

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, JULY 10, 2012

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL HELD ON JULY 10, 2012, 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 3:00 p.m.

◆ **INTRODUCTIONS**

◆ **INVOCATION**

President Todd Bertoch, Church of Jesus Christ of Latter Day Saints

President Todd Bertoch said the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Arnold

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

◆ **ROLL CALL:**

Present:

Absent:

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow
Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

None

SUMMARY OF CURRENT OR RECENT EVENTS

Mayor Kuykendall welcomed G. Eugene Neil as the Interim City Attorney.

I. CONSENT AGENDA

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

- A. Approval of the Minutes of the Prescott City Council Special Meeting of June 19, 2012 and June 26, 2012.
- B. Authorization of payment for Lucity Annual Technical Support and Software Maintenance Agreement in the amount of \$16,621.20.

COUNCILMAN LAMERSOM MOVED TO APPROVE CONSENT AGENDA ITEMS I-A AND I-B; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

II. REGULAR AGENDA

- A. Public Hearing and consideration of a liquor license application from Jana Lynn Harris, applicant for The Big Easy, for a Series 07, *Beer & Wine Bar*, license for The Big Easy located at 125 North McCormick Street.

Ms. Burke noted that the property had been posted and some questions had been raised regarding the facility. She noted that the Building Department had been in contact with the applicant. The Building Department wanted to take the process before the Planning and Zoning Commission for a review of the facility. The staff recommended that the public hearing be opened and that the Council took any public comments and continue the hearing until July 24, 2012. The property would not have to be reposted.

Councilman Blair asked what the reason for the delay was. Ms. Burke noted that there were questions raised about the facility and that there were discrepancies between the site plan and the building. She noted that the Building Department would like to have those addressed before the liquor license was approved.

COUNCILMAN BLAIR MOVED TO CONTINUE THE PUBLIC HEARING UNTIL JULY 24, 2010, FOR FURTHER STUDY; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- B. Adoption of Resolution No. 4141-1301 establishing Campaign Sign Free Zones(s); and adoption of Ordinance No. 4839-1302 amending City Code Sections 8-2-3 and 8-2-4 to limit campaign signs in certain public rights-of-way.

Mr. Guice noted that three options were prepared for Councils' consideration. Option A covered the entire area discussed and would become effective November 13, 2012. Option B would be the same resolution and the same zones, but the ordinance would be adopted with an emergency clause. Option C would create two zones with one zone

becoming effective that day and the other zone effective November 13, 2012.

Councilman Lamerson noted that as a municipal corporation, the stockholders were the taxpayers of the City of Prescott. He noted that they had assets that the corporation owned. He said there were certain elements within the Constitution that afforded municipal corporations the opportunities to have charters. He noted that they afforded the City what they were going to do with their private municipal property. He found it offensive that some of the Arizona legislators would come in Prescott and take over the property, while they eliminated their regulations on their own properties. He said that he did not understand why the State could change what the City did with their private property.

Mr. Podracky said the State preempted local authority. He said they had specific findings of fact and said it was a matter of statewide concern. He said it was taking it out of local concern, which the Charter may prohibit.

Councilman Lamerson asked if it had been challenged in court. He noted that the State took itself and other entities out of the equation and created different classes of people. He noted that it appeared to him that they had a centralized government approach to governing the State of Arizona. He noted that the City had a Charter that it followed and asked who gave the State the authority to change it.

Mr. Podracky said it had not been challenged in court. He noted that municipalities throughout the State were creating campaign-free zones. He noted that it was a matter of law, only. He said that local entities were creatures of the state, as political subdivisions. He noted that the Prescott Charter would control matters of purely local concern only. Councilman Lamerson noted that the State did not own the City's rights-of-way.

Mayor Kuykendall noted that the City asked the property owners to be responsible for the area between the streets and their property line. If it got unsightly the City had a right to impose on them whatever it took to get it corrected. He noted that the City did not allow the citizens to put a sign out for a garage sale without going through the correct procedure. He said the political sign was a means to advertise the person who was running for the office. He asked if they enforced the ordinance, what the next action would be to force them into compliance.

Mr. Podracky said it was a question of a First Amendment right and that they were dealing with political speech, the most highly protected category in that amendment. He noted that any imposition against that right to apply their free speech rights had to be something that was narrowly tailored and of compelling state interest. He said commercial speech in

the right-of-ways had a different level of protection. At the same time the City was required to narrowly tailor that particular ordinance that would withstand Constitutional muster or challenge. He said the third level of the due process analysis, was that any time a City was imposing some speech that was neither commercial nor political; it would need a rational basis.

He noted that there was a Supreme Court case in 1984 that was similar, in Los Angeles. It said that cities and towns had the authority to ban, on their own initiatives, political signs in the right-of-way. He noted that there was actual state preemption in the current situation. Councilman Lamerson asked if it would be a local issue to acknowledge that the entire City of Prescott was a tourism destination point. He asked which part of Prescott was not tourism oriented.

Mr. Podracky said it was important to discuss the point. He noted that if it ever got challenged, they would want to have a thick legislative record where they discussed the importance of how it was related to commercial tourism and/or hotel and resort areas. He said the more they could talk about it, the better. He said that he recalled Councilman Scamardo talking about Willow Creek Road and the importance of the lakes. He noted that anything they could get on the record, if they were planning on adopting campaign sign-free zones, would be very helpful

Councilman Arnold broke down the three options presented by staff. He asked what the impacts of their decision would be on people who had already put up sign and those who had not yet put up their signs.

Mr. Podracky said that an emergency would take a super majority vote of the Council, which would be five out of seven. He noted that emergency measure standards were for immediate preservation of the peace, health and safety of the city or town. He noted that it was a high standard. He noted that Mr. Kidd talked about what to do with the preexisting signs and was of the opinion that they may want to let the existing signs stand.

Councilman Arnold asked if he believed that an emergency existed. Mr. Podracky said that it was a finding of fact and it would not be his recommendation. He said it would generally be for an immediate health and safety problem.

Councilman Scamardo said they would also use an emergency clause when there was a timing factor. Mr. Podracky said that they had done it before and it was a legislative decision. He noted that citizens had a right to refer legislation and if they got enough signatures, they could challenge it.

Councilman Lamerson said there were certain ramifications to freedom of speech. Councilman Kuknyo said they should send the law back to the State and said it may be a fight they may want to enter. He noted that there were a lot of City right-of-ways outside of homes. He would not want a candidate sign in front of his house who he did not endorse. He asked if they could set up political display areas.

Councilman Scamardo noted that the State granted them an option under subsection C, which he read. He said the Council's job was to take the exception of three square miles and told Mr. Guice that he was only 24 percent of the total allowed. He said they all had other areas that they would like to have included in their historic neighborhood.

Councilman Arnold said that he was not a proponent of declaring an emergency. He said that he believed they should look at the entire town.

Councilman Blair said he would like to see it come back at a Workshop because there were too many unanswered questions. He noted that he agreed with Councilman Kuknyo. He said that he would be a no vote and wanted it sent back to the State.

Councilman Scamardo said that he was not in favor of an emergency, but the longer they delayed to take advantage of the exclusion, the more they set a precedent for that to be held up in the future. He said they should look at declaring a three mile square zone for tourists and historic area and let it go into effect in 30 days and let the chips fall where they may.

Councilman Lamerson said it did not matter what they voted on. He noted that the State already imposed a law. He said it was now their charge to defend how they would come up with something to best serve the citizens of Prescott. He noted that Prescott was in the middle of the tourist season and it looked like a garbage dump. He said that he would support an emergency clause.

Councilman Blair said they should take the full extent of the Ordinance the State gave them. He asked who would enforce it. Mr. McConnell noted that there was code enforcement. He noted that those personnel were backed up by the Police Department and the City Attorney's office. He noted that whatever avenue the Council took should be enforceable.

Councilman Carlow said they should have a workshop and were not in a position to make a decision. He said there were more than three square miles of tourist area.

Daniel Mattson, Prescott, said that if it had to be a contiguous zone, he asked if it could be connected by sidewalks.

Sandra Smith said that it was difficult to see around the signs on her scooter.

Dick Busby said that he spoke with Mr. Kidd in June and asked why the signs were going up so quick. He said that he was following the rules and felt that whatever decision was made would impact those who had already put their signs out.

Craig Brown, District 4 Candidate, said that he supported the action to protect the historical and cultural areas of Prescott two weeks prior. He noted that the signs were out there three to four weeks longer than they should have been. He said that was the only way to get his name out there for people who did not know him. He said that he would remove his signs from Lake Drive, but if anyone removed any of the other signs, he would take them to court.

Daniel Mattson said they were just asking that there was not an unregulated mass of signs

Bryn Stotler, Community Director, Prescott Lakes Community Association, wanted to know how they could include their thoroughfares in the sign-free zones. She noted that the Community Association would also be affected by House Bill 2471, amending ARS 33-1808 , which provided that the association had no right to restrict members from displaying the signs on their private property; however it did exempt the community association from having to allow signage in the common areas

Tom Atkins asked Council if the Council put their own signs in public places or if they were on private property. Councilman Lamerson said he placed his signs on private property with the permission of property owners. Councilman Kuknyo said that he thought a few of his signs were on public property.

Bob Bockrath, Prescott noted that he drove through Prescott Valley a week prior and noted that there were no political signs which changed as they drove into Prescott. He noted that the legislators were the biggest violators. He suggested that the Council deal with the issue immediately.

Dennis Duval, Prescott asked how they would enforce any zone when they could not even enforce the noise ordinance. Mr. Neil noted that property owned by the County was not public right-of-way. Mr. Duval noted that when he protested on the corner and put up a sign two feet square on Courthouse Square, a security person made him remove the sign.

Mayor Kuykendall noted that it was a good example and said if it was not broken, they should not fix it. He noted that the Council should do a little work and give Mr. Guice direction. Mr. Duval said their effort to restrict political speech was a slippery slope.

Councilman Blair said they should address the legislature later and do the emergency clause at that time. Councilman Scamardo agreed.

Councilman Arnold asked if an unsafe sign could be removed. Mr. Podracky said yes. Councilman Arnold asked if they would set a precedent if they allowed the campaign season to continue with the signs placed as they were. Mr. Neil said, not in his opinion.

Councilman Arnold noted that in relation to the two classes of people, if they changed the argument midstream it would create a problem with who could put signs up and who could not. He said that he did not like the look. He noted that they were too late for the current election.

Mr. Neil said that if the Council was going to consider an emergency, they needed to have a dialogue as to how it would fit within the emergency session. He noted that a vote for the emergency clause would be 6 of 7.

Mr. McConnell said they needed a couple of days to think through the alternatives. He asked if they were talking about alternatives with ribbons or areas of right-of-way. Mayor Kuykendall asked if they could have the next meeting at 3:00 P.M. the following Friday. Mr. McConnell said they could set a meeting for that time and requested that it be at 1:00 P.M.

- C. Approval of a professional services agreement with Carollo Engineers Inc., for the 2012 City Potable Water System Model Update in an amount not to exceed \$230,000.00.

Mr. Nietupski gave background on the water model. He noted that it was a working tool that Public Works relied on in the operation and planning for improvements associated with the system. He said it was a computerized based geographic information system that provided hydraulic modeling. He noted that since 2005, conditions had changed and it was necessary to update the model so the outcomes would be accurate.

Councilman Arnold said the biggest problem he had, besides the cost, was the project assumptions. He said the public should know how the City was addressing the current population and future land use.

Mr. Nietupski said the project involved a review of land use and it would look at water demand. He said there would be multiple workshops on land

use. Councilman Arnold asked if the new conservation programs would be taken into account. Mr. Nietupski said yes.

Councilman Lamerson said that many issues regarding the costs of supplying water to the current rate users could be different in the near future

Councilman Scamardo asked if the \$230,000 was a “not to exceed” price. Mr. Nietupski said that it was.

COUNCILMAN SCAMARDO MOVED TO APPROVE A CONTRACT WITH CAROLLO ENGINNERS, INC., FOR THE 2012 POTABLE WATER SYSTEM MODEL UPDATE IN AN AMOUNT NOT TO EXCEED \$230,000.00; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- D. Award of bid and contract for the FY 2013 Pavement Rehabilitation Project to Asphalt Paving & Supply, Inc., in the amount of \$1,689,376.85.

Mr. Nietupski said that the project would affect the main arterial streets in the community and downtown.

Councilman Carlow asked how they would notify the businesses. Mr. Nietupski said the contractor would provide that service.

COUNCILMAN KUKNYO MOVED TO AWARD THE BID AND CONTRACT FOR THE FY 2013 PAVEMENT REHABILITATION PROJECT TO ASPHALT PAVING & SUPPLY, INC. IN THE AMOUNT OF \$1,689,376.85; SECONDED BY COUNCILMAN CARLOW; PASSED UNANIMOUSLY.

- E. Approval to perform night work on Prescott Lakes Parkway between State Route 69 and State Route 89 associated with the FY 2013 Chip Seal, Pavement Preservation and Various Pavement Repairs Project.

Mr. Nietupski noted that this would allow the contractor to work in that location to keep from impacting the auto dealerships and Wal-Mart. This project was a pavement preservation project to polymer sealer the streets, which required a couple of hours to dry.

Councilman Arnold asked if Wal-Mart had been told about the project. Mr. Nietupski said they would be.

Mr. McConnell said the City of Prescott would not totally preclude access. Mr. Nietupski said there would be a way to apply the product and open up one driveway.

COUNCILMAN ARNOLD MOVED TO APPROVE NIGHT WORK ON PRESCOTT LAKES PARKWAY BETWEEN STATE ROUTE 69 AND STATE ROUTE 89 FOR WORK ASSOCIATED WITH THE FY 2013 CHIP SEAL, PAVEMENT PRESERVATION AND VARIOUS PAVEMENT REPAIRS PROJECT; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY

- F. Ordinance No. 4838-1301 setting the Fiscal Year 2013 City property tax levy.

Mr. Woodfill noted that it was the end of the budget cycle for FY2013. He said staff proposed to keep the primary property tax rate at the same amount. He noted that to do that they had to reduce their levy due to declining property values in the tax region. He said the secondary tax was used to retire debt. The debt on the two General Obligation bonds was related to the purchase of the lakes in 1998. He noted that 2013 was the last year of the bond. The tax rate was going up to cover the debt service.

He said that after 2013, there was only a minor debt used for capital improvements at the lakes, issued 4 years later. The City's property tax rate, in relation to surrounding regions, was the lowest rate in Yavapai County that provides fire service.

Councilman Arnold wanted to make clear that they were not raising primary property tax/money going into the General Fund. Mr. Woodfill said they reduced their allowable levy to keep the rate at the same amount. Councilman Arnold said the secondary property tax was based on voter approved bond from the early 1990's.

Mr. Woodfill said that it was going up, but the rate was very low. He showed a chart comparing in-City and out-of-City tax. He said they were raising the tax rate .0399 per \$100.00 of assessed value.

COUNCILMAN CARLOW MOVED TO ADOPT ORDINANCE NO. 4838-1301; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

IV. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Meeting of July 10, 2012, adjourned at 4:55 p.m.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

KIM WEBB, Interim 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 10th day of July, 2012. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2012.

AFFIX
CITY SEAL

Kim Webb, Interim City Clerk