

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY**

**TUESDAY, SEPTEMBER 10, 2013
6:00 P.M.**

The Town Council of the Town of Chino Valley, Arizona, met for a Regular Meeting in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Tuesday, September 10, 2013.

Present: Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Mike Best; Councilmember Linda Hatch; Councilmember Pat McKee; Councilmember Lon Turner; Councilmember Don Wojcik

Staff Present: Town Manager Robert Smith; Town Attorney Phyllis Smiley; Finance Director Joe Duffy; Police Chief Chuck Wynn; Police Officer Deana Winn; Civil Engineer Richard Straub; Utilities Supervisor Chris Bartels; Utilities Crew Leader Joe Grassi; Town Clerk Assistant Liz Hart; Town Clerk Jami Lewis (recorder)

1) CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL

Mayor Marley called the meeting to order at 6:01 p.m.

Mayor Marley gave the invocation and led the Pledge of Allegiance.

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

a) Introduction of Scott Freitag, new Fire Chief of the Chino Valley Fire District.

Mayor Marley introduced Chief Freitag, who spoke about community involvement and partnering with the Town.

b) Proclamation declaring September 2013 as "National Alcohol and Drug Addiction Recovery Month," sponsored by the Prescott Area Recovery Day Committee.

Mayor Marley read the proclamation and presented it to representatives from the Recovery Day Committee, who spoke about the upcoming Recovery Day event.

c) Presentation by Claire Louge, Parent Awareness and Community Outreach Coordinator with First Things First.

Ms. Louge presented information on the state's First Things First program, which funded programs to prepare children for kindergarten.

- d) Presentation by Tracie Schimikowsky, Director of Operations, Chino Valley Chamber of Commerce, regarding the Tools for Business web links.

Ms. Schimikowsky demonstrated the Tools For Business Success, an online tool for economic development and business support.

3) **CALL TO THE PUBLIC**

Call to the Public is an opportunity for the public to address the Council concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

4) **RESPONSE TO THE PUBLIC**

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

5) **CURRENT EVENT SUMMARIES AND REPORTS**

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

Councilmember Hatch reported on an upcoming Northern Arizona Council of Governments Economic Development Committee meeting, at which Town Manager Robert Smith and Town Engineer Ron Gritman will speak about a grant application for the Town's proposed industrial park.

Councilmember Best reported on a meeting with the new fire chief and the recent Territorial Days parade.

Vice-Mayor Croft reported on a recent Appointments Subcommittee meeting.

Mayor Marley reported on the public comment deadline for the Prescott Active Management Area's Fourth Management Plan. He also presented his monthly Mayor's Report, which pertained to the true cost of providing water to Arizona communities.

6) CONSENT AGENDA

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to approve Consent Agenda items 6a, b, c and d.

Vote: 7 - 0 PASSED

- a) Consideration and possible action to approve the July 23, 2013 regular meeting minutes. (Jami Lewis, Town Clerk)
- b) Consideration and possible action to approve the August 13, 2013 regular meeting minutes. (Jami Lewis, Town Clerk)
- c) Consideration and possible action to approve the change order to the Professional Services Agreement with Stroh Architects in the amount of \$1,500.00 for services to resolve structural issues found with the library remodel. Funds to come from Library Impact Fees. (Ron Gritman, Public Works Director)
- d) Consideration and possible action to approve change order number 1 to Professional Services Agreement with Lyon Engineering, in the amount of \$18,065.00, relating to the Road 3 North at Town Hall Drainage Project. Funds to come from the Road 3 North Yavapai Country Drainage Grant and the Capital Improvement Fund. (Ron Gritman, Public Works Director)

7) ACTION ITEMS

- a) Consideration and possible action to approve purchase of alternative chip seal material from CEMEX Prescott Valley to provide 1/2" and 3/8" chips for the 2013 Chip Seal Program in an amount not to exceed \$80,000. Funds to come from HURF Fund Road Materials line. (Ron Gritman, Public Works Director)

Mr. Gritman and Senior Engineering Project Manager Richard Straub reported that:

- On July 23, 2013, Council approved purchasing chip sealing chips from Charter Materials. When the chips were delivered, staff found that they did not meet the required specifications. When staff contacted Charter Materials about washing the chips further to remove the dirt and other material, Charter refused. As staff could not use the material, they needed to seek a alternative source.
- Staff contacted the second low bidder, CEMEX in Prescott Valley, to see if they would honor the Yavapai County bid price, and they were not willing to do so.
- Per the Town's procurement code, staff then sought three new bids. The lowest usable bid came from CEMEX at a price of \$13.96 per ton.
- As the Town had not paid for the chips from Charter Materials, staff was seeking approval to spend the allocated funds on a different supplier. The Town will have to pay additional funds for delivery, whereas Charter had included it in its purchase price.

- As staff was running out of time for chip sealing due to the dropping temperatures, staff proposed to chip seal three roads this year and complete the chipsealing program in the spring.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to approve purchase of alternative chip seal material from CEMEX Prescott Valley for the 2013 Chip Seal Program, in an amount not to exceed \$80,000.

Vote: 7 - 0 PASSED

- b) Consideration and possible action to award trucking for the 2013 Chip Seal Program to C&R Trucking, in an amount not to exceed \$10,000.00. Funds to come from HURF Fund Road Materials line. (Ron Grittmann, Public Works Director)

Mr. Grittmann and Senior Engineering Project Manager Richard Straub reported that chips for the Town's upcoming chip seal program needed to be hauled from CEMEX in Prescott Valley. As the Town did not have sufficient trucks, staff sought another hauler. C&R Trucking, the only local trucking company within the Town, quoted a lower price than CEMEX for delivery.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to award trucking for the 2013 Chip Seal Program to C&R Trucking in an amount not to exceed \$10,000.

Vote: 7 - 0 PASSED

- c) Consideration and possible action to award the oil contract for the 2013 Chip Seal Program to Western Emulsion in an amount not to exceed \$100,000. Funds to come from the HURF Fund Road Materials budget. (Ron Grittmann, Public Works Director)

Mr. Grittmann and Senior Engineering Project Manager Richard Straub reported that:

- Under the Town's procurement code, the Town could follow the bid of another public agency. In procuring oil for the Town's chip seal program, staff contacted Western Emulsion, the low bidder on Yavapai County's chip seal contract, who agreed to honor the price quoted to Yavapai County for the Town.
- Staff budgeted \$250,000 for the 2013 chip seal program. With chips to cost \$80,000 and oil to cost no more than \$100,000, this left \$70,000 for equipment rental and trucking, which was more than sufficient to complete the roadways approved on August 13.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to award the oil contract for the 2013 Chip Seal Program to Western Emulsion in an amount not to exceed \$100,000.

Vote: 7 - 0 PASSED

- d) (i) Review of ARS Section 9-500.14 as it relates to a request by the citizens' committee in support of the Chino Valley Unified School District's bond measure for Council and Town support of the measure.

(ii) Review of ARS Section 16-1019 and Chino Valley Unified Development Ordinance (UDO) Section 4.21.3 regarding posting political signs on Town rights-of-way. (Mayor Chris Marley; Town Manager Robert Smith)

Acronym used in this item:

UDO (Unified Development Ordinance)

Ms. Smiley reported that:

- This item arose from an inquiry to General Services Director Cecilia Watts by a citizens' committee asking Council to support the Chino Valley Unified School District's bond measure and to allow the committee to put signs up on Town property.
- State statute prohibited the Town from complying with both requests.
- A.R.S. Section 9-500.14 prohibited cities and towns from using their resources to influence the outcome of an election, with penalties up to \$5,000 plus any amount of misused funds subtracted from the city or town's budget against any person who knowingly violated or aided a person in violating this section.
- Section 4.21.3 of the UDO prohibited political signs on Town rights-of-way and Town-owned property. Council could not waive this Code requirement with regard to Town-owned property. However, this UDO Section was in conflict with A.R.S. Section 16-1019(C) with regard to Town rights-of-way, which made it a crime for the Town to remove political signs in the public right-of-way, during a specific time period, that were not placed in a location hazardous to public safety.
- As such, this portion of the UDO should be amended and Council could also elect to amend the UDO to allow political signs on Town property, so long as it would allow all viewpoints.
- Despite these prohibitions, individual councilmembers could support the measure, but not while using Town facilities or other Town resources, and the committee could place signs in the Town's rights-of-way as permitted by law.

Planner Ruth Mayday informed Council that she and Ms. Smiley were working on several amendments to the UDO, including this section.

MOVED by Councilmember Don Wojcik, seconded by Councilmember Linda Hatch to table this discussion until Council had something from staff to vote on.

Vote: 3 - 4 FAILED

NAY: Mayor Chris Marley
Vice-Mayor Darryl Croft
Councilmember Mike Best
Councilmember Lon Turner

Council discussed this item being a priority and staff bringing it to the next meeting. Ms. Smiley and Town Manager Robert Smith explained that UDO amendments needed to go to the Planning Commission first, so it would take at least a month to get back to Council; and in the meantime, state standards would take precedence over the UDO.

MOVED by Councilmember Lon Turner, seconded by Vice-Mayor Darryl Croft to direct the town manager to inform staff of the issue with the UDO and that it will not be legal to take down political signs in the Town's right-of-way.

Vote: 7 - 0 PASSED

- e) Notification and possible discussion regarding incident at Library on July 25, 2013 and public disclosure of email discussion among Councilmembers and Staff. (Councilmember Don Wojcik; Councilmember Linda Hatch)

Ms. Smiley reported that:

- A question arose about events involving Town staff and Councilmembers at the library during the week of July 22, 2013, where a few of the Councilmembers met in the librarian's office and interacted with Town employees and/or a contractor's employee[s]. Following this, there was a series of emails about these interactions.
- Councilmembers Wojcik and Hatch questioned whether the emails, and one in particular from Vice-Mayor Croft, violated the Arizona Open Meeting Law. They contacted the Arizona State Assistant Ombudsman for Public Access, who determined that a violation did occur and recommended that Councilmember Wojcik contact the Town Attorney as to what action to take.
- She then advised that the offending emails be made available to the public and that a discussion of the incident and the email be held at a public meeting. She further recommended that Council and staff participate in Open Meeting Law training, which was scheduled for September 17, 2013.
- When a Councilmember willingly violated the Open Meeting Law, the Council had the option to censure the member, but that was not an official penalty. She will review the statutory penalties at the training.

Councilmembers Wojcik, Hatch, and McKee added further details about the subject events. The three of them visited the library; two went into a meeting and Councilmember Wojcik asked a question of the library director about the Library remodeling contract. The library director initiated a visit to the construction site. Shortly thereafter, the town manager sent a memo to the councilmembers about the events that transpired, to which Vice-Mayor Croft sent a reply to all recipients. The memo and email series contained some misinformation about who participated in the visit to the construction site and Vice-Mayor Croft's email violated the Open Meeting Law in that he replied to all the recipients. Only Councilmember Wojcik visited the construction area at the initiation of the library director; the other two councilmembers did not leave their meeting.

Vice-Mayor Croft apologized for offending anyone in his email.

Council discussed:

- Town/Council policy with regard to following the chain of command by making inquiries of the town manager;
- Town/Council policy with regard to councilmembers making inquiries of staff;
- the town manager neglecting to speak with the councilmembers involved before sending out his memo.

Town Manager Robert Smith related that due to safety issues associated with the incident, he had to get the memo out quickly, and he also worked out an appropriate method with Public Works and the Library staff to schedule a tour for the Council before sending the memo. From staff's viewpoint, his memo focused on safety and clarity and efficiency of communication between councilmembers and staff. Staff desired Council to have any and all information, and councilmembers could enter any place for any inquiry. However, as councilmembers did not always recognize the affect they had on staff when they entered the production line and asked questions, the most accurate way to obtain information was to go through management. Because of the questions being asked and the library director's office being used for a meeting, which was an unusual occurrence, staff and Library volunteers expressed some feelings of intimidation and fear about the subject of the meeting and Councilmember Wojcik's inquiries.

- f) *Continued from August 13, 2013:* Consideration and possible action to approve the Agreement for Professional Consulting Services with Lyon Engineering for design of the stormwater improvements at Chino Meadows Unit 5 in an amount not to exceed \$119,980.00. Funds to come from Capital Improvement Program fund. (Ron Gritman, Public Works Director)

Town Attorney Phyllis Smiley reported that this item was on the previous agenda, but as the agreement was still under revision, Council postponed the item. The agreement was now ready for approval.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to approve the Agreement for Professional Consulting Services with Lyon Engineering for design of the stormwater improvements at Chino Meadows Unit 5 in an amount not to exceed \$119,980.

Vote: 7 - 0 PASSED

- g) Discussion and possible action to schedule a study session or otherwise direct staff with regard to developing an ordinance to regulate the growing of any plant that can be used for medicinal purposes. (Councilmember Pat McKee; Councilmember Don Wojcik)

Councilmember McKee reported that several citizens had asked her about the Town enacting an ordinance to regulate locations for medical marijuana cultivation facilities. While the Town had no such regulations, most communities had some sort of ordinance in place. Some were very restrictive, while some were very lax. She was requesting that Council hold a study session to discuss developing an ordinance to protect the Town from any crops grown for medicinal purposes.

Council discussed distances of such facilities from schools or churches, staff including the state standards in the study session agenda packet, and inviting growers to attend the meeting. They asked staff to schedule a meeting as soon as possible.

8) EXECUTIVE SESSION

Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the Town's attorneys on any of the above agenda items pursuant to A.R.S. § 38-431.03(A)(3).

Town Attorney Phyllis Smiley advised that the requested action items under 8c and 8e could not be acted upon as they were mistakenly placed on the executive session agenda. They will need to be brought back at a later time.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to go into executive session for items 8a, b and d at 7:34 p.m.

Vote: 7 - 0 PASSED

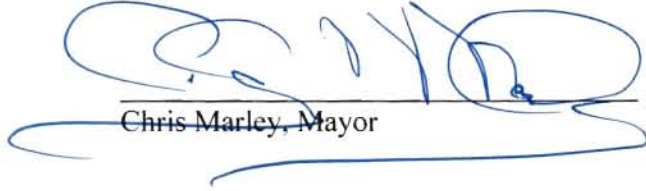
Mayor Marley reconvened the meeting into Regular Session at 8:51 p.m.

- a) Council may vote to go into executive session pursuant to A.R.S. § 38-431.03(A)(3) for discussion or consultation for legal advice with the Town Attorney regarding the Peavine right-of-way. (Robert Smith, Town Manager)
- b) Council may vote to go into executive session pursuant to A.R.S. § 38-431.03(A)(3) and (7) for discussion or consultation with the Town Attorney for legal advice and with designated representatives of the Town in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property that is an extension of the existing Road 4 South to the east, in the immediate vicinity of the section line, consisting of approximately 8.6 acres. (Robert Smith, Town Manager)
- c) Consideration and possible approval of Letter of Intent and Contract relating to the acquisition of right-of-way for the Road 4 South extension project.
- d) Council may vote to go into executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney regarding the Town's position regarding an intergovernmental agreement with the City of Prescott related to payments for the transportation of water that is the subject of negotiations. (Robert Smith, Town Manager)
- e) Consideration and possible approval of an Intergovernmental Agreement with the City of Prescott related to Payments for the Transportation of Water. (Robert Smith, Town Manager)

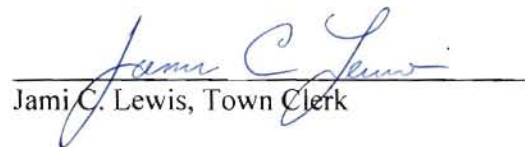
9) **ADJOURNMENT**

MOVED by Councilmember Lon Turner, seconded by Councilmember Pat McKee to adjourn the meeting at 8:52 p.m.

Vote: 7 - 0 PASSED


Chris Marley, Mayor

ATTEST:


Jami C. Lewis, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Town Council of the Town of Chino Valley, Arizona held on the 10th day of September, 2013. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 8th day of October, 2013.


Jami C. Lewis, Town Clerk