



Minutes Formal City Council Meeting February 7, 2013

Minutes of the Formal Council Meeting of Thursday, February 7, 2013, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Tempe City Hall, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Mark W. Mitchell
Councilmember Robin Arredondo-Savage
Councilmember Kolby Granville
Councilmember Corey D. Woods

Vice Mayor Onnie Shekerjian
Councilmember Shana Ellis
Councilmember Joel Navarro

STAFF PRESENT:

Jeff Kulaga, Acting City Manager
Brigitta M. Kuiper, City Clerk
Various Department Heads or their representatives

Andrew Ching, City Attorney
Lisa Collins, Interim Community Development Director

Mayor Mitchell called the meeting to order at 7:33 p.m.

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

3. MINUTES

A. Approval of Council Meeting and Council Committee Meeting Minutes

Motion by Vice Mayor Shekerjian to approve the following COUNCIL MEETING AND COUNCIL COMMITTEE MEETING MINUTES; second by Councilmember Ellis. Motion passed unanimously on a voice vote 7-0.

1. Formal Council Meeting - January 24, 2013
2. City Council Special Meeting - January 28, 2013
3. City Council Special Joint Meeting - January 28, 2013
4. Executive Session - January 24, 2013
5. Economic, Lake, Downtown and Advanced Transportation Council Committee - November 13, 2012
6. Neighborhood and Education Council Committee - November 5, 2012

B. Acceptance of Committee, Board & Commission Meeting Minutes

Motion by Vice Mayor Shekerjian to accept the following COMMITTEE, BOARD AND COMMISSION MEETING MINUTES; second by Councilmember Arredondo-Savage. Motion passed unanimously on a voice vote 7-0.

1. Board of Adjustment - February 22, 2012
2. Development Review Commission - December 11, 2012
3. Development Review Commission Study Session - December 11, 2012
4. Historic Preservation Commission - December 13, 2012
5. Transportation Commission - November 13, 2012

4. REPORTS AND ANNOUNCEMENTS

A. Mayor's Announcements

Mayor Mitchell announced that an appointment to the Electrical Code Advisory Board of Appeals will be made tonight, as agenda item 5A1.

B. Manager's Announcements – None.

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 City 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 Mitchell announced consideration of the **AGENDA** items.

Motion by Councilmember Woods to approve the Agenda with the exception of items 5C1 and 5D1, which were removed for separate consideration, and items 5A4 and 5A5, which were removed/deleted from the agenda; second by Councilmember Navarro. Motion passed on a roll call vote 7-0.

A. Miscellaneous Items

- A1. Approved a board appointment to the Electrical Code Advisory Board of Appeals.

Fiscal Impact: There is no fiscal impact to City funds.

Electrical Code Advisory Board of Appeals	Term Expires 2/10/16
Andy Rogacki (FT1)	New Appointment
(Fire Department Representative)	
(FT1) – First full term	

- A2. Approved an Amended Subdivision Plat for KENNETH PLACE TOWNHOMES, located at 1419 and 1425 S. Kenneth Place. The applicant is Mario Mangiamele, of Iplan Consulting.

Fiscal Impact: There is no fiscal impact on City funds.

The following conditions of approval apply:

1. The Subdivision Plat for the +/- .376 acres KENNETH PLACE TOWNHOMES shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe Community Development Department on or before February 7, 2014 or prior to issuance of a Certificate of Occupancy, whichever comes first. Failure to record the plat on or before February 7, 2014, which is one (1) year from date of City Council approval, shall make the City Council approval of the plat null and void.
2. Abandon existing public utility easements that are no longer needed within the property. Separately submit abandonment request to Public Works/Land Services Division and process abandonments through City Council.
3. Provide exclusive easements for public water and sewer lines within KENNETH PLACE TOWNHOMES. Either have easements "dedicated hereon" the Subdivision Plat or have easements separately reviewed by the Public Works Department, dedicated by separate instrument and recorded at the Maricopa County Recorder's Office.
4. All property corners shall be set and verified by Registered Land Surveyor. Submit completed and sealed Notice of Verification to Land Services staff (kenneth_olmstead@tempe.gov) no later than three (3) months from date of County Recordation of plat or on a date as determined by staff.

- A3.** Authorized the Mayor to execute a Communications Infrastructure Use Agreement Between CenturyLink Inc. and the City of Tempe. (**Contract #2013-26**)

Fiscal Impact: N/A

- *A4.** ~~THIS ITEM WAS REMOVED/DELETED FROM THE AGENDA. Hold a public hearing to recommend the approval of an acquisition of control and agent change of a Series 12 restaurant liquor license for Thomas and King, Inc., dba Applebee's Neighborhood Grill & Bar, 1655 West Elliot Road.~~

- *A5.** ~~THIS ITEM WAS REMOVED/DELETED FROM THE AGENDA. Hold a public hearing to recommend the approval of an acquisition of control and agent change of a Series 12 restaurant liquor license for Thomas and King, Inc., dba Applebee's Neighborhood Grill & Bar, 909 East Broadway Road.~~

- *A6.** Held a public hearing and recommended the approval of a Series 12 restaurant liquor license for A & D Pizza Inc., dba Barro's Pizza, 37 West Baseline Road.

Fiscal Impact: N/A

- *A7.** Held a public hearing and recommended the approval of a Series 10 beer and wine store liquor license for Sandhu and Son Investment, LLC, dba Sandhu Chevron, 808 East Baseline Road.

Fiscal Impact: N/A

- *A8.** Held a public hearing and recommended the approval of a Series 11 hotel/motel liquor license for Tempe Hospitality Ventures, LLC, dba Sheraton Phoenix Airport Hotel, 1600 South 52nd Street.

Fiscal Impact: N/A

- A9.** Approved an annual renewal to the lease agreement with the Tempe Community Action Agency for a community garden at Escalante Park located at 2150 E. Orange Street. (**Contract #2011-21B**)

Fiscal Impact: There is no fiscal impact to the City. Water and permit fees are paid by Tempe Community Action Agency.

- A10.** Approved the appointment of and Employment Agreement for Andrew B. Ching as Interim City Manager. (**Contract #2013-33**)

Fiscal Impact: Total savings of approximately \$61,639.86 is anticipated over ten pay periods during the search for the permanent City Manager position. Total savings of approximately \$162,210.15 is anticipated over a twelve month period.

- A11.** Approved the appointment of and Employment Agreement for Judith R. Baumann for Interim City Attorney. (**Contract #2013-34**)

Fiscal Impact: Total savings of approximately \$61,639.86 is anticipated over ten pay periods during the search for the permanent City Manager position. Total savings of approximately \$162,210.15 is anticipated over a twelve month period.

- *A12.** Held a public hearing and recommended the approval of a Series 04 in - state wholesaler's liquor license for JFC International Inc., dba JFC International, 7815 South Hardy Drive., #106.

Fiscal Impact: N/A

B. Award of Bids/Contracts

- B1.** Awarded a construction manager at risk construction services contract with Achen-Gardner Construction, L.L.C. and a professional services construction management contract with C. Williams Construction Engineering, Inc. for ASU perimeter metering and a new water main on Rural Road between University Drive and Apache Boulevard. (**Contract #2013-27; 2013-28**)

Fiscal Impact: Total construction manager at risk construction services contract amount is \$3,214,933.77, construction management contract amount is \$117,840, and project contingency amount is \$320,000. Total cost for construction of this project, including materials testing and other related costs, is \$3,959,465.77. The remaining available balance of \$3,404,568.08 has been approved and appropriated in Capital Improvement Fund Nos. 3203519, Perimeter Meter ASU Main Campus, and 3203539, Waterline Upgrades - Rural Road (University Drive to Apache Boulevard). The balance needed of \$554,897.69 is available in Water/Wastewater contingency funds. These amounts will be transferred to Capital Improvement Fund No. 3204581 to fund these contracts and related costs.

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

- *C1.** **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.** Introduce and hold the first public hearing to adopt a resolution for a General Plan amendment to increase density, an Ordinance for a Zoning Map amendment to R-3 Multi-family with a Planned Area Development (PAD) for development standards for 18 new attached townhomes for BELLA VITA, located at 1004 N Miller Rd. The applicant is Hudd Hassel. The second and final public hearing is scheduled for February 21, 2013. (Resolution No. 2013.14 and Ordinance No. 2013.12)

- *C2.** Introduced and held the first public hearing to adopt an ordinance abandoning a portion of an existing Waterline Easement as shown on the plat of Elliot Business Park 5, located at 7825 and 7929 South Hardy Drive. The second and final public hearing was scheduled for February 21, 2013. (Ordinance No. 2013.13)

Fiscal Impact: N/A

- *C3.** Introduced and held the first public hearing to amend Chapter 2, Article III of the Tempe City Code, relating to the Human Resources Department by amending Section 2-139. The second and final public hearing was scheduled for February 21, 2013. (Ordinance No. 2013.14)

Fiscal Impact: There is no direct cost to the City with the Code amendment.

- *C4.** Introduced and held the first public hearing to amend Chapter 24, Article V, of the Tempe City Code relating to Aggressive Solicitation by amending sections 24-115 and 24-116. The second and final public hearing was scheduled for February 21, 2013. (Ordinance No. 2013.15)

Fiscal Impact: N/A

D. Ordinances and Items for Second Hearing/Final Adoption

- *D1.** **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.** Hold the second and final public hearing to adopt an ordinance abandoning an existing waterline easement as described in document 19821207, Docket 16467, Page 1076, recorded in the office of the Maricopa County Recorder. (Ordinance No. 2013.07)

- *D2. Held the second and final public hearing and adopted **ORDINANCE NO. 2013.08** abandoning part of an existing access and utility easement and two existing public utility easements as recorded on the plat of Tally Ho Farms Unit No. Two, Book 108, Page 39, office of the Maricopa County Recorder.

Fiscal Impact: N/A

- *D3. Held the second and final public hearing and adopted **ORDINANCE NO. 2013.09** abandoning an ingress, egress, refuse, emergency vehicle, public utility, facilities, and drainage easement as recorded on the plat of 4455, Book 970, Map 46, and part of an existing public utility easement as recorded in document 2008-0060641 at the office of the Maricopa County Recorder.

Fiscal Impact: N/A

- *D4. Held the second and final public hearing and adopted **ORDINANCE NO. 2013.10** for a Zoning Map Amendment from General Industrial District to MU-4, Mixed-Use High Density District, and an Amended Planned Area Development Overlay for a proposed commercial and residential development for THE GRAND AT PAPAGO PARK CENTER, located at 1151 West Washington Street. The applicant is Papago Park Center, Inc.

Fiscal Impact: While this ordinance change does not directly impact revenue, the planned development will result in collection of the standard development fees, calculated according to the approved fee structure at the time of permit issuance.

The following conditions of approval apply:

1. A building permit application shall be made on or before February 7, 2018, or the zoning of the property may revert to that in place at the time of application. Any reversion is subject to a public hearing process as a zoning map amendment.
2. The property owner(s) shall sign a waiver of rights and remedies form. By signing the form, the Owner(s) voluntarily waive(s) any right to claim compensation for diminution of Property value under A.R.S. §12-1134 that may now or in the future exist, as a result of the City's approval of this Application, including any conditions, stipulations and/or modifications imposed as a condition of approval. The signed form shall be submitted to the Community Development Department no later than March 9, 2013, or the zoning map amendment approval shall be null and void.
3. The Planned Area Development Overlay shall be put into proper engineered format with appropriate signature blanks and kept on file with the City of Tempe's Community Development Department prior to issuance of building permits.
4. The developer must receive approval of the final Traffic Impact Study from the Traffic Engineering prior to issuance of a building permit. Any intensification in land use will require an update to the traffic study.
5. Provide Art in Private Development, pursuant to Section 4-407, for each phase of development to contribute its portion of art at the time of building permits.
6. The maximum allowed building height shall include all elements above the building roof, including mechanical, antennas, and other structural elements.
7. Upon development of any of the sites south of the canal, the developer shall provide a fencing barrier adjacent to the Union Pacific Railroad property consisting of steel vertical pickets or similar construction. The fence shall be a minimum of six (6) feet in height, measured from nearest grade, and designed with gates to provide emergency access where required. Post "no trespassing" signs every 300 feet and where gates are located.

- *D5. Held the second and final public hearing and adopted **ORDINANCE NO. 2013.11** authorizing the Mayor to execute a development and disposition agreement, leases and additional documents necessary for the sale/lease of City-owned property to Liberty Property Limited Partnership (Liberty), a Pennsylvania limited partnership. (**Contract #2013-14**)

Fiscal Impact: The purchase prices for the "Main Tract" and "Small Tract" are equal to \$4.54 and \$9.00 per gross square-foot, respectively. The gross revenue for the Main Tract and Small Tract are estimated to be \$15.1 million and \$2.1 million, respectively. The net revenue from the Main Tract will be \$9.6 million and \$1.5 million of the revenue from the Small Tract will be paid to the "Water Fund" as repayment for the original purchase of the land. The estimated net revenue to the City from the sale of the property over the term of the agreement is \$11.9 million.

E. Resolutions

- E1. Adopted **RESOLUTION NO. 2013.15** authorizing the Mayor to execute the Intergovernmental Agreement between the City of Tempe, City of Chandler, and City of Scottsdale for the purposes of conducting a cooperative written hiring examination for the position of firefighter. (**Contract #2013-29**)

Fiscal Impact: The City's cost of staff time and other operating expenses for participating in this Agreement is appropriated in the Fire Department's General Fund operating budget. No additional budget appropriation is required in the Agreement.

- E2. Adopted **RESOLUTION NO. 2013.16** authorizing the Mayor to execute a development agreement with Honeywell International, Inc. The agreement is supportive of Honeywell's application to the U.S. Foreign-Trade Zones Board for a foreign-trade zone on approximately 68 acres of real property near the northeast corner of Warner Road and Priest Drive. (**Contract #2013-30**)

Fiscal Impact: Standard commercial property is assessed at a rate of 20%—reducing to 18% over the next four years. Although state statute allows for real and personal property in a Foreign-Trade Zone to be reclassified and assessed at a rate of 5% of the Full Cash Value and Limited Property Value as determined by the Maricopa County Assessor, pursuant to this agreement, Honeywell agrees not to seek such reclassification for any existing real property within the proposed Foreign-Trade Zone.

AGENDA ITEM(S) REMOVED FOR SEPARATE CONSIDERATION:

- *C1. Introduced and held the first public hearing to adopt a resolution for a General Plan amendment to increase density, an Ordinance for a Zoning Map amendment to R-3 Multi-family with a Planned Area Development (PAD) for development standards for 18 new attached townhomes for BELLA VITA, located at 1004 N Miller Rd. The applicant is Hudd Hassel. The second and final public hearing was scheduled for February 21, 2013. (Resolution No. 2013.14 and Ordinance No. 2013.12)

Fiscal Impact: While this ordinance change does not directly impact revenue, the development will result in collection of the standard development fees, calculated according to the approved fee structure at the time of permit issuance.

Mayor Mitchell opened the public hearing.

Darlene Tussing, Tempe, representing the East Rio Neighborhood Association, made the following comments regarding the project: supports the plan overall; requested that the Covenants, Conditions and Restrictions (CC&Rs) include restrictions on parties and excessive behavior; requested that speed humps be placed in the alley; the property owner has agreed to address security and privacy issues.

The City Council and staff discussed including behavior standards in CC&Rs; Andrew Ching, City Attorney, stated that the covenants being discussed are restatements of otherwise-prohibited activities. He further explained that this creates a redundancy that would be superseded by law.

The City Council and staff also discussed the need to use mature landscaping to create privacy for the neighbors; the use of speed humps in the alley and how the process works in regards to traffic studies for the installation of speed humps; whether it is classified as an alley or a street. Lisa Collins, Interim Community Development Director, explained that it is an alley, and that she would need to work with the Public Works Department to determine if speed humps would affect trash pickup vehicles.

Reese Anderson, Pew & Lake, applicant representative, made the following comments related to the project: the alley will only be paved along the property line and will be used only for internal circulation between the project's buildings; the alley will otherwise remain unpaved; primary access to the property will be from Miller and Curry Roads; the landscaping and privacy issues have been addressed and were discussed at the Development Review Commission hearing. He agreed with Mr. Ching's assessment of the CC&Rs.

David Ware, Phoenix, owner of an adjacent property, stated his support of the project for the following reasons: he has worked with the property owner's legal counsel to address concerns; property owner has acted in good faith.

Albert Dare Sr., Tempe, stated his support of the project for the following reason: this project will be good for the north Tempe area.

Mayor Mitchell closed the public hearing; the second public hearing was scheduled for February 21, 2013.

***D1.** Held the second and final public hearing and adopted **ORDINANCE NO. 2013.07** abandoning an existing waterline easement as described in document 19821207, Docket 16467, Page 1076, recorded in the office of the Maricopa County Recorder.

Fiscal Impact: N/A

Councilmember Ellis declared a conflict of interest.

Vice Mayor Shekerjian requested that in the future, agenda items have a location instead of the recordation information. Brigitta Kuiper, City Clerk, responded that in the future, there will be an address or location.

Motion by Councilmember Woods to approve item 5D1; second by Councilmember Arredondo-Savage. Motion passed on a roll call vote 6-0-1 with Councilmember Ellis abstaining.

6. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

Councilmember Granville

- Three Habitat homes are currently under construction in Tempe in partnership with Habitat for Humanity and other agencies.

Councilmember Arredondo-Savage

- Geography Bee on February 13, 2013 in the Tempe City Hall, City Council Chambers.
- Tickets for Spring Training go on sale on Saturday, February 9, 2013.
- Tempe Diablos charity game on February 24, 2013.
- Geeks' Night Out on February 21, 2013.

Vice Mayor Shekerjian

- Geeks' Night Out on February 21, 2013.
- Harvest for Humanity's Tomato Fest fundraiser on March 2, 2013.

Mayor Mitchell

- Tempe Diablos charity game on February 24, 2013.

7. PUBLIC APPEARANCES

A. Scheduled – None.

B. Unscheduled

Eleanor Holguin, Tempe, spoke about the public appearances section of the agenda and the former City Manager Charlie Meyer; submitted a packet of information to the Mayor and City Clerk; spoke about the hazard status that had been placed on her home; voiced concern about Police Chief Tom Ryff.

Megan Smedley, Tempe, speaking on behalf of Arizona Student Environmental Coalition, expressed support for the renewal of the Community Garden lease agreement with Escalante Community Park, and thanked the City Council for adopting the item.

Haryaksha Gregor Knauer expressed appreciation for the City Council's endorsement of the Community Garden; spoke about Corporate Welfare and the Liberty Development and Disposition Agreement on the agenda (D5); expressed concern about the sanitization of Mill Avenue.

The meeting adjourned at 8:10 p.m.

I, Brigitta M. Kuiper, 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 February 7, 2013, by the Tempe City Council, Tempe, Arizona.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk