

**SUMMARIZED MINUTES
SCOTTSDALE CITY COUNCIL
REGULAR MEETING
TUESDAY, JANUARY 8, 2013**



**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251**

COUNCIL INAUGURATION

CALL TO ORDER

Vice Mayor Dennis Robbins called to order the Inauguration Ceremony of the Scottsdale City Council at 4:34 P.M. on Tuesday, January 8, 2013, in the City Hall Kiva.

INTRODUCTION

Vice Mayor Robbins introduced the current and incoming Councilmembers.

OATH OF OFFICE

City Clerk Carolyn Jagger administered the oath of office to re-elected Mayor W.J. "Jim" Lane, re-elected Councilmember Suzanne Klapp, and newly-elected Councilmembers Virginia Korte and Guy Phillips.

INAUGURAL REMARKS

Mayor Lane thanked his wife Joanne, his family members, and Scottsdale citizens for their support. He said it has been the privilege of a lifetime to serve as Mayor of Scottsdale. He is humbled by the support and trust of the Scottsdale voters and is committed to working to meet their expectations.

ADJOURN

The Council Inauguration Ceremony adjourned at 4:44 P.M.

REGULAR COUNCIL MEETING

CALL TO ORDER

Mayor W.J. "Jim" Lane called to order the Regular Meeting of the Scottsdale City Council at 5:02 P.M. on Tuesday, January 8, 2013, in the City Hall Kiva.

NOTE: IN ACCORDANCE WITH PROVISIONS OF THE ARIZONA REVISED STATUTES THE SUMMARIZED MINUTES OF CITY COUNCIL MEETINGS ARE NOT VERBATIM TRANSCRIPTS. THESE MINUTES ARE INTENDED TO BE AN ACCURATE REFLECTION OF ACTION TAKEN BY THE CITY COUNCIL. DIGITAL RECORDINGS OF CITY COUNCIL MEETINGS ARE ON FILE IN THE CITY CLERK'S OFFICE.

ROLL CALL

Present: Mayor W.J. "Jim" Lane
Vice Mayor Dennis E. Robbins
Councilmembers Suzanne Klapp, Virginia L. Korte, Robert W. Littlefield,
Linda Milhaven, and Guy Phillips

Also Present: Acting City Manager Dan Worth
City Attorney Bruce Washburn
City Auditor Sharron Walker
City Clerk Carolyn Jagger

PLEDGE OF ALLEGIANCE – Boy Scout Troop 6, Troop Leader Dan Colton

INVOCATION – Father Pat Robinson, The Catholic Community of the Blessed Sacrament

MAYOR AND COUNCIL WELCOME AND REMARKS

Mayor Lane announced that closed captioning services will be provided for tonight's meeting and for all future Council meetings.

Mayor Lane invited the newly-elected Councilmembers to say a few words.

- Councilmember Korte said she is honored to serve as a Scottsdale City Councilmember. She thanked the citizens of Scottsdale and her campaign volunteers and family members. She gave special thanks to her mom for her encouragement and for teaching her how to show up for life.
- Councilmember Phillips thanked the citizens of Scottsdale and, most of all, his wife for her hard work and constant support.
- Councilwoman Klapp thanked her campaign staff, family, and friends, but mostly her husband Tim for his support throughout the campaign. She also noted her appreciation of City staff in serving the citizens of Scottsdale.

Mayor Lane thanked the City Manager, City Attorney, City Treasurer and their staff for their efforts to restructure, refinance, renegotiate, and reduce a settlement agreement with Scottsdale Fashion Square, which prepays the City's lease on the Nordstrom Garage using Municipal Property Corporation Bonds. This will save the City about \$1.0M in FY 2013/14, and an estimated \$2.0M per year thereafter, based on a 3% annual sales increase assumption. Savings over the next fifteen years is estimated at \$30.0M. He also noted that this team has been instrumental in reworking agreements for Community Facilities Districts for a savings of \$4.5M.

CITY MANAGER'S REPORT - None

PRESENTATIONS/INFORMATION UPDATES – None

PUBLIC COMMENT

- John Washington welcomed the new Councilmembers.
- Mike Fernandez commented on light rail in Scottsdale.

- Tammy Rowland announced that the City of Phoenix is closing Echo Canyon Park for renovation, while leaving the Cholla Trailhead open. She asked the Council to request that the City of Phoenix close Cholla Trailhead through March 31st to alleviate neighborhood congestion.
- Mark Stuart commented on subsidies and how they are implemented in Scottsdale. He submitted a document (attached), which he asked to have made part of the public record.

MINUTES

Request: Approve the Regular Meeting Minutes of December 3, 2012 and December 4, 2012; and Special Meeting Minutes of December 3, 2012.

MOTION AND VOTE - MINUTES

Vice Mayor Robbins moved to approve the Regular Meeting Minutes of December 3, 2012 and December 4, 2012; and Special Meeting Minutes of December 3, 2012. Councilwoman Milhaven seconded the motion, which carried 7/0.

CONSENT AGENDA

- 1. Hollywood Live Partial Termination of Development Agreement and Conditional Use Permit (24-UP-2012)**
Requests:
 1. Adopt **Resolution No. 9294** authorizing Agreement No. 2013-007-COS for the partial termination of Development Agreement No. 1998-046-COS with Excel Promenade LLC and Excel Promenade Office LLC; and
 2. Adopt **Resolution No. 9290** approving a Conditional Use Permit for a bar use in an existing 19,600± square-foot establishment with Planned Regional Center (PRC) zoning, and finding that the conditional use permit criteria have been met, for Case No. 24-UP-2012.

Location: 16203 N. Scottsdale Road
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 2. Hollywood Live Liquor License (113-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a person and location transfer of a series 6 (bar) liquor license for an existing location with a new owner.
Location: 16203 N. Scottsdale Road
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 3. La Petite France Liquor License (119-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for an existing location with a new owner.
Location: 7001 N. Scottsdale Road, Suites 127 and 128
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov

- 4. Liquor Vault Liquor License (120-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for an Agent and Acquisition of Control Change for an existing series 9 (liquor store) liquor license.
Location: 9301 E. Shea Boulevard, Suite 133
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 5. Chop & Wok Liquor License (121-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for a previously licensed location with a new owner.
Location: 10425 N. Scottsdale Road
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 6. Chipotle Mexican Grill No. 2029 Liquor License (122-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for a new location and owner.
Location: 20851 N. Scottsdale Road, Suite D-101
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 7. Pig & Pickle Liquor License (123-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for an existing location with a new owner.
Location: 2922 N. Hayden Road
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 8. Sprouts Farmer's Market No. 2 Liquor License (124-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for sampling privileges for a series 10 (beer and wine store) liquor license for an existing location and owner.
Location: 9301 E. Shea Boulevard, Suite 132
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 9. Sprouts Farmer's Market No. 19 Liquor License (125-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for sampling privileges for a series 10 (beer and wine store) liquor license for an existing location and owner.
Location: 4402 N. Miller Road
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov

- 10. Inchin Bamboo Garden Liquor License (126-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for a new location and owner.
Location: 10050 N. Scottsdale Road, Suites 121, 123, and 125
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 11. 21 Degrees Cigars Liquor License (127-LL-2012)**
Request: Consider forwarding a recommendation to the Arizona Department of Liquor Licenses and Control for a person and location transfer of a series 7 (beer and wine bar) liquor license for a new location and owner.
Location: 9375 E. Shea Boulevard, Suite C-100
Staff Contact(s): Tim Curtis, Current Planning Director, 480-312-4210, tcurtis@scottsdaleaz.gov
- 12. Sante Abandonment (9-AB-2011)**
Request: Adopt **Resolution No. 9272** extending the time to fulfill the conditions for abandoning 25± feet of right-of-way easement along E. Earll Drive and N. Civic Center Plaza, located adjacent to 7345 E. Earll Drive, with Highway Commercial District (C-3) zoning.
Location: 7345 E. Earll Drive
Staff Contact(s): Randy Grant, Planning, Neighborhood, and Transportation Administrator, 480-312-2664, rgrant@scottsdaleaz.gov
- 13. Hydrogen Sulfide Mitigation Improvements Construction Services Contract**
Request: Adopt **Resolution No. 9224** authorizing CM@Risk Construction Services Contract No. 2012-176-COS with Archer Western Construction, LLC, in the amount of \$189,646, for design phase services for hydrogen sulfide mitigation improvements at five pumpback sewer stations.
Staff Contact(s): Derek Earle, Public Works Acting Executive Director, 480-312-2776, dearle@scottsdaleaz.gov
- 14. Transportation On-Call Engineering Services Contract Modifications**
Request: Adopt **Resolution No. 9275** authorizing the following transportation on-call engineering services contract modifications for the fourth year option:
1. On-Call Engineering Services Contract No. 2009-188-COS-A2 with Gavan and Barker, Inc.
2. On-Call Engineering Services Contract No. 2009-189-COS-A2 with Wood Patel and Associates, Inc.
3. On-Call Engineering Services Contract No. 2009-190-COS-A2 with Dibble Engineering, Inc.
4. On-Call Engineering Services Contract No. 2009-192-COS-A2 with URS Corporation
Staff Contact(s): Derek Earle, Public Works Acting Executive Director, 480-312-2776, dearle@scottsdaleaz.gov

- 15. Clinical Modalities and Training Budget Transfer**
Request: Adopt **Resolution No. 9296** authorizing a budget transfer of \$70,000 from the General Fund Operating Contingency to the Fire Department's General Fund Operating Budget for the costs associated with providing training related to new clinical modalities. These monies will be directly reimbursed to the City by Professional Medical Transport Ambulance through the Financial Reserves for Clinical Modalities and Training portion of Ambulance Contract No. 2005-162-COS.
Staff Contact(s): Alan Rodbell, Public Safety Executive Director, 480-312-1900, arodbell@scottsdaleaz.gov
- 16. Emergency Traffic Management Mutual Aid Intergovernmental Agreement**
Request: Adopt **Resolution No. 9245** authorizing Intergovernmental Agreement No. 2012-186-COS with Maricopa County Department of Transportation for emergency traffic management mutual aid (Regional Emergency Action Coordinating Team Program).
Staff Contact(s): Derek Earle, Public Works Acting Executive Director, 480-312-2776, dearle@scottsdaleaz.gov
- 17. Proposition 202 Funds Acceptance Intergovernmental Agreement**
Request: Adopt **Resolution No. 9215** to authorize:
1. Intergovernmental Agreement No. 2012-174-COS with the Salt River Pima-Maricopa Indian Community to accept \$1,228,355.31 in Proposition 202 Tribal Gaming funds.
 2. Budget transfer of \$1,228,355.31 from the adopted FY 2012/13 Grant Contingency and/or the Future Grants Budget to the center assigned to record all the grant activity.
- Staff Contact(s):** Brad Lundahl, Government Relations Director, 480-312-2683, blundahl@scottsdaleaz.gov
- 17A. Scottsdale Fashion Square Settlement**
Request: Adopt **Resolution No. 9303** to:
1. Approve Contract No. 2013-012-COS between the City and Scottsdale Fashion Square LLC (SFS) settling a dispute between the City and SFS regarding the amount owed by the City to pay all rent due under the Scottsdale Fashion Square Partnership (SFSP) Garage Lease Agreement, Exhibit 7 to Redevelopment Agreement No. 960138, amending that Lease Agreement; and
 2. Authorize such budget transfer authority as may be necessary to fund such settlement.
- Staff Contact(s):** Bruce Washburn, City Attorney, 480-312-2405, bwashburn@scottsdaleaz.gov

MOTION AND VOTE - CONSENT AGENDA

Vice Mayor Robbins moved to approve Consent Items 1 through 17A. Councilwoman Klapp seconded the motion, which carried 7/0.

REGULAR AGENDA

17B. Community Services of Arizona Settlement

Request: Adopt **Resolution No. 9305** approving the contracts listed below for the purpose of a settlement with Community Services of Arizona, Inc. (CSA), allowing it to transfer eight multi-family properties that were funded with Federal Home Investment Partnership Program (HOME) funds to Quantum Realty Partners, LLC, or affiliated entity or designee(s), and providing for the limitations arising from the use of those HOME funds to remain in place for the required periods of time.

- a) Agreement No. 2013-013-COS, Release Agreement, between the City and CSA;
- b) Agreement No. 2013-014-COS, Buyer's Agreement between the City and Quantum Realty Partners, LLC, or affiliated entity or designee(s);
- c) Agreement No. 2013-015-COS, Loan Restructuring Agreement, between the City and Quantum Realty Partners, LLC, or affiliated entity or designee(s);
- d) Agreement No. 2013-016-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Casa Cibola located at 3202-3208 N. 68th Street, Scottsdale, AZ;
- e) Agreement No. 2013-017-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Villa Ventura located at 3230 N. 66th Place, Scottsdale, AZ;
- f) Agreement No. 2013-018-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Cheery Lynn II located at 6702 E. Cheery Lynn Road, Scottsdale, AZ;
- g) Agreement No. 2013-019-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Cheery Lynn III located at 6638 and 6644 E. Cheery Lynn Road, Scottsdale, AZ;
- h) Agreement No. 2013-020-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Shalimar Sands located at 6824 E. 4th Street, Scottsdale, AZ;
- i) Agreement No. 2013-021-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Royal Palms located at 4525 N. 74th Street, Scottsdale, AZ;
- j) Agreement No. 2013-022-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called 66th Place located at 3231 N. 66th Place, Scottsdale, AZ;
- k) Agreement No. 2013-023-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Cheery Lynn I located at 6701 and 6707 E. Cheery Lynn Road, Scottsdale AZ.

Staff Contact(s): Bruce Washburn, City Attorney, 480-312-2405,
bwashburn@scottsdaleaz.gov

Community Services Executive Director Bill Murphy gave a PowerPoint presentation (attached), outlining the details of the proposed settlement. Community Services of Arizona, Inc. (CSA) has asked to sell eight multi-family properties to Quantum Realty Partners, or its affiliated designee, for \$1.6M. Under Federal guidelines, the new buyer is responsible for operating the properties as affordable rental units, with annual compliance monitoring performed by the City of Scottsdale. The City's main goal is to protect the City's financial interest, avoid any repayment to HUD, maintain a positive working relationship with HUD and the Maricopa County Consortium, and to continue to adhere to Federal HOME regulations.

MOTION AND VOTE - ITEM 17B

Councilman Littlefield moved to adopt Resolution No. 9305, approving the contracts listed below for the purpose of a settlement with Community Services of Arizona, Inc. (CSA), allowing it to transfer eight multi-family properties that were funded with Federal Home Investment Partnership Program (HOME) funds to Quantum Realty Partners, LLC, or affiliated entity or designee(s), and providing for the limitations arising from the use of those HOME funds to remain in place for the required periods of time.

- a) Agreement No. 2013-013-COS, Release Agreement, between the City and CSA;
- b) Agreement No. 2013-014-COS, Buyer's Agreement between the City and Quantum Realty Partners, LLC, or affiliated entity or designee(s);
- c) Agreement No. 2013-015-COS, Loan Restructuring Agreement, between the City and Quantum Realty Partners, LLC, or affiliated entity or designee(s);
- d) Agreement No. 2013-016-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Casa Cibola located at 3202-3208 N. 68th Street, Scottsdale, AZ;
- e) Agreement No. 2013-017-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Villa Ventura located at 3230 N. 66th Place, Scottsdale, AZ;
- f) Agreement No. 2013-018-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Cheery Lynn II located at 6702 E. Cheery Lynn Road, Scottsdale, AZ;
- g) Agreement No. 2013-019-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Cheery Lynn III located at 6638 and 6644 E. Cheery Lynn Road, Scottsdale, AZ;
- h) Agreement No. 2013-020-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Shalimar Sands located at 6824 E. 4th Street, Scottsdale, AZ;
- i) Agreement No. 2013-021-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Royal Palms located at 4525 N. 74th Street, Scottsdale, AZ;
- j) Agreement No. 2013-022-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called 66th Place located at 3231 N. 66th Place, Scottsdale, AZ;
- k) Agreement No. 2013-023-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called Cheery Lynn I located at 6701 and 6707 E. Cheery Lynn Road, Scottsdale AZ.

Councilwoman Klapp seconded the motion, which carried 7/0.

18. 2013 Federal Legislative Agenda

Request: Consider the approval of the City of Scottsdale's 2013 Federal Legislative Agenda.

Presenter(s): Brad Lundahl, Government Relations Director

Staff Contact(s): Brad Lundahl, Government Relations Director, 480-312-2683, blundahl@scottsdaleaz.gov

Government Relations Director Brad Lundahl gave a PowerPoint presentation (attached) on the 2013 Federal Legislative Agenda.

Discussion:

Human Services

- Mr. Lundahl acknowledged that the Federal Government has made cuts to many programs over the past few years and confirmed that the City is not requesting additional program revenue. The City's intent is to ask for the minimum amount of revenue necessary to hold the line to maintain current programs.

Information Technology - Municipal Right-of-way/broadband services

- A Councilmember noted recent easement issues between a utility company and the City over who has the right-of-way to make roadway improvements on Thomas Road. Mr. Lundahl committed to working with Acting City Manager Dan Worth to make changes to the proposal to address jurisdictional issues.

Information Technology - FCC Public Safety Narrowbanding Requirements

- Mr. Lundahl explained that the FCC has mandated narrowbanding at 700 megahertz by 2017, which will cost the regional Public Safety entities approximately \$150.0M to implement. A three-pronged approach is being proposed: 1) oppose the requirement to narrowband the frequency; 2) support efforts to grant the regional Public Safety entities a waiver for the narrowbanding requirement; and 3) request an extension of the deadline up to 2020 to allow more time to make resources available for implementation.
- A Councilmember pointed out that the City recently spent a great deal of money to move to the 700 megahertz frequency, which pales in comparison to the requirement for narrowbanding.

Public Safety - Public Safety Communications Systems

- A Councilmember stated that the City has been making efforts towards adjusting the frequency for public safety communications for quite some time. Mr. Lundahl acknowledged that Scottsdale is doing well, but some of the neighboring communities have not reached the level that the item is trying to address.

Public Safety – Fire SAFER Grants - Application Process

- Prior to the economic downturn, it was the City's policy to only accept funds for shovel-ready capital projects. During the economic downturn, funds were accepted to hire firefighters to achieve four firefighters on each truck, with the understanding that the City would be responsible for salaries beyond the initial period of time. The City does not need to participate in pursuing simplification of the process because the City is not interested in applying for additional grants.
- A comment was made that one problem with Federal funding is that cities are concerned about getting their piece of the pie when they should be working to spend less.
- Concerns were expressed regarding the purpose for simplifying the process of applying for SAFER Grants for operational needs.
- Councilmembers expressed reluctance to reject the proposal without a better understanding of the program and how it can potentially benefit the City in the future.
- The Council consensus was to remove the SAFER Grants Application Process from the 2013 Federal Legislative Agenda.

Regulatory Affairs - Clean Air Act - PM-10

- Mr. Lundahl explained that Maricopa County is in a non-attainment area for PM-10 (dust), and faces sanctions and possible loss of Federal transportation money if the area's air quality does not meet federal standards. By working with the Maricopa Association of Governments, strides have been made in getting the EPA to recognize natural events, such as dust storms. However, the EPA's rules and regulations still need to be tweaked to recognize the region's unique dust storms.
- A Councilmember believes that the EPA's guidance interpretation of exceptional events is flawed and requires greater standardization.

Regulatory Affairs - Navajo Generating Station

- Mr. Lundahl explained that the EPA is requesting that the Navajo Generating Station install additional emissions equipment, with an estimated cost of \$1.0B. When asked how far this issue could go, Mr. Lundahl replied that if the EPA pursues the request litigation would not be out of the question.

MAYOR AND COUNCIL

19. Ethics Refresher Training

On May 2, 2006, the Scottsdale City Council adopted Resolution No. 6879 and Ordinance No. 3675, establishing the City of Scottsdale Public Service Ethics Program and a Code of Ethical Behavior related to elected and appointed officials, which became effective July 1, 2006. The City's Ethics Program and the Code require that the Councilmembers receive annual ethics training.

This ethics training for the City Council will include the following components:

1. A discussion of the requirements of the Code of Ethical Behavior that are most frequently implicated in the Councilmembers' activities.
2. An update on any changes that might have occurred in the last year relating to the Code of Ethical Behavior.
3. An opportunity for Councilmembers to raise any issues of particular concern to them.

The training session is instructional and informational. No public business will be considered; however, the City Councilmembers may engage in discussion about ethics issues as part of this training session.

Staff Contact(s): Bruce Washburn, City Attorney, 480-312-2405,
bwashburn@scottsdaleaz.gov

City Attorney Bruce Washburn gave a PowerPoint presentation (attached) on the City's Ethics Program, focusing on when it is permissible for Councilmembers to make inquiries of staff and the City's gift policy.

Discussion:

- A Councilmember asked if all independent ethics officers' deliberations are made solely on the basis of the allegations in the complaint. Mr. Washburn explained that complaints against the Mayor or a Councilmember are immediately forwarded to an independent ethics review officer, without comment or input from anyone. The officer reviews the allegations to determine whether the complaint warrants further action. If it is determined that there is a basis for proceeding, a body of three ethics officers is empaneled to conduct a hearing, where both sides of the issue are heard, and to determine whether a violation had occurred.
- Clarification was sought on when a Councilmember can directly ask questions of a department head. Mr. Washburn said questions raised outside of a public meeting should be directed to the attention of the relevant Charter Officer. At a Council meeting, it is permissible for Council to question any department head delegated by the City Manager, or appropriate Charter Officer, to talk to the Council about a particular matter.

PUBLIC COMMENT - None

CITIZEN PETITIONS

23. Receipt of Citizen Petitions

Request: Accept and acknowledge receipt of citizen petitions. Any member of the Council may make a motion, to be voted on by the Council, to: (1) Direct the City Manager to agendize the petition for further discussion; (2) direct the City Manager to investigate the matter and prepare a written response to the Council, with a copy to the petitioner; or (3) take no action.

Staff Contact(s): Carolyn Jagger, City Clerk, 480-312-2411, cjagger@scottsdaleaz.gov

No citizen petitions were received.

MAYOR AND COUNCIL ITEMS - None

ADJOURNMENT

With no further business to discuss, the Regular Meeting adjourned at 7:01 P.M.

SUBMITTED BY:



Carolyn Jagger
City Clerk

Officially approved by the City Council on

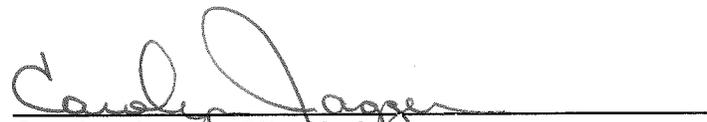
February 5, 2013

CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular Meeting of the City Council of Scottsdale, Arizona held on the 8th day of January 2013.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 5th day of February 2013.



Carolyn Jagger, City Clerk

Summary of the Gift Clause violation claims against the T.P.C. "lease" arrangement.

We will be asking the court to overturn and abrogate this contract because it violates the Arizona Constitution's prohibition against municipalities providing subsidies to private entities.

At this time, there are 6 basic claims which the city must counter in order to successfully convince a court that the business arrangement with the T.P.C. is not a violation of the Gift Clause.

- I. **The original business arrangement itself, as defined by the lease agreement, is a clear and unequivocal violation of the Gift Clause.**
- II. **The structure and design of the lease, and the history of enforcement of the lease provisions is in itself a subsidy to the T.P.C.**
- III. **The option to renew and extend the lease, at no cost to the T.P.C., is an extremely valuable direct subsidy to the T.P.C.**
- IV. **This is a lease in name only. In reality, all of the operational risks of the lessee have been transferred to the city. Hence, this business arrangement is really a golf course management agreement. The city is paying between 15 to 30 times fair market value for this golf course management contract.**

- V. The city is paying the T.P.C. and the P.G.A. \$21 million to guarantee future television sponsorship of a professional golf tournament. The city is using taxpayer funds to directly assist the P.G.A. in enriching itself. This serves no legitimate public purpose as defined by the Arizona Supreme Court. Hence, it is prohibited by the Gift Clause.

- VI. This deal "cries out" for judicial review because of the circumstances surrounding the negotiations with the T.P.C. The public presentations to the city council by city staff were extraordinarily false and misleading.

Summary of the Gift Clause violation claims against the T.P.C. "lease" arrangement.

We will be asking the court to overturn and abrogate this contract because it violates the Arizona Constitution's prohibition against municipalities providing subsidies to private entities.

At this time, there are 6 basic claims which the city must counter in order to successfully convince a court that the business arrangement with the T.P.C. is not a violation of the Gift Clause.

I. The original business arrangement itself, as defined by the lease agreement, is a clear and unequivocal violation of the Gift Clause.

The city built a golf course with public funds with two avowed purposes:

- (1) Building a course solely for the purposes of hosting the Phoenix Open golf tournament.
- (2) Building a course in order to promote the Tournament Players Club brand and the future viability and profitability of this brand.

This arrangement fails the Wistuber test. There is no bona fide public purpose. The consideration given to the city fails the objective fair market value criterion test.

In reality, this golf course is no different than any private golf course that is open to the public, except that the city must spend about \$1 million annually to maintain the viability of the course.

The city didn't build the course because of a lack of "high quality" golf courses open to the public in Scottsdale.

The city didn't build the golf course because Scottsdale taxpayers were crying out for more golfing opportunities.

The city built the course in order to promote and host the Phoenix Open.

The Phoenix Open exists for one reason and one reason only, to promote professional golf and professional golfers, and to enrich the professional golfers in the tournament. The Open also creates opportunities for private businesses to sell their products to the golfing public, via sponsorships and television advertising.

A successful golf tournament creates many indirect benefits to the hosting city, but no direct measurable benefits to taxpayers. There are no bargained for direct, measurable benefits to taxpayers, as required by the Arizona Supreme Court.

Because of the clear intent of the arrangement, it would be difficult to claim that the entire arrangement isn't a direct subsidy to the PGA and the businesses that sell products via the tournament. It's extraordinarily difficult to claim that this "arrangement" was not designed as a direct subsidy to the T.P.C. and the P.G.A.

II. The structure and design of the lease, and the history of enforcement of the lease provisions is in itself a subsidy to the T.P.C.

In reality, this is a lease in name only. This lease effectively privatizes a public asset, because it transfers all of the financial benefits of ownership to the T.P.C. at the direct expense of the taxpayer. The city retains the risks of ownership, which are normally borne by the lessee.

Since lease inception, the city has lost \$27 million on this lease. The T.P.C. and the P.G.A. have earned between \$30 million and \$100 million from this relationship.

Once again , it fails to meet the Public Purpose and Objective Market Value criterion set forth in Wistuber.

1. The lease explicitly admits to creating subsidies for the T.P.C.
2. The T.P.C. is given water at the city's cost. No other golf courses or businesses receive this type of subsidy.
3. The lease does not conform to industry standards. There are no performance standards or minimum performance requirements.
4. There are no periodic performance review requirements.
5. There are no financial controls to protect ownerships interests.
6. There is no verification process to ensure compliance with the terms of the lease.
7. There is no criterion for replacing the T.P.C. for non-performance.

How can the city know whether it is receiving what it has bargained for?

The lease is in effect a "perpetuity", wherein the T.P.C. will remain in control of the public asset, so long as it desires.

The term of the lease far exceeds industry norms. Typically, a lease is 3 to 5 years, and 10 years is considered a very long term. Lease renewal is not automatic, unless performance measures are attained or other circumstances dictate that renewal is desirable for the owner.

None of these customary controls of ownership exist here.

Without financial controls , verification procedures and a process for replacing the manager, you are an owner in name only.

III. The option to renew and extend the lease, at no cost to the T.P.C., is an extremely valuable direct subsidy to the T.P.C. This option has a current market value of between \$5 million and \$35 million, depending on the relevant valuation parameters.

Once again, granting this option to the T.P.C. for free fails both criterion of the Wistuber Test: It serves no public purpose and the consideration received is multiples less than the objective fair market value of the option.

An option is a special type of insurance contract. An option allows the owner of the option to guarantee a future stream of benefits to herself, in exchange for paying the market price of the option.

An option to extend a business lease protects the lessee from competition from other businesses that desire to compete for this business.

An option allows the lessee to continue a lucrative business arrangement for an extended period of time.

An option to extend a business lease will only be exercised if it benefits the option owner.

The fair market value of this option is the expected discounted value of the future cash flows to the option owner.

Using the financial data provided to the city at year end 2011 allows us to estimate a value for the option.

Using a binomial option pricing model , with current interest rates and historical data as estimates of the relevant parameters, yields an estimated market value of \$5 million to \$35 million for the option price. The city received nothing tangible in return for allowing the T.P.C. to exercise its option to extend the contract for 25 years.

- IV. This is a lease in name only. In reality, all of the operational risks of the lessee have been transferred to the city. Hence, this business arrangement is really a golf course management agreement. The city is paying between 15 to 30 times fair market value for this golf course management contract. This agreement fails the Objective Fair Market Value criteria for analyzing the consideration the city is receiving in return for its cash payments of \$21 million for future course improvements.**

It's normal practice in Arizona for golf course management companies to receive 3 to 5 percent of gross revenues, plus a bonus for equaling or exceeding E.B.I.T.D.A. targets.

The T.P.C. is receiving 90 percent of golf revenues, plus 98 percent of sales, plus all revenue from golf lessons, plus all membership fees.

This is the proverbial garbage truck example in *Turken v Gordon*. The city is buying a proverbial garbage truck for \$10 million, when the fair market value is \$300,000. This results in a direct subsidy to the seller of the proverbial garbage truck.

So, even if a court disagrees with us on items I. to III., we will prevail on this alone. The business arrangement must meet both Wistuber criteria in order to comply with the Gift Clause. It clearly fails the objective Fair Market Value test.

- V. The city is paying the T.P.C. and the P.G.A. \$21 million to guarantee future television sponsorship of a professional golf tournament. The city is using taxpayer funds to directly assist the P.G.A. in enriching itself. This serves no legitimate public**

purpose as defined by the Arizona Supreme Court. Hence, it is prohibited by the Gift Clause.

T.V. sponsorship underwrites the tournament purse, it helps P.G.A. members to grow their endorsement deals with private merchants, and it helps private businesses to sell products to the public. The only reason of existence for T.V. sponsorship of golf tournaments is to promote purely private interests.

The city certainly receives many indirect public benefits from the location of the Phoenix Open at the T.P.C. of Scottsdale. The city may even benefit indirectly from the T.V. coverage of the Phoenix Open. This does not suffice to ensure compliance with the Gift Clause. As our Supreme court has noted already, "Compliance with the Gift Clause cannot be assumed , simply because the indirect public benefits may be substantial."

VI. This deal "cries out" for judicial review because of the circumstances surrounding the negotiations with the T.P.C. The public presentations to the city council by city staff were extraordinarily false and misleading.

Many crucial facts were concealed from the council. Information necessary to make an informed decision in the best interests of the citizenry were withheld and other information was falsified.

The city council has received no explicit guidance or education about how a subsidy is defined , or how to analyze compliance with the Gift Clause.

Item 17B

Resolution No. 9305

PROPERTY SETTLEMENT WITH
COMMUNITY SERVICES OF
ARIZONA, INC. (CSA)

Property Settlement

- Adopt **Resolution No. 9305** authorizing the Mayor to execute contracts for the purpose of a settlement with Community Services of Arizona (CSA) allowing it to transfer eight multifamily properties funded with federal HOME Investment Partnership (HOME) Program funds to Quantum Realty Partners, LLC, or its affiliated entity(ies) or designee(s), or nominees (Buyer) and providing for the limitations arising from the use of those home funds to remain in place for the required periods of time.

Home Investment Partnership Program (HOME)

- Provided by Department of Housing and Urban Development (HUD)
- Funds administered by the City of Scottsdale through the Maricopa HOME Consortium
- Scottsdale has participated and administered the HOME program for past 18 years
- Funding supports activities that increase the supply of affordable housing for low-income persons
- Program compliance Regulated by HUD

Home Investment Partnership Program (HOME)

- Federal HOME Regulations:
 - require a period of affordability on housing for low-income persons of 15-20 years depending on amount of investment
 - mandate eligibility requirements for tenants
 - set maximum rent amounts during period of affordability

Community Services of Arizona, Inc. (CSA)

- Non-profit organization
- Received HOME funds for acquisition, rehabilitation, rental of multi-family properties between 1996-2006
- City HOME funds from HUD Program
- Maricopa County HOME Consortium Community Housing and Development Organization (CHDO) funding

Community Services of Arizona, Inc. (CSA)

- CSA owns and operates 8 multi-family low-income rental properties in Scottsdale
- Total of 86 units (66 affordable)
- Total HOME investment of \$4,002,061
- City General Fund investment of \$100,000

Property Settlement

- CSA requesting authorization from City to sell all 8 multi-family properties as one portfolio
- Total of 86 units (66 affordable)
- Sale price \$1.6 million dollars

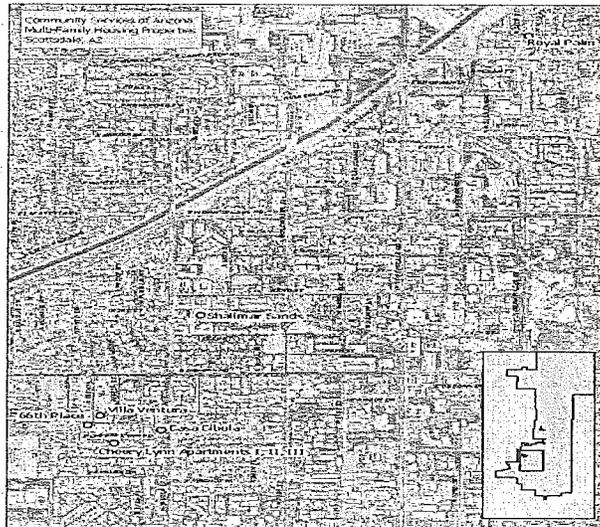
Property Settlement

- Buyer - responsible for operating properties as affordable rental units through period of affordability
- Buyer - required to follow federal HOME Program regulations
- Properties and records subject to annual compliance monitoring by City

Property Settlement

- City currently in 1st deed position on 5 of 8 properties
- City will subordinate 1st deed positions, in exchange City will record Declarations of Affirmative Land Use Restrictive Covenants (LURA) in 1st position on all 8 properties

CSA Multi-Family Portfolio



CSA Multi-Family Portfolio

Property Name	Property Address	Affordable Units	Public Investment	Affordability Expiration
Cheery Lynn I	6701/6707 E. Cheery Lynn Rd.	8	\$248,400	June 26, 2013
Casa Cibola	3202/3208 N. 68th St.	8	\$370,010	March 6, 2017
Villa Ventura	3226/3230 N. 66th Pl.	8	\$425,000	April 29, 2023
Shalimar Sands	6824 E. 4th St.	10	\$694,283	April 22, 2024
Royal Palms	4525 N. 74th St.	8	\$490,808	May 5, 2025
Cheery Lynn II	6702 E. Cheery Lynn Rd.	4	\$292,516	March 9, 2026
Cheery Lynn III	6638/6644 E. Cheery Lynn Rd.	8	\$728,402	July 6, 2027
66th Place	3231 N. 66th Pl.	12	*\$852,642	July 12, 2027
*100,000 General Funds		66	\$4,102,061	

Recent Staff Action

- City staff met with CSA and Buyer over last year to establish agreements that would:
 - Preserve affordability periods
 - Protect City’s HOME investment of \$4,002,061
 - Allow CSA to sell all 8 multi-family properties to Buyer

Settlement Agreement

- City's main goals of transaction
 - Protect the City's financial interest to avoid repayment of initial HOME investment of \$4,002,061
 - Continue to follow and adhere to federal HOME regulations
 - Preserve affordability periods on all properties
 - Continue to provide affordable housing to the citizens of Scottsdale

Agreement Documents

- Release Agreement between the City and CSA
- Buyer's Agreement between the City and Buyer
- Loan Restructuring Agreement (Mezzanine) between the City and Buyer
- Declarations of Affirmative Land Use Restrictive Covenants (LURA), in 1st position on all 8 properties

Land Use Restriction Agreements

- Land Use Restriction Agreements (LURA's)
 - Restrictive covenants that run with the land will be recorded for each property
 - Preserve the affordability periods
 - Contain provisions that enable the City to enforce affordability requirements
 - Allow City to continue to provide low-income housing in Scottsdale
 - City continues to meet HUD regulatory obligations to avoid repayment of HOME funds

Staff Recommendation

- Adopt **Resolution No. 9305** authorizing the Mayor to execute contracts for the purpose of a settlement with Community Services of Arizona (CSA) allowing it to transfer eight multifamily properties funded with federal HOME Investment Partnership (HOME) Program funds to Quantum Realty Partners, LLC, or its affiliated entity(ies) or designee(s), or nominees (Buyer) and providing for the limitations arising from the use of those home funds to remain in place for the required periods of time.

Agreement Documents

- Agreement No. 2013-013-COS, Release Agreement between the City and CSA;
- Agreement No. 2013-014-COS, Buyer's Agreement between the City and Holiday Partners, LLC., as nominee of Quantum Realty Partners, LLC;
- Agreement No. 2013-015-COS, Loan Restructuring (Mezzanine) Agreement between the City and Holiday Partners, LLC., as nominee of Quantum Realty Partners, LLC;

Agreement Documents

- Agreement No. 2013-016-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called **Casa Cibola located at 3202-3208 N. 68th Street, Scottsdale, AZ;**
- Agreement No. 2013-017-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called **Villa Ventura located at 3230 N. 66th Place, Scottsdale, AZ;**
- Agreement No. 2013-018-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called **Cheery Lynn II located at 6702 E. Cheery Lynn Road, Scottsdale, AZ;**

Agreement Documents

- Agreement No. 2013-019-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called **Cheery Lynn III located at 6638 and 6644 E. Cheery Lynn Road, Scottsdale, AZ;**
- Agreement No. 2013-020-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called **Shalimar Sands located at 6824 E. 4th Street, Scottsdale, AZ;**
- Agreement No. 2013-021-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called **Royal Palms located at 4525 N. 74th Street, Scottsdale, AZ;**

Agreement Documents

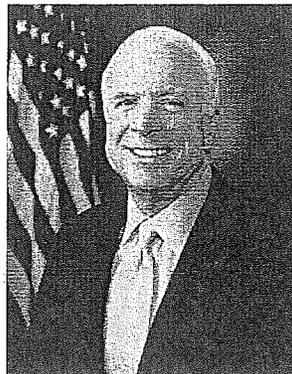
- Agreement No. 2013-022-COS, Declarations of Affirmative Land Use Restrictive Covenants, for the property called **66th Place located at 3231 N. 66th Place, Scottsdale, AZ;**
- Agreement No. 2013-023-COS; Declarations of Affirmative Land Use Restrictive Covenants, for the property called **Cheery Lynn I located at 6701 and 6707 E. Cheery Lynn Road, Scottsdale AZ.**

Item 18

Federal Legislative Agenda

January 8, 2013

Senator John McCain



Senator Jeff Flake



Congressman David Schweikert

- Congressional District 6



Congresswoman Kyrsten Sinema

- Congressional District 9



Human Services

- Support continued funding for the CDBG program.
- Support the continued viability of the Section 8 Housing Choice Voucher program.
- Support continued funding for LIHEAP.
- Support changes to the LIHEAP funding allocation.
- Support continued funding for the CSBG program.
- Support the Weatherization Assistance Program.

Information Technology
Municipal Right-of-Way/Broadband Services

- Oppose any efforts that would preempt a local jurisdictions rights to manage and receive fair compensation for the use of its right-of-way, easements, and property.

Information Technology
FCC Public Safety Narrowbanding Requirements

- Oppose the requirement to “narrowband” public safety frequencies.
- Support efforts to grant a waiver from the narrowbanding requirements for members of the Regional Wireless Cooperative.
- Support extending the narrowbanding implementation date to 2020.

Preservation
McDowell Sonoran Preserve

- Support the restoration of funding of the Land and Water Conservation Fund.
 - Funded from offshore drilling activities.
 - Congress originally authorized up to \$900 million annually.
 - Program receives a fraction of that amount each year.

Public Safety
Flexibility of Public Safety Funding

- Support more flexibility in the use of federal Homeland Security funds to include *maintenance* and *operations* of existing federally funded equipment.

Public Safety

Metropolitan Medical Response System (MMRS)

- Support the continued funding of the Metropolitan Medical Response program at the Department of Homeland Security.
 - An operational system at the local level to respond to a terrorist incident and other public health emergencies that create mass casualties or casualties requiring unique care capabilities.
 - Supports integration of emergency management, health, and medical systems to respond to mass casualty incidents.

Public Safety

Public Safety Communications Systems

- Support efforts to enhance a national framework for public safety communications, interoperability, and consistent operational standards.

Public Safety
SAFER Grants -- Application Process

- Support extending the SAFER grant application period to give local governments more opportunity to evaluate the need for SAFER grants and make financially sound decisions in making an application.
- Support extending the time between when a SAFER grant is awarded until it must be utilized – to give local governments more time to properly recruit and hire new employees.

Regulatory Affairs
Clean Water Act – Proposed Guidance

- Oppose actions by the EPA and U.S. Corps of Engineers to expand the definition of “waters of the United States” through Guidance or other non-legislative mechanisms.

Regulatory Affairs
Clean Air Act – PM-10

- Support efforts by the EPA to revise the flawed “Exceptional Events Rule” for PM-10 emissions – giving more flexibility to western states that are susceptible to natural dust-emitting meteorological events.

Regulatory Affairs
Navajo Generating Station

- Oppose efforts by the EPA to impose unnecessary emission controls at the Navajo Generating Station.

Water Resources
Water Resources -- Regulations

- Oppose unfunded and/or burdensome regulations that would unnecessarily increase water delivery costs disproportionate to the benefit received by Arizona water users.

Water Resources
Forest Restoration

- Support efforts to enact effective and large-scale forest restoration efforts for Arizona and other western forests to improve forest health, protect water supplies, and reduce the risks from catastrophic wildfires.

Any Questions?

Item 19

***COUNCIL ETHICS REFRESHER
JANUARY 8, 2013***



***CITY COUNCIL ETHICS 2012 ETHICS
REFRESHER TRAINING TOPICS***

1. INTERACTIONS WITH EMPLOYEES
2. GIFTS
 - a. How to analyze
 - b. Reporting
3. QUESTIONS

CITY CHARTER

ART. 2, § 16

Sec. 16. Appointments, removals and interactions with city employees.

A. Neither the council, any of its members, nor any member of an appointed public body shall **control or demand the appointment or removal** of city employees subject to the direction and supervision of any officer of the city.

WHAT YOU CAN DO

B. The council and its members may interact with such employees **for the purpose of inquiries**. However, neither the council, any of its members, nor any member of an appointed public body shall **give orders** to any such employees, either publicly or privately.

***EMPLOYEES SERVING
MAYOR AND COUNCIL***

C. This section does not apply to city employees whose primary duties are to directly serve the mayor or members of the council.

***DISCUSSIONS AT
OPEN MEETINGS***

The council, at a public meeting, may express its views and fully and freely discuss with any officer of the city anything pertaining to city affairs or the interests of the city.

COUNCIL RULE 13.1

No Councilmember shall make any inquiry of staff, or otherwise request any staff project, requiring over eight hours of staff work without first placing such an item on an agenda for purposes of discussion and direction by Council. This requirement does not apply to staff members whose primary duties are to directly serve the Mayor or members of Council.

SECTION 2-56, CODE OF ETHICAL BEHAVIOR

(6) If the complaint states on its face allegations that, if true, would constitute a violation of a **mandatory requirement** or prohibition (as opposed to **aspirational or administrative provisions**) of the City's Code of Ethical Behavior or a city law, take action as set forth below.

GIFTS

Two separate Code provisions:

SRC § 2-50 applies to elected officials and Board and Commission members

SRC § 14-135 applies to all City officials, officers, employees, and Board and Commission members

SRC § 2-50(a)

City officials are prohibited from soliciting, receiving, or accepting gifts of any kind from anyone who is **engaged in a general practice or specific situation that involves the city's decision-making or permitting processes**, except as exempted below.

EXEMPTIONS – SRC § 2-50(b)

Exemptions include **entertainment, hospitality (including meals), transportation, and token mementoes** directly associated with **events** that an official is attending as a **representative of the city**. If any gift or personal benefit is permissible and exceeds twenty-five dollars (\$25.00) in value, then the city official must declare it to the city clerk as provided in the Scottsdale Revised Code Section 14-135, **unless reporting is not required by the Code provision.**

ARS § 14-135(D)

Gifts and other personal benefits or items of value shall not be accepted if acceptance could **reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action.**

ARS § 14-135(E)

If, after consideration of the ethical standards expressed in this policy, a gift, personal benefit, or other item in excess of twenty-five dollars (\$25.00) in value, is accepted, it must be declared in writing with the city clerk's office **within five (5) business days of acceptance**. The declaration shall be made on a form designated by the clerk.

ARS § 14-135(F)

The following items reflect legitimate public duties or purposes, or are otherwise **not considered gifts** to an employee or officer for personal benefit that must be declared pursuant to 14-135(e):

- (1) **Admission** to events which are **sponsored or funded in whole or in part by the city**, if furnished by the **city** or **sponsor(s)** of such events;
- (2) **Reasonable hosting**, including meals and refreshments, travel, and related expenses, furnished in connection with official speaking engagements, ceremonies or other **work-related appearances on behalf of the city**, when public or civic purposes are served;

ARS § 14-135(F) (continued)

- (3) Gifts of goodwill or other tokens of appreciation **accepted on behalf of the city**, or in the case of food, accepted and shared with others in the work place.
- (4) **Items received and donated to a charitable organization.**

**CITY SPONSORED EVENTS
FY 2012/13 (RESOLUTION 9214)**

- ✱ 1. Goodguys 15th Southwest Nationals
- ✱ 2. Scottsdale Classic Futurity & Quarter Horse Show
- ✱ 3. Arizona Bike Week
- ✱ 4. Sun Circuit Quarter Horse Show
- ✱ 5. Region 7 Arabian Championship Show
- ✱ 6. Scottsdale Culinary Festival
- ✱ 7. Barrett Jackson Collector Car Auction

CITY SPONSORED EVENTS (continued)

- * 8. Russo & Steele Scottsdale Auction
- * 9. Celebration of Fine Art
- * 10. Scottsdale Arabian Horse Show
- * 11. Arabian Breeder Finals
- * 12. Polo Series: Polo Season Finale
- * 13. Thunderbird Emporium
- * 14. Scottsdale Fall for Art

DOCUMENTS AT DAIS

- ❖ Personal Interest Disclosure form (due on or before 1/31)
- ❖ Ethics refresher form
- ❖ Resolution 9214 (sponsored events)