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CALL TO ORDER

[Time: 00:00:00]

Mayor Ortega: I call the August 20, 2024, City Council Special Meeting and possible Executive Session to Order. City Clerk Ben Lane please conduct the Roll Call.

ROLL CALL

[Time: 00:00:06]

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

Mayor Ortega: Present.

Ben Lane: Vice Mayor Barry Graham.

Vice Mayor Graham: Here.

Ben Lane: Councilmembers Tammy Caputi.

Councilwoman Caputi: Here.

Ben Lane: Tom Durham.

Councilmember Durham: here.

Ben Lane: Betty Janik.

Councilwoman Janik: Here.

Ben Lane: Kathy Littlefield.

Councilwoman Littlefield: Here.

Ben Lane: And Solange Whitehead.

Councilwoman Whitehead: Here.

Ben Lane: City Manager Jim Thompson.

Jim Thompson: Here.

Ben Lane: City Attorney Sherry Scott.

Sherry Scott: Here.

Ben Lane: City Treasurer Sonia Andrews.

Sonia Andrews: Here.

Ben Lane: The Clerk is present. Thank you, Mayor.

Mayor Ortega: Excellent.

AGENDA ITEM 2

[Time: 00:00:44]

As a point of privilege, I would like to entertain item No. 2 in our agenda first. We will have a presentation by the City Attorney and then open public comment, and as a reminder, advocacy for or against a candidate or ballot measure during a City Council meeting is not allowed pursuant to state law.

So let us move forward with item No. 2, presenting the item, Lane et al. versus City of Scottsdale and I'll

give the floor to City Attorney Sherry Scott, hello.

AGENDA ITEM 2

[Time: 00:01:17]

City Attorney Sherry Scott: Thank you Mayor, as the Council knows, we received a legal challenge to the 0.15 percent tax ballot measure that the Council moved forward to be placed on the November 2024 ballot. We went to Superior Court to defend that legal challenge, and the Superior Court found no fault with the ballot description. They found that the proposition is not confusing or misleading and the city's word choice speaks favorably to the city's success, successful attempt to be transparent and undermines arguments that the city has engaged in a bait and switch, which was the plaintiff's argument, in that legal challenge case.

The plaintiffs appealed that to the Court of Appeals, and the Court of Appeals disagreed with the trial court and reversed the trial court. The Court of Appeals found that the word replace was accurate, but disagreed with the use of the word reduce in the ballot language and found that word misleading because the ballot measure is proposing a new tax. The court also found fault with the yes/no statements as written in the City's ballot measure. The Court of Appeals ordered that the ballot measure not proceed as currently worded in the November ballot.

Upon receiving the court's order, the City immediately contacted the county and asked if under these special circumstances the city could revise the ballot measure language pursuant to the Court of Appeals ruling and remain on the November 2024 ballot. The county indicated that the city could, provided they get the ballot language very quickly because the ballot is getting ready to go to print later this week.

The city now has a very short window of opportunity to revise the ballot measure pursuant to the court's order and keep the measure on the 2024 General Election Ballot. I'd like to remind the Council that these types of ballot measures need to be on a General Election Ballot. It can't be a special election.

So that leaves the city with a few options. Of course, one option is to do nothing. That goes without saying. The other option is to amend Resolution No. 13092 and change the ballot language, revise the ballot measure in accordance with the Court of Appeals ruling and move that forward to the county to be included on the November 2024 ballot.

The other option is to file an appeal with the Arizona Supreme Court, that would take the form of an emergency petition for special action and/or petition for review. I have to be honest, I'm not sure the city has time to do that. Given the short timeline that we have. I'm not sure that the Supreme Court would take the matter, and if the Council decides to amend Resolution No. 13092 and come into compliance with the Court of Appeals ruling, there's a strong argument that perhaps we have mooted the case that might otherwise be appealable to the Arizona Supreme Court.

So, let's talk about the first option, which is the more certain of the two. If you were to revise the ballot

language in compliance with the Court of Appeals decision, this is how it would look. Of course there are other options, there might be a word or two that you could change but have a strict word limit. Particularly on the descriptive title for this full text, and that makes it a bit more difficult.

But you can see that the main change let's see if this does any tricks. The main no, that's the tagline, let me go back. The main change is the city code amendment to enact a transaction privilege use tax rate. We took the words reduce and replace out of the ballot measure, even though the Court of Appeals agreed with the word replace, the Goldwater Institute, the plaintiffs very much objected to that word. So that word has been removed from this proposed ballot measure language.

[Time: 00:06:07]

On the descriptive title, it says enacts a 0.15 percent transaction privilege tax rate for 30 years, solely to fund the improvement, maintenance and protection of citywide parks and recreational facilities. And the maintenance and protection of the preserve as determined by ordinance effective immediately upon the expiration of the 0.20 percent tax rate in 2025. The yes vote language has changed in way that mirrors the earlier changes. The no vote shall have the effect of denying the city the authority to enact a new 0.15 percent transaction privilege and use tax rate, and the current .20 percent transaction privilege and use tax rate will automatically expire at the end of June 30, 2025.

Moving on to the tagline text, this is the second option. The full text will be printed in the ballot materials regardless of whether we have to use the tagline. We do think that we'll probably have to use the tagline text, and it's the tagline that the voters will see on the ballot. And that provides much of the same language, Scottsdale enact a 0.15% transaction privilege and use tax rate effective July 1, 2025 upon the expiration of the current .20 percent tax rate. And then the improved the designated purpose of that tax continues, the yes/no statements are very similar to what I read earlier.

I would like to point out, this would be an amendment to Resolution No. 13092, which the Council previously passed. And that resolution contains a provision that the City Council directs the City Clerk, City Manager, City Attorney and City Treasurer to take such steps as may be necessary to include the matter on the General Election ballot. In section 1 above that, it also says substantially in the form of the language the Council approves.

So, if we find a problem with one word that the staff has some administrative authority to make that change, but the types of changes I'm recommending here today, I didn't think that we would have the administrative authority to do that without a Council public hearing and approval.

Let me get to my options slide. My motion slide. I'll just use the Elmo. Thank you. Possible motions are to move to amend Resolution No. 13092, including the ballot measure language as reflected in today's meeting materials and in the presentation. And directing staff to submit the revised ballot measure to Maricopa County for inclusion on the November 2024 ballot. Another potential motion is to move Council take no action today and wait to consider including this ballot measure in a future general election. I'm sure there are other options. I'm happy to answer any questions.

PUBLIC COMMENT

[Time: 00:10:15]

Mayor Ortega: Thank you, Ms. Scott. At this point I will move to public comment, then we'll have some deliberations. We have four requests to speak, and if you could please come forward, you have three minutes. Mr., let me remind also everyone that electioneering or speaking for or against a ballot measure or candidate is not permitted from anyone up here at the dais during public comment, that's according to state law. James Haxby and then Adam Kwasman.

[Time: 00:10:52]

Jim Haxby: Scottsdale. I would encourage you to do nothing because I have some questions, if you put out a new amendment, I think the time frame to put ballot arguments has come and gone. So, by changing the wording on what was originally there, I don't think the residents have a right to go in and put ballot arguments in for what this new bill will be. The way this new wording to express their opinion.

I also kind of question where the money is going. You know, I think of like going to our parks, I would think that would come out of the general fund. I mean, I don't go down to Wells Fargo and get a loan when I need to pay the landscaper and fix my irrigation system at my house. I figure that in my general budget is maintaining my place. And I think that the funds collected off this should be more defined and appointed rather than at some later date the Council will appoint how this money is allocated. You know, if we have a budget short fall, let's be honest with the residents.

This whole thing, in my opinion, was designed to deceive the residents when we used the preserve and protect language, it's not a new tax, it's a blah, blah, blah, it is. The other tax expired, this is a new tax coming on, and it will increase taxes. Let's be up front about it. If we need the money, we need the money, but let's be honest with the residents. Let's don't try to deceive them.

You know, I to go back, and I honestly think we do have a short fall, just looking at our roads and the potholes and whatever, but I think the thing to fund this stuff and whatever when we use such a deceptive message, it generated a distrust with the city government and what's going on. And I think honesty and straight forwardness on there is the best policy, and I don't see that if you change this today, how the residents will have a right to express their opinion and any arguments for the ballot language. So that's my two bits worth.

Mayor Ortega: Thank you, sir. Next Adam Kwasman then Mark Sonnenklar and Bob Pejman.

[Time: 00:14:00]

Adam Kwasman: Mr. Mayor, members of the Council, my name is Adam Kwasman, I live in McCormick Ranch, and I am the former Vice-Chairman of the House Ways and Means Committee.

The transaction privilege taxes you are amending today stems from a bill that I was very much a part of a decade ago at the state level. But any government, whether it's local, whether it's state, whether it's federal, demands open, transparent accountability. That availability is the definition of the public trust. That's why when this bill when this referral was originally passed, it was lauded by many members of this Council and the Mayor for being open, for having a long runway of public comment and public participation. That's why when we, the voters and when with the residents of this city, when we have certain issues with the original wording of this referral, we were countered with the argument of saying no, we had an open and transparent process, this is the correct wording, we're going to move forward. Well, as we all know, that wording was illegal, that wording was deceitful, and that wording was thrown out and enjoined.

Here's the issue. Within 24 hours, we have gotten a notice that there is going to be a meeting and change the wording of this referral. It was done behind closed doors, it was done in an in transparent manner, and it was done without the availability of public comment, except for an immediate meeting at 2:00 p.m. when most residents are not available to come. And it has to be done quickly, quickly, quickly. Let me tell you as an attorney and as a father, anything done quickly is not done right. It very much seems that all of those overtones of availability and openness and transparency has been sacrificed on the altar of just slamming a tax hike down our throats.

You know, it's having a majority at the Council is not a permanent thing. We are never going to always have a permanent majority in any level of government. My question to members of this Council, is that the following. Is the precedent that you want to set for future Councils? Is this really what you want when you get enjoined by the state Court of Appeals to ram a tax hike through within 24 hours behind closed doors? Without the public participation that you yourself championed a few months ago. Think about it.

Mayor Ortega: Next, we have Mark Sonnenklar and Bob Pejman.

[Time: 00:17:23]

Mark Sonnenklar: My name is Mark Sonnenklar. Thank you for allowing me to have some time to speak on this issue, Council, I appreciate it.

I'm not sure how the county Council could have concluded that this, that it was legal to change the wording of the language at the last minute and put this on the ballot in November because ARS19-123a states that there must be a publicity pamphlet that is issued with every single measure that is proposed by the city Council and put on the ballot.

And that particular provision states that when the Secretary of State, I'm quoting now, when the Secretary of State is ordered by the legislature or by petition under the initiative and referendum provisions of the Constitution to submit to the people a measure of proposed amendment to the Constitution, the shall cause to be printed at the expense of the state a publicity pamphlet. That

publicity pamphlet needs to include the comments of the public, and that is clearly stated in ARS19-141c in which the public needs to be given 90 days to comment on that particular proposition that's going to go to the ballot.

It's that particular revised statute, Arizona revised statute 19-1419c states, quote, arguments supporting or opposing municipal, or county initiative and referendum measures should be filed with the city or town clerk of the county or the county officer in charge of elections, not less than 90 days before the election in which they are to be voted upon. You are not giving the required 90 days that you have to give to the public to comment on this particular proposal. And those who did comment, with respect to your originally worded proposal, many of their comments addressed the fact that they did not believe your description of the proposal was accurate.

So, what are you going to do with those comments? They're really not particularly relevant or applicable at this time, and are you going to put those within are you going to put those in the publicity pamphlet, are you not going to put those in the publicity pamphlet, but the bigger point is that you have to give the public 90 days to provide comment for printing within the publicity pamphlet, and it's really not possible to do that at this late juncture.

So that's the legalities of it. I believe if you were to vote to move forward with putting this on the ballot in November of 2024, you would be in violation of state law. So, again, I don't know how the county could have determined that this was legal to do this. Then on the political front, you know, I know Councilwoman Caputi is running --

Mayor Ortega: Excuse me sir, your time has expired.

Mark Sonnenklar: Politically, I don't think this is a good idea.

Mayor Ortega: Excuse me sir, thank you very much.

Mark Sonnenklar: Thank you.

Mayor Ortega: And as a courtesy, we will continue by the clock, appreciate your comments. Bob Pejman, and I don't know if there are any other requests. So, I believe you're the last one. How are you, sir?

[Time: 00:21:03]

Bob Pejman: Was going to say good evening, it's not a good evening, Councilmembers, Council Ortega. My name is Bob Pejman. Mayor Ortega, Councilmembers, address is on the record. This is a significant vote. So why isn't City Hall packed? Because few people know about what's going on right now. I literally found out about this meeting a few hours ago, that's only because a Councilmember told me about that. You can say that this lack of transparency and bare minimum notice to the community is not by design, it sure looks like it.

Speaking of transparency, your move today will further erode trust in this Council and the process as a whole. And if you think that the voters trust in you is intact, I'll welcome you to look at the results of the primary election. Just look at where the incumbents finished and look who won outright. But there's at least one thing that we know for certain now. That the court system agreed with all of the residents who questioned the honesty of the ballot language. They are all vindicated because the court also called the ballot language, quote unquote, misleading.

Now at the 11th 1/2 hour, you're voting to change the language in what I call, in what I call an air of nontransparency. Why is that? Because with almost no time for the residents to be aware of this meeting and provide input before you vote, that's exactly what it is. And now to echo what the previous speaker said, think about the people who wrote ballot arguments against this measure. And what will now be the old language.

When the pamphlet is out, these people could look like liars and out of touch with reality because their arguments won't match the new language that will be on the ballot. And yes, there are two Arizona election statutes, ARS19-123 and ARS19-141, which provide or require 90-day deadline to submit new ballot arguments, and that day has expired. I want to put just the language from that I mean it's clear, it's clear. Not less than 90 days before the election at which they are to be voted upon. That time has passed now. That time has passed.

Alternatively, you're not providing an opportunity for the constituents to write appropriate ballot arguments for the new language as required by election. That is not my opinion, it's election law. So, you can be potentially violating both of these election statutes, whether you keep the existing language or allow the new ones. And I just wish that you wouldn't go this far to get this ballot measure on the ballot and in the meantime, tainting the entire process. Thank you.

Mayor Ortega: Thank you, sir. Next, we do have two additional speakers. That is Carla. Carla and Mary Manross.

[Time: 00:24:32]

Carla: Hi, I'm Carla, 3420 North 78th Street, just over there in Peaceful Valley. You've heard a lot of why you shouldn't do it. Well, it's very simple why you should do it. It's your responsibility to give the citizens the right to vote. It's that simple.

You know, what the Goldwater Institute and the plaintiffs have done is just to waste time and waste money, and they've wasted a lot of taxpayer dollars. What really matters is you giving the people the right to vote for things they care deeply about. Our parks, our preserve and our public safety.

As far as the ballot arguments, I've read them all over and over, what you are changing is or being proposed you change, there's no real substantial difference in any of those arguments. They would still apply with the new language, with a few minor exceptions.

So, whether or not, by law, you choose to throw out all the arguments and just let the proposition stand on its own or you keep the existing arguments, the people of Scottsdale are smart enough to figure it out with newspaper coverage, et cetera. So, I would ask you please do what your job is, and that is on something this important to the future of our city, give the citizens the right to vote, send it forward to them this November 5. Thank you.

Mayor Ortega: Thank you. Next, we have Mary Manross.

[Time: 00:26:32]

Mary Manross: Good afternoon, I appreciate the chance to be here and say a word. Carla pretty much explained the essence of our concerns. The citizens have the right to vote on this issue. The Superior Court agreed with the city, the appeals court did not agree with all the language, and there's obviously there's always other steps that can be taken. But the fact is a lot of time has been spent, an enormous amount of money has been spent from our taxpayers to fight this and I don't understand why, I've been involved with a lot of serious, important issues in this community since 1972, and this is another one our citizens need to speak on. So, I'm not sure what anyone is afraid of, letting the citizens speak. And as far as the ballot arguments, I hope you definitely would agree that they should be allowed to remain in, but if indeed for some reason they weren't, they should all be out, not just certain ballot arguments.

I think this is just egregious what has happened with the Goldwater Institute has done in this instance to our community. Not letting our citizens speak on this when it's something that's been considered and planned and worked on for three years now. Three years. With an enormous number of residents from south to north involved in the process. And they're not being allowed to vote on this issue.

So please move forward and do that, we would sincerely appreciate it. This isn't the first roadblock we have ever met and I'm sure it won't be the last. We are here to make sure that we can revitalize our community and it really needs it. Especially in the southern part of Scottsdale, it deserves it and needs it. Please consider it, thank you so much.

Mayor Ortega: Thank you. With that I will close public comment.

I do want to clarify one thing before we go to Council, and that is that there has not been an Executive Session or secret session, prior to our discussions. This is fully open, and to let everyone know that that's the case.

We have Councilwoman Janik and Councilwoman Whitehead.

[Time: 00:28:58]

Councilwoman Janik: Thank you Mayor. I move to amend Resolution No. 13092 including the ballot measure language as reflected in today's meeting materials and presentation and that the city direct staff to submit the revised ballot measure to Maricopa County for inclusion on the November 2024 ballot.

Councilwoman Whitehead: I'll second that motion.

Mayor Ortega: Did you want to speak to your second?

Councilwoman Whitehead: No, thank you.

Mayor Ortega: Okay then I have Councilmember Graham.

[Time: 00:29:37]

Vice Mayor Graham: Thank you, Mayor. Sherry, can we put up the language for from your slides? While she's pulling that out, I'll make a few. Scottsdale residents.

Sherry Scott: If you could put up the PowerPoint presentation.

Vice Mayor Graham: At the very end the possible motions. You know, I just want to say Scottsdale residents are getting railroaded. We are discussing today at the 11th hour a rush job to redraft the ballot language description of a \$1.2 billion dollar 30-year tax program. I think this Council has a lot to be concerned about.

I think they have to be concerned about residents who are saying that they've been denied enough time to review and digest these changes. I think this Council should be concerned about whether these language changes have been adequately vetted. I think this Council should be concerned about the pro and con ballot arguments that were submitted for an entirely different ballot measure description that no longer exists. I think this Council should be concerned with introducing a new ballot draft without affording our residents the same opportunity as we originally afforded them, to write ballot arguments. I think this Council should be concerned how this move might affect residents trust in their city government.

So, with those comments, one thing I want to remark on, Sherry, is that we are making at least I read through, and we got the redraft very recently, and the redraft includes several references to a 1995 tax that, to me, is totally irrelevant. Everything that I've heard from the court and from all the discussions should absolutely be lifted and removed out of this ballot measure description. From the descriptive title when it references immediately upon the expiration of the .2 percent tax, we can just put a date, we should not refer to another irrelevant separate tax. From the yes statement immediately upon the expiration, that should be removed if I understood what the court decision was saying. If we want to meet what I consider to be the test of what the court said. From the no statement, we need to remove

and the current .2 percent transaction privilege and use tax. I don't think the 1995 tax has anything to do with this tax, and that's what I thought I heard the court saying.

So, I actually will pose that as a question. What kind of consideration, Sherry, in the legal department was given to that, thank you.

[Time: 00:33:03]

Sherry Scott: Thank you, Mayor and Vice Mayor Graham. So, the I didn't read the Court of Appeals ruling the way you did. The Court of Appeals did not want the city saying that there is a reduction of that tax, they made that very clear, they felt that this is a new tax. I think the language also the revised language we proposed makes the clear that the city's enacting a new tax.

But the Court of Appeals did not say that the city could not say that tax would be effective immediately upon the expiration of 0.20 percent tax. That is the timing of the ballot measure, and I believe that's a critical portion of the ballot measure, and that's why we put it in the language, it's accurate, it's not misleading in any way, but certainly the Council can choose to remove that and replace it for with a certain date if you would like.

Vice Mayor Graham: Yeah, that would be my desire, and just a few quick questions. Do you know about how much we have paid Sherman Howard to defend Prop 490.

Scott: I don't. I would have to look that up. My guess is it's definitely, well, I don't want to guess. I don't want to guess.

Vice Mayor Graham: Has the city made any other payments in defense of this, related to this lawsuit.

Sherry Scott: Yes, the city has made some payments, those bills are reviewed By Lori Davis, who is the Deputy over litigation. I haven't been personally reviewing those payments.

Vice Mayor Graham: What were those payments for.

Sherry Scott: I'm sorry to the lawyers.

Vice Mayor Graham: I'm saying other than to Sherman Howard?

Sherry Scott: Oh, I'm so sorry, okay I'm saying no, not that I'm aware of.

Vice Mayor Graham: How many professional staff hours do you think, city staff hours have been dedicated to defend the Prop 490 ballot language?

Sherry Scott: You're a numbers person, I'm not a numbers person.

Vice Mayor Graham: You're an attorney, attorneys track hours, right? I mean...

Sherry Scott: I wouldn't want to track all of my hours, Councilman Graham. But we have been working very hard, and I think everybody knows we have been spending a lot of time on this, not only during the process when the ballot measure was being studied and reviewed and going to all of those task force meetings, we have spent countless hours on this.

Vice Mayor Graham: The question was about the defense of the 490, but not the preparation of it. And then I guess to wrap up my comments, you know, at this point, I refuse to railroad residents. So, I can't support an 11th hour ballot language change that doesn't afford citizens, residents the chance to review and provide input on this. I'm getting the sense that moving to take no action today isn't possible, so to salvage something better, I will make an Alternate Motion to I will make an Alternate Motion to remove all those references I mentioned to an irrelevant what I consider to be an irrelevant expiring tax.

Scott: If I can help with that motion, simply to remove any reference to the expiring 0.20 percent tax and replace that language with a date certain.

Vice Mayor Graham: Correct.

Councilwoman Littlefield: I'll second that.

Mayor Ortega: We have an amendment although it was an Alternate Motion, and we have a second. Any other discussion on the Alternate Motion? I see Councilmember Durham.

[Time: 00:37:17]

Councilmember Durham: Yeah, Mr. Mayor. Mr. Graham wants to remove the references to the prior tax, but the Court of Appeals very specifically said we must reference the prior tax. The pages here aren't page numbered, but it's the second page from the end, the court said that we need to specify that the current tax would terminate as scheduled and no longer exist. So, the Court of Appeals has specifically directed us to reference the old tax, and that's exactly what we have done. We've exactly copied what the Court of Appeals told us to do. So, we should not be removing that provision because it's what the court wants to see.

Mayor Ortega: Okay. I see a Councilwoman Caputi and Councilmember Graham, Vice Mayor Graham. Let's go to Councilwoman Caputi.

Councilwoman Caputi: Thank you. I'm having a little bit of trouble figuring out where this conversation is going. You know, I think there's merit to both to all of the points that are being brought up here today. I certainly support the idea of having a dedicated funding source for our parks and preserves, that's why I voted to put it forward to the residents. I also recognize there is a lot of merit in this argument that we are sort of doing I believe in this mission, I'm not sure I believe in the process. I'm sitting up here getting more and more uncomfortable not knowing where I land because the process seems like it's

getting muddier, and I think there some validity to the comments some our residents are making, that we are here at 2:00 in the afternoon in the 11th hour. I'm having a hard time digesting everything that's happening, and the legalities being tossed back and forth. I can't imagine how the residents are feeling.

So, I just want to express the point that, again, I support the mission, I'm getting increasingly more uncomfortable about the process, and I'll be happy to hear more from my colleagues. Thank you.

Mayor Ortega: Councilmember Graham?

[Time: 00:39:37]

Vice Mayor Graham: Thank you, Mayor. Sherry, Councilmember Durham commented that we were required. You say we were required to say that. I would I don't have it here in front of me, my colleague does but does it have you do you did you read that section that Mr. Durham is, so he just handed me his copy. And before I read this, I would think it would say something like if we were to discuss it, a conditional statement, then you must qualify or explain it as followings. I don't see the court telling forcing us to put language about another tax in here. I think it would be it would be providing us optionality. Do you have any comments on that.

Sherry Scott: The Court of Appeals, Vice Mayor Graham, was critical of the City's no statement because it didn't clarify that the expiring 0.20 percent tax would simply expire if there was a vote of no. So, they say namely, well, let me start one sentence before that. Here the no language in both the full text and the tagline text fails to communicate the essential change that a no vote would effectuate, namely that the current tax would terminate a as scheduled and no longer exist.

Because of the court's criticism on that, both during the oral argument and in their order, we did feel it necessary to include in the no statement.

Vice Mayor Graham: I have to disagree with my colleague that we are forced to talk about a tax that is expiring. This to me, I read this if we do talk about it, then we have to say that it is expiring before it. I read this totally differently. I know that people have different legal opinions. This, to me seems to say if we want to somehow talk about an irrelevant tax, then we have to be extra careful in the way we discuss it. So, I'll keep my motion on the floor. Thank you, Mayor.

Mayor Ortega: I call the question. So, we can vote on the suggestion of modifying something as discussed, we could go back and forth, therefore a yes vote would support the motion, a no vote would deny the motion.

Vice Mayor Graham: Point of order. If we vote yes and approve this, is this resolved, this whole matter resolved or go back to the original motion.

Mayor Ortega: Of course it goes back to the original motion. So, we are just saying that and you will now.

Vice Mayor Graham: Thank you.

Mayor Ortega: Thank you. So please record your vote. Okay. The vote the motion does not carry. That is 2-5 with member Graham and Councilwoman Littlefield voting no. We will return to the motion on the floor and the motion at this point is open for discussion, I have Councilwoman Whitehead and Councilmember Durham and proceed.

[Time: 00:43:08]

Councilwoman Whitehead: Thank you, Mayor, and like Councilwoman Caputi's remarks, I agree this is something that remarks that we heard are definitely for consideration, but and I appreciate Councilman Graham's effort to make perhaps make a 7-0 vote, I'm not sure. But I think what we are trying to do is follow the court's order. So we went to Superior Court that court upheld the language, and the language was a very transparent process. It was two years in the making, many meetings, and, in fact, at that point Councilman Graham made some recommendations of some of the verbiage does reflect those discussions.

So, this language was definitely done in a public setting, and with good intent, but we heard from the appellate court wasn't a rejection, it was that that court found had trouble or disagreed with some of the words in the no part of our ballot language. And in fact, it is my understanding that the Goldwater Institute requested that the court not allow the city to change the language and is that correct that was one of the requests of the Goldwater Institute?

Sherry Scott: Mayor and Councilwoman Whitehead, yes, the city, in all fairness, the city filed a motion for clarification asking the court to clarify its order about whether or not it was intending to prohibit this ballot measure regardless of its wording from moving forward. The court amended its order, making it clear that it was only prohibiting the ballot measure from moving forward as it was currently worded. The Court of Appeals then denied the motion for clarification because it had already amended its order to make met clear. So that's where we are on that point.

Councilwoman Whitehead: Okay so thank you. So, I didn't get that quite right, but thank you for clarifying. So, in fact that court did not oppose the city changing the language, and the intent of this proposition doesn't change, it's the one or two words, a few words are changing and I think one of the arguments I really enjoyed, I've never spent much time in court, I pride myself on that, but is that there are many ways to say the same thing correctly the city worked really hard to say to explain this ballot initiative correctly, and so we are changing a word because the appellate court did not agree with one or two of the words we chose, but I really appreciate the process, I appreciate the continued input, but I am supporting it, so thank you.

And I want to point out, just one more item, which is this is up to the voters. There is no decision about a tax being made on this dais. We don't make those decisions, we simply allow our voters to decide, that's what we are doing today. Thank you.

Mayor Ortega: We have Councilmember Durham, Councilwoman Janik, Councilwoman Caputi

[Time: 00:46:43]

Councilmember Durham: Thank you, Mayor. Mr. Haxby and Mr. Kwasman have both falsely stated that this is a tax increase. Our current tax is 8.05, and if the proposition is passed, the tax will reduce to 8.0. So, I'm not a math major, but I'm pretty sure that the movement from 8.05 to 8 percent is a tax reduction. So, somebody can contradict me if I'm wrong, but I'm pretty sure I've got my math right on that. Councilmember Whitehead is correct, we are not bypassing the citizens, the citizens are going to vote. That's the way we always do it. So, the citizens get the final say. And I can't understand why Councilmembers who claim to be pro resident are so afraid of the residents. These parks belong to the residents and the preserve. And Councilmember Graham and Councilmember Littlefield are presumably going to try to stop the citizens from having any input on these decisions, which I find amazing. I think former Mayor Manross said it. Why are they afraid of the citizens? Why are they afraid of letting them vote? It's bizarre to me.

All seven of us agree that our parks need help, on April 2nd of this year Councilmember Graham stated, I also agree with those that point out about the neglect to some of our southern Scottsdale parks and on June 4th, he stated, we hear about parks in disrepair and crumbling. So, he's heard from the residents, and he knows the residents are concerned, but he wants to sit on his hands.

I don't always agree with Councilmember Graham, but he's right, our parks are in trouble and as for Councilmember Littlefield, she says in her pamphlet statement we have aging parks that need maintenance. I agree with her we have parks that need maintenance. Then she goes on to say why have we not been putting money aside from our operating budget for these known maintenance questions. Costs over the years. It's a very good question. Why haven't we been funding them. But of but the only person who could answer that is Councilmember Littlefield. Because she's the only one that's been on the Council during these years of neglect, and before Councilmember Littlefield, it was Bob Littlefield. So, we have had around 20, 24 years of neglect on our parks, and the time for neglect is stopping now that's why we are proposing this. We have got to stop the neglect of our parks. The truth is, there is a failure of leadership on past Councils, and part of that past leadership is doing his best to kick the legs out from under our parks and preserves by supporting the Goldwater Institute.

But now the new faces on the Council are leading. We are not going to take this neglect any longer, and that's why we are stopping it today. Councilmember Littlefield and Councilmember Graham have not given any solutions to this, they've suggested bond measures, but you can't bond measure you can't have a bond measure for fixing a swing set. Or pulling up invasive weeds or mowing the grass. You can't do bond measures for maintenance. Those are only for large capital projects. So, I think we are ready to vote on this I would like to call the question.

Mayor Ortega: Thank you, the question has been called.

Vice Mayor Graham: Point of order, can I respond?

Mayor Ortega: Sorry, sir, call to question means no more discussion.

Vice Mayor Graham: So, Councilmember Durham makes the last word.

Mayor Ortega: Sir, I'm only saying that's what the rules are. So, we will now please record your vote on the motion to as presented. The motion carries with Council Vice Mayor Graham opposed, Vice Mayor sorry, Littlefield opposing and Caputi opposed and it carries 4-3. That matter is closed.

Next, we will revisit the item No. 1. I do not see any purpose in requesting an Executive Session. I do not see a motion for an Executive Session.

[Time: 00:52:53]

Vice Mayor Graham: We didn't finish item 2. We voted on the call to question. We haven't voted on No. 2.

Mayor Ortega: The call to question was...

Vice Mayor Graham: To eliminate debate, we didn't vote on that, did we?

Mayor Ortega: Sorry, go ahead, sorry attorney, go ahead correct me.

Sherry Scott: Mayor, I believe Councilman Graham, Vice Mayor Graham is correct, technically when you call the question, you should vote on calling the question and then you should move to that motion.

Mayor Ortega: Sure. Excuse me, thank you very much. At this point, we will move to the main motion, which is please record your vote.

Vice Mayor Graham: Point of order, Mayor, we need to vote on the call to question, because there is confusion on what we were going on. Then we go to what's on the table.

Mayor Ortega: Well, we actually...

Vice Mayor Graham: Madam Parliamentarian.

Mayor Ortega: Okay, excuse me.

Sherry Scott: I agree, just for clarity's sake.

Mayor Ortega: Sure, that's do that. Let's start over.

Sherry Scott: Just for clarity's sake. Let's start over.

Vice Mayor Graham: So, we can see who wants to cut off debate. We'll see, put it on the record.

Mayor Ortega: Yeah, the call the question was raised, to support that and yes or to continue is a no. Please record your vote. Okay.

Ben Lane: Councilwoman Littlefield, how do you vote?

Vice Mayor Graham: Okay, let's continue debating.

Mayor Ortega: Thank you, I see that as a no. Therefore, the call to question fails and we will continue the discussion. At this point, I believe there was Councilwoman Littlefield had requested to speak. Please go ahead.

[Time: 00:54:41]

Councilwoman Littlefield: Thank you, Mayor. I'm amazed at all that happened here. There are many problems with this, and many, many citizens are outraged. I can say that because they've been calling me. Yes, I have been listening to the citizens and I've been hearing what they say. They are paying very close attention to this, people, and its Council majority is rather nefarious activities regarding this. They are not happy about it. They want this open, above board and available for everybody to know what is going on. What is happening on this, and we are not doing that, and that is a problem.

For myself, I have several rather major concerns, firstly the publicity pamphlet, which we have talked about. Many citizens paid \$100 to submit comments regarding the sales tax request as described in the pamphlet. They submitted their comments under the understanding that the publicity pamphlet reflected the position accurately and the description of it was true. Even if we gave back the \$100 to everyone who wrote a letter to the pamphlet, which we should do if we change all this, if this passes, that would not now be the case. They would not reflect it, and it could be argued that we were mis-advertising or misleading or downright lying to our citizens in order to get this tax passed. We have to be consistent, and we have to be above board. If it could be claimed to be legally acceptable, it opens wide doors of deep distrust for the Council and for its ulterior motives by citizens. In fact, I have already heard from many.

It also could very well harm any future money requests we might make that we may actually need to fund for actual needed city work, like the parks, nobody up here is saying the parks should not be maintained, the parks should not be fixed. There is no one here that I know of that is saying that. The problem, the question becomes where do we get the money to do it and why haven't we been saving for it when we knew it was coming up? You are asking for short-term benefit with long-term negative consequences, believe me, our citizens have long memories, and just to be very clear, we already have the money needed to repair the lakes, and all of us plan on doing just that.

Back to the pamphlet. The pamphlet is required by state law and needs to reflect clearly and accurately the questions upon which the citizens will vote. By doing this, we are saying we did not accurately fulfill our obligations, either to the city or to its citizens if we don't have a pamphlet. A major concern for me is that the citizens now cannot speak to this accurately through the pamphlet to reach other voters. Timing is bad and it is too late to submit. Why we are now looking at something that will not exist in a new pamphlet if that's what we do and more importantly, there will be basically defrauded citizens will be defrauded by the city, by the right to speak, they will not have that right if we don't use a pamphlet to distribute to all of the voting population.

By changing the question, we make arguments meaningless, and to do what you're suggesting is wrong, it's possibly legal, I don't think it is, but it's immoral and it's unethical. Our citizens need to have the right to speak out, the need to put their articles in the pamphlet to be heard by other citizens and other voters. By doing this, by putting a new pamphlet out, we are not giving them that right. We are taking it away from them. And other voters are having the rights to see what they say taken their rights away too. I can't suggest that we do this, it's not correct, and it's not obeying what I foresee as the law. Thank you.

Mayor Ortega: Thank you. Councilwoman Caputi, then Vice Mayor Graham.

[Time: 00:59:27]

Councilwoman Caputi: Well, I agree with Councilwoman Whitehead, I think that we have worked really hard to be transparent throughout this entire process which is why I'm struggling so hard today because I don't understand why we would stop the transparency at this 11th hour. I'm just not I don't know that I'm necessarily on board with stopping at this point. I 100 percent support having our residents have a voice again, that's why we referred it to the ballot. But I don't understand what the rush is necessarily. Our current tax is still running, we can certainly make sure that there's more community support and agreement on our Council and from our residents and bring it back at a later date. Residents would have a voice, we could have this has become such an inflammatory issue at this point and that's what's giving me pause. Thank you.

Mayor Ortega: Vice Mayor Graham?

Vice Mayor Graham: Thank you, Mayor. You know, I've served on boards and commissions and City Council since 2014. And in that whole time, I have never seen a personal attack filled fact free monologue than like what we just experienced from Councilmember Durham. Some of his smears against Councilmember Littlefield, who I would argue enjoys far more resident support are disgraceful.

To respond to Councilmember Durham's sarcastic math comment, the local tax rate, your local tax rate is 1.55 percent. Effective 6/30/25. That's what it's been scheduled to be for many years. If Councilmember Durham gets his tax, that tax rate will increase to 1.700 percent. That is an increase. Guess how much of an increase that is, it is \$1.2 billion over 30 years. So, we don't need the sarcasm. Councilmember Durham lectures and points the finger at why others didn't fix the problems he's been

here for four years. What's he done? Since I've been on Council, I've watched you know, setting aside what asking what he's done, since I've been on Council, I have watched Councilmember Durham wave through over \$150 million of budget overruns. Many approved \$14 million of staff pay to increase the average staff pay to \$114,000. He didn't even ask why. He wasn't curious.

Councilwoman Janik: Call the question.

Mayor Ortega: Sir, it's best that you just stay to the motion.

Vice Mayor Graham: I'll wrap it up. Okay, thank you.

Mayor Ortega: Please keep to the motion. We must.

Vice Mayor Graham: So before Councilmember Durham casts another stone, I think everyone up here could benefit from some introspection, including why an appeals court told this Council that this Council's chosen language was illegal. Thank you.

Mayor Ortega: Okay. Councilwoman

[Time: 01:03:11]

Councilwoman Whitehead: I'll call the question. Councilman Durham is one of the most thoughtful Councilmembers we have.

Vice Mayor Graham: Point of order, you called the question.

Mayor Ortega: At this point, I also do see.

Councilwoman Whitehead: I would like to speak before I call the question. May I?

Mayor Ortega: Well, I did give you the floor, but I do also see City Attorney, did you mean to have your request on? Okay. So, I thought I should clarify that. The Councilwoman has withdrawn her question so that she can speak again we are speaking to the motion, and you have the floor.

Councilwoman Whitehead: Until two years ago, we had really good deliberations up here, we did not have Councilmembers here accused us as a city as a council, of committing fraud. But that's what we are hearing up here on the dais, and we didn't have personal attacks against each other. We are up here to bring different points of view, different expertise, and to try to move forward. So, there's no fraud being committed up here, and there's also, this is not a contentious issue. Poll after poll after poll has shown that 70 percent of citizens want to raise extend, whatever you want to call it. Have a sales tax to invest in their parks and to put policeman in their parks so the parks are safer and to have wild fire prevention. We don't want to just rely on luck, the way the wind is blowing. So, this I completely disagree with Councilwoman Caputi and her assertion that this is a divided issue.

For 50 years, the citizens of this city have made open space a priority. Why it took a couple of times to get the Greenbelt through. Nobody is saying that was a bad vote. Twice approved a preserve, approved sales tax dollars for the preserve, and so this is just an extension of what we have done for 50 years.

I've been speaking to community groups all year on this, and honestly, I find almost 100 percent of the residents I speak to say that spending three or four bucks a month per house to reinvest in our parks is a good decision. So, this isn't about us cramming a tax down anybody's throat. This isn't about us making a decision on a tax, it's simply it's simply about allowing the voters to do that.

And Councilman Durham is an attorney, and I appreciated his reflection, his thoughts on the appellate court decision, and I appreciate our City Attorney Scott's. We can't do what Vice Mayor Graham is suggesting is not what the court suggested. It has merit, perhaps, but it's not what the court suggested.

So, what we are doing is consistent with what the court is allowing us to do, and it is not changing the fundamental ask of the voters or it's not changing the fundamental definition of what a yes vote will do or what a no vote will do. So, I'm it's disturbing to me to have these terrible attacks on each other, we are each elected by the residents, and I think that the city is the low tax, high value low crime city that we love, that has the most open space in the state. Who wouldn't want to spend a couple of bucks a month to make sure that we maintain that. I don't know. But it's not my decision. It's the decision of the voters. So, thank you with that. I will call the question.

Mayor Ortega: Okay, we will have a vote on the call to question. And.

[Time: 01:07:24]

Councilwoman Janik: Problem, I pushed my button before several of these speakers.

Councilwoman Whitehead: I'll pull my call the question and let everybody else speak.

Councilwoman Janik: I would like to comment my motion. Thank you, Mayor. All right. First of all, the new language is greatly improved, I think we have done a really good job with that. I think it's way more understandable. I think we followed the guidelines that were issued by the courts, which is important because that sends a positive message out to our community.

I have spoken to many citizens, and they are very much in favor of this. They want to keep our city top notch. We do currently fund repairs for the parks, for WestWorld, and it is simply part of a very big budget, and it is not enough to keep us a top-notch city, and the other problem is parks get older and older, when your house gets older, you need to put more money to keep it up so it will be in top notch shape. That's what we are hoping to get for the citizens of Scottsdale.

I believe there is quite a bit of time for all the citizens to investigate what we have said, what we have done, certainly the people that are opposed to what we are doing up here have had their say, done a very good job of explaining why they are opposed to what we are doing. But at the end of the day, the

citizens should have the right to decide, and that's what we are working on up here, working on let's refer it to the citizens, let's see what our citizens want, because after all, all of us are here for the great City of Scottsdale. So, I would hope we would all keep that in mind.

I guess I am very disappointed that we seem to be reflecting everything that's going on in our country, and that is that we are at extremes, we can't seem to come to the middle. We seem to think that compromise is a cuss word. That is not a good place to be. And I hope that by giving the citizens that we will give the citizens the right to vote on it I hope we will have a clear mandate in either direction. Will so that we know we are properly representing our citizens. Thank you.

Mayor Ortega: Okay. I will now speak, did the City Attorney want to clarify any part of our process?

[Time: 01:09:50]

Sherry Scott: Please, Mayor, and I didn't want to interrupt your debate. But I do want to clarify on the record that the city will make any necessary adjustments to the informational packet. Those will be included, and we will also work toward allowing those who have submitted their prior ballot measures the opportunity to make any revisions that they feel they need to make as a result of this change. So, we will work towards that. I believe we have that ability and the authority that I mentioned earlier in my presentation. I just didn't want anyone to leave thinking that if they submitted a ballot argument, they're not going to have an opportunity to potentially revise that.

Mayor Ortega: Thank you. Now I will speak. This process has been going on for 20 months. That's a lot of public input. What we were dealing with is bigger than all of us. It's bigger than individuals, in our audience, bigger than any personality that may be judging or weighing or any accusation that may be made. That's why as I have approached this and in good faith, I believe, beginning with the task force, I think they had over 1400 comments, 22 meetings. We held four or five ourselves all in good faith.

We need to make sure we recognize that and all the effort of anyone coming forward because it is bigger than all of us, we know these questions came late in the game when the lawsuit was filed in the city. It wasn't filed earlier. There would be more discussion. That can be discussed, but it created a small window and pushed all that effort against the wall. Why frankly, we had third party review of our decision. Why? Because it was a lawsuit was brought, it went to Superior Court and we had a third-party review of that we did our best up here, I believe in constructing and working with a recommendation. But it's true, the buck stops with us, right? And on round one the Superior Court said, you know, its readable we have no objection and that was their third-party review.

Then an appeal was done, did it cost us money, hell yeah it cost the city because we had something that was proposed, and it actually prevailed when it was questioned. We had a second third party review that went to appellate court the appellate court didn't just throw out the baby with the bath you know with the bath water. They said there are three words in here that the opposing council may have had a point about out and we kind of question that can you clarify. I actually want to thank the Goldwater Institute because they asked for a third-party review, and they got it we got better answers and we said

you know it's not about nastiness or saying who was conspiring or doing something illegal these are these are the top minds in a judicial body that they also as I read it said we're not going to write it for you but the way you wrote it maybe 99% of it's okay but there's a couple things here. Did we have much time to react no. We barely got it 24 hours ago right but we've held this meeting there was nothing held in private secrecy and insider dealing as in any way on Executive Session for this we come together, there is apparently stones being thrown, but I believe it's reinforced and clarified for us so that we can make it better and as we have recrafted it, it's an amendment to the original resolution that was passed. The court didn't say throw out the resolution, no, they said look at these three words.

What we are seeing today is not about personalities or arguing or an electioneering is not part of this deal today. The deal is, we have community property, we custodians of that as Mayor and Council. That's a good thing. It's okay, good thing. We have come to the point where we are, in my opinion and as it's been written, we comply with the court order that's our job. We fortunately have three judges that helped us craft what we see today. So, it's not about pettiness. It's not about why we didn't do it first, 90 days ago or how it evolved because whenever you design something by committee, right? Is it perfect? Of course not.

And yet, it has been refined and that's a good thing, so we are I am frankly very sure that we have had a great consult and external review of this so that our responsibility is to comply with the court order, and that's what we have done today. So, in doing that, I am calling for the question so that we can just, again, disregard in my mind, I keep thinking what is our big role here. We are custodians of community property. We can all agree on that. And we value our community property, and we have to allow the public, because we don't raise taxes, people look for the value in what they are getting from this particular measure, and they'll decide whether that pocket park at Garfield or Paiute or Apache Park and the preserve and trails matter to them and whether they want to have a sales tax. We cannot raise the sales tax. That proposition is put forward because it's a big picture.

So, at this point, I would, I will call the question so then we can vote on the main motion. I see Councilmember Durham wants to speak, but I am not I have called the question, we will vote on the question, I don't want any back and forth in my opinion, that's where we are at. Everyone has had ample chance to speak, and would therefore we will vote on the question, which would be to yes means we halt the discussion and then we will vote on the main motion. Please show us the voting board.

[Time: 01:18:00]

We are calling the question, that means we will just end that bantering and so forth and move forward. Okay. So, we have the vote is 6-1 to end to end debate and now go to the question and vote on it. I will ask the Clerk to please show us the new voting board.

The motion, as stated and the syntax and so forth, and the obligation, the City Attorney has clarified she will make available the information, please record your vote on the motion. Okay. The motion carries 4-3 with Vice Mayor Graham, Councilwoman Littlefield and Councilwoman Caputi objecting.

AGENDA ITEM 1

At this point we are concluded with item No. 2 and for the record, item No. 1 had to do with a possibility of going into an Executive Session. I see no reason for a motion, I'm not calling for a motion to go in Executive Session. I don't see anyone wishing to speak. Therefore, I ask for a motion to adjourn.

ADJOURNMENT

[Time: 01:19:24]

Councilwoman Caputi: So moved.

Councilwoman Janik: Second.

Mayor Ortega: Please record your vote.