

**SCOTTSDALE CITY COUNCIL  
REGULAR MEETING MINUTES  
FRIDAY, DECEMBER 2, 2016**



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

**CALL TO ORDER**

Mayor W.J. "Jim" Lane called to order a Regular Meeting of the Scottsdale City Council at 5:07 P.M. on Friday, December 2, 2016, in the City Hall Kiva.

**ROLL CALL**

Present: Mayor W.J. "Jim" Lane; Vice Mayor Kathleen S. Littlefield; and Councilmembers Suzanne Klapp, Virginia Korte, Linda Milhaven, Guy Phillips, and David N. Smith

Also Present: Acting City Manager Brian Biesemeyer, City Attorney Bruce Washburn, City Treasurer Jeff Nichols, City Auditor Sharron Walker, and City Clerk Carolyn Jagger

**PLEDGE OF ALLEGIANCE** – Troop 583, Leaders Shannon Aiton and Clarise O'Connor

**INVOCATION** – Mayor Lane requested a moment of silence to reflect on the blessings of the City and across the nation for the Holiday season.

**MAYOR'S REPORT**

Mayor Lane congratulated the Saguaro High School Football Team on their 4<sup>th</sup> consecutive State championship.

Mayor Lane recognized John and Caroline Slade for their community generosity in sponsoring "Christmas in Scottsdale," a computerized multimedia holiday show. The Slades have raised and donated more than \$10,000 and delivered more than 3,000 donated toys to Child Crisis Arizona.

**PRESENTATIONS** – None

**NOTE:** MINUTES OF CITY COUNCIL MEETINGS AND WORK STUDY SESSIONS ARE PREPARED IN ACCORDANCE WITH THE PROVISIONS OF ARIZONA REVISED STATUTES. THESE MINUTES ARE INTENDED TO BE AN ACCURATE REFLECTION OF ACTION TAKEN AND DIRECTION GIVEN BY THE CITY COUNCIL AND ARE NOT VERBATIM TRANSCRIPTS. DIGITAL RECORDINGS AND CLOSED CAPTION TRANSCRIPTS OF SCOTTSDALE CITY COUNCIL MEETINGS ARE AVAILABLE ONLINE AND ARE ON FILE IN THE CITY CLERK'S OFFICE.

## **PUBLIC COMMENT**

- Alex McLaren asked the City to update the exercise equipment at Osborn Park.
- Lauren Mendoza asked to have the Scottsdale trolley route extended.
- Lee Massey expressed concern about parking in the Downtown area.
- Karen O'Connor asked the City to allow the Artisan Market to return to Southbridge.
- Bill Pfeiffer commented on the two-hour parking limits in downtown and suggested issuing additional permits for business owners.

## **ADDED ITEMS**

### **A1. Added Items**

The November 28, 2016 Special and Regular Meeting Minutes and Consent Item No. 18B were added to the agenda on December 1, 2016.

**Request:** Vote to accept the agenda as presented or continue the added item(s) to the next scheduled Council meeting, which is January 17, 2016.

## **MOTION AND VOTE – ADDED ITEMS**

Councilmember Korte made a motion to accept the agenda as presented. Vice Mayor Littlefield seconded the motion, which carried 7/0.

## **MINUTES**

Request: Approve the Regular Meeting Minutes of October 25, 2016, November 14, 2016, AND November 28, 2016; Work Study Session Minutes of October 25, 2016; Special Meeting Minutes of November 10, 2016 and November 28, 2016; and Executive Session Minutes of November 10, 2016.

## **MOTION AND VOTE – MINUTES**

Councilman Phillips made a motion to approve Regular Meeting Minutes of October 25, 2016, November 14, 2016, and November 28, 2016; Work Study Session Minutes of October 25, 2016; Special Meeting Minutes of November 10, 2016, and November 28, 2016; and Executive Session Minutes of November 10, 2016. Councilwoman Klapp seconded the motion, which carried 7/0.

## **CONSENT AGENDA**

### **1. XGolf Scottsdale Liquor License (94-LL-2016)**

**Request:** Consider forwarding a recommendation of approval to the Arizona Department of Liquor Licenses and Control for an agent and acquisition of control change for an existing Series 7 (beer and wine bar) State liquor license.

**Location:** 8480 E. Butherus Drive, Suite 102

**Staff Contact(s):** Tim Curtis, Current Planning Director, 480-312-4210, [tcurtis@scottsdaleaz.gov](mailto:tcurtis@scottsdaleaz.gov)

### **2. Rhythm and Wine Liquor License (97-LL-2016)**

**Request:** Consider forwarding a recommendation of approval to the Arizona Department of Liquor Licenses and Control for a Series 7 (beer and wine bar) State liquor license for an existing location and owner.

**Location:** 7605 E. Pinnacle Peak Road, Suite D-1

**Staff Contact(s):** Tim Curtis, Current Planning Director, 480-312-4210, [tcurtis@scottsdaleaz.gov](mailto:tcurtis@scottsdaleaz.gov)

- 3. Permanent Extension of Premises for Tia Shorty's (8-EX-2016)**  
**Request:** Consider forwarding a recommendation of approval to the Arizona Department of Liquor Licenses and Control for a permanent extension of premises for a Series 12 (restaurant) State liquor license for an existing location to expand the patio.  
**Location:** 7001 N. Scottsdale Road, Suite 184  
**Staff Contact(s):** Tim Curtis, Current Planning Director, 480-312-4210, [tcurtis@scottsdaleaz.gov](mailto:tcurtis@scottsdaleaz.gov)
- 4. Level Up Conditional Use Permit (9-UP-2015#2)**  
**Request:** Find that the conditional use permit criteria have been met and adopt **Resolution No. 10654** approving a Conditional Use Permit renewal for an existing Medical Marijuana Use (dispensary) in a 3,770± square-foot facility with Industrial Park (I-1) zoning.  
**Location:** 14980 N. 78<sup>th</sup> Way, Suites 204 and 207  
**Staff Contact(s):** Randy Grant, Planning and Development Services Director, 480-312-2664, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)
- 5. Byers Dispensary Renewal Conditional Use Permit (10-UP-2015#2)**  
**Request:** Find that the conditional use permit criteria have been met and adopt **Resolution No. 10652** approving a Conditional Use Permit renewal for an existing Medical Marijuana Use (dispensary) in a 6,800± square-foot facility with Industrial Park (I-1) zoning.  
**Location:** 15190 N. Hayden Road  
**Staff Contact(s):** Randy Grant, Planning and Development Services Director, 480-312-2664, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)
- 6. Vines & Hops Conditional Use Permit (8-UP-2016)**  
**Request:** Find that the conditional use permit criteria have been met and adopt **Resolution No. 10653** approving a Conditional Use Permit for a Bar on a 2400± square-foot site with Central Business/Parking District Downtown Overlay and Parking District Vehicle Parking Downtown Overlay (C-2/P-3 DO & P-2 DO) zoning.  
**Location:** 4216 N. Brown Avenue  
**Staff Contact(s):** Randy Grant, Planning and Development Services Director, 480-312-2664, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)
- 7. Granite Reef Circle Lofts Replat (19-PP-2006#2)**  
**Request:** Approve a replat to an existing approved subdivision final plat for a 20-lot subdivision with Multi-Family Residential (R-5) zoning.  
**Location:** 1401 N. Granite Reef Road  
**Staff Contact(s):** Randy Grant, Planning and Development Services Director, 480-312-2664, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)
- 8. Silverstone Parcel F Final Plat (9-PP-2015)**  
**Request:** Approve the final plat for 174 lots on 21.82± acres with Multiple-Family Residential District, Planned Community District (R-5/PCD) zoning.  
**Location:** Southeast corner of E. Pinnacle Peak Road and N. 74<sup>th</sup> St. (7360 E. Silverstone Dr.)  
**Staff Contact(s):** Randy Grant, Planning and Development Services Director, 480-312-2664, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)
- 9. Chauncey Marketplace Rezoning (19-ZN-2002#4)**  
**Request:** At the request of staff and the applicant, continue to January 17, 2017.

**10. Cattletrack Village Rezoning (19-ZN-2016)**

**Requests:**

1. Adopt **Ordinance No. 4291** approving a zoning district map amendment on a 2.1±-acre site from Single-Family Residential District (R1-43) zoning to Single-Family Residential District, Planned Residential District (R1-18/PRD) zoning, with a development plan and amended development standards, to allow for a 4-lot subdivision.
2. Adopt **Resolution No. 10651** declaring the document entitled "*Cattletrack Village Development Plan*" to be a public record.

**Location:** 5713 N. Cattletrack Road

**Staff Contact(s):** Randy Grant, Planning and Development Services Director, 480-312-2664, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)

**11. Clayton Hospitality Outdoor Dining Revocable License Agreement**

**Request:** Adopt **Resolution No. 10644** authorizing Agreement No. 2016-181-COS with Park Park, LLC, for an outdoor dining patio on a City parcel known as Scottsdale Mall.

**Location:** 7343 E. Scottsdale Mall

**Staff Contact(s):** Daniel Worth, Public Works Director, 480-312-5555, [dworth@scottsdaleaz.gov](mailto:dworth@scottsdaleaz.gov)

**12. Aztec (Pulte) Park Intergovernmental Agreement**

**Request:** Adopt **Resolution No. 10660** authorizing Agreement No. 1991-065-COS-A1 with Scottsdale Unified School District No. 48 to extend the agreement pertaining to the joint use of Aztec (Pulte) Park.

**Staff Contact(s):** William Murphy, Community Services Director, 480-312-7954, [bmurphy@scottsdaleaz.gov](mailto:bmurphy@scottsdaleaz.gov)

**13. Palomino Library Artwork Agreement**

**Request:** Adopt **Resolution No. 10658** authorizing Agreement No. 2016-185-COS with Scottsdale Unified School District No. 48 and Scottsdale Cultural Council, d/b/a Scottsdale Arts, for the installation and maintenance of artwork at Palomino Library.

**Staff Contact(s):** William Murphy, Community Services Director, 480-312-7954, [bmurphy@scottsdaleaz.gov](mailto:bmurphy@scottsdaleaz.gov)

**14. Waste Management Phoenix Open Event Agreement**

Item 14 was moved to the Regular Agenda (Page 6).

**15. Russo and Steele Auto Auction Event Agreement**

**Request:** Adopt **Resolution No. 10622** authorizing five-year event Agreement No. 2016-174-COS with Russo and Steele, LLC, to provide State Land for staging, production, and parking.

**Location:** State Land located on the southeast corner of Scottsdale Road and Arizona State Route 101

**Staff Contact(s):** Brian Dygert, WestWorld General Manager, 480-312-6825, [bdygert@scottsdaleaz.gov](mailto:bdygert@scottsdaleaz.gov)

Mayor Lane opened public testimony.

Mark Stuart, Scottsdale resident, expressed concern with the event agreement, and asked Item 15 be removed from the consent agenda.

Mayor Lane closed public testimony.

- 16. American Trucker Festival WestWorld Event Agreement Termination**  
**Request:** Adopt **Resolution No. 10655** authorizing the termination of Agreement No. 2016-004-COS with R. Entertainment Company, LLC.  
**Staff Contact(s):** Brian Dygert, WestWorld General Manager, 480-312-6825, [bdygert@scottsdaleaz.gov](mailto:bdygert@scottsdaleaz.gov)
- 17. McDowell Sonoran Preserve Policy Documents**  
Item 17 was moved to the Regular Agenda (Page 6).
- 18. Request for Exemption from Posting Security for Outstanding Workers' Compensation Claims**  
**Request:** Adopt **Resolution No. 10661** authorizing the execution of a letter to the Industrial Commission of Arizona requesting an exemption to the requirement to post security for outstanding workers' compensation claims.  
**Staff Contact(s):** Katherine Callaway, Risk Management Director, 480-312-7841, [kcallaway@scottsdaleaz.gov](mailto:kcallaway@scottsdaleaz.gov)
- 18A. Scottsdale Municipal Property Corporation Contribution Agreement and Release**  
**Request:** Adopt **Resolution No. 10670** authorizing Agreement No. 2016-187-COS with Gust Rosenfeld, PLC, to accept \$75,000, paid in three annual installments of \$25,000 each, in order to settle any and all claims the City may have against Gust Rosenfeld, PLC, arising from services performed in connection with the issuance of the City of Scottsdale Municipal Property Corporation Excise Tax Revenue and Refunding Bonds – Series 2013 CUI SP No. 810489 and the City's subsequent settlement with the Internal Revenue Service regarding its disputed assertion that interest on a portion of those bonds was taxable.  
**Staff Contact(s):** Bruce Washburn, City Attorney, 480-312-2405, [bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

Mayor Lane opened public testimony.

Mark Stuart, Scottsdale resident, expressed concern with the bonds issued by the Scottsdale Municipal Property Corporation, and asked Item 18A be removed from the consent agenda.

Mayor Lane closed public testimony.

- 18B. Mobile Integrated Healthcare Practice Program Professional Services Agreement**  
**Request:** Adopt **Resolution No. 10671** authorizing Agreement No. 2015-161-COS-A2 with HonorHealth to extend the agreement for an additional year for the mobile integrated healthcare practice program.  
**Staff Contact(s):** Tom Shannon, Fire Chief, 480-312-1821, [tshannon@scottsdaleaz.gov](mailto:tshannon@scottsdaleaz.gov)

#### **MOTION AND VOTE – CONSENT AGENDA**

Councilmember Korte made a motion to approve Consent Agenda Items 1 through 18B, absent Items 14 and 17, which were moved to the Regular Agenda. Councilwoman Klapp seconded the motion, which carried 7/0.

## **REGULAR AGENDA**

### **14. Waste Management Phoenix Open Event Agreement**

**Request:** Adopt **Resolution No. 10646** authorizing Agreement No. 2016-183-COS with The Thunderbird Charities, Inc., for a five-year parking agreement at WestWorld for the Waste Management Phoenix Open.

**Staff Contact(s):** Brian Dygert, WestWorld General Manager, 480-312-6825, [bdygert@scottsdaleaz.gov](mailto:bdygert@scottsdaleaz.gov)

Mayor Lane opened public testimony.

Mark Stuart, Scottsdale resident, expressed concern with the proposed event agreement.

Mayor Lane closed public testimony.

### **MOTION AND VOTE – ITEM 14**

Councilmember Korte made a motion to adopt Resolution No 10646. Councilwoman Milhaven seconded the motion, which carried 7/0.

### **17. McDowell Sonoran Preserve Policy Documents**

**Request:** Adopt **Resolution No. 10662** approving the Cultural Resource Master Plan, Ecological Resource Plan, and Conceptual Rock Climbing Plan related to the management of the McDowell Sonoran Preserve.

**Staff Contact(s):** Kroy Ekblaw, Preserve Director, 480-312-7064, [kekblaw@scottsdaleaz.gov](mailto:kekblaw@scottsdaleaz.gov)

Senior Trails Planner Scott Hamilton gave a PowerPoint presentation (attached) on the proposed McDowell Sonoran Preserve policy documents.

Mayor Lane opened public testimony.

Mike Nolan, McDowell Sonoran Conservancy, spoke in support of the proposed McDowell Sonoran Preserve policy documents.

Mayor Lane closed public testimony

### **MOTION AND VOTE – ITEM 17**

Councilman Phillips made a motion to adopt Resolution No. 10662. Councilmember Korte seconded the motion, which carried 7/0.

### **19. Andante Law Group In-Lieu Parking Credits (5-IP-2016)**

**Request:** Continue to the January 17, 2017 City Council meeting at the request of the applicant.

### **MOTION AND VOTE – ITEM 19**

Councilman Phillips made a motion to continue Item 19 to January 17, 2017. Vice Mayor Littlefield seconded the motion, which carried 7/0.

**20. 2017 State Legislative Agenda**

**Request:** Consider the approval of the City of Scottsdale's 2017 State Legislative Agenda.

**Presenter(s):** Brad Lundahl, Government Relations Director

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

Government Relations Director Brad Lundahl gave a PowerPoint presentation (attached) on the City's 2017 State legislative agenda.

**MOTION AND VOTE – ITEM 20**

Councilwoman Milhaven made a motion to approve the 2017 State Legislative agenda. Councilmember Korte seconded the motion, which carried 7/0.

**21. Raintree 69kV Undergrounding Improvement District No. I-6002**

**Requests:**

1. Adopt **Resolution No. 10649** to:
  - a. Begin the formal process of establishing the City of Scottsdale, Underground Utility Facilities Improvement District No. I-6002.
  - b. Authorize a FY 2016/17 Special Programs Fund operating contingency budget appropriation transfer not to exceed \$150,000 to a newly-created operating center within the Public Works Division, Capital Project Management Department, to record the one-time administrative activities associated with forming the district. This contingency transfer will be funded by reimbursements from the district and will be recorded as a recovery of expense.
  - c. Declare an emergency for the immediate operation of this resolution to allow for the immediate commencement of the notice procedures, which is necessary for the underground improvements to be completed in an expeditious manner.
2. Establish January 17, 2017 as an objection hearing date for the City of Scottsdale, Underground Utility Facilities Improvement District No. I-6002.

**Presenter(s):** Daniel Worth, Public Works Director; **Staff Contact(s):** Daniel Worth, Public Works Director, 480-312-5555, [dworth@scottsdaleaz.gov](mailto:dworth@scottsdaleaz.gov)

Public Works Director Daniel Worth gave a PowerPoint presentation (attached) on the proposed Raintree 69kV Undergrounding Improvement District.

Mayor Lane opened public comment.

Alex McLaren, Scottsdale resident, spoke in support of the undergrounding improvement district.

Mayor Lane closed public comment.

**MOTION AND VOTE – ITEM 21**

Councilman Smith made a motion to: (1) Adopt Resolution No. 10649; and (2) establish January 17, 2017, as the date for a public hearing to consider the issue of ordering an election on the formation of the City of Scottsdale, Arizona, Underground Utility Facilities Improvement District No. I-6002, and to receive public comment on the proposed district and, if needed, a public hearing on any written objections received for the district, reserving the right to adjust or cancel the hearing dates as needed. Vice Mayor Littlefield seconded the motion, which carried 7/0.

**PUBLIC COMMENT** – Mark Stuart commented on an initiative petition (attached) to prohibit any construction in the Preserve.

## **CITIZEN PETITIONS**

### **22. 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](mailto:cjagger@scottsdaleaz.gov)

No citizen petitions were received.

## **MAYOR AND COUNCIL ITEMS**

### **23. Request to Agendize a Discussion on Short-term Rentals**

**Request:** At the request of Councilmember Korte, direct staff to agendize: "A presentation, discussion, and direction to staff regarding the City's short-term rentals ordinance, including: (1) Possible amendments to the short-term rentals ordinance to add penalties, which would go against the owner, and/or revocable license provisions, aimed at reducing excessive noise and neighborhood disturbances; and (2) including an item in the City's legislative program to effect changes in the State's short-term rentals law."

## **MOTION AND VOTE – MAYOR AND COUNCIL ITEMS**

Councilmember Korte made a motion to direct staff to agendize a presentation, discussion, and direction to staff regarding the City's short-term rentals ordinance, including: (1) Possible amendments to the short-term rentals ordinance to add penalties, which would go against the owner, and/or revocable license provisions, aimed at reducing excessive noise and neighborhood disturbances; and (2) including an item in the City's legislative program to effect changes in the State's short-term rentals law. Councilman Phillips seconded the motion, which carried 7/0.

## **ADJOURNMENT**

The Regular City Council Meeting adjourned at 6:57 P.M.

### **SUBMITTED BY:**



Carolyn Jagger  
City Clerk

Officially approved by the City Council on

January 17, 2017




**C E R T I F I C A T E**

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 2<sup>nd</sup> day of December 2016.

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

**DATED** this 17<sup>th</sup> day of January 2017.

  
\_\_\_\_\_  
Carolyn Jagger, City Clerk

Item 17

**Agenda Item #17**  
**McDowell Sonoran Preserve**  
**Policy Documents**

Scottsdale City Council  
December 2, 2016

**Policy Documents:**

- Cultural Resource Master Plan
- Ecological Resource Plan
- Conceptual Rock Climbing Plan

## **Cultural Resource Master Plan**



Guide decisions related to the **interpretation, protection, and management** of cultural and historic elements of the Preserve.

### **Cultural Plan Includes:**

- Overall **cultural "story"** of the Preserve
- Public **education & interpretation**
- Methods for **protecting and monitoring** cultural sites
- Management recommendations for **Brown's Ranch site**

## Cultural Plan Public Input:



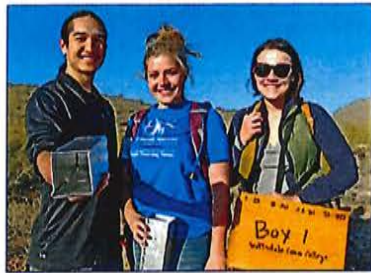
- Preserve users
- McDowell Sonoran Conservancy
- Local Tribal Representatives
- Local Historians & Archeologists
- Historic Preservation Commission  
*(approved April 2016)*
- McD. Sonoran Preserve Commission  
*(approved July 2016)*

## Ecological Resource Plan



Ensures **science-based understanding** of the plants, animals, and biodiversity of the Preserve to promote **long-term resource sustainability.**

## Special Thanks to the McDowell Sonoran Conservancy Field Institute



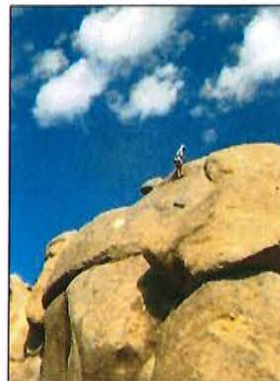
### **Ecological Plan:**

- Creates a process for ongoing **monitoring of the ecological health** of the Preserve
- Provides a **systematic methodology** to evaluate and respond to ecological challenges
- Provides for **science-based management recommendations**

## **Ecological Plan Expert and Public Input:**

- General Public
- City of Scottsdale Staff
- Environmental Planning Group, LLC
- MSFI Science Advisory Committee
- Conservancy Stewards & Board of Directors
- Community Stakeholders
- McDowell Sonoran Preserve Commission  
*(Approved September 2016)*

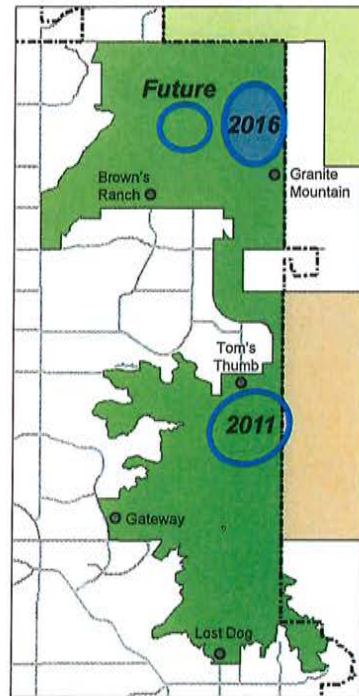
## **Update to Conceptual Rock Climbing Plan** (adding Granite Mountain)



Guides the accepted **practices**, **responsibilities**, and **areas** where rock climbing is permitted within the Preserve

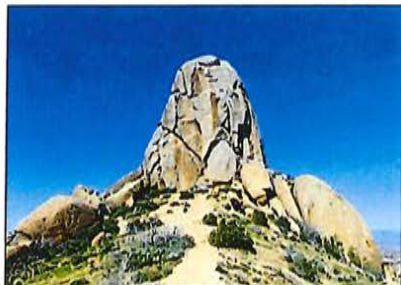
## Rock Climbing Plan Covers:

- Climbing areas
- Access routes
- Responsibility and safety of climbers



## Rock Climbing Public Input:

- Rock Climbing Community
  - Arizona Mountaineering Club
  - Public outreach at climbing gym
- McDowell Sonoran Preserve Commission  
*(approved July 2015)*



**QUESTIONS?**



**Item 20**

***Proposed 2017 State  
Legislative Program***

**City of Scottsdale  
Government Relations Office  
December 2, 2016**

***2017 State Legislative Program***

- Second Regular Session of the 52<sup>nd</sup> Legislature begins January 11, 2016
- Senate President:
  - Steve Yarbrough (R-Chandler, LD17)
- Speaker of the House:
  - J.D. Mesnard (R- Chandler, LD 17)

## ***2017 State Legislative Agenda***

- Input from City Leadership
  
- Two Sections
  - Core Principles
  - Policy Statements (includes Key Positions)

## ***2017 State Legislative Program***

- For consideration tonight:
  1. Add, subtract, or amend Legislative Agenda.
  2. Consider approval of 2017 State Legislative Agenda.

## ***2017 Key Positions***

- OPPOSE changes to the Construction Sales Tax statutes that would transform the location and method of collecting and distributing construction-based taxes from where the construction occurs to where construction materials are purchased (point-of-sale).
- OPPOSE legislation that would prohibit or eliminate the transaction privilege tax on the renting or leasing real property for residential purposes. The negative impact to the City of Scottsdale from the loss of these funds would be in excess of \$5M annually.

## ***2017 Key Positions***

- SUPPORT the repeal of SB 1487 (state law; local violations; penalties) that threatens state shared revenues.
- OPPOSE legislation that would negatively alter or remove the City of Scottsdale's important and long-established ordinances regarding native plants and how development occurs in the natural Sonoran desert environment.

## ***Economic Vitality***

- SUPPORT increased state funding for favorable tourism and associated job creation environment.
- SUPPORT small business by reducing unnecessary obstacles to small business that are inconsistent with the values of the community.
- 

## ***Economic Vitality***

- SUPPORT legislation or actions that embrace emerging technology in Arizona.
- SUPPORT state efforts for a nationwide outreach campaign in support of Arizona being a medical tourism destination.

## ***Local Government Finance***

- SUPPORT efforts to enhance the applicability of the Construction Sales Tax that do not reduce the revenue stream to local governments.
- SUPPORT efforts to offset the potential loss of rental-car surcharge revenues that may result from the rulings on *Saban v. Arizona*.

## ***Transportation***

- SUPPORT the continued viability of HURF funding to cities and towns and support phasing down the percentage of HURF revenues being used to fund DPS.
- SUPPORT the continued viability of the State Aviation Fund, including assurances that fuel taxes will be placed in the Fund or returned to the airport where the fuel sales occur.

## ***Tourism***

- SUPPORT the Arizona Office of Tourism budget request of an additional \$3 million to ramp up efforts to market Arizona as a vacation destination.
- SUPPORT efforts to increase the visibility of Arizona, Scottsdale and other Arizona cities and towns as being tourism destinations.

## ***Tourism***

- SUPPORT a sustainable, long-term funding mechanism for state tourism promotion. Increase awareness of the positive economic impact of Arizona tourism to business and community leaders.
- Position Arizona to be able to consistently attract and host major events in the state. In particular, support policies that enhance Arizona's reputation as a world-class destination for cutting-edge healthcare facilities and services.

## ***Preservation & Environmental Planning***

- SUPPORT efforts to mitigate salinity accumulation, including collaborative measures to minimize or eliminate sodium chloride from water softeners.
- SUPPORT legislative efforts to bring about changes in forest management with the goal of enacting effective and large-scale forest restoration projects to improve forest health, increase water yield, and reduce the risks and costs of catastrophic wildfires.

## ***Public Services & Facilities***

- **Scottsdale Water Service –**
  - SUPPORT legislation to protect and maintain the city's established surface and ground water supplies.
  - SUPPORT legislation to ensure the city's role in the management and continued use of reclaimed and remediated waters.
  - SUPPORT increased funding for the Arizona Department of Water Resources including funds to assist the Department with their responsibilities with general stream adjudications and a digital multimedia marketing specialist to focus on countering the narrative that Arizona is running out of water.

–

## ***Public Services & Facilities***

- **Scottsdale Solid Waste**
  - OPPOSE legislation that would eliminate the City of Scottsdale's ability to make decisions on what items are to be recycled or sent to a landfill.

## ***Proposed Legislation***

- **Mobile Home Parks –**
  - **SEEK** legislation that would increase the amount of relocation funding a mobile home tenant can receive from the Arizona Mobile Home Relocation Fund when they are displaced due to a change in use for the land on which the mobile home is located.
  - Suggested increases:
    - Increase from \$5,000 to \$7,500 for single units.
    - Increase from \$10,000 to \$12,500 for double units.



## *Any Questions?*

- For more information, contact the City of Scottsdale Government Relations Office

## Item 21

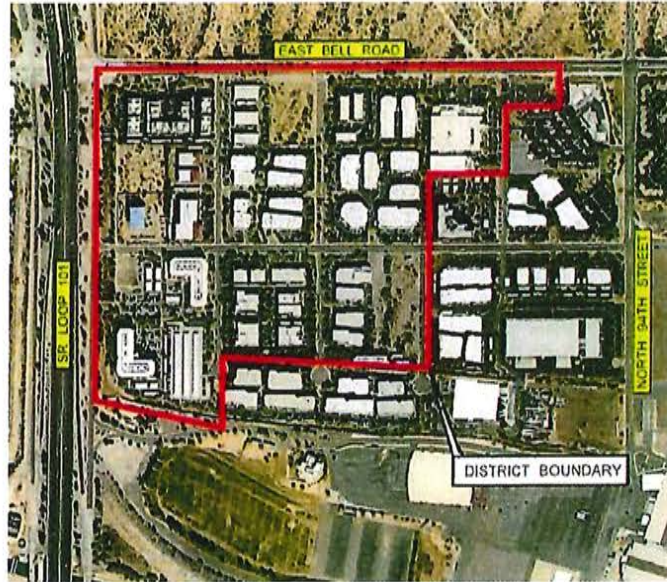
# **Raintree 69kV Underground Improvement District No. I-6002 Resolution of Intention**

*City Council  
December 2, 2016*

### **Proposed Action**

- Adopt Resolution 10649 to begin process of establishing an Underground Utility Facilities Improvement District
  - Notice of intention to form district
  - Authorize a \$150k fiscal year 2016-17 contingency budget transfer to record costs of administrative activities associated with forming the District; to be funded by reimbursements from the District and will be recorded as a recovery of expense
  - Declare an emergency; allows immediate commencement of the notice procedures, which is necessary for the underground improvements to be completed consistent with APS timeline
- Set objection hearing date for January 17, 2017

### Map of Proposed District



### Map of Proposed Project



## **Purpose and Responsibilities**

- APS:
  - Construct the powerlines underground and pay associated costs
- District members:
  - Reimburse APS for costs of constructing powerlines underground
  - Costs apportioned per assessment methodology
  - Option of one time payment or financing over 15 years at APS' cost of capital
- City:
  - Collects semi-annual assessment
  - Forwards funds to APS

## **Process**

- Resolution of intention: Establishes district boundary and items of work to be constructed
- Post and publish notice of intention; 30 day comment period
- Public hearing for objections:
  - Proposed date January 17, 2017 Council meeting
  - Council may order election regarding district formation and levy of the assessment if majority of property owners in district have signed a petition in support of formation.
- Election utilizing simplified ballot card; registered voters and property owners within the proposed district receive ballots
- If election is successful, Council may adopt a Resolution Ordering Work to give direction to APS to begin construction
- Public hearing at future Council meeting to hear objections to proposed assessment methodology; Council may then adopt a Resolution Levying the Assessment and Approving the Assessment Diagram
- Resolution of Final Assessment follows completion of construction

## **Council Action**

### **Adopt Resolution 10649 to begin process of establishing an Underground Utility Facilities Improvement District**

- Notice of intention to form district
- Authorize a \$150k fiscal year 2016-17 contingency budget transfer to record costs of administrative activities associated with forming the District; to be funded by reimbursements from the District and will be recorded as a recovery of expense
- Declare an emergency; allows immediate commencement of the notice procedures, which is necessary for the underground improvements to be completed consistent with APS timeline
- Set objection hearing date for January 17, 2017

## **Questions and Discussion**

**DECEMBER 02, 2016  
CITIZEN PRESENTATION TO  
THE SCOTTSDALE CITY  
COUNCIL:  
OUR FUTURE LOOKS VERY  
BRIGHT**

**GET YOUR GAME FACE  
ON, 2017 IS GOING TO BE  
A FUN FILLED YEAR FOR  
ALL OF US CO-EQUAL  
LEGISLATORS.**

**In Arizona, all political power resides in the people.** Arizona Constitution, Article II. Declaration of Rights, **Section 2. Political power. Section 33. Reservation of Rights.**

Voters are traditionally viewed as **co-equal legislators.** In fact, voters can do things via initiative, that elected officials cannot do.

More on this topic next year.....



**I. The upcoming initiative to  
Prohibit Construction of any  
type in the Preserve,  
Forever.**

- Preserving the McDowell Sonoran Preserve  
in a Natural State for Future Generations,  
Forever Free from Commercial  
Development**

- An application for an initiative petition serial number was filed yesterday.
- A copy of this application is attached for your reviewing pleasure.

**WHAT MUST PUBLIC OFFICIALS AND CITY EMPLOYEES DO , IN ORDER TO AVOID USING MISUSING PUBLIC RESOURCES TO INFLUENCE AN ELECTION, NOW THAT BUILDING IN THE PRESERVE IS AN ELECTION ISSUE?**

- Starting Dec. 02, 2016, the city **cannot use any city resources of any type** discussing building in the Preserve, in any manner.

This Prohibition ends after the voters vote on this initiative in November, 2018.

- Violating this Prohibition leads to very stiff personal financial penalties for violators under A.R.S. 9-500.14 A copy of this statute is attached to this presentation for your review. A copy of the Arizona Atty Gen.'s Opinion explaining the severe restrictions in this law is also included for your review.

- What steps must the City take to avoid the misuse of public funds relating to the upcoming Initiative Election:

- A detailed EMAIL with concrete steps is attached to this presentation.

Essentially the City has to freeze all unspent monies and remove all mentions of the DDC or building in the Preserve from all City webpages, including the DDCCS website. City employees can no longer work on the DDC project on City time. City council members can no longer discuss the DDC in public meetings. However, City employees and Elected

Officials are free to exercise their constitutional rights on their own time, but not with any City resources.

- The City has until Friday Dec. 09, 2016 to account for all unspent funds, to recover and sequester these funds and to change City employees schedules accordingly. After Dec. 09, 2016, I will take legal action to force compliance with A.R.S. 9-500.14.

# **CONCLUSION:**

**It's going to be a  
very fun year for  
CO-EQUAL  
LEGISLATORS.**

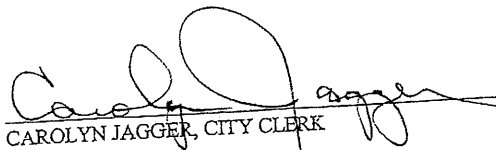
**HAPPY**

**TRAILS!**

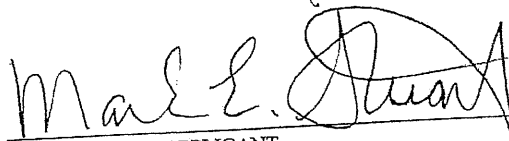
**ACKNOWLEDGEMENT OF RECEIPT**

I, Carolyn Jagger hereby acknowledge receipt of the following documents on this 1<sup>st</sup> day of December, 2016:

1. Application for Initiative or Referendum Petition Serial Number with Summary and Full Text of the Measure attached – IT-2016-01 (total of 4 pages)

  
\_\_\_\_\_  
CAROLYN JAGGER, CITY CLERK

12/1/2016  
DATE

  
\_\_\_\_\_  
SIGNATURE OF APPLICANT

12/1/2016  
DATE

OFFICE OF THE  
CITY CLERK  
2016 DEC - 1 PM 3:35 99

2016 DEC - 1 PM 3: 59

OFFICE OF THE  
CITY CLERK



**APPLICATION FOR INITIATIVE OR REFERENDUM PETITION SERIAL NUMBER**

Carolyn Jagger, MMC  
City Clerk, City of Scottsdale  
3939 N. Drinkwater Blvd.  
Scottsdale, Arizona 85251

The undersigned intends to circulate and file an INITIATIVE or a REFERENDUM (circle the appropriate word) petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Pursuant to Arizona Revised Statutes § 19-111, attached hereto is the full text, in no less than eight point type, of the MEASURE or CONSTITUTIONAL AMENDMENT (circle appropriate word) intended to be INITIATED or REFERRED (circle appropriate word) at the next general election. **The measure is an amendment to the Scottsdale city Charter.**

**SUMMARY:** A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be circulated.

Please refer to the attached summary sheet on the next page.

2016 DEC -1 PM 3:57  
OFFICE OF THE  
CITY CLERK

*Mark E. Stuart*

Signature of Applicant

Mark E. Stuart

Printed Name of Applicant

8629 E. Cheryl Drive

Address

Scottsdale Arizona 85258

City

State

Zip

(480) 922-6169 / Cell (602) 316-0999

Telephone Number

Name of Organization (if any)

Address

City

State

Zip

Telephone Number

Name of Officer and Title

Address

City

State

Zip

Telephone Number

Name of Officer and Title

Address

City

State

Zip

Telephone Number

Date of Application:

12/1/16

Signatures Required:

23,908

Deadline for Filing:

7/5/2018

Serial Number Issued:

IT-2016-01

FOR OFFICE USE ONLY

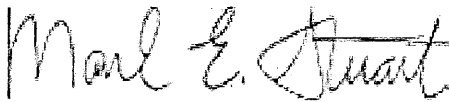
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Signature of Applicant

Mark E. Stuart

Name of Organization (if any)

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Name of Officer and Title

Address

City

State

Zip

Telephone Number

Date of Application: \_\_\_\_\_

Signatures Required: \_\_\_\_\_

Deadline for Filing: \_\_\_\_\_

Serial Number Issued: \_\_\_\_\_

FOR OFFICE USE ONLY

SUMMARY: A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be attached.

This initiative will add **Section 12: Preserving the McDowell Sonoran Preserve in a Natural State for Future Generations, Forever Free from Commercial Development** to **Article 8** of the city charter. This measure will expressly prohibit construction of any facilities of any type in the Preserve without the express approval of a majority of the registered voters in Scottsdale. Construction consisting solely of repairs of existing trails and trailhead facilities, will be allowed without voter approval.

This measure also provides for mandatory reimbursement of any costs incurred to enforce compliance with Section 12.

# **Pursuant to A.R.S. § 19-111, the full text of the proposed amendment to the Scottsdale city charter is below.**

---

## **Section 12: Preserving the McDowell Sonoran Preserve in a Natural State for Future Generations, Forever Free from Commercial Development.**

1. Construction of any type on any land designated as preserve land, as of January 02, 2016, is expressly prohibited. This prohibition of construction does not apply to repairs of trails and trailhead facilities existing prior to January 02, 2016.

### **Preserve Land is defined as follows:**

- a. All land currently designated as preserve Land pursuant to Article 8, Section 8 of the Scottsdale city charter. See attached map. The green shaded areas are Preserve Land.
  - b. All land currently planned to be purchased by the City for use as preserve land in the future.
2. The City Council must reimburse any person or entity that enforces this charter provision with litigation or negotiations involving an attorney, all costs and attorney's fees incurred by that person or entity. Costs and attorney's fees must be properly documented in accordance with Arizona law.
3. The City may construct new facilities on Preserve Land only after the explicit approval of a majority of the registered voters in Scottsdale via a public vote.

APPENDIX B:  
*Maps -  
Preserve Land Acquisitions  
Through 2014*

Base photo as of April 2006

SCOTTSDALE RD

101

PIMA RD

FRANK LLOYD WRIGHT BLVD

SHEA BLVD



Fifty-second Legislature - Second Regular Session

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**9-500.14. Use of city or town resources or employees to influence elections; prohibition; civil penalty; definitions**

A. A city or town shall not spend or use its resources, including the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages, personnel, equipment, materials, buildings or any other thing of value of the city or town, for the purpose of influencing the outcomes of elections. Notwithstanding this section, a city or town may distribute informational pamphlets on a proposed bond election as provided in section 35-454 if those informational pamphlets present factual information in a neutral manner. Nothing in this section precludes a city or town from reporting on official actions of the governing body.

B. The prohibition on the use of public resources to influence the outcome of bond, budget override and other tax-related elections includes the use of city-focused or town-focused promotional expenditures that occur after an election is called and through election day. This prohibition does not include routine city or town communications.

C. This section does not prohibit the use of city or town resources, including facilities and equipment, for government-sponsored forums or debates if the government sponsor remains impartial and the events are purely informational and provide an equal opportunity to all viewpoints. The rental and use of a public facility by a private person or entity that may lawfully attempt to influence the outcome of an election is permitted if it does not occur at the same time and place as a government-sponsored forum or debate.

D. Employees of a city or town shall not use the authority of their positions to influence the vote or political activities of any subordinate employee.

E. The attorney general or the county attorney of the county in which an alleged violation of this section occurred may initiate a suit in the superior court in the county in which the city or town is located for the purpose of complying with this section.

F. For each violation of this section, the court may impose a civil penalty not to exceed five thousand dollars plus any amount of misused funds subtracted from the city or town budget against a person who knowingly violates or aids another person in violating this section. The person determined to be out of compliance with this section is responsible for the payment of all penalties and misused funds. City or town funds or insurance payments shall not be used to pay these penalties or misused funds. All misused funds collected pursuant to this section shall be returned to the city or town whose funds were misused.

G. Nothing contained in this section shall be construed as denying the civil and political liberties of any employee as guaranteed by the United States and Arizona Constitutions.

H. For the purposes of this section:

1. "Government-sponsored forum or debate" means any event, or part of an event or meeting, in which the government is an official sponsor, which is open to the public or to invited members of the public, and whose purpose is to inform the public about an issue or proposition that is before the voters.
2. "Influencing the outcomes of elections" means supporting or opposing a candidate for nomination or election to public office or the recall of a public officer or supporting or opposing a ballot measure, question or proposition, including any bond, budget or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition in any manner that is not impartial or neutral.
3. "Misused funds" means city or town monies or resources used unlawfully as proscribed by this section.
4. "Routine city or town communications" means messages or advertisements that are germane to the functions of the city or town and that maintain the frequency, scope and distribution consistent with past practices or are necessary for public safety.



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION  By  MARK BRNOVICH ATTORNEY GENERAL  July 30, 2015	No. I15-002 AMENDED (R15-002)  Re: Use of Public Funds to Influence the Outcomes of Elections
--	---

To: Sheila Polk  
Yavapai County Attorney

Bill Montgomery  
Maricopa County Attorney

**Questions Presented**

You have asked for guidance on the limitations imposed by Arizona Revised Statutes Section 11-410 on the use of county resources to influence an election. Your inquiry focuses on the relationship between section 11-410 and ballot measures, and raises two discrete questions:

1. When do the restrictions on the use of public resources “for the purpose of influencing the outcomes of elections” arise with regard to a ballot measure?
2. What conduct or communications does the prohibition in A.R.S. § 11-410 preclude?

**Summary Answer**

1. The prohibitions in Section 11-410 on the use of public resources “for the purpose of influencing the outcomes of elections” in the context of a ballot measure



proposition arise upon the filing of an application for a serial number for a ballot initiative or referendum.

2. Determining whether particular conduct or communications may be prohibited requires analysis under an objective two-part test:
  - a. Was there a use of public resources?
  - b. If so, were the public resources used “for the purpose of influencing the outcomes of elections?”

### Background

In 1996, the Arizona Legislature enacted a series of statutes to prohibit the use of public resources “for the purpose of influencing the outcomes of elections.” 1996 Ariz. Legis. Serv. Ch. 286 (S.B. 1247). The original statutory language did not define the phrase “influencing the outcome of elections,” but rather, generally prohibited expending public resources for that purpose. *Id.* The prohibitions, codified in the Arizona Revised Statutes, applied to cities (§ 9-500.14); counties (§ 11-410); state and public agencies (§ 16-192); school districts and charter schools (§ 15-511); community colleges (§ 15-1408); and universities (§ 15-1633). The Legislature clarified that it did not intend through these prohibitions to deny any civil or political liberties of public employees that are guaranteed by the federal and state constitutions. *See, e.g.,* A.R.S. § 11-410(G)(2015).

In 2000, this office looked to the campaign finance laws for guidance to determine what “influencing the outcome of elections” encompassed. Ariz. Atty. Gen. Op. I00-020. That guidance resulted in two general principles. First, determining whether something has the purpose of influencing an election should be generally an objective test. *Id.* at 2 (*citing Federal Election Comm’n v. Ted Haley Congressional Comm.*, 852 F.2d 1111, 1116 (9th Cir. 1988))

(Under federal campaign finance law, whether something is intended to influence an election is an objective test, rather than a test “based on the subjective state of mind of the actor.”)). Second, “campaign expenditures ‘for the purpose of influencing elections’ do not include ‘non-partisan activity designed to encourage individuals to vote or to register to vote.’” *Id.* (quoting A.R.S. § 16-901(9)(b)). This office set forth specific guidance for public officials stating that the operative statutes “do *not* prohibit

- elected officials from speaking out individually regarding measures on the ballot;
- the use of public resources to respond to questions about ballot measures, although responses should provide factual information that suggest neither support nor opposition to the measure;
- the use of public resources to investigate the impact of ballot measures on a jurisdiction;
- the use of public resources to prepare and distribute the election information required by statute; and
- the preparation and dissemination of materials ‘reporting on official actions of the governing body.’”

*Id.* at 3-4 (emphasis in original).

Two years later, Division Two of the Arizona Court of Appeals interpreted Section 9-500.14. *See Kromko v. City of Tucson*, 202 Ariz. 499 (App. 2002). The court noted, “[a]t the heart of the appeal and cross-appeal is the following question: precisely what constitutes ‘influencing the outcomes of elections’ for purposes of the statute?” *Id.* at 501 ¶ 6. The court ultimately settled on the “unambiguously urges” test, finding that an actor would not be found to violate the prohibition unless the communication at issue “unambiguously urges a person to vote

in a particular manner.” *Id.* at 503 ¶ 10 (internal quotation marks and alterations omitted). In applying this test, the court looked at whether “reasonable minds could differ” as to whether the particular communication encouraged a vote one way or the other on the propositions at issue. *Id.* (internal quotation marks omitted). In other words, the court imposed a very narrow reading of the prohibition at issue. The *Kromko* court explicitly rejected a requirement of impartiality similar to that in A.R.S. § 19-124(B) because Section 9-500.14 did not expressly require impartiality. *Id.* at 502.

In 2007, this office subsequently relied on the 2000 AG opinion, with reference to *Kromko*, in considering whether elected county officials may use their official titles in various materials that advocate the success or defeat of ballot measures. *See* Ariz. Atty. Gen. Op. I07-008 (“[E]lected officials may communicate their views on pending ballot measures and may use their official titles when doing so.” “Although county officials may sign their names and use their official titles in such communications, they may not use public resources or funds for the purpose of expressing these views.”).

In 2013, the Arizona Legislature substantially amended the prohibitions against the use of public resources to affect elections. *See* 2013 Ariz. Legis. Serv. Ch. 88 (H.B. 2156). Among the broad changes made, the Legislature provided a statutory definition of “influencing the outcomes of elections” lacking at the time of the *Kromko* decision:

“Influencing the outcomes of elections” means supporting or opposing a candidate for nomination or election to public office or the recall of a public officer or supporting or opposing a ballot measure, question or proposition, including any bond, budget or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition in any manner that is not impartial or neutral.

A.R.S. § 9-500.14(G)(2); § 11-410(G)(2); § 15-511(L)(2); § 15-1408(J)(2); § 15-1633(K)(2); § 16-192(G)(2).<sup>1</sup>

### Analysis

There are two questions pending: (1) when do the statutory prohibitions on the use of public resources “for the purpose of influencing the outcomes of elections” arise with regard to a ballot measure, and (2) what conduct or communications do the prohibitions preclude?

#### **1. Question One: When (temporally) do these prohibitions arise?**

The Legislature has not explicitly answered this question. This office’s 2000 opinion stated that the statutory prohibitions with regard to ballot measures “apply before a measure qualifies for the ballot.” Ariz. Atty. Gen. Op. I00-020 at 4. We now clarify that the language of Section 11-410<sup>2</sup> indicates that the prohibitions arise upon the filing of an application for a serial number for a ballot initiative or referendum. *See* A.R.S. § 19-111.

The 2013 amendments to Section 11-410 adding the operative definition make it clear that, for purposes of ballot measures, the prohibition against influencing an election includes “supporting or opposing a ballot measure, question or proposition” and “supporting or opposing *the circulation of a petition* for a ballot measure, question or proposition.” A.R.S. § 11-410(H)(2) (emphasis added). The statute makes plain that the prohibition applies not just to measures on the ballot, but also to supporting or opposing the circulation of a petition. *See id.* In other words, the Legislature defined this prohibition to apply beyond merely the time at which

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<sup>1</sup> As previously noted, the Legislature further amended the relevant statutes in 2015. *See* 2015 Ariz. Legis. Serv. Ch. 296 (H.B. 2613) (amendments to all relevant statutes except A.R.S. § 15-1633).

<sup>2</sup> For convenience, and because it is the direct subject of the inquiry, the analysis in this Opinion will reference Section 11-410. Because the operative language in that section is repeated elsewhere, the analysis in this Opinion applies equally to the same language as found in A.R.S. § 9-500.14(G)(2); § 15-511(L)(2); § 15-1408(J)(2); § 15-1633(K)(2); and § 16-192(G)(2).

the election participants (candidates and ballot measures) are fixed. A petition may be circulated once the Secretary of State issues an official serial number to the petition. *See* A.R.S. §§ 19-111(B), 19-121(A). Thus, for ballot measures, the prohibitions arise when an official serial number is assigned to the petition.

Aligning the statutory prohibitions with this objectively identifiable date is consistent with Arizona's election laws generally, which typically tie election-related prohibitions and duties to objectively identifiable dates and times. *See, e.g.*, Ariz. Const. Art. IV, Pt. 1 § 1(4) (setting the time for filing of initiative and referendum petitions); A.R.S. § 16-311 (time for filing a candidacy nominations paper); § 16-914.01 (duties for campaign finance reporting, including deadlines, for committee supporting or opposing a ballot measure); § 16-945 (prescribing contribution schedules for candidates participating in public financing scheme). A contrary rule would cause unnecessary ambiguity and potentially chill the otherwise permissible conduct or speech of elected officials and public employees. Accordingly, the prohibitions in Section 11-410 arise with regard to ballot measures when an application for a serial number for a ballot initiative or referendum is filed.

**2. Question Two: What conduct or communications do these prohibitions preclude?**

The Legislature's 2013 amendments to Section 11-410 effectively rejected the *Kromko* "unambiguously urge" test as the only measure of influencing the outcome of elections, but the Legislature did not clearly articulate its preferred alternative to that test. However, the definition of "influencing the outcomes of elections" provides sufficient guidance to construct an analytical framework to assist public officials in avoiding prohibited conduct under the statute.

Statutory interpretation principles require that each portion of the provision at issue be given effect; in other words, we do not read a statute in a way that would render a portion

superfluous or ineffective. *Grand v. Nacchio*, 225 Ariz. 171, 175-76 ¶ 21 (2010) (“We ordinarily do not construe statutes so as to render portions of them superfluous.”). Accordingly, whatever test the Legislature intended to adopt in its 2013 amendments, it must incorporate all elements of the definition.

To give full meaning to the statute, the analytical framework requires an objective two-part test: (1) was there a use of public resources; (2) if so, were the public resources used “for the purpose of influencing the outcomes of elections?”

*A. Was There A Use of Public Resources?*

As a threshold matter, the statutory prohibition does not become operative unless there is a use of public resources. In other words, there is no need to analyze the conduct or communication if there is no use of public resources because Section 11-410 does not apply.

Arizona’s statutory prohibitions are quite broad, including “the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages, personnel, equipment, materials, buildings or any other thing of value.” A.R.S. § 11-410(A). Although broad, this list is consistent in applying only to a “thing of value.” *See id.* A violation of the statutory prohibitions must therefore involve the use or expenditure of a public resource that has value.

In addition to the specific examples given in the statute, this prohibition also generally applies to the use of a public employee’s time during normal working hours, as that time is a public resource that has value. Employees’ time spent outside of normal working hours is not a public resource.

Elected officials’ time, however, should be considered differently. Elected officials’ titles and duties are not readily separated from their persons. *Colorado Taxpayers Union, Inc. v.*

*Romer*, 750 F. Supp. 1041, 1045 (D. Colo. 1990) (“the political personage which are not separable from the man in office. The official position is a part of the person of the incumbent at all times. Governors have no duty shifts or time off.”).<sup>3</sup> This should not lead to a conclusion that elected officials have less ability to participate in the political process than their employees. Rather, it suggests that whether particular conduct in question under this statute occurred during the traditional work day is not a relevant consideration to evaluating if public resources have been expended when the actor at issue is a politically elected official.<sup>4</sup> Instead, the inquiry for elected officials must consider whether the official used public resources other than his time.

The Legislature is not presumed to have adopted a statute intended to infringe state elected officials’ and employees’ ability to engage in the political process as citizens. And the Legislature expressly stated that it did not intend the prohibitions as prohibiting constitutionally protected speech. A.R.S. § 11-410(G) (“Nothing contained in this section shall be construed as denying the civil and political liberties of any employee as guaranteed by the United States and Arizona Constitutions”). Thus, elected officials and public employees do not use public resources when they take a position on a ballot proposition, where for the employee it is outside of their normal working hours or while on approved official leave, and for either an elected

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<sup>3</sup> In Arizona, state and county elected officials do not accrue sick or annual leave and are not required to use leave for time away from the office. *See* A.R.S. § 41-742(D)(1) (exempting state elected officials from the state personnel system), A.R.S. § 11-352(A) (exempting county elected officials from the county merit system). In other words, Arizona’s laws explicitly recognize that elected officials always carry their title and official persona, regardless of the time of day.

<sup>4</sup> This is consistent with the general jurisprudence regarding the federal Hatch Act, and related state “Little Hatch” Acts, which proscribe certain political activities by government employees, but generally exempt certain high level, primarily elected, officials. In *United States Civil Service Commission v. National Ass’n of Letter Carriers*, the Supreme Court held that the Hatch Act struck a constitutionally sustainable balance between First Amendment rights of public employees and “obviously important interests sought to be served by the limitations on partisan political activities now contained in the Hatch Act.” 413 U.S. 548, 564 (1973). *See also Patterson v. Maricopa County Sheriff’s Office*, 177 Ariz. 153 (App. 1993). The statutory framework in A.R.S. § 11-410 strikes that same balance.

official or a public employee, the individual does not otherwise expend public resources in taking that position. Examples of this type of permissible speech include drafting an editorial or participating in an interview or a debate.

The use of either an elected official's title or other incidental uses of the attributes of office also is not a use of public resources for purposes of the statutory prohibition. The statutory prohibitions should be interpreted and applied to implement the Legislature's legitimate purpose of deterring the misuse of public funds, but they should not be employed to improperly silence public officials from expressing views on important matters of public policy. Although an elected official's title has some inherent value, it does not constitute a use of public resources under the statute when the elected official exercises his First Amendment rights to speak about elections. Thus, the use of a public official's name and title on a mailing that is not paid for with public resources would not constitute a use of public resources because the Legislature's legitimate regard for the First Amendment outweighs whatever minimal value that the use of an official's title may have. *See* Atty. Gen. Op. I07-008. Similarly, the presence of a regular security detail paid for by an elected official's office by itself does not constitute the use of public resources for purposes of the statutory prohibition because the security detail must accompany the elected official regardless of whether the elected official is communicating about a ballot measure. *See, e.g., Romer*, 750 F. Supp. at 1045 (The detail is generally considered an extension of the public official's political person and is not separable from the person in office; "There is a difference between the conduct of public officials in speaking out on controversial political issues and their use of governmental power to affect the election.")<sup>5</sup>

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<sup>5</sup> *Romer* was "not a public expenditure case." *Id.* at 1044. The federal court instead considered whether the Colorado Governor's conduct and speech in opposition to a ballot measure violated state citizens' First Amendment rights as a result of the use of state resources as well as the



If an activity falls into one of the exceptions above, there is no need to move on to the second step of the analysis. But where an elected official or public employee does in fact use a public resource, additional analysis is required.

*B. Was the Public Resource Used “For the Purpose of Influencing the Outcomes of Elections?”*

*1. The standard is objective.*

Where there is a use of public resources, the analysis turns to purpose—whether the public resources were used “for the purpose of influencing the outcomes of elections.” Although examination of that purpose seems to implicate subjective intent, our office has previously adopted an objective test in determining whether something has the purpose of influencing an election. *Ariz. Atty. Gen. Op. I00-020 at 2 (citing Fed. Election Comm’n v. Ted Haley Congressional Comm., 852 F.2d 1111, 1116 (9th Cir. 1988)); see also FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449, 466-69 (2007) (rejecting intent-based test in the context of an as-applied constitutional challenge); Orloski v. Fed. Election Comm’n, 795 F.2d 156, 162, 165 (D.C. Cir. 1986) (approving of an objective test to determine whether a contribution is made for the purposes of influencing any election).* While the Legislature substantially amended the statutes at issue since this office’s 2000 opinion, it did not suggest that the standard should not be objective. Indeed, the primary concern—conduct or communications that have the purpose of influencing the outcomes of elections—has remained the same and thus the analysis regarding an

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“power and prestige” of the public office. *Id.* at 1042. The court’s analysis as to what constituted public resources in that context is relevant and instructive to the questions addressed in this opinion. A public official presented with an opportunity to exercise constitutionally protected rights to free speech, where such opportunity poses a potential security threat, must not be required to choose between his safety and the exercise of free speech. As previously noted, section 11-410 explicitly exempts conduct protected by state and federal constitutions so it is clear that our Legislature did not intend for public officials in this state to be faced with such a Hobson’s choice.

objective test endures. The objective test will necessarily involve a fact-specific, case-by-case evaluation. Ariz. Atty. Gen. Op. I00-020.

2. *The standard prohibits supporting, opposing, or disseminating information in a manner that is not impartial or neutral.*

The statutory prohibition on the use of public resources for the purpose of “influencing the outcomes of elections” precludes the use of public funds for “supporting or opposing” a candidate or ballot measure “in any manner that is not impartial or neutral.” A.R.S. § 11-410(H)(2). “Support” is defined as “to promote the interests or cause of.” Merriam-Webster.com. “Oppose” means “to place opposite or against something.” *Id.* By contrast, “impartial” is defined as “treating or affecting all equally” *id.*, while “neutral” means “a position of disengagement,” *id.* Thus, the terms “supporting or opposing” are antonymic to “impartial or neutral.” In other words, it is not possible to “support or oppose” a candidate or ballot measure in an “impartial or neutral” manner.<sup>6</sup>

Despite this apparent tension in the text of the statutory prohibition, it is possible to discern the Legislature’s purpose and intent from the language of the statute. Courts determine legislative intent from the statutory language, “the general purpose of the act in which it appears,

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<sup>6</sup> It is well-established that statutes “must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*, 132 S.Ct. 2307, 2317 (2012). “The requirement of clarity is enhanced . . . when the statute ‘abut[s] upon sensitive areas of basic First Amendment freedoms.’ *Info. Providers’ Coal. for Def. of the First Amendment v. FCC*, 928 F.2d 866, 874 (9th Cir. 1991) (internal quotation marks and citations omitted). Where a statute is vague, it will “inevitably lead citizens to ‘steer far wider of the unlawful zone’ . . . than if the boundaries of the forbidden areas were clearly marked.” *Grayned*, 408 U.S. at 109 (quoting *Baggett v. Bullitt*, 377 U.S. 360, 372 (1972)). The definition of “influencing the outcome of elections” presents some constitutional concerns because the uncertainty resulting from the inherent contradiction between “supporting or opposing” and “in any manner that is not impartial or neutral” may well deter public officials and employees from engaging in protected speech. The Arizona Legislature may consider looking to language that the State of Washington used in a similar statutory prohibition that does not present the same vagueness concerns. *See Wash. Rev. Code Ann. § 42.52.180* (2012).

and the language of the act as a whole.” *No Ins. Section v. Indus. Comm’n*, 187 Ariz. 131, 132 (App. 1996) (internal citation omitted). Section 11-410 generally sets forth a prohibition against the use of public resources for the purpose of influencing the outcomes of elections, and attempts to give some parameters for that prohibition through carve outs (that is, distributing informational pamphlets or reporting on official actions (Subsection A); certain government-sponsored forums or debates (Subsection C); and any conduct protected by our federal or state constitution (Subsection G)). Moreover, the definition in subsection (H)(2) is self-evidently a response to the narrow test set forth in *Kromko*. The Court of Appeals in *Kromko* rejected an impartiality test because, “Had the legislature wanted to make presentation of an impartial analysis a prerequisite to [the use of public] funds and resources to educate the public on a ballot issue, it easily could have done so.” 202 Ariz. at 502 ¶ 7. With subsection (H)(2), the Legislature made clear that it did require impartiality as an element in the test. We can thus infer that the Legislature intended the prohibition on the use of public resources to apply not just to uses of public resources that unambiguously urge the electorate to vote in a particular matter, but also to uses of public resources that “support or oppose” a ballot measure ambiguously by presenting the information in “any manner that is not impartial or neutral.” See A.R.S. § 11-410(H)(2); see also Ariz. Atty. Gen. Op. I00-020 at 2 (allowing responses to inquiries on election issues “in a neutral manner that does not urge support or opposition to a measure”).

In the context of a ballot measure, we thus assess whether the use of public resources is for the purpose of influencing an election using an objective test to determine both its purpose and its manner. The test looks to: (1) whether the use of public resources has the purpose of supporting or opposing the ballot measure, and (2) whether the use of public resources involves

dissemination of information in a manner that is not impartial or neutral. As noted above, this test is objective.

In many cases, the application of the test will be straightforward. If the use of public resources unambiguously urges voters to vote for or against a ballot measure, it will violate the statutory prohibitions because (1) it supports or opposes the ballot measure, and (2) there is no question that the use is not impartial or neutral given its unambiguous message for or against the measure. Similarly, if a reasonable person could not find that the use of public resources supports or opposes a ballot measure, it will not violate the statutory prohibitions because (1) it does not support or oppose a ballot measure, and (2) it must therefore be impartial or neutral with regard to the ballot measure.

In other cases, the application of the test will require additional analysis. If a reasonable person could conclude that the use of public resources supports or opposes a ballot measure but reasonable minds could differ, *see Kromko*, 202 Ariz. at 503 ¶ 10, then the test will require closer examination of whether the use of public resources disseminates information in a manner that is not impartial or neutral. For this examination, we can analogize to the requirement that the legislative council provide “an impartial analysis” of each ballot measure or proposed amendment. A.R.S. § 19-124(B). Our Supreme Court has held that impartial analysis must “avoid[] argument or advocacy” and “be free from any misleading tendency, whether of amplification, of omission, or of fallacy, and it must not be tinged with partisan coloring.” *Tobin v. Rea*, 231 Ariz. 189, 194 ¶¶ 12-13 (2013) (internal quotation marks and citations omitted). The use of “rhetorical strategy” in an attempt to persuade the reader is another signal that the dissemination of information violates this prohibition. *See Citizens for Growth Management v. Groscost*, 199 Ariz. 71, 72-73 ¶ 6 (2000). If an analysis of the manner of the use of public

resources reveals that it engages in advocacy, misleads, or uses rhetorical strategy, the use of public resources will violate the statutory prohibition because (1) a reasonable person could find that the use supports or opposes a ballot measure, and (2) it is not impartial or neutral.<sup>7</sup>

In other words, when assessing whether conduct implicates section 11-410's restrictions based on its purpose, we must account for the delicate balance between the prohibition on the improper use of public resources to influence elections and the need for public officials and employees to carry out their public functions. If a reasonable person could find that the use of public resources supports or opposes a ballot measure, we assess whether it is done in a neutral or impartial manner by examining whether it is: (1) free of advocacy; (2) free of misleading tendencies, including amplification, omission, or fallacy; and (3) free of partisan coloring.

3. *The standard may be applied practically.*

To clarify the application of the standard set forth above, we provide the following practical application examples, each of which is subject to the purpose and manner analysis as set forth above.

Routine uses of public resources made in the normal course of government functions would be presumed not to run afoul of the statutory prohibitions unless additional evidence demonstrates the use of resources was for the purpose of influencing an election. If the use of public resources is a routine use in the normal course of government functions, an objective observer would likely conclude that the purpose of the use of public resources was not to promote the interests of the ballot measure or to be used against the ballot measure. As such,

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<sup>7</sup> This is consistent with our previous opinion assessing the circumstances under which informational materials that do not advocate for or against a measure, but are not specifically authorized or required by statute, may be disseminated using public resources. Ariz. Atty. Gen. Op. I00-020 (approving of "such factors as the style, tenor and timing of the publication" to determine whether a public resource was used for the purpose of influencing an election) (internal quotation marks and citation omitted).

routine communications are presumed to be permissible; but that presumption may be rebutted by evidence that the communication meaningfully deviated from the routine in a manner that objectively indicated it had the purpose of influencing an election in violation of the statutory prohibitions. For example, where a tough-on-crime ballot measure is being circulated, the release of statistics that report an increase or decrease in crime but did not expressly address the ballot measure would be presumed not to violate the statutory prohibitions if it is a routine communication. In order to rebut that presumption, there would need to be evidence that, considering the totality of the circumstances, **the report disseminated information in a manner that was not impartial or neutral.** Relevant circumstances may include evidence that the report was inaccurate, misleading, **and/or used rhetorical strategies that attempt to persuade the voter.**

Similarly, in the discharge of their duties, elected officials are often presented with inquiries from the press or constituents concerning their positions on a variety of public policy issues, including ballot measures. For example, a county attorney may be asked at an open press conference to express a position on a pending ballot measure. Given the First Amendment implications discussed above, the official may respond to the inquiry without violating the prohibition on the use of public funds where the statement does not otherwise result in a non-routine use of public resources. Ariz. Atty. Gen. Op. I00-020 at 3 (citing *Smith v. Dorsey*, 599 So. 2d 529, 541 (Miss. 1992) (“the effective discharge of an elected official’s duty would necessarily include the communication of one’s considered judgment of the proposal to the community which he or she serves.”)). Although the use of the official’s time during the press conference has some value, the First Amendment implications of the official’s speech and the explicit carve-out in subsection (F) for speech protected by the First Amendment both indicate that this should not be considered a use of public resources within the statutory prohibition.

Further, the statute and this office's previous guidance recognizes that public officials may expend public resources concerning elections for a variety of neutral or impartial reasons, including "the use of public resources to respond to questions about ballot measures, although responses should provide factual information that suggest neither support nor opposition to the measure;" "the use of public resources to investigate the impact of ballot measures on a jurisdiction;" "the use of public resources to prepare and distribute the election information required by statute;" and "the preparation and dissemination of materials 'reporting on official actions of the governing body.'"<sup>8</sup> Ariz. Atty. Gen. Op. I00-020 at 3-4. Again, any expenditure or use of resources related to the subject matter of a ballot measure and within the operative time frame will be subject to the purpose and manner analysis to determine whether it violates the prohibition. For example, the use of public resources to investigate the potential impact of a ballot measure on a jurisdiction could give rise to a challenge where the dissemination of information related to that investigation is made in a manner that fails to be neutral or impartial.

As expressly permitted by the statute, public officials also may sponsor forums or debates at public expense if they remain impartial, the events are purely informational and provide an equal opportunity to all viewpoints. A.R.S. § 11-410(B).

In contrast, the statute prohibits a non-elected public employee's attendance at a non-neutral event designed for the purpose of supporting or opposing a ballot measure if the employee attends the event during normal working hours unless the employee uses annual leave

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<sup>8</sup> Ariz. Atty. Gen. Op. I00-020 interpreted the prior version of the statutory prohibitions that did not have the definition of "influencing the outcome of elections" at issue here. But that opinion embraced a similar standard, as it indicated that the use of resources must be assessed in an objective manner on a case-by-case basis to determine whether, for example, information is provided "in a neutral manner that does not urge support or opposition to a measure."

personal time; such attendance would violate the statute's prohibition on use of personnel for the purpose of influencing the outcome of an election.

The importance of context in this objective analysis cannot be overstated. The use of public resources to disseminate information may be impartial or neutral in content, but violate the statutory prohibition in the manner in which it is disseminated. For example, if neutral or impartial information is disseminated through direct mail only to likely voters (as opposed to the full relevant constituency), that context may indicate that the public resources are being used for the purpose of influencing the outcome of elections.

### Conclusion

Section 11-410 prohibits counties from using public resources for the purpose of influencing the outcomes of elections. The statute seeks to balance a public official's First Amendment rights to participate in the political process, and the public's right against compelled subsidy of speech embodied in the improper use of public resources to influence elections. This opinion provides an analytical framework to assist public officials in their efforts to balance their First Amendment rights with the public's right against compelled subsidy of speech.

To that end, the operative time frame for the relevant prohibitions is triggered by the filing of an application for a serial number for a ballot initiative or referendum.

The determination of whether particular conduct is permissible requires analysis under an objective two-part test:

1. Was there a use of public resources?
2. If so, were the public resources used "for the purpose of influencing the outcomes of elections?"



Under this test, any use of public resources that occurs after the restrictions arise under the statute is subject to the objective test set forth above, which must necessarily constitute a fact-specific, case-by-case evaluation to determine whether such use was for the impermissible purpose of influencing the outcome of an election.

Mark Brnovich  
Attorney General



Mark Stuart &lt;mstuart1789@gmail.com&gt;

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**Complying with ARS 9-500.14 vis-a-vis the Citizen Initiative to Prohibit Construction in the Preserve**

1 message

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**Mark Stuart** <mstuart1789@gmail.com>

Fri, Dec 2, 2016 at 1:12 PM

To: jlane@scottsdaleaz.gov, "Phillips, Guy" &lt;gphillips@scottsdaleaz.gov&gt;, "Littlefield, Kathy" &lt;klittlefield@scottsdaleaz.gov&gt;, vkorte@scottsdaleaz.gov, "Washburn, Bruce" &lt;bwashburn@scottsdaleaz.gov&gt;, "Jagger, Carolyn" &lt;cjagger@scottsdaleaz.gov&gt;, sklapp@scottsdaleaz.gov

Greetings Mayor Lane:

I am concerned that the City is misusing public funds to influence the outcome of a future election. Whether the City will be able to build in the Preserve, at all, will be on the ballot in Nov. 2018 because of a citizen initiative I filed yesterday. Please take appropriate actions to ensure that public monies and other public resources are not being misused. This term is defined in A.R.S. 9-500.14 .

The email message below was sent to the City Manager and the City Treasurer. As I read the law, these persons would be personally responsible for repaying all public monies misused.

Some detailed explanations are provided below.

Please review it at your pleasure.

Thanks.

Mark Stuart

1. I filed an application for a serial number for an initiative petition to prohibit any construction in the Preserve on Dec. 01, 2016 at about 4pm.

Because construction in the Preserve will be an election issue, the city is prohibited by state law from using any public resources to discuss building in the Preserve in any manner. See **I. A.R.S. 9-500.14** See also **II. Ariz. Atty . Gen. Legal Opinion** No. I15-002 Amended, July 30, 2015. Items I and II are attached to this message for your convenience.

2. The prohibition begins on the date the application is filed with the town clerk.

"The prohibitions in Section 9-500.14 arise upon the filing of an application for a serial number for a ballot initiative or referendum." See **II, p. 5.**

Currently, the City is openly advocating building in the Preserve, using approximately \$1.9 million of city funds , city staff time and other city resources.

3. Please provide a full accounting for all city resources utilized to promote building in the Preserve thru Dec. 01, 2016.

3. (A) Please instruct the DDCS and Swaback partners to freeze all spending related to building in the Preserve immediately.

4. Please instruct city staff that they can no longer use their time, while they are on the official clock, to discuss or work on any proposals related to building in the Preserve.

5. Please remove all references to the DDC from the City's websites.

6. Please instruct the DDCS to stop advocating building in the Preserve with city resources of any kind.

7. Please make arrangements to have the City's unspent funds returned to the city immediately. The statute makes you personally responsible for repaying any city funds or the costs of other resources used to discuss building in the Preserve after Dec. 01, 2016. See **A.R.S. 9-500.14 (F)** This could be a very large cost for you personally. You are now forewarned.

8. I will be speaking at the council meeting tonight. I am reviewing all legal options to enforce compliance with the statute.

I sincerely hope that we can resolve this issue amicably, with your full cooperation.

Mark Stuart (480) 922-6169

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2 attachments



I Using City Resources to Influence Elections\_AR 9-500.14.pdf  
171K



II R15-002 AMENDED Issued Attorney General Opinion I15-002.pdf  
4040K