

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, OCTOBER 23, 2012
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL HELD ON OCTOBER 23, 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** by Rabbi Billy Berkowitz, Temple B'rith Shalom.

◆ **PLEDGE OF ALLEGIANCE** by Mayor Kuykendall

◆ **ROLL CALL:**

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow

Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

◆ **PROCLAMATIONS**

A. Blood Management Awareness Week

No one was available to accept the proclamation and the item will be scheduled for the November 6, 2012 Workshop.

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

None

I. CONSENT AGENDA

A. Approval of the minutes of the Prescott City Council Regular Meeting of August 14, 2012; Workshop of October 2, 2012; Regular Meeting of October 9, 2012.

B. Approval of Mitel telephone system hardware upgrade in the amount of \$15,847.40.

COUNCILMAN ARNOLD MOVED TO APPROVE CONSENT AGENDA ITEMS I.A.-I.B., WITH NOTATION OF CHANGES TO MINUTES; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

II. REGULAR AGENDA

- A. Public Hearing and consideration of a liquor license application from Tiffany Lynn Salazar, applicant for Taco Don's LLC, for a Series 12, Restaurant, license, for Taco Don's located at 624 Miller Valley Road.

Mayor Kukendall opened the public hearing. There were no public comments.

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

COUNCILMAN BLAIR MOVED TO APPROVE A LIQUOR LICENSE APPLICATION NO.12133538, FOR A SERIES 12, RESTAURANT, LICENSE, FOR TACO DON'S LOCATED AT 624 MILLER VALLEY ROAD; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

- B. Public Hearing and consideration of a liquor license application from Deborah Levin Stamm, applicant for Bird Cage Saloon, for a Series 06, All Spirituous Liquor Bar, license, for Bird Cage Saloon located at 160 South Montezuma.

Mayor Kukendall opened the public hearing. There were no public comments.

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

COUNCILMAN LAMERSON MOVED TO APPROVE A LIQUOR LICENSE APPLICATION NO.06130066, FOR A SERIES 06, RESTAURANT, LICENSE, FOR BIRD CAGE SALOON LOCATED AT 160 SOUTH MONTEZUMA; SECONDED BY COUNCILMAN ARNOLD PASSED UNANIMOUSLY.

- C. Adoption of Resolution No. 4148-1309 approving a Library Support Agreement with the Yavapai County Free Library District.

Roger Saft, Library Director, presented the item and explained the agreement sets forth the responsibilities of the Yavapai County Free Library District and the City of Prescott, for membership in the Yavapai Library Network, as well as the formula used to calculate annual funding allocations. In the current fiscal year Prescott will receive \$550,000. This agreement extends through June 30, 2013 and will automatically renew thereafter unless cancelled by either party.

Councilman Lamerson questioned the amount we receive from the County. Over the years we struggle with operations in the Library. The Yavapai Free Library District is a taxing authority. What happens if we opt out of the District? He supports the library but has questions.

Councilman Arnold said he is concerned that we are entering into a contract that automatically renews unless cancelled by either party. He doesn't have an issue with the automatic renewal, but would like to see more information brought back to Council next year, especially in light of five new Supervisors being elected. We need to continue to have ongoing discussions.

Councilman Blair said our library is partially funded through property taxes and sales tax revenues. As those revenues decrease, there is more pressure on the City to provide the service. There needs to be dialog with the County. It is all the same tax payer's money. We need to come up with a more viable way to access properties in Yavapai County that pay for all operations of the library rather than be subjected to a fluctuating sales tax. Councilman Blair advocates a more meaningful dialog with Yavapai County Supervisors. Now is the time to look forward, he said.

COUNCILMAN ARNOLD MOVED TO ADOPT RESOLUTION NO. 4148-1309; SECONDED BY COUNCILMAN CARLOW PASSED UNANIMOUSLY.

- D. Approval of Resolution No. 4150-1311 establishing a Library Advisory Board as a standing committee of the Prescott City Council.

Roger Saft, Library Director introduced this item which was discussed by Council at their workshop on October 2, 2012. This board will be a standing committee of Council, providing advice to the Director and Council in matters of library policy. The board will also create a public forum for continued policy and service level review, and provide recommendations to Council on cost-recovery for Library services.

Councilman Arnold said this is a step in the right direction. Three Council members met with Friends of the Library to discuss how we move forward

in planning our library. He urged that there should be a member not affiliated with a stakeholder of the library.

Mr. McConnell, said board members would be appointed by the City Council. He compared it to the Planning Commission, where there is usually a Council representative/liaison on the board. This is a free standing committee, supported by staff, in coordination by a Council representative. Board activities will be determined by how Council wants them to operate in terms of priorities, services, and finances. The board will come back to Council with recommendations based on their charge.

Councilman Carlow said timing is good, allowing the board to be involved in the budget process.

Mr. Saft said that the Friends of the Library representative would not be a voting member, but could participate in the meetings.

Elisabeth Ruffner, Prescott citizen, thanked Council for taking this step. It is important to have a Library Advisory Board, she said.

COUNCILMAN LAMERSON MOVED TO ADOPT RESOLUTION NO. 4150-1311, ESTABLISHING A LIBRARY ADVISORY BOARD AS A STANDING COMMITTEE OF THE PRESCOTT CITY COUNCIL; SECONDED BY COUNCILMAN BLAIR PASSED UNANIMOUSLY.

- E. Approval of Amendment No. 1 to City Contract No. 2012-068 with PCL Construction, Inc.-Fann Environmental, LLC, a Joint Venture, for Construction Manager at Risk services to construct the Airport Water Reclamation Facility Phase I Expansion, in an amount not to exceed \$35,287,006.00.

Councilman Arnold stated he had a potential conflict of interest and stepped down from the dais at 3:31P.M.

Mark Nietupski, Public Works Director, presented. He reported that PCL Fann has provided pre-construction services under the preceding contract during engineering design of the AWRF facility improvements. The amendment is based on several things, which guarantee a maximum price proposal, which has been submitted by PCL Fann. This expansion will increase the capacity to 3.75 million gallons per day. Due to magnitude and complexity of the project Construction Manager at Risk (CMAR) process, a qualifications-based approach to construction, provides many important benefits. Common goals and objects are developed with emphasis on value, quality of construction and schedule. Budget control is continuous throughout the project.

Mr. Nietupski said that the project started in 2009 and in 2010 recommendations from a master planned study were presented to Council. This expansion is urgently needed, Mr. Nietupski said, and will help us maintain regulatory compliance and provide for future growth in the area.

Mr. Nietupski reviewed the Phase 1 milestones and said the project will be completed in Fall of 2014. The process has been audited by a third party to validate the cost that the City has reviewed as received. We have gone through a very detailed process to come to this point with respect to an agreement on the cost of the project. Mr. Nietupski reviewed the overall project budget and said financing for this project is through Water Infrastructure Financing Authority (WIFA). The financing was authorized by Council in August of 2010 and in April of 2011 City Council adopted an Ordinance to authorize a loan for twenty (20) years at an interest rate of three (2.9) percent. The debt will be repaid from user rates and Impact fees going forward.

Councilman Lamerson asked to clarify that this project is exempt from Proposition 401, due that this is a health and safety issue and sewer related. He questioned amendments. Mr. Nietupski replied that we contemplate two contracts. The pre-construction services contract which was the original contract and as we go through the process of engineering and design in conjunction with the input from the construction manager and staff, at the end of that process has to be another mechanism to deliver the contract. In this case, it is a contract amendment. Not for pre-construction services but actual construction services, where the construction manager will work to deliver the project. That provides the amendment to the original contract. He explained the use of the contingency which is strictly for City use. It is not for the CMAR's use unless the City directs him to. Mr. Nietupski further explained that we are looking at a construction contract verses an overall project budget. There are costs in the overall budget that the City will incur independently. The next item on the agenda is a request for spending the money for the permitting and utility construction that needs to occur. The City will pay for those services. This is separate but necessary for the delivery of the project.

Councilman Scamardo pointed out that there are some things that the CMAR has no control over, such as easements and other utility construction.

Michael Peters, Prescott resident, directed his comments to Council saying when they were elected they each promised transparency in government in actions and conduct. This item is for phase I expansion. This is an expansion and not an exception allowable under the City

Charter, Article VI, Section XVI. All these facts and figures talk about phase 1 expenditures. Doesn't that suggest a phase II or phase III or phase IV? When does it stop? This is what he means about transparency. Everything that is needed to start this project incurs a debt. We don't have the money. You are going to borrow the money. You are imposing another debt on the taxpayers of this City. It hasn't been made clear what the amount covers. You need to look at the contract before you sign. He said he would hope that Council is all equally well versed on our City Charter. Article VI, Section XVI.A.II, defines what a project is. Proposition 401 has been incorporated into the City Charter. Section XVI.B requires the mandate of prior voter approval for projects exceeding \$40 million dollars. These expenses may go over the \$40 million as stated in City Charter. Article VI, Section XVI.C, there are no exceptions allowing the expenditure of taxpayer dollars in this water reclamation project. If you read the exceptions, expansion is not allowable without getting taxpayer approval first. This involves serious attention by all Council members before a vote is taken.

Mr. Peters submitted an official notification to the City Clerk for a records request under the Open Records Act for legal fees incurred by City Council outside the scope of what our City Attorney has spent for a period of years. He said he has never been the subject of an Executive Session but Council could have invited him down to the executive session and he could have told Council all about the Big Chino and why he needs the records. Finally, we have in agenda item II.F, a request for approval of all these fees, which all add up to \$374,508.05. He does not see that figure up there for phase I budget. He said we do need this expansion but you cannot bypass the voters of this City and Prop 401 contained in the City Charter.

Councilman Blair asked the Attorney to confirm that this project does not fall under Proposition 401. Mr. Neil said this project has been reviewed by his office with regard to the exceptions in Proposition 401 and it is their opinion that this project clearly falls within those exceptions that are set forth in Proposition 401.

City Manager McConnell said this project is a culmination of several years of presentations, cost estimates, etc. for what we call the waste water treatment master plan for the City of Prescott. This is not a new project coming before Council in the amount of \$35 million dollars. The master plan and all supporting materials, which are a matter of public records, presented the wastewater master plan in phases. We know that Phase 1 needs to be constructed. Phase 1 consists of two components; one component is to remedy the processes at the current waste water treatment plant which are not working. Proposition 401 makes a distinction between capacity and existing deficiencies as it relates to this

type of project. He argues that 60% of this project is to fix the existing plant and make it work. It is nowhere near \$40 million dollars. In respect to future phases, if they pertain solely to expansion they may pertain to Proposition 401. But, they may never be done. The phases are done for planning purposes. The City deals in multiyear budgets. The budget for this project is \$42.6 million dollars, and this tells the public in order to fix this and expand it, that is what it will cost to deliver this. This item today is only a portion of that. Seven years of discussion has brought us here. This is compliant with Proposition 401, the financing is set up, and this is the day and time to proceed with this project.

Mr. Nietupski said the City of Prescott operates the wastewater treatment facilities in compliance and under the regulation of the Arizona Department of Environmental Quality. When we don't operate those facilities in compliance with those regulations, the City and the citizens of Prescott are at risk. Those regulations are in place for public health and safety. We are required to provide for these improvements to responsibly meet the needs of the public.

Daniel Matson, Prescott citizen, said having been present in many of these meetings over the past several years he can assure Mr. Peters this has been discussed many times and has been very transparent. All of this has been discussed by Council many times. Payment for this comes from user fees. We can't charge fees for wastewater if we don't have the ability to process wastewater. We have no choice but to do this phase 1 expansion. The City had the foresight to design this project to allow for expansions in future phases in necessary. Don't worry about phase I, it probably won't happen in our lifetime.

Mayor Kuykendall said Council talks about transparency frequently. We have had councils that always stepped up to the challenge. There were many temporary fixes to the one wastewater treatment plant. We have grown to 40,000 people. As growth changes, our fathers saw fit to go into the creek bed and make sure they stayed ahead of the game. People live here because there are people who step up to the challenge. Sundog is at capacity. We have a brand new juvenile detention plant and that inflow is going to be going into Sundog. And, there is going to be a new jail coming next to the new juvenile detention. Both facilities will drain into Sundog. This council took an oath and we are honoring that oath to keep the public safe with the things that the City has to provide. There will be an election in a year and our citizens will get to decide again who they want to make their decisions. I have confidence in our government to act in the best interests of our folks, Mayor Kuykendall said.

COUNCILMAN SCAMARDO MOVED TO APPROVE AMENDMENT NO. 1 TO CITY CONTRACT NO. 2012-068 WITH PCL CONSTRUCTION,

INC.-FANN ENVIRONMENTAL, LLC, A JOINT VENTURE, FOR CONSTRUCTION MANAGER AT RISK SERVICES TO CONSTRUCT THE AIRPORT WATER RECLAMATION FACILITY PHASE I EXPANSION, IN AN AMOUNT NOT TO EXCEED \$35,287,006.00; SECONDED BY COUNCILMAN LAMERSON PASSED UNANIMOUSLY. 6-0

Councilman Arnold asked Interim City Attorney Neil if he had a conflict of interest with the next item. Mr. Neil said in his opinion, this item is not associated with the earlier conflict Councilman Arnold returned to the dais at 4:22 P.M.

- F. Authorization of payments for various utility extensions and permitting fees for the Airport Water Reclamation Facility Expansion Phase I Project: (a) Arizona Public Service Electric Utility Extension \$30,000.00; (b) Unisource Gas Utility Extension \$96,743.00; (c) Arizona Department of Environmental Quality Permit Fee \$75,000.00; and (d) City of Prescott Building Permit Fee \$172,765.15.

Mark Nietupski, Public Works Director, presented, and said this item is to authorize payments for third party utility extensions, and permitting fees for construction of the Airport Water Reclamation Facility (AWRF) Expansion, Phase I Project.

Councilman Kuknyo asked if we are leaving any path to use alternative energy sources, such as solar. Mr. Nietupski said we have made provisions in this project to accommodate solar installation in the future, upon completion of this expansion at the airport water reclamation facility. We could offset some of the energy needs and ultimately reduce the City's expenditures for energy as we move forward.

COUNCILMAN SCAMARDO MOVED TO APPROVE PAYMENT TO ARIZONA PUBLIC SERVICE IN AN AMOUNT NOT TO EXCEED \$30,000.00; PAYMENT TO UNISOURCE ENERGY SERVICES IN AN AMOUNT NOT TO EXCEED \$96,743.00; PAYMENT TO ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY IN AN AMOUNT NOT TO EXCEED \$75,000.00; PAYMENT TO THE CITY OF PRESCOTT IN THE AMOUNT OF \$172,675.15; SECONDED BY COUNCILMAN LAMERSON PASSED UNANIMOUSLY.

- G. Approve a request by Yavapai College for a variance to the City Code, Title 8-6-2, to allow placement of an electronic monument sign within the public right-of-way, and to grant an exception to the Land Development Code, Article 6.12, pertaining to the size and height of the sign, and approval of the license agreement for the sign.

Mark Nietupski, Public Works Director presented, and said that approval of this item will grant a variance from City Code and allow Yavapai College to place a free-standing monument sign in a public right-of-way.

Councilman Arnold reported he met with members of Yavapai staff to discuss his concerns of the placement of the signs and to address his concerns as relates to traffic on Sheldon Street. He said traffic safety issues need to be addressed. He asked to play a short video he filmed earlier in the day, which shows a visual of what he observed.

Mayor and Councilmen shared his concerns for public safety

Mr. Clint Ewell, Vice President of Finance and Administrative Services at Yavapai College said the college is interested in having the sign to better communicate with the community and it would also be used as an opportunity to provide other public service announcements.

Councilman Arnold said the college is amenable to work with staff. He recommends tabling the item to provide staff a chance to find a solution.

COUNCILMAN ARNOLD MOVED TO TABLE ITEM G. TO THE NOVEMBER 13, 2012 VOTING SESSION; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

- H. Approval of a professional services agreement with Red Oak Consulting for Development of Impact Fees, Infrastructure Improvement Plan and Associated Documents, and Analysis and Development of Utility Rates, in an amount not to exceed \$289,694.00.

Mr. Mark Woodfill, Finance Director, presented. Current development impact fees must be replaced with a new fee schedule based on land use assumptions and an infrastructure improvement plan in compliance with the pertinent statutes. With all the new requirements and steps necessary we need to get started on the process to meet the deadlines. With the passage of Senate Bill 1525 the City is now required to use outside licensed professional experts.

The City received five (5) Statements of Qualifications for this publically advertised project. Red Oak was selected by the committee from the top three firms interviewed. Red Oak has been involved with the City's water and wastewater impact fee studies in the past. This is a study of our current eight (8) existing impact fees as well as looking at our water and wastewater rates to overcome our shortfall. Six public meetings are being proposed.

Councilman Arnold said he read through the proposal and is glad there are several opportunities for public comment and participation. Impact fees do have a place. This study is important. It is our duty to our residents that are fees are where they need to be. We should move forward on this.

Councilman Scamardo asked the Interim City Attorney if there were any challenges from Charter Cities on SB 1525. Mr. Neil said there have not been. The state feels this is a matter of state wide concern and therefore Charter cities cannot opt out.

Mayor Kuykendall asked if impact fees should pay for their own purpose. Mr. Woodfill said yes, and that the fees would not come out of the general Fund.

COUNCILMAN ARNOLD MOVED TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH RED OAK CONSULTING FOR DEVELOPMENT OF IMPACT FEES, INFRASTRUCTURE IMPROVEMENT PLAN AND ASSOCIATED DOCUMENTS, AND ANALYSIS AND DEVELOPMENT OF UTILITY RATES, IN AN AMOUNT NOT TO EXCEED \$289,694.00; SECONDED BY COUNCILMAN CARLOW; PASSED UNANIMOUSLY.

- I. Adoption of Ordinance No. 4842-1240 granting an Electric Utility Easement to Arizona Public Service Company (Shops at Prescott Gateway).

Mark Nietupski presented, and said that this is related to the shops at Prescott Gateway. This will allow Arizona Public Service Company to extend their service into three new commercial buildings currently under construction.

COUNCILMAN KUKNYO MOVED TO ADOPT ORDINANCE NO. 4842-1240; SECONDED BY COUNCILMAN LAMERSON PASSED UNANIMOUSLY.

- J. Approval of a professional services agreement with JE Fuller Hydrology & Geomorphology, Inc., to update Willow Creek and Willow Creek Tributary FEMA floodplain delineations and design water utility scour protection in an amount not to exceed \$135,257.00.

Mark Nietupski, Public Works Director, introduced the item, and reported that funding is through Yavapai County Flood Control District and was authorized by a resolution and governmental agreement last year.

The project includes a portion of Willow Creek and a portion of the Willow Creek tributary. FEMA has a levy analysis mapping program that has structural and modeling guidelines that need to be considered. These have changed in recent years and they may be less restrictive now, resulting in reducing some court claim issues with respect to the property behind the levy. Currently we have some issues with the analysis that identified some of that area being in the 100 year flood plain. This project will more distinctly look at that issue with respect to that levy and update the floodplain so they are an accurate representation, consistent with the FEMA guidelines for levies.

John Sellers, Prescott resident, pointed out there is a low crossing across Clearwater Drive. It is his opinion that this item is the most vital item on the agenda. What goes on in the wash is critical to the city's future. People don't see it because it is on private land. Mr. Sellers said there is a major wash with a 48 inch sewer running along it and three pipelines. There is also a major traffic collector running across it, creating a huge confluence of infrastructure. This is vital, as all the city's water lines run through there. In 1983 it was Katrina for the City and it could be so again. He listed the questions he would like the study to answer: (1) Has the damming of the wash raised the flood level by more than 3 feet? (2) How do you get the pipes out of harm's way without damming the wash again? (3) Does the City plan to comply with the 1948 easements that govern those pipes? (4) How do you fix the pipes if they need a major fix as he thinks it does? (5) Did the city mean to put a major collector connector under the Colorado River when that wash is in full flood? Mr. Sellers asked Council to think ahead and think public safety as they consider the ramifications that come with this project.

COUNCILMAN LAMERSON MOVED TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH JE FULLER HYDROLOGY & GEOMORPHOLOGY, INC., TO UPDATE WILLOW CREEK AND WILLOW CREEK TRIBUTARY FEMA FLOODPLAIN DELINEATIONS AND DESIGN WATER UTILITY SCOUR PROTECTION IN AN AMOUNT NOT TO EXCEED \$135,257.00; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- K. Adoption of Ordinance No. 4842-1241 authorizing sale of surplus vehicles and equipment.

Interim City Attorney Neil said the Prescott City Charter requires Council adoption of an Ordinance to take action to dispose of surplus items. Council took action at the August 28th Council meeting approving the sale of surplus items. In moving forward staff realized that the Charter required an Ordinance.

COUNCILMAN ARNOLD MOVED TO ADOPT ORDINANCE NO. 4842-1241, AUTHORIZING SALE OF SURPLUS VEHICLES AND EQUIPMENT; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

III. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Meeting of October 23, 2012, adjourned at 5:10 p.m.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

LYNN MULHALL, 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 23rd day of October, 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

LYNN MULHALL, City Clerk