

Minutes of the Regular Meeting held November 4, 2013 at 7:00 p.m. in the Council Chambers.

MEMBERS PRESENT

Mayor Lopez Rogers and Council Members

Frank Scott, Vice Mayor
Jim Buster
Jim McDonald
Charles Vierhout
Ken Weise

ABSENCE EXCUSED

Stephanie Karlin

ALSO PRESENT

Charlie McClendon, City Manager
David Fitzhugh, Assistant City Manager
Rogene Hill, Assistant City Manager
Charles Andrews, P.E., City Engineer
Tracy Stevens, Development and Engineering Services Director
Cheryl Covert, Economic Development Specialist
Andrew McGuire, City Attorney
Carmen Martinez, City Clerk

1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

Carmen Martinez, City Clerk, read a statement of participation regarding public appearances.

2 UNSCHEDULED PUBLIC APPEARANCES

There were no unscheduled public appearances.

3 CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

Vice Mayor Scott requested separate consideration of Item 3(h).

a. APPROVAL OF MINUTES

1. Work Session of October 7, 2013
2. Regular Meeting of October 7, 2013
3. Work Session of October 14, 2013
4. Work Session of October 21, 2013
5. Regular Meeting of October 21, 2013

b. LIQUOR LICENSE – AGENT CHANGE AND ACQUISITION OF CONTROL – QUIK FOOD MART, LLC

A request from Ms Theresa June Morse for approval of an Agent Change and Acquisition of control for the Series 10 - Off-Sale Retailer's License to sell beer and wine at Quik Food Mart located at 921 W Main Street in Avondale.

c. LIQUOR LICENSE – AGENT CHANGE AND ACQUISITION OF CONTROL – CLAIM JUMPER RESTAURANT

A request from Ms Andrea Dahlman Lewkowitz for approval of an Agent Change and Acquisition of Control for the Series 12 - Restaurant Liquor License at Claim Jumper Restaurant located at 10125 W McDowell Road in Avondale.

d. PROFESSIONAL SERVICES AGREEMENT – NEW ENGINEERS

A request to approve a Professional Service Agreement with Narasimhan Consulting Services Inc., d/b/a/ NCS Engineers to provide design, bid phase support, third party coating inspections and construction phase engineering services for recoating and miscellaneous improvements to the water storage tanks at the Northside Booster Station in the amount of \$80,018 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

e. FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT – GANNETT FLEMING, INC.

A request to approve the First Amendment to the Professional Services Agreement with Gannett Fleming, Inc. for the design of the Headworks Bridge Crane at the Wolf Water Resource Center for an increase of \$8,300 for a total of \$55,000 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

f. THIRD AMENDMENT TO CONTRACTOR AGREEMENT – FSL HOME IMPROVEMENTS

A request to approve the third amendment to the contractor agreement with FSL Home Improvements for an increase of \$169,000 in reallocated HOME Investment Partnership and Community Development Block Grant funds with an extension to March 31, 2013 that will allow for the program to continue without interruption and authorize the Mayor or the City Manager and the City Clerk to execute the necessary documents.

g. RESOLUTION 3146-1113 – MUNICIPAL SPONSORSHIPS AND NAMING RIGHTS POLICY

A resolution adopting a Municipal Sponsorship and Naming Rights Policy for city events, partnerships, sponsorships, marketing arrangements and naming rights.

i. RESOLUTION 3149-1113 – ACCEPTANCE OF GRANT AWARD FROM AZ SPORTS AND TOURISM AUTHORITY

A resolution authorizing the acceptance of a grant award through the Arizona Sports and Tourism Authority for the Recreation Department Safe Ride, Safe Bike project in the amount of \$25,740 for the purchase and installation of bicycle storage lockers to be placed at multiple locations around the City and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

j. RESOLUTION 3150-1113 – HONORING POLICE CHIEF KEVIN KOTSUR ON OCCASION OF HIS RETIREMENT

A resolution honoring Police Chief Kevin Kotsur on the occasion of his retirement. The resolution will be presented to Chief Kevin Kotsur on November 7, 2012, at his retirement reception.

Council Member Weise moved to approve the consent agenda as presented, with the exception of Item 3(h). Council Member Vierhout seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Council Member Vierhout	Aye
Council Member McDonald	Aye
Council Member Weise	Aye
Mayor Rogers	Aye
Vice Mayor Scott	Aye
Council Member Karlin	Excused
Council Member Buster	Aye

Motion carried unanimously

h. RESOLUTION 3147-1113 – INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF SURPRISE FOR THE LEASE OF A FIRE TRUCK

A request to adopt a resolution approving an Intergovernmental Agreement with the City of Surprise relating to the lease of a Fire Truck, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

Vice Mayor Scott explained that he pulled this item off the consent agenda to draw attention to its importance. The fire truck in question is one of only two of its kind west of Central Avenue in Phoenix, and is special in terms of the broad range of functions it provides. He thanked City Council, staff and Fire Chief Adams for making this addition possible.

Vice Mayor Scott moved to approve Consent Agenda Item 3(h) as presented. Council Member Vierhout seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Council Member Vierhout	Aye
Council Member McDonald	Aye
Council Member Weise	Aye
Mayor Rogers	Aye
Vice Mayor Scott	Aye
Council Member Karlin	Excused
Council Member Buster	Aye

Motion carried 6-0

4 MUNICIPAL AESTHETICS PROGRAM FUNDING AGREEMENT – SALT RIVER PROJECT

A request to approve a Municipal Aesthetics Program Funding Agreement with Salt River Project (SRP) in a maximum amount of \$1,795,800 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

Charles Andrews, P.E., City Engineer, explained that SRP's program provides cities with the opportunity to make aesthetic improvements on new and existing SRP facilities. There are currently 22 recipients in the overall base fund, which is based on 0.8% of SRP's annual gross revenues. Avondale's portion is based upon the city's percentage of the Salt River Valley's Water Users Association Membership, irrigation water acreage, the percentage share of total electric facilities revenue, and the total cost of electric system work done in the prior fiscal year. SRP places restrictions on what can and cannot be done with the funding. Avondale can use the money to place certain overhead lines underground, upgrade the curtain walls of SRP well sites, or pipe existing irrigation channels. The City cannot use the money for purposes such as relocating power poles or irrigation channels.

Mr. Andrews stated that in 2012 SRP implemented a three-year rolling program, which established deadlines for the 22 fund recipients. Avondale has been rolling over its funding since 2005/06, and has a current balance of approximately \$1.9 million. The City could also leverage three future years for \$100,000 each, which could bring the available amount to nearly \$2.2 million. SRP requires that the City either spend or be in the process of spending all the money by May of 2015. Typically it takes a considerable amount of time to plan for undergrounding of powerlines or piping of irrigation channels. To meet this tight schedule, the qualifying project would have to utilize all the available funding and involve property owners who are amenable to dedicating the required rights-of-way to the City. Other factors to consider are projects that increase safety, provide an economic development benefit, and make a positive visual impact.

Mr. Andrews explained that staff selected a dozen projects that could qualify for SRP funding and graded them according to the aforementioned criteria. The most promising project is to underground the existing SRP irrigation channel located along the west side of 107th Avenue, starting about 500 feet north of Pierce Street and running to Van Buren. The owner of the adjacent land is willing to dedicate the required right-of-way for SRP power and irrigation. The City will obtain all necessary rights-of-way for the future. The property owner will also dedicate additional right-of-way on the future Roosevelt alignment, which will increase in width. They are also willing to dedicate right-of-way for future improvements at 107th and Van Buren, and the future Van Buren Multi-Use Recreational Corridor. The undergrounding project would expend about \$1.6 million of the \$1.9 million available, and would meet all of the other evaluation criteria. If City Council approves the project, the SRP design will be completed by October 2014, with construction completed by November of 2015.

Council Member McDonald said staff chose a good project. Currently, 107th Avenue congests at Van Buren and the street should be widened there. He inquired about intersection improvements. Mr. Andrews explained that the intent of the project is to leave

107th Avenue and Van Buren clear of any encumbrances. Vice Mayor Scott concurred that this project meets all the criteria and was well chosen.

Council Member McDonald moved to approve a Municipal Aesthetics Program Funding Agreement with Salt River Project in a maximum amount of \$1,795,800 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. Council Member Vierhout seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Council Member Vierhout	Aye
Council Member McDonald	Aye
Council Member Weise	Aye
Mayor Rogers	Aye
Vice Mayor Scott	Aye
Council Member Karlin	Excused
Council Member Buster	Aye

Motion carried 6-0.

5 PROPOSED MAINTENANCE IMPROVEMENT DISTRICT POLICY

Information related to the proposed Maintenance Improvement District Policy which has the purpose of informing and assisting developers in the formation of a Maintenance Improvement District for new residential subdivisions to assist with maintenance of the landscape improvements adjacent to and along public roadways and parkways when the Homeowners Association responsible to maintain those improvements becomes defunct or fails.

Tracy Stevens, Development and Engineering Services Director, provided an update on the proposed Maintenance Improvement District (MID) Policy. The policy would introduce a mechanism for maintaining landscaped areas as originally designed and approved, should a Home Owners Association (HOA) fail for any reason. The draft policy was recently revised to clarify what the City can and cannot maintain, according to state statute. Maintenance can include the landscaping, irrigation and drainage facilities, and tracts and easements, but all eligible landscaped areas have to be adjacent to public roadways or parkways. The plan review process will be used to ensure that all locations comply with that statute.

Ms. Stevens explained that the Mayor and City Council are empowered to form the MID through the final plat stage. The MID would only be triggered in the event of failure of the HOA to maintain a landscaped facility. At no point would homeowners be required to pay both an HOA fee and a MID assessment. This policy would apply to any new project after November 1, 2013. The MID tax assessment charge would remain at zero while the HOA is maintained. Upon failure of an HOA, the City would assume maintenance under the MID, and the assessment would show up on the County Assessor's property tax bill and received one year in arrears. The City would ask for a MID petition waiver when an applicant submits their final plat, requesting the legal description and the listing of the area boundaries on the plat.

Mayor Rogers inquired whether the MID would apply to properties that are already in HOAs but not completed as homes yet. Ms. Andrews responded that the policy would not apply to them because the City would not have the opportunity to go back and form the MID through the final plat stage. The policy is not set up to work with each individual property owner. Mayor Rogers felt the MID would serve as a safeguard for taxpayers.

Council Member Buster described the MID as a great idea that hopefully will never have to be used. At some point, the legislature might have to tweak the law to address areas that are not adjacent to roadways, but this is a good first step. Charlie McClendon, City Manager, said the item would return for City Council approval on November 18.

6 PUBLIC HEARING FOR CABLE TELEVISION LICENSE AGREEMENT – QWEST BROADBAND SERVICES, INC. DBA CENTURYLINK

A public hearing to consider approving a Cable Television License Agreement with Qwest Broadband Services, Inc. dba CenturyLink and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

Cheryl Covert, Economic Development Specialist, reviewed that CenturyLink applied for a cable license agreement to place their services on existing Qwest infrastructure and to provide cable as a second entrant in Avondale. CenturyLink also requested waivers at the June 10, 2013 City Council work session, which were eventually granted on August 12. The public hearing is to discuss approval or denial of this agreement.

Ms. Covert explained that negotiations between CenturyLink and Avondale have concluded with a six-year agreement that can stretch up to fifteen years with incentives. City Council may extend the license agreement for an additional three years if CenturyLink provides reasonable supporting documentation that it is capable of offering cable to a substantial portion of living units in Historic Avondale on or before October 31, 2019. CenturyLink would receive an additional two years if they offer cable services to new living units counted towards the 50% requirement, and would exclude those living units to which CenturyLink is prohibited from offering cable services pursuant to an existing agreement. CenturyLink will receive an additional two years if it can offer cable services to at least 20% of the living units in the city by November 30, 2016, and another two years if it can offer cable service to 50% of the living units by the end of the sixth year after the effective date.

Ms. Covert said the City of Avondale and CenturyLink have agreed on all terms except for section 18.1. CenturyLink requested and received a substantial waiver to remove the buildout requirements in the City Code, and will instead expand services based on market demand. Section 18.1 is related to a requirement that CenturyLink hook up customers meeting a density of 250 customers with a distance of 4,000 feet from a potential remote terminal site. CenturyLink will only agree to accept this requirement if they become the dominant carrier in the city.

Ms. Covert explained that staff believes it was reasonable to request the condition in section 18.1 that would require CenturyLink to extend its services if a certain number of subscription requests had been made to them, but they did not agree. Staff is concerned about permanently unserved areas and unfair competition.

Ms. Covert presented the following options:

- A. To approve CenturyLink's Cable License Application and approve the Cable License Agreement, including a request that CenturyLink provide service at certain demand levels.
- B. To grant CenturyLink's request to rescind its Cable License Application, while the City retains the non-refundable submittal fee.
- C. To approve the Cable License Application and amend the Cable License Agreement with the alternative conditions in section 18.1 regarding line extensions as proposed by CenturyLink.

Council Member McDonald said the thought of having another competitor offering cable service to the city is an attractive one, but some areas are not currently being served and they should be. CenturyLink is only interested in offering service on existing lines and does not want to expand. He said he finds this position unacceptable. City Council must consider the interests of Avondale as a whole. He said he would be willing to accept CenturyLink's withdrawal if they cannot accept the changes to section 18.1.

Council Member Buster expressed disappointment that an agreement could not be reached. A second cable entrant would provide citizens with a choice, but at the same time, the City has already made a reasonable effort in allowing for the possibility that CenturyLink could expand to other parts of the community. If they would respond to a demand of 500 residents within 4,000 feet of a potential remote terminal site, he would accept that compromise. At some point they have to be willing to compromise too.

Mayor Rogers opened the public hearing. Upon noting no requests to speak, she closed the public hearing.

Council Member Weise said he too is disappointed. The deal would offer benefits to Avondale residents, but City Council must represent all citizens. To say that Historic Avondale should be left out is unacceptable. CenturyLink is the third largest telecommunications company in the United States and a technological leader, but they claim to be technologically unable to comply with the City's request. He noted that CenturyLink made similar concessions to the City of Chandler, and said he would support option A. In response to his request for a legal opinion, Andrew McGuire, City Attorney, said should City Council approve option A, it would be up to the applicant to determine whether they would sign it or not. They have already indicated they will not. Council Member Weise said that course of action would tell the citizens of Avondale that City Council went forward in good faith but that CenturyLink would not comply.

Council Member Vierhout said he too is disappointed, and would support option A. Council Member Buster proposed an amended option A.

Council Member Weise moved to approve the Cable License Application and Cable License Agreement as presented, with an amendment requiring that CenturyLink hook up customers meeting a density of 500 requests for service within 4,000 feet of a remote terminal site. Council Member Buster seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Council Member Vierhout	Aye
Council Member McDonald	Aye
Council Member Weise	Aye
Mayor Rogers	Aye
Vice Mayor Scott	Aye
Council Member Karlin	Excused
Council Member Buster	Aye

Motion carried 6-0.

7 ADJOURNMENT

There being no further business before the Council, Council Member Weise moved to adjourn the meeting; Council Member Vierhout seconded the motion. Motion carried unanimously.

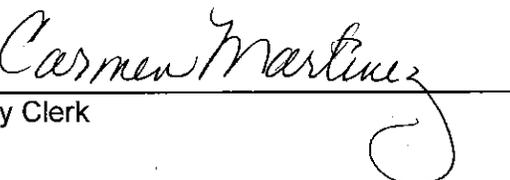
City Council meeting adjourned at 7:42 p.m.


Marie Lopez Rogers


Carmen Martinez, CMC
City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Council of the City of Avondale held on the 4th day of November. I further certify that the meeting was duly called and held and that the quorum was present.


Carmen Martinez
City Clerk