

TOWN
Of
PARADISE VALLEY



TOWN COUNCIL
Scott P. LeMarr, Mayor

Mary Hamway, Vice Mayor
Paul E. Dembow
Vernon B. Parker

Michael Collins
Pam Kirby
Lisa Trueblood

**Thursday, January 26, 2012
4:00 pm**

Meeting Location: Town Hall 6401 E. Lincoln Drive, Boardroom

*****REVISED MEETING NOTICE AND AGENDA*****

1. CALL TO ORDER / ROLL CALL

Notice is hereby given that members of the Town Council will attend either in person or by telephone conference call, pursuant to A.R.S. §38-431(4).

2. WORK/STUDY DISCUSSION ITEMS

Work/Study is open to the public however the following items are scheduled for discussion only. The Town Council will be briefed by staff and other Town representatives. There will be no votes and no final action taken on discussion items. The Council may give direction to staff and request that items be scheduled for consideration and final action at a later date. The order of discussion items and the estimated time scheduled to hear each item is subject to change.

- a. Discussion of Special Use Permit Process Changes** **30 minutes**
Staff Contact: Eva Cutro, Community Development Director, 480-348-3522
- b. Joint Planning Meeting Report: Pre-applications and Drainage** **30 minutes**
Staff Contact: Eva Cutro, Community Development Director, 480-348-3522
- c. Discussion of Salary and Classification Plan** **30 minutes**
Staff Contact: James C. Bacon, Jr., Town Manager, 480-348-3690

3. EXECUTIVE SESSION

Notice is hereby given that the Town Council may adjourn into Executive Session at one or more times during the meeting. Executive Sessions are not open to the public.

- a.** Discussion of Town Manager and Town Attorney Performance Reviews as authorized by A.R.S. §38-431.03.A.1.
- b.** 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

**Meeting Location: Town Hall Council Chambers
Approximate Start Time: 6:00 p.m.**

4. RECONVENE FOR REGULAR MEETING

5. ROLL CALL

6. PLEDGE OF ALLEGIANCE*

7. PRESENTATIONS*

8. CALL TO THE PUBLIC

Citizens may address the Council on any matter not on the agenda. In conformance with Open Meeting Laws, Council may not have discussion or take action on this matter at this Council meeting, but may respond to criticism, ask that staff review a matter raised, or ask that it be put on a future agenda. Those making comments shall limit their remarks to three (3) minutes. **Please fill out a Speaker Request form prior to addressing the Council.**

9. MAYOR / COUNCIL / MANAGER REPORTS

The Mayor, Council or Town Manager may provide a summary of current events. In conformance with Open Meeting Laws, Council may not have discussion or take action at this Council meeting on any matter discussed during the summary.

10. CONSENT AGENDA

All items on the Consent Agenda are considered by the Town Council to be routine and will be enacted by a single motion. There will be no separate discussion of these items. If a member of the Council or public desires discussion on any item it will be removed from the Consent Agenda and considered separately. **Please fill out a Speaker Request form prior to the start of the meeting and indicate which item you would like to address.**

a. Minutes of Town Council Meeting January 12, 2012

11. PUBLIC HEARINGS

None

12. ACTION ITEMS – The Town Council May Take Action on Any of These

Matters. Citizens may address the Council regarding any or all of these items. Those making comments are limited to three (3) minutes. Speakers may not yield their time to others. Please fill out a Speaker Request form prior to the start of the meeting and indicate which item you would like to address.

a. Approval of Modified Letter Agreement from the Office of the Arizona Attorney General Related to Open Meeting Law Violation

Recommendation: Approve the modified Letter Agreement from the Office of the Arizona Attorney General settling the open meeting law violation matter.

Staff Contact: Andrew M. Miller, Town Attorney, 480-348-3691

13. ADJOURN

AGENDA IS SUBJECT TO CHANGE

*Notice is hereby given that pursuant to A.R.S. §1-602.A.9 , subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Town Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.

The Town of Paradise Valley endeavors to make all public meetings accessible to persons with disabilities. With 72 hours advance notice, special assistance can also be provided for disabled persons at public meetings. Please call 480-948-7411 (voice) or 480-483-1811 (TDD) to request accommodation to participate in the Town Council meeting.



Memorandum

TO: Honorable Mayor and Town Council

FROM: James C. Bacon, Jr., Town Manager
Eva Cutro, Community Development Director 

DATE: January 26, 2012

SUBJECT: SUP Process Changes

The 2012 General Plan amendments approved by the Town Council in November, 2011 include an implementation step to revise the current Special Use Permit (SUP) process:

LU 2.1.2.6 Special Use Permit Processing.

The Town shall identify and implement measures to amend or modify the Special Use Permit application process with the goal of reducing the length of time required to process a Special Use Permit application.

25. Special Use Permit Process Revisions

Town staff shall prepare for Town Council consideration a list of recommendations for defining or amending the Special Use Permit application or review process with a goal of reducing the length of time required to process such applications.

The General Plan also encourages revitalization of SUP properties. Our current process - which some have described as long, drawn out, expensive, and without a known outcome - may not inspire applicants.

Staff has begun to consider how we would proceed. We have identified all of the amendments granted since 1999 (See attached table). Our focus has been on intermediate amendments because we believe that their use will increase over the next decade. The remainder of this memorandum focuses on suggested changes to the intermediate amendment process.

BACKGROUND

Two years ago Article XI, Special Uses and Additional Use Regulations was revised to create an Intermediate Amendment process. Previously any SUP amendment that altered the lot coverage

of a project was processed as a major amendment, allowing the entire SUP to be analyzed. The intermediate amendment process now allows applicants to increase the floor area of a project up to 40%, while only allowing the geographical area of the proposed amendment to be evaluated.

Over the past 12 years the Town processed a total of 71 SUP amendments, over a third of those – 25 to be exact- were processed as major amendments. Today more than half of those – 13 amendments- would be processed as Conditional Use Permits (CUPs), minor, or intermediate amendments.

The intermediate amendment process is a quicker and less expensive alternative to the major amendment process. However, this process can be streamlined even further. Staff does not believe any Code amendments are necessary to achieve this; and suggests several process and submittal revisions to accommodate the streamlining.

INTERMEDIATE AMENDMENTS

The current process involves a pre-application with staff for review and comment. Once the pre-application is completed, the applicant can formally apply. The application is first sent to Town Council for a Statement of Direction. It then proceeds to the Planning Commission for review and recommendation and lastly to Council for approval or denial. As this is a legislative process there is always the chance of a referendum where the voters can overturn the Council decision. This review may take several months to over a year to complete.

The majority of the SUP review is spent preparing and reviewing the many submittals the Town requires, including but not limited to:

1. Authorization letter
2. Current title report and/or warranty deed
3. Narrative
4. Site Plan
5. Building Plans
6. Signage Plan
7. Landscape Plan
8. Lighting Plan
9. Hydrology Study
10. Grading and Drainage Study
11. Traffic Study
12. Water Impact Service Study
13. Noise Study
14. CC&R's
15. Color Aerial
16. Any other plans or studies deemed necessary by staff, Commission, or Council

It is staff's recommendation that this list be modified and a two-step review process occur. The "primary" review will include the main concept, followed by a secondary review to discuss the details of the project. This would provide an applicant with assurance that the concept is approved by the Town prior to spending time and money preparing and presenting the details of the project. This approach encourages the revitalization of our SUP properties and provides a fairer SUP review process.

PRIMARY REVIEW

An example of primary review documents for an amendment involving new structures may include:

1. Narrative explaining the project
2. List of proposed uses
3. Density and intensity (square footage of existing and proposed for each use and unit counts when applicable)
4. Site plan with general locations
5. Minimum setbacks from all property lines
6. Range of heights with maximum height
7. Limited circulation plan, mainly showing ingress and egress
8. Parking location and proof of adequate parking

Of course some SUPs may require additional or less information and this list can be amended on a case by case basis. The decision to amend the list would be made at the time the Town Council adopts its Statement of Direction for the project.

The "primary" review would go through the entire intermediate review process outlined in the Town Code with full public participation at both the Commission and Council levels. The Commission would hold a hearing and make a recommendation to the Council. The Council would then hold a hearing and make a final decision. This would provide an applicant with the necessary entitlements prior to preparing the other details of the complete amendment. Items such as landscaping, lighting, and signage plans would be submitted later as part of the "secondary" review.

It is also important to emphasize that certain operational concerns can be addressed during the primary review via stipulations. For example, rather than requiring a detailed noise analysis of mechanical equipment at the time of SUP approval, it can be stipulated that mechanical specifications for HVAC's, pool pumps, laundry equipment, etc. shall not exceed X decibels at the property line or that the property will comply with the existing noise code. In addition, it can be stipulated that things like "delivery/loading areas shall not be visible from off the property". That should address certain concerns without having to get into the details during the SUP's "primary" review/approval process.

SECONDARY REVIEW

The secondary review process can be done in a number of ways. At the December 15th Council work session, a secondary review by staff was discussed. While it was agreed that this would expedite the review process, there were some concerns about the lack of public participation in the process. At the January 17th Commission meeting there was consensus among the Commissioners that the secondary review should be done as a minor amendment process. They believe this allows for public participation at the Commission hearing. Staff believes that a compromise can be reached where the secondary review process remains administrative, but allows for public participation. Currently staff sends out letters to all adjoining and/or impacted neighbors to make them aware of proposed amendments and allows them a chance to comment. This process is suggested for the secondary review if the Town Council wants more public participation than already exists in the primary review process.

PLANNING COMMISSION DISCUSSION

Intermediate SUP amendments were discussed at both the January 3rd and 17th Planning Commission meetings. The Commission understood the need to streamline the intermediate amendment process and is in favor of the primary and secondary review process. However, the Commission still had some reservations, including:

- A desire for a more detailed site plan during the primary review
- A desire for the architectural style to be addressed in the primary review
- How to determine what is needed during the primary and secondary reviews for each, unique, SUP amendment.
- How to assure that the applicant goes through the secondary review – do we hold up building permits until the details are approved.

SUMMARY

Staff is recommending the option of a two-step review process. The process would still contain a Pre-application, Statement of Direction, Planning Commission, and Town Council review. The “primary” submittal requirements would be condensed, reducing the preparation and review time. This would provide an applicant with assurance that his concept is approved by the Town prior to spending lots of time and money preparing and presenting the minor details of the project. The details of the project would be submitted later, during the “secondary” review. As all SUP amendments are unique, the level of material for the secondary review will vary; and, in some cases, a secondary review may not be necessary at all. At this time there are two SUP amendments in the pre-application stage, Camelback Golf Club and Sanctuary Resort. It is anticipated that the proposed expedited intermediate review process will be used on these applications.

INTERMEDIATE SPECIAL USE PERMIT

Town Council
January 26, 2012

General Plan 2012

LU 2.1.2.6 Special Use Permit Processing.

The Town shall identify and implement measures to amend or modify the Special Use Permit application process with the goal of reducing the length of time required to process a Special Use Permit application.

25. Special Use Permit Process Revisions

Town staff shall prepare for Town Council consideration a list of recommendations for defining or amending the Special Use Permit application or review process with a goal of reducing the length of time required to process such applications.

Article XI. Special Uses and Additional Use Regulations

- Revised in 2009 to create Intermediate category
- Previously all amendments that altered lot coverage were considered major amendments
- Intermediate amendment allows an increase up to 40%
- Intermediate amendment is quicker and less expensive
- Intermediate process can be further streamlined

Current Intermediate SUP Process

- Pre-application
 - Formal application
 - Town Council Statement of Direction
 - Planning Commission review and recommendation
 - Town Council decision
- The review time varies from a few months to over a year with the bulk of the time spent preparing and reviewing required submittals

PERMIT APPLICATION SUBMITTAL REQUIREMENTS

- 1. Authorization letter
- 2. Current title report and/or warranty deed
- 3. Narrative
- 4. Site Plan
- 5. Building Plans
- 6. Signage Plan
- 7. Landscape Plan
- 8. Lighting Plan
- 9. Hydrology Study
- 10. Grading and Drainage Study
- 11. Traffic Study
- 12. Water Impact Service Study
- 13. Noise Study
- 14. CC&R's
- 15. Color Aerial
- 16. Any other plans or studies deemed necessary

Streamlined Submittal Requirements

- 1. Narrative explaining the project
- 2. List of proposed uses
- 3. Density (Square footage of existing and proposed for each use)
 - 4. Intensity (Unit counts and occupancy loads)
- 4. Site plan with general locations (bubble or box plan)
- 5. Minimum setbacks from all property lines
- 6. Range of heights with maximum height
- 7. Limited circulation plan (mainly ingress and egress)
- 8. Parking location and proof of adequate parking

Other Information

- Submittal list may be amended at Council SOD
- Operational concerns addressed in stipulations
- Minor details (lighting, landscaping, signage) to be reviewed at a later date

Secondary Review

- December 15th Council work session - secondary review by staff was discussed.
 - Concern about a lack of public participation in the process.
- January 17th Commission meeting - consensus among the Commissioners for a minor amendment process.
 - Allows for public participation at the Commission hearing.
- Compromise solution - administrative review with public participation.
 - Letters will be sent to all adjoining and/or impacted neighbors

This process is suggested for the secondary review if the Town Council wants more public participation than already exists in the primary review process.

Summary

Process still contains:

- Pre-application
- Statement of Direction
- Planning Commission Review and Recommendation
- Town Council Review and Decision

Submittal requirements condensed
Preparation and review time reduced
Quicker Intermediate Amendment review

It is anticipated this process shall be used on the pending Sanctuary and Marriott Golf Course intermediate amendments

**THE TOWN OF PARADISE
VALLEY SALARY & JOB
CLASSIFICATION PLAN**

A Discussion of Future Actions

January 26, 2012



A GOOD PAY PLAN DESIGN...

- › Is externally competitive and internally equitable
- › Helps recruit, retain, and financially reward employee performance
- › Is responsive and relevant to changing internal and external needs



How are We Doing??

- › Compensation data collected in April from 16 local municipalities suggests that the Town's pay ranges continue to meet plan objectives
- › Recent recruitments for Senior Accountant, Police Officer and Public Works Director/Town Engineer indicate we are attracting quality candidates



Three Options

- ▶ Maintain present pay schedule and approach ("Do nothing")
 - OR -
- ▶ Initiate a third party audit of the present plan
 - OR -
- ▶ Initiate process with a third party to redesign the current salary and job classification plan

Current Approach

- ▶ Salary ranges based on the mid-point of the comparable communities ("the market")
- ▶ Market changes are measured annually based on changes actually made in prior fiscal year
- ▶ Market changes do not result in automatic salary increases, but may result in range increases
- ▶ All salary increases are based on performance
- ▶ Internal equity is reflected exclusively in pay plan

Third-Party Audit

- ▶ To assess current external competitiveness and internal equity
- ▶ To recommend future maintenance alternatives to ensure up to date pay plan
- ▶ To recommend continuing the use of the same "external comparable" municipalities or identifying alternative "comparative sets"
- ▶ To help determine "market position"
- ▶ Fiscal Impact
- ▶ Process expected to take 6 - 12 months

Redesign Current Pay Plan

- ▶ Third-Party to initiate a complete compensation study to redesign salary and compensation plan
- ▶ Includes:
 - Job analysis of all current positions
 - Benchmarking
 - Market surveys
 - Internal equity analysis
 - Determination of pay plan type(s)
 - Recommend market position
- ▶ Fiscal impact
- ▶ Process expected to take 12-18 months

Questions??

▶ Council Direction?





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

January 12, 2012

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, January 12, 2012 at 3:00 PM.

COUNCIL MEMBERS PRESENT

Mayor Scott P. LeMarr
Vice Mayor Mary Hamway
Council Member Paul E. Dembow
Council Member Pam Kirby arrived at 3:50 p.m.
Council Member Vernon B. Parker arrived at 3:30 p.m.
Council Member Lisa Trueblood

Council Member Michael Collins not present

STAFF MEMBERS PRESENT

Town Manager James C. Bacon, Jr.
Town Attorney Andrew Miller
Town Clerk Duncan Miller
Town Engineer William Mead
Community Development Director Eva Cutro
Municipal Court Director Jeanette Wiesenhofer

Discussion of Expenditure Limitations

Town Manager Jim Bacon introduced Dennis J. Osuch, Partner with CliftonLarsonAllen LLP. He reminded Council that the Town contracts with CliftonLarsonAllen to conduct the Town's comprehensive annual financial audit.

Mr. Osuch explained that in 1980, voters approved an amendment to the Arizona Constitution imposing an expenditure limitation on Arizona cities and towns. The purpose was to control expenditures and limit future increases in spending to adjustments for inflation, deflation, and population growth. The maximum amount a city or town may spend in a budget year is calculated by the Economic Estimates Commission (EEC). The limitation is based on revenue from fiscal year 1979-80. Certain expenditures such as debt service payments, federal grants, and "excess" highway user revenue funds, among other items, are specifically excluded from the calculation of the expenditure limitation. Cities and towns can elect for a permanent base limit adjustment or alternative expenditure limits.

Mr. Osuch explained the estimation and reporting process and timeline. He said the Town's current expenditure limit is \$25.4 million. The expenditure limit = adjusted base limit (\$4.7 million + \$1.9 million) x population factor (1.4087) x inflation factor (2.7169).

Responding to a question from Council, Mr. Osuch stated that prior to 2008 the Town was in the one-percent of cities who were close to hitting the expenditure limit. Since 2008 the Town has been well below the limitation. The difference was that the voters approved a permanent base adjustment in 2006.

Responding to a question from Council, Mr. Osuch confirmed that the Town's payment to the City of Phoenix for fire service is counted against Phoenix's expenditure limit and not the Town's.

Discussion of Financial Reserve Policies

Mr. Osuch explained that the Town's current fund balance policy states that the combined General Fund and Highway User Revenue Fund fund balance must be at least equal to 90%, but not more than 110% of operating expenditures.

He provided the following four-year Fund Balance data:

Four Year Trend information of Fund Balance

Year	General Fund and HURF Fund Balance	General Fund and HURF Fund Expenditures	Percent of Fund Balance to Expenditures
2011	\$ 15,736,345	\$ 14,878,777	105.8%
2010	\$ 17,252,779	\$ 14,972,882	115.2%
2009	\$ 22,137,728	\$ 18,112,846	122.2%
2008	\$ 30,144,912	\$ 18,087,276	166.7%

Year	General Fund Balance	General Fund Expenditures	Percent of Fund Balance to Expenditures
2011	\$ 14,002,511	\$ 13,434,247	104.2%
2010	\$ 14,865,748	\$ 13,509,430	110.0%
2009	\$ 19,055,184	\$ 16,264,667	117.2%
2008	\$ 26,023,277	\$ 16,186,198	160.8%

He said the unassigned General Fund Balance as a percentage of expenditures is 93%. This compares with 72% in Fountain Hills, 261% in Cave Creek, and 24% in Scottsdale.

He said Scottsdale's percentage is closer to the average. Most cites have about 4 months of carry forward revenue. He cautioned that although the Town carries forward approximately 12 months in comparison, Town revenue sources are subject to greater variability. This is because the Town does not assess a primary property tax, but rather relies entirely on hospitality and construction taxes. These taxes can be unpredictable and react to changing market conditions.

Discussion of FY 2012-13 Preliminary Budget

Mr. Bacon reviewed the component parts (five-year forecast, revenues, expenditures, and capital projects) that will make up his budget recommendation to Council to be delivered in March.

Mr. Bacon discussed the revenue assumptions that will be used to build the budget. He stated that sales tax and bed tax will progressively improve over the next 5 years. Construction sales tax and license and permit fees are projected to be flat based on FY 2010-11 collections, but are adjusted in FY 2011-12 through FY 2012-14 for the 3-year sales tax rate increase. All other sales tax collections and franchise fees are projected to increase by 2% annually based on FY 2010-11 actual collections. State shared revenues are projected to increase 2%, 2.25%, 2.25%, 2.75%, and 3% annual increases between FY 2012-12 and FY 2016-17 respectively.

Salaries and overtime are projected to remain flat after organizational restructuring through FY 2016-17. ASRS retirement benefits are expected to increase by 10% compounded annually. Public Safety retirement is projected to increase by 10.5% compounded annually. Health insurance is projected to increase by 10% annually. Other employee benefits, photo radar, insurance, and all other operation and maintenance costs will increase by 2% annually. The fire services fee is expected to increase by 3.5% annually. Lease payments based on existing debt service schedules including 2011 Motorola lease-purchase agreement with no new lease agreements thereafter.

He said human services funding will not be included in the budget unless directed otherwise by the Council. It was not included in the current budget, but \$50,000 was budgeted the previous year.

He made the following suggestions for the FY 2012-13 through 2013-14 Capital Improvement Program budget:

- Mockingbird Lane
- Street Resurfacing
- Public Safety Communications
- Echo Canyon Parking

- Town Entry Monuments
- Undergrounding – D21
- Stanford Drive
- Sidewalks and drainage improvements

He said the priorities should be reconstruction of Stanford Drive and Mockingbird Lane from 52nd St to 56th Street. Another priority is the police communications improvements.

Council asked for briefing on Phoenix Fire Service intergovernmental agreement, specifically what is required with regard to public safety communications.

Mr. Bacon provided the following timeline for budget review and consideration:

- January 12 – Study Session
- January through March 15 – Update revenue estimates and develop expense budgets
- March 16 – Town Manager’s Recommended Budget delivered to Town Council
- March 22 – Study Session to review the budget
- May 24 – Final Budget Adoption

Council’s preference was to hold an all-day budget review meeting and a follow-up study session to review any changes.

Motion and vote: Vice Mayor Hamway moved to go into executive session at 4:41 p.m. Councilmember Parker seconded the motion which passed by a vote of 6 – 0.

EXECUTIVE SESSION

- a. Discussion and consultation with town representatives concerning disposition of real property and right-of-way in the vicinity of 66th Pl. and E. Stallion Rd, as authorized by A.R.S. §38-431.03.A.7, and discussion and consultation with the Town Attorney regarding legal advice as authorized by A.R.S. §38-431.03.A.3
- b. Discussion and consultation with the Town Attorney regarding pending or potential litigation and current and/or future development agreement with Potomac Hotel Limited Partnership/ MTS Land LLC 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.
- c. 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 5:54 P.M.

COUNCIL MEMBERS PRESENT

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

Council Member Michael Collins was not present

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
Planner George Burton
Public Works Director Andrew Cooper

PLEDGE OF ALLEGIANCE

Mayor LeMarr led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations.

CALL TO THE PUBLIC

Jerry Van Gasse updated Council on Echo Canyon parking. He stated he spoke with Phoenix's Mayor and Council regarding the expansion of parking at Echo Canyon. He said all the vested parties are moving forward to improve hiker access to and use of Camelback Mountain.

MAYOR / COUNCIL / MANAGER REPORT

Councilmember Dembow reported that the Annual Paradise Valley Vintage Car Show raised over \$8,000. It was divided between two charities benefiting veterans organizations.

Mayor LeMarr reported that the Martin Luther King, Jr. Celebration will be held on Monday starting at 11:00 a.m. in the Council Chambers. This year David and Joan Lincoln will be the honored guests.

CONSENT AGENDA

- a. **Minutes of Town Council Meeting November 10, 2011**
- b. **Minutes of Town Council Special Meeting November 17, 2011**
- c. **Minutes of Town Council Meeting December 1, 2011**
- d. **Minutes of Town Council Meeting December 15, 2011**
- e. **Approval of Board of Adjustment Chair**
Recommendation: Approve Emily Kile to serve as Chair of the Board of Adjustment.
- f. **Approval of Special Event Liquor License for Boys & Girls Clubs of Greater Scottsdale, Inc**
Recommendation: Approve the Special Event Liquor License for Boys & Girls Clubs of Greater Scottsdale, subject to the stipulations in the Action Report
- g. **Approval to Purchase Police Vehicles**
Recommendation: Approve the purchase of three 2012 Chevrolet Tahoes for the Police Department from Courtesy Chevrolet in an amount not to exceed \$93,949.
- h. **Withdrawn**
- i. **Adoption of Ordinance Number 640; Amending the Criteria Related to Filling Council Vacancies**
Recommendation: Adopt Ordinance Number 640
- j. **Approval of Letter Agreement from the Office of the Arizona Attorney General Related to Open Meeting Law Violation**
Recommendation: Approve the Letter Agreement from the Office of the Arizona Attorney General settling the open meeting law violation matter.

Mr. Bacon summarized the items on the consent agenda.

Item J was removed for separate discussion.

Motion and Vote: Vice Mayor Hamway moved to adopt the Consent Agenda with the exception of item J. Councilmember Parker seconded the motion which passed by a vote of 6 – 0

J. Approval of Letter Agreement from the Office of the Arizona Attorney General Related to Open Meeting Law Violation

Recommendation: Approve the Letter Agreement from the Office of the Arizona Attorney General settling the open meeting law violation matter.

Mr. Miller read a letter from the Arizona Attorney General's Office regarding a self-reported violation of the Open Meetings Law. (Attachment A) He stated that the Attorney General's office noted that the violation was unintentional and that the Town took proactive actions to cure the violation. He recommended Council approve the settlement letter.

Responding to a question from Council regarding whether all councilmembers must sign the letter or if only the member who violated the Open Meeting Law should have to sign it, Mr. Miller stated that a quorum of members should be sufficient.

Responding to a question from Council regarding the Open Meeting Law training required by the settlement letter, Mr. Miller stated that the training will likely be given by someone from the Arizona Ombudsman's Office. He said it would take about 10 to 15 minutes.

Motion and Vote: Vice Mayor Hamway moved to approve Item J. Councilmember Parker seconded the motion which passed by a vote of 5 – 1.

Aye: LeMarr, Hamway, Dembow, Parker, Trueblood (Trueblood voted "aye" but stated she would not sign the settlement letter)

No: Kirby

Motion and Vote: Vice Mayor Hamway moved to reconsider adoption of Item J. Councilmember Parker seconded the motion which passed by a vote of 6 – 0

Council questioned the Town Attorney for specifics on the remedial Open Meeting Law training as required by the settlement letter. He was asked who would give the training, who would have to be present for the training, and if the settlement letter could be amended to clarify how long the training would last. Council also asked if the settlement letter signature page could be amended to indicate that a councilmember was signing the letter as a member of the public body but not as the councilmember who violated Open Meeting Law.

Motion and Vote: Vice Mayor Hamway moved to continue consideration of Item J to the January 26, 2012 meeting so that the Town Attorney could contact the Attorney General's Office about clarifying the settlement letter. Councilmember Parker seconded the motion which passed by a vote of 6 – 0.

Item e. Approval of Board of Adjustment Chair

Emily Kile thanked Council for approving her selection as Chair of the Board of Adjustment.

PUBLIC HEARING

There were no public hearings.

ACTION ITEMS

There were no action items.

ADJOURNMENT

Motion and vote – Vice Mayor Hamway moved to adjourn. Councilmember Kirby seconded the motion which passed by a vote of 6 - 0.

Mayor LeMarr adjourned the meeting at 6:16 p.m.

ATTEST:

Scott P. LeMarr, Mayor

Duncan Miller, Town Clerk



TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
CHILD AND FAMILY PROTECTION DIVISION
CIVIL AND CRIMINAL LITIGATION AND ADVICE SECTION

KEVIN R. SMITH
ASSISTANT ATTORNEY
GENERAL
(602) 542-8195

January 11, 2012

(Via Mail and E-mail: amiller@paradisevalleyaz.gov)

Andrew M. Miller
Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, Arizona 85253-4328

RE: Self Reported Open Meeting Law Violation

Dear Mr. Miller:

Thank you for your letter in which you reported a suspected violation of the Arizona Open Meeting Law on behalf of the Town of Paradise Valley ("Town"). I would also like to thank you for your assistance and cooperation during the investigation of the above referenced report. This letter will serve as formal notice that the Arizona Attorney General's Office ("Office") has concluded its review of the information you provided and based upon that information our Office has determined that a violation of the Arizona Open Meeting Law occurred as outlined below.

Violation

1. Conducting a meeting in violation of the Open Meeting Law:

A.R.S. § 38-431(4) defines a meeting as:

"the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action."

As our Office stated in Ariz. Att'y. Gen. Op. 105-004, an exchange of e-mails can constitute a meeting. Simultaneous interaction among the members of a public body is not required. *Id.* A communication that proposes legal action to a quorum of a public body violates the Open Meeting Law, even if there is no exchange among the members concerning the proposal. *Id.*

The information you provided shows that Planning Commissioner Dolf Strom proposed legal action regarding the use of meters in relation to a Distributed Antenna System (DAS) in an e-mail to the entire Planning Commission which was also sent to all of the members of the Town Council. On a second occasion, Council Member Paul Dembow proposed legal action regarding the DAS in an e-mail sent to all of the Council members. These e-mails constituted "meetings" under the Open Meeting Law. Because the meetings were not noticed in accordance with A.R.S. § 38-431.02 and not open to the public as required by A.R.S. § 38-431.01 they were held in violation of the Open Meeting Law.

Settlement

The Arizona Attorney General's Office does not believe that the actions which constitute the violation listed above were done with any bad intent. Our Office also took note of the proactive steps taken by the Town regarding the suspected violation once it was discovered. These steps included: 1) notifying the public of the suspected violation by disclosing it at a Town Council meeting on October 13, 2011 and the Planning Commission meeting on October 18, 2011; 2) making copies of the e-mails in question available to the public at the meetings previously listed; 3) discussion/counseling by the Town Attorney with the Town Council regarding the problems associated with proposing legal action by e-mail, including providing them with a copy of Arizona Attorney General Opinion 105-004; and 4) self-reporting the suspected violation to the Arizona Attorney General's Office. Your letter also indicated that you had contacted the Arizona Ombudsman's Office regarding conducting additional training with the members of the Town Council and Planning Commission with a focus on e-mail related issues.

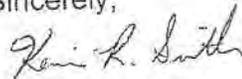
Our Office commends the Town on its proactive response and believes that the steps the Town has taken and the planned training are an acceptable means of addressing the violation. In addition our Office also requires the following:

- That this letter and the proposed settlement shall be appropriately noticed on the agenda of the next regular Town Council meeting. The letter will be read aloud, discussed, and copies of the letter shall be made available to members of the public. The letter shall also be approved and/or appropriately ratified at the next regular Town Council meeting. A copy of the notice and agenda for that Town Council meeting shall be sent to me at the Arizona Attorney General's Office.

If the proposed agreement is acceptable to your client, please so indicate by countersigning this letter and returning it to me on or before February 1, 2012. If this agreement is not acceptable the Arizona Attorney General's Office will move forward to enforce the Open Meeting Law and seek any appropriate further remedies it deems necessary.

Should you have any further questions, please feel free to contact me at the address or phone number listed on this letter.

Sincerely,



Kevin R. Smith
Assistant Attorney General

The Town Council of the Town of Paradise Valley acknowledges that one Member of the Planning Commission and one Member of the Town Council have committed a violation of the Open Meeting Laws and its Members agree to the terms set forth in this letter, and are authorized to enter into this letter agreement.

By

Legal Counsel

Date

Chairman/President

Date

Member

Date

HDM-#2565140



Town of Paradise Valley Action Report

Agenda Item: ___
Date: January 26, 2012
Consent Agenda

AGENDA TITLE

Approval of (Modified) Letter Agreement from the Office of the Arizona Attorney General Related to Open Meeting Law Violation

TO: Mayor LeMarr and Town Council Members	Agenda Item Relates to Mission/Vision	<ul style="list-style-type: none">Provides high quality public services to a community which values limited government
FROM: James C. Bacon, Jr., Town Manager <i>B</i> Andrew Miller, Town Attorney <i>AM</i>	Strategic Initiative	
DEPARTMENT: Town Attorney	Other Policies or Statutory Requirements	
CONTACT: Andrew M. Miller Town Attorney		

RECOMMENDATION

It is recommended that the Council approve the (now modified) Letter Agreement from the Office of the Arizona Attorney General settling the open meeting law violation matter.

SUMMARY STATEMENT

In mid-October e-mails from one member of the Planning Commission and one member of the Council that raised Arizona Open Meeting Law (OML) violation issues were discovered. These e-mails suggested alternative legal actions that could be taken by the Town in response to the application for a minor special use permit amendment (SUP Amendment) by Crown Castle relating to the installation of electric meters for each Crown Castle telecommunication node. These e-mails were promptly identified as problematic, were provided to the public at both the council and planning commission meetings relating to the Crown Castle electric meter request, and copies of these e-mails were provided to the public. The OML violation created by these two e-mails was then self-reported to the Office of the Attorney General (AG) for its review, with the goal of eliminating concerns regarding the validity of the subsequent approval of the Crown Castle SUP Amendment and to complete any remedial measures suggested by the AG.

The AG's review concluded that the two e-mails did violate the OML, but commended the Town for its proactive response and the steps the Town has taken (including a commitment to a future e-mail specific OML training session for both the Planning Commission and Council) to address the OML violations. To settle the OML matter with just the remedies that the Town has committed to performing, the AG would like the Council to approve the attached settlement letter which recognizes that the two violations by individual members of the Planning Commission and Council did occur and that appropriate remedial steps have been and will be taken,

including public approval/discussion of the settlement letter and making a copy of the settlement letter available to the public.

This matter was initially discussed at the Council's January 12, 2012 meeting and continued so that some clarifications and modifications to the settlement letter could be pursued. The Attorney General's Office has agreed with two modifications to the settlement letter that should clarify and resolve concerns expressed at the January 26, 2012 Council Meeting. First, the letter now permits that OML training regarding e-mail issues to be conducted by the Town Attorney, which should make scheduling of the training on a future Planning Commission and Council agenda more convenient and timely. Second, the signature section of the settlement letter now separates the signatures for those Council Members whose e-mail violated the OML and those that did not, but who are in agreement with the settlement.

It is respectfully suggested that the Town Council approve the settlement letter proposal and execute the acknowledgement contained on page 4 of the letter.

BUDGETARY IMPACT

None.

ATTACHMENT(S)

Modified Settlement Letter Agreement from the Office of the Arizona Attorney General



TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
CHILD AND FAMILY PROTECTION DIVISION
CIVIL AND CRIMINAL LITIGATION AND ADVICE SECTION

KEVIN R. SMITH
ASSISTANT ATTORNEY
GENERAL
(602) 542-8195

January 20, 2012

(Via Mail and E-mail: amiller@paradisevalleyaz.gov)

Andrew M. Miller
Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, Arizona 85253-4328

RE: Self Reported Open Meeting Law Violation

Dear Mr. Miller:

Thank you for your letter in which you reported a suspected violation of the Arizona Open Meeting Law on behalf of the Town of Paradise Valley ("Town"). I would also like to thank you for your assistance and cooperation during the investigation of the above referenced report. This letter will serve as formal notice that the Arizona Attorney General's Office ("Office") has concluded its review of the information you provided and based upon that information our Office has determined that a violation of the Arizona Open Meeting Law occurred as outlined below.

Violation

1. Conducting a meeting in violation of the Open Meeting Law:

A.R.S. § 38-431(4) defines a meeting as:

"the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action."

As our Office stated in Ariz. Att'y. Gen. Op. 105-004, an exchange of e-mails can constitute a meeting. Simultaneous interaction among the members of a public body is not required. *Id.* A communication that proposes legal action to a quorum of a public body violates the Open Meeting Law, even if there is no exchange among the members concerning the proposal. *Id.*

The information you provided shows that Planning Commissioner Dolf Strom proposed legal action regarding the use of meters in relation to a Distributed Antenna System (DAS) in an e-mail to the entire Planning Commission which was also sent to all of the members of the Town Council. On a second occasion, Council Member Paul Dembow proposed legal action regarding the DAS in an e-mail sent to all of the Council members. These e-mails constituted "meetings" under the Open Meeting Law. Because the meetings were not noticed in accordance with A.R.S. § 38-431.02 and not open to the public as required by A.R.S. § 38-431.01 they were held in violation of the Open Meeting Law.

Settlement

The Arizona Attorney General's Office does not believe that the actions which constitute the violation listed above were done with any bad intent. Our Office also took note of the proactive steps taken by the Town regarding the suspected violation once it was discovered. These steps included: 1) notifying the public of the suspected violation by disclosing it at a Town Council meeting on October 13, 2011 and the Planning Commission meeting on October 18, 2011; 2) making copies of the e-mails in question available to the public at the meetings previously listed; 3) discussion/counseling by the Town Attorney with the Town Council regarding the problems associated with proposing legal action by e-mail, including providing them with a copy of Arizona Attorney General Opinion 105-004; and 4) self-reporting the suspected violation to the Arizona Attorney General's Office. You have also indicated that you will be conducting additional Open Meeting Law training with the members of the Town Council and Planning Commission with a focus on e-mail related issues.

Our Office commends the Town on its proactive response and believes that the steps the Town has taken and the planned training are an acceptable means of addressing the violation. In addition our Office also requires the following:

- That this letter and the proposed settlement shall be appropriately noticed on the agenda of the next regular Town Council meeting. The letter will be read aloud, discussed, and copies of the letter shall be made available to members of the public. The letter shall also be approved and/or appropriately ratified at the next regular Town Council meeting. A copy of the notice and agenda for that Town Council meeting shall be sent to me at the Arizona Attorney General's Office.

If the proposed agreement is acceptable to your client, please so indicate by countersigning this letter and returning it to me on or before February 1, 2012. If this agreement is not acceptable the Arizona Attorney General's Office will move forward to enforce the Open Meeting Law and seek any appropriate further remedies it deems necessary.

Should you have any further questions, please feel free to contact me at the address or phone number listed on this letter.

Sincerely,

Kevin R. Smith
Assistant Attorney General

I acknowledge that I have sent an e-mail that violates the Arizona Open Meeting Laws and agree to the settlement terms set forth in this letter:

Council Member

Date

By

Legal Counsel

Date

We, the remaining Members of the Town Council of the Town of Paradise Valley acknowledge that one Member of the Planning Commission and one Member of the Town Council have committed a violation of the Arizona Open Meeting Laws and agree to the settlement terms set forth in this letter; and we are authorized to enter into this letter agreement:

Mayor

Date

Council Member

Date

HDM-#2565140