

Minutes of the Work Session held October 11, 2010 at 6:00 p.m. in the Council Chambers.

**MEMBERS PRESENT**

Mayor Lopez Rogers and Council Members

Jim McDonald, Vice Mayor  
Stephanie Karlin  
Frank Scott  
Charles Vierhout  
Ken Weise

**EXCUSED ABSENCE**

Jim Buster

**ALSO PRESENT**

Charlie McClendon, City Manager  
David Fitzhugh, Assistant City Manager  
Rogene Hill, Assistant City Manager  
Paul Adams, Fire Chief  
Kevin Kotsur, Police Chief  
Sue McDermott, City Engineer  
Andrew McGuire, City Attorney  
Carmen Martinez, City Clerk

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**1) ROLL CALL BY THE CITY CLERK**

**2) FIREWORKS ORDINANCE**

City Council receives information and gives direction to staff regarding the development of a fireworks ordinance for the City of Avondale.

Mr. McClendon acknowledged that the sale of fireworks has traditionally been banned in Arizona, but the Legislature passed a law this year allowing the sale of certain consumer fireworks. Cities can regulate the use, but not the sale of these fireworks.

Chief Adams requested Council direction on a potential fireworks use ordinance in Avondale. House Bill 2246 goes into effect on December 1 and it changed State laws regarding fireworks. The law restricts the sale of fireworks to persons 16 years and older. It continues to allow Federally deregulated items referred to as novelties, and continues to prohibit firecrackers and aerial fireworks. Cities are allowed to regulate the use of consumer fireworks within their limits. Sales will be regulated by NFPA Standard 1124, and the State Fire Marshall is required to adopt the 2006 version. Permissible consumer fireworks include various types of sparklers, cylindrical fountains, cone fountains, multiple tube firework devices, illuminating torches, and ground spinners. Helicopter spinners are still prohibited. Total pyrotechnic composition may not exceed 200 grams on a single base. There are no restrictions on who can sell fireworks.

Chief Adams noted that the language of the regulation regarding the sale of fireworks is confusing and it is likely that legal challenges will be filed. The County may not regulate sale or use in unincorporated areas, except when there is a reasonable danger of wildfires. While sales tax revenue is expected to increase, so is the number of fires, injuries, vandalism, crime related to temporary stands, and the potential for noise complaints. In 2008, there were over 22,000 reported fires related to fireworks, including 1,400 structure and vehicle fires. There were 40 civilian injuries nationwide, and \$42 million in direct

property damages last year. The majority of the injuries are burns to the extremities. Some people use fireworks in ways they were not intended for, such as vandalism. Pets do not like fireworks. Enforcement for illegal fireworks will still be allowed. An ordinance banning use while sales are allowed would be very difficult to enforce and very resource intensive. The international fire code can still be used with respect to the tent.

Chief Adams presented various options for Council's consideration. The City could choose to do nothing, focusing strictly on consumer education. There are several ways to restrict use, including a wholesale ban, restricting use to certain periods of time or to certain locations, restricting use from certain locations, or allowing use with minimum age and adult supervision. An alternative could be to focus on misuse by providing penalties when an emergency response, property damage, or injury results. The League of Cities has developed a very generic model ordinance. Most cities have indicated their intent to ban the use of fireworks. Goodyear has adopted a use ban. He said City staff recommends not restricting use, but instead penalizing the misuse of fireworks that result in emergency response, while focusing on consumer education.

In response to Mayor Lopez Rogers' inquiry, Chief Adams noted that Avondale has not had a big problem with fireworks, since they remain illegal at this point. They are, however, used within the city. Fire departments have successfully fought off this type of legislation until this past year. Council Member Scott asked whether Avondale could require purchasers to be 18 years old. Mr. McGuire responded that when the State Legislature makes a declaration, even charter cities are preempted from regulating in that area. This legislation is very unclear about zoning issues.

Council Member Scott requested the Police Chief's opinion. Chief Kotsur responded that he agreed with Chief Adams' position on this issue. Initial calls for service on New Year's Eve and July 4th are already significant for the Police Department. Council Member Scott acknowledged that their recommendation is the smart way to approach the problem. It would be impossible to ban all use of fireworks.

In response to inquiry by Council Member Vierhout, Chief Kotsur advised that the Police Department has had the ability to enforce laws in the past for possession of illegal fireworks. This legislation would certainly change things. There are many statutes on the books, and the Police Department can often only enforce them in reaction to a complaint. In response to further inquiry from Council Member Vierhout, Chief Adams cited that the City could determine penalties for the illegal sale of fireworks; for instance, to a minor under 16. The only penalty assigned at the present time is for violations on State land, for which there is a \$1,000 fine. Mr. McGuire added that the penalties in place today are the same penalties that will be in place for the new statute. Sales to minors are a small problem compared to actual use of unauthorized fireworks. Council Member Vierhout queried whether the PD would ever employ undercover stings to determine whether stands are selling fireworks to minors. Chief Kotsur advised that the Police Department would employ that tool, usually in relation to a complaint history or the types of injuries in an area.

Council Member Vierhout wondered why the State would pass a law that the State itself is exempt from, while at the same time asking that cities take on the problem. Chief Adams said illegal fireworks are easier to deal with because they can be confiscated; while illegal

use would be more challenging to prove. Chief Kotsur explained that an investigation would need to be conducted with would include interviews, evidence impound, etc. and it could take a couple of hours to determine whether a violation has occurred. Council Member Vierhout noted examples where fireworks appear to be marketed to kids indicating that parents could easily purchase fireworks for kids to use. The consumer market largely consists of families with teenagers. If used correctly, there are generally no problems. The concern is over misuse.

In response to an inquiry from Council Member Vierhout, Chief Adams said it would be impossible to predict how large of a wildfire could result from a spark caused by fireworks. It would depend on the condition of the vegetation, temperature, humidity, and resources available. Rapidly expanding fires are more common in July than January. Large wildfires are very resource intensive to fight, which is why there is such concern about State lands and National Parks.

Vice Mayor McDonald noted that there would be little point in prohibiting sales in one area if someone could get them from another city nearby. People can even buy them from the internet. Controlling the sale of fireworks is nearly impossible. He supported an ordinance with penalties involved, particularly for negligent users. The ordinance should include reasonable guidelines describing who can get them, proper usage, and public education. Roadside tents would be eyesores. He wished that the law had been stopped in the Legislature.

Council Member Karlin expressed incredulity that the law was ever passed, especially considering Arizona's susceptibility to wildfires and drought. It will be challenging for the public if cities all pass their own ordinances, because people are often not clear on where the boundaries are. She suggested that fireworks businesses should be subject to higher fees to sell in Avondale. The ordinance should focus on creating a safe environment for residents. An educational component is necessary. She queried whether the law would allow fireworks at any time of the year. Chief Adams affirmed that it would, however, fireworks companies usually limit their activities to certain times of year so the matter would regulate itself.

Council Member Karlin noted that fireworks can only be stored for a certain amount of time before becoming volatile. This fact should be part of the education effort. Chief Adams indicated the Fire Department would be responsible for education. One method would be to set up a relationship with vendors to provide safety information at the point of sale. There will always be people who misuse them, however. Council Member Karlin noted that the State protected itself by only allowing \$3 million from the State General Fund for emergency wild land fire suppression. Chief Adams clarified that the fund has been in place for many years, but the Legislature provided no additional revenue to go along with the fireworks statute.

Council Member Weise questioned whether general retailers could sell fireworks and questioned what challenges the fire department would face when responding to fires. Chief Adams indicated that the fire department always assumes that hazardous materials are present unless proven otherwise, particularly at general retailers who have a wide variety of products. At certain times of the year, it would be reasonable to assume that fireworks are

present at a building fire. Council Member Weise noted that Avondale is conveniently located for the sale of fireworks. He inquired about zoning restrictions. Mr. McGuire advised that the zoning question remains unresolved. The statute does not indicate whether it creates a free for all outside the bounds of zoning. Based on how it is written, Avondale would have a difficult time creating regulations that could prevent fireworks vendors in commercial zones. The City would potentially have to obtain the Attorney General's opinion on a couple of issues. For the moment, the presumption is that commercial establishments and their parking lots are wide open. In response to inquiry by Council Member Weise, Mr. McGuire noted there is a threat of liability from just about anything that happens, but it would be very challenging for someone to claim that the City was negligent for allowing them to do something that is allowed by State law.

Council Member Weise expressed concern that 16 year olds would be allowed to use fireworks unsupervised. He felt that the Legislature created an unclear law at a time when the State has far more pressing issues to solve. Avondale should try to restrict use as much as possible, primarily for safety and due to City resource reasons.

Council Member Scott said he would have been just fine without fireworks being legal in Arizona. This law was imposed on cities, and could result in the City expending money to defend against litigation, and public safety officials being stretched even thinner than they already are. The law should never have been passed, but since it has, the only thing Avondale can reasonably do is enact an ordinance to punish the misuse of fireworks.

In response to inquiry by Council Member Vierhout, Mr. McGuire explained that the law specifically addresses sales; there are no guidelines on how old someone has to be to use fireworks. The statute leaves it open for cities to regulate the use of fireworks within its boundaries, but the City would have to establish proof in order to enforce a law against use by minors. That does not mean that the City could not enforce an age restriction, but it would be up to Council to provide direction on the use of fireworks within the City. Council Member Vierhout suggested permitting the sale of fireworks to 16 year olds, but requiring users to be 18. Mr. McGuire defended that such an ordinance could raise questions of reasonableness. If someone were allowed to drive a car at age 16 in Arizona but had to be age 18 in Avondale, State law would pre-empt. The City has complete authority on the use of fireworks, but not the sale.

Council Member Weise asked whether there would be any distinction between a misuse of fireworks by a 16 year old and misuse by an adult. Mr. McGuire said City Council could establish a distinction, but reminded him that minors are in a different situation when it comes to assessing liability.

Vice Mayor McDonald suggested a requirement that fireworks vendors, including roadside stands, be fitted with sprinklers. Chief Adams responded that with respect to fireworks, the sprinkler ordinance does not trigger until the structure reaches 7,500 square feet. The International Fire Code cannot be used to deal with the sale. NFPA 1124 will set the parameters for the use of sprinklers.

Council Member Weise noted that since kids of any age would essentially be able to use fireworks, Council should restrict total usage. The City cannot stop sales, and there will

always be people who violate the law. He would feel guilty voting for anything less than a total ban, only to later discover that fireworks injured a five year old.

Mayor Lopez Rogers described this law as another unfunded mandate that cities have to deal with. She noted that Jerry Weiers, one of Avondale's legislators, was a sponsor of the bill. Fireworks lobbyists convinced legislators that this was the right thing to do. No consideration is given to cities, and the families and children who live in them. She felt Avondale should ban the use of fireworks. Children may already be using them now, but at least the City would not be giving permission to do so. Mr. McClendon acknowledged that a complete ban would be most similar to the current ban.

Mayor Lopez Rogers asked Council to reiterate their positions. Council Members Karlin and Vierhout favored a ban. Vice Mayor McDonald said the City could not prevent people from buying or using fireworks. He would prefer that the City express its disapproval and establish penalties against misuse, rather than institute an outright ban. Council Member Scott supported the recommendation of Chief Adams and Chief Kotsur. Charlie McClendon indicated he had enough direction from Council as to how to proceed.

### **3) ANNEXATION REQUEST – WIGWAM CREEK SOUTH ANNEXATION**

A request from residents of the Wigwam Creek South subdivision for annexation into the City of Avondale.

Mr. McClendon indicated that the residents of a Maricopa County island have requested annexation into Avondale. There are positive and negative factors that Council must consider. He introduced Assistant City Manager, Rogene Hill to present this item.

Ms. Hill introduced some of the residents of Wigwam Creek who have been working on the plan for over two years. She explained that there are 1,266 homes in the area, with an estimated population of just over 4,000. The average home value is \$142,000. Finance estimates that the revenue streams from this community could potentially reach \$1,390,000. Only \$738,000 of that amount would be for the general fund, while the remainder would be for dedicated funds. The area is bordered by Indian School Road on the south and Camelback on the north. To the East is Avondale's community of Rio Crossing. The City of Litchfield Park would have to de-annex the strip around the area so that the community would be contiguous with Avondale. Litchfield Park has indicated their desire to retain the commercial corners, but would be open to de-annexing the rest.

Wigwam Creek has a middle school and two zoning areas that do not exist in Avondale. The R1-10 and R1-7 areas have large lots of about 11,000 square feet. The rental rate is very low, at about 22%, and the foreclosure rate is about 1%.

Ms. Hill described that the process began in 2008. Citizens were asked to determine the level of interest and commitment from residents before any official action would be taken. They have presented over 600 letters to the City Clerk, and believe that more than 50% of the residents would sign an annexation petition. They are asking for a waiver of the annexation fee of \$4,000. Liberty Water currently serves them. Police services are provided by Maricopa County. Rural/Metro provides fire service.

Ms. Hill indicated that Wigwam Creek South has a stable water service and residents are not seeking water services from Avondale. She explained that it has been a longstanding policy for the City to provide water service to newly annexed areas, however, in the case of this annexation request the cost of bringing the subdivision into Avondale's system would be prohibitive and a deal breaker. Allowing an exception of this policy, however, would create a block of voters who could vote against future bond issues that would not directly affect them as they would not be paying for water service to Avondale. Regarding sanitation service, Ms Hill indicated that an additional sanitation truck driver would be required and residents would have to pay for the cost of trash cans, perhaps over a year. She pointed out that sanitation only accounts that become delinquent are harder to collect on

The Police Department determined that the community averages 57 calls per month and generates 15 reports, the equivalent to a small percentage of a slow beat. It would not place a great burden on police calls for service. The area would be absorbed into Beat 2, and require two additional officers and the associated equipment. There is a possible need for a School Resource Officer, but that issue could be negotiated. She indicated some streets are private but HURF revenues would cover the cost of maintaining the streets. Litchfield Park would retain responsibility for improvements along Dysart Road and Camelback. The community is in a street light improvement district. It is unknown whether APS or the County would approve continuing with this district, so the City might either have to form a new street light improvement district, or actually purchase the streetlights.

Ms. Hill indicated that fire service is the issue of greatest interest to the community's residents noting that fire service would need to be provided immediately upon annexation. The area would be serviced from the Northwest Public Safety Facility, the fire portion of which would need to be completed at a cost of \$2 million. The City has applied for the SAFER grant this year and if approved, it would pay for staffing for the first three years.

Ms. Hill indicated that all property owners would be asked to sign a Prop 207 waiver in addition to the annexation petition. The annexation could help the City develop commercial areas along the Indian School corridor that have remained undeveloped.

Three things could end the annexation process: the cost of bringing the community into the City's water service (which would be about \$6 million), denial of the fee application waiver, or requiring residents to pay buy in fees. Homeowners are unlikely to be able to come up with the cash to pay for the fees, given the current real estate market. Council must determine whether there is value to annexing Wigwam Creek South into Avondale.

Vice Mayor McDonald inquired about the difference between Liberty's water rates, and Avondale's. Ms. Hill replied that Liberty is soon going to increase its rates and when the increase goes into effect the rates would be fairly comparable to Avondale's. The capital costs involved are the main issue. The houses would all have to be disconnected from Liberty's system and connected to Avondale's. Mr. McClendon added that the biggest cost would be paying Liberty for the right to serve that area. Vice Mayor McDonald inquired about the \$70,000 one-time police fee. Ms. Hill explained that it would cover the cost of

equipment to serve that area. Mr. McClendon added that the ongoing \$200,000 cost would cover equipment replacement charges.

In response to Vice Mayor McDonald's inquiry, Chief Adams advised that the Wigwam Creek South neighborhood would comprise about 20% of the service area of the Northwest Fire Station. Vice Mayor McDonald opined that it is critical to know the outcome of the SAFER grant. Mr. McClendon noted that a decision on the grant would likely occur by the time Council reached the final stages of the annexation process. If Council decided to move ahead with the process, Avondale would have to get Litchfield Park to de-annex their strip. Council would have to take formal action to initiate the process. The residents would have a year to sign on. State law requires that a majority of citizens and a majority of the assessed valuation approve of the annexation. Vice Mayor McDonald expressed concern that State shared revenues could go away, which would seriously impact the numbers.

Vice Mayor McDonald noted that there is currently no direct connection between Rio Crossing and Wigwam Creek South and both HOA's are experiencing issues with kids climbing walls at a park to get back and forth from school. He inquired about installing a path that would allow them to walk through the area without destroying the wall or private property. Ms. Hill confirmed that the issue has been raised, but residents are uncertain whether a pathway is the best solution. Safe Routes to School offers a possible grant opportunity to develop a secure pathway that would protect private property and provide access to the school. The issue would have to be negotiated moving forward. Vice Mayor McDonald expressed that he would have no issue bringing the community into the City, but the SAFER grant, the State shared revenue, and the strip annexation are points of concern.

Council Member Weise reported that sewer fees from Liberty Water are \$27.20 per month. Basic service is \$25.75 per month. There is a charge of \$2.25 for every 1,000 gallons of water. He felt that the community would be a huge asset for the City. The larger lots would help attract more businesses, whose executives are looking for larger homes and gated communities. It has a very successful middle school, and a private school. There are costs involved, but any opportunity to eliminate County islands is welcome. If the residents want to stay with Liberty, that is acceptable. The application fee should be waived in this case. The residents of Wigwam would benefit from the annexation. He expressed concern that a great deal of staff time could be spent on the annexation process only to have it nullified if a majority of the assessed value do not approve it. He encouraged the City to conduct open houses in an effort to familiarize residents with Avondale. Mr. McClendon said the City would work to ensure that the residents understand the benefits of annexation. Council Member Weise noted that decisions made in Avondale affect Wigwam Creek South every day. Residents there would benefit from better fire service, and Avondale would be able to build out the northwest public safety facility quicker.

Council Member Vierhout agreed with Council Member Weise. He inquired about recycling. Ms. Hill explained that the neighborhood is served by a number of private haulers, and each has their own policy. The residents would be very interested in a recycling program.

Council Member Karlin expressed concern about the stability of Liberty Water. If Liberty failed, the City would have to spend \$6 million to add residents to the system, and further

burden it. Avondale would be getting the homes but not the retail, which is where most of the revenue comes from. She said she would like to study the situation further before making a decision. Ms. Hill clarified that staff is seeking only initial direction. The Water Department could provide their observations on Liberty Water. Council Member Karlin opined that the City should move forward but noted that there are many issues to consider along the way.

Council Member Scott queried whether citizens in Avondale could opt out of trash service. Ms. Hill indicated they could not. The homeowners currently have the option to use one of several private haulers. Being under Avondale's system would be an advantage to them. Council Member Scott inquired about HOA fees. Mr. Martin, representing the Wigwam Creek South HOA, explained that there are two HOAs in the area. Bel Fleur is a subdivision contiguous to Wigwam Creek South and would be part of the annexation and it has its own HOA. Basic HOA fees in Wigwam Creek South are \$43.00 per month and an additional \$25.00 per month for homes within the gated community.

In response inquiry by Council Member Scott, Mr. McClendon explained that Avondale would have to put together the capital funds to finish the fire station. The SAFER grant could pay for salaries for three years, while the revenue generated from the community could go to offset the capital costs. He pointed out that the City would have to appropriate the capital funds to complete this project at some point anyway; it just becomes a matter of when.

Council Member Scott indicated that the annexation would essentially commit the City to completing the fire station regardless of the City's financial situation and questioned what would occur if the City did not get the SAFER grant and decided not to expedite the completion of the station. Mr. McClendon responded that by building the shell, the City has already committed to finishing it at some point and the annexation would simply force a need for it sooner. If the station is not completed, Avondale could initially serve that neighborhood out of the existing stations and with its automatic aid partners. The level of service there now, however, is unsatisfactory. Council Member Scott expressed that he would have no problem exploring this proposal further. If the neighborhood is going to commit to Liberty Water, however, they cannot later complain that Avondale is failing to provide them with services. He said he would support waiving the application fee, and would not require a buy in fee. He was happy to hear that the neighborhood wants to join Avondale and encouraged the residents to shop in Avondale. Avondale has long talked about having large lot sizes, and annexation of this neighborhood would provide it instantly. He shared Vice Mayor McDonald's concern about the walk through gate to the school.

Mayor Lopez Rogers cited that the annexation issue is not a clear-cut case. There are several matters to be concerned about. A recent ASU study indicates that residential has a negative financial impact especially in this case where the city would not receive an impact fee. She requested an economic impact study to determine the financial impact that annexation would have. Mayor Rogers commented that if the neighborhood is coming into Avondale, the City should be in charge of programs like the lighting improvement district. As the State continues to take funds away from cities, it becomes critical for Council to understand what the General Fund is going to be like as a result. She encouraged moving the process forward to further explore the issues.

**4) UPDATE ON THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE II MS4 PERMIT**

An update on the status of the NPDES Phase II MS4 Permit and the implementation of the Stormwater Management Plan (SWMP).

Ms. McDermott said the NPDES program was created under the Clean Water Act of 1987 to add stormwater pollution prevention to the national effort. It is regulated nationally by the EPA, statewide by ADEQ, and locally by the City of Avondale. The NPDES permit is required for all municipalities that have a storm drain system. The permit requires that the City have a stormwater management plan that consists of six minimum control measures, including public education, public involvement, illicit discharge detection and elimination, construction site runoff, post-construction runoff control, and good housekeeping.

The City has been focusing on illicit discharge over the past year. Staff has worked on a process to collect information, conduct investigations, collect evidence, issue letters noting the offense, and ultimately issuing a citation where necessary. The code is being revised in order to make enforcement easier for staff. Illicit discharge includes dumping oil into catch basins, and swimming pools discharges into the storm drain system. Over 50 calls were received last year, and 30 letters sent.

Each construction project requires a stormwater pollution prevention plan. Avondale has created a template that contractors can use to develop their plan, including what the City would allow as best management practice. Staff has developed internal checklists for staff reviewing the plans, and developed inspection policies and procedures. Engineering has trained all the plan review and inspection staff, and has approved seven plans over the past year. Many City departments are involved in the public notification effort. Public Works hosted a household hazardous waste day. There was a cleanup of Tres Rios. Staff is conducting an inventory of all stormwater inlets and drywells, and is developing a maintenance plan for 22 catch basins.

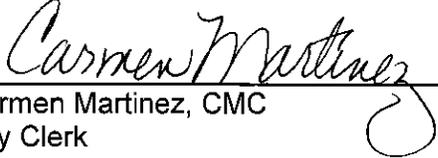
Council Member Weise asked whether the oil discharges are about the lack of awareness or due to blatant disregard for the rules. Ms. McDermott reported that most of the violators the City has talked to have been receptive to the message. In response to Council Member Weise's inquiry, Ms. McDermott responded that complaints that come in over the weekend are investigated on Monday morning. Staff works closely with Public Works and Code Enforcement on these issues.

**5) ADJOURNMENT**

With no further business before the Council, Council Member Weise moved to adjourn the work session. Council Member Vierhout seconded the motion. The motion carried unanimously.

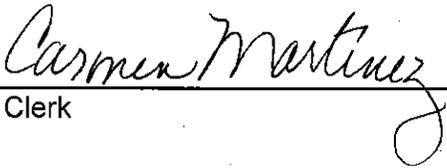
Meeting adjourned at 7:54 p.m.

  
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Mayor Lopez Rogers

  
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Carmen Martinez, CMC  
City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Work Session of the Council of the City of Avondale held on the 11th day of October 2010. I further certify that the meeting was duly called and held and that the quorum was present.

  
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City Clerk