



**TOWN COUNCIL MEETING  
6401 E. LINCOLN DRIVE  
PARADISE VALLEY, ARIZONA 85253  
SUMMARIZED MINUTES**

**NOVEMBER 4, 2010**

**CALL TO ORDER**

Mayor LeMarr called to order the Town Council meeting of the Town of Paradise Valley, Arizona, held at Town Hall 6401 E. Lincoln Drive, on Thursday, November 4, 2010 at 4:00 PM.

**COUNCIL MEMBERS PRESENT**

Mayor Scott P. LeMarr  
Vice Mayor Mary Hamway  
Council Member Michael Collins  
Council Member Paul E. Dembow  
Council Member Pam Kirby  
Council Member Vernon B. Parker  
Council Member Lisa Trueblood

**STAFF MEMBERS PRESENT**

Town Manager James C. Bacon, Jr.  
Town Attorney Andrew Miller  
Town Clerk Duncan Miller  
Police Chief John Bennett  
Public Works Director Andrew Cooper  
Budget & Finance Director David Andrews  
Community Development Director Eva Cutro  
Town Engineer William C. Mead  
Planner George Burton  
Fire Marshal Robert Lee

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**Discussion of Fireworks Ordinance**

Mr. Bacon stated that during the past legislative session, a bill was adopted by the legislation changing the way consumer fireworks are regulated in the Arizona. The new law permits the sale of consumer fireworks but allows municipalities regulate the use if they so choose.

Fire Marshal Robert Lee stated that the law becomes effective on December 1, 2010. It allows anyone 16 years of age or older to purchase consumer fireworks. Consumer fireworks include ground and hand held sprinkler devices, cylindrical fountains, illuminating torches, ground

spinners, flitter sparklers, wire sparklers or dipped sticks, and multiple tube fireworks devices. He said aerial consumer fireworks will still be prohibited except as part of a permitted public fireworks display.

Although the law allows the sale of fireworks in Arizona, it permits individual cities and towns the right to prohibit their use. He cautioned that the use of fireworks is inconsistent with the desert environment. He cited national statistics regarding the number of fires and injuries caused as a result of consumer fireworks.

He recommended that the Town adopt an ordinance with the following provisions:

- State that the desert environment of Paradise Valley has unique fire risks
- Prohibit the use of consumer fireworks within the Town
- Prohibit the sale of consumer fireworks by anyone under 16 years of age
- Require signage at the point of sale to explain the prohibition of their use within the Town and to require that the purchaser be at least 16 years of age
- Create a liability for expenses for emergency responders if convicted of a violation of the ordinance

Council questioned if the Town would have more authority to regulate the erection of temporary tents to sell the fireworks than it would the sale of fireworks. Mr. Miller stated that each SUP property would have to be looked at individually to determine if tents could be permitted and fireworks sold. He noted that there is no uniformity among legal professionals if this law supersedes local zoning laws. Most of the cities in Maricopa County are expected to adopt ordinances prohibiting the use of fireworks in their jurisdictions.

There was discussion regarding the emergency responder liability provision. Mr. Lee responded that the City of Phoenix adopted the provision. Since the Phoenix Fire Department serves the Town it is appropriate to adopt a similar provision. There was concern that fear of have to pay the cost of a fire department response might delay or prevent people from calling 911.

There was consensus not to be the first municipality in the area to adopt the ordinance. If, however, all of the Town's neighbors adopted the ordinance they did not want the Town to become a magnet for their use. Mr. Bacon stated that the Town would monitor what actions were taken in other cities and bring back the ordinance for consideration at a later date.

### **Discussion of Noise Ordinance**

Mayor LeMarr stated that the noise ordinance involves a number of complicated issues. He anticipated that the Council would discuss amendments to the ordinance at multiple work sessions and at least one public hearing before any action is taken. Mr. Bacon reconfirmed that this topic will be discussed in work session again in January at the earliest.

Mr. Miller stated that there are many variables associated with the measurements and regulation of noise. He noted that the Planning Commission recently reviewed an application from a resort property who would like to amend their SUP to allow for pyrotechnic fireworks. He stated that the Town has already been contacted by an attorney representing a neighbor of that resort who has an interest in the noise that may result from such fireworks. Mr. Miller said a deliberate attempt will be made to involve the resorts, resort neighbors, and the greater community in discussions about amendments to the noise ordinance.

Mr. Miller explained that noise is governed by two sections of the Town Code: Chapter 8 and Chapter 10. He said there are difficulties in applying the current code provisions to certain noise complaints. The existing "absolute standard" of 56 decibels (dB) maximum from 7 a.m. to 10 p.m. and 45dB from 10 p.m. to 7 a.m. does not work well in all areas of the Town. Many parts of Town have ambient noise levels in excess of the absolute standards, thus making noise complaints difficult to prove. As a result, the Town retained a noise expert to evaluate the current code. He recommended using a system of measuring noise complaints that would take into account the differences in ambient noise levels in different areas of the Town. The system would assess violations when the noise level exceeds the "local ambient" by more than 6 dB. He said staff believes this may be a good solution as ambient noise levels in one residential neighborhood are often greater than the absolute levels contained in the current code. Moreover, the 6dB variance would most likely capture construction equipment.

He recommended amending the current code by combining Article 8-10 with Article 10-7, thus providing one place in the Code for all noise regulations. Second, he recommended adopting the "local ambient deviation" method as the primary means for regulating stationary noise sources. Third, regulation of unique noise sources such as animals, yard/landscape equipment, and burglar alarms should be retained as they are; and construction noise should be handled primarily through days and hours limitations as is done currently, with an additional absolute standard to be applied to construction noise too.

Responding to a question from Council, Mr. Miller stated that the "local ambient noise" is measured at the site of the noise over a 5 minute period.

The Council noted that the Town and its resorts have changed since inception of the noise code. There is more traffic moving through the Town. Houses are larger and take longer to construct. The resorts cater more to special events than in past years. This has led to more noise. There was consensus that a clearer definition of noise is necessary to give enforcement officers better direction and a greater chance of proving a violation. Council directed staff to select 6 places around the Town to take ambient noise readings to get an idea of the different noise levels in different parts of the Town. They also asked staff to share the draft ordinance with the Scottsdale Convention and Visitors Bureau and the resort community to get their feedback. Council also questioned if 1 noise meter was sufficient or if each police officer and code enforcement officer should have their own.

**Discussion of Special Event Permits**

Mr. Bacon stated that the Town's Special Event Ordinance is in need of revisions. He said the fundamental policy question for the Council to consider is what is the right balance between regulating fundraising events held at residential properties while at the same time allowing weddings and family reunions on residential properties?

Mr. Burton stated that the Special Events Ordinance was adopted in July 2004. Since that time several provisions have been identified as needing clarification or amendment.

First, he suggested that additional provisions may be needed to limit the scope of charitable events on residential properties. Such as requiring that homes used for special events be occupied by the owner and shall not use unrelated sponsors.

Second, concerns have been raised regarding adverse impacts of event parking. Paring and security is reviewed on a case-by-case basis by the Police Department and Fire Marshal. However, should the Town require the use of off-duty police officers for specified types of events or parking along specific streets?

Third, temporary structures on residential properties must meet accessory structure setbacks. This requirement often causes problems. Many applicants request waivers or request reduction of front yard setbacks. The Council could consider reducing setbacks on residential properties, modifying setback requirements for SUP properties, and/or allow the Town Manager to review requests for modified setbacks on a case-by-case basis.

Fourth, currently there is no requirement for neighborhood notification of surrounding property owners. He recommended adding a notice requirement to the ordinance which would include: the date, description of the event, parking impacts, noise impact, applicant contact information, and staff contact information.

Fifth, the fees charged for special events should be revisited. Currently fees are charged for some types of events but not for others. Should there be a blanket permit fee and should charitable events be exempted?

Sixth, he noted that there are conflicts between the Code and the fee schedule regarding erection of tents on SUP properties.

Council was asked to review the suggested amendments and provide feedback to Eva Cutro. The ordinance would be brought back to Council in January.

**Motion and vote** – Council Member Hamway moved to go into executive session at 5:34 p.m. Kirby seconded the motion which passed by a vote of 7-0.

**EXECUTIVE SESSION**

- a. Legal advice from Town Attorney regarding **water rate cases and special taxing districts** as authorized by A.R.S. §38-431.03.A.3 and discussion and consultation with Attorney regarding potential or threatened litigation regarding **Arizona-American Water Company Notice of Intent to file a new Rate Case** as authorized by A.R.S. §38-431.03.A.4

**RECONVENE FOR REGULAR BUSINESS MEETING**

**CALL TO ORDER**

Mayor LeMarr reconvened the meeting of the Town Council at 6:30 P.M.

**COUNCIL MEMBERS PRESENT**

Mayor Scott P. LeMarr

Vice Mayor Mary Hamway

Council Member Michael Collins

Council Member Paul E. Dembow

Council Member Pam Kirby

Council Member Vernon B. Parker

Council Member Lisa Trueblood

**STAFF MEMBERS PRESENT**

Town Manager James C. Bacon., Jr

Town Attorney Andrew Miller

Town Clerk Duncan Miller

Police Chief John Bennett

Community Development Director Eva Cutro

**PLEDGE OF ALLEGIANCE**

Mayor LeMarr led the Pledge of Allegiance.

**PRESENTATIONS**

There were no presentations.

**CALL TO THE PUBLIC**

Resident Sean Perini asked the Council to protect the neighbors from the noise generated by Montelucia Resort. Mayor LeMarr asked that the Town Manager to contact Dr. Perini to inform him about the work session discussion regarding noise.

**MAYOR / COUNCIL / MANAGER REPORT**

Councilmember Parker congratulated Councilmember Kirby on her election to the Scottsdale Unified School Board.

**CONSENT AGENDA**

- a. Minutes of Town Council Meeting October 7 and October 21, 2010**
- b. Approval of Hillside Building Committee Membership Rotation**  
*Recommendation:* Approve the 2010 and 2011 Hillside Building Committee rotation schedule for the Planning Commission as listed in the Action Report.
- c. Approval of Special Event Liquor License for Faith Counseling Center**  
*Recommendation:* Approve the Special Event Liquor License for Faith Counseling Center for an event at Christ Church of the Ascension, subject to the following stipulations: only those people authorized by law be allowed to dispense and/or consume alcoholic beverages; consumption shall be limited to the premises as indicated in the application; and Section 10-7 Control of Excess Noise be observed.
- d. Award of Human Services Funding for Fiscal Year 2010-2011**  
*Recommendation:* Accept the Human Services Funding Committee's recommendation for distribution of grant funds for Fiscal Year 2010-2011, and authorize the Town Manager to execute funding agreements with grant recipients.
- e. Approval of Second Amendment to the Kiva Elementary School Intergovernmental Agreement Clarifying the Field Maintenance Responsibilities of Each Party**  
*Recommendation:* Authorize the Town Manager to execute a Second Amendment to the original intergovernmental agreement between the Town and the Scottsdale Unified School District No. 48 that will clarify the terms of Section 8 of the original intergovernmental agreement by providing greater detail for responsibilities of the Town and the District with respect to the maintenance of the Kiva Field and ancillary facilities.

Mr. Bacon summarized the items on the Consent Agenda.

Councilmember Kirby removed items a, d, and e.

**Motion and vote** – Vice Mayor Hamway moved to approve the Consent Agenda with the exception of items a, d, and e. Councilmember Parker seconded the motion which passed by a vote of 7 – 0.

**a. Minutes of Town Council Meeting October 21, 2010**

Councilmember Kirby stated that there was an error on page 4, paragraph 4 regarding the effective date of the proposed Arizona American rate increase. The date should read December 1, 2011, not December 1, 2010.

**Motion and vote** – Councilmember Kirby moved to approve the minutes from October 21, 2010 with the amendment to page 4, paragraph 4. Vice Mayor Hamway seconded the motion which passed by a vote of 7 – 0.

**d. Award of Human Services Funding for Fiscal Year 2010-2011**

Councilmember Kirby noted that she and Vice Mayor Hamway serve on the Human Services Funding Committee. She reported that the Committee reviewed the funding applications and developed the recommendation being considered for adoption. She thanked staff for the well-organized application and review process.

**Motion and vote** – Councilmember Kirby moved to award grant funding to the following organizations and authorize the Town Manager to execute funding agreements with the grant recipients.

1. American Cancer Society Relay for Life
2. Area Agency on Aging
3. Central Arizona Shelter Services
4. Community Information & Referral
5. Duet (Formerly Beatitudes DOAR)
6. Northwest Block Watch
7. Phoenix Christian Counseling Associates
8. Phoenix Community Alliance (Anti-Graffiti)
9. Rotary Vocational Fund of AZ
10. Scottsdale Prevention Institute
11. Scottsdale Sister Cities Association

Vice Mayor Hamway seconded the motion which passed by a vote of 7 – 0.

**e. Approval of Second Amendment to the Kiva Elementary School Intergovernmental Agreement Clarifying the Field Maintenance Responsibilities of Each Party**

Councilmember Kirby asked for an explanation of the changes in responsibility and if it increased the Town's financial obligation.

Vice Mayor Hamway responded that the agreement simply memorializes current practices. For example, the original agreement did not define who was responsible for supplying fertilizer and maintaining the restroom. The agreement does not increase the Town's responsibilities or financial obligation.

Mr. Miller reported that the agreement is scheduled for School District approval next week.

**Motion and vote** – Vice Mayor Hamway moved to approve the Second Amendment to the Kiva Elementary School Intergovernmental Agreement Clarifying the Field Maintenance Responsibilities of Each Party. Councilmember Kirby seconded the motion which passed by a vote of 7 – 0.

**PUBLIC HEARINGS**

There were no public hearings.

**ACTION ITEMS**

There were no action items.

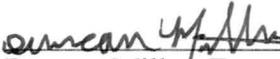
**ADJOURNMENT**

**Motion and vote** – Vice Mayor Hamway moved to adjourn. Council Member Parker seconded the motion which passed by a vote of 7-0.

Mayor LeMarr adjourned the meeting at 6:54 p.m.

  
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Scott P. LeMarr, Mayor

ATTEST:

  
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Duncan Miller, Town Clerk