

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, HELD FEBRUARY 3, 2009, AT 6:00 P.M., AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

CALL TO ORDER AND ROLL CALL

Mayor Joens called the regular meeting to order at 6:00 p.m. Roll call was taken as follows:

COUNCIL MEMBERS PRESENT

Diane Joens, Mayor
Karen Pfeifer, Vice Mayor
James Chapman, Council Member
Tim Elinski, Council Member
Duane Kirby, Council Member
Linda Norman, Council Member
Terence Pratt, Council Member

STAFF MEMBERS PRESENT

Doug Bartosh, City Manager	Rudy Rodriguez, Finance Director
Marianne Jiménez, City Clerk	Dan Lueder, Utilities Director
Steve Horton, City Attorney	Tim Costello, City Engineer
John O'Neill, Library Director	Charlie Scully, Planner
George Gehlert, Community Development Director	Kyla Allen, Executive Assistant

PLEDGE OF ALLEGIANCE TO THE FLAG

Zachery Romfo, a member of the Youth Commission, led the Pledge of Allegiance.

BRIEF SUMMARY OF CURRENT EVENTS BY MAYOR, CITY COUNCIL AND/OR CITY MANAGER--
THE PUBLIC BODY DOES NOT PROPOSE, DISCUSS, DELIBERATE OR TAKE LEGAL ACTION ON
ANY MATTER BROUGHT UP DURING THIS SUMMARY UNLESS THE SPECIFIC MATTER IS
PROPERLY NOTICED FOR LEGAL ACTION

Mr. Bartosh made the following announcements: Yesterday the Old Town Association held its annual strategic planning session. The plan would be shared with the Council when it became available; the Focus on Success economic planning exercise would meet Wednesday at 5 p.m., at Yavapai College, in room M-137 of the Library. Public comments were welcome; an all employee meeting would be held tomorrow to discuss budget matters; a coffee talk was scheduled for Cottonwood Village on Wednesday, February 11 at 9 a.m.; there would be a council candidate forum at Pine Shadows on Saturday at 8 a.m.; the recreation center groundbreaking was scheduled for Tuesday, February 10, at 3 p.m.; Paula Street would be closed from Mingus Avenue to the recreation center entrance for construction purposes; a public meeting would be held Wednesday, February 11, at 6:30 p.m. at the Council Chambers to discuss the design concepts of South 12th Street from

Mingus Avenue to Birch Street.

Council Member Pratt stated he had attended a meeting of the Verde Valley Transportation Planning Organization.

Mayor Joens stated there would be a Prescott National Forest plan revision public meeting in Camp Verde on February 25, from 5:30 to 8:30 p.m. Council attendance was encouraged as this plan would affect us for the next 20 years; Gardens for Humanity sponsored an Agriculture Renaissance event which she attended. The resulting “white paper” would be presented to the Council when it became available.

Mr. Bartosh stated there was one additional meeting to be announced which was a joint meeting with the Verde Valley Fire District on Thursday, the 5th, at 6 p.m. in the Public Safety Building.

CALL TO THE PUBLIC

Ms. Shirley Froellech, of Pine Shadows, stated damage to some units had been caused by road construction on State Route 89A. Residents wished to contact the appropriate authority regarding the matter and asked city officials to assist them to do so.

Mayor Joens asked Mr. Bartosh to assist Ms. Froellech in this matter.

APPROVAL OF MINUTES—Regular Meetings of January 6 & 20, 2009

Council Member Kirby moved to adopt the minutes. Council Member Elinski seconded the motion.

Mayor Joens stated on page 7 of the January 6 minutes it stated “Mayor Joens stated the land had been purchased by the City specifically for such a purchase”. She believed she said “project” instead of “purchase”, and requested staff to listen to the recording to verify that. With that correction, the motion was passed unanimously.

UNFINISHED BUSINESS— The following items are for Council discussion, consideration, and possible legal action.

ORDINANCE NUMBER 530—AMENDING TITLE 9, PUBLIC PEACE, MORALS AND WELFARE, CHAPTER 9.08 OFFENSES AGAINST PROPERTY, OF THE MUNICIPAL CODE BY ADDING A NEW SECTION 9.08.080, DEFACEMENT OF PROPERTY, AND SECTION 9.08.090 REMOVAL OF GRAFFITI; SECOND & FINAL READING

Mr. Scully stated this would be the second reading of amendments to the Municipal Code which would improve the ability to enforce action against graffiti. These amendments refined the Code’s definition of graffiti and outlined details and responsibilities for its removal from both public and private property.

Mayor Joens asked if there were any comments regarding this matter from the public. There were none.

Council Member Pratt moved to adopt Ordinance Number 530. The motion was seconded by Council Member Kirby, and passed unanimously.

Mayor Joens asked the City Clerk to read Ordinance Number 530 by title only.

ORDINANCE NUMBER 530

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AMENDING TITLE 9, PUBLIC PEACE, MORALS, AND WELFARE, CHAPTER 9.08 OFFENSES AGAINST PROPERTY, OF THE MUNICIPAL CODE BY ADDING A NEW SECTION 9.08.080, DEFACEMENT OF PROPERTY, AND SECTION 9.08.090 REMOVAL OF GRAFFITI.

ORDINANCE NUMBER 538—AMENDING ARTICLE II, DEFINITIONS, SECTION 201., GENERAL, OF THE CITY OF COTTONWOOD ZONING ORDINANCE BY ADDING THE NEW DEFINITIONS OF “CAMP” AND “CAMPING”, UNDER ARTICLE II, DEFINITIONS, SECTION 201., GENERAL, AND AMENDING ARTICLE IV, ZONING DISTRICTS, SECTION 404., GENERAL PROVISIONS, BY ADDING A NEW SUBSECTION X., “CAMPING WITHIN THE CITY LIMITS” TO SECTION 404., GENERAL PROVISIONS; SECOND & FINAL READING

Mr. Scully stated the next two items were related. Ordinance Number 538 dealt with amendments to the Zoning Ordinance, by addressing the issue of camping. It would restrict camping within the city limits, except where it was authorized or exceptions were indicated. Authorized places would be those designed and improved for such use or informal use elsewhere with the permission of the property owner. The issue has arisen because of uninvited “guests” on private property, particularly large vacant properties or areas near washes and the river. Currently, under the Zoning Ordinance, camping was not listed as a permitted use. This clarified what would be and what would not be permitted. Prohibited activities were specified under an extended definition of camping which included sleeping outdoors, utilizing make-shift shelters, and sleeping in vehicles, whether passenger cars or recreational vehicles. There was a generous approach for exceptions, including visitors to a private residence for a week or two, backyard camping, and overnight parking in a parking lot with the consent of the property owner, such as Wal-Mart allowed.

Mayor Joens opened the floor to the public.

Mr. Bob Richards, of 1495 East Crestview Drive, stated a custodian currently stayed full time in a camping vehicle on the Mongini property at Happy Jack Road. He asked if that person would no longer be permitted to remain there.

Mr. Scully stated such use was specifically addressed and authorized through special use permits.

Council Member Kirby moved to adopt Ordinance Number 538. The motion was seconded by Vice Mayor Pfeifer, and carried with a dissenting vote by Council Member Elinski.

Mayor Joens asked the City Clerk to read Ordinance Number 538 by title only.

ORDINANCE NUMBER 538

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AMENDING ARTICLE II, DEFINITIONS, SECTION 201., GENERAL, OF THE CITY OF COTTONWOOD ZONING ORDINANCE BY ADDING THE NEW DEFINITIONS OF "CAMP" AND "CAMPING", UNDER ARTICLE II, DEFINITIONS, SECTION 201., GENERAL, AND AMENDING ARTICLE IV, ZONING DISTRICTS, SECTION 404., GENERAL PROVISIONS, BY ADDING A NEW SUBSECTION X., "CAMPING WITHIN THE CITY LIMITS" TO SECTION 404., GENERAL PROVISIONS.

ORDINANCE NUMBER 539—AMENDING THE MUNICIPAL CODE OF THE CITY OF COTTONWOOD BY ADDING A NEW CHAPTER 8.48, CAMPING WITHIN CITY LIMITS, TO TITLE 8, HEALTH AND SAFETY; SECOND & FINAL READING

Mr. Scully stated these amendments to the Municipal Code were made to address the issue of camping activities, primarily on public properties such as streets and parks. Vehicles were usually involved and there was concern for proper sanitation. Locations where such activities were legally permitted for 14 days at a time were just minutes away outside the city limits. Infractions would be handled initially with warnings and a discussion of other options. Enforcement would not be pursued unless there was continued non-compliance.

Council Member Kirby stated while that might be current policy, it could change in the future.

Mr. Scully stated the ordinance specifically stated that no one would be arrested for violation unless they continued to engage in such conduct after a warning.

Mayor Joens opened the floor to the public. There were no public comments.

Council Member Pratt moved to adopt Ordinance Number 539. The motion was seconded by Council Member Norman, and carried with a dissenting vote by Council Member Elinski.

Mayor Joens asked the City Clerk to read Ordinance Number 539 by title only.

ORDINANCE NUMBER 539

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AMENDING THE MUNICIPAL CODE OF THE CITY OF

COTTONWOOD BY ADDING A NEW CHAPTER 8.48, CAMPING WITHIN THE CITY LIMITS, TO TITLE 8, HEALTH AND SAFETY.

CONSENT AGENDA--The following items are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Council Member or a citizen so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.

ACCEPTANCE OF GRANT FROM THE ARIZONA DEPARTMENT OF HOMELAND SECURITY FOR SWAT TRAINING AS IT PERTAINS TO THE NATIONAL INCIDENT MANAGEMENT SYSTEM

ACCEPTANCE OF GRANT FROM THE ARIZONA DEPARTMENT OF HOMELAND SECURITY AS IT PERTAINS TO THE NATIONAL INCIDENT MANAGEMENT SYSTEM FOR THE PURCHASE OF NIGHT VISION GOGGLES FOR THE POLICE DEPARTMENT SPECIAL WEAPONS AND TACTIC TEAM (SWAT)

LIQUOR LICENSE APPLICATION FOR MIGUEL ESPARZA SANTANA FOR THE EL TOREO RESTAURANT LOCATED AT 2181 HIGHWAY 89A

Mayor Joens asked if any Council Member or any member of the public wished to pull an item from the consent agenda for discussion. No one asked to do so.

Council Member Norman moved to approve the consent agenda. Vice Mayor Pfeifer seconded the motion, which passed unanimously.

NEW BUSINESS--The following items are for Council discussion, consideration, and possible legal action.

RESOLUTION NUMBER 2423--ARIZONA, AUTHORIZING THE PURCHASE OF REAL PROPERTY FROM THE FOXWORTH-GALBRAITH COMPANY, KNOWN AS YAVAPAI COUNTY ASSESSOR'S PARCEL NUMBER 406-43-008

Mr. Lueder stated at the last Council meeting approval was given for an offer to be made on the Foxworth-Galbraith property, and the offer had been accepted. A sales contract had been drafted and signed off on by the city attorney. Staff requested approval by the Council of the resolution to enable the purchase of the property and to authorize the Mayor to sign the purchase contract. Approval would open a 20-day escrow period. The change of ownership was expected to take place during that 20-day period.

Council Member Pratt asked what the lease payments were on the existing facility the utility department occupied.

Mr. Lueder stated the city paid \$3,400 per month, plus utilities. The rate would increase to \$3,700 per month in April. The facility was costly and inadequate.

Council Member Kirby asked when the new facility would be occupied.

Mr. Lueder stated it would not be before August or September. Staff had prepared a statement of qualifications to enable work to start right away. An architect would have to be approved by the Council. Designs would be presented at a work session and the city would then put out bids for the project.

Council Member Kirby asked if a meeting with the architect could be arranged so the Council could ask questions regarding aspects they would like to see included.

Mr. Lueder stated it could be arranged if the Council so desired. Staff had conceptualized what it wanted to do and the police department had expressed an interest in putting an evidence building on the site.

Council Member Kirby stated a Council meeting would not be necessary if he could arrange to discuss his opinions.

Mr. Lueder stated staff was looking for a lot of input. His staff and representatives of the police department would work together.

Mayor Joens opened the floor to the public. No one chose to comment on this issue.

Council Member Kirby moved for the adoption of Resolution Number 2423. Council Member Elinski seconded the motion, which passed unanimously.

Mayor Joens asked the City Clerk to read Resolution Number 2423 by title only.

RESOLUTION NUMBER 2423

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE PURCHASE OF REAL PROPERTY FROM THE FOXWORTH-GALBRAITH COMPANY, KNOWN AS YAVAPAI COUNTY ASSESSOR'S PARCEL NUMBER 406-43-008.

ORDINANCE NUMBER 540--AMENDING THE CITY OF COTTONWOOD ZONING ORDINANCE BY AMENDING SECTION 405. B., DEFINITIONS BY ADDING A NEW DEFINITION FOR SIGN, WALKING; ADDING A NEW SECTION 405. E. 13., SIGN, WALKING; ADDING A NEW SUBSECTION J. TO SECTION 405. D. PERMITS; AND AMENDING SECTION 405. E. 10., OFF-SITE ADVERTISING BY DELETING SECTION 405. E. 10., IN ITS ENTIRETY AND ADDING A NEW SECTION 405. E. 10.: FIRST READING

Mr. Scully stated this would be the first reading of an amendment to the Zoning Ordinance. It had been approved by the Planning & Zoning Commission in their meetings held in October and November. The Council considered the matter at its meeting held on December 9. It was based on a State law approved last May which required municipalities to allow sign walkers. Municipalities could adopt reasonable restrictions regarding time, place, and manner for such sign walkers. Reasonability addressed health and safety such

as that vehicle visibility should not be blocked, streets should be kept clear, and there should be no disruption of other commercial activities. The ordinance allowed the use of sign walkers on sidewalks in front of the business doing the advertising. There was an 8-foot height limit. Like other signs, it would require a sign permit. Exemptions would be allowed for political and fund raising events.

Council Member Elinski stated whether the "Cuppie" sign walker would be allowed on the sidewalks and where else he would now be allowed.

Mr. Scully stated anywhere around the shopping plaza where his business was located.

Council Member Elinski asked about the permissibility of charging permit fees for freedom of speech.

Mr. Horton stated discussion had determined that charging a fee was permissible for this activity.

Mayor Joens opened the floor to the public. No one chose to speak.

Mayor Joens asked the City Clerk to read the first reading of Ordinance Number 540 by title only.

ORDINANCE NUMBER 540

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AMENDING THE CITY OF COTTONWOOD ZONING ORDINANCE BY AMENDING SECTION 405.B.DEFINITIONS BY ADDING A NEW DEFINITION FOR SIGN WALKING; ADDING A NEW SECTION 405.E.13., SIGN, WALKING; ADDING A NEW SUBSECTION J. TO SECTION 405.D.PERMITS; AND AMENDING SECTION 405.E.10., OFF-SITE ADVERTISING BY DELETING SECTION 405.E.10., IN ITS ENTIRETY AND ADDING A NEW SECTION 405.E.10.

REQUEST OF SUPPORT FOR THE NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION AUTHORITY'S (NAIPTA) REGIONAL PURSUIT OF FEDERAL TRANSIT FUNDING THROUGH THE ECONOMIC STIMULUS PACKAGE & APPROVAL OF NAIPTA RESOLUTION NUMBER 09-001

Mr. Bartosh stated a request had been received from our transit partner NAIPTA to support their interest in a portion of the stimulus package grant funds from the federal government.

Mr. Jim Wagner, of 2300 Huffer Lane, Flagstaff, representing NAIPTA, stated this type of funding was an opportunity for transit growth, particularly since other funds could not be guaranteed in the current economic climate.

Mayor Joens asked if there was any comment from the public. There was none.

Council Member Norman moved to approve Resolution Number 09-001. The motion was seconded by Vice Mayor Pfeifer, and passed unanimously.

YAVAPAI LIBRARY NETWORK PARTICIPATING LIBRARY AUTOMATION AGREEMENT & RATIFICATION OF REVISED RULES OF NETWORK OPERATION

Mr. O'Neill stated the Yavapai Library Network had 40-some members, including schools, museums, hospitals, public libraries, and colleges. Its goal was the implementation of the Integrated Library System (ILS) within its funding formula allowing access to several times the volume of our library which had 97,000 titles.

Council Member Elinski asked if we had to supply staff for the various committees.

Mr. O'Neill stated, yes. The success of the network depended on local participation and contacts.

Council Member Chapman asked what the typical cost was.

Mr. O'Neill stated \$30,000 was allocated for the network which included a \$13,000 assessment for the operating system, courier service at \$18 per day, internet filtering, and other user costs. Migrating to a new platform could be funded from reserves designated for this purpose with the network's finance agency.

Mayor Joens asked if this had anything to do with books on line. Could we download books?

Mr. O'Neill stated, no. The cost was prohibitive because we had to guarantee an expenditure of \$4,000 for three or four years without right of ownership. The cost of electronic editions of titles was many times that of a paper copy and downloading was restricted to one patron at a time.

Council Member Pratt expressed his support for the network.

Council Member Kirby moved to authorize the Mayor to execute the intergovernmental agreement with the Yavapai Library Network on behalf of the City of Cottonwood. The motion was seconded by Mayor Joens, and passed unanimously.

SEVENTEENTH AMENDMENT TO THE COTTONWOOD AIRPARK, INC., GROUND LEASE TO CORRECT THE LEGAL DESCRIPTION OF LOT 103 OF COTTONWOOD AIRPARK

Ms. Jiménez stated last summer Cottonwood Airpark, Inc. requested approval of the 16th amendment to the ground lease to clarify the legal description to Lots 101 and 102. After the transfer of the assignment of Lots 101 and 102, it was discovered that the legal description of Lot 103 had been affected, which required clarification. Approval of the 17th amendment was requested to clarify the legal description of Lot 103.

Mr. Bob Oliphant, of 330 Desperado Drive, stated he had circulated pictures of the property

in question which he called a “ripoff” of the City because the lease payments were so small and no public benefit resulted from the current lease. He believed the lease violated the State Constitution because the city was granting a gift of the property lease.

Mr. Horton stated the City owed contractual duties to the leaseholders and the current arrangements did not violate the constitution. Any changes would have to be negotiated substantively. He did not believe that altering a lot description was the appropriate time to initiate such negotiations for a long term commitment begun in 1983.

Council Member Kirby asked if the lease was for 25 years or 50 years.

Mr. Costello stated the lease was for 100 years. There was a base period of 50 years and an add-on period of fifty years.

Council Member Pratt stated that tonight the issue was not about the lease terms but of redefining a lot description. The lease issue should be revisited at another time.

Council Members Elinski and Kirby agreed with Council Member Pratt about revisiting the lease terms later.

Mr. Horton stated the original leases did not have conditions of execution of economic development or public purpose. If they had, the City would be in a stronger position. It could seriously look at this in the context of a leasehold interest transfer but the city’s duty was to not unreasonably consent to a transfer. If the transferor had not met the city’s expectation of fostering economic development in 25 years, then that might be the time to do that.

Council Member Pratt stated this matter should be revisited to determine whether there would be an option, if there have been requirements that have not been fulfilled, to rescind leases and rewrite them for the city’s benefit while avoiding potentially losing actions for breach of contract.

Council Member Pratt moved to approve the 17th amendment to the Cottonwood Airpark, Inc. ground lease. Council Member Kirby seconded the motion, which carried with a dissenting vote by Mayor Joens, who stated she did so to oppose what had gone on in these situations for so many years.

Mr. Bartosh stated he would work with the city attorney to determine a date this matter could be brought back to the Council for discussion.

ORDINANCE NUMBER 541-AMENDING THE MUNICIPAL CODE OF THE CITY OF COTTONWOOD, ARIZONA, BY AMENDING CHAPTER 2.96, AIRPORT COMMISSION, OF TITLE 2, ADMINISTRATION AND PERSONNEL.; FIRST READING.

Mr. Bartosh stated he was presenting changes to the ordinance that allowed the Council to create an Airport Commission. It was to make clearer the Commission’s authority and responsibility to the City Council. Membership was to be reduced to five instead of seven.

Mr. Al Gradajan, Airport Commission Chairman, stated that neither the Council nor the Commission followed Robert's Rules, and reference to them in the original ordinance creating the Commission had caused uncertainty. Reducing the number of Commission members would allow the creation a more efficient commission.

Mr. Horton stated this ordinance accomplished the important clarification of the potential for misconstruction in the original enabling ordinance regarding the role of the Airport Commission as an advisory body to the Council. It was not to be in any context a policy or rule making body.

Mayor Joens stated the Council did not intend, when this ordinance was originally approved, to give away their rights to another body to make decisions.

Mr. Horton stated the law prohibited the Council from delegating its legislative authority.

Mayor Joens stated some members of the Commission had interpreted it that way. Now, this would make it very specific and it should be a much more comfortable feeling for the Commission because they would know where they stood and the Council would be in a much more comfortable position.

Mayor Joens asked if there was any public comment. There was none. She asked the City Clerk to read the first reading of Ordinance 541 by title only.

ORDINANCE NUMBER 541

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AMENDING TITLE 2, ADMINISTRATION AND PERSONNEL, OF THE MUNICIPAL CODE OF THE CITY OF COTTONWOOD; BY ADDING A NEW CHAPTER 2.96, AIRPORT COMMISSION.

CLAIMS & ADJUSTMENTS

Mayor Joens moved to pay the claims and adjustments. The motion was seconded by Council Member Norman, and passed unanimously.

ANNUAL REVIEW OF THE CITY MANAGER—PURSUANT TO A.R.S. § 38-431.03.(A)(1) DISCUSSION OR CONSIDERATION OF EMPLOYMENT, ASSIGNMENT, APPOINTMENT, PROMOTION, DEMOTION, DISMISSAL, SALARIES, DISCIPLINING OR RESIGNATION OF A PUBLIC OFFICER, APPOINTEE OR EMPLOYEE OF ANY PUBLIC BODY, EXCEPT THAT, WITH THE EXCEPTION OF SALARY DISCUSSIONS, AN OFFICER, APPOINTEE OR EMPLOYEE MAY DEMAND THAT THE DISCUSSION OR CONSIDERATION OCCUR AT A PUBLIC MEETING; THE COUNCIL MAY VOTE TO CONVENE INTO EXECUTIVE SESSION SUBJECT TO THE CITY MANAGER'S RIGHT TO COMPEL THE COUNCIL TO DISCUSS THIS MATTER IN OPEN MEETING.

Mayor Joens stated the Council complied with the requirements to send a letter to Mr.

Bartosh, giving him 24 hours notice as to whether he wanted to hold this meeting in public.

Mr. Bartosh indicated that discussion under executive session was acceptable.

Mayor Joens made a motion to resolve into executive session. Council Member Elinski seconded the motion, which passed unanimously.

At the conclusion of the executive session, Council Member Kirby moved to resolve out of executive session. Council Member Norman seconded the motion which passed unanimously.

Council Member Pratt moved to provide a merit pay increase of five percent to the City Manager. Council Member Kirby seconded the motion, which passed unanimously.

ADJOURNMENT

Vice Mayor Pfeifer moved to adjourn. Council Member Norman seconded the motion, which passed unanimously. The regular meeting adjourned at 8:25 p.m.

Diane Joens, Mayor

ATTEST:

Marianne Jiménez, City Clerk