



## Minutes Regular City Council Meeting May 21, 2015

Minutes of the Regular Council Meeting of Thursday, May 21, 2015, held at 6:00 p.m. in the Harry E. Mitchell Government Center, Tempe City Hall, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

### **COUNCILMEMBERS PRESENT:**

Mayor Mark W. Mitchell	Vice Mayor Corey D. Woods
Councilmember Robin Arredondo-Savage	Councilmember Kolby Granville
Councilmember Lauren Kuby	Councilmember Joel Navarro
Councilmember David Schapira	

### **STAFF PRESENT:**

Andrew Ching, City Manager	Ken Jones, Deputy City Manager – Chief Financial Officer
Judi Baumann, City Attorney	Steven Methvin, Deputy City Manager – Chief Operating Officer
Brigitta M. Kuiper, City Clerk	Wendy Springborn, Engineering Services Manager
David McNeil, Environmental Services Manager	Ryan Levesque, Deputy Community Development Dir. – Planning
Various Department Heads or their representatives	

Mayor Mitchell called the meeting to order at 6:18 p.m.

1. Councilmember Navarro gave the invocation.
2. Mayor Mitchell led the audience in the **Pledge of Allegiance**.
3. **MINUTES**
  - A. Approval of City Council Meeting Minutes  
**Motion by Councilmember Granville to approve agenda item 3A1 – 3A3; second by Councilmember Arredondo-Savage. Motion passed unanimously on a voice vote 7-0.**
    1. Executive Session - May 7, 2015
    2. Issue Review Session - January 29, 2015
    3. City Council and Downtown Tempe Authority Joint Meeting - April 21, 2015
  - B. Acceptance of Board, Commission and Committee Meeting Minutes  
**Motion by Councilmember Granville to accept agenda item 3B1 – 3B9; second by Councilmember Arredondo-Savage. Motion passed unanimously on a voice vote 7-0.**
    1. Aviation Commission - April 14, 2015
    2. Development Review Commission - March 10, 2015 and April 28, 2015
    3. Development Review Commission Study Session - March 10, 2015 and April 28, 2015
    4. History Museum and Library Advisory Board - February 4, 2015 and March 4, 2015
    5. Human Relations Commission - April 14, 2015
    6. Mayor's Youth Advisory Commission - April 7, 2015

7. Tempe Fire Public Safety Personnel Retirement System Board - April 2, 2015
8. Tempe Police Public Safety Personnel Retirement System Board - April 2, 2015
9. Transportation Commission - April 14, 2015

#### 4. REPORTS AND ANNOUNCEMENTS

##### A. Mayor's Announcements

###### *United Arizona Employee Association 2015 Scholarship Presentation*

Mayor Mitchell invited Sandra Jaramillo, Vice President of United Arizona Employee Association to assist in presenting educational scholarships to students Chloe Grafakos and Cheyenne Fletcher.

##### B. City Manager's Announcements

Andrew Ching, City Manager, thanked Richard Edgecomb, City Hall Security Guard, for his years of service to the City of Tempe.

Mr. Ching announced that staff will be providing brief presentations on various City programs as part of the City Manager's Announcements portion of the agenda.

###### *1. Service Line Protection Program (SLiPP) Update*

Wendy Springborn, Engineering Services Manager, provided an update on the Service Line Protection Program (SLiPP), which was implemented in 2011. The program offers up to \$5,000 for repair and/or replacement of water and sewer service lines and is currently offered to single family, owner occupied residences. Ms. Springborn outlined which sections of the sewer and water service lines are and are not covered by the program, number of program subscribers, number of requests for service, program expense versus revenue data, average repair costs, lessons learned, and next steps which include updating program terms and conditions; updating the fee schedule; and, potentially expanding the program to include rental properties. Program information is available on the City's website.

###### *2. Fats, Oils, & Grease Program Update*

David McNeil, Environmental Services Manager, provided an update on Tempe's voluntary Fats, Oils, and Grease Program, the Tempe Grease Cooperative (TGC), which allows its members to receive 15% purchasing discounts due to a collective approach. Currently, there are 62 businesses enrolled in TGC with an annual waste diversion rate of nearly 400,000 gallons of grease and oil waste. Program information is available on the City's website.

#### 5. CONSENT AGENDA

All items listed on the Consent Agenda will be considered as a group and will be enacted with one motion by the City Council unless an item is removed for separate consideration. Members of the public may remove public hearing items for separate consideration. Public hearing items are designated by an asterisk (\*). Councilmembers may remove any item for separate consideration.

**Motion by Councilmember Navarro to approve the consent agenda with the exception of items 5A5, 5B11, and 5B16, which were removed/deleted from the agenda; second by Councilmember Arredondo-Savage. Motion passed unanimously on a roll call vote 7-0.**

##### A. Miscellaneous Items

- 5A1. Approved a Capital Improvement Program spending authority transfer from the Federal Grant Contingency Project No. 5406329 to the Signals Contingency Project No. 9869.

**Fiscal Impact:** Capital Improvement Program Project No. 5406139 was established to ensure legal spending authority exists in the event that new funding sources become available for

new or rescoped projects that were not foreseen during the regular CIP process. The spending authority of \$40,000 will be transferred from CIP project 5406329, Federal Grant Contingency, to CIP project 9869, Signal Contingency. This transfer will increase spending authority by \$40,000 for the project. The total project budget after transfer is \$40,000. There is no increase to the total CIP. The source of funds for the transfer will come from developer assistance.

- \*5A2. Held a public hearing and recommended the approval of a series 12 restaurant liquor license for Pita Jungle Tempe II, LLC, dba Pita Jungle, 4 East University Drive.

*Fiscal Impact:* N/A

- \*5A3. Held a public hearing and recommended the approval of a series 12 restaurant liquor license for 3 Mountains LLC, dba Gangnam, 933 East University Drive, Suite #115.

*Fiscal Impact:* N/A

- \*5A4. Held a public hearing and recommended the approval of a series 06 bar liquor license for Perez Tempe, LLC, dba Lucky Break, 1807 East Baseline Road, Suite #101.

*Fiscal Impact:* N/A

- \*5A5. REMOVED/DELETED FROM THE AGENDA AT THE REQUEST OF THE ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL ~~Hold a public hearing to recommend the approval of a series 10 beer and wine store liquor license for NTNDC LLC, dba Nighttime Nosh, 625 South Smith Road, Suite #13.~~

- 5A6. Approved a reappointment to the City of Tempe Merit System Board.

*Fiscal Impact:* N/A

**Merit System Board**  
Russell Schoeneman (No Term Limitation)

**Term Expires 05/31/2018**  
Reappointment

**B. Award of Bids/Contracts**

- 5B1. Approved the renewal of a one-year contract with Symetra Life Insurance Company for Stop Loss Insurance overseen by the Internal Services Department.

*Fiscal Impact:* Total cost of this contract will not exceed \$750,000 during the one-year renewal period beginning July 1, 2015. Sufficient funds will be appropriated in the Health Fund – cost centers 4167 (Employees) and 4169 (Cobra Participants) – for the anticipated expenditures in fiscal year 2015/2016.

- 5B2. Approved the one-year renewal of a contract with Colton Commercial for property management, leasing services, and the purchase or sale of properties for the City.

*Fiscal Impact:* All property management fees for City-owned properties are paid to the contractor out of the rent payments collected. The costs associated with the purchase or sale of properties for the City are incorporated into the transaction.

- 5B3. Approved the one-year renewal of a contract with Artistic Land Management, Inc. for landscape maintenance services for transit properties.

*Fiscal Impact:* Total cost of this contract will not exceed \$350,000 during the one-year renewal

period. Sufficient funds have been appropriated in the Transit Fund cost centers 3914 (Transit Operations - EVBOM), 3915 (Transportation Center), 3917 (Bus Stop and Bikeway Maintenance), and 3921 (Light Rail Operations) for the anticipated expenditures in the current fiscal year.

- 5B4. Approved the renewal of a one-year contract with Heinfeld, Meech & Company, P.C. for professional financial statement audit services for the Internal Services Department and other City departments on an as-needed basis.

**Fiscal Impact:** Total cost of this contract will not exceed \$125,000 during the initial one-year contract period. Sufficient funds have been appropriated in General Fund cost center 1831 (Accounting), Community Facilities District Fund cost center 5016 (Community Facilities District - Equipment, Insurance and Contingency), Transit Fund cost center 3911 (Transit Admin and Regional Services), Section 8 Housing Fund cost center 2772 (Section 8 Administration), and other City-wide cost centers as needed for anticipated expenditures in the current fiscal year.

- 5B5. Approved a two-year contract renewal with Standard Printing Company, Inc. for the automated processing, printing, and inserting of water utility bills and tax and licensing notices and statements for the Internal Services Department.

**Fiscal Impact:** Total combined cost of this contract shall not exceed \$345,000 during the two-year contract renewal period. Sufficient funds will be appropriated in General Fund cost center 1832 (Tax and Licensing) and Water Wastewater Fund cost center 1841 (Customer Services) for the anticipated expenditures in the current fiscal year.

- 5B6. Approved the utilization of a one-year Mohave Arizona Purchasing Cooperative contract with CLH International, Inc. for the purchase of Brother Pocket Jet mobile thermal printers and related equipment to be installed into Police patrol vehicles.

**Fiscal Impact:** Total cost of this contract will not exceed \$70,000 during the one-year contract period. Sufficient funds have been appropriated in the Police Protection Capital Improvement Project Fund cost center 5501999 (Police CAD/RMS/FRWS System) for the anticipated expenditures in the current fiscal year.

- 5B7. Approved the utilization of a one-year Mohave Arizona Purchasing Cooperative contract with Konica Minolta Business Solutions U.S.A., Incorporated and Baystone Financial Group, a Division of Kansas State Bank for the lease, installation, and maintenance of multifunctional digital copiers/printers throughout the City on an as-needed basis.

**Fiscal Impact:** Total value of this contract will not exceed \$510,000 during the five-year lease term. Sufficient funds have been appropriated in various Citywide cost centers for the anticipated expenditures during the current fiscal year in the General, Solid Waste, Transit, and Water/Wastewater Funds. This contract is widely used throughout the City and is charged to various cost centers.

- 5B8. Approved the utilization of a one-year Western States Contracting Alliance cooperative contract with SHI International Corporation for the purchase of desktop and server operating system software, Microsoft Enterprise software support, software licensing, and related services to be overseen by the Internal Services Department.

**Fiscal Impact:** Total cost of this contract shall not exceed \$900,000 during the one-year contract period. Sufficient funds have been appropriated in General Fund cost center 1991 (IT Administration) and other City-wide cost centers as needed for the anticipated expenditures during the current fiscal year.

- 5B9. Approved the utilization of one-year State of Arizona contracts with Gruber Technical, Inc. and Titan Power, Inc. for the purchase of uninterrupted power supply equipment, services and maintenance utilized throughout the City.

*Fiscal Impact:* The total combined cost of these two contracts shall not exceed \$350,000 during the one-year contract period. Sufficient funds have been appropriated in various funds and cost centers for the anticipated expenditures in the current fiscal year.

- 5B10. Approved the utilization of seven-month State of Arizona contracts with Fisher Scientific Company, LLC, and VWR International, Inc. for the purchase of laboratory supplies and equipment for the Public Works Department.

*Fiscal Impact:* The total combined cost of these contracts will not exceed \$300,000 for the seven-month contract term. Sufficient funds have been appropriated in the Water/Wastewater Fund cost centers - 3013 (Johnny G. Martinez Water Plant), 3014 (South Tempe Water Plant), and 3041 (Environmental Laboratory) for the anticipated expenditures during the current fiscal year.

- 5B11. ~~REMOVED/DELETED FROM THE AGENDA AT THE REQUEST OF STAFF Approve a sole source purchase with POSH Manufacturing Limited for the purchase of 146 specialized smart card reader/scanner devices that will be installed into Police patrol vehicles.~~

- 5B12. Awarded a professional services contract to Stanley Consultants, Inc. to provide construction management services for the second construction phase of new production well no. 16 located at 8690 South McClintock Drive. **(Contract #2015-97)**

*Fiscal Impact:* The contract amount is \$105,741. Funds are approved and appropriated in fiscal year 2014/15 to cover this contract and related costs in Capital Improvement Project No. 3200019, New Production Wells.

- 5B13. Awarded a professional services contract to Cole & Associates, Inc. dba Cole Design Group, Inc. to prepare an Americans with Disabilities Act Self-Evaluation and Transition Plan for the City of Tempe. **(Contract #2015-98)**

*Fiscal Impact:* The contract amount is \$195,062. Funds are approved and appropriated in fiscal year 2014/15 to cover this contract and related costs in Capital Improvement Project No. 6706249, ADA Accessibility Survey.

- 5B14. Awarded a professional services contract to Ayres Associates Inc. for design of fiber optic cable installation along the Rural Road corridor from the north and south city limits. **(Contract #2015-99)**

*Fiscal Impact:* The contract amount is \$201,248. Funds are approved and appropriated in fiscal year 2014/15 to cover this contract and related costs in Capital Improvement Project No. 6907269, Fiber Optic Installation – Rural Road.

- 5B15. Awarded a professional services contract to Structural Grace, Inc. for a Citywide structural assessment of foundation-mounted light poles. **(Contract #2015-100)**

*Fiscal Impact:* The contract amount is \$93,140. Funds are approved and appropriated in fiscal year 2014/15 to cover this contract and related costs in Capital Improvement Project No. 6999841, Streetlight Pole Structure Replacement.

- 5B16. ~~REMOVED/DELETED FROM THE AGENDA AT THE REQUEST OF STAFF Award a two-year contract with three, one-year renewal options to Hurricane Aquatics, LLC for weekly monitoring and maintenance services of the City's park and golf course lakes and aquatic life.~~

- 5B17. Awarded single purchase contracts to McNeilus and Scranton Manufacturing Company for the purchase of three front load refuse vehicles for use by the Public Works Department. **(Contract #2015-102 A-B)**

*Fiscal Impact:* Total cost of these two contracts will not exceed \$620,000. Sufficient funds have been appropriated in the Solid Waste Fund – cost center 3714 (Commercial) – for the anticipated expenditure in the current fiscal year.

- 5B18. Awarded a two-year contract with three, one-year renewal options to Precision Graphics for screen printed and embroidered clothing for the Fire Medical Rescue Department. *(This item was continued from the May 7, 2015 Regular Council Meeting)* **(Contract #2015-75)**

*Fiscal Impact:* Total cost of this contract will not exceed \$220,000 during the initial two-year contract period. Sufficient funds have been appropriated in the General Fund cost center 2340 (Fire – Emergency Services) for the anticipated expenditures in the current fiscal year.

C. Resolutions

- 5C1. Adopted **RESOLUTION NO. R2015.49** amending Tempe City Code, Appendix A, Schedule of Fees and Charges, Chapter 14, Fire Prevention and Protection, relating to the fees for permit, inspection and administrative services, required by the 2012 International Fire Code and the Tempe City Code.

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

- 5C2. Adopted **RESOLUTION NO. R2015.50** authorizing the Community Services Director to accept an award of the 2015 Library Services and Technology Act grant for the "Sewing Skills and Cosplay" project, provided by the Institute of Museum and Library Services through the Arizona State Library, for the purpose of providing public access to sewing equipment and introductory training in sewing skills to improve Science, Technology, Engineering, Arts and Mathematics offerings and to bring new skills to teens and young adults. **(Contract #2015-103)**

*Fiscal Impact:* The amount of the grant award is \$3,950 in federal funds. Acceptance of this grant does not require any matching City funds. Sufficient budget appropriation for expenditure of this grant is authorized in the Governmental Grants and Donations Fund (Fund 46) as part of the fiscal year 2014-15 adopted budget.

- 5C3. Adopted **RESOLUTION NO. R2015.51** authorizing the Mayor to execute an Intergovernmental Agreement between the City of Scottsdale and the City of Tempe that reallocates \$579,351.11 of HOME Program funds from the City of Scottsdale to the City of Tempe. **(Contract #2015-104)**

*Fiscal Impact:* The reallocated funds are federal HOME funds from the City of Scottsdale. There is no fiscal impact on City funds.

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6. **NON-CONSENT AGENDA**

All items listed on the Non-Consent Agenda will be considered separately. Agenda items scheduled for Introduction and First Public Hearing will be heard, but will not be voted upon at this meeting. Agenda items scheduled for Second Public Hearing and Final Adoption will be voted upon tonight.

Quasi-judicial items are indicated by "q-j". The City Council sits as a quasi-judicial body when hearing certain items as determined by the City of Tempe Zoning and Development Code or State law. In this situation, the City Council

must conduct itself as a court, not as a legislative body. Pre-meeting contact with the City Council on quasi-judicial matters is prohibited. Any materials or conversations concerning the item shall only be presented to the City Council at the scheduled public hearing.

Agenda items 6A2 and 6A3 are designated as quasi-judicial (q-j) items.

**A. Miscellaneous Items/Bids/Contracts/Resolutions**

- 6A1. Contract renewal with Allegiance Benefit Plan Management, Inc. /CIGNA for a Preferred Provider Organization medical network, Flexible Spending Account administration, and Consolidated Omnibus Budget Reconciliation Act administration services.**

There was no discussion on agenda item 6A1.

**Motion by Councilmember Navarro to approve agenda item 6A1; second by Councilmember Kuby. Motion passed unanimously on a roll call vote 7-0.**

- 6A1.** Approved the one-year renewal of a contract with Allegiance Benefit Plan Management, Inc./CIGNA for a Preferred Provider Organization medical network, Flexible Spending Account administration, and Consolidated Omnibus Budget Reconciliation Act administration services for eligible City employees and dependents overseen by the Internal Services Department.

*Fiscal Impact:* Total cost of this one-year renewal will not exceed \$12,000,000 during the one-year contract period beginning July 1, 2015. Sufficient funds will be appropriated in the Health Fund – cost centers 4167 (Employees) and 4169 (Cobra Participants) – for the anticipated expenditures in fiscal year 2015/2016. The sources of the funds include both City and employee contributions to the Health Fund. The employee contribution for fiscal year 2015/2016 is estimated at \$3,000,000.

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- q-j **\*6A2. Public hearing for an Appeal of the decision of the Development Review Commission to deny a Use Permit for outdoor vending (food truck service) for DOG AND PONY BREWERY CO., 922 West First Street.**

Ryan Levesque, Deputy Community Development Director – Planning, stated that this request was originally heard by the City's Hearing Officer and included five use permits consisting of: a brewery, outdoor seating, outdoor vending for food truck service, live entertainment, and a reduction of the front yard setback from 25' to 18.75'. The property is zoned General Industrial District. The Hearing Officer approved all five use permits. An appeal was filed by a neighboring residential property owner to the south. The items were then brought to the Development Review Commission (DRC). The DRC denied the use permit for food truck service, but approved the four other use permits. If Councilmembers vote in favor of the appeal, it would overturn DRC's decision, thus allowing food truck service.

Lindsay Schube, Appellant, Gammage & Burnham, stated that Dave Arnce, Owner/Operator of Dog & Pony Brewery is a member of the Tempe business community and one of the owners of the Cartel business establishment that has six locations, including a business in the Maple/Ash neighborhood. The request is to approve the use permit to allow food truck service for the Dog & Pony Brewery and tasting room located at 922 West 1<sup>st</sup> Street. This site is located at the northeast corner of Hardy Drive and First Street, south of the Tempe Center for the Arts. Located on the north side of street are industrial and commercial buildings, which make this a compatible location for food truck service. It is zoned General Industrial; it is important to think about base zoning and what it allows when considering granting a use permit. The Hearing Officer approved the use permit for food truck service because it met the criteria as set forth in the ordinance.

A brewery will be located on the northern portion of site and a 936 square foot home will be redeveloped on the southern portion of site to serve as a tasting room. No wine or spirits will be served on the patio, which is over 1,000 square feet. The request is to allow no more than two food trucks on the site, at any time. There has been a misconception with some neighbors that this is a large scale bar; it is not. She compared the size of The Yard establishment, which is 32,000 square feet versus the size of the Dog and Pony tasting room, which is much smaller and does not have enough space for a kitchen. Food trucks provide an amenity for patrons; this is a responsible business practice when serving alcohol.

Ms. Schube reviewed the building floor plan and elevation. The two designated food truck parking spots are setback 185'; no more than two food trucks will be on the site at any time; electrical power will be available for food trucks to use; vehicles will not be running while they are parked, which is environmentally responsible and will eliminate exhaust for patrons sitting on the patio. The food truck business has protocols; hours of operation will be coordinated by Mr. Arnce; service will be available primarily around lunch and dinner hours.

Councilmembers, Ms. Schube, and Mr. Levesque discussed the business hours of operation, which will be from 8:00 a.m. to midnight with food truck service initially available Thursday through Saturday from 4:00 p.m. to 9:00 p.m. Food trucks are small businesses; hours of food truck operation will depend on how much business is available. Food trucks must have a reservation at this location in order to operate; if there is no business, they will move on to their next pre-determined location.

In the approval conditions for the four use permits that were approved, there is a standard stipulation that if concerns arise, staff can review the issues, schedule a public hearing, and the City Council can revoke any of the use permits, if approved by Councilmembers. The Hearing Officer also added a stipulation that the applicant return to the Hearing Officer in February 2016 for a review of the use permits. The applicant would agree to this stipulation for the food trucks use permit also, if it is approved.

Because this is a quasi-judicial item, there are standards that should be considered such as, will food trucks cause a significant increase in traffic, create a nuisance, contribute to neighborhood deterioration, conflict with schools, or create disruptive behavior. Air traffic noise exists at this location. The business will be well managed and is compatible with surrounding uses. Residences are located to the south of this site. Since power will be available for use by food trucks, no generators or engines will be running while the vehicles are parked.

The project is currently being reviewed by the City's building department. The business is scheduled to open in December 2015. The DRC appeal delayed the process. Mr. Levesque reviewed the five use permit requests presented to the DRC and explained that the vote at the DRC meeting was 6-1 for the four use permits, with the food truck use permit request being denied. Vice Mayor Woods stated that he felt live entertainment might be more of a concern to the neighborhood, rather than food trucks. Mr. Levesque stated that at their meeting, the DRC indicated that live music was appropriate, but felt that food trucks were not appropriate. It was clarified that the live entertainment will occur inside the building, and not outdoors.

Councilmember Kuby compared this food truck use permit request to the Squeaky Dog Brewery business operation, which also uses food trucks and is located across the street from a residential neighborhood. Food trucks are needed as an amenity when serving alcohol. If the use permit is not granted, the business will be at an operational disadvantage. She voiced support of allowing food trucks to operate at this location.

Mayor Mitchell opened the public hearing and indicated that he had a speaker card from Ruben Rodriguez; Mr. Rodriguez did not address the City Council.

Councilmember Granville noted that the food truck ordinance was revised approximately one year ago, to relax regulations; he requested clarification regarding the permitting requirements for food trucks in residential areas. Mr. Levesque stated that the distinction is that permits are issued for food trucks in the right-of-way; however, this request is for an on-site designation for food trucks.

Councilmember Arredondo-Savage voiced support for allowing food trucks; a successful business is an enhancement and a value. She voiced appreciation of Mr. Arnce wanting to do business in Tempe and the importance of eliminating barriers to success. She requested that if the City Council approves the appeal, the appellant return in six months to a year, for an evaluation of the impacts of food trucks in the neighborhood.

**Motion by Councilmember Arredondo-Savage to approve the appeal for agenda item 6A2 with an amendment that the appellant return in six months after the opening of the business, to provide an update on the impact of food trucks in the neighborhood; second by Councilmember Schapira. Motion passed unanimously on a roll call vote 7-0.**

- q-j \*6A2. Held a public hearing and approved an Appeal, *as amended*, of the decision of the Development Review Commission to deny a Use Permit for outdoor vending (food truck service) in the General Industrial District for DOG AND PONY BREWERY CO., located at 922 West First Street. *The appellant will return in six months after the opening of the business to provide an update on the impact of food trucks in the neighborhood.* The appellant is Lindsay Schube, Gammage & Burnham.

*Fiscal Impact:* None.

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- q-j \*6A3. Public hearing for an Appeal of the decision by the Development Review Commission to approve a Development Plan Review, a Use Permit to allow tandem parking, and a Use Permit Standard to increase the maximum building height, for two new apartment buildings containing 19 units for 5TH & HARDY APARTMENTS, 1000 West 5th Street.

William Connelly, Appellant, requested that this item be continued to the June 11, 2015, Regular Council Meeting.

**Motion by Councilmember Navarro to continue agenda item 6A3 to the June 11, 2015, Regular Council Meeting; second by Councilmember Arredondo-Savage. Motion passed unanimously on a roll call vote 7-0.**

- q-j \*6A3. *Continued the public hearing to the June 11, 2015, Regular Council Meeting at the request of the Appellant*, for an Appeal of the decision by the Development Review Commission to approve a Development Plan Review, a Use Permit to allow tandem parking, and a Use Permit Standard to increase the maximum building height, for a project consisting of two new apartment buildings containing 19 units for 5TH & HARDY APARTMENTS, located at 1000 West 5th Street. The appellant is William Connelly.

*Fiscal Impact:* None

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- \*6A4. Public hearing for a review of the Zoning Map Amendment and Planned Area Development Overlay for a time extension request of prior entitlements for HAYDEN HARBOR AT TEMPE TOWN LAKE, 430 North Scottsdale Road.

Ryan Levesque, Deputy Community Development Director – Planning, stated that this item is a time extension request for Hayden Harbor at Tempe Town Lake, consisting of a zoning map amendment and a planned area development (PAD) overlay for mixed-use with allowance of 6 mixed-use towers ranging in height from 220' to 278'. Uses consist of hotel, residential, restaurant, retail, and office space. The applicant is requesting a time extension to February 24, 2018. If a time extension is granted, it will maintain the zoning designation of MU-4 and PAD entitlements for this site. Should the City Council decide not to grant a time extension, the property would be rezoned from mixed-use MU-4 to General Industrial District and the PAD removed. Those zoning designations would not be in conformance with the General Plan 2040 as this area is projected to be mixed-use.

Manjula Vaz, applicant representative, stated that the entitlements were processed approximately five years ago because the property was in bankruptcy and the court requested that the value of the property be maintained. At the time, it was the intent of the applicant to build a mixed-use development. A project has not been proposed to the City Council because development proposals for this site have consisted of smaller, wood frame buildings. The intent is to build a taller residential tower with mixed-use development. The applicant is now prepared to process a PAD within the next year.

The applicant's intent is to return to the City Council with retail along Rural Road, a high density residential tower, and office space. The site is located directly north of the State Farm building in Marina Heights. The applicant is requesting a one year PAD time extension versus having the land revert to Industrial zoning, which is a land use that is not supported by the General Plan.

Mayor Mitchell opened the public hearing.

Councilmembers and Ms. Vaz discussed how the applicant has declined offers to build because the proposed developments did not fit the City Council's vision for this site. Councilmembers have indicated they would like taller residential/office, mixed-use development. The delay in moving forward with a project was to see how the State Farm project and the market developed, to ensure development on the proposed site meets the City Council's vision. The residential component will include a mixture of apartments and condominiums, with high density concrete, steel, and glass materials. The office and retail buildings along Rural Road will look similar to the State Farm building.

Councilmember Granville stated that he will be voting no for two reasons: 1) approval of this item puts Councilmembers in an inferior position because Councilmembers are bargaining against a decision made by a previous City Council; reverting the zoning eliminates that issue; and, 2) what Tempe looked like five years ago, and what residents want, changes over time. Public input on what the proposed project currently looks like is important. What may have been appropriate five years ago may no longer be the case.

Vice Mayor Woods stated that feedback from residents has indicated that residential, office, and retail is typically better than having industrial zoning located adjacent to a neighborhood. Had the zoning been reverted on an earlier request for a time extension, the zoning would have reverted to General Industrial with the potential that a strip club (adult business) would be an option for that site. His preference is to keep the zoning intact to avoid that potential. He questioned if the project would be required to return to Councilmembers where the PAD is combined with the Development Plan Review (DPR). Mr. Levesque clarified that if the redesign is a substantial change from the previous design, that entire package would return to the City Council.

Vice Mayor Woods stated that the City Council will have an opportunity to review the DPR and site plan and then vote on the project. It would be different if the City Council were only extending the PAD. The new rules provide more protection to adjacent residential areas. He stated that he is comfortable with granting the time extension, given the new rules.

Councilmember Navarro noted that the applicant has made a strong case in terms of why there has been a delay in moving forward with a project; the applicant is aware of the City Council's vision of ensuring a quality project. There are guidelines for how the City views the lake. There is a process that provides an opportunity for the City Council to review project changes. He voiced support for the time extension request and appreciation for the applicant's explanation for the delay in moving forward with a project. This project complies with the General Plan.

Mayor Mitchell stated that what is being proposed fits the vision and criteria the City Council is looking for, especially for the lake; the lake has always been zoned for this type of project. The City Council previously denied a stucco, wood stick frame project on south side of lake. These requests are considered on a case by case basis; consideration is given to what the project is and its proximity to residences. Zoning has changed in parts of the community based on various issues. With the upturn in the economy, projects are moving forward such as the third phase of the Hayden Ferry Lakeside project, the State Farm development, and additional projects on the north side of the lake, including residential development.

Councilmember Arredondo-Savage voiced appreciation for the due process for zoning reversions and that it is helpful to consider the original intent for a project. She was a member of the City Council when this project was originally approved and agrees that the project fits the City Council's vision. These requests are considered on a case by case basis. Some of the projects are older than others; it is all about changing neighborhoods, as well as the vision of the community and the City Council. She voiced support for the time extension request. Ms. Vaz clarified that the time extension request is for one year. Councilmember Kuby noted that there are additional conditions that staff recommended.

**Motion by Councilmember Arredondo-Savage to approve agenda item 6A4, as amended, to a one-year time extension; second by Vice Mayor Woods. Motion passed on a roll call vote 6-1 with Councilmember Granville voting no.**

- \*6A4.** Held a public hearing for a review of the Zoning Map Amendment and Planned Area Development Overlay and approved a *one-year* time extension request of prior entitlements for HAYDEN HARBOR AT TEMPE TOWN LAKE, located at 430 North Scottsdale Road. The applicant is Gammage and Burnham PLC.

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

The following *amended* condition of approval shall apply, in addition to the existing conditions of approval:

Condition 1: A building permit application shall be completed on or before *May 21, 2016*, with the intent to issue a building permit and commence construction, or the zoning of the property may revert to that in place at the time of application, subject to a public hearing at City Council.

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- \*6A5.** Public hearing for a review of the Zoning Map Amendment and Planned Area Development Overlay for a time extension request of prior entitlements for M7 MIXED USE DEVELOPMENT, 701 South Mill Avenue.

Ryan Levesque, Deputy Community Development Director – Planning, stated that this time extension request is for M7, which is a mixed-use development consisting of properties that front along Mill Avenue from 7<sup>th</sup> Street to Myrtle Avenue. The original development had three tower elements, one being a hotel with two residential tower elements of 306' in height. The time extension request pertains to the PAD overlay with no zoning map changes. The underlying existing zoning is CC – City Center District. The PAD entitlements granted additional height, density, and a parking reduction. The applicant is requesting a time extension to December 31, 2016. There are two property owner representatives in this case, for this site.

Charles Huellmantel, Electric Capital representative, displayed a map of properties spanning from Mill Avenue to Forest Avenue. The center parcel is owned by Electric Capital. Manjula Vaz represents the client for the remaining two parcels. Electric Capital spent the last few years working through bankruptcy issues for the property; the property was eventually split among two separate entities and now has three property owners. The original request was for a time extension to December 31, 2016; however, that request has been changed to a one-year time extension to May 21, 2016. Electric Capital has been working on developing its parcel, has hired an architect, and has met with staff several times. He anticipates that within the next two months, the project will be reviewed by staff, the DRC, and City Council.

Since there are three property owners, there could conceivably be three separate projects. It is important that the focus over the next year be on the project, versus the reversion process. The project today is significantly larger than the proposed revised project in terms of height and land mass. The City Council will have an opportunity to review the new project and make a decision at that time.

Mayor Mitchell questioned that since the proposed project is anticipated to be an entirely different project, why not revert the zoning. Mr. Huellmantel stated that the State of Arizona requires a process to revert zoning that consists of multiple public hearings; reverting zoning is not automatic. If the zoning were to be reverted, it would take twice the amount of work.

Mayor Mitchell opened the public hearing.

Councilmember Arredondo-Savage expressed concern about the initial project, but due to the stated revisions to the project and that City Council will have an opportunity to review the new project, she is comfortable with a one-year time extension.

**Motion by Councilmember Arredondo-Savage to approve agenda item 6A5 as amended, with a *one-year* time extension from today's date; second by Vice Mayor Woods.**

Mayor Mitchell noted that the applicant will be returning to the City Council with a project that is different than what was originally approved at this location. He stated that he will not be supporting the time extension request because of the size of building, the importance of this location in the downtown core, and the importance of seeking feedback on what should be in that location

**Motion passed on a roll call vote 5-2 with Mayor Mitchell and Councilmember Granville voting no.**

- \*6A5. Held a public hearing for a review of the Zoning Map Amendment and Planned Area Development Overlay and approved a *one-year* time extension request of prior entitlements for M7 MIXED USE DEVELOPMENT, located at 701 South Mill Avenue. The applicants are Charles Huellmantel, Huellmantel and Affiliates and Manjula Vaz, Gammage and Burnham.

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

The following *amended* condition of approval shall apply, in addition to the existing conditions of approval:

Condition 1: A building permit shall be obtained on or before *May 21, 2016*, or the zoning of the property may revert to that in place at the time of application, subject to a public hearing.

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**B. Ordinances and Items for Introduction and First Hearing**

- \*6B1. **Ordinance authorizing the granting of an Irrigation Easement to Salt River Project Agricultural Improvement and Power District over City-owned land located near Priest Drive and Warner Road.**

Mayor Mitchell introduced the ordinance and opened the public hearing. There was no discussion or public comment on agenda item 6B1.

- \*6B1. Introduced and held the first public hearing to adopt an ordinance authorizing the granting of an Irrigation Easement to Salt River Project Agricultural Improvement and Power District over certain City-owned land located near the intersection of Priest Drive and Warner Road, and the execution of an easement agreement. The second and final public hearing was scheduled for June 11, 2015. (Ordinance No. O2015.22)

*Fiscal Impact:* No impact on City funds.

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- \*6B2. **Ordinance authorizing the granting of a reciprocal easement to LMC Apache Terrace Holdings, LLC over City-owned land located near Dorsey Lane and Apache Boulevard.**

Mayor Mitchell introduced the ordinance and opened the public hearing. There was no discussion or public comment on agenda item 6B2.

- \*6B2.** Introduced and held the first public hearing to adopt an ordinance authorizing the granting of a reciprocal easement to LMC Apache Terrace Holdings, LLC over certain City-owned land located near the southeast corner of Dorsey Lane and Apache Boulevard, and authorizing the Mayor or his designee to execute a reciprocal easement agreement and related documents. The second and final public hearing was scheduled for June 11, 2015. (Ordinance No. O2015.23)

*Fiscal Impact:* No impact on City funds. Developer will construct and maintain the driveway.

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**C. Ordinances and Items for Second Hearing and Final Adoption**

- \*6C1. Ordinance amending Chapter 26, Article III, of the Tempe City Code relating to Disposal of Property in Police Possession.**

Mayor Mitchell opened the public hearing. There was no discussion or public comment on agenda item 6C1.

**Motion by Councilmember Granville to approve agenda item 6C1; second by Councilmember Navarro. Motion passed unanimously on a roll call vote 7-0.**

- \*6C1.** Held the second and final public hearing and adopted **ORDINANCE NO. O2015.17** amending Chapter 26, Article III, of the Tempe City Code relating to Disposal of Property in Police Possession.

*Fiscal Impact:* There is no direct cost to the City.

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- \*6C2. Ordinance authorizing the granting of a power distribution easement to Salt River Project Agricultural Improvement and Power District over City-owned land located near 7195 South Shutterfly Way.**

Mayor Mitchell opened the public hearing. There was no discussion or public comment on agenda item 6C2.

**Motion by Councilmember Kuby to approve agenda item 6C2; second by Vice Mayor Woods. Motion passed unanimously on a roll call vote 7-0.**

- \*6C2.** Held the second and final public hearing and adopted **ORDINANCE NO. O2015.18** authorizing the granting of a power distribution easement to Salt River Project Agricultural Improvement and Power District over certain City-owned land located near 7195 South Shutterfly Way, and authorizing the City Manager or his designee to execute an easement agreement and related documents. (Contract #2015-105)

*Fiscal Impact:* No impact on City funds.

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- \*6C3. Ordinance authorizing the abandonment of temporary construction and slope easements located near 1607 East Apache Boulevard.**

Mayor Mitchell opened the public hearing. There was no discussion or public comment on agenda item 6C3.

**Motion by Councilmember Schapira to approve agenda item 6C3; second by Vice Mayor Woods. Motion passed unanimously on a roll call vote 7-0.**

- \*6C3. Held the second and final public hearing and adopted **ORDINANCE NO. O2015.19** authorizing the abandonment of a temporary construction easement and a temporary slope easement located near 1607 East Apache Boulevard.

*Fiscal Impact:* No impact on City funds.

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- \*6C4. **Ordinance authorizing the abandonment of a waterline easement located near the southwest corner of Elliot Road and River Parkway.**

Mayor Mitchell opened the public hearing. There was no discussion or public comment on agenda item 6C4.

**Motion by Councilmember Kuby to approve agenda item 6C4; second by Councilmember Schapira. Motion passed unanimously on a roll call vote 7-0.**

- \*6C4. Held the second and final public hearing and adopted **ORDINANCE NO. O2015.20** authorizing the abandonment of an existing waterline easement located near the southwest corner of Elliot Road and River Parkway.

*Fiscal Impact:* No impact on City funds.

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- \*6C5. **Ordinance amending Chapter 19 of the Tempe City Code, Motor Vehicles and Traffic, making it a secondary offense for the operator or passenger of a motor vehicle to smoke cigarettes, pipes, cigars, or other combustible substances or to use an electronic nicotine delivery system in a motor vehicle when a person under the age of 18 is present.**

Mayor Mitchell opened the public hearing.

Matt Morales, Phoenix, Executive Director of the National Association for Vapor Businesses, stated that the vaping industry is against smoking and is concerned about combining vaping and electronic nicotine delivery systems with combustible tobacco products in the same ordinance or legislation. The industry would support this if vaping was separated from combustible tobacco in the ordinance. Secondhand smoke emitted by combustible tobacco has been proven to be cancer causing. Vaping and smoking in a car are two separate things. Studies have shown there is zero traceable effect for secondhand vaping; individuals are 60% more likely to never smoke again, once they begin vaping with electronic cigarettes (e-cigarettes). The essence of what Councilmembers are trying to achieve is positive.

Leland Fairbanks, Tempe, Maricopa County Medical Society member, stated that the Maricopa County Medical Society endorses including e-cigarettes in prohibitions to protect the air. E-cigarettes are not water vapor; they contain toxic ingredients. Officials from the United States Public Health Service also support Tempe in including e-cigarettes in the ordinance. It takes 30 years to develop lung cancer; the studies are not yet available to indicate if e-cigarettes are safe.

Caius McNaughton, Scottsdale, vapor business owner and member of the National Association for Vapor Businesses, stated that he applauds efforts to protect children from the dangers of secondhand smoke. He noted that the inclusion of vapor products in the ordinance is a misclassification. Vapor products don't contain tobacco, nor do they involve combustion, which are the cause of tobacco harm. Studies and data indicate that secondhand exposure to vapor does not present the same risk as traditional tobacco cigarettes; there are more harmful compounds in air than there are in vapor products. Vaping provides a healthier alternative; the industry is working hard to avoid any association with tobacco, or the tobacco industry.

Councilmember Navarro voiced support for the ordinance. Tempe has taken steps to mitigate secondhand smoke and recently classified e-cigarettes in an ordinance. Tobacco use of any kind is bad; it should be used in appropriate places.

Studies indicate that smoking tobacco or using smoking devices in cars is not beneficial to any of the passengers, including children. There is contradicting data regarding e-cigarettes and regular smoking devices. Drivers will not be pulled over for smoking; this is a secondary offense if an individual is pulled over for any other violation.

Councilmember Schapira stated that he has been working on this issue for nine years; it is the right thing to do. Concerns have been raised that this ordinance is about legislating parenting. Nicotine and tobacco have harmful impacts on children; parents should not be smoking in a car with children. This is an acute issue in Arizona. With urban sprawl, people are driving longer distances with children in their cars. He provided death rate statistics for children exposed to secondhand smoke, including the number of children in Arizona that are exposed to second hand smoke in vehicles. The goal is to mitigate harm caused by the consumption of nicotine and the effects of combustible tobacco; evidence is lacking regarding vaporized nicotine, but there is antidotal evidence that inhalation of nicotine vapor could be harmful. Vaping is a step in right direction; innovation is occurring. Kingman recently plagiarized Tempe's ordinance language and passed a similar ordinance. Tempe will be the first city in the Valley to pass this type of ordinance, which becomes effective in 30 days.

**Motion by Councilmember Schapira to approve agenda item 6C5; second by Councilmember Arredondo-Savage.**

Councilmember Kuby voiced support for this ordinance and congratulated the City of Kingman for passing this ordinance. This is the right thing to do.

Councilmember Granville stated that he was the dissenting vote on the e-cigarette ordinance a year ago and he has not seen any new data since then. This ordinance does more good than harm. This ordinance legislates doing harm to people who are vulnerable and unable to protect themselves; it is irrelevant to parenting. He voiced concern that this ordinance would cover high school students, making it illegal for a choice someone is making, versus a parent telling a child to get into a car.

**Motion passed unanimously on a roll call vote 7-0.**

Councilmember Kuby congratulated Councilmember Schapira for bringing this issue forward to the legislature and now to Tempe. Tempe is leading the way.

- \*6C5. Held the second and final public hearing and adopted **ORDINANCE NO. O2015.21** amending Chapter 19 of the Tempe City Code, Motor Vehicles and Traffic, making it a secondary offense for the operator or passenger of a motor vehicle to smoke cigarettes, pipes, cigars, or other combustible substances or to use an electronic nicotine delivery system in a motor vehicle when a person under the age of 18 is present.

*Fiscal Impact:* This ordinance would result in the collection of a \$50 fine for the first incident and \$100 fine for all subsequent incidents.

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## 7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

Councilmember Kuby

- Commented on the Tempe Leadership Program bike corral project at Tempe Beach Park. Charities will have an opportunity to operate the corral and collect tips during events. State Farm is participating in fund raising activities. She provided a website address for fundraising information.

Councilmember Arredondo-Savage

- Thanked Dr. Fairbanks for a sign that includes e-cigarettes. Approximately one year ago, Tempe added e-cigarettes to its smoking ordinance. There are still unproven facts; vaping may be a way to stop smoking. Thanked Councilmember Schapira for incorporating e-cigarettes into the ordinance that was approved this evening.
- Tonight is graduation night. Thanked educators and staff members for ensuring children are successful.

- Have a wonderful summer.
- The Tempe Public Library and the City's website have information on children's activities, including summer school information.

Councilmember Navarro

- Congratulated graduates.
- Thanked Richard Edgecomb, City Hall Security Guard, for his service to the City of Tempe.

Councilmember Granville

- Thanked Richard Edgecomb, City Hall Security Guard, for his service to the City of Tempe.
- Tempe Preparatory Academy has 8 out of 58 students that have achieved national merit scholar status.
- Congratulated all graduates.

Mayor Mitchell

- Thanked Richard Edgecomb, City Hall Security Guard, for his service to the City of Tempe.
- Happy birthday to his daughter.
- Congratulated school administrators, faculty and graduates; Tempe has great schools.
- Tuesday, June 9, 2015 – City Talk at the Tempe History Museum; Greg Ruiz, Fire Medical Rescue Department Chief, will provide a public safety update.
- Wished all a safe and happy Memorial Day weekend.

**8. PUBLIC APPEARANCES**

- A. Scheduled – None.
- B. Unscheduled – None.

**The meeting adjourned at 7:58 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 Regular City Council meeting of May 21, 2015, by the Tempe City Council, Tempe, Arizona.

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Mark W. Mitchell, Mayor

ATTEST:

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Brigitta M. Kuiper, City Clerk