Minutes
Regular City Council Meeting
May 26, 2016

Minutes of the Regular Council Meeting of Thursday, May 26, 2016, 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
Judi Baumann, City Attorney
Ken Jones, Deputy City Manager – Chief Financial Officer
Brigitta M. Kuiper, City Clerk
Steven Methvin, Deputy City Manager – Chief Operating Officer
Julian Dresang, Traffic Engineer
Ryan Levesque, Deputy Community Development Dir.-Planning
Alex Smith, Real Estate Development Supervisor
Various Department Heads or their representatives

Mayor Mitchell called the meeting to order at 6:09 p.m.

1. Councilmember Kuby 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 Arredondo-Savage to approve agenda items 3A1 – 3A2; second by Vice Mayor Woods. Motion passed unanimously on a voice vote 7-0.

1. Regular City Council Meeting - March 17, 2016
2. City Council Work Study Session - March 29, 2016 and April 7, 2016

B. Acceptance of Board, Commission and Committee Meeting Minutes

Motion by Councilmember Arredondo-Savage to accept agenda items 3B1 – 3B10; second by Vice Mayor Woods. Motion passed unanimously on a voice vote 7-0.

1. Aviation Commission - April 12, 2016
2. Development Review Commission - March 22, 2016
3. Development Review Commission Study Session - March 22, 2016
4. Neighborhood Advisory Commission - April 6, 2016
5. Parks, Recreation, Golf and Double Butte Cemetery Advisory Board - April 20, 2016
6. Tempe Fire Public Personnel Safety Retirement System Board - April 7, 2016
7. Tempe Municipal Arts Commission - April 13, 2016

8. Tempe Police Public Personnel Safety Retirement System Board - March 3, 2016 and April 7, 2016
9. Tempe Sustainability Commission - March 21, 2016
10. Transportation Commission - March 8, 2016

4. REPORTS AND ANNOUNCEMENTS

A. Mayor's Announcements – None.

B. City Manager's Announcements

1. Traffic Barricade Manual Update

Julian Dresang, Traffic Engineer, provided an overview of the City's Traffic Barricade Program. He stated that traffic barricades are used to manage street infrastructure, special events, and traffic flow. The program's primary goal is safety. Barricading is overseen by the federal government through their Manual on Uniform Traffic Control Devices. The City has also developed a Traffic Barricade Manual. Recent updates to the City's Traffic Barricade Manual include limiting road work during morning and evening rush hours; improved advanced notification to users through various public outreach methods; and, improved accommodations for transit users. Staff is in the process of notifying the public, barricade companies, and construction contractors, of the program changes.

In response to a question, Mr. Dresang stated that the public may report traffic barricade concerns by calling Tempe 311.

2. Andrew Ching, City Manager, thanked the City Hall security staff for their work and wished Security Guard, Jim Taylor, well on his future endeavors.

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 Arredondo-Savage to approve the consent agenda with the exception of item 5A7, which was removed for separate consideration; second by Councilmember Granville. Motion passed unanimously on a roll call vote 7-0.

A. Miscellaneous Items

5A1. Approved the April 2016 Report of Claims Paid to be filed for audit.

Fiscal Impact: Total payments in April: $20,044,499.40

*5A2. Held a public hearing and recommended the approval of a series 12 restaurant liquor license for King of Gyros LLC, dba King of Gyros, 1342 West Warner Road, Suite B106.

Fiscal Impact: N/A

*5A3. Held a public hearing and recommended the approval of a series 12 restaurant liquor license for Neighborhood Restaurants, LLC, dba Zipps Sports Grill, 1860 East Warner Road, Suite 109.

Fiscal Impact: N/A

*5A4. Held a public hearing and recommended the approval of a series 12 restaurant liquor license for Ncounter Franchising LLC, dba Ncounter, 310 South Mill Avenue, Suite A101.

Fiscal Impact: N/A

*5A5. Held a public hearing and recommended the approval of a series 03 domestic microbrewery liquor license for Barley Entertainment LLC, dba Blasted Barley Beer Company, 404 South Mill Avenue, Suite 101.

Fiscal Impact: N/A

*5A6. Held a public hearing and recommended the approval of a series 06 bar liquor license for Barley Entertainment LLC, dba Blasted Barley Beer Company, 404 South Mill Avenue, Suite 101.

Fiscal Impact: N/A

5A7. THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION. Approve an amendment to the Tempe City Council Rules of Procedure, relating to Rule 2, Conflict of Interest. (Note, amending the Tempe City Council Rules of Procedure requires an affirmative vote of at least two-thirds (2/3) of the City Council; therefore, a Council vote of 5 of 7 is required for approval.)

B. Award of Bids/Contracts

5B1. 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 one-year 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.

5B2. Approved a two-year contract renewal with MISCOwater for Siemens sludge removal parts on an as needed basis.

Fiscal Impact: Total cost of this two-year contract renewal will not exceed $400,000. Sufficient funds are available in the Water Wastewater Fund - cost center 3013 (Johnny G. Martinez Plant) for the anticipated expenditures.

5B3. Approved a two-year contract renewal with Banc of America Merchant Services, LLC. for credit and debit card processing services.

Fiscal Impact: Total cost of this two-year contract renewal will not exceed $500,000. Sufficient funds are available in cost centers – General Fund - 1831 (Accounting), and 1832 (Tax and Licensing), Golf Fund – 2511 (Rolling Hills Golf Course), and 2512 (Ken McDonald Golf Course), Water/Wastewater Fund – 1841 (Customer Services), Performing Arts Fund – 3610 (Performing Arts Admin), Transit Fund – 3915 (Transportation Center), and Highway User Revenue Fund – 3822 (Traffic Engineering) for the anticipated expenditures.

5B4. Approved a one-year contract renewal with CTE (Center for Transportation and the Environment) for the evaluation of propulsion/energy options related to the Tempe Streetcar Project.

Fiscal Impact: Total cost of this one-year contract renewal will not exceed $80,000. Sufficient funds have been budgeted in the Transit Fund – Cost Center 3914 (Transit Operations) – for the anticipated expenditure.

5B5. Approved a one-year sole source contract renewal for software maintenance and support with Infor Public Sector, Inc. for the City's infrastructure management system.

Fiscal Impact: Total cost of this contract will not exceed $94,432.52 during the one-year contract period. Sufficient funds have been appropriated in General Fund cost center 1991 (IT Administration) for the anticipated expenditures in the current fiscal year.

5B6. Approved a one-year sole source contract renewal with PhoenixNAP for computer infrastructure and disaster recovery hosting services for the Internal Services Department.

Fiscal Impact: Total cost of this one-year contract renewal will not exceed $80,000. Sufficient funds have been appropriated in General Fund cost center - 1991 (IT Administration) for the anticipated expenditures.

5B7. Approved a three-year and one-month contract renewal with Millenium Golf Management, LLC to provide golf, food, and beverage services at the City's Rolling Hills and Ken McDonald Golf Courses. (Contract #2011-70B)

Fiscal Impact: Total cost of this contract renewal will not exceed $850,000. Sufficient funds have been appropriated in Golf Fund cost centers 2513 (Ken McDonald Business Operations) and 2517 (Rolling Hills Business Operations) for the anticipated expenditures in the current fiscal year.

5B8. Awarded a professional services consultant contract to Jacobs Engineering Group Inc. for evaluation and design of modifications to the light rail transit crossing on University Drive near McAllister Avenue. (Contract #2016-110)

Fiscal Impact: The professional services consultant contract amount is $106,604. A portion of the funds ($75,000) to cover this contract were approved and are appropriated for fiscal year 2015/16 in Capital Improvement Project No. 6907739, Light Rail Efficiency Improvement at University Drive. The balance is proposed to be funded in fiscal year 2016/17.

5B9. Awarded a construction contract to Insituform Technologies, LLC for flood irrigation system infrastructure improvements on College Avenue between Broadmor Drive and Palmcroft Drive. (Contract #2016-111)

Fiscal Impact: The construction contract amount is $122,190 and the project contingency amount is $12,200. A portion of the funds ($110,000) to cover this contract and associated expenses were approved and are appropriated for fiscal year 2015/16 in Capital Improvement Project No. 3205899, Flood Irrigation Infrastructure Improvements. The balance is proposed to be funded in fiscal year 2016/17.

C. Resolutions

5C1. Adopted RESOLUTION NO. R2016.51 authorizing the Chief of Police or designee(s), to execute a grant agreement between the City of Tucson and the Tempe Police Department to accept grant funds for salary, overtime and employee related expenses for a Sergeant position assigned to the High Intensity Drug Trafficking Area - Maricopa County Drug Suppression Task Force. (Contract #2016-112)

Fiscal Impact: The amount of the total grant award is $173,938. This grant award will supplement the Police Department's existing General Fund budget appropriation. Sufficient budget appropriation for expenditure of this grant was included as part of the Police Department RICO and Grants Fund (Fund 45) as part of the fiscal year 2015-16 adopted budget.

5C2. Adopted RESOLUTION NO. R2016.52 authorizing the Mayor to execute the Memorandum of Understanding between the Institute for Child Success and the City of Tempe to accept a Technical Assistance Award to pursue a Feasibility Study on using Pay for Success financing in Early Childhood. (Contract #2016-113)

Fiscal Impact: In-kind staff time match of $35,000. The commitment of staff time will come from the existing personnel budget.

CONSENT AGENDA ITEM REMOVED FOR SEPARATE CONSIDERATION:

5A7. Amendment to the Tempe City Council Rules of Procedure relating to Conflict of Interest.

Councilmember Granville voiced concern about the term "personal involvement" that is referenced in the Conflict of Interest Disclosure form, as it is not clearly defined. He discussed potential examples of personal involvement.

Councilmember Schapira stated that the term "personal involvement" is included in the City Charter. He stated that he is not opposed to further defining the term, at a later date. Substantial interest and personal involvement would be determined at the discretion of a Councilmember. The Councilmember would then have the option of recusing himself or herself from a matter, to avoid the appearance of impropriety.

Councilmember Navarro stated that the purpose of this agenda item is to increase transparency by providing City Council conflict of interest information on the City's website.

Motion by Vice Mayor Woods to approve agenda item 5A7; second by Councilmember Arredondo-Savage. Motion passed unanimously on a roll call vote 7-0.

5A7. Approved an amendment to the Tempe City Council Rules of Procedure, relating to Rule 2, Conflict of Interest. (Note, amending the Tempe City Council Rules of Procedure requires an affirmative vote of at least two-thirds (2/3) of the City Council; therefore, a Council vote of 5 of 7 is required for approval.)

Fiscal Impact: N/A

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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.

A. Miscellaneous Items/Bids/Contracts/Resolutions

*6A1. Public hearing for a review of conditions of approval for a Use Permit to allow an animal kennel and outdoor dog run for TEMPE DOGS 24/7, 937 East Broadway Road, Suite 7.

Mayor Mitchell opened the public hearing.

Stephen Biles, Tempe Dogs 24/7 owner, stated that he met with community members after the last public hearing. He stated that he eliminated the outdoor dog run and that he is willing to make that a permanent condition of the use permit, along with a few other stipulations.

Mary Hoyt, Tempe, voiced appreciation for Mr. Biles' decision to remove the dog run, which was the main concern for the school and the neighborhood. She voiced support for modifications to the Use Permit conditions of approval.

The public hearing was closed.

Motion by Vice Mayor Woods to approve agenda item 6A1; second by Councilmember Arredondo-Savage. Motion passed unanimously on a roll call vote 7-0.

Ryan Levesque, Deputy Community Development Director – Planning clarified that the motion on this item includes the stipulations and modifications presented by the applicant, which were included in the City Council meeting packet for this item.

Use Permit conditions of approval with modifications as requested by previous appellant and applicant per letter dated May 21, 2016:

2. The Use Permit is valid for the plans as submitted within this application, excluding the Exterior Dog Run. Any additions or modifications may be submitted for review during building plan check process.

~~8. The applicant shall return to the City Council 6 months after occupancy of the site, for a review of compliance with these conditions as a public hearing. Prior to the review hearing, the applicant shall provide data pertaining to the number of after-hour (8:30 pm to 6:30 am) customer visits to the business.~~

~~12. Total number of dogs on site at any time not to exceed a monthly average of 85 dogs per day. The six-month review will evaluate a request for 100 per day.~~

~~13. Drop off and pickup hours limited to 6:30 a.m. to 8:30 p.m., with after hours by appointment.~~

*6A1. Held a public hearing for a six-month review, *and approved modified conditions of approval*, for a Use Permit to allow an animal kennel and outdoor dog run for TEMPE DOGS 24/7, located at 937 East Broadway Road, Suite 7. The applicant is Tempe Dogs 24/7.

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

6A2. Contract with Express Scripts to provide pharmacy benefits management services for eligible City employees and dependents.

There was no discussion on agenda item 6A2.

Motion by Councilmember Kuby to approve agenda item 6A2; second by Vice Mayor Woods. Motion passed unanimously on a roll call vote 7-0.

6A2. Approved a one-year contract renewal with Express Scripts to provide pharmacy benefits management services for eligible City employees and dependents. *(This item was continued from the May 12, 2016 Regular Council Meeting)*

Fiscal Impact: The total cost of this one-year contract renewal will not exceed $3,400,000. Sufficient funds will be appropriated in the Health Fund – cost center 4167

(Employees) and 4169 (Cobra Participants) – for the anticipated expenditures in the upcoming fiscal year. Effective date of the renewal is July 1, 2016.

6A3. Contract with the Tempe Convention and Visitors' Bureau to provide tourism-related marketing services.

There was no discussion on agenda item 6A3.

Motion by Vice Mayor Woods to approve agenda item 6A3; second by Councilmember Schapira. Motion passed unanimously on a roll call vote 7-0.

6A3. Approved a six-year contract renewal with the Tempe Convention and Visitors' Bureau to provide for Tourism-related marketing services. (Contract #2016-116)

Fiscal Impact: The annual cost of the contract starts at $2,300,000 in fiscal year (FY) 2016-17 and increases with the cost of additional services and inflationary adjustments in the subsequent five years as follows: FY 2016-17 – $2,300,000; FY 2017-18 – Increase annual payment by $104,500, plus CPI adjustment; FY 2018-19 – Increase annual payment by $90,000, plus CPI adjustment; FY 2019-20 – Increase annual payment by $65,000, plus CPI adjustment; FY 2020-21 – Adjust annual payment based on CPI; FY 2021-22 – Adjust annual payment based on CPI.

B. Ordinances and Items for Introduction and First Hearing

*6B1. Ordinance amending Chapter 12, Article II, Tempe City Code, relating to floodplain management, by amending Sections 12-29 and 12-31 respectively, relating to standards of construction and standards for utilities within special flood hazard areas.

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

*6B1. Introduced and held the first public hearing to adopt an ordinance amending Chapter 12, Article II, Tempe City Code, relating to floodplain management, by amending Section 12-29, relating to standards of construction, and by amending Section 12-31, relating to standards for utilities within special flood hazard areas. The second and final public hearing was scheduled for June 9, 2016. (Ordinance No. O2016.33)

Fiscal Impact: No impact on City funds.

C. Ordinances and Items for Second Hearing and Final Adoption

*6C1. Ordinance for an Amended Planned Area Development and a Development Plan Review for FAIRFIELD INN & SUITES, 2222 South Priest Drive.

Mayor Mitchell opened the public hearing. There was no discussion or public comment on agenda item 6C1. The public hearing was closed. Councilmember Navarro left the meeting.

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

*6C1. Held the second and final public hearing and adopted ORDINANCE NO. O2016.26 for an Amended Planned Area Development and a Development Plan Review for a new five-story hotel in the GID Zoning District in Fountainhead Corporate Park for FAIRFIELD INN & SUITES, located at 2222 South Priest Drive. The applicant is Les Partch of Functional Formation Architecture.

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.

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*6C2. Ordinance approving the lease of City-owned property at Rio Salado Parkway and Mill Avenue, a development and disposition agreement, leases, and related documents.

Mayor Mitchell opened the public hearing. Councilmember Navarro returned to the meeting.

Dustin Short, Tempe, questioned why the City was allowing a hotel tax break as part of the development agreement.

Alex Smith, Real Estate Development Supervisor, stated that the development agreement is for the lease of City-owned property and allows for the development of a hotel on the property. He clarified that there is no rebate of the hotel tax or the transient lodging tax; the agreement authorizes a government property lease excise tax for the hotel.

Mayor Mitchell closed the public hearing.

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

*6C2. Held the second and final public hearing and adopted ORDINANCE NO. O2016.27 approving the lease of City-owned real property located at the intersection of Rio Salado Parkway and Mill Avenue, and authorizing the Mayor to execute a development and disposition agreement, one or more leases and related documents necessary to affect such leases and other transactions. (Contract #2016-114)

Fiscal Impact: The City will lease the “Mill Tract”, “Hotel Tract” and the “Multipurpose Tract” for a period of ninety-nine (99) years. The rent for each of the Mill and Hotel Tracts will be an amount equal to $10,000 annually plus percentage rents that will commence on the 4th anniversary of the lease and range from 0.5% - 3.0% of specified revenue sources. The rent for the Multipurpose Tract will commence on the 4th anniversary of the lease and will range from 0.5% - 1.0%, of specified revenue sources.

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*6C3. Ordinance granting a Utility Easement to Arizona Public Service Company on City-owned land, Tempe (Hayden) Butte.

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

Mitchell closed the public hearing.

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

*6C3. Held the second and final public hearing and adopted ORDINANCE NO. O2016.28 authorizing the granting of a Utility Easement to Arizona Public Service Company on certain City-owned land known as Tempe (Hayden) Butte. (Contract #2016-115)

Fiscal Impact: N/A

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*6C4. Ordinance for a Planned Area Development Overlay and a Development Plan Review for NEWMAN CENTER / THE MAXWELL ON COLLEGE, 712 South College Avenue.

Mayor Mitchell opened the public hearing.

Trevor Barger, applicant representative, requested a continuance for agenda item 6C4.

Councilmember Arredondo-Savage voiced appreciation for the on-going dialogue between the applicant and the stakeholders. She stated that she supports the continuance.

Motion by Councilmember Arredondo-Savage to continue the second public hearing for agenda item 6C4 to the June 9, 2016, Regular City Council meeting; second by Vice Mayor Woods. Motion passed unanimously on a roll call vote 7-0.

*6C4. *Continued to the June 9, 2016, Regular City Council Meeting,* the second and final public hearing to adopt an ordinance for a Planned Area Development Overlay and approve a Development Plan Review for a new mixed-use development containing 295 dwelling units, restaurant, retail, office, classroom, and church uses for NEWMAN CENTER / THE MAXWELL ON COLLEGE (PL150419), located at 712 South College Avenue. The applicant is Maxwell Tempe, LLC. (Ordinance No. O2016.29) *(Note: A legal zoning protest has been filed; therefore, a 3/4 City Council majority vote (6 of 7) is required for approval.)*

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.

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*6C5. Ordinance authorizing the abandonment of waterline easements located near 500 and 508 West First Street.

Mayor Mitchell opened the public hearing. There was no discussion or public comment on agenda item 6C5. Mayor Mitchell closed the public hearing.

Motion by Councilmember Arredondo-Savage to approve agenda item 6C5; second by Vice Mayor Woods. Motion passed unanimously on a roll call vote 7-0.

*6C5. Held the second and final public hearing and adopted ORDINANCE NO. O2016.30 authorizing the abandonment of waterline easements located near 500 and 508 West First Street.

Fiscal Impact: N/A

*6C6. Ordinance amending Chapter 2, Article II, Division 2, Tempe City Code, relating to the appointment and qualifications of judges and commissioners.

Mayor Mitchell opened the public hearing. There was no discussion or public comment on agenda item 6C6. Mayor Mitchell closed the public hearing.

Motion by Councilmember Schapira to approve agenda item 6C6; second by Councilmember Arredondo-Savage. Motion passed unanimously on a roll call vote 7-0.

*6C6. Held the second and final public hearing and adopted ORDINANCE NO. O2016.31 amending Chapter 2, Article II, Division 2, Tempe City Code, Section 2-26 relating to the appointment and qualifications of judges, and Section 2-34 relating to the appointment and qualifications of commissioners.

Fiscal Impact: There is no direct cost to the City from the proposed amendments.

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*6C7. Ordinance for a Planned Area Development and a Development Plan Review for 9TH AND WILSON, 431 W. 9th Street.

Mayor Mitchell opened the public hearing.

Wendy Riddell, Berry Riddell Law Firm, applicant representative, stated that the request is for a Planned Area Development (PAD) for six single-family, owner-occupied, homes at 9th Street and Wilson Street. The applicant is seeking deviations relating to the following setbacks: a front yard setback from 20' to 13' to accommodate bay windows; a side yard setback from 10' to 5'; and, a setback on the 9th Street side of the property from 20' to 3' to accommodate four additional guest parking spaces. If the guest parking spaces were eliminated, that setback would not be required. The building height and lot coverage are within the zoning requirements. The guest parking spaces were requested by the neighbors; bicycle parking is also included in the project. There has been dialogue with the neighborhood resulting in the following project modifications: changed the initial project from apartments to for-sale, single-family homes; reduced building height; relocated air conditioning units; eliminated tandem garages; eliminated rooftop decks; reduced curb cuts from four to one; added guest parking; increased garage depths; relocated parking and garages to the interior of the project; added front porches and bay windows; changed architectural style from contemporary to craftsman; changed the building colors; and, added turf and large trees.

The applicant is requesting that the City Council consider adding the following stipulations to the Development Plan Review (DPR):

1) Work with the neighbors on the landscape palette to include 36-inch box trees in the specified requested varieties.
2) Incorporate pavers with grass in the driveways.
3) Plant and maintain hedges along the eastern and southern property lines.
4) Incorporate language in the PAD as well as in the Covenants, Conditions and Restrictions (CC&R's) stressing the intent for owner-occupied homes.
5) Work with City staff to provide a four way stop sign at 9th Street and Wilson Street.
6) Provide the neighborhood with an $8,000 grant to incorporate additional art.

Ms. Riddell stated that with the inclusion of the above stipulations, the project will be in conformance with the goals of the Northwest Tempe Strategic Plan.

Josh Meibos, Tempe, Chair of the Wilson Art and Garden District Neighborhood Association, stated that the proposed development does not fit the character of the neighborhood. This development has been a divisive issue. He discussed various unique features within the neighborhood. The concern is that this development will set a precedent for other R-3

zoned properties in the neighborhood. The current proposal is preferred over an apartment complex. If the PAD overlay is approved, the neighborhood association is asking that the six stipulations noted earlier be included.

In response to questions from Councilmembers, Mr. Meibos stated that the original plan for an apartment complex was out of character with the neighborhood; he would prefer that the existing house on the property remain. Craftsman style, single-family homes in the revised plan is a better option than an apartment complex. He stated that the neighborhood discussions began when the property went up for sale. At that time, Sarah Capawana was selected to represent the neighborhood association.

Councilmembers asked staff about the consanguinity laws and the limitations of renting a single family R-3 zoned residence. Ryan Levesque, Deputy Community Development Director – Planning, stated that the consanguinity laws apply to the district design of property. In this case, the property is zoned multi-family. The project has three bedrooms per unit. Mr. Levesque confirmed that if there were five people living in one unit, it would not violate the consanguinity laws. Judi Baumann, City Attorney, stated that the applicant and the neighbors have agreed to the stipulations. Imposing an additional condition involving consanguinity laws would require additional analysis. She noted that the City Council has the option to convene into Executive Session to discuss the matter further.

In response to a question from Councilmembers, Ms. Riddell stated that her client is unavailable at this time to respond to whether or not he would be agreeable to add language to the CC&R's relating to consanguinity laws. She noted that there is a strong intent, as evidenced in the PAD, that the units be owner-occupied.

In response to a question, Ms. Baumann that stated she would need to research the ordinance regarding fraternities and sororities as it may relate to the property in question. There are certain requirements in applying for a fraternity or sorority for residentially zoned property in Tempe. She stated that owning a fee simple property would allow the home to become a rental property. The applicant and the neighbors have agreed through the stipulations to provide some protection with the owner-occupied designation, and that language is also proposed for inclusion in the CC&Rs.

Sarah Capawana, Tempe, spoke in opposition to the project. She stated that she lives across the street from the proposed project and agrees with Mr. Meibos' statements. She was chosen to lead a task force to represent the concerns of the neighborhood regarding this project. The neighbors have indicated that they do not want apartments at this location and that four versus six houses are preferred. If the PAD is approved, six units will be built; this is a no-win situation. Given the choices, the neighborhood prefers the for-sale houses, versus apartments. The stipulations reflect the neighbors' concerns. The neighborhood appreciates the opportunity to provide input on the aesthetics of the project. If an apartment project is built, the neighborhood will have no input.

In response to a question, Ms. Capawana stated that she prefers the craftsman design better than the initially proposed project.

Sally Wittlinger, resident in the Wilson Art and Garden neighborhood, spoke in opposition to the project. She stated that she participated on the Task Force and noted that the project is too large for the property; it does not fit the character of the neighborhood. She stated that the neighborhood consists of small, older homes, on large flood-irrigated lots with mature landscaping. The neighborhood is walkable, bike-friendly, incorporates public art, and does not need to be fixed. She is concerned that if the PAD is denied, then the applicant, Mr. Risi, will build a three-story apartment complex on this property, which she is opposed to. Either project will set a bad precedent for the other R-3 zoned properties on Wilson Street and on Farmer Avenue. She stated that she would prefer single-family homes at this location.

Drew Sullivan, Tempe, business owner, spoke in opposition to the project. He noted that renters have been excluded from the process. He stated that the City Council and staff have encouraged multiple, owner-occupied units, on a small parcel in a market where units are purchased to serve as rental properties. He stated that Mr. Risi has appealed to the neighbors' fears about a development project ruining the character of the Wilson neighborhood, setting a precedent for future developers to follow that approach.

Philip Yates, Tempe, spoke in opposition to the project. He stated that the proposed project does not fit the character of the neighborhood. He discussed Mr. Risi's description of the neighborhood, at the last public hearing. Due to the price of the units, the units will become rental properties. In the past, the City has provided grant funds for artwork in the neighborhood.

Jeff Titone, Tempe, spoke in opposition to the project. The community has continually asked Mr. Risi to reduce the density of this project. It is not the City Council's responsibility to ensure that Mr. Risi makes a profit on his investment. The neighborhood is asking Mr. Risi to build within the current zoning laws. No one is trying to deny Mr. Risi his rights as a property owner. A 30' apartment building is only three feet taller than the currently proposed project. Because so many neighbors and community members are opposed to this project, it should send a strong message to the City Council.

Justin Stewart, Tempe, Chair of the Mitchell Park Neighborhood Association, spoke in opposition to the project. He discussed the divisive impact that this project has had on the neighborhood. Residents are asking the City Council to stand against developers that want to take over neighborhoods. The City Council should insist that developers follow development code regulations.

Dustin Short, Tempe, spoke in opposition to the project. He stated that in order to build single family homes, the applicant would need to follow the building standards which would likely limit the density to three homes. He explained the Tempe Zoning and Development Code (ZDC) Use Permit requirements for a single story, single family residence to add, expand, or rebuild for a second story. Six dwelling units may be built on this property, but only as an apartment or townhome complex. The guest parking spaces do not conform to the ZDC requirements; parking requirements for single family developments differ from parking requirements for multi-family developments. He stated that he is also representing *Tempe Residents Against Social Harm*, a group that desires to keep development within the current zoning rules. Instead of improving the character or quality of the neighborhood, this project maximizes the profit for the applicant. The City Council has repeatedly shown their willingness to appease developers. If the PAD is approved, it will send the message that historical and cultural areas within the City are not protected by the City Council. Alternatively, the City Council can listen to residents rather than a special interest.

In response to a question from a Councilmember, Mr. Levesque stated that the parking requested is in conformance with the code; four additional guest parking spaces are also included in the project. Mr. Short clarified that his concern was not with the number of parking spaces but rather the size of the spaces, which are too short to comply with the zoning code. Mr. Levesque detailed the code requirements relating to the size of parking spaces. Ms. Riddell added that several of the guest parking spaces are compact spaces because they are additional spaces; the minimum parking requirements have been met.

Councilmember Granville confirmed with Mr. Short that the City Council will receive a copy of a neighborhood signature petition regarding the project. Mr. Short stated that he was asked to leave a neighborhood meeting that he attended, concerning this project; he also confirmed that he does not reside in the subject neighborhood.

Therese Lucier, Tempe, spoke in opposition to the project. She stated that the density of this project is a threat to her quality of life due to the increase in the ambient temperature of the area and the potential for renters. Much of the conflict could have been avoided if City staff would have proactively assisted the applicant in finding an appropriate site for their development. She asked the City to explore how other cities work with developers on locating projects.

Vice Mayor Woods discussed conformity issues with R-3 zoning. The City Council and City staff need to work on mitigating those challenges. Much of the frustration about this project has been generated by Mr. Risi's approach and his previous comments regarding the neighborhood. This project has had a divisive impact on the neighborhood.

Mayor Mitchell asked about the possibility of offering property owners zoning downgrades from R-3 to R-2, free of charge. A similar offer was made in the Maple Ash neighborhood years ago, although no property owners accepted the City's offer. He suggested creating a City Council work group or subcommittee to study this matter to ensure there are processes in place related to how the City assists potential developers. He noted that the Character Area Planning process for this particular area is underway.

Councilmember Navarro stated that once planning processes are in place, it will benefit the Development Review Commission, developers, the City Council, City staff, and the neighborhoods.

Councilmember Schapira referenced Mr. Risi's comments during the May 12, 2016, Regular City Council Meeting, about the proposed development being the nicest project in this neighborhood. Councilmember Schapira stated that the craftsman design does not fit with the neighborhood, which consists primarily of block construction homes. He stated that he does not support the initially proposed, or the most recently proposed, project. Mr. Risi needs to design a project that fits with the neighborhood.

Ben Funke, Tempe, Co-Chair of the Mitchell Park Neighborhood Association, spoke in opposition to the project. He noted that R-3 zoning allows for apartments to be built. It is doubtful that people will want to downzone their property. He questioned why there is zoning in place if it is not used. Much of the Wilson neighborhood is R-3 zoning and now the City is considering a further increase in the zoning and density of the parcel. A PAD is not the only way to influence a project; the ZDC includes a section on R-3 zoning. He asked why exceptions would be made for Mr. Risi, especially given the nearly unanimous opposition from the neighborhood. He then discussed the threatening manner in Mr. Risi's approach to the City Council. Neighborhood residents are the City Council's constituency whereas Mr. Risi is not a constituent nor is he a resident of Arizona. Mr. Funke stated that he was asked to leave a neighborhood meeting that he attended concerning this project, yet he is a co-chair of a nearby neighborhood association. A petition with over 100 signatures will be presented to the City Council asking the City Council to uphold the R-3 zoning.

Vice Mayor Woods stated that from his perspective, more emphasis should be placed on the input provided by residents that live within the boundaries of the proposed development. Mr. Funke stated that there was no transparency in the neighborhood meeting; no efforts were made to include the greater community. Mayor Mitchell noted Mr. Funke's threatening tone and emphasized the importance of listening to everybody.

Councilmember Kuby noted that a resident's power is their vote. In this case, a developer is threatening to build an unsightly structure. There are some areas of other neighborhood associations that are geographically close to this proposed development.

Sarah R. (last name not provided), Tempe, spoke in opposition to the project. She described her experiences and challenges in trying to purchase property in this area. $400,000 is too high of a purchase price for most millennials, decreasing the likelihood for owner-occupied homes in this area. She urged the City Council to consider the future of this neighborhood and its residents. The City Council should send the message that it will not be threatened by developers; projects should be built within the boundaries of the law, without special privileges.

Karyn Gitlis, Tempe, spoke in opposition to the project. She stated that she dislikes the architecture of this project. This project has been contentious. Instead of receiving a historic designation, the Maple Ash neighborhood now has five multi-family complexes, all of which were fought by the Maple Ash Neighborhood Association. She and a small neighborhood group met with the Mayor and Councilmember Navarro to request that the City Council reject the PAD request. Subsequently, the Mayor met with the developer to develop a plan to persuade nearby homeowners to approve the project. This process has created divisiveness, confusion, and rifts within the community. Neither of the options is acceptable; many questions remain unanswered. She requested that the City Council table this request to allow more time to explore the design and to look for better development processes for R-3 zoned properties.

Mayor Mitchell stated that his intent at the last Regular City Council Meeting was to try to bring the neighborhood together. At that meeting, he emphasized that he did not appreciate the tactics that the developer used. Having lived in the area, he understands the neighborhood and is considering all of the viewpoints that have been expressed. He has relayed the concerns of neighborhood residents to Mr. Risi. There are two options: the project currently under consideration with opportunities for stipulations, or a three-story apartment structure. He noted that Ms. Gitlis misrepresented his intent in the meetings that he participated in regarding this project.

Councilmember Kuby noted that although an apartment complex is being referred to as the second option, that project has not been presented to the City Council; it is being used to intimidate the decision making process.

Councilmember Navarro stated that this has been a difficult process. The City Council is trying to do their due diligence in meeting with the neighbors and the applicant, and considering all of the opinions.

Brian Tomasi, Tempe, spoke in opposition to the project. He stated that he lives near the proposed project. He expressed frustration that he was not invited to one of the neighborhood meetings concerning this project; however, he did attend a neighborhood meeting where there was consensus to ask the City Council to deny the PAD request and to offer no exemptions. If approved, this development could lead to fewer owner-occupied homes in the area.

Cathie Mancini, Tempe, spoke in opposition to the project. She disagreed that more weight in the decision-making process should be given to a neighborhood association representative. She presented a petition with 128 signatures of individuals that are opposed to any special exemptions for this project. She noted that there was not much difference in height between the apartments at 30' or the six units at 27'. The proposed project is too dense. An apartment complex would allow for more affordable rentals in the neighborhood.

Mayor Mitchell discussed points Ms. Mancini made in an email to him concerning a neighborhood meeting. Ms. Mancini stated that she has been excluded from meetings due to the fact that she is a renter. Mayor Mitchell clarified that the neighborhood association selected one person to represent the neighborhood and that his colleagues respect everyone's opinions and concerns.

Clair Grisa, Tempe, spoke in opposition to the project. She stated that she signed the petition. In her neighborhood, R-3 zoned developments have resulted in an increase in traffic. She asked the City Council to vote against the PAD request and to consider the potential for a domino effect for R-3 zoned developments.

Vice Mayor Woods emphasized that the viewpoints of residents that are not part of a neighborhood association are relevant to the process; everyone's opinion matters. His question was should those who live within the boundaries of the immediate neighborhood, or those who were elected to represent that neighborhood, have more weight regarding projects.

Darlene Justus, Tempe, spoke in opposition to the project. She stated that if this project is approved, Mr. Risi will expand into different areas of Tempe. This will set a precedent for future developers. She noted that PADs were first proposed to improve projects. Councilmembers have the option whether or not to approve this PAD request. The neighborhood cannot be classified as a historic district because of R-3 zoning. The City Council should not condone Mr. Risi's insulting tactics.

Councilmember Granville noted various examples of having to choosing between bad or worse development projects. One way to avoid this is to revoke entitlements. This project is another example of a loophole in the process. He noted that in a few weeks the City Council will receive a legal opinion and there will be discussions to ensure that a precedent is not set. He does not believe there will be a domino effect from this project.

Deb Gain-Braley, Tempe, spoke in opposition to the project. She stated that land owners should be able to do what they want with their land within the boundaries of the current code, so long as it does not harm nearby land owners. In her opinion, more attractive neighborhoods have larger or common setbacks. Setbacks allow for views and have cooling effects. She stated that she would not want the proposed project in her neighborhood.

Mayor Mitchell closed the public hearing.

Councilmember Granville requested that an additional stipulation be added to the CC&Rs relating to consanguinity laws. Ms. Riddell stated that she does not have authority to agree to that stipulation, although she does not reject the concept.

Councilmember Kuby stated that this project has been divisive to the community; it is a no-win situation. Each option may lead to a bad precedent. The City can require developers in an R-3 zone to communicate with the community earlier in the process. The density of the project is the primary concern; there have been no compromises made. She questioned why the developer has not proposed building four homes, which is within the legal constraints of R-3 zoning. She stated that she does not support this proposal.

Councilmember Schapira stated that there are certain zoning provisions and requirements in the ZDC and the City Council has the authority to allow for exceptions. In this case, the applicant is asking for exceptions on property setbacks. He stated that he does not support the project design; no one has expressed support for the design of the project. He questioned approving an exception for a project that no one supports.

Ms. Riddell acknowledged that this has been a very divisive issue in the neighborhood and she understands the neighbors' perspective. The issue before the City Council is a choice between single-family homes versus apartments. City officials have put a lot of effort into seeking a solution. She would like to continue to work with the neighborhood.

Councilmember Arredondo-Savage agreed that this project has created divisiveness in the neighborhood. Regardless of the vote on the project, she would like the neighbors to work together. She respects all of the opinions expressed. There was direction given to making this an owner-occupied development. The TIP manual (Tempe Involving the Public) is a tool to encourage inclusiveness; the process could be more inclusive in order to get the best feedback and input. She supports home ownership over apartment products. She stated that she will be supporting the PAD; the PAD process was created to enhance properties and projects.

Councilmember Navarro acknowledged that this is a choice between apartments versus owner-occupied homes. The project could potentially become rental properties. Ideally, the stipulations that the neighbors developed will help make the project better. The lake and the downtown have made this area attractive. Ideally, residents in the proposed development will become involved in the neighborhood association and maintain their property. He agreed that this is a no-win situation and voiced support for home ownership.

Vice Mayor Woods stated that at the last meeting, his position was that he could not support this project unless there were some concessions given and stipulations agreed to with the neighborhood. When a project is this divisive, he tends to support the residents in the area. Based on the neighborhood agreeing to the additional stipulations, he stated that he will vote in favor of this PAD request.

Mr. Levesque clarified that after further discussion with the City Manager and the Code Enforcement Manager, the definition for consanguinity does apply to a single family dwelling, even if it is on a multi-family zoned lot.

Councilmember Granville clarified that in the proposed project no more than three unrelated people may live within one dwelling unit under the consanguinity laws. Although he would not support this project in his neighborhood, he will defer to the neighbors in the community.

Councilmember Kuby stated that consanguinity is an unenforceable law unless there is a crime committed or someone willingly provides the information.

Mayor Mitchell stated that the intent of a PAD is to improve a property. In this case, there was an opportunity to listen to the neighborhood spokesperson to obtain something of value that fits the character of the neighborhood. The neighborhood association has agreed to support owner-occupied units as opposed to an apartment complex. He stated that he will support the project based on the neighborhood association's feedback.

Motion by Councilmember Navarro to approve agenda item 6C7, with additional stipulations [see page 10] to the Development Plan Review; second by Councilmember Arredondo-Savage. Motion passed on a roll call vote 5-2 with Councilmembers Kuby and Schapira voting no.

*6C7. Held the second and final public hearing and adopted ORDINANCE NO. O2016.32 for a Planned Area Development and approved a Development Plan Review, *with six additional stipulations,* for six single-family homes, for 9TH AND WILSON, located at 431 W. 9th Street. The applicant is Jerry Palmer of Palmer Architects.

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.

7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

Councilmember Schapira

- Tempe Elementary School District, in partnership with the City of Tempe, has been awarded a $500,000 grant from First Things First to implement the Thrive to Five initiative within the Tempe Elementary School District.

Councilmember Kuby

- Wished her daughter happy birthday.
- May 29, 2016 will be her 33-year wedding anniversary.

Mayor Mitchell

- Wished everyone a happy and safe Memorial Day.

8. PUBLIC APPEARANCES

A. Scheduled – None.

B. Unscheduled

Drew Sullivan, Tempe, expressed his disappointment that dozens of people in this neighborhood have spent months putting together petitions, only to have their requests dismissed tonight [Agenda item 6C7]. He discussed the neighborhood association activity and a public records request submitted to the City concerning the Farmer Arts project. He asked for clarification on whether or not a developer must submit a public records request to obtain certain information.

Mayor Mitchell stated that the City Attorney will address the issue with Mr. Sullivan after the meeting.

The meeting adjourned at 8:43 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 26, 2016, by the Tempe City Council, Tempe, Arizona.

_____
Mark W. Mitchell, Mayor

ATTEST:

_____
Brigitta M. Kuiper, City Clerk