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CALL TO ORDER

[Time: 00:00:01]

Mayor Ortega: Good evening. I call the December 8th, 2021, city Council regular meeting to order. City Clerk Ben Lane, will you please conduct the roll call.

ROLL CALL

[Time: 00:00:15]

Clerk Ben Lane: Thank you Mayor. Mayor David Ortega.

Mayor Ortega: Present.

Clerk Ben Lane: Vice Mayor Tammy Caputi.

Vice Mayor Caputi: Here.

Clerk Ben Lane: Councilmembers Tom Durham.

**CITY OF SCOTTSDALE
DECEMBER 08, 2021 REGULAR AND WORK STUDY COUNCIL MEETING
CLOSED CAPTION TRANSCRIPT**

PAGE 2 OF 51

Councilmember Durham: Here.

Clerk Ben Lane: Betty Janik.

Councilmember Janik: Present.

Clerk Ben Lane: Kathy Littlefield.

Councilmember Littlefield: Present.

Clerk Ben Lane: Linda Milhaven.

Councilmember Milhaven: Here.

Clerk Ben Lane: Solange Whitehead.

Councilmember Whitehead: Here.

Clerk Ben Lane: City Manager Jim Thompson.

Jim Thompson: Here.

Clerk Ben Lane: City Attorney Sherry Scott.

Sherry Scott: Here.

Clerk Ben Lane: City Treasurer Sonia Andrews.

Sonia Andrews: Here.

Clerk Ben Lane: City Auditor Sharron Walker.

Sharron Walker: Here.

Clerk Ben Lane: And the Clerk is present.

[Time: 00:00:43]

Mayor Ortega: Excellent. We have the fire chief and firefighter Derek Owen if anyone needs assistance.

Today we're honored for the pledge of allegiance, the president of boys and girls club of Scottsdale. Please come forward.

Boys and Girls Club: I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands: One nation under God, indivisible, with liberty and justice for all.

Mayor Ortega: Thank you for being here. Please tell us your name and your school and your favorite subject.

Kathleen McMahon: Hello, I'm Kathleen McMahon. My favorite subject is history.

Addison Jones: I'm Addison Jones and I go to desert mountain high school and my favorite subject is English.

Nia: Hi, I'm Nia my favorite subject is U.S. history.

Mayor Ortega: This is the final meeting of Council for the year 2021. I hope everyone has a wonderful holiday, great time with family and friends.

If you're looking for something terrific to do, we have many events. Please check out the Scottsdazzle program. The events take place at various venues and around the old town and we encourage you to shop our businesses and meet our friendly merchants in old town. Our Scottsdazzle will continue until December 31st. For more information, please just search Scottsdazzle using any browser.

Well, I want to wish everyone a great holiday season and enjoy this beautiful weather and we will now proceed with the meeting. The first part of our meeting will involve public comment.

PUBLIC COMMENT

[Time: 00:03:30]

Public comment is reserved for Scottsdale citizens to comment on non agenda items within the jurisdiction of our city Council. No official Council action can be taken on any matter brought forward by the speakers, and they are invited to speak for three minutes.

So, I have opened public comment and at this point, I don't see -- there is one. There is one public comment. It is in person. That is Daniel. If you could come forward and tell us your address and you have three minutes.

Daniel Ishac: A few months ago I sent a letter to the Council and Mayor about the lack of quorum at the meeting. Last night, Councilwoman Whitehead correctly stated that no one has the only or best solution to city challenges and issues.

I'm assuming she felt compelled to state the obvious after the Mayor wielded his gavel. The Council sat and listened to you speak for 18 minutes on the topic at hand, quite a bit of background to bolster your direction to the City staff.

Vice Mayor Caputi waited to be speaking, and shared her opinions and suggestions to the City staff, in a much more abbreviated manner than you did. Apparently because her views differ, you tried to silence her under order.

But you didn't use the same authority against those who agree with your positions. That is shameful behavior from an elected official. Fortunately, we have the experience and knowledge of Councilwoman Milhaven to challenge your behaviors and unbiased input from the City Council to stop tyranny. I thank the City Council for standing up. It is shameful it wasn't unanimous.

Scottsdale deserves better than what we saw last night. If it was an isolated incident, I wouldn't be here tonight, but it wasn't. Continued behavior like last night is going to lead to unfavorable coverage of the City in the press.

As elected officials, your contribution of your time is not enough. Your conduct is important. Decorum is a basic expectation.

Mayor Ortega: Thank you, sir. You didn't state your address, did you? okay, thank you. Continuing, we will close public comment and at this point, we will discuss consent agenda items 1-9A. We received three in person and one telephonic for item 9. It is proper to open up and hear public comment on any of the consent agenda items. If I could call forward the speaker remotely for item number 9. Can you handle that please, staff?

PUBLIC COMMENT – CONSENT AGENDA

[Time: 00:07:23]

Brian Hancock: Yes Mayor, we have David Mason on the line.

David Mason: Thank you. I am David Mason of 33217 north 61th place Scottsdale, Arizona. Can you hear me?

Brian Hancock: Yes.

David Mason: Mayor and city Councilmembers, I want to thank you for this public comment opportunity. I encourage adoption of ordinances 4527, 4528 and approval of the 2022 legislative agenda. I was on the Scottsdale city short term rental working group whose recommendations led to the proposed ordinances and contributed to portions of the 2022 state legislative agenda addressing the impacts of short term rentals and opposing legislation to curtail.

You are to be commended for the most noteworthy approach to public rentals and protecting the safety of the general public. It is every resident's issue, it is one of the reasons no one wants to live next to a short-term rental.

The ordinances highlight the public safety and Scottsdale residents' rights to a decent safe place to live. These ordinances are practical, reasonable, workable and plain common sense. These ordinances recognize public safety means short-term rentals shouldn't be havens for nuisance behaviors threatening safety and peace.

Operating with little regard of peace and safety are nuisances for public safety in Scottsdale neighborhoods. Public safety hasn't seem to much interest. These ordinances make public safety of more interest to short term rental owners and the industry. And hopefully more responsive to public safety and less destructive.

Thank you, Mayor, Councilmembers and staff for all of your hard work. Please continue to address short-term rental issues and possibly reconvening in some form another working group. Please consider the merits of similar actions of other cities and towns, and those who have survived the challenges. I know there's a number of cities and towns working on issues as we are in Scottsdale. Thank you for your time.

[Time: 00:10:41]

Mayor Ortega: Thank you, sir. Next, former Congressman Goldwater. Please come forward. Oh, certainly, we also have Mark Beauvais in person listed.

Mark Beauvais: Using the best data available and fundamental analysis techniques, representative economic performance data for this sector. According to the same body of data some of you have used, Scottsdale has 4,926 vacation rental units available as of today.

Only 94% of these are whole home rentals, the other being fractional rooms for rent and what not inside a house. Another 12% are 30 day plus rentals, not true short-term rentals in the sense we refer them, netting us to a total of 4,275 true short-term rentals in Scottsdale.

This is 15% of the total of 27,000 units across our state. Since 2019, vacation rentals have produced over 10 million annual visitors to Arizona in each fiscal year. This year, the number is closer to 12 million with 1.8 million of those annual visitors lodging here in Scottsdale. Arizona department of revenue reports for the fiscal year ending June 30th of 2021, \$600 million in online lodging revenues which has produced 80 million in TPT tax revenues to our state.

And approximately \$12 million in TPT tax revenues to Scottsdale directly. Unfortunately, due to historic issues and practices, that money looks like hotel tax revenues as it comes into the city and it is labelled as such. So Scottsdale is blind to the vacation rental tax revenue that is actually coming in. Additional visitor spending produces five times this amount in other tax revenues, with Scottsdale being an outsized beneficiary. Whether you stay in Gilbert or Glendale and there are vacation rentals in every city across the valley, chances are, a visit to Scottsdale is on your vacation to-do list.

If tourism is important to Scottsdale and the City invests heavily in tourism promotion, then vacation rentals are important to Scottsdale. I urge you not to get rid of vacation rentals in Scottsdale. Thank you.

[Time: 00:14:30]

Mayor Ortega: Thank you. Next we have Tim Scarpino.

Tim Scarpino: I think we were severely underrepresented in that working group. I think we can all agree problem houses and party houses and issues with -- those nuisance houses are not good for the neighborhoods, they're not good for short term rental industry and I think we can all agree we want to rid them from our community.

However, there are certainly other opportunities to correct this issue without adding new ordinances or adjusting the ordinances. Particularly the time to respond. It is challenging. One of the things we do as responsible vacation managers, we have private security that drives around and noise monitoring devices that are nowhere near as beneficial as we are led to believe. When we contact guests from the violations, they're just watching TV.

Obviously there are exceptions to the rule, but we take many, many proactive steps to be good neighbors in the community. We want to work together with the government to solve the problem of these nuisance houses, we just don't feel these two ordinances are beneficial toward solving the problem. What is going to happen, those that are the nuisance houses are going to go underground and they're not going to be under the same set of rules.

So I'm afraid that these may have unintended consequences of putting the good players at a disadvantage and putting the bad players at a better advantage because they're not going to follow any of the rules. That's all I have, thank you. I appreciate your time and thank you for working through this issue and we're excited to get rid of the nuisance houses, too. It is bad for our community and the vacation rental industry. Thank you.

Mayor Ortega: Thank you. Next we have Barry M Goldwater Jr. Good to see you.

Barry Goldwater Jr: Mr. Mayor, members of the City Council, thank you for allowing this testimony and I appear here today because I'm concerned that the City of Scottsdale proposed ordinance of 4527 contains provisions that are perhaps unnecessary, counterproductive and contrary to the law. There are problems out there and those of us in this business want to work with everyone to clean that up.

I think vast majority of rental units are law-abiding, well-intended and obey the law. In this case, SB-1530 that went into effect in 2017 prohibits local governments from proposing restrictions based on classification, use and occupancy. Cities may not impose short term rentals any rule that doesn't apply to all other residential rental property. The only exception is that based on local government may impose rules necessary to protect the public safety and health.

Proposal number 4527 conflicts with this rule in several ways, by irregular short term rentals. An emergency contact person cannot be expected to put an immediate end to a nuisance and not likely that that person would make it to the home when a nuisance is still occurring.

The police are the best suited to deal swiftly with nuisance and complaints. By forcing owners to be on call in the event of ordinance violation is inappropriate. Owners are not police. The proposed adoption ordinance violates state law and is not necessary. Rather than punishing innocent property owners and adding another level of bureaucracy, the City should enforce existing laws against nuisance properties when they occur. Thank you.

Mayor Ortega: Thank you. We'll close public comment and we can open comment -- I see Councilwoman Whitehead on the subject.

Councilwoman Whitehead: I was going to ask staff to pull it from the consent agenda to do a presentation.

Mayor Ortega: Thank you. Councilwoman Janik?

Councilwoman Janik: I had the same request, pull it from consent and put it on regular.

Mayor Ortega: Certainly. We have our open subject, which is the consent agenda items. 1-9A. And excluding consent agenda item number 9. Do I have a motion on those?

Councilwoman Whitehead: I'll make a motion to approve 1-9A with the exception of item 9.

Councilwoman Janik: I second.

[Time: 00:21:58]

Mayor Ortega: Thank you. We have a motion and we have a second. Any discussion? Please register your vote concerning the consent agenda items. Thank you. That was unanimous.

We will proceed to our regular agenda items, which would be in this case, the agenda item number 9, 10, 11 and 12. They will be handled individually and I'm asking assistant City Manager Brent Stockwell to make the presentation as requested. Thank you.

ITEM 9 – VACATION RENTAL AND NUISANCE PARTY CODE AMENDMENTS

[Time: 00:22:41]

Brent Stockwell: Mayor Ortega and city Council, I am one of your assistant City Managers. I worked with the short term working group over 12 weeks and six meetings last spring and also,

was here in support of Councilmembers Janik and Milhaven who presented on this subject July 1st.

The Council unanimously directed us to move forward with the working group recommendations and report back on a quarterly basis, which we did on November 9th. We went through the draft ordinances with you in detail that evening and we shared all of this information with all of the members of the working group and an interested party list of everyone that has ever contacted us about this issue and wanted to be involved and we sent as we mentioned that night, information out to the government relations representatives for airbnb, Expedia, vRBO at that time.

All that to have an open and transparent process as we go through this. As you know as well, you sent a letter to the Arizona legislature letting them know of the importance of the issue to Scottsdale residents and we know that you have heard from hundreds of residents in the community concerned about both those of appropriate short term rental owners that are supportive of what they do, but the vast majority concerned about owners of other properties not properly obeying Scottsdale's laws.

[Time: 00:24:24]

One of the recommendations was to evaluate if ordinances could be strengthened to improve the ability to enforce and of course as we talked about in the working group and on the first and then again on November 9th, we're doing this within the authority granted by the state of Arizona for local governments to address this issue.

His team were the ones that went out in the neighborhoods with noise monitors to help us identify those levels. Two things, the first is the vacation rental ordinance. This is the only thing that applies only to short term rentals.

That requires a one hour response time in the event that a police officer has to go out to a property in response to an emergency and they are calling someone that has -- the owner has identified as the emergency contact and that is something where the police officer needs the help of the emergency contact to get that situation under control.

And we could -- we have talked before about the details of that situation. This is not something new. The City of Chandler had a one hour response time in their ordinance, that is one of the things we uncovered when we looked at all of the ordinances in the City and state on this. It is something not unusual. We have a false alarm ordinance. A lot of people have alarms at their home.

A few people don't maintain them and they cause false alarms and what we require in that situation, someone has to come out in half an hour to turnoff that alarm so it's not a nuisance for the neighborhood. We thought a reasonable requirement when a police officer, not anybody,

but when a police officer goes out and says I need the help of the owner or representative to get the situation under control.

I think that's entirely reasonable. If you never have a problem at your home, you won't have the need for that to be in place. Then the second one, this is the nuisance party and unruly gathering ordinance. This is not just short-term rentals, this is long-term rentals, single family residences that most of us live in.

If we choose to have a party that disturbs the peace and quiet of the neighbors around us after 10:00 p.m. at night in particular, there -- we have given our police officers a little bit more authority to address that and set what that standard is. As discussed on November 9th, it defines people who not just once, not twice, not three times, four times we've had to go and they have been found responsible so we can hold them more -- we can assess higher levels of penalties and responsibilities.

[Time: 00:27:50]

You may recall back November 9th we talked about innovation we tried previously. The police service fee. This ordinance will eliminate that experiment of the police service fee and use the more standard practice, the civil citation process that goes to civil court. If this situation happens, they'll have their day in court and the judge will decide that matter.

As we discussed on November 9th, it is increasing the minimum fines, all of the authority that the state legislature had given us for that and providing mechanisms in place suggested by the industry for mitigation, suspension of the fines if they implement best practices such as those mentioned tonight. We certainly think we have gone through a thorough process on this and done all of the analysis to be consistent with the law, while continuing to advocate for increased local control as you have directed us to do.

That's why we're here tonight. Thank you. And I have mentioned the community involvement. Here's what we're asking for tonight. Thank you.

Mayor Ortega: Councilmember Milhaven.

Councilmember Milhaven: Thank you Mayor and thank you Brent. Gentlemen I'm surprised to hear you felt you were left out of the process, all of the meetings were open to the public and included public comment opportunities. I'm surprised to hear that you didn't feel you had the opportunity to input in that. I understand showing up may be a burden but if the police show up and the tenants are not going to respond, then I think the owner needs to take some responsibility.

I also think it puts the responsibility on the owner to make sure that they're not advertising that 20 people can be there and have a party and the owner makes sure that the folks they're renting to understand -- I don't know if we finished doing this, we talked on the task force about a

good neighbor, remember you are in a neighborhood and good neighbors behave this way.

Watch your noise and don't put your trash on the street and all the things we see the bad actors doing, to remind tenants to be good neighbors while visiting our neighborhoods. So I would hope that it would happen not very often that someone would need to be called if the owner is doing a good job in the way they're advertising their property. Talking to folks in the industry, our intension is to rent to families and not have big party houses.

[Time: 00:30:30]

I'm all for having the owner have a little bit of responsibility in terms of screening tenants and informing about how we expect them to behave in our neighborhoods. I was surprised to hear you say, sir, you have private security driving around. That would suggest, it wouldn't be a problem to show up in 60 minutes. I understand it would put a bit of a burden. We talked about the fine and Brent talked about, if someone shows a good-faith effort to address the issue, we're going to be responsive to that and try to cooperate with the owner.

I do think I'd like to move forward with this. I'm going to make a motion to adopt ordinance 4527 and 4528.

Councilwoman Whitehead: I'll second the motion.

Mayor Ortega: Great. I see two, three other requests to speak. Councilwoman Janik and then Councilwoman Whitehead.

Councilwoman Janik: Thank you for the great report. I'm glad you gave clarification. You did especially on the one hour response time. I have to tell you, I was the one that recommended the one hour response time. First, it's in Chandler. And it's helped get the situation under control and it hasn't been involved with the law as far as we know.

I'm aware the rules exist in other cities and they work. Because they work, I think it's important for us to adopt them. You have to realize that if you have one party house on a block, it affects many of the neighbors because the noise disturbs the children, the babies, the parents, etc. cetera.

So we need to put the responsibility back on the owner and the people renting that particular location. And I think this is a good way to attack the problem. I do not believe we're not following the law. And the other comment, I understand when you say this is the amount of money that is brought in by short-term rentals and I accept that.

But I would hope you would accept that the hotels have lost business because of short-term rentals. It is a balancing act. While people in the audience may think wow, look at the money we'll lose if we clamp down on this, in fact, it's not one to one parity.

It doesn't work that way. If we didn't have short-term rentals, the hotels would probably be back to where they were. That argument, I question it. I would like to look at the numbers. Pretty much that's my comments.

Mayor Ortega: Councilwoman Whitehead and then Councilmember Durham.

Councilwoman Whitehead: I would say peace and quiet and enjoyment of your neighborhood is priceless, that said, we appreciate quality short-term rentals. I don't think I or anybody else wants the end that. I want to thank Brent and my colleagues on Council and staff for the work to bring this forward. The best way -- actually I'm going to quote -- I agree, bad short-term rentals are really hurting our communities but they're also hurting the short-term rental industry and your profits, your bottom line.

So we're all in the same boat. We want to get rid of these guys. The best way to avoid different codes and different cities is to aggressively fight at the state level to protect neighborhoods. Since we don't have that and we're here today, I would say the one hour enforcement is not going to hurt the good short-term rental owners. People that don't murder people aren't bothered by the laws that don't allow you to.

I appreciate your comments, but let's keep working together, I definitely support the ordinance changes. Thank you.

[Time: 00:34:54]

Mayor Ortega: Thank you. Councilmember Durham and Councilwoman Littlefield.

Councilmember Durham: Thank you Mayor. Looking at the letter, he quotes from the Arizona statutes that say we have the ability to require someone to respond in a timely manner. That seems to me an hour is a timely manner. You can get almost anywhere in Scottsdale in less than an hour. It also allows us to require the response be in person, over the phone and by e-mail.

So those are stated as alternatives. So, as I see it, we're requiring a timely response, less than an hour and we're requiring it in person, which the statute seems to support our ability to do that. You have any comments on that?

Brent Stockwell: I'll make a quick comment on that. There's one item from the staff report we clarified this. You may recall we discussed this on November 9th because we heard a concern from one of the government relations representatives from one of the online lodging marketplaces, they preferred Phoenix's ordinance that allowed you to call or text. We said last time and earlier, if a police officer has to show up, we think the owner of the home should also be there.

What we wanted to say and I'm quoting from the report. If a police officer is on site responding to the emergency, the emergency contact needs to be physically at the house to control the

situation. In the event emergency contact responds by phone or text or e-mail and able to resolve the situation within one hour, it is highly unlikely they would be cited for failure to respond in person.

It is a logical argument. If you can get it done within the time period -- the problem is only when we try to contact someone and no one responds within an hour. I thought that was responsive to your statement and I'll yield to deputy City Attorney.

Luis Santaella: Mayor and members of the Council, the legal issue that the Congressman brought up was he was stating that he believed that the emergency contact provision violated state law because it doesn't apply to owner occupied or long-term rentals.

There's two sections. One public safety section where the city can impose laws unique to short term rentals such as transportation, some public health and safety type regulations if they demonstrate, if the City demonstrates a public safety need.

That same section says that the City can require an emergency contact. The section that Councilman Durham referred to, the City can require two different contact information. Emergency and complaint. There's no restrictions on emergency contacts, what we can require. We just have to demonstrate there's a need.

In the ordinance you're going to adopt or considering adopting tonight, there's a statement about the number of police calls that have occurred at short-term vacation rentals and it is over 1200 if I recall correctly. That seems to be a very significant public safety reason for requiring emergency contacts to respond within an hour.

[Time: 00:38:58]

It is covered by a section or authorized by a section that doesn't apply to long-term or owner occupied. There is a difference between the two. Just wanted to provide that clarification.

Brent Stockwell: If I may go further, that ordinance was through October and had 1821 I believe was the number. We got updated numbers today through the end of November, just for the month of November alone, there were 175 calls for service related to short term rentals in the Scottsdale police department and resulted in five notices of violation for the nuisance party and unruly gathering ordinances, on top of nine the month prior and we finally have the numbers on that.

Believe me, there's been a consistent effort for the notice of violation and this ordinance only helps your police department respond to that. Thank you.

Mayor Ortega: Next, Councilwoman Littlefield.

Councilwoman Littlefield: Thank you, Mayor. Thank you Brent. I would like to thank Councilwoman Milhaven and Councilwoman Janik for their work and efforts in having this happen. I do support this. I think a lot of work, a lot of study and a lot has gone into this to make sure it is tight and it is accurate and it is appropriate. I support this. I think the rules are needed and I think the numbers justify that and prove they are needed. The calls that I get from neighbors who are awake at 3:00 in the morning because of parties going through their neighborhoods is not what we want here.

People have a right to expect a certain peace and quiet in their neighborhoods and in their homes. When that doesn't happen, then we need to step up and do something. We need to protect our neighborhoods, our citizens and I think this is a common sense way to address the actual, real issues and not go outside of the boundaries and protect citizens, neighborhoods and the peace and quiet they deserve. I will be supporting this. Thank you and thank you both for your help on this. Thank you.

Mayor Ortega: Okay. Thank you. I also support the resolutions as stated. By the time a notification is made, there's already a police report in progress. It's important to know that. That means it has been elevated to a point where we need and want accountability and of course every time an officer goes to a property, they are in potentially harm's way. So we are doing our job and our responsibility to both for the neighborhood as well as the owner. Accordingly, I don't see any other comments from Council. We have a motion, we have a second to approve the vacation rental nuisance party ordinance amendments. Adopt the ordinances. Please register your vote. Unanimous.

ITEM 10 – 2022 STATE LEGISLATIVE AGENDA

[Time: 00:42:29]

Mayor Ortega: We'll move on to item number 10. Item number 10 is a regular agenda item. The legislative agenda is discussed and presented by management and in this case, Shane Stone is the management assistant associate presenting our look ahead and requesting our review and action. Thank you.

Shane Stone: Thank you and good evening Mayor Ortega and members of the City Council. I'm Shane Stone. Tonight I'll take you through our proposed 2022 state legislative agenda. Government relations will be tracking throughout the session and reporting it to Council with important updates. It is important however with the important decisions made at the state capitol and the pace in which things can change in the building, to approach with an agenda that is clear on issues that can significantly impact the City of Scottsdale.

In 2022, we'll see the second session of the 55th legislature. The upper chamber led by senate president Karen Fann and house by rusty bowers of Mesa. With both houses holding -- the republican party holding the majority. There are three legislative districts with a connection to

Scottsdale. District 23 includes almost all of Scottsdale. Legislative district 24. Legislative district 28 has just a small portion east of Scottsdale road. It will have more Scottsdale residents in it or similar to it after redistricting.

To respect Scottsdale unique character and culture, preserve local funding and oppose the local authority. We'll go over support and opposition of proposals by area of policy. There are several proposals that stand out as particularly impactful of better service leaving them highlighted as key positions.

In this area, we have two proposals to support. First, legislation that enhances the capabilities to address the negative impacts of short term rental properties and the short term rental industry and tourism industry. And second legislation allowing the City easier access to water infrastructure, finance authority and with financing. Access to the funding could build and maintain water infrastructure.

[Time: 00:45:57]

We also have three key areas of opposition. First, the legislation that would limit or curtail the City's current zoning authority, particularly in residential areas. Secondly, to legislation to reduce revenue for the City. And third, oppose unfunded mandates the City. We also have areas of legislative support and opposition within specific areas of state policy.

The first is economic vitality and tourism. Medical tourism is a significant economic driver for Scottsdale. We support policies -- we support additional job creation measures, including training and development. Our educated and well-trained workforce is an advantage and we want the opportunity to expand on that advantage and support the revitalization of infrastructure and safety enhancements and lowering information technology costs.

Next in local government finance, we support the stability of public pensions and reducing unfunded pension debt. Scottsdale has been a leader in this space through our reduction of unfunded liabilities and pensions. We support the continued viability of highway user revenue funds to fund infrastructure projects. We support changes to the major events fund which would remit monies back to local governments for their support of events that bring in regional and state-wide benefit.

And in accordance with the key position to oppose the elimination of revenue streams, the tax on the rental of real property for residential and reduction or elimination for speculative builders tax and construction sales tax that don't return revenues equitably. Construction taxes should be remitted to communities that take on the cost associated with the construction.

In the area of transportation, we have three potential proposals to support. First, the continued viability of the state aviation fund, including provisions to return funds to the airport where the fuel is sold. We all know how important the Scottsdale airport is to the community and economy.

We support the extension of the proposition 400 regional sales tax to a county wide vote of the people. And support the continuation of the leadership of the development of safe autonomous vehicles and devices. This is where we have seen significant investment occur in Scottsdale. In quality of life issues, we are following two of the major works of the City Council.

On the tail of non discrimination, we support legislation to prohibit based on sexual identity and gender discrimination and support local and regional efforts on housing. In public safety, we support efforts to allow us to limit firework uses and lessen the fireworks risk.

[Time: 00:49:16]

This is good local control policy anyway but especially in Scottsdale and we support legislation that enhances the ability to preserve public safety and oppose legislation to impair our effectiveness at maintaining public safety and on a range of topics including risk reduction measures, photo enforcement and certificate of necessity for ambulance transportation.

In preservation and environmental planning, we follow the value in our new general plan of conserve and preserve the environment. This is done by supporting programs that minimize adverse environmental impacts and ensure energy and water are used responsibly.

We support increased resources to the Arizona department of agriculture for the treatment of non-invasive weeds and bring about changes in forest management to increase forest health, improve water yields and reduce catastrophic wildfire risk.

We oppose legislation regarding native plants and sustainable development. Finally in the area of water services and facilities, we support positions that strengthen the state's water management, including the 1980 ground water management act and ability of local water providers such as Scottsdale water to manage, plan and reserve water resources for customers, to preserve our way of life well into the future. That concludes the presentation of the 2022 state legislative agenda. The action this evening, to approve the agenda. I yield to questions you may have.

Mayor Ortega: At this time, I would recognize public comment. We would open public comment. I'm told there is no public comment. Therefore I will close the public comment on this item. And open to Council questions or discussion. Councilwoman Whitehead and then Councilmember Durham.

Councilwoman Whitehead: Thank you for the presentation. Great priorities. So there is -- there has been in the news some talk about our ability to limit, for instance, electric bikes in the preserve. Do we need to add that as part of this or does it fit -- it could fit in a couple of areas, public safety as well as under the preservation priorities. I wonder if we want to -- if my colleagues feel it might be worthwhile or staff has guidance on adding specific language on that.

Shane Stone: On that, I would go back to the core principles. Any is going to be opposed by the City with reasonable communication of the City Council on those issues.

Councilwoman Whitehead: Okay. So if that turns into a bill in some committee, we can immediately without Council approve or go after it? okay. That works for me. Thank you.

Mayor Ortega: Councilmember Durham and then Councilwoman Janik.

Councilmember Durham: Thank you, Mayor. This is a very long list. Are there any things on it in particular that you expect to bubble to the top and be more likely than others that we should be keeping an eye on?

Shane Stone: Thank you Councilmember Durham for that question. Here I would go to the key positions. Certainly we expect short-term rentals to be a topic this year and something that will bubble to the top. The key positions are areas where we expect to see something happen. I would say those are the most likely. Does that answer the question?

Councilmember Durham: Yes, thank you.

Mayor Ortega: Councilwoman Janik, Councilmember Milhaven.

Councilwoman Janik: Thank you for the presentation. I have a question for clarification. In front of me, I have the letter that I believe we will be sending off to the state that summarizes all of these ideas and positions. And yet you went through in quite a bit more detail. Does the state get both the letter and the detail or just the letter? I was just curious.

Shane Stone: Thank you for the question Councilwoman Janik. I believe you're referring to the legislative agenda with front and back. The text you saw at least on the screen is the same text on here. That will be shared with legislative leadership and Scottsdale legislators at our legislative breakfast and something that government relations will be able to carry into the offices of legislators. It will have all of the text you have seen.

[Time: 00:54:41]

Councilwoman Janik: Thank you.

Mayor Ortega: Councilwoman Littlefield?

Councilwoman Littlefield: Thank you for your presentation. I would ask that as you watch what the legislature is doing and what's happening and all that good stuff, if you would pay extra special close attention to issues that involve water use here in the state of Arizona and any negative changes to Scottsdale that might be happening, make sure we have a very quick and close announcement or let us know if anything changes so we can stay on top of that issue that's

important to all of us.

Shane Stone: Absolutely. Thank you Councilwoman Littlefield.

Mayor Ortega: Councilmember Milhaven.

Councilmember Milhaven: I move to accept and approve the City of Scottsdale 2022 state legislative agenda.

Councilwoman Whitehead: I second that.

Mayor Ortega: I will add my comments as well. I do support the motion and the second. My question relates to the water resource issue. It is major, we are basically at Stage 1 and a half. There is state funding, approximately \$100 million placed in the budget for this fiscal year. Just want to know that as we track that, that Scottsdale gets our consideration.

It dealt with a lot of compensation for agriculture and so forth. With that, please we have a motion and a second. Please register your vote. Thank you. Appreciate your work.

Shane Stone: Thank you Mayor Ortega and members of the Council.

ITEM 11 – FISCAL YEAR 2020/21 ANNUAL FINANCIAL AUDIT

[Time: 00:56:45]

Mayor Ortega: Well, our next item is number 11, fiscal year 2021 Annual Financial Audit, presented by Sharron Walker, City Auditor, and Brittny Williams. Heinfeld, Meech & Company have their audit report.

City Auditor Walker: I will be speaking on the table here tonight so Britney can do her presentation from the podium. Presenting audit results at a public council meeting has been recognized as a somewhat of a best practice because there is a new state law passed this last session that now requires that to happen. That law also requires that the CPA that performs the audit be the one to present the audit results. Britney will be presenting the results and then after her overview there is one other part of the law I will be addressing. Then I will present the audit results.

Britney, if you will advance the slide for me, there is one more thing I wanted to provide a little bit of background on. For the public and the newer city council members who haven't seen the annual financial audit report before, the charter actually requires the council to designate a CPA to perform the audit. The councils assign that responsibility to the city auditor, and my office selected Heinfeld, Meech & Company to conduct the audit. It is the treasurer accounting staff that performs the extensive set of financial supports that they audit. And then after the audit we present those results to the audit committee, and they receive these financial reports that there

November 15 meeting. I will turn it over to Britney and let her summarize what is yours results were.

Britney Williams: Good evening, Mayor Ortega, members of the Council. Thank you so much for having me here this evening. As Sharron mentioned, on November 15 I did present to the audit committee the results of our audit reports. There are several of them. We kind of went through them at the audit committee. In total we have given about 18 different reports so far, and we still have two left to do, so we are just going to give you a brief summary here.

What you see on the screen right now is our actual independent auditors report. We give an audit opinion on the city's annual comprehensive financial report, which is that really big financial statement, as well as all the seven component units of the city, which include the 5 CFD, the Municipal Property Corporation and the Scottsdale Preserve Authority. They all receive an individual audit opinion. Each of the opinions we provided were clean opinions. We call those unmodified, meaning we didn't have to not opine or change our modifier opinion in any way.

[Time: 00:59:54]

They are clean, the best you can get. That is really good. That is kind of what this first slide is covering. We also have some communications that we are required to give to those charged with governance. We went through this as well at the audit committee. It is called a communication to governance letter, entered is required understatements of auditing standards for auditors to get. I coaster a number of different things. It talks about estimates that management has made in the financial statements, if there were any difficulties encountered during the audit, if we made any adjustments, if we had any disagreements with management, any fraud, anything like that, that would have all been in this letter. We issue one of these letters for the city financial statements as well as all seven component units as well. So eight of these letters. There were no issues, nothing to note. It was a very standard letter. You can read through it. It is a pretty easy read in just a few pages.

So if you wanted to see the full version of that, we presented it at the audit committee. We also do something called a single audit where we audit the federal awards that the city spends during the year. Fiscal year 21 saw a lot of changes with COVID-19 funding, The CARES Act, The ARPA Act, all these different acts that have given municipalities a lot of money. It came with its challenges. We do an audit on that. Included in that single audit report is a report on internal control. So we look at lots of different things with internal controls as far as financial reporting, all the different areas, cash, investments, revenues, expenditures, capital assets, debt. We look at a lot of different things.

We did find one deficiency in the report we had to report here. We also in our practice and guided by standards have to do an evaluation of everything we find and determine whether or not it rises to the level of inclusion in this report. There are different levels as well. It can be a significant deficiency, noncompliance, and material weakness. The one that we had was a significant deficiency. So in essence, what happened was the equity balance for your joint

venture reported was an error. Technically it was a clerical error. Somebody grabbed the wrong line item, grabbed another municipality. It is an unfortunate situation. But people make mistakes. That is really all that was.

But we were required to report that. So you would see that in this report. As far as the federal programs that we audited, we did not have any findings there, so a lot of federal money spent. We had to do a risk assessment on what federal programs we were going to test. We rotate them. No findings there, no issues. You have to present a status on prior findings. Last year we had an issue on the housing voucher that was a federal reward. It was fully corrected this year. That is something to note with the city. Anytime we have an issue we have to note in this report, it is fully corrected almost immediately, and in the next report we give that status and are able to say it has been fully corrected.

We also issue a report for some complaints related to the highway user revenue funds. We test those expenditures, make sure they are spent in accordance with state statute, and we give a one-page report on that. This is not an audit opinion, it is just a report. Everything was fine with that. As I mentioned, we have two more reports we are going to be doing in the spring. That is the HUD report for housing type issues and then the annual expenditure limitation reports. So it is a full year of audit and fund for us. We get to come out and see Sharron and her team and Ana and her team several times during there. It is always a pleasure to come out and work with everybody and see everybody. We gave more detail at the audit committee meeting on different types of things tested this year and the way we look at things that we change up. With that, I will open it to questions were handed back to Sharron for her final pieces.

[Time: 01:04:49]

City Auditor Walker: If there are no questions about the financial statements, I will cover one additional requirement that was added in at that same law that requires the audit presentation at a public meeting. It is highlighted here in tan on the slide. Brittney, if you can do for the next slide for me. This is what the particular section says. It looks like maybe subsection B is the connection to the audit presentation. The law became effective September 29. That was after the fiscal year that Heinfeld, Meech & Company was auditing. The currently available training, not as an audit but just waiting there, did not find any issues. So the requested action today is as recommended by the audit committee to accept the fiscal year 2020/21 financial reports as submitted by Heinfeld, Meech & Company and to adopt Resolution Number 12342.

Mayor Ortega: Thank you. I see one request to speak. Councilman Littlefield.

Councilmember Littlefield: Thank you, Mayor. I would like to say as Chairman of the Audit Committee, working with Sharron for a number of years and with my fellow auditor councilmembers, I would like to say thank you. The auditor and her staff to fine work, exceptional work with the city, and they have work standards that are extremely high. They live up to them. I believe that we are very lucky to have an audit staff that works for the city, checks the city with the attitude of not finding and condemning but finding and fixing or just making

better as we go through all our various audits in the city. I think it is the attitude that should happen because that is how we improve as a city and how we get better. So thank you, and thank you for your work also because you keep us all in line. Thanks.

City Auditor Walker: Thank you.

Mayor Ortega: Thank you. With that, I will move for acceptance of the 2020/21 financial audit supports submitted by the city's external auditors, Heinfeld, Meech & Company PC and adopt resolution 12342 to demonstrate compliance with ARS 41-1494.

Councilmember Durham: Second.

Mayor Ortega: Thank you. We have a motion and a second. Any discussion? Seeing none, please register your vote. Thank you. Well done.

ITEM 12 – FISCAL YEAR END 2021 FINANCIAL REPORT

[Time: 01:07:57]

Mayor Ortega: Our next regular agenda item is item number 12, which is the fiscal year and 2021 financial support. Sonia Andrews, City Treasurer, is coming to us with that report.

City Treasurer Andrews: Good evening, Mayor Ortega, and good evening, councilmembers. The annual report is audited, done, published, and posted on the city's website. I wanted to say that the annual financial report is a very important document. Not just because it is audited and 210 pages long, but because it is a document that our citizens, rating agencies, and our bond investors, it provides them insight into the city's financial functioning of the city. In essence, it is like a report card that tells us how we are doing financially.

In tonight's presentation I will highlight some numbers from our year end financial report and also let you know what it says about the city's financial health. But before I begin my presentation, I would like to take a moment to recognize and thank my accounting director Ana and her staff for all the work they have done. It takes a lot of hard work, a lot of specialized knowledge, and a lot of dedication to keep our books accurate throughout the year to get through the audit and get a clean audit and produce a 210 page annual financial report. The other thing is that our annual financial report has earned the GFOA, the national GFOA award for Excellence and Financial Reporting for 48 consecutive years. We should be very proud of that.

We will be submitting this report for the award again this year. For the benefit of our audience who may not know, the city fiscal year ends on June 30. It takes about two months for us to get through your end procedures so we can produce some preliminary results for Council. I'm happy to report there is no change from the preliminary results that we reported. We then take another couple months to prepare for the audit, get through the audit, present the audit to the audit committee, and here we are tonight, the final step of this year end process to present the

year and financial results to Council. In order to understand our financial report and how it shows our physical health, I need to spend a little bit of time to go over some basics on what we look for when assessing the city's fiscal health.

First, we look at financial condition. Do all revenues cover expenses? Are we spending within our means? Do we have a b cash position? Do we have enough cash to pay our bills on time? Or do we have cash flow problems? We also look at financial capacity. Do we have a manageable debt burden? Or are we overleveraged? Do we have the ability to find and finance capital needs, or do we have to push those to the future? We look at financial resiliency. Do we have sufficient reserves and budget flexibility to withstand economic downturns and unforeseen events without undue pressures on our finances?

[Time: 01:11:45]

Our year end report shows the city of Scottsdale is financially b and in very good shape. Let me go through some numbers that will show that. First of all, our revenues. If you remember at the start of fiscal year 2021, all the way back to July 2020, we were three months into the pandemic. There was significant uncertainty as to where our finances would be through the pandemic, the recession. We did not know where our revenues would end up. Fortunately for us, revenues came in ber than expected and ber than prior years across all funds. Yes, we received federal stimulus dollars which boosted our revenues, but we also had a b recovery and economic activity that generated taxes and other revenues.

On our enterprise funds, back in July 2020 through September 2020 we had virtually little to no monsoon season. So we had higher than expected water usage, which boosted our revenues. And also, the airport side we experienced much higher activity. So overall, we ended the year with revenue numbers as resented on this slide and positive revenue growth.

On the expenditure side, we managed our spending very closely. Again, because there is so much uncertainty to what revenues we would end up with through the year. While some of our expenditure categories increased, other categories came in lower. So overall, total expenditures for the year were either unchanged from the prior year or lower than the prior year, as shown on this table. So overall for the fiscal year, we were spending within our means.

We also improved our balance sheet. We increased investments in capital assets. We now have over 6 billion invested in various infrastructure, facilities, and other capital assets. We increased general fund cash and investments to almost 160 million. That improves our liquidity position and cash flows. We also increased unrestricted net position. That is like our equity.

We continue to maintain a very manageable debt profile. This chart shows various debt obligations. During fiscal year 2020 we issued 51.2 million in new GO bonds for our 2019 bond program. We issued 311 million in Refunding Bonds. We did not issue any other debt aside from that. And to address our pension liabilities, we set aside 40 million which we contributed this fiscal year to pay down PSPRS unfunded liability. The financial report will also show you that we

maintained our reserves throughout 2021. Our financial policies require specific reserve levels as shown on the slide. Reserves are becoming more and more important as we have more and more uncertainties and to ensure financial resiliency so we can weather economic downturns and handle emergencies and unforeseen events. And finally, we maintained our strong bond rating. The city has a AAA rating, the highest rating that can be achieved. We should be very proud of that. We have the highest rating because of the reasons listed here.

We continue to experience b economic and revenue growth. We have a strong balance sheet. We maintain manageable debt and long-term liabilities. And very importantly, to demonstrate b financial management practices and policies. This is my last slide. In conclusion, I must say that the city's financial strength is not something that was achieved overnight but three years of consistent and outstanding financial and budget management and stewardship by the Council, city staff, and treasurers before me. So I thank you. I can answer any questions you might have.

[Time: 01:16:22]

Mayor Ortega: Very good. I will note first of all that I don't see any request for public comment. Therefore I will close public comment on this issue and move on to Council comment.

Councilmember Janik: Thank you, Sonia. A nice report. I appreciate all that information. I appreciate the fact it was in an understandable fashion. We didn't have 1000 pages of so many numbers. So thank you. I do have one question. It is on the slide where you talk about maintaining policy reserves. That looks wonderful. I just want to make sure it is in the industry averages, general fund stabilization reserves, is 10% the industry average for that reserve?

City Treasurer Andrews: Mayor, numbers of accounts, that is a very good question. That is actually a little lower than best practice. There is no law that dictates what level of reserve that is required, but there are best practices. We are actually in the process of looking at all of our financial policies. We will be bringing financial policies to council to recommend moving those resources to a higher level. We will bring that to Council in February.

Councilmember Janik: Thank you. I appreciate it.

Mayor Ortega: Councilmember Durham.

Councilmember Durham: Since I am on the audit committee, I did read almost all of the financial report, and it is easy to understand why we've gotten awards for it. It is very readable, very easy to understand, which financial reports aren't always. So I wanted to commend the people who put it together. It is a very good job. It is something that is worthwhile for certainly all of us and for other citizens to read as well. Thank you.

Mayor Ortega: Vice Mayor Caputi.

Vice Mayor Caputi: Thank you. I just want to point out that a lot of us up here spend our days reading a lot of negative comments and complaints, and it is so great to spend part of our meeting minding each other that the city is actually doing an exceptionally good job, that we are heading in a great direction, and as you pointed out, for years we have been doing the right thing and moving in this positive way. Yay for us. It is nice to have a positive report. I don't think we can underscore it now. Great job. Thank you.

Mayor Ortega: So at this point we are just accepting the financial report. We will not require any vote per se. Are there any other comments? Seeing none, we will move on. Thank you very much, again, Treasurer Sonia Andrews. We have a second opportunity for public comment at the end of our regular meeting. I see that there is no public comment requested. So therefore I will close the second public comment opportunity. Finally, if there were any petition, it would have been submitted by now. So acknowledge that there is no petition presented. And therefore we move on with that item.

The final item in our regular agenda is whether or not there is any Mayor or Council item tonight. I was not informed of any item in particular. So we will be looking at the next part of our meeting, which will be a work-study, subject as posted. I will adjourn the meeting and we will reconvene in 10 minutes. At 6:30. We will continue with the informal work-study. Thank you.

[Time: 01:20:47]

(Break)

CALL TO ORDER

[Time: 01:21:37]

Mayor Ortega: I called December 8, 2021 City Council work-study session to order. For the record, I note that all members of the City Council and charter officers are present. Work-study sessions provide a less formal setting for the Mayor and council to discuss specific topics with each other and city staff and provide an opportunity to give and receive some direction from the council. To provide an opportunity for public input during a work-study, to allow for up to five speakers as public comment. I have confirmation there are no in person or remote requests from the public. So accordingly, I will close the public comment on the works study item.

WORK STUDY ITEM 1 – AMENDMENT TO BOARD AND COMMISSION MEMBER ORDINANCE AND RELATED COUNCIL RULES OF PROCEDURE

[Time: 01:22:43]

Mayor Ortega: The subject that we have as posted is the amendment consideration to board and commission member ordinances and related council rules of procedure. The presenter is Brent

Stockwell, assistant city manager, and the second topic is the code of ethics. The presenter is City Attorney Sherry Scott. We will lead off with you, Brent.

Brent Stockwell: Good evening. I am happy to be here talking to about a subject other than short-term rentals. Board and commission members are an important part of the city's community involvement process, and just for context, I have been working with the council on these related matters since 2004. They say if you don't get it right the first time, try and try again. I appreciate the opportunity to keep working on this to address what the current council would like. We certainly worked in the past to address these prior ordinance changes to what prior council's have wanted. The 21 boards and commissions you haven't 133 members, 15 of those, 94 of your appointees are in areas I support. I have a vested interest in making sure we get this right. Those appointees of yours are those that are out there weigh in on matters that are of importance to the staff I support. I want to get this right. I want to get some direction from you on what you want to do at this point.

So the current, let's look at, let's talk about background first. The current board and commission attendance procedures we have went in effect on September 13, 2011, when ordinance number 3963 was adopted. At that time this new section set up standard attendance requirements for all members rather than have them vary by each one of those 21 different public bodies.

[Time: 01:25:03]

Under the ordinances in place today, the chair is required to notify the Mayor if certain conditions are met. That helps make sure there is consistency and application of the ordinance requirements and also keeps the chair out of the difficult position of having to figure out when someone should continue to serve in one they should not. That is really the practice we hadn't place prior to that time. What that did and thinking back to the time of 2011, that discretion on the part of the Mayor and Council. Even though they missed three consecutive meetings were 4 out of 6 due to a serious medical issue or that of a family member. It is context on the rules we have in place. Thinking back to less than a month from today, he did have a proposal on November 9. There were two items prepared and discussed. They clarified how the council will consider removal of a member and whom the chair should notify.

They amended the council rules of procedure to say how you should handle that and also to say that the chair should notify the full City Council instead of just the Mayor. Another option that you could consider is to continue the current practice. That is that the Mayor or any member of the council request the removal or replacement of any member during the Mayor and council items, if the item receives a majority vote during the council it will be added to the next available council meeting agenda unless another date is established by the council. Alternatively, members of the council request to have removal or placement of the member added to a schedule on a council meeting agenda, also another subjective your rules and procedure.

Another thing you may want to consider is rolling back all the way up prior to 2011 and saying let's strike these requirements altogether. What would happen if you did that? The full counsel

would retain the ability under code 2-41-E that's is a member of board or commission may be removed any time with or without cause. You can do that with change of rules of procedure or not. Before I get into some other options and walk you through the direction, as we were thinking about this, and I worked on this with your city manager, city clerk, and city attorney, so I was just one designated to do the presentation today. There are two areas of key direction.

One is that expectations for board and commission members, and the second is how do we handle members when they fall short of expectations. We consider absences, tardies, and recusal. Current policy includes a tardy member to be absent. What we did is looked at the data for the last six months. Shane Stone who was up here earlier went and reviewed all the agendas. We find 128 boarding commission members that met over the last six months. Current policy in place today should have resulted in the review of one board member, and it did. Absences and tardies are remarkably well. Only 11/128 members were tardy or absent more than once over the last six months. Recusals are even more rare. There have been eight total recusals over the last six months, which includes five board members and commissioners with only one having multiple recusals. That one commissioner recused himself on more than 20% of the action item votes within the last six months. It was really due to the fact that there commission only had three action item votes. There recused themselves one time, that is 33% of the time. I just want to mention that.

As they say, the devil is in the details of any of these uniform rules. You want to make sure you are aware of those and thinking about those as we move forward on that. Two other options I want to mention, then I will get to a slide that will walk us through how you can provide direction to us on this so we can come back with an ordinance or resolution change that is acceptable to the majority of the council.

[Time: 01:29:30]

So another option we wanted to bring forward for your consideration would be instead of this discretionary removal that came in place in 2011, another thing you can do is make the removal of a member for absences nondiscretionary. That would make the removal automatic if a standard is met. If you other standards in the ordinance are automatic. If you lose your residency within the city or if you are convicted of a felony or a crime of moral turpitude. And what that means is that instead of having to schedule an item to remove the member, we just go straight to the process of scheduling their vacancy and filling that along with the other board and commission vacancies.

So a process that is familiar to you because you just did it last night. And that would mean we wouldn't have to formally schedule the removal of a member. If one of the things you are concerned about is to add insult to injury, for lack of a better phrase, and bringing someone forward once they have missed attendance were accused too many times, or whatever the standard is, you could make this automatic. And then you could reconsider if you want to make them eligible for reappointment or not. This will be much more clear on the next slide, but one more thing.

So recusals, council could also provide direction to consider removal of a member once they reach a certain threshold of recusal due to a conflict of interest. This is not a new matter for us. We talked to you in May and prior councils the year before. We keep running into challenges to try to figure out a solution that always catches who you want to catch and release is everybody you would want to release and continue. That is the tricky part. But we do have four options for you. When would be to equate recusals to absences. A certain number of recusals, such as three, would equal one absence. Let me just be clear here because I'm watching people make notes. I am basically reading from the memo we got to yesterday.

All of this should be out on the website and available to everyone. It should be in your Dropbox packet. The second one is this. That is setting a percentage of total items. Set a threshold such as 20% as limit for recusals based on total action items related to it. It works better if there are a lot of action items. Another would be to set a threshold such as 20% based on the total number of meetings were a member recuse themselves from any action item due to a conflict. And then the fourth option that we came up with was to continue with the current practice.

When the extent of recusals by any individual member becomes problematic to most councilmembers, the council has the ability to schedule the removal under code 2-41-E. That is serving at the pleasure of council. Hopefully, that was not too long, and what I have done here is flesh out a number of things you might want to provide direction. Let me go through them first. Then we can go through them in order or do something else. I am just here to help you. The first one, absences. As a standard needed? Yes or no? If yes, what should it be? The current standard is three consecutive meetings were four meetings in a six-month period.

And I am saying that in just making sure I have that right because I know in one version of this PowerPoint we didn't have it right. It is three consecutive or four in a six-month period. Yes, that is correct. The second one is tardies. It is a standard needed? Yes or no? If yes, what should it be? The current standard is that any tardy counts the same as an absence, if a tardy comes the same as an absence and someone is only one minute, five minute, 15 minutes late, but they are there to vote any of the action items, is that as problematic as someone who is missing an entire meeting? You know, always thinking about all these things, what is the unintended consequence for many of these actions? Next on, recusals. It is a standard needed? There is not currently a standard. Notification, who is notified. The Mayor and a designee are currently required to be notified by the Chair when standards are met. That is basically the proposal on November 9.

[Time: 01:34:17]

When the standard is met, is it automatic remove or scheduled for consideration by the city council, or something else? The item that I mentioned earlier, if someone has been removed because of absences or tardies or recusals, can they reapply immediately or will there be a one-year waiting period such as for the member who served two terms. I've tried to simplify this.

Rest assured it is not this simple. There is a lot of detail on here. We want to get a sense of your direction and to finish the conversation we started previously by multiple councils and get some direction, we will come back and write this into an ordinance or resolution as needed, and work through all those issues so we can clarify for you any unintended consequence as we notice as a result of it. Thank you.

Mayor Ortega: Thank you. And hopefully we can take all six items piece by piece and some consensus direction. I see Councilmember Milhaven.

Councilmember Milhaven: I say with. I agree with the Mayor, we take it one at a time. I have another suggestion for process before we get into the meat of it. I know any works that we can take a vote that takes any legal action, but when I first set on Councilman, staff advised me that in a work-study at the end of the conversation sometimes staff are not quite as clear as they would like to be on what we would like. So perhaps to help make this move along a little more efficiently, maybe we can make a motion to direct staff so we can see who agrees were doesn't agree with one particular idea. Otherwise, I think each of us would have to speak on each point, and certainly of my colleagues want to speak, they can go ahead, but if you agree with the motion that was made in that direction, we can move this on a little more quickly. So I would like to make that suggestion for process.

[Time: 01:36:29]

Mayor Ortega: That makes sense to me.

Councilmember Milhaven: In that case, I will get started. (Laughs) Since I have the floor. In terms of absences, when you said if something becomes problematic, for me that sort of takes a broad swath and makes a lot of sense on a lot of these points. If an absence becomes problematic, the staff liaison to the board or commission or the chair could notify – we can decide who - can notify who this has become an issue. That can get referred to council. Council members can say yes, we agree to hear this at a meeting to consider this person's continued attendance. I for one don't think we need an absence standard. We just go back to your if it becomes problematic. That would be my point of view.

Mayor Ortega: Councilmember Durham. Councilmember Janik.

Councilmember Durham: I have a question first, which is how far in advance are board and commission calendars set? Because with Mr. Lane we have a calendar that is practically a full year in advance. So it is very easy for us to say no, I am going to be that of the country then, please adjust the meeting. It is usually very easy to take care of issues like that. I am not sure if it is so easy to do that on boards or commissions.

Brent Stockwell: Mayor and members of the council, and the vast majority they are set because they are the same time of the month and same day of the week every year and have been for some time. So you can plan ahead.

Councilmember Durham: My suggestion for the policy is I think it gets very difficult for all four of us to try to debate why a person missed or why they didn't miss or what the reason was or etc. It does make a lot of sense in my view. After thinking about this, I think we should stick with the standard that we have three consecutive or four in six, but I would also require that a notice be made before that last absence. And I would put that in the ordinance just to make sure it is official so that a person would be on notice. They can try to come into compliance. But if they are not able to, I would offer the possibility of reappointment. I think it is very difficult for the four of us to try and debate over why somebody missed a meeting and throws us into controversy over whether that was a good reason or not. It is just something I don't think is appropriate for us to take on.

Mayor Ortega: Councilmember Janik and Councilmember Littlefield.

Councilmember Janik: Thank you, Mayor. By far the most part agree that having a standard makes it less political or the perception of it being political is reduced by having a standard. I understand three consecutive meetings. It is a pretty serious absence. When you say four in six months, you have some committees that meet twice a month and some that meet once a month. If you meet once a month and you miss four or four and six months as opposed to missing four out of double that number, I think we need to get a little more leeway on that four in six months to the committee's that meet twice a month. Does that make sense? Just look at the numbers and make it relatively the same for both. So if I miss four in six months but we only meet once a month, that is 4/6. But if it is four added meeting twice a month, that is 4/12, that is only missing a third of the meetings. Perhaps we should be a little more lenient and give them a few more meetings. Maybe it is not doable because of consistency, and I think Jim Thompson has a comment on that.

[Time: 01:41:26]

City Manager Thompson: Mr. Mayor, members of council, Councilmember Janik, if you are going to go down that path you should probably look at a percentage. If you are talking about for it times in six months, two a month, 12, that is 33%. Likewise on the other side, if it was 4 times 3, your percentage is greater. Maybe it is 30 or 35% or 40%. That would be your percentage basis if you really want to look at it from that way. I think it is easier to handle than saying if you meet once a month or meet twice. But all of the sudden, if the board has to meet twice rather than once, so to accomplish that, maybe it is a presented you look at.

Councilmember Janik: Thank you. Thank you for the clarity on that. I am curious what the other councilmembers think about this.

Mayor Ortega: Councilmember Littlefield.

Councilmember Littlefield: I like what Brent said. I think that made a lot of sense. Breaking it down into percentages is fine too. As long it is consistent. I think a warning call is just basic

common courtesy. I would like to do that. These people are volunteers. They have lives, families, and other things going on besides attending our board and commission meetings. They might not be keeping track of stuff like this. Just a warning call saying, "You missed three, make sure you go to the next one," I think that is a good set. One thing that they said, tardies, are they standard now? Do they equate to an absence? I think that should not be. There's a lot of reasons why you could be absent. You could be in an automobile accident, you could be a witness to an automobile accident and have to say that because the police says, you come over here, I want to talk to. It could be a number of different things. A business meeting that runs late. Traffic in general, which is getting worse, by the way.

So I think a tardy should not necessarily be equated to an absence. It could be a minute or two or five. If you show up in the last five minutes, there may be a line that needs to be drawn there so that it doesn't become ridiculous. But in general, I don't think a tardy of five minutes late because of traffic, that is not something I would say equates to an absence.

Mayor Ortega: OK. Well, here's a few comments. Did you need to respond?

Brent Stockwell: If I could, Mayor and members of the council, as you were talking about that, because am working directly with chairs a lot in the staff representatives of boards and commissions, I want to say how we do typically handle it. I can think of one in particular where a member had missed two meetings. The chair knows the responsibility is to notify the Mayor's office. I said, what you reach out to them directly let them know about that. I will also say, it has never been easier to attend a board or commission meeting in Scottsdale, particularly during the pandemic, because we invested a lot in Zoom technology and remote meetings.

[Time: 01:45:05]

So people that are even on business trips are still able, many of them are still able to fully participate in the meeting remotely. We always offered a telephonic technology as well. I just wanted to add that context. We certainly try and work with it. We haven't really talked about the issue of trying to make sure there is a quorum and place, but the staff representative and chair are always following up and trying to make sure they know exactly who is going to attend a meeting because we don't have the quorum present, we can't hold the meeting at all. It is an embarrassment to the city and an inconvenience to the public and anyone who might come if a board has a posted meeting they can't attend for a quorum. I just want to mention that you have some context on how we handle those.

Mayor Ortega: First of all, when we can look for common ground in this discussion, and the first role, as you mentioned, of the boards, commissions, and task force, is to help the city process. I think we can all agree with that. The second situation has to do with vacancies. When there is an empty chair, does that serve the public on point number one? So it is a concern as far as absences, recusals, if that is the reason or not, and of course tardiness, if someone arrives 30 or 40 minutes late. So the subject, first of all, that I would look for agreement among my peers is in 2011 the role for three misses in a row and 4/6 was established. That has been the standard that

is used in onboarding all the commissioners, task force numbers, and so forth. Those rules are pretty clear. I think you mentioned there may have been one instance or so of somebody, maybe a couple instances that you know of where that standard, which has been in practice since 2011. I believe that standard is a good one. We can't go with no standards whatsoever, in my opinion. The next question about having on boarding, when on boarding happens, all commissioners have to go through the roles and discussion of that. And also on the ethics training, which is mandatory for all boards and commissions, as with City Council.

So I think we can agree that that standard works. It seems to align with, and it has worked for a substantial period of time, and I don't see any reason why we would loosen that. I think it is a positive expectation. The question about tardies, I think if there was a tardy beyond 30 minutes, and I only saw one, by the way, of a tardy mentioned. It was 35 minutes late or whatever. That is what the clerk records. It was shown on the minutes of the meeting. As far as the notification, so we've got absences, I believe the standard is pretty clear. And if somebody is disrupted in their personal life, business life, vacations, or otherwise, that's fine. The first position is family. They did the right thing. Either business or family or personal may be paramount. I am in favor of holding the line on that, allowing automatic because that practice has been consistent. And then the openness to reappoint once somebody gets, I don't want to set a life together, but the priority is always family, business, and then pleasure or whatever may happen. We wouldn't want a commission to come ahead of family, right?

[Time: 01:49:48]

So this method of then reviewing every 10 years what those standards are is a good one. The fact is it did come to my desk according to the rules established by Councilmember Milhaven and the council at the time. I didn't ask for that to happen. It came to me because an individual or future mirror, the person exceeded the threshold that all the other boards and commission members are held to. There have been cases I saw where someone had missed four meetings by the time they quit returning calls or whatever was happening. So there is no question we have a sound threshold we can all agree on when a person takes that position. If for some reason they got a job out of town or other demands happen, certainly those become an attendance or meeting miss question.

Now, the other question has to do, I have no problem having an automatic situation where if you miss those. The question is not the person. The question is the vacancy. The question is whether or not there's two or three seats up here that are empty. I know we encounter that recently on DR when there were only four here. It is not a personal thing. It is just a basic go back to point one, which is our expectations are there, and they are being met and generally by 90, 95%. It is a good threshold. I would not lower the bar by saying you can miss five in a row. That would not serve us better. So there are several other comments. I have one about recusals and so forth. Let's go to Vice Mayor Caputi and Councilwoman Whitehead.

Vice Mayor Caputi: Thank you, Mayor. I'm going to reiterate, these are volunteers, and we are grateful for all of their work. You mentioned how rare this actually happens. I think that part of

me feels like this is a solution looking for a problem. This barely ever comes up. So my opinion is that we are making this way too complicated. We are going to go down a million rabbit holes right here. I cannot follow what Councilmember Janik was saying about. I think if we all took a turn about saying this many absences, this many tardies, this many recusals, is going to get absorbed. These are all volunteers. Most of them pretty want to be here. We watch the process pretty regularly how earnest and intent people are to get a position on our boards and commissions. They are really happy to be here. So possibly we are overthinking this.

I would suggest that we don't need any of these rules. The board and commission members always serve at the pleasure of this council, and that we have an annual review for everybody every year. So it would be very easy at that point to say, I mean, we always get the audit report and we can say, boy, this person missed a couple of meetings, they were late, whatever it might have been, and we can make a decision based on the rule of all of us being alerted and then the decision to put it on an agenda and possibly get rid of somebody if they were causing a problem. Probably with some sort of call, as you suggested, to reaching out to someone and seeing what the heck is the problem.

But the point is, we are all going to become babysitters, right? I mean, it really isn't happening that much, so why not just get rid of the rule and review at the end of the year when needed? I mean, if you want to repeat how few of times this has actually happened, right? We would just address it at the end of the year and move on. The idea of auto removal, I don't feel strongly about a lot of the other rules, but again, these are volunteers. It is totally disrespectful to automatically kick someone off without some sort of, hey, did you realize there is an issue here? What's the problem? I think that is just common courtesy. Yeah. Again, I think we are overthinking this. I am happy to hear with the rest of the council wants to do, but my opinion is this doesn't really need to be this complicated.

[Time: 01:54:35]

Mayor Ortega: OK. Councilwoman Whitehead and Councilwoman Janik.

Councilmember Whitehead: Thank you. I think the rules we have in place work. I think that is great. I think the low absences that we have just may be because of the roles. I think there is nothing we want less than to have arbitrary decisions. I actually do support having rules. I served on a commission. I obviously chair the DR periodically. They are so crucial. Having the full commissions and boards is crucial. I do support the match what Councilmember Tom Durham said and I think it was echoed by Councilwomen Littlefield and Janik. I think I support the three consecutive absences. Something could be wrong there. We should always be checking on commissioners when there are such absences.

I support adding specific language. I would like to add that the chair and/or staff person in charge of that commission contact the Commissioner after each absence, number one, to make sure they are OK, and number two, to remind them of the rule. I like the idea of using a percentage. This is public dollars, not just serving on these commissions, so we do want these

seats filled. I will let staff advisors on a good percentage so we are being consistent no matter how many meetings a month these boards or commissions have. I would like to hear more from my colleagues on, I want to add one more thing. If a commissioner or board member does reach that three or even the two, I would like the whole council notified. However, I do think it should be a decision of one. Whether it is automatic has some benefits, but I will be interested to hear how the rest of the council feels on that one. I am not real b one way or another. There are benefits to the Commissioner either direction. And on tardies, I think that should be at the discretion of the chair of the commission and/or staff, in conjunction with the staff. I think that is where I'm at. Thank you.

Mayor Ortega: Thank you. Councilwoman Janik and then Councilmember Milhaven.

Councilmember Janik: Thank you. I also agree that we need to be checking on the people that are missing the meetings more regularly. If there is a reason, hopefully we can resolve it before it's an issue. I think the reason we have good attendance is because we do have rules. That is exactly what Councilmember Whitehead said. The other thing I think we need to consider, it is good to talk to both sides. How do most of the people, the people they are serving, how they feel about the rules? Had they gotten complaints? Are they happy with them? Do they think they are reasonable? Are there any they object to? It will be nice to get input from them too because they are dedicated citizens.

[Time: 01:58:18]

Brent Stockwell: Mayor, members of the council, if there's a question there, but when we did this back in 2018, not only did we go out and talk to all the board and commission members, we actually held a session at the Community Design Studio back when you could meet with people in person and have meetings like that. And we asked them, how is the process going for them? What improvements could we make? We did include that in a report at the time. I don't recall at the time, I haven't reviewed it in the last couple days. We want to ask them about meaningful topics. We have to check before the meeting to make sure there's at least four members there because that is a quorum for all of those bodies.

We do check afterwards. It is something that is in place. I think the fact that people want to serve and that this is happening is a sign why it is relatively rare. Again, we've also gone through a very difficult period of time with the pandemic. This is impacted so many people's lives. It is a difficult time. I think hopefully when we can get to a more normal period we will have a better sense of what that practice would be. Thank you.

Councilmember Janik: Thank you.

Mayor Ortega: Councilmember Milhaven and Councilmember Durham.

Councilmember Milhaven: Now that all of my colleagues have had a chance to speak, I'm going to try to make a couple of directions to staff to vote on. I'm going to try to break this into small

pieces to see if this move things along. Although I disagree with the majority of my colleagues, what I heard most of them say is we need an absence standard. There seem to be some agreement that the current standard of three consecutive or four in six months was agreeable to most. I would make a motion to direct staff to retain the current absence policy. We can add other stuff to it.

Mayor Ortega: One way is to, you are asking for a vote, but actually we are just going to give it a nod. It appears that direction, having rules makes sense, we don't take official -

Councilmember Milhaven: I thought we agreed. OK, everybody nod if you agree.

Mayor Ortega: If there was an objection, the discussion would go another way. You want to go back and forth so someone else can have a viewpoint? Or would you like to lead on all of that?

Councilmember Milhaven: I want to give all of my colleagues an opportunity to say what they want to say, but I certainly hope we can get out of here before midnight.

Mayor Ortega: I agree. I saw Councilmember Durham a millisecond behind you.

Councilmember Milhaven: If we can pick pieces out that we agree on and move to the next. I know Betty suggested percentages. If you wanted to add percentages on top of that, we can make it the next discussion item.

Mayor Ortega: I also said common ground, and this is the way we are going. If you would like to take two.

Councilmember Milhaven: Fine, I am done.

Mayor Ortega: OK. Councilmember Durham, we have a consensus seeker.

[Time: 02:01:55]

Councilmember Durham: Thank you, Mayor. I think the three consecutive makes perfect sense, but 4/6 for a commission that only meets once a month is pretty low standard. That would mean they would miss the majority of it, half a year. I would like to think of a way to try to fix that with a percentage standard that would require certainly more than four out of the six.

Mayor Ortega: In that case, point well taken. We would look at staff or city manager to bring back some options based on that discussion. Jim, did you have a point to make there?

City Manager Thompson: Yes, Mr. Mayor and members of Council. I think we all spoke to item A. I think some may not agree, but the consensus appears to be that the three consecutive or a percentage, and if we were trying to do the same as the four in six months would come back at 30%, but we will look at how many meet twice a month, once a month, and make sure that

percentage corrects. That is a minor change to what we have today. I think I also heard that staff contact the member after one and make sure everything is OK, things are going alright, and after two, we will go through that every time there is an absence. But I think then the council's desire is to contact all of you when they reach that three consecutive or the percentage, 30% in six months, whatever that number needs to be that we will bring back to you. We will notify you all of that and determination of how we got there. Tardies is one, I'm going to walk through a couple of them because you touched on some of those, but on tardies there is a little bit of mix there. Is that up to the board or chair? I kind of heard that. I heard timewise, 30 minutes or some other time? A lot of things that come up are these consistent tardies or tardies over a period of time. You may not want to touch that. If somebody is going to miss most of the meeting, assumed to be absent.

They probably won't come if they are missing most of the meeting unless we know about it. It is probably one time for a special incident that happened, not continuous. Recusals, I know that is when we struggle with. But one of the challenges, and we didn't bring this out, but I will be frank about it, is that on recusals, some of our boards and commissions require some level of expertise. If you are an expert on those areas you sometimes have that conflict because you may do work in the community for which you live. Many do. We hope that. In fact, many things we talk about is where we work, play, and live in one place, you would hope that transpires. So some have that. It hasn't really been an issue with the exception of one or two during the period of time I have been you, which is now almost 5 years. So very few do we see those recusals, even with the expertise that is required. We have a few boards where we do desire to have that expertise.

[Time: 02:05:41]

In fact, in some cases the tourism environment we actually require hotels to be active. There is the conflict of interest that you have to declare that is defined by state law and we define as well. Then there is, when you think about it, sometimes we recuse ourselves because of appearance. Which is not by law. And then to have you have an interpretation every time? Sometimes we just recuse because there is an appearance. We recommend you dismiss yourself but do not say you have to dismiss yourself. Some do just because of an appearance issue even though they don't have a direct benefit from the case. So now we are starting to measure that.

And then what you are going to do is force people unless they have a direct impact that they want, and you are still going to get people questioning it. Again, you may not wish to touch that one at this point. We can go through the others, D and F, but I think we always come back to the think that we have a will, maybe just fine tune it a little bit with notification. I think maybe that has been an issue. Maybe from a staff perspective, contact after someone misses. Those boards help one, two, three, four meetings over a month, ovary period of how we can address that.

You always have the chance to return unless they termed out. I don't think we should make a decision on that because the circumstances are. Removal, same thing, you have the ability to bring back anybody to remove whatever reason you desire. Again, notification. Again, I think we

addressed that by notifying all of council prior to the third one. So hopefully that helps. I am just trying to help us all kind of come to a conclusion here. It sounds like some minor modifications to A and we can bring those back. If you want to address any others, I am happy to come back with those as well. I think it gets more complex and more challenging. And challenging on the staff side too. The more rules you have, the more we have to monitor and execute as well.

Mayor Ortega: Thank you, City Manager. I will add to that, we are a multibillion-dollar organization. And to have to re-audit work revisit everyone annually because there were no rules does not work in our favor. Appointing, I want to reiterate this, the obligation to make the meetings as best possible is very clear. I think that is attributable to our high attendance. But also, we have an obligation to the public. The public will come to a meeting. I know when subject was canceled recently because they barely had a quorum and one person had to leave. So we had the public coming in. They won't know until the final minute practically whether they turned away from their jobs or however they came to speak publicly. So holding to that whole is very good. The other point that we have is that this is why I believe we should adjust, we are not offing them from a commission.

[Time: 02:09:27]

We are recognizing a vacant position. The vacancy is a threshold. It is noticeable. It may be in some cases we barely have 4/7. It is a pretty stringent yet comparatively loose requirement that has been satisfied. To move forward with this, I know the conflict of interest issues will come up later in the ethics discussion. I will mention the recusal question came shortly after I took office. We had a simple audit report sent to us by the auditor on recusals, absences, and so forth. It caught my eye. As we are, wow, I am the new Mayor and we had a substantial amount of recusals. That did touch my eye because there wasn't a particular rule in place on that.

I am not trying to complicate it right now on recusals. I think a 10 year review is pretty good. We will be able to go back and serve the public. We served when we had a full panel and we also served when we appoint a member who may have taken a break, who may have had other obligations. It is not disrespectful. They are free to have more business or take care of their health obligations or whatever. It is not in any way disrespectful. It is just an acknowledgment that we have a vacant seat to fill. That is my job. That is our job. We will hopefully give you enough direction at this point. Let's move on to the next question that's on the agenda. Thank you.

WORK STUDY ITEM 2 – CODE OF ETHICS

[Time: 02:11:33]

Mayor Ortega: At this point we have on work-study a presentation by City Attorney Sherry Scott regarding visiting, revisiting the code of ethics and some streamlined suggestions. Thank you.

City Attorney Scott: Thank you, Mayor. Mayor, members of the council, what I intend to do is go over the ethics code. Not in detail, but just generally with you tonight. As we go through each major section, I will pause and ask for questions and whether or not the council is interested in updating or changing any of those sections. First, let me start just giving you a little history. The ethics code was created by a citizens task force 2005. It was adopted and implemented in July 2006. We weren't really sure how many ethics complaints we were going to get work what our experience was going to be after this ethics code went into place. We have some experience with it now. It has not been amended since it was originally adopted.

It is broken into several sections. I am not going to go into each one of these in detail, but to give you a general overview, we have definitions, the ethics policy, conflicts of interest, gifts, open government, open meeting laws and executive sessions, preservation and availability of public records, undue influence on subordinates, and enforcement. The only definition, there are very few definitions, there are only three, as I recall. The only one that is really telling or meaningful is the definition of city officials. Because this ethics code applies only to city officials. City officials are defined as being the Mayor, councilmembers, and appointed board and commission members or task force members. It does not include city employees or charter officers. Those are governed by a different ethics code. We do have an ethics code, it is just slightly different than yours.

[Time: 02:14:01]

Under the conflicts of interest section in your ethics code, the most important thing for you to know, and I quoted it hereunder A, is "Arizona law prevents local governments from imposing different conflicts of interest laws and state law." This is one of the areas where the state has preempted the cities. The ethics code does acknowledge that. This is a quote from the ethics code. It goes on to provide guidance to the Mayor and council and appointed board and commission members about what the state conflict of interest rules provide as they interpreted those. The biggest thing for the council to understand is that the state provides that a conflict of interest arises when a city official has a substantial interest, and that is a defined term, in a matter coming through the city's decision-making process. Substantial interest is basically a direct or indirect financial or proprietary interest in a matter coming before the city for a decision. By you or your relative. I can't forget that part. Relative is defined fairly broadly.

There are exceptions. Every good rule has a few good exceptions and conflicts of interest is no different. State law provides exceptions considered remote interest. They have to fall into a specific category of a remote interest set out in a state statute. The most common ones that we see are a few remember of a class of 10, I don't believe we have a councilmember who is a hotelier, but let's say we did, they would be able to vote on things that might financially impact hotels because they would be a member of a class of 10 with no greater interest than the others.

Another one we see often is a non-salaried officer or member of a nonprofit. That is an exception, a remote interest. A member of a nonprofit cooperative marketing association. Again, a remote interest and exception. And receiving municipal services on the same terms as non-

officials. For instance, you vote on the water bill, rates, other fees you may end up paying as citizens of Scottsdale. Those are not conflicts of interest.

When a conflict of interest arises, the city official must refrain from participating in any manner in the city's decision-making processes as a city official. They have three business days to declare the specific nature of their interest on the public record by updating his or her personal interest disclosure form. I will go over that with you in a minute. And putting that on file with the clerk's office. You must publicly announce the conflict at the meeting when it is on the agenda and get up and leave the room before the discussion on that item begins. So because state law doesn't allow us to add to the conflicts of interest rules, we do have an aspirational requirement into the ethics code. It is not mandatory. It is just as strongly encouraged. And that is that it is strongly encouraged that city officials avoid involvement in situations where there is no technical conflict of interest but where active participation might raise the perception of undue influence or impropriety.

The final section in the conflict of interest section of your ethics code provides that city officials are required to complete a personal interest disclosure form annually before the first meeting in January but no later than January 31 if you don't have a meeting in January. I hope you can see it. I presented a copy of the personal interest disclosure form. You also have it in your packet. It is basically asking the public officials whether or not there is an item coming up on a future agenda that they already know they have a conflict with. And if so, to put that down and to describe the nature of the conflict and get that on file with the city clerk's office. If there are none, the answer will just be none. It will be signed and put on file with the city clerk.

[Time: 02:19:01]

What happens next if there are conflicts of interest throughout the year, we ask that the board official fill out the declaration of conflict of interest form. That later gets attached to the personal interest disclosure form. So at the end of the year we have one document that provides all of the conflicts that the public official has had throughout the annual year. This form does ask for information both on conflicts and refusals to avoid an appearance of impropriety. It is a single form. You check either, you declare there is a substantial interest or you don't believe you have one, but it is still an appearance of impropriety if you were to act. The public officials are to explain what the nature of the conflict is. They sign and date it. Again, it is supposed to be on file with the city clerk within three days. That is three days from the time the item comes before the body.

So that is conflict of interest in a nutshell. I am pausing here to ask if you have any changes or additions that you would like to see to this section. Some thoughts I had is whether you wanted to add any additional aspirational requests or remove aspirational requests. Whether you are interested in seeing some simplification to the forms. I do believe we could make some minor changes to the forms that might simplify them somewhat, or any other clarifications you might want to see to this section.

Mayor Ortega: Attorney Scott, just for clarification, on the conflicts of interest in voting upon something, that is usually implied in this jurisdiction. However, if a party had business in another state and another jurisdiction or another city with a principal partner as an LLC as a consultant or in some way, how would we actually be able to discern, or is it written there in any jurisdiction? It seems to be associated with what comes before the city. However, I don't know if it is descriptive enough to cover all jurisdictions or other financial interests. Just generally wondering that.

City Attorney Scott: There is a difference between a conflict of interest form and a financial disclosure form. The council will fill out a financial disclosure form, but the unelected appointed officials will not. They are only filling out conflict of interest form if they have an actual conflict on an item that is coming before them. If they have an actual conflict or item coming before them, the absolute cannot participate in any way. But if they don't have anything coming before them that presents a conflict, they have no requirement to disclose any other business activities that they may have in other jurisdictions or pending with other bodies.

Mayor Ortega: OK. Again, just as to form, and of course, these conflict forms relate to us in our financial disclosure and then to board members, it seems to me and looking at some of the ones that were filed in the clerk's office, they don't seem to be as descriptive. There is a description, but I would recommend that some of them might say site plan or item number. I believe that under description if it would be more useful to say case numbers three, four, five, or case number whatever, applicant so-and-so, client so-and-so, because then it can be traceable in some way. It validates the declaration that the person is making. It is good to know.

They want to disclose that. But again, some of what I come across has been, I don't want to say sloppy, but I think it would be a good and transparent way of explaining and without having to dig through all the records and so forth. So it would be the client of the individual or just like if I said I had a bank loan on my financials and then I would say, well, it is with bank and such and such. It is more than just saying I had a bank loan. That is my suggestion as we review this. It will be helpful to trace that. As you said, you stapled that to the yearly financial disclosure. It would mean more to whoever is declaring that. It would be more traceable for the future.

[Time: 02:24:44]

City Attorney Scott: I understand. I think I misunderstood you before. We can modify the form to prompt the person filling it out to provide a little bit more information. Staff can probably do a better job of making sure the information they are supposed to put down gets down on the form. Because board and commission members aren't filling these out all the time. They probably need a little help and assistance from time to time. I will work with legal staff advising the boards to make sure they know to have us take a look at those forms when they do come in so we can make sure they are properly completed, but I also think this form could be simplified somewhat and promptly board member who is filling this out about what type of information they need to be including.

Mayor Ortega: I'm going to go a little further with this, again, to serve the public. If someone were to come to a parks and rec meeting and say, "I sell fertilizer and I recuse from this decision..." I think if it is a DR case in particular, I am very familiar having worked here on projects for over 40 years, a staff report that goes out to the public might state that board member so and so has declared a conflict. So at least the public would know. Again, it is just freedom of information. It is a good tool. So when the public comes in the door and they say three or four people, they would not know. So the self-declaration is a good pull for everyone. It helps us ensure we have a quorum.

It is a manageable thing, I believe. Obviously, if some consultant is working with staff, they know that. It is a good tool for the public to know as well. It is just a suggestion as we discussed these and move forward. I saw Councilmember Janik.

Councilmember Janik: Just a quick question on page 7. Do you think three business days is a sufficient amount of time for the declaration? Or should we give them a little more time?

City Attorney Scott: Well, it is three days from the time it comes up on the agenda. So I think that is sufficient. Because usually they know weeks in advance that it is coming up on the agenda.

Councilmember Janik: Thank you.

City Attorney Scott: But of course we encourage them to get it on file as soon as they can.

Mayor Ortega: Vice Mayor Caputi.

Vice Mayor Caputi: I'm not 100% sure what the Mayor was talking about. I couldn't quite follow what he wants to have listed. I just want to reiterate that we probably wouldn't create additional rules over and above what the state requires, correct?

[Time: 02:27:55]

City Attorney Scott: That is correct. You are absolutely correct there. But the state law does require that a board and commission member explain the nature of the conflict of interest.

Vice Mayor Caputi: Certainly.

City Attorney Scott: I think that is what the Mayor was alluding to. The sometimes we get the forms. It is not really clear with the conflict of interest is. We know the matter they conflicted out on, but we don't know why because there is not enough information on the form. I think a lot of that is just lack of clarity in the form and just working with the board members a little more. I believe we can change this to promptly board members and make it a little easier for them to fill out.

Mayor Ortega: I don't know it is that complicated. I sat on the development review Board for three years. Usually when someone conflicts out it is because you have a landscape architect working on the project we are being as to vote on. I didn't know it was overly complicated. It makes sense if you are being employed on a project that we are going to be voting on, of course you would recuse yourself. Another quick comment I wanted to make, I don't know how comfortable I feel with making a lot of aspirational parts to our code of ethics. I think if we are going to make a code of ethics, we don't want to be aspirational. We want there to be much more definite rules and regulations. As we have seen, we don't want to leave too much open to interpretation. My opinion would be keep the aspirational parts of it to a minimum. Let's make very clear what we are looking for in terms of expectations of ethical behavior. Thanks.

Mayor Ortega: So at this point, going piece by piece, I would ask for a nod. I believe the conflict of interest allows, state law allows two things. One is the description and one is an explanation. So certainly saying "I am a landscape architect" is the explanation, but the description is case number applicant and so forth. That is good and useful information. It gets less aspirational. It is more direct. It is more complete for the public. The next thing that you had.

City Attorney Scott: I think I've got it unless anyone else had a comment on conflicts. Moving onto the next section that gets some attention from time to time. Prohibited gifts. City officials are prohibited from soliciting, receiving, excepting gifts of any kind from anyone engaged in a general practice, and that is not a defined term currently, or specific situation involving the city's decision-making or permitting process. So gifts of any kind is defined within that code provision itself. And it is really anything of value, but the definition goes on for some time. It is money, services, bones, travel, hospitality, including meals, or entertainment. Promises of future gifts, anything of value that might be construed as an attempt to create a more favorable relationship than that of the general public. Including the purchase, sale, lease of personal or real property, employment services or contracts as promised to the public official or the public official's family members. It is a very broad definition. And so when we train on this, we really just say anything of value. You are prohibited from taking anything of value from someone engaged in a general practice or specific situation involving the city's decision-making or permitting process.

[Time: 02:32:09]

Unless you fall within an exemption. Exemptions include entertainment, hospitality, which includes meals, transportation and token mementos that are directly associated with events that you are attending as a representative of the city. I put that in quotations because it is also not defined. They are going to be situations where it is very clear you are attending an event as a representative of the city. There are going to be situations where it is very clear you are not attending an event as a representative of the city. There are all those events that are in the gray area in between.

So if you get a gift and you think it is permissible, meaning it is not coming to you from someone engaged in a general practice in front of the city or that has a specific situation, any specific situation pending with the city, and you wish to accept it and it is not an exemption, it doesn't

fall within the exemption, then you have to declare it. Pursuant to 14-135 within five business days of acceptance. Unless the code provision does not require reporting. The code provision that is referenced in your ethics code is 14-135.

It is another code provision that applies to gifts for city officials, current councilmembers, and city employees. This one applies to everyone. The following reflects legitimate public duties were purposes and are not considered gifts that must be declared. Events sponsored or funded in whole or in part by the city, reasonable hosting expenses for official speaking engagements or ceremonies or appearances on behalf of the city when public or civic purpose is served. You get a little more clarity there about when you might be appearing as a council member on behalf of the city, but it is not crystal clear what would fall into the and what would not. Gifts of goodwill or tokens of appreciation accepted on behalf of the city. Food accepted and shared with others. And gifts received and donated to charity. You never have to insult anybody by declining a gift. You can take it and give it to charity.

There are also additional prohibitions that are found in 14-135 that apply to the council and city employees alike and board and commission members. The council is prohibited from soliciting items of value for personal benefit, from accepting gratuities, tips, honoraria or payments for official duties, and you are prohibited from accepting items that could reasonably be construed as an attempt to exert improper influence or as a reward for an official action.

[Time: 02:35:27]

So what changes would you like to see to gifts, if any? Should we merge the two code sections on gifts into a single code section in the ethics code? It has caused some confusion in the past to have two different sections in two different places. Should personal gifts such as those given from family members and longtime friends be declared? Does the city want to see declaration those types of gifts? Should reasonable hosting and hospitality for any event for a public or civic purpose is served be exempt? Or do you want to see if the declarations when a member of council or a board and commission member is attending those types of events and accepting some reasonable hospitality at them?

Should the number of days to complete a gift form be changed? Remember, it is five days from acceptance. It is not five days from the event. If you have accepted a ticket to go to the event, you may not know if you're going to attend before those five days expire. Should the \$25 value change? That was written into the code many, many, many moons ago when \$25 got you a lot more than \$25 does today. Or any other thoughts that you may have about changes to the gift section.

Mayor Ortega: You took a breath, so at this point I appreciate that.

City Attorney Scott: You can always interrupt me.

Mayor Ortega: I a call to speak from Councilmember Durham and then Councilmember Whitehead. And then Councilmember Janik. Councilmember Durham and Whitehead, go ahead.

Councilmember Durham: Thank you, Mayor. As I read this, if we meet with somebody who regularly does business with the city or is in the practice of it and they give us a cup of coffee or a cookie, that is not allowed.

City Attorney Scott: That is correct.

Councilmember Durham: It seems to me that doesn't make any sense. For the same reason we talked about before about not insulting someone, if we are meeting with somebody at their offices, not in a public place, but if we meet somebody at their offices and they offer us a cup of coffee and a cookie or something like that, I don't think that should be covered. I think possibly sort of a de minimis exception for people doing business with the city might make sense. I would merge the definition of a gift with the rest of it, as you have suggested. On the relatives, you are talking about a relative who is doing business with the city? Receiving a gift from a relative who is doing business with the city?

[Time: 02:38:55]

City Attorney Scott: I think if the relative was doing business with the city then you would probably have a conflict of interest and you can participate, but if it was a distant relative or a close friend who may be does regularly practice in front of the city, it seems to me like that still might be prohibited. But it is just something the council needs to think about. Right now, the way we interpret that as under section 14-135, but involves gifts that you take in your official capacity, that you receive and take in your official capacity.

We have always interpreted a gift from a family member to be in your personal capacity and not something you are getting as an official, so it is not something that would require a gift form. It is certainly not something you would have to decline. But that has been raised about whether or not that is the correct interpretation. It has been raised before. So I think it deserves some clarity. Keep in mind this section of the ordinance applies to city employees as well as the council and board and commission members.

You can imagine what would happen in the city clerk's office if all of us had to declare any gift we received over the holidays that is more than \$25 in value. It is just simply not the intention of that code provision. But when we get to the enforcement section of the ethics code, I will go over with you and you will find out that it is a panel of independent judges that make those decisions. They don't really look to how we train on his ethics codes. I think it behooves the council to make it as clear as you can.

Councilmember Durham: It seems to me if there is a gift from somebody who has an interest in business before the city, whether it is from a relative or close personal friend or something, it seems to me that that ought to be allowable. It could be cured by filing a certificate form, right?

City Attorney Scott: If that is the way you wanted to be, yes. We could write that in. But right now the declaration is only required. It only helps if it is a permissible gift. You cannot legitimize an impermissible gift by filing the gift form. So right now if a councilmember has a family member who regularly practiced at the city of Scottsdale, they would not be able to accept a gift. If they wanted to make sure that they stayed out of trouble with the ethics code.

Councilmember Durham: I guess that would not be a conflict of interest because if a person doesn't have a direct interest in the business that person is pursuing, it wouldn't fall under the conflict of interest provisions.

[Time: 02:42:25]

City Attorney Scott: It would only fall under the conflict of interest provisions if that relative were bringing a matter before the council. It would then trigger a conflict of interest. I would expect this council not to vote on any matter that the relative had a financial, direct or indirect financial interest in. That is easier for the council to wrap its head around. It makes sense. But when you are talking about accepting gifts and you have personal lives as well as professional lives, sometimes those lines get a little more blurry. Perhaps not to me, but again, I am not the one that is going to be interpreting this when and if an ethics complaint against the council comes forward. And that is why. Because it is been an issue that is been publicly debated and question, and in fact, a prior ethics panel has commented on the lack of clarity between the two code sections here, I think we should endeavor to clarify it. I hear you suggesting there should be some exemption for friends and family in your personal capacity, provided that they are not regularly practicing or in the city with a specific situation that would come before that body.

Councilmember Durham: I think that is the situation we are in most of the time. If you get a gift from a friend or relative and they don't have anything pending before the city and they are not in the normal business of having physicians before the city, it seems to me that is not an issue at all, I don't think. But I am just thinking of a situation where someone might have, a friend or a relative, although relative is a little bit easier to deal with. Friend gets pretty broad. I am always in favor of more transparency and publication of the interest. Possibly we can solve that for relatives but not for friends.

The one other thing I also have is 14-135-E, I would like to make that within five days, sorry, within 10 business days of receipt instead of acceptance. I think that might make it easier if we are buying that to receipt rather than acceptance. And we are now doing that electronically. So this may not be necessary. But we could add that the declaration shall be made on a form designated by the clerk and can be communicated by electronic means just to remove any doubt that the electronic forms the clerk is using now are legitimate.

City Attorney Scott: We could do that.

Councilmember Durham: That is all I have.

Mayor Ortega: Thank you. Continuing the conversation, Councilmember Whitehead.

Councilmember Whitehead: Thank you, Mayor. I agree with Councilmember Durham. I would like to merge the two sections for gifts. Reasonable hospitality, I think that if we are going to a chicken dinner on behalf of the city we shouldn't fill out forms. I think that saves taxpayer dollars and staff aggravation and time. I would like to say reasonable hospitality when you are being invited as a city council member and probably called out as a councilmember, we shouldn't consider that a gift. I like the idea of extended, I'm not sure if I understood Councilman Durham correctly. I think it should be 10 days.

[Time: 02:46:44]

Just to get people an opportunity to not break any of our ethics code. 10 days after the event or receipt of whatever it is. I like the 10 days and then not from acceptance. I am cool with making it \$50. I think 25, \$50. I think most of us just don't accept anything. I like the idea if sometimes you do get people purchase coffee for you before you get there, so if we could have some kind of leeway there. And it seems like you have the relative thing covered. I mean, if you have a great uncle that suddenly gets you a gift and he is coming before city, they should declare it. It seems like you have that well covered, but nobody should be declaring gifts they are getting from their family otherwise. Or friends. So I think that is where I stand. Thank you.

Mayor Ortega: Thank you. I see the city clerk wants to weigh in. Perhaps you can give us some particulars.

Clerk Lane: Thank you, Mayor. I want to mention one thing. I do think Councilwoman Whitehead is a good suggestion about it being after the event. Because sometimes the tickets will come in weeks in advance of the events and the councilmember might change their mind or have some type of conflict and then not be able to go to the events. The other thing is that the short timeframe now, it does make it difficult on the clerk staff to make sure that is filled out in time by the councilmember and recorded. I do think after the event, some period of time after the event is very helpful to have that gift declaration form filled out.

Mayor Ortega: Thank you, Clerk. Also, I think perhaps for clarity that if there is an appearance on behalf of the city, I would suggest it to be calendared. It is a useful way of saying, in many cases, I see the ones that come to the Mayor as invitations. I don't know, it may say Mayor and Council, I don't check other councilmembers, but it does become a question of quorum sometimes. Perhaps too many of us may be seated at one table. It would be useful to calendar that. And then if someone sometimes drops out or fines they are available, sometimes it is filled by a staff member or some other opportunity. I see Councilwoman Janik and Councilwoman Littlefield.

Councilmember Janik: I think everything was covered by Councilwoman Whitehead. I agree with what she has proposed. Thank you.

Mayor Ortega: Councilwoman Littlefield.

Councilmember Littlefield: I would like to say the same thing. I had a list of things and basically Councilwoman Whitehead said to them all. I agree with what she said. I don't think I need to repeat them. The suggestions that Councilmember Durham and Councilmember Whitehead said about raising the value to 50 from 25.

Mayor Ortega: I will cover one detail. I see Vice Mayor Caputi, just so I don't forget this thought. You just buzzed in. We are a community property state. That means some of us have spouses and so forth. And in most cases the invitation comes to myself and through the office I see an invitation and my spouse is not, Joanne may or may not want to go to the particular event. In some cases we choose to buy her ticket for that.

[Time: 02:51:08]

In other cases when they are on invitation, of course I calendar it. This relates to just the friendliness of the community, nonprofits, whatever is going on. Just to make another point, at times the city will buy a table. And in that case it is pretty clear if that table is offered to several of us who may be councilmembers. At some point that number drops down depending on who is in town or whatever. Or a staff member. There may be two tables the city buys. There is some clarity and that sort of purchase and participation. Moving on to Vice Mayor Caputi.

Vice Mayor Caputi: I agree with most of the comments are ready. I don't know if this is the spot world to be inserted, but I heard from several constituents about the need to put some more in this ethics code that we not be allowed to accept anonymous gifts. As I read through this I didn't actually see it listed anywhere, and I do think that is fairly important in an ethics code. The relist somewhere that we not be allowed to accept anonymous gift. I don't know where it would be inserted. I would like to see that an article. I can't imagine a reason it would ever exist that we would be able to justify receiving something that the public would know where it is from.

City Attorney Scott: Thank you. We prepared that amendment before. I know exactly where to insert that. Can I follow-up on your comment, Mayor? So is the direction from the council that we would also like to exempt reasonable hospitality for a spouse attending an event where a civic or public purpose is served, or just for the councilmember themselves?

Mayor Ortega: I think it is clear, and yes, it is on record that when two tickets are offered, whatever fair value is stated, and that is very useful. Again, we are a community property state. That is the way these galas and so forth tend to be resented.

City Attorney Scott: Very good.

Mayor Ortega: One more comment it will go to the next section. Councilwoman Whitehead.

Councilmember Whitehead: Should we just say date, not spouse? I'm not trying to split hairs, but I just don't know if we want to say spouse.

City Attorney Scott: Spouse or companion. We can do that.

Councilmember Whitehead: Thank you.

Mayor Ortega: Thank you. Next portion of your presentation.

City Attorney Scott: Open meeting law. I am going to touch on this very briefly because I think the council knows the open meeting law very well. But just to remind you, all meetings of any public body shall be public meetings and all people so desiring shall be permitted to attend and listen to the deliberations and proceedings. The public policy is that the business of the public should be done in the public.

And even though some limited communications outside a meeting are not a violation, somewhat limited one way communications and limited communications between less than a quorum, the Attorney General's office strongly recommends, and remember, here's the one that investigates open meeting law violations, that members on boards, commissions, and other appointed advisory groups are encouraged to communicate about city business at open public meetings.

[Time: 02:55:14]

I am going to quickly touch on undue influence on subordinates. Both the city charter and your ethics code provide that the city council may make inquiries of staff but not interfere with the city manager's authority. The ethics code prohibits orders or explicit directions or requests, publicly or privately, to any subordinate of the city manager.

It prohibits influencing the city manager on hiring or firing. Again, the council can ask questions, but you should be careful here and try to direct most of your inquiries to the city manager, his direct staff. So do you have any other changes to these provisions or any other updates you would like to see? Or anything additional to these provisions and the ethics code you would like to see added?

Mayor Ortega: I see no hands at this point. Oh, excuse me, Councilmember Durham.

Councilmember Durham: On the sheet 2-54, it says we may make inquiries but prohibits requests. I am not sure what the difference is between an inquiry and a request. I think most of us are some of us as a matter of course have directed questions to staff below the city manager and don't always include the city manager. We have a quick question, to say, "Could you provide me with this piece of information?" I think that is something most of us commonly do. Certainly not directing anybody or giving directions or anything, but it seems to me that a request is not that different than an inquiry.

City Attorney Scott: Yes, I think what that is intending to solve and where it gets difficult is if a councilmember not knowing what the work plan is for an employee or what they have on their plate goes up to an employee and says, "Let me inquire about..." I am just bouncing off a prior conversation we had. How many conflicts of interest have been filed by board and commission members, and how many recusals? I would like to see that in a report over the last five years because that would really help me decide how I wanted to vote or handle this item. That is an inquiry but also requested is probably going to take a great deal of time for that employee. You don't know what that employee is charged in doing.

They're going to feel a great deal of pressure because you are a councilmember to get that done for you. That is the kind of request that should be directed to the city manager to see if he can direct a member of his staff to pull that together for you in an appropriate timeframe. But if you go up to somebody and ask a simple question, you can make an inquiry and they can give you the answer just right there, there is no problem with that. They are not going to feel unduly influenced or overly burdened by your request. So I think those are those two different situations.

[Time: 02:59:07]

Mayor Ortega: Councilwoman Littlefield.

Councilmember Littlefield: Thank you. I just had a question as I read this through. I know that the city manager hires most of our employees here at the city, but also the other charter officers have hiring and firing capabilities also. So does this include under an assumption the other charter officers also?

City Attorney Scott: We should probably clarify that it does. I think we interpret it that way. It almost always falls within the city managers umbrella on the board and officials are making inquiries of staff, which can cause some absent were some problems. But yes, I think logically it would extend to the other charter officers. I can certainly make that clarification when we bring this back for council action.

Councilmember Littlefield: I think that would be good. Also, when I first got on board, and I haven't heard it since, this whole discussion brought it back to my head because I haven't thought about it, there was somebody who told me at the time that you can ask for something, but it can't take more than a couple of hours for a staffer to do. They had a definite number. I don't remember what the hours were because I never did it that way. Was not just real or made up?

City Attorney Scott: I think it is real. I have the same memory. I believe it is in your council rules you can ask questions but it shouldn't take more than eight hours and if it takes more than eight hours it requires more than four members of council to direct staff in that regard.

Mayor Ortega: My singular comment is how staff manages and handles a question from any one of us. I want to commend the way it is handled because I think it is related to open meeting law as well. So there is not an attempt to broadcast a bit of information among ourselves, but the respondent, a staff member might say, "So and so and I might have had a request from a councilmember, just to fill you in, this is a frequently asked question and I am able to provide that." I commend that. I think it is important. Another way that I see that, and again, good management, I commend the auditor because she has a file.

Several of us have been in office 11 months, 12 months, and it is very useful to call upon, and when I ask or say what was the last audit on such and such, it may be four years old, it may be a year and 1/2 old. I think that information is certainly on the website, but that is certainly available and very prompt. I appreciate that also from the clerk's office when some information as to improvements of that and the order of information. I think that is very useful and our commitment to be transparent to the public. So continuing on, I see no other hands up. We will continue with the discussion.

[Time: 03:02:50]

City Attorney Scott: Very good. Thank you, Mayor. The last section in the ethics code is enforcement. I think this is the section that is most in need of updates. Again, when the ethics code was first adopted, nobody really knew how many ethics complaints we were going to get. And although this has caused some discussion, we don't get that many. We don't get that many ethics complaints, which is great. But the ethics code does state what is required if a complaint comes in. They cannot be anonymous complaints. You have to have the name of the complainant.

They have to state a violation of a mandatory provision of the ethics code. They have to state the facts that they are basing their allegation of an ethics violation on. But they can just say "I believe these facts to be true" and sign an affidavit to that fact. Sometimes the folks sending in ethics complaints don't really know, they are just assuming what the facts are. They can attach documents and witnesses. Their affidavit must allege a violation of mandatory provision. There is a time period in the ethics code. It can be for a violation that allegedly occurred no more than 365 days before the complaint comes in. And no more than 90 days from the time that the person complaining learned about the matter.

So the earlier of those two things. And I don't really think there is much of a problem. I am going backwards. Much of a problem with what is required to be in the complaint. I'm sorry, I lost my place here. So there's two different tracks up in enforcement process. One for boards and commission members and one for counsel. Let's start with the first one for appointed board and commission members or task force members. Complaints about your appointed public officials are reviewed by the City Attorney. The City Attorney can dismiss it if it is incomplete or doesn't state a proper violation. Otherwise, the City Attorney must themselves investigate the allegation, prepare findings of fact and conclusions of law, and make a recommendation to the council in a

report that becomes a public report. The council must consider that public report at a council meeting. If they find an ethics violation, they may remove the public official from office.

I think that process works fairly well. Although if the City Attorney does find there is no ethics violation, you still have to go through the public report and the city council meeting, which can be difficult for that public official. And then we have complaints about council members. When a complaint regarding a councilmember comes in, it must go to an independent ethics panel. First, we are required to keep 10 to 12 contracts for our independent ethics reviewers at any given time. Of retired judges or legal faculty with ASU or U of A. It is not any retired judge, it is retired state or federal judges. It is a pretty high bar.

[Time: 03:06:56]

If there is not enough judges were faculty to serve in this pool of 10 to 12, we can go outside of that, but at least two thirds of the pool must be judges or faculty. They cannot be residents of Scottsdale. They cannot have regular Scottsdale work or work for Scottsdale clients. They really have to be extremely independent of Scottsdale in order to qualify. I only have seven to eight contract right now. It is nearly impossible for me to keep 10 to 12 judges or legal faculty on file to serve as Independent ethics officers, and one of the reasons why that is so seldom have an ethics complaint. We go through the process of having contracts and doing all that administrative work, then they get no work. They have nothing to do.

So if the complaint comes in, I then have two immediately transfer it to the independent ethics officer. I name an independent ethics officer annually from the pool of individuals that are serving as independent ethics reviewers. That ethics officer will conduct an initial screening of the complaint and dismiss it if it is incomplete or untimely or if there is no mandatory violation alleged. They must refer it to an investigation if it is not dismissed. It is investigated by a three-member panel that the independent ethics officer selects. There is no current ability for the independent ethics officer to consider any outside evidence that may quickly dispose of the complaint without the need to send it to a three-person panel.

The ethics panel is to investigate allegations and make findings of fact and conclusions of law in a report that goes to the City Council, the complainant, respondent, City Attorney, and City Clerk. That must all occur within 60 days of the complaint. There is an extension available. The council must accept or reject the report at a meeting. The ethics code does allow the city attorney to prepare, it requires, actually, the city attorney to prepare rules of procedure, which I have prepared to govern the hearing and investigation process. I am not going to spend the time to go through the details of current rules of procedure, but they were in your packet if you care to look through them.

So changes to the enforcement section. Should we update the ethics panel membership and ethics officer requirements? Do we need 10 to 12 or can that number be lowered? I can tell you that number can be lowered. I think we just had a few in the last election cycle and we usually

only see ethics complaints coming in during an election year. Does the independent ethics officer need to rotate every year? Just when they get to know the code, they rotate.

Mayor Ortega: At this point I have three hands up. Councilwoman Whitehead, then Councilmember Littlefield. So let's start with Councilwoman Whitehead so we don't get too far ahead of the presentation.

Councilmember Whitehead: Thank you, Mayor. I like the idea of limiting the pool to make it easier. I also like the idea of expanding the credentials possibly to county or city level judges. Then maybe look at it again if that is still troubling to bring in. I know there's some discussion about bringing in attorneys. I am open to that. That would possibly make it majority judges. I am open to that. I like the idea of rotating every five years. Let's get our money's worth. There is one other... Oh, that is the one I had. OK. Councilmember Milhaven knew what I wanted to say. I would like to change the original part to include considering outside evidence that might cause the first round to just dismiss it before it goes to the three-judge panel. Those are all my things. Thank you. Thank you, Councilmember Milhaven.

[Time: 03:12:05]

Mayor Ortega: Thank you, Councilwoman Littlefield and then Councilmember Durham.

Councilmember Littlefield: I had much the same issues and suggestions that we do cut down on the numbers of panels that you have on retired judges and faculty and consider outside. The evidence makes sense. No reason to keep these folks on a string there if we are not going to use them. Thank you.

Mayor Ortega: Councilmember Durham. And then Councilmember Milhaven.

Councilmember Durham: Thank you, Mayor. I would be fine with lowering the members of the panel to six maybe. I'm sure you know a better number than me, but it seems like success probably more than enough. I would try to keep as many judges or faculty as possible. Just because I think they might be better judges. I would be fine with rotating the officer every three years or so. And when you talk about outside evidence, does that include a response by the, I guess it would be the council member of this point?

City Attorney Scott: It would be. And yes, I think it would allow for a council member to say, let's say you were accused of accepting a gift, or let's make it more simple. You were accused of not filing a declaration after accepting a gift. And you did file the declaration.

Councilmember Durham: But right now you can't - yeah. OK. I would definitely allow the possibility of a councilmember filing a response and giving the ethics officer the ability to dismiss the claim based on that.

City Attorney Scott: It would be like an informal version of a preliminary dispositive motion.

Councilmember Durham: Yeah. Thank you.

Mayor Ortega: Yes, Councilmember Milhaven.

Councilmember Milhaven: On slide nine it says City Council considers the report in public meeting. Do we have to do that? If the panel finds there was no violation, do we still have to do it in a public meeting? My concern is people may use complaints to try to embarrass people. If there is no foundation for the claim, I don't know I want to give people an opportunity to publicly embarrass people where it isn't appropriate. So could we narrow it and say it would only be reviewed in a public meeting if it was found to be in violation?

City Attorney Scott: Certainly. We could write that in. If it were found to be a violation. I would write it and under both boards and commissions as well as the council.

Councilmember Milhaven: Thank you.

Mayor Ortega: OK. I see no other hands on this issue. We will continue. Thank you.

City Attorney Scott: That was the end of my presentation, Mayor.

Mayor Ortega: OK.

City Attorney Scott: Thank you.

[Time: 03:15:37]

Mayor Ortega: Well, I do have one question. As to whether this takes the place of our yearly ethics and training requirement. It seems as though we withstood quite a few details here. We look forward to the - you are amazing. We get individual briefings. Just to clarify again, the on boarding for councilmembers and commissioners is very thorough, in my opinion, and I believe yearly requirement is also standard. So I look forward to the other points to be discussed. I see no other points. We are therefore concluded. Do I hear a motion to conclude?

Councilmember Littlefield: I move.

Mayor Ortega: Moved to adjourn. Second? All in favor? We are done. Thank you.