

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, SEPTEMBER 13, 2011
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on SEPTEMBER 13, 2011, in the COUNCIL CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Kuykendall called the meeting to order at 3:01 p.m.

◆ **INTRODUCTIONS**

Councilman Lamerson welcomed Council-Elect Arnold and Kuknyo.

◆ **INVOCATION:** The Heights Church

There being no one present from The Heights Church, Councilman Hanna gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Hanna

Councilman Hanna led the Council and audience in the Pledge of Allegiance.

◆ **ROLL CALL:**

PRESENT

Mayor Kuykendall
Councilman Blair
Councilman Hanna
Councilman Lamerson
Councilwoman Lopas
Councilman Scamardo

ABSENT

Councilwoman Suttles

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

Mr. McConnell reminded everyone of the upcoming BestFest.

I. CONSENT AGENDA

CONSENT ITEMS A - D LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.

Councilman Hanna commented on Item B, noting that Mr. McConnell was saving the City about \$176,000 a year by accepting the contract and doing the job he was doing. He said that the majority of the Council diligently tries to look after the public's dollars and cents and he was glad to have him there.

Councilman Lamerson thanked Councilman Scamardo and Mr. McConnell for their work on development of the agreement.

COUNCILMAN LAMERSON MOVED TO APPROVE CONSENT AGENDA ITEMS I-A THROUGH I-D; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- A. Approval of payment to Yavapai County in the amount of \$47,250.85 for Primary Election services.
- B. Approval of Employment Agreement with Craig McConnell as City Manager.
- C. Approval of funding distributions from the Acker Trust for FY2012.
- D. Approval of minutes of the Prescott City Council Regular Voting Meeting of August 23, 2011, and the Special Meeting of August 30, 2011.

II. REGULAR AGENDA

- A. Approval of the Official Canvass of the City of Prescott Primary Election held August 30, 2011.

Ms. Burke reviewed the Official Canvass of the City of Prescott Primary Election held August 30, 2011, as indicated below:

NUMBER OF REGISTERED VOTERS:	25,541
NUMBER OF BALLOTS CAST IN THE ELECTION:	12,397
VOTER TURNOUT PERCENTAGE:	48.54%

MAYOR

Number of valid ballots for Mayor:	12,201
Number required to be elected in Primary:	6,102

Kuykendall, Marlin	6,557 *
Suttles, Mary Ann	4,113
Thurston, Deborah	1,486

COUNCIL

Number of valid ballots for Council:	12,027
Number required to be elected in Primary:	6,015

Arnold, Charles (Charlie)	6,677 *
Dubiel, Alan	5,084
Kuknyo, Chris	7,535 *
Lamerson, James	7,426 *

WRITE-IN CANDIDATE

Luzius, Robert	1,635
----------------	-------

*Elected in the Primary

COUNCILMAN HANNA MOVED TO APPROVE THE OFFICIAL CANVASS OF THE PRESCOTT PRIMARY ELECTION HELD AUGUST 30, 2011; SECONDED BY COUNCILMAN SCAMARDO; PASSED UNANIMOUSLY.

- B. Public Hearing and consideration of a liquor license application from John J. Nielsen, applicant for Prescott Brewing Company, for a new Series 03, *Domestic Microbrewery*, located at 6396 Lear Lane.

Ms. Burke reviewed the application, noting that the property had been posted as required and no public comments had been received. She also added that a representative of the applicant was present should there be any questions.

COUNCILMAN LAMERSON MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

COUNCILMAN LAMERSON MOVED TO APPROVE A LIQUOR LICENSE APPLICATION FROM JOHN J. NIELSEN, APPLICANT FOR PRESCOTT BREWING COMPANY, FOR A NEW SERIES 03, DOMESTIC MICROBREWERY, LOCATED AT 6396 LEAR LANE; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- C. Public Hearing and consideration of a liquor license application from Gregory John Swigut, applicant for Papa's Italian Restaurant, for an Agent Change, located at 1124 White Spar Road.

Ms. Burke reviewed the application, noting that the property had been posted as required and no public comments had been received. She also added that a representative of the applicant was present should there be any questions.

COUNCILMAN HANNA MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

COUNCILMAN HANNA MOVED TO APPROVE A LIQUOR LICENSE APPLICATION FROM GREGORY JOHN SWIGUS, APPLICANT FOR PAPA'S ITALIAN RESTAURANT, FOR AN AGENT CHANGE, LOCATED AT 1124 WHITE SPAR ROAD; SECONDED BY COUNCILMAN SCAMARDO; PASSED UNANIMOUSLY.

- D. Approval to purchase an Airport Premises Liability Insurance Policy for a term of October 1, 2011, through September 30, 2012, from Ace Property and Casualty Insurance Company at a premium cost of \$14,750.00.

Ms. Swain said that the City's broker was instructed to go out and get bids. They talked with five companies and only two submitted bids. She said that the City currently has a \$50 million limit. Because they are still experiencing a soft market (meaning they have the liberty of asking for more things) they also quoted a \$75 million limit. When they researched further they found that other comparable airports, such as Flagstaff, Chandler, Mesa, all had a \$50 million limit so they felt that was adequate. She said that Ace came in as the lowest bidder at \$14,750.

Councilman Scamardo asked for clarification on what "TRIA" was. Ms. Swain said that it stood for Terrorists Insurance and came about after 9/11. She said that most airports do not purchase it primarily because of the strict requirements associated with it.

Councilman Scamardo said that he noticed that all of the bids were for \$50 million with no deductible. He asked if that was because of the way the specifications were written, or if it was looked at and discounted. Ms. Swain said that prior to her arrival with the City they had always had a zero deductible. She has been here three and a half years and since their premium has gone down substantially every year due to the soft market, they have maintained that deductible amount. When the market starts to turn they may have to consider a deductible.

COUNCILMAN SCAMARDO MOVED TO APPROVE THE PURCHASE OF AN AIRPORT PREMISES LIABILITY INSURANCE POLICY FOR A TERM OF OCTOBER 1, 2011, THROUGH SEPTEMBER 30, 2012, FROM ACE PROOPERTY AND CASUALTY IN THE AMOUNT OF \$14,750.00; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- E. Approval to pay the Arizona Department of Water Resources FY2011-2012 Municipality Fee in the amount of \$49,637.15.

Leslie Graser said that this item was for a new assessment applied to all cities and towns, enacted during the 2011 regular session, and becoming effective July 20, 2011. The money will be used by ADWR (Arizona

Department of Water Resources) to carry out their department objectives. The fee itself is calculated based on a municipality's population, with a cap of \$7 million. This year, since they were not certain it would pass, there was no specific amount budgeted. It will come out of the water fund. In future years the City will budget the maximum, and it should not change until the next census or another change in the law.

Councilman Lamerson asked if this was for the City's extraction of water from the aquifer. Ms. Graser said that this particular fee is a new fee because of the financial cuts taken by ADWR. The fee he was referring to was a separate fee charged by ADWR and would continue as in the past.

Mayor Kuykendall said that his understanding was that one of the reasons they did not pass the charge on to the customer was because they did not have the capability on the water bill to add another line.

Mr. McConnell said that the water rates for the City were set by Council for a three-year period and are listed in the City Code. Those rates were set some time ago and this is a new fee that just came about. Ms. Graser said that the legislature made recommendations on how the cities/towns could recuperate these funds, but it was not written into the law.

Mr. McConnell said that what has not been stated is that the state removed the majority of funding from a state department, ADWR. In order to continue to have that department complete its responsibilities, that budget was shifted from the state to the local source and this is it.

Mayor Kuykendall asked if a municipality would still be charged a fee if they did not have their own water company. Ms. Graser replied that they would, such as Chino Valley.

Councilwoman Lopas said that they were "robbing Peter to pay Paul." She said that ADWR has to continue, and they were one of the departments hit worst. If it was not a mandate she would not vote for it.

Councilman Scamardo clarified that it would not change for the next ten years, until the next census. Ms. Graser said that it was written into the law to use the 2010 census numbers.

Councilman Hanna said that he does not support it either.

Councilman Lamerson asked how the City's challenge of the census numbers would impact this fee. Mr. McConnell said that they have not yet pursued that formally as there is some expense to it, but he would get an update on where it stands. He said that one piece of legislation out of the 2011 session would provide an additional financing mechanism for

communities under 40,000 population, so if Prescott's population went over that number they would no longer be able to utilize it.

COUNCILMAN SCAMARDO MOVED TO APPROVE PAYMENT TO THE ARIZONA DEPARTMENT OF WATER RESOURCES FY2011-2012 MUNICIPALITY FEE IN THE AMOUNT OF \$49,637.15; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

- F. Adoption of Resolution No. 4095-1205 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an Intergovernmental Agreement with the Arizona State Library, accepting funding of a Job Help Hub at the Prescott Public Library, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Library Director Toni Kaus reviewed this agreement, noting that it would provide funding for a part-time person.

Councilman Hanna noted that in Item 13 the text read forty five days, but the number was 60. He asked which number was correct. Ms. Kaus said that she had not caught that discrepancy during her review, but would find out and correct the document.

Brief discussion was held on the budget for this. Mr. Woodfill said that all of the grants that the City enters into are reimbursable, like this one. Since this is a grant, it will be from the Governmental Grants item and there is a reserve to cover them.

COUNCILMAN BLAIR MOVED TO ADOPT RESOLUTION NO. 4095-1205; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- G. Award of bid and contract for the Meadowbrook Road Water Main Replacement Project to Action Direct, LLC, dba Redpoint Contracting, in the amount of \$238,325.00.

Mr. Nieutpski said that this was for a water main replacement in the Thumb Butte area where they have experienced recurrent leaks and breaks in the last few years. He said that they received six bids after the mandatory prebid conference was held, and this was the low bid. He said that they have confirmed their bid and their background/reference check had been completely satisfactorily.

COUNCILMAN LAMERSON MOVED TO AWARD THE BID AND CONTRACT FOR THE MEADOWBROOK ROAD WATER MAIN REPLACEMENT PROJECT TO ACTION DIRECT, LLC, DBA

**REDPOINT CONTRACTING, IN THE AMOUNT OF \$238,325.00;
SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.**

- H. Award of bid and contract for the Chino Valley Arsenic Treatment Site Improvements Project to RK Sanders, Inc., in the amount of \$155,777.00.

Mr. Nietupski said that this was a requirement of the conditional use permit obtained by the City in the Town of Chino Valley when arsenic improvements were required to comply with ADEQ. The City had to install landscaping, screening, etc. to minimize the visual impact of the project.

He said that the mandatory prebid was held in August and the low bid of \$155,777 was received for a 90-day construction period, with funding to come from the Water Fund. He said that the contractor has an A license and the background/reference check has been completed.

Councilman Blair asked if the City of Prescott served water to the residents of Chino Valley. Mr. Nietupski replied that they did.

Councilman Scamardo said that on the previous item the difference between the first and second bidder was around one percent. The difference between the first and second on this bid was 17.5%, which is a flag in his mind. He hoped they had not left anything out. Mr. Nietupski said that was a valid concern, but the contractor has confirmed the bid and there was a representative at the meeting if Council should have any questions of them.

Councilman Lamerson asked if it was customary, in a federal unfunded mandate that the City be subject to special use permits. What would have happened if Chino Valley refused to issue the permit. Mr. Kidd said that it may not be customary, but it has happened before. He said that there have been cases in the Valley where the courts determined that if a government was acting in a proprietary capacity, they could apply.

**COUNCILMAN SCAMARDO MOVED TO AWARD THE BID AND
CONTRACT FOR THE CHINO VALLEY ARSENIC TREATMENT SITE
IMPROVEMENTS PROJECT TO RK SANDERS, INC., IN THE
AMMOUNT OF \$155,777.00; SECONDED BY COUNCILMAN BLAIR;
PASSED UNANIMOUSLY.**

- I. Adoption of Ordinance No. 4808-1208 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, repealing Ordinance No. 4789-1140 and accepting a Corrective Sewer Easement from First American Title Insurance Company, Trustee for Carrington Homes, Inc., to provide sewer service to the Prescott Highlands Subdivision.

Mr. Nietupski said that this was a housekeeping item and was requested due to the change in ownership of the First American Prescott office.

Mayor Kuykendall asked if there would be any impact on title policies issued on City projects by First American. Mr. Nietupski said that he believed this was a singular event associated with the timing. Going forward there is an understanding of successor of interest.

Councilman Lamerson asked what the City's capacity was at the Airport facility. Mr. Nietupski said that the Airport is near the top. They are currently at around 9.5 mgpd and they have a 1.2 mgpd capacity. He said that at Sundog they have capacity to treat potentially another ½ mgpd based on current circumstances. He said that they will be before Council in the near future to talk about the CMAR associated with the Airport treatment facility.

Mayor Kuykendall asked what impact the new juvenile center would have on the Sundog plant. Mr. Nietupski said that he could not comment at this time as he is not aware of the number of beds they are going to develop. He has not seen the analysis.

COUNCILMAN BLAIR MOVED TO ADOPT ORDINANCE NO. 4808-1208; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- J. Acceptance of a proposal by the Ft. McDowell Indian Community to dismiss its appeal with prejudice re the City of Prescott's Decision of Assured Water Supply and authorization of legal counsel to take any steps necessary to effectuate the dismissal.

Mr. Kidd said that a few weeks ago the Council had before them the settlement proposal of the Yavapai Apache Nation. This item is the sequel to that and is the last part to all of the lawsuits re the City's constitutionality of importation. He said that Fort McDowell is willing to file this with prejudice, meaning they cannot be filed again. Everyone will bear their own attorneys' fees.

Councilman Lamerson said that it had been a long ride. He heard that Prescott has the right to import water; no one else. The fact that the City is willing to sell some of their water to their neighbors demonstrates a tremendous amount of cooperation.

Councilman Blair asked if this meant that all of the legal challenges and hurdles the City has faced over the past ten years have been resolved. Mr. Kidd said that was correct.

COUNCILMAN BLAIR SAID THAT IT WAS A GREAT DAY AND HE MOVED TO ACCEPT A PROPOSAL BY THE FORT MCDOWELL INDIAN COMMUNITY TO DISMISS ITS APPEAL WITH PREJUDICE RE THE CITY OF PRESCOTT'S DECISION OF ASSURED WATER SUPPLY AND AUTHORIZATION OF LEGAL COUNSEL TO TAKE ANY STEPS NECESSARY TO EFFECTUATE THE DISMISSAL; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

III. ADJOURNMENT

There being no further business to be brought before the Council, the Regular Voting Meeting of the Prescott City Council held September 13, 2011, adjourned at 3:58 p.m.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

ELIZABETH A. BURKE, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Voting Meeting of the City Council of the City of Prescott, Arizona held on the 13th day of September, 2011. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2011.

AFFIX
CITY SEAL

ELIZABETH A. BURKE, City Clerk