



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

September 8, 2011

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, September 8, 2011 at 3:00 PM.

COUNCIL MEMBERS PRESENT

Mayor Scott P. LeMarr
Vice Mayor Mary Hamway
Council Member Michael Collins arrived at 4:07 p.m.
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
Town Engineer William Mead
Finance Director David Andrews
Community Development Director Eva Cutro
Public Works Director Andrew Cooper
Police Chief John Bennett
Planner George Burton

Discussion of Franchise Agreements

Town Attorney Andrew Miller introduced Jose Esparza from Southwest Gas and Kendra Cea of Arizona Public Service Company.

Mr. Miller briefed the Council on the timing for renewal of existing franchise agreements with Arizona Public Service Company (APS) and Southwest Gas Corporation (SWG). He said there is a two-step process for renewing franchise agreements. First, the agreements must be approved by the Town Council. Second, the agreements must be placed on the ballot for voter approval. To meet the timing necessary to place these agreements on the March 2012 ballot, the Council must take action by November 14, 2011.

Franchise agreements typically have a term of 25 years. The APS agreement expires on January 19, 2013 and the SWG agreement expires on February 22, 2015. He recommended that both agreements be renewed and placed on the March 2012 ballot so that both agreements could run on concurrent terms.

He reported that he has been exchanging draft agreements with APS and SWG for the past several months. The agreements are based on model language that has been adopted by a number of municipalities without substantial modifications. Both utilities strongly prefer to keep the main terms the same for all new franchise agreements that they execute.

He summarized the proposed changes. There is a new provision in the APS agreement that would require the Town and APS to share the cost equally in the event the Town requires APS to relocate its underground facilities within 10 years after their installation or conversion. Both agreements will include a "most favored nations clause" allowing the town to raise its fee if the utility negotiates a fee higher than 2% with another municipality. Both agreements will remove the outdated "property tax equivalent" payment. Finally, the SWG agreement will include a 2% charge to ratepayers for a "capital expenditure fund" to be used for system improvements and relocations, with the excess given to the Town.

He said, in addition to the APS and SWG franchise agreements, he drafted franchise agreements with Arizona-American Water and Berneil Water Company. Council provided direction at an earlier meeting to prepare and present a draft franchise agreement for the water utilities if the City of Scottsdale moved forward with its Arizona-American franchise agreement. The Town has received draft agreements from Arizona-American Water. To date, Scottsdale has not released a draft water franchise agreement and, according to Arizona-American Water, Scottsdale has not started any such negotiations.

Council discussed the SWG proposal to establish a 2% capital expenditure fund. It is estimated that it would generate \$100,000. According to SWG, approximately \$20,000 is spent per year on capital expenditures and upgrades. The remainder would be transferred to the Town's General Fund. The point of the capital expenditure fund is to localize capital project expenditures so that customers in one municipality are not paying for improvements in another municipality. There was Council discussion about reducing the percentage to an amount that more closely reflects actual capital expenditures.

Kendra Cea, APS Area Manager, explained that public rights-of-way (ROW) exist to provide for public transportation and public utilities. Public ROW are owned by the public and held in trust by local governments who are charged with control and regulation. The franchise grants utilities permission to use the ROW. She said APS has franchises in 53 incorporated cities and towns and 11 counties. The franchise fee is uniform at 2%. The franchise agreement provides clarity on mutual obligations, such as surface restoration, vegetation management, and relocations costs.

She stated that the Town's current agreement includes a tax credit offset for franchise fees. She said many cities have opted to remove the offset by adopting Model City Tax Code Option 13

which would allow the Town to assess and APS to collect a utility tax in addition to the franchise fee. If the Town were to adopt Model Option 13, an additional \$600,000 in general fund revenue would be generated.

Discussion of Vice Mayor Term and Appointment Process

Vice Mayor Hamway stated that this item was scheduled for discussion to clarify that her decision in 2006 to step down as vice mayor after one-year was never meant to be the start of a tradition. The Code only states that the vice mayor serves at the pleasure of the Council. It does not specify a term. Traditionally, the vice mayor term was two-years to coincide with the two-year council term. In 2000 when Council terms became four-years, the mayor and vice mayor terms continued to last two years. She explained that in 2006 when she was elected vice mayor she assumed it was a two-year term and intended to serve two years when she was selected. However, she stepped down after one-year to deal with personal matters. After she stepped down as vice mayor, Scott LeMarr served one year, Ron Clarke served one year, and Jini Simpson served one year.

Council discussed the need to clarify the term of office. The attorney was directed to prepare a code amendment providing that the vice mayor shall be selected at the first meeting in June for a one-year term with a term limit of two consecutive terms.

Mr. Bacon stated that the ordinance would be scheduled for consideration at the first meeting in October.

Motion and vote: Vice Mayor Hamway moved to go into executive session at 4:02 p.m. Mayor LeMarr seconded the motion which passed by a vote of 6 – 0.

EXECUTIVE SESSION

- a.** Discussion and consultation with the Town's legal counsel regarding possible revisions to the Town Manager's employment agreement as authorized by A.R.S. §38-431.03.A.4 and legal advice re same as authorized by A.R.S. §38-431.03.A.3.
- b.** Discussion and consultation with the Town Attorney regarding franchise agreements with Arizona Public Service Company and Southwest Gas Corporation as authorized by A.R.S. §38-431.03.A.4 and legal advice re same as authorized by A.R.S. §38-431.03.A.3.

- c. Discussion and consultation with the Town Attorney regarding pending or potential litigation and current and/or future development agreement with Potomac Hotel Limited Partnership related to Mountain Shadows as authorized by A.R.S. §38-431.03.A.4 and legal advice as authorized by A.R.S. §38-431.03.A.3.
- d. The Town Council may go into executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the agenda items listed on the agenda as authorized by A.R.S. §38-431.03.A.3.

RECONVENE FOR REGULAR BUSINESS MEETING

CALL TO ORDER

Mayor LeMarr reconvened the meeting of the Town Council at 6:25 P.M.

COUNCIL MEMBERS PRESENT

Mayor Scott P. LeMarr
Vice Mayor Mary Hamway
Council Member Michael Collins
Council Member Paul E. Dembow
Council Member Vernon B. Parker departed at 6:35 p.m.

Council Member Pam Kirby and Council Member Lisa Trueblood were not present

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, Jr.
Finance Director/Assistant Town Manager David Andrews
Community Development Director Eva Cutro
Planner George Burton

PLEDGE OF ALLEGIANCE

David Andrews led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations.

CALL TO THE PUBLIC

There were no public comments.

MAYOR / COUNCIL / MANAGER REPORT

The Mayor reported that he, along with Mr. Bacon and Mr. Mead, met with APS regarding Underground Utility Conversion District 6. He said Council will vote at the next meeting to award a contract to underground the district. In addition, District 21 is ready for design and will be budgeted for Fiscal Year 2012-2013.

Mr. Bacon added that this year's capital projects budget is \$2.8 million with District 6 making up \$1.3 million. The remainder will be used for street resurfacing.

CONSENT AGENDA

- a. Minutes of Town Council Meeting June 23, 2011**
- b. Authorization of Payment to CenturyLink for Underground Utility Conversion District Number 6.**
Recommendation: Authorize payment to CenturyLink in the amount of \$159,508 for underground Utility Conversion District Number 6.
- c. Adoption of Ordinance Number 631; Amending Town Code Article 8-8 Special Events on Private Property and Public Rights-of-Way**
Recommendation: Adopt Ordinance Number 631.

Mr. Bacon summarized the items on the Consent Agenda. He said Item b was withdrawn so that it could be considered at the same time as the award for the APS undergrounding costs for District Number 6.

Motion and vote: Vice Mayor Hamway moved to adopt the consent agenda with the exception of item b. Councilmember Parker seconded the motion which passed by a vote of 5 – 0.

PUBLIC HEARING

Adoption of Resolution Number 1242 Declaring as a Public Record the 2010-11 Amendments to the Tax Code of the Town of Paradise Valley and Ordinance Number 637 Amending the Town Tax Code

Town Attorney Miller explained that Ordinance 637 includes a series of tax code updates recommended for adoption by the Unified Audit Committee and Model City Tax Code Commission. The amendments include a clarification on the taxable status of medical

marijuana; an extension on the tax deduction sunset date for installation of solar energy devices; a tax exemption on certain types of commercial rentals, clarification on the treatment of successor privilege tax liability in foreclosure sales; and tax exemptions for school districts and charter schools. In addition to these amendments the Town has been meeting with the Unified Audit Committee to adopt a new Section that would allow the Town to tax non-residential rental at the same rate as the Town's general sales and use tax rate.

Mayor LeMarr opened the public hearing. There were no public comments.
Mayor LeMarr closed the public hearing.

Motion and vote: Councilmember Parker moved to continue the public hearing and consideration of Resolution Number 1242 and Ordinance Number 637 to the October 27, 2011 Town Council meeting. Councilmember Collins seconded the motion which passed by a vote of 5-0.

Councilmember Parker departed at 6:35 p.m.

ACTION ITEMS

Adoption of Resolution Number 1240; Compliance with Governmental Accounting Standards Board Statement Number 54, Fund Balance Reporting, Governmental Fund Type Definitions, and Appointment

Dennis J. Osuch, CPA, Principal with LarsonAllen, briefed Council on the Governmental Accounting Standards Board (GASB) Statement Number 54 requirements. He said GASB is the rule-making body for governmental accounting and has issued new guidelines entitled "Fund Balance Reporting and Governmental Fund Type Definitions". This new standard requires changes in how the Town reports financial statements effective for Fiscal Year 2010/2011. The purpose of the new Statement is to provide clearer and more consistent fund balance classifications and to clarify the existing governmental fund type definitions.

He said GASB Statement 54 creates five new classifications of fund balance. Each classification depicts the relative strength of the spending constraint for which the fund balance can be used. The classifications are: non-spendable, restricted, committed, assigned, and unassigned.

He stated that it is important to assign someone to designate fund balances otherwise the funds will roll back into the general fund.

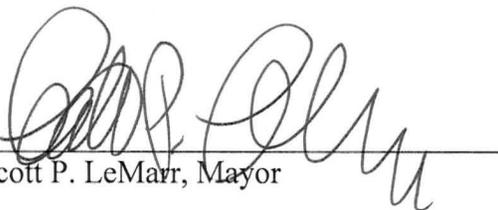
Responding to a question from Council, Mr. Osuch stated that the new rules will not have much impact on the Town.

Motion and vote: Vice Mayor Hamway moved to adopt Resolution Number 1240. Councilmember Dembow seconded the motion which passed by a vote of 4 – 0.

ADJOURNMENT

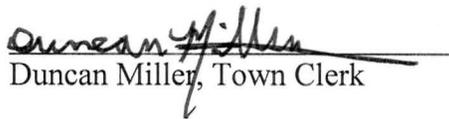
Motion and vote – Councilmember Dembow moved to adjourn. Councilmember Collins seconded the motion which passed by a vote of 4 - 0.

Mayor LeMarr adjourned the meeting at 6:50 p.m.



Scott P. LeMarr, Mayor

ATTEST:



Duncan Miller, Town Clerk