



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:

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

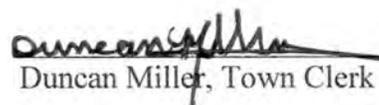
Motion and vote – Vice Mayor Hamway moved to adjourn. Councilmember Kirby seconded the motion which passed by a vote of 6 - 0.

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



Scott P. LeMarr, Mayor

ATTEST:


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.

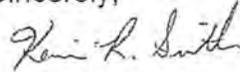
Our Office commends the Town on its proactive response and believes that the steps the Town has taken and the planned training are an acceptable means of addressing the violation. In addition our Office also requires the following:

- 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
	_____	_____
	Member	Date
	_____	_____
	Member	Date
	_____	_____
	Member	Date
	_____	_____
	Member	Date

HDM-#2565140