

Minutes Formal City Council Meeting May 14, 2009

Minutes of the Formal Council Meeting of Thursday, May 14, 2009, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Municipal Building, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Hugh Hallman
Vice Mayor Shana Ellis
Councilmember P Ben Arredondo
Councilmember Mark W. Mitchell
Councilmember Joel Navarro
Councilmember Onnie Shekerjian
Councilmember Corey D. Woods

Mayor Hallman called the meeting to order at 8:05 a.m.

1. Councilmember Mitchell gave the invocation.
2. Mayor Hallman led the audience in the **Pledge of Allegiance**.

3. MINUTES

A. Approval of Council Meeting Minutes

Motion by Councilmember Shekerjian to approve the following **COUNCIL MEETING MINUTES**.
Second by Councilmember Woods. Motion passed unanimously on a voice vote.

1. Council's Issue Review Session – April 23, 2009 [20090514clrkck01.pdf](#)
2. Council's Neighborhood Parks Rehabilitation & Maintenance Committee – April 15, 2009
[20090514nprm01.pdf](#)
3. Council's Sports, Recreation, Arts & Cultural Development Committee – March 4, 2009
[20090514srac01.pdf](#)

B. Acceptance of Board & Commission Meeting Minutes

Motion by Councilmember Shekerjian to accept the following **COMMITTEE & BOARD MEETING MINUTES**.
Second by Councilmember Woods. Motion passed unanimously on a voice vote.

4. Development Review Commission – March 10 & 24, 2009 [20090514drc01.pdf](#)
[20090514drc02.pdf](#)
5. Rio Salado Advisory Commission – March 24, 2009 [20090514rsac01.pdf](#)
6. Special Events Task Force – May 5, 2009 [20090514setf01.pdf](#)
7. Transportation Commission – March 10, 2009 [20090514tc01.pdf](#)

4. REPORTS AND ANNOUNCEMENTS

A. Mayor's Announcements

- a. Mayor Hallman announced that in honor of **Public Works Week**, we are delighted to have a proclamation created that appropriately honors the City's Public Works employees. He read the proclamation that designated May 17- 23, 2009, as Public Works Week in Tempe, Arizona. He presented the proclamation to **Glenn Kephart**, Public Works Manager.
- b. Mayor Hallman stated that the Tempe Fire Department, in cooperation with Tempe St. Luke's Hospital, PMT Ambulance, and with the support of the Tempe Police Department provide the emergency medical services and transportation for the residents and visitors 24 hours per day, seven days a week and the Fire Department and PMT Ambulance respond to over 15,000 calls for EMS service each year. He read a proclamation designating May 17-23, 2009, as **National Emergency Medical Services Week** in Tempe, Arizona. He presented the proclamation to **Fire Chief Cliff Jones, Police Chief Tom Ryff, President of PMT, Bob Ramsey, and Elizabeth Krecker, representative of Tempe St. Luke's Hospital.**

B. Manager's Announcements

- Charlie Meyer stated that the City of Tempe staff has the ability to do some extraordinary things and make them look ordinary. Yesterday's events that occurred with ASU and the President of the United States coming to Sun Devil Stadium went off without a hitch. All of the problems were handled. Most cities would be overwhelmed with the responsibility of providing support for protection of the President, support for protecting all of the people at the event, providing transportation for everyone in and out, especially when that transportation was completely interrupted by the President's motorcade, and on top of that, with 100+ degree temperature with people standing in the sun for hours, our Fire Department provided medical support to a very large number of people without any significant adverse consequences. They made it look easy. There aren't very many cities that could do what our employees did yesterday. He highly commended the City employees who were involved in the events and made it a wonderful event for the ASU graduates and those who attended.

5. AGENDA

All items in these minutes identified with an asterisk (*) are **public hearing items**. All items listed on the agenda are approved with one council action. Items scheduled for Introduction/First Public Hearing will be heard but not adopted at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon at this meeting.

Mayor Hallman announced consideration of the **AGENDA**.

Mayor Hallman asked Jerry Hart, Financial Services Manager, to explain the reason for the emergency clause in Item #19.

Mr. Hart introduced Sarah Smith representative of the City's bond counsel, Gust Rosenfeld, to address the question.

Sarah Smith responded that although the City Charter has a provision that allows for all resolutions to be passed effective immediately, because the bond market, particularly this bond market, requires certainty, counsel thought it

was worthwhile to put an emergency clause in the resolution. It makes it perfectly clear that this resolution, upon approval of the Council, will be effective immediately.

Mayor Hallman asked why the grants were not listed in Item #20.

Amber Wakeman responded that the City applies as a group.

Mayor Hallman requested that staff list the separate grant applications in the future.

Motion by Councilmember Woods to approve the Agenda as amended (Item #17 was removed for separate consideration). Second by Councilmember Shekerjian. Motion passed on a hand vote 7-0.

A. Miscellaneous Items

8. Approved the Report of Claims Paid to be filed for audit for the month of April, 2009.
COMMENTS: A copy of the detailed claims report may be obtained by contacting the City Clerk's Office.
9. Approved **Contract #2007-15A**, an Amendment to the Employment Agreement for Janet R. Hort as City Clerk.
COMMENTS: Annual salary increase for City Clerk and approval of extending vacation accrual limits through June 30, 2010.
DOCUMENT NAME: [20090514casv01.pdf](#) **POSITIONS AUTHORIZED (0302-01)**
- *10. Held a public hearing and recommended the approval of a Series 12 restaurant liquor license for Tempe Boston's LLC dba Boston The Gourmet Pizza, 400 West University Drive.
COMMENTS: Charbel El Harouni is the Agent for this application.
DOCUMENT NAME: [20090514LIQ01.pdf](#) **LIQ LIC (0210-02)**

B. Award of Bids/Contracts

11. Approved **Contract #2009-88**, a six-month contract with Mead Westvaco Specialty Chemicals for the purchase of Aqua Nuchar powdered activated carbon to be used by the Water Utilities Department
COMMENTS: (#WUD09-148-01) Total cost for this contract shall not exceed \$1,600,000.
DOCUMENT NAME: [20090514fsts03.pdf](#) **PURCHASES (1004-01)**
12. Approved **Contract #2008-138E**, job order no. 5 to replace the Kiwanis Park Sister Cities restroom building through the existing job order contract with Foresite Design & Construction, Inc. and approval of a project contingency.
COMMENTS: Total amount for job order no. 5 is \$263,418 and the amount of the project contingency is \$26,000.
DOCUMENT NAME: [20090514PWTG01.pdf](#) **KIWANIS COMMUNITY PARK (0706-25)
PROJECT NO. 6301064**
13. Approved one-year renewal of contracts with Chematrix, LLC, Lakepointe Environmental Group,

Inc., and Siemens Water Technologies Corporation for the purchase of odor control chemicals for the Water Utilities Department.

COMMENTS: (WUD08-154-01, 02 and 03) Total cost for these contracts shall not exceed \$200,000.

DOCUMENT NAME: [20090514fst02.pdf](#) **PURCHASES (1004-01)**

14. Approved a one-year renewal of a contract with Somerset Landscape Maintenance, Inc., for landscape maintenance services.

COMMENTS: (T09-002-02) Total amount not to exceed \$720,000.

DOCUMENT NAME: [20090514fslq01.pdf](#) **PURCHASES (1004-01)**

- C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action.

- *15. Introduced and held the **first public hearing** for a Historic Overlay District for DATE PALM MANOR. **The second public hearing is scheduled for May 28, 2009.**

COMMENTS: (PL090049) (multiple property owners; Tempe Historic Preservation Office, applicant) consisting of thirty-eight (38) lots with single-family homes, all within approximately 7.84 acres, located at 2106 S. Mill Avenue; 5-137 W. Palmcroft Drive; 2015-2030 S. Dromedary Drive; 32-121 W. Palmdale Drive; and 2019-2025 S. Dateland Drive, in the R1-6, Single-Family Residential District and the R-3, Multi-Family Residential Limited District. The request includes the following:

HPO09001 (Ordinance No. 2009.12) – Historic Overlay District consisting of thirty-eight (38) lots.

ZOA09002 (Ordinance No. 2009.12) – Code Text Amendment for Section 5-502 of the Zoning and Development Code.

DOCUMENT NAME: [20090514dsrl01.pdf](#) **PLANNED DEVELOPMENT (0406)**

- *16. Introduced and held the **first public hearing** for a Historic Designation for ELLIOTT (GARBINSKI) HOUSE, located at 1010 South Maple Avenue. **The second public hearing is scheduled for May 28, 2009.**

COMMENTS: (PL090050) (Justin Garbinski, property owner; Tempe Historic Preservation Office, applicant) consisting of a 1929 Bungalow-style home on approximately 0.22 acres, located at 1010 South Maple Avenue, in the R-2, Multi-Family Residential District. The request includes the following:

HPO09002 (Ordinance No. 2009.13) – Historic Designation consisting of one (1) lot.

DOCUMENT NAME: [20090514dsrl02.pdf](#) **PLANNED DEVELOPMENT (0406)**

- *17. ***THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.***

Introduced and held the **first public hearing** for an ordinance to amend Chapter 32 of the Tempe City Code, relating to towing by amending Sections 32-1, 32-2, 32-4, 32-5, and 32-6, relating to towing fees. **The second public hearing is scheduled for May 28, 2009.**

PUBLIC HEARING

Pete N. Colantoni, Mesa. He addressed Council as a former vice chairman of the City of Tempe's Towing Ad Hoc Committee. Approximately four years ago under this Council's direction, the Ad Hoc Committee convened for eighteen

months to write what has proved to be the most comprehensive towing ordinance in the State. This ordinance was written with the help of all concerned parties who would be affected by any changes to an ordinance that had not been addressed since 1982. This Council and that committee should be commended for a fine job, given all the issues and changes over the last twenty-five years. He asked why, after so much hard work, we would allow a couple of individuals that did not have the knowledge, the history, the entire cause and effect or the input of everyone concerned to make changes to the best written ordinance in the State. He is available to participate in those committee hearings again and would be willing to share his knowledge and his experience with a committee that is willing to accept input. He urged Council not to settle for any less than what we already have. Let's not go backwards.

David Richardson, Tempe, appearing on behalf of Maple Avenue Investments which owns property at 24 W. Fifth Street. He agreed with the previous speaker who commented that there had been an efficient and effective ordinance in place for some time and that it need not be modified. This building, as a result of other development nearby, street closures, variances to other properties, and its accessibility to popular locations such as Starbuck's and the post office, has become the only parking lot for many users of nearby locations. It is private property, however. The ordinance before the Council seeks to regulate a private property owner's right and to restrict that right to protect private property rights and to allow, in this case, trespassers to use property without permission when there is plainly stated signage that tells people not to park on the premises.

Mayor Hallman asked Mr. Richardson if he is arguing that this is a private property right and Council is seeking to regulate private property yet the City does that currently.

Mr. Richardson agreed, according to the existing ordinance. In particular, Section 32.4 requires a private towing company serving a private property owner to give notice to the Tempe Police Department before it immobilizes or tows a vehicle from private property. Currently the ordinance requires the towing company to give the Police Department notice of towing within one hour after the towing. The announcement by staff to the Council states that this is an ordinance to regulate fees. It actually does much more than that. This is an ordinance to regulate notification. The crux of the notification issue is that if a private property owner has to give notification to the Police Department before it can immobilize a trespasser's vehicle, it will be deprived of immediate relief. The property owner is entitled to immediate relief to keep trespassers from accessing and remaining upon its property.

Mayor Hallman asked who owns the building.

Mr. Richardson responded that the building belongs to Maple Avenue Investments.

Mayor Hallman clarified that Maple Avenue Investment's principal called the towing company to have a car towed.

Mr. Richardson responded that they have a contract with a towing company.

Mayor Hallman clarified that the towing company shows up and tows any car parked in the parking lot.

Mr. Richardson responded that they are authorized to come to that location and tow any car which is not authorized to park there and is trespassing.

Mayor Hallman asked if he thought it was unreasonable to have the towing company call the Police Department and notify them that they are taking a car so that it doesn't inadvertently get reported as stolen.

Mr. Richardson agreed because he maintains offices there and this evening he was informed that a vehicle was towed from the private space he leases. The lease agreement is an obligation of his client to him and his client is duty bound to honor that obligation. Tonight, someone decided to use his private parking space and the contractor towed the vehicle from his private parking space.

Mayor Hallman asked if it was towed before he knew it was there.

Mr. Richardson responded that vehicles that park in this location have a sticker if they are authorized to park there.

Mayor Hallman asked if he knew there was a car parked in his parking space.

Mr. Richardson responded that he did not know it was there.

Mayor Hallman clarified that Mr. Richardson thought it was unreasonable for the towing agent to make a phone call to say he is towing a vehicle. That would unreasonably delay the opening of that parking space.

Mr. Richardson did not think it was unreasonable to make a phone call, but it is unreasonable to require a phone call before immobilizing. Making a phone call within the hour after towing is reasonable. It has been working.

Mayor Hallman stated that the reason this has come up is that we have ended up with vehicles that have been believed to be stolen so resources are spent searching for vehicles that turned out to be towed.

Mr. Richardson disagreed.

Mayor Hallman stated that he based his understanding on a staff briefing.

Mr. Richardson added that it took the towing company fifteen minutes to get a call through to the Tempe Police Department. If the City is going to pass an ordinance that requires a call before towing, that's at least fifteen minutes for each trespassing vehicle that parks in that lot. The average time is not fifteen minutes, but is more like twenty minutes, or on weekends or when there is a large event, the average time would be more like 45 minutes. If it takes that long, a property owner does not have a reasonable remedy to protect parking or other property rights. The towing companies provide a service to private property owners. If the City is not capable of enforcing trespassing ordinance as it relates to motor vehicles, then private property owners ought to have the right to enforce it. Enforcement means effective enforcement, not delayed enforcement, not conditional enforcement, not enforcement with restrictions that make it impossible to have the means for remedy. If the City requires prior notice, it will take 15, 20 or 45 minutes to get the message to the Police Department. He has no problem with calling within the hour after immobilization. The problem is that by making the call beforehand, all the trespassers are enabled to have 15, 20 or 45 minutes of free parking. That disturbs the obligation of the landlord to park his contracted tenants in that location 24 hours per day. The City Council has signs designating their own parking spaces 24 hours per day. Landlords should have the same right on their property.

*****FIRST PUBLIC HEARING ONLY, NO COUNCIL ACTION TAKEN. THE SECOND PUBLIC HEARING IS CURRENTLY SCHEDULED FOR MAY 28, 2009.**

D. Ordinances and Items for Second Hearing/Final Adoption

- *18. Held the **second public hearing** and adopted ORDINANCE NO. 2009.17 and ORDINANCE NO. 2009.22 authorizing the Mayor to execute Power Distribution Easements with Salt River Project Agricultural Improvement and Power District (Job #KJ3-10906 & Job #KJ6-271) for the Energization of the City of Tempe/Valley Metro Rail Employee Parking Lot located at Apache Boulevard and the Price/101 Freeway.

DOCUMENT NAME: [20090514PWWS02.pdf](#) SALT RIVER PROJECT (0113-03)

E. Resolutions

19. Approved RESOLUTION NO. 2009.40 authorizing the execution and delivery of certain agreements; approving an official statement; approving the issuance and sale of Excise Tax Revenue Obligations (not to exceed \$24,500,000), Series 2009; authorizing the taking of all other actions necessary for the immediate consummation of the transactions contemplated; and **declaring an emergency.**

DOCUMENT NAME: [20090514fsjh01.pdf](#) BOND SERVICE ADMINISTRATION (0203-01)

20. Approved RESOLUTION NO. 2009.43 approving the submission of City of Tempe applications for Gila River Indian Community State Shared Revenue Grant Funds.

DOCUMENT NAME: [20090514graw01.pdf](#) GILA RIVER INDIAN COMMUNITY (0109-32)

21. Approved RESOLUTION NO. 2009.44 approving Tempe High School to apply for gaming funds from the Gila River Indian Community.

DOCUMENT NAME: [20090514graw02.pdf](#) GILA RIVER INDIAN COMMUNITY (0109-32)

22. Approved RESOLUTION NO. 2009.45 approving Childsplay to apply for gaming funds from the Gila River Indian Community.

DOCUMENT NAME: [20090514graw03.pdf](#) GILA RIVER INDIAN COMMUNITY (0109-32)

23. Approved RESOLUTION NO. 2009.42 approving **Contract #2009-91**, the Third Amendment to the Development Agreement with AUTOPLEX OWNERS ASSOCIATION, an Arizona nonprofit corporation, with regard to the Landmark Identification Feature along I-10 corridor between Elliot and Warner.

DOCUMENT NAME: [20090514cdcm01.pdf](#) DEVELOPMENT PROJECT (0406)

6. PUBLIC APPEARANCES

SCHEDULED PUBLIC APPEARANCE

- DELETED

UNSCHEDULED PUBLIC APPEARANCE

- **Carol Martsch**, representing the SEIU. She prefaced her remarks by saying this was not a personal attack in any way. The fact that Jan Hort was not being paid her fair due should have been taken care of long before now. To put this before the Council for approval at this time when we are looking at every way possible to save

people's jobs, when we are being asked to give up all of our raises, all of our STEP increases, all would-be market adjustments for the next three to five years, is poor timing. The SEIU has been actively involved in trying to save as many jobs as possible throughout the City, has willingly given up market adjustments which should have taken place in January, and is still being asked to contribute more. We are talking about people where a little more out of their paychecks really hurts. She is not arguing against the raise, but she is arguing against the timing. It is bad precedence to set. She has a hard time explaining that we have to do more adjustments to our benefits package, and they know this is probably not the last time this will happen.

Mayor Hallman concurred with her first comment that this should have been taken care of before now. If it would help to explain this to employees, he would be glad to provide the facts. If the City Clerk would have retired on June 30, 2009 and received her market adjustments, she would have received a significant package, larger than the amount of money that would be supplied in this instance. City employees received adjustments of the ranges in 2007 and 2008. Ms. Hort did not because of arrangements they had and they are now trying to make up for. Ms. Hort, in 2007 based on the 75th percentile as all other employees are receiving, would have had a salary of \$111,853. We kept her at \$96,232 because we were working to make the department cost less and she agreed to it. She deferred \$15,600 in 2007, and in 2008, her salary was set at \$103,436. Her 75th percentile salary would have been \$119,812. She gave up for that year \$16,400. Those two years total \$32,000. Her current salary, if we took the range adjustment for this year, would be \$121,000. In agreement that she would not retire on June 30, 2009, because she deferred \$32K in prior salary, we have instead, as we do with our other appointed employees, negotiated a specific contract. In this instance, Ms. Hort very generously agreed to continue to help the City she has dedicated her life to. We did not want to lose that expertise with an election coming. While I appreciate the timing may look bad, in honor of the fact that this employee deferred \$32K in two prior years, without including the adjustment for 2009 and that she chose not to retire on June 30, 2009, like many employees, this has allowed us to keep the expertise we need in the Clerk's Office and we have still saved money as the retirement incentive is capped at \$50,000.

Ms. Martsch added that it flies in the face of those left behind. They won't get any raises for the next few years and we are still looking for ways to ding them today. It is a slap in the face when we are talking about economic crisis and yet we come up with this. It is very sad. It puts a cloud over anything that we are trying to do on a bargaining basis because apparently some are more equal than others. She was sad and disappointed that it has come to this.

7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

- Councilmember Arredondo asked the City Manager to congratulate Public Works for the outstanding job in cleaning up the City-owned vacant lot and were very responsive to citizen requests. Regarding the outstanding job during the President's visit yesterday, that is just the Tempe way. We expect it and they came through with flying colors. He asked that a discussion be held at an IRS regarding the loss of the historical position at the Museum and the organizational details.
- Councilmember Mitchell thanked the staff for all of their hard work with the event yesterday.
- Councilmember Shekerjian thanked Lisa Collins and the Public Works staff that set up an opportunity to visit Mr. Singh's composting farm. It is a concept being considered by the City for composting green waste for use in the parks. She also thanked the Connections Café at the Library for their great service and she encouraged others to stop by.
- Mayor Hallman stated that he had the privilege of attending a concert at McKerny on May 11th. It was a concert for heroes and he watched young people perform in honor of our police officers and firefighters and others. Jill

Osborn, director of that orchestra, with her ASU intern, did an amazing job. This orchestra of middle-school participants sounded about as good as any high school orchestra.

Meeting adjourned at 8:50 p.m.

I, Jan Hort, the duly-appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be the minutes of the Formal City Council meeting of May 14, 2009, by the Tempe City Council, Tempe, Arizona.

Hugh Hallman, Mayor

ATTEST:

Jan Hort, City Clerk

Dated this _____ day of _____, 2009.