether or not that specific one is indicative of the only situation where for wildlife situation that would ever come up, and we would want to have a land bridge, and whether or not that would have -- that would require public vote. So I think one of the things we're going -- if we are getting on that direction, one of the things we are going to be looking at is exactly what makes up this list of allowables without a public vote, versus those that require a public vote.

City Attorney Bruce Washburn: And, of course Mr. Ekblaw and his presentation talked about the other kinds of things that we routinely do in the Preserve and, you know, the council can choose whether or not to give consideration or whether the list needs to include other things or for that matter whether the land, you know -- clearly this is for a land bridge that's over Dynamite and not going under Dynamite. The whole list of possibilities is something that the council would -- may choose to consider.

[Time: 00:54:07]

City Attorney Bruce Washburn: So, yeah, these are basically trails, minimal facilities required for trail heads used for trail access. And, you know as Mr. Myers is pointing out, there can be disagreement about the meaning of just about any term and certainly minimal facilities is something that, you know, one person's minimal facility might not be the same as another's. And then the other aspect of the petition is the request for limitation on the use of Preserve tax funds.

And so just to make this clear, the first one is about any construction that takes place in the Preserve, no matter how it's paid for and this is about any use of the Preserve's tax funds no matter what they are used for and the request is that a vote of citizens take place through the approved use of taxes other than -- and this is essentially the same list as the -- as on the construction. With the additional land acquisition and the building of trails, the minimal facilities required for trailhead and the Dynamite land bridge.

So if the council decided that they wanted to have the matters referred to the voters, the question becomes: What can, in fact, the council refer to the voters? Back in 1968, there was an Arizona Supreme Court case, which the city of Scottsdale had the honor to be featured, as one of the parties in which the city of Scottsdale had refused to process some referendum petitions from some citizens, and the -- the Arizona Supreme Court held that cities do not generally have a power to refer matters to the citizens, that that -- unless the power might be found if it was granted to a charter city in its charter. So the city of Scottsdale then went out and amended its charter to give the council the authority to refer matters to the citizens. Just maybe give you a little more back story than you want.

The Arizona constitution provides specifically that the state legislature can refer matters to the voters and we see them do that just about every election, there's something referred by the state legislature, but there's nothing in the constitution that says municipalities can refer matters to the voters, which is why the Arizona Supreme Court was saying, well, maybe if it's in your charter. So the citizens went out and amended the charter to provide for matters to be referred to the voters, and that charter amendment was approved by the governor, which means that the governor found that it was consistent with the Arizona constitution and Arizona law. So presumably this is permissible, and so what our charter now says is that all city matters on which the council is or shall be empowered to legislate may be submitted to the electors for adoption or the adoption of the general special election with the same manner and the force and the effect of the matters submitted upon petition.

In other words the voters have the right to require that matters be referred to them and the council can do the same in the same manner as would be done by the citizens on petition. And I underline

the is or shall be -- is or shall be empowered to legislate because there's a long line of cases out there, in fact across the country, that talk about what can and cannot be referred to the voters. And what can be referred to the voters are legislative acts and not administrative acts.

So what is a legislative act? Well, legislative act, that's one of those things where oftentimes you don't know whether what you have done is a legislative act until the court of appeals tells you. There's cases all over the place about what does and does not constitute a legislative act.

I'm going to give you an example of how difficult it is -- it can be to make that determination but please don't try to take this example and give you some type of definition because the cases are all over the place. But in 1991, there was a case out of Mesa, where the Mesa city council had voted to expand country club drive from five lanes to seven lanes. The citizens went in and took out a petition for a referendum and this closes up to the court -- the Arizona Supreme Court and the Arizona Supreme Court says no, no, no, that decision to widen the street from five lanes to seven lanes, that wasn't a legislative act.

And well, what was a legislative act if that's not a legislative act? Well, here's what the legislative act was. There had been a bond election and at the bond election, the voters had voted to approve bonds to, quote, improve, construct, reconstruct and rehabilitate the streets and the highways of the city to acquire land and interest in land for right-of-way for that purpose and to pay all costs in connection therewith. So the Arizona Supreme Court says that was the legislative act and the decision to actually widen country club, that's just an administrative decision. You voters, if you didn't want the council to do that, you should have known that they would do that when you voted to approve bonds to reconstruct streets.

Truthfully, if somebody read those facts to me and asked me to guess, I would have guessed it would have come out the other way, but that's why they are on the Arizona Supreme Court and I'm not because apparently I would have gotten that wrong. But it's -- I just use this as an illustration as how difficult it can be to determine what exactly is the legislative act that -- that you can refer the voters to, because it's not a legislative act, you condition refer it to the voter -- you condition refer it to the voters.

So my advice is that if you decide to do something in line with this petition, where you want to refer something to -- you want to be sure that something could be referred to the voters, that the language be something to the effect of the legislative act that provides for the expenditure of funds -- you know, for example, the expenditure of Preserve tax funds for anything other than the acquisition of land or the construction of these certain objects, that legislative act after enactment by the city council shall be referred to the voters.

By the way, that's the way referrals work. Council enacts it and then they refer it to the voters. So first it has to get by the council. So that's -- I think that's best way to make sure that whatever you are referring to the voters is a legislative act and you refer it to the voters. You claim that the legislative act will be referred to the voters.

So how can the city establish the matter be submitted to the voters and the petition has two suggestions or requests, I should say. One is by resolution, and the other is by charter amendment, and the petition has them in the disjunctive, it's either or, but the council could do both if they wanted to and then I'm also going to address the possibility of an ordinance because I think that would be another way that the council might be able to get at what it is that the petition is requesting.

What does it look like if the council would like to use a resolution and what are the kind of pros and cons of doing it that way? Well, the good news about a resolution is it can usually be affected fairly quickly. It can be adopted at any meeting where it's properly agendized. For the most part, the resolutions don't get a lot of public outreach, although they can. And resolutions are not subject to referendum, generally after the council has adopted a resolution, you don't have to wait 30 days before it goes into effect. So it could be implemented fairly quickly. The other side of the coin is that the council can, of course, change the resolution at any meeting and again that doesn't wait 30 days to go into effect and generally is not subject to referendum by the voters.

[Time: 01:02:31]

Mayor Lane: Mr. Washburn, one of the things I'm talking about on the resolution and you're talking about legislative acts versus presumably administrative acts as well, but under Article 10 part 1, do we not have the authority to submit anything that we're empowered to vote on to the electorate?

City Attorney Bruce Washburn: No you are empowered to submit anything on which you can legislate to the electorate. You vote on resolutions and all sorts of things that are not subject to referendum and cannot be submitted to the voters.

Mayor Lane: Okay. Very good. I missed that.

[Time: 01:03:10]

City Attorney Bruce Washburn: I'm sorry if that got missed in my torrent of explanations. I apologize. And this slide has just stopped proceeding. Okay.

Charter amendment. The charter amendment is kind of the other end of the spectrum from a resolution. The first has to be approved by the council and it then has to be submitted to the voters. It then has to be approved by the governor. If it's not in conflict with or if -- if it states that it is subject to and then it would not be in conflict with the laws and the constitution of the state, and the governor has 30 days in which to act on that. Of course, the charter amendment can only be used by using the same practice. It's usually that we do a fair amount of public outreach and the reason for that is because it is so difficult after you have enacted a charter amendment to make adjustments to it, if experience shows that there are other matters that should have been considered or things come up that were just not foreseen.

So the public outreach is an opportunity for the citizens to go well, what about this? What about that. What if this happens and as I'm sure you will remember, the last time we did a large number of

substantive charter amendments we had a charter amendment commission, task force, I'm sorry I don't remember which, I think it was a task force, we had a charter amendment task force that held public hearings over a series of weeks before bringing something back for council consideration.

So the general practice has been to be very careful about putting things into the charter because once they are there, if something comes up and you need to change it there's no quick way to do that. Even -- even if every -- well, 239,000 citizens in Scottsdale agreed this was the best thing to do, you still have to go through the whole process.

If the city were going to do this, and it was going to be sent to the voters for an election, when can the election be held. It can only be held in March, May, August or September, and November, and in order to ensure that all the deadlines are met for getting the matter properly before the public, including approving the ballot language, accepting the ballot arguments, all of that, the recommendation is that the city call the election at least 140 days before the election is supposed to take place, because there's a lot of legal steps between calling the election and having the voters actually vote on election day. If, in fact, the council wanted to do this sometime in the next couple of years, here are the dates that are available.

And, of course, it can have a cost. Elections that are held on the -- basically the August or September and November elections, the even numbered years, it doesn't cost us anything additional to put a charter amendment on the -- on the ballot, but any of the other dates. So in the next two years, there would be a total of eight dates that would be available, of those eight dates, six of them -- for special elections would cost roughly \$500,000.

The other option, which was not referenced in the petition, but which I think is worth bringing to the council's attention is the possibility of doing this in an ordinance. Ordinances are kind of the middle ground between the resolution and the charter amendment. They usually have some period of public outreach if there's any substance to them at all. Like a resolution, they can be adopted at any meeting where they are properly agendized.

And here's the thing about a -- here's the thing about an ordinance. About this ordinance. And that would be that I -- in my opinion, this ordinance would be a legislative act. It would enact policy and it's would be referred to the voters and it would also -- it would also specify the means by which that is supposed to be done, and so if the council at a later time decided it no longer wanted to follow the ordinance -- let's say the council adopted an ordinance that says before any matter can be -- anything can be built in the Preserve, except these selected items, the legislative act authorizing that act would be referred to the voters. The council would be obligated to follow that ordinance, I believe, and if it decided it wanted to change the ordinance, a future council could vote to change the ordinance but that would be referable by the volunteers. In other words, voters would have a chance to themselves take out a petition and require a vote.

So what -- what that would look like is if the citizens decide that they don't like the council changing that ordinance, they would have a chance -- they would have 30 days after the council acted to gather the necessary signatures for petition. Right now it's 7,850. That number can change depending on

votes that are cast at some future election. But if they get number of signatures, then the council has to refer the matter -- has to refer the ordinance, changing the ordinance to the voters, and the change to the ordinance can't take effect until the voters have a chance to vote on it.

So think way the volunteers would absolutely have a chance to vote, even if it was by referring a change of the ordinance made by the council. It's kind of a middle ground. It's not a -- it's not what I would call an elegant solution, but it -- on the one hand, it does make sure that the voters always have some opportunity to vote, even if they have to do it in some circumstances by petition, but it also makes it possible to change the ordinance to take allow for construction of some other matter that nobody had foreseen was going to be necessary, by the council fairly quickly. And, you know, it might be something where everybody agrees, oh, yeah, that's a good change. We never thought of that. And nobody would want to take out a petition and try to reverse that process.

So those are kind of the three options. The resolution, nice and easy. But readily changeable. The charter amendment, takes a lot of effort and time and -- and creates problems if you find out later if you didn't get it right and it needs to be fixed, the ordinance is kind of a middle ground but it does not give us firm guarantee that the citizens will have a vote but it gives some guarantee to the citizens that they would have a vote -- at least it would be possible for them to have a vote.

With that, I would be happy to answer any questions.

[Time: 01:10:15]

Mayor Lane: Thank you, Mr. Washburn. I appreciate that information. I don't know whether we have any questions at the moment. On the resolution side, if, in fact, once a proposal were to come to us, and I'm not specifically talking about the DDC, but if a proposal were to come to us, that would be something that this body would be voting on, can we have, is it appropriate and can it be structured to have a resolution to commit to a -- commit to a public vote?

City Attorney Bruce Washburn: Yes, I think this council could adopt a resolution that commits --

Mayor Lane: So promise to?

City Attorney Bruce Washburn: Yes, again a future council could readily change that resolution, but, yes, this council could adopt such a resolution.

Mayor Lane: So that would be one thing but it would not be subject to a referendum?

City Attorney Bruce Washburn: No, that resolution would not be subject to a referendum, I do not believe.

Mayor Lane: Okay. That's where the ordinance comes in?

City Attorney Bruce Washburn: Yes, sir.

Mayor Lane: Okay. Well, I will ask councilmembers if they have any questions -- any further questions or if there is any thought about direction. Councilman Smith?

[Time: 01:11:46]

Councilman Smith: Thank you, Mayor. To Mr. Washburn, I think I understand this in terms of what the requirements are -- I'm sorry, what the opportunities are for referendum following an ordinance change by the council. You described it in terms of if we passed this ordinance and ever decided to change it, the citizens would have a referendum right to call a vote. Is it also true that even creating this ordinance citizens would have a right with referendum to call it for a vote?

City Attorney Bruce Washburn: Yes.

Councilman Smith: Thank you.

Mayor Lane: Thank you, Councilman. Thank you Mr. Washburn. Any other questions?
Councilman Phillips.

[Time: 01:12:44]

Councilman Phillips: This isn't a question. I assume we are going to get the ball rolling here. So I do have a Preserve text amendment and I will pass this out to the rest of the council. And I will ask Brian to put it up on the screen so the public can see it.

This is my proposal and direction to staff in response to a 450 citizen petitions this council is considering an amendment to the Preserve ordinance Section 11 which outlines what the city can and cannot do within the Preserve. I believe back in '99, when this draft was ratified certain loopholes were included to allow special interests to construct various project in the Preserve. Because of the citizen diligence these loopholes have been uncovered and now we begin the process to close them.

I should hope and expect that all of us here in the council will agree that transparency and the public right to have a day of what goes in the Preserve is of utmost importance. By directing staff to amend this portion of the charter we will regain the public trust and have a fair elections. They can come back to us at a regular council meeting with a new draft we can vote on to bring to the voters. So I begin.

[Time: 01:14:13]

I call to direct staff to initiate a text amendment to the Scottsdale city charter pertaining to the Preserve ordinance Section 11 as amended below and bring back to council for vote to bring before the electors at the next city scheduled or special election. Further direct staff to agendize the vote for moratorium and any construction within the Preserve, excluding trails and trailheads until after said charter election.

Now, in this, the black is what's in the charter now and the red is the suggested changes. Section 11 removal of Preserve land designation. The council may remove the Preserve designation from any parcel of land, less than one acre in area. I propose to add for the sole purpose of trail and trailheads only. Such removal shall be limited to a maximum of six parcels with any one calendar year and such removal cannot be contiguous or otherwise connected to any one parcel, except for a connection of trails. Such removal, until 60 days after an affirmative vote of two-thirds of all members of the council and after any resolution of any referendum concerning any such referendum.

Removal. Preserve designation from any -- strike other, parcel of land and accept trail and trailheads shall require approval of two-thirds of all members of council but shall not become effective and approved by the vote of the majority of votes cast in the election.

And then we add Article 12 to clarify Preserve ordinance, Article 11, so no misinterpretation or level within made misconstrue or redefine that no man made facilities that tax money of any sort other than those contained in the Preserve before this article are expressly prohibited without a public vote of the electors and add Article 13, definition trailheads. Trailheads consist of up to 1 acre parcel only with appropriate parking facilities as determined by estimated visitor usage. It will be approved by two-thirds council vote before approval of such trailhead.

The two that Mr. Howard Myers brought to us, I prefer this because a charter amendment is binding by the electors and a resolution is subject to interpretation and changed by the council, which got us here in the first place. Thank you.

Mayor Lane: Thank you, Councilman. Councilwoman Milhaven. Was that a motion?

Councilman Phillips: Yeah, if we are looking at a motion or direction to staff, that was my direction.

Mayor Lane: Well, yeah, a motion would obviously be for --

Councilman Phillips: I would make a motion to direct staff.

Mayor Lane: To staff. Okay. So that motion is on the table.

Vice Mayor Littlefield: I will support it.

Mayor Lane: The motion is seconded. Would you like to speak toward it?

Vice Mayor Littlefield: It's a little bit more detailed than what I was going to do. It's got a little more in it, but the general idea of it, the trend of it, the protection of the land is what I want, and so I will support staff looking at that, taking that into account. Thank you.

[Time: 01:17:40]

Mayor Lane: Councilwoman Milhaven.

Councilwoman Milhaven: Thank you, Mayor. Wow, there's certainly a lot of emotion in the room and every single person in this room loves this Preserve. You know, Mayor Lane doubled the size of the Preserve during his tenure as Mayor and thanks to his efforts we were able to leverage \$88 million of state matching funds in order to create the significant connections to the state -- the state lands. Up at brown's Trailhead, they put plaques up when I went to the opening they put plaques up for every citizen committee that met to contemplate the Preserve and Virginia Korte's name is on every single one of those plaques. She was part of every single step along the way. And so excuse me, every single one of us cherish the Preserve. We share that in common.

Interesting for us -- right, this is an interesting conversation because it's not just about the Preserve. It's about how we govern ourselves. We all get elected, all seven of us were elected by the people in Scottsdale at large. And as part of that responsibility when we run for election, we tell people what we believe and we tell people what we think, and then when we get elected, our responsibility is to act consistent with what we shared with folks. And to bring our best thinking and our best selves to every single conversation. And that means being respectful. It means about learning about issues. It's about listening to people and then bringing our best thinking to every single conversation. Excuse me.

So I have read all of your emails. I have looked at your websites. I have read the Facebook posts and I think I have seen most of the tweets. And so it's clear that for many of you, where the Preserve is your backyard, what happens to the Preserve is important! And it matters! And we hear you that it matters how what we do impacts your backyard. And so, of course, it's important to you, and we need to listen and be sensitive and it decisions that we make at the recreation of Preserve commission and for this council and future councils will continue to be responsible and sensitive to how this impacts your backyard. There are a lot of people who feel very strongly about it, but there's also a lot of people who are home tonight enjoying their family, would are trusting that we are going to bring our best thinking and our -- and do what's best for the city at large.

And I know this is not about the Desert Discovery Center but I see lots of signs and stickers on people that say no DDC. In my opinion, it's not good public policy to have a charter amendment in order to kill a project that people don't like. And so I can't part any charter amendment at this time.

May it make sense at some point in the future to bring something to the citizens, yes, it may. But at this time, I don't think that that would be appropriate. I think we need to bring our best thinking and not be looking at website hits, Facebook likes, and Twitter retweets as a foundation for public policy.

So having said that, I will make an alternate motion that we take no action at the current time. Thank you.

Mayor Lane: Alternate motion on direction.

Councilmember Korte: I will second that.

[Time: 01:21:13]

Mayor Lane: Would you like to speak toward it?

Councilmember Korte: Just very quickly. Many of you know I have been a long-time supporter of the Preserve. Having been there, at the very grass roots level with many other Preserve activists back in the early '90s. The Preserve was not, shall we say, a -- an embraced concept at that time. It took many of us many, many hours to approach leaders in our community and business leaders in our community and our tourism industry to -- shall we say convince them, get them into the Preserve where there were no trails at that time, except maybe Jeep trails and talk about what this could be. It has become everything that we could imagine.

My support for taking no action should not be construed as lack of support for the Preserve because I was there at the beginning and I continue to be there as an avid hiker, equestrian and steward. But I believe that no action is the appropriate action at this time or lack of action because we are still embarking on defining -- so regardless of this petition and that this petition has nothing to do with the DDC, I believe its intention is to create obstacles for the DDC, and being a long-time supporter of this vision, I am not interested in creating obstacles.

I want to see what the DDC can become because the definitions that I'm seeing on flyers, that I have seen on Facebook, that I have seen on web pages by those individuals who oppose this DDC, that's misinformation. We don't know what this thing is today and I want to move this forward so that we can define what the DDC is, and then have a community dialogue about embracing this and being inspired by this DDC.

Mayor Lane: Thank you, Councilwoman. Councilman Phillips.

[Time: 01:23:51]

Councilman Phillips: Are we talking about the DDC? That's not a question. That's rhetorical. Okay, this is not to kill a project. The intent is not to gill a project by eliminating the public vote on it. What this is, is -- this project can still continue. This project can come to the council. This project can be approved by council.

What this is, for this project and hundreds of our projects in the future that are going to come to council, we will have to go to public vote and that's the big issue here is should the council vote for big projects or should the public vote for big projects? I think the public should vote for them. We vote for bonds for big projects. We should vote for anything that should be in the Preserve.

There was a comment about being respectful to citizens. Let's listen to the citizens and let's do that. Let's give them a say. Let's give them a vote.

[Time: 01:24:54]

Mayor Lane: Thank you, Councilman. I'm not inclined to support the no action at all, but I will say that I'm very concerned about the language that the first time I have seen it is what we will have in front of us. I was going to ask, have you seen this proposal and have you -- do you have any comments on --

City Attorney Bruce Washburn: I'm sorry, I have been looking at it just now and I couldn't -- I couldn't make a meaningful comment without a thorough study.

Mayor Lane: And maybe I'm of a similar mind. I'm more in line with what Mr. Myers originally had indicated. I think it's simpler and easier. One of my greatest concerns is that we are not able to maintain and keep the various structures that what we have and what we need to do in the Preserve for course. The master plan, and the trails and the trailheads that we would end up having to take each and every one of those or so it sounds to the public for a vote. And as we were told a little earlier, you were talking about a half a million dollars a pop, this is a pretty -- I think somewhat responsible issue if we are just actually doing some things that the Preserve requires and needs. Even if it's a land bridge for wildlife, and so I'm very concerned about this particular motion. It's put me in a difficult position.

I would be happy to offer an alternate motion, on what the original petition had called out for, the only thing I would change on that is to have a -- to have Mr. Kroy Ekblaw's list considered along with some of the things he's indicated as far as maintenance and items that are planned as far as some infrastructure, but basically for trails and the services on the Preserve. And maybe the upkeep to them if they need to be rebuilt at some point in time. Taking those kind of things to a public vote each and every time, I think would be wrong. So I have real difficulty with what this says and it does sound to be rather encumbering in the day-to-day activities that we would have for the Preserve. It might end up costing us more to put it on the ballot than it would to build something or the other that we need for the Preserve. So my concern is that I will probably be a no on both of these.

I don't know. I can offer an alternative motion and that would be to follow closer to -- and I will. I'm not -- I don't have a great track record on getting traction on these things. So as some people in the room probably no but nonetheless, I will say that I would like to go with the original outline in general, but also consider Mr. Ekblaw's list that he presented to us, and also for some considerations of things that we know we need to do and we have planned and authorized for the development of the Preserve in the sense of its mission, and that's trails and trail heads or otherwise that may need to be -- or even parking lots to accommodate.

So I will put the direction out on that basis and see if I get any takers. As an alternative to the alternative. Well, as I said, I don't have a great track record on that. I guess that doesn't go anywhere. So okay. Well, next is Councilwoman Klapp.

[Time: 01:28:43]

Councilwoman Klapp: I would -- I would be in support of the motion to take no action, because in

thinking about a charter amendment, we are -- this charter amendment would not recognize what the citizens agreed to when they agreed to the tax. We saw the language that was given to us as to what the agreement was for the tax which included not only buying land but making improvement on the land. So this amendment is just way too restrictive in my mind for charter amendment. So I would not be supportive of it. So with this particular language, I would support no action.

Mayor Lane: Thank you, Councilwoman. Councilman Smith?

[Time: 01:29:37]

Councilman Smith: I guess I want to begin as I'm sure all of us up here feel an appreciation for everybody who has tuned into this whole discussion. Thank you for coming. Thank you for being at the library. Thank you for watching at home, whatever your position may be.

You have inundated us with emails, Twitters, and so on, as councilman -- Councilwoman Milhaven indicated and we do find that informative. We do read them. And I think speaking for myself, it does inform our opinions. I recognize that the passions are high, and that the opinions are divided on this issue, but as has been said many times, we are not here to discuss the DDC, and it's frankly, unfortunate, that this discussion has become colored by the current election environment.

This undefined DDC that the council or the study group is in the middle of studying has become such a politically divisive issue that sometimes the only suggested resolution we have to the debate is just to create charter amendments, to outlaw it, and each charter amendment seems to be more and more stringent and more restrictive and stringent than the one before. So me to deal with this issue by way of a charter amendment it is not an appropriate use of the city's charter. This is our constitution. It defines the governance of the city. It doesn't define the operations of the city. At best, I think the -- such restrictive language, if we even had it, needed it, it would be included in our body of law which here is known as ordinances as the city attorney described them.

And like some others here. I don't reach this conclusion, because of my position for or against the Desert Discovery Center. My position in that regard would be determined once the January authorized study is completed and we have got the public opinion and feedback, and we collected it, assessed it. That's when my opinion and hopefully your opinion will be reached based on fact.

I am mindful of the fact that we already have some language that governs decisions that affect the Preserve. In some cases, the language is very specific and other cases the language is aspirational or visionary, but it's no Laos restrictive on our actions. We have language in the charter. I don't look to Section 11 to this petition did where it talks about removing land for one reason or another, but in Section 8, I think you will find the aspirational purpose for the Preserve and it says council may designate Preserve land to establish a mountain and desert reservation heritage for future -- for present and future citizens of the city. That's the aspirational objective. That's what we are trying to accomplish and that's an appropriate statement to have in our charter.

We also obviously have a huge body of law in the ordinances in Section 21, where we talk about how

the Preserve may contain facilities for improvements that the city determines are necessary or appropriate. To support passive recreational activities. Again it's fairly determinative in terms of what we intend to have, what we think the voters ought to have in the Preserve and we have the Preserve tax language itself in the various ballots giving us instruction of what kind of improvements will be authorized.

And you saw the Preserve tax language that talked about improvements would be allowed to the Preserve land. And I have with many of talked about the nuance of the language of that particular Preserve ballot, because it talks about improvements thereto, not improvements thereon. There is a difference, in my opinion. If you take out the word "there" we are talking about improvements to the Preserve. That's what the citizens wanted the Preserve tax money to be used for.

And, of course, we have, besides this body of law, and the guidance we have from the voters, we have an enormous governance process in place for the city and it's a process that's been in place and developed over the 25-year history of the Preserve. And that's why I had Kroy explain how these decisions to build a trail or a trailhead or even expand a parking lot or whatever, these are not trivial decisions that are made at the staff level. These are decisions that are made with the inclusive process involving the McDowell Sonoran Preserve commission, in some cases the planning commission and in some cases public outreach. But we have a governance process that guides us in what we put into the Preserve.

So if we -- if we let the DDC study takes its course and provide guidance that it is consistent with the charter, insist that the it is consistent with the preordinance and the Preserve tax language, and that's going to encompass things like looking at the size and the scope of activities and the capital and the operating costs. It will have all manners of consideration, hopefully in this final study that we are all presented with. And all of this will be evaluated upon receipt of the current study but we can't possibly make those determinations today when we are only a third of the way through the study period.

So obviously you know from my remarks, my conclusion is that we have charter language. We have ordinance and we have language from the voter ballots that the voters approved. Let's use the guidance that with already have. It has worked for 25 years. We have determined from these various guidance mechanisms what to do in the Preserve to meet the expectations of the voters and I think it's worked pretty good.

I find it inconceivable that we would locate a future Desert Discovery Center on Preserve land without seeking voter approval. I find it inconceivable that we -- to allocate money to a project that's like this, that's not provided in the tax ballot language without seeking voter approval.

So as the alternate motion recommended, I too would recommend that we defer this action until or unless we have some event that makes it both relevant and necessary. Thank you, Mayor.

[Time: 01:37:19]

Mayor Lane: Thank you, Councilman. Councilman Phillips.

Councilman Phillips: Thank you, Mayor. At the beginning of this when I read this, I said, well this is a draft text amendment. This is a draft text amendment. It will provide staff with the intent we need for them to come back to us at a regular council meeting with the new draft that we can vote on. So this is a draft. The red lines that I added in there are intent for the staff to look at, to tell the purpose and the intent of what we are looking for. Obviously staff will use different words and phrases and then it will come back to council and that's what we will look at.

But what you are hearing ton is let's not -- hearing tonight is let's not do that. Let's not have a public vote. We have to change this and add a text amendment to our ordinance is restricted and stringent. We are asking for public vote S. a public vote restricted and stringent? That's all we are asking for.

You know, twice council people have brought up about the DDC. Let it run its course. We are not talking about the DDC. Okay. We are not talking about the DDC. We're talking about any big project on the Preserve and the public's right to have a voice in it.

If the council says tonight let's not do anything, they are basically saying we are telling you that we are in charge and they are not. That's what we are saying. That we hold the cards and you don't. We will tell you what's right and you will listen. That's what's going on here tonight.

We're asking for a public vote. I don't see anything wrong with that. I think you deserve it.

Mayor Lane: Thank you, Councilman. Vice Mayor Littlefield. Please, please, I asked you not to.

[Time: 01:39:11]

Vice Mayor Littlefield: Okay. I'm going to ask for your indulgence, if I can for a moment, because this may take me a few minutes to say. I think that Scottsdale as a smaller city in the United States has done something truly remarkable. Citizens in Scottsdale, in a citizen-driven action created a Preserve called the McDowell Sonoran Preserve that encompasses over 30,000 acres of natural, open, high desert for the enjoyment of our city, our citizens, our visitors and our tourists. By the time the Preserve is completed and paid for, it will have cost our citizens throughout the entire city almost a billion dollars of their money. That's approximately \$300 a piece! Per person. Man, woman and child. For a city of our size, this is true history a tremendous and an amazing feat.

I don't know any other city in the country like Scottsdale who has done anything like it. It is a totally appropriate thing that the citizens of Scottsdale care about what happens in their Preserve. It is their Preserve. They bought it. They paid for it. And they are the ones that use it to a large extent.

The Preserve itself was originally funded -- I'm a native Scottsdale person. I was here when it started and we watched what happened throughout the years. It was specifically started to prevent commercial development inside its boundaries. Two surveys done in the 1990s show that 90% of the citizens supported that the land be Preserved and keep the development out of it. In fact, the first

Preserve vote was only to buy the land. That's all it included. We couldn't do anything else.

The Preserve ordinance was written and signed in 2000 and it is the legal document, right now, that codifies the protections that we put on the land to make it truly a Preserve. It wasn't until 2004, four years later, that citizens even agreed to use Preserve funding to build the trails and the minimal trailheads that we have today. Rightly, the city went to the citizens and asked them for permission to change what can be done and the citizens said yes. They trusted us and they said, four different times on four different consequential votes, yes, bid the trails. Build the trailheads. That's what we did. They voted this way, believing that the land would be Preserved in its natural state for ourselves and our children and our children's children.

[Time: 01:42:37]

None of the improvements to date include any commercial development. The gateway, all the trailheads, they are free. You can walk in there tomorrow morning and pay nothing and enjoy the Preserve. Any of them.

The council, I believe, does not have the discretionary power to change the vote of the people what -- what the people of Scottsdale voted for without their consent. And that was the trail, the land, and the minimal trailheads. It's clearly spelled out in the ordinance what the citizens wanted and did not want.

My concern is with the violation of those promises made to our citizens. Their votes were at least partially built upon the ordinance that was passed the year 2000, before the additional four votes that listed the terms of the ordinance, and the terms are what caused the Preserve itself to exist, as a Preserve, and not just a bunch of open, natural space. They protect the land from commercial development. That was its original intent.

Within this ordinance, the city promised some very specific things, and it is on that basis by multiple votes at the ballot box that citizens agreed to tax themselves to do the things that we promised we would do, and to not do the things that we promised we would not do. Some of the terms and conditions, I say this for those would may not have read the ordinance at some time. There were just 32. These are just a few. The sale of food, beverage and other merchandise is prohibited, period. No person shall possess or consume liquor. No person shall remove, deface, damage, disturb or excavate any materials, including but not limited to plants, rocks or other earth materials. No person shall dig or excavate any sand or gravel or rocks or soil. No glass or ceramic or breakable food or beverage containers are allowed in the Preserve. No person shall operate any sound amplification system in any kind, even including musical instruments, and it goes on.

[Time: 01:45:25]

So for us to do something other than the trails and the trailheads and the parking garage -- or parking lots that we have we have to change the ordinance to allow it. To change the ordinance to allow it I believe we need to go back to the citizens and ask their permission. I'm not saying they are going to

say no. They said, yes, five times. They may say yes a sixth time. But we need to ask their permission.

I personally believe that the citizens do not want this, and this is from talking to them up and down all of Scottsdale. This is not just a one area issue. All over Scottsdale people are concerned and they ask you what is this about? With will, you voted for it. You need to know and I believe that proponents of the D.C. know that and that's why they don't want to vote.

Let me say one thing. It's trust in government is not a given. It's earned. So not allow people to vote on this very, very basic change to our Preserve, the most basic change is a betrayal of their trust in us, their representatives. If we don't allow this vote, we say no, no action, on something that touches the heart and the soul of our citizenry and helps define would and what we are as a city, I believe that trust will be broken and this is not law, Mr. Washburn. This is reality of law people feel. I believe that trust will be broken in the foreseeable future. Trust is a two-way street. It has to be earned and once it's destroyed, it's very difficult to resurrect.

Another thought, the proponents of the DDC believe it would be a very nice tourist attraction, and it very well may be to bring more people to Scottsdale so they can enjoy our Preserve and spend more money here. Be good tourists. However, whether it would or not is immaterial. The purpose of the Preserve has never been tourism. Its sole and only purpose has been to Preserve the land, the plants and the animals that live there.

If we as a council remove the lands protections from the ordinance, currently binding to all of this land, and to amend the municipal use master site man to allow for uses that are currently denied, whether the DDC or any other commercial development, within the Preserve boundaries, it is not only an end run around the citizens of the Scottsdale. It is the end of the Preserve because we removed protections from the ordinance. They are removed from the entire 30,000 acres of land. The ordinance is what protects it. If we remove it, all of that land just becomes a massive swath of natural open space belonging to the city. It is open for developers to move in, to build, and believe me, wall-to-wall people.

You know this. This happens in Scottsdale. They would make billions off of our land and they would make billions at your expense. The billion dollars of tax money that the citizens of Scottsdale have paid for this would be totally wasted. 25 years ago, we would never have sat up here and entertained the idea of commercial development inside the boundaries of our Preserve. If we allow this tonight, and take no action and continue on the course that we are on right now, 25 years from now, there will be no Preserve, except maybe as a name on a plaque for an H.O.A. subdivision. The Preserve will only be a memory.

[Time: 01:50:02]

Mayor Lane: Please, I will ask you -- please no.

Vice Mayor Littlefield: So I definitely support the petition submitted by Mr. Myers and I give that

direction to staff. We cannot afford to lose the trust off our people and we cannot afford to lose our Preserve. The only change I would make is that any vote made by the citizens on this issue would be a binding vote -- and that the city council would have to abide by it.

I also support part two to require a binding vote for the use of the Preserve tax funds for anything other than already approved by the citizens, land acquisition, the building of trails, minimal facilities required for the trailheads, the brander land bridge over Dynamite and also maintenance for what we have on our Preserve.

The DDC should not be considered part of a trail head and this is my final comment. And the reason is it's locked away. All of our trailheads are open and free to the public. We want people to come and they have come! We have hundreds of thousands of people every year enjoying our Preserve right now. Freely, without cost. Because the DDC is not that way, it would have fees and it would have costs involved, just to go in the door. It's locked away from the gateway, even if it's put there. That takes it out of a trailhead's connotation. I believe it's part of a trailhead.

Now I seconded Councilman Phillip's motion because he had basically the same motion but just a little tighter language. If -- tighter language. If the staff can write that up, I would port that but I support the charter amendment. I think it's become obvious the ordinance is not strong enough to buck the political winds within our city. We need something that will protect our city and our people and their investment in the Preserve into perpetuity, like we promised. Thank you.

[Time: 01:52:25]

Mayor Lane: Thank you, Vice Mayor. Vice Mayor was that a motion?

Vice Mayor Littlefield: Yes.

Mayor Lane: And I will second that motion. I think it's greatly different than what was proposed by Councilman Phillips, but nevertheless, in a very real way, I share a good deal of what you said. I appreciate some of the drama you put into it, but nevertheless, it's an important point for us to remember. There has been an evolution to a major asset here in the city. Old timers first talk about the first thousand acres was supposed to be a shooting range. I mean we have come a long way from that thinking. So I'm absolutely a believer that this, the magnitude of this asset for the citizens, owned by all of us and have a significant change in the kind of facility that's going on, it should be subject to a public vote. And I think that's an imperative for us. I think to do otherwise is -- is circumventing, I think the will of the people and frankly the use and the integrity of that asset.

So I'm very concerned about the fact that we are in the point of a no action or so it sounds. And it is the -- it is the motion that's on deck, we go with the alternative motion first except this is an official third motion.

Vice Mayor Littlefield: Yes, it is.

Mayor Lane: We have an opportunity to see what type of participation we have with this third motion. But I think that with that direction, from just that motion, and if we get the votes for it right now, it would be something that we could send to staff and that they would be able to come back with some responses to how we would be able to act upon that, and I look forward that to happen. I have seconded it. And so that -- that alternative now -- now alternative, alternative motion, I was not able to get is yours and I seconded it.

So I will go to Councilwoman Milhaven.

[Time: 01:54:46]

Councilwoman Milhaven: I feel compelled to correct some things that were just said. The Councilman Littlefield said that we didn't have the right to change the right of the people. That's absolutely correct. We don't have the right to change the vote of the people and if we did anything that contradicted any previous votes, the city attorney would be jumping up and down and waving his arms to stop us. We are not doing anything that contradicts any previous vote of the people.

Councilwoman read several exceptions from our ordinance. I would like to make sure that people understand the ordinance was passed by city council, not by a vote of the people, and that she failed to read the part of the ordinance that says the provisions of this section shall not apply to persons or groups which have been issued a permit by the Preserve director. While it was prohibited by ordinance, the ordinance also provides provisions to make exceptions to those things.

She also commented about commercial development on 30,000 acres which to say is hyperbole would be a grace understatement. I have seen on Facebook somebody -- I think it was on Facebook where somebody posted our intention to build a Walmart in the Preserve I also saw some emails about talking a nuclear power plant. That's ridiculous and not our intention and by doing nothing today, we are not allowing commercial development in the Preserve. That's not the intention. That's not part of the conversation. It's simply distorting the conversation.

So having corrected all of that, I would like to call the question.

Mayor Lane: The question has been called and seconded. All of those in favor of calling the question, please indicate by aye. The question has been called.

[Time: 01:56:39]

Mayor Lane: We do have the alternative, alternative motion on the table. Not having any further discussion on it, I will ask for then a vote. All of those in favor, please indicate by aye. Those opposed with a nay. Okay. You can see the results there. Okay. That motion fails.

[Time: 01:57:07]

Mayor Lane: The next motion down the poll is the motion to take no action. All those in favor of

that motion, all in favor aye. Opposed nay. That motion passes 4-3 with Vice Mayor Littlefield, myself and Councilman Phillips opposing.

That completes the item for our work study as far as are I can see, because that -- that's a no action item. There's no further comment on it.

Thank you, everyone, for all of your input. Thank you.