

PRESCOTT CITY COUNCIL
STUDY SESSION MEETING
TUESDAY, OCTOBER 11, 2016
PRESCOTT, ARIZONA

MINUTES OF THE STUDY SESSION MEETING OF THE PRESCOTT CITY COUNCIL
HELD ON OCTOBER 11, 2016, in the COUNCIL CHAMBERS located at CITY HALL,
201 SOUTH CORTEZ STREET, Prescott, Arizona.

1. CALL TO ORDER

Mayor Oberg called the meeting to order at 1:00 p.m.

2. ROLL CALL:

Present:

Mayor Oberg
Mayor Pro Tem Lamerson
Councilman Blair
Councilman Lazzell
Councilwoman Orr
Councilman Sischka
Councilwoman Wilcox

Absent:

None

3. DISCUSSION ITEMS

A. Presentation by Public Works of Various Capital Improvement Program
(CIP) Project Delivery Methods

Henry Hash, Public Works Director, gave an overview of various delivery methods
available for projects within the City's Capital Improvement Program (CIP).

Mayor Pro Tem Lamerson asked who was responsible for inspecting projects to ensure
the City was getting the quality expected. Mr. Hash said the Public Works Department
was responsible.

Steve Orosz, Program Development Manager, presented:

- Design-Bid-Build (most common)
 - o Two Contracts
 - o Designer and Contractor Work Independently with City
 - o Low Bid
- Design-Build
 - o One Contact
 - o Designer and Contractor Collaborate
 - o Guaranteed Maximum Price

- CMAR (Construction Manager At-Risk)
 - o One Contract
 - o Designer and Contractor Collaborate
 - o Guaranteed Maximum Price
- Job Order Contracting (JOC)
 - o Multiple Contracts
 - o City Directs Work
 - o Fixed Pricing

Mr. Orosz reviewed each delivery method and listed examples:

- Design-Bid-Build, most traditional method, most commonly used. Straight forward construction projects. Examples: water, sewer, storm drain line construction, roadway reconstruction
- Design-Build, best suited for project with many unknowns. Contractor input during design. Examples: SCADA Standardization, Production Well Rehabilitation Program
- CMAR, best suited for large, complex projects, potential long term O&M was desired, advocate for City that directs Designer and Contractor. Examples: Granite Dells Parkway/SR89A Interchange, Airport Wastewater Treatment Plant
- JOC, small, routine, specific projects. Examples: sidewalk panel replacement, roof repairs, minor pavement projects.

Mayor Pro Tem Lamerson said he had a concern with using a delivery method never used before on critical projects (production well). Mr. Orosz said the contractors and designers the City worked with had done numerous projects using the chosen delivery method.

Mr. Hash said the water and wastewater system in Prescott and System Control and Data Acquisition (SCADA) were very complicated. He said some of the projects required expertise that could not be found in-house.

Mayor Pro Tem Lamerson thanked him for clarifying why the City sought outside experts.

Councilwoman Orr asked about the guaranteed maximum price and how the contractor(s) were chosen for Design-Build.

Councilwoman Wilcox asked who developed the specifications and determined the quality of the specifications.

Mr. Orosz continued with the presentation. He said the City set parameters, but worked with contractors regarding costs and schedule. He said staff selected a firm based upon qualifications. He said staff reached out to the construction community to see what others charged and then picked the low bid based upon that process. He said to determine guaranteed maximum price, the City worked with contractors and designers

to come up with a maximum price. The contractor and designer would then work within that agreed upon price. He said the City had standard specifications and worked within those parameters. The City may state certain specifications for projects which the contractor/designer would accommodate.

Mr. Orosz listed benefits of each method.

- Design-Bid-Build – most commonly used, low bid, city controls schedule
- Design-Build – fewer changes, increased constructability, DB controls schedule
- CMAR – CMAR controls project and schedule, known price, increased constructability, better long term O&M,
- JOC – quick job completion, known price

He said the project would determine the best delivery method.

Mayor Oberg asked if staff was being efficient, in order to reduce costs and streamline completion. Mr. Orosz said, yes.

Michael Lamar, City Manager, said in terms of CMAR and Design-Build, he had seen parties negotiate a maximum guaranteed price and if there were any savings both the City and contractor would split the savings. He asked if this was allowable. Mr. Orosz said, yes.

Councilman Blair said he did not want the City using the same contractor over and over. Mr. Orosz said staff understood.

Mayor Pro Tem Lamerson said ultimately the Council was responsible for holding staff accountable for the specifications. He said specifications needed to be clear to the contractor. Mr. Orosz said he understood. He said staff was updating specifications to remove ambiguity questions and being very specific as to what the City wanted delivered and constructed.

B. Discussion/direction regarding adoption of a residential vacation rental ordinance

Jon Paladini, City Attorney, presented. He showed a video – Adam Ruins Everything, Why Your Airbnb May Be Illegal. He said the purpose of the ordinance was to establish regulations for vacation rentals of residential property, enabling the City to preserve the public health, safety, and welfare of its residents. He said in 2016, the Arizona legislature adopted legislation which prevented cities and towns from prohibiting vacation rentals or short-term rentals in residential zones. He said if adopted, the attached ordinance would require the owner/operator of a vacation rental to obtain an annual certificate, business, and transaction privilege tax (TPT) licenses.

Mayor Pro Tem Lamerson said with the passing of the new legislation every residential property was available for commercial use. Mr. Paladini said in theory that was correct. Mayor Pro Tem Lamerson said if that was the case, then could the City regulate every residential property the same way it regulated hotels.

Mr. Paladini said the ordinance would regulate vacation rentals in residential zones. He said the current Land Development Code prohibited rentals of residential units for less than 30-days in residential zoned areas. He said new legislation allowed vacation rentals in residential zoned areas. He said the purpose of the ordinance was to preserve the public health, safety and welfare of the residents.

Councilman Lazzell asked if new legislation allowed cities to adopt regulations regarding vacation rentals. Mr. Paladini said reasonable regulations could be adopted.

Councilman Blair asked if vacation rentals would be disclosed through real estate transactions. Mr. Paladini said, no. He said the ordinance included a requirement that evidence must be provided that the applicant provided the name and 24-hour telephone number of the local contact person to all property owners, as shown in the Yavapai County Assessor's records, within 300 feet of the vacation rental property.

Councilman Blair voiced his concern with not notifying prospective buyers of residential homes that vacation rentals and/or sober living homes were located in the neighborhood. Mr. Paladini said the intent of the ordinance was to set minimum standards of operation to help minimize the impact of vacation rentals.

Councilman Blair said the City needed to hire more code enforcement officers to oversee the State mandates.

Mr. Paladini said the question was whether the Council wanted to adopt minimum standards to regulate vacation rentals. He said the City could not prohibit vacation rentals.

Councilman Blair asked if the ordinance was strong enough to stop illegal renting.

Mr. Paladini reviewed parts of the ordinance:

- No owner of a vacation rental shall rent a vacation rental for a period of 29 consecutive days or less without a valid vacation rental registration certificate
- The registration certificate shall be displayed in a clear and legible manner
- The applicant shall register the property as a vacation rental with the City annually
- The owner shall be responsible to ensure that the vacation rental unit complies with all applicable codes regarding fire, building, health, and safety and other relevant laws

- The local contact person shall limit overnight occupancy to a maximum number of overnight occupants equal to 2 persons, plus an additional 2 persons per bedroom within the vacation rental unit.
- The local contact person shall be available 24 hours per day, 7 days per week
- The local contact person shall ensure occupants do not create unreasonable noise disturbances
- Creation of a "Good Neighbor Brochure"

Mr. Paladini said if there were violations of the ordinance, the registration certificate might be revoked. If the owner continued to operate illegally the City would have rules to issue citations.

Councilwoman Orr asked if neighborhoods groups/Home Owner Associations prohibited vacation rentals. Mr. Paladini said CC&R's were not affected by the new legislation. He said the City did not have the authority to enforce CC&R's.

Councilman Sischka asked if the vacation rentals would be subject to the business license tax, bed tax, and other applicable fees. Mr. Paladini said vacation rental owners/operators would be required to obtain a city business license, TPT license and required to pay TPT and transient occupancy (bed) taxes.

Councilman Blair said the City needed to create a data bank of vacation rentals. Mr. Paladini said the business license, TPT license, and certification would provide pertinent information.

Councilwoman Wilcox said the definition of occupants was not listed in the ordinance. She did not want to discriminate against families with young children that slept in the same room as the parents. Mr. Paladini said an age limit could be defined in the ordinance.

Councilwoman Wilcox asked about listing parking standards. She wanted to ensure adequate parking was provided. Mr. Paladini said the Land Development Code already had parking standards. He said a lot of older homes did not have on-site parking available. He said it would be a challenge to enforce. He said the ordinance could be fine tuned if it was discovered vacation rentals created a parking problem.

Councilwoman Wilcox asked about violations. Mr. Paladini said the ordinance stated any person who uses, or allows the use of, residential property in violation of the code was guilty of a misdemeanor for each day in which the violation occurred. He said continuance of violations would result in suspension of certification, fees, and criminal or civil legal remedies.

Councilwoman Wilcox asked about notification to the occupant regarding citations, fines, evictions for creating a disturbance, or for violating other provisions of the code. Mr. Paladini said occupants could also be cited if found violating laws.

Councilwoman Wilcox said it would be hard to enforce against temporary visitors. Mr. Paladini said the purpose of the ordinance was to put the burden on the owner/operator. He said the idea was to notify occupants that if the Police appear they individually could be subject to civil, criminal citation and/or arrest.

Mayor Pro Tem Lamerson said he supported the most stringent level of accountability. He said the property owner was responsible for ensuring peace and quiet in the neighborhood. Mr. Paladini said yes, the property owner had the ultimate responsibility for what happened on their property.

Ralph Hess, citizen, voiced his concern regarding State imposing mandates over local governance and asked what the City was doing to stop the State.

Alison Zelms, Deputy City Manager, said the City worked every year through its lobbyist, the League of Arizona Cities and Towns, and other organizations to try and ensure local government control. She said the City worked closely with the AirBnB lobbyist which ended in legislation less damaging to the City.

Mayor Oberg said the City also worked with other cities to help do what was best for all.

Councilman Lazzell said the Council received legislative updates on the issues.

Ms. Zelms said last year the Council's decision to add a contract lobbyist had helped immensely.

Councilman Blair said he asked the Attorney General if he sat in on state legislation sessions to recognize possible conflicts between City Charters and State law. He was told the only time the Attorney General became involved was if there was a lawsuit. Councilman Blair thought that was wrong. He said the City would need to sue the State of Arizona in order to get a legal opinion from the Attorney General.

Mayor Oberg said the bill was reviewed for legal issues. Ms. Zelms said the legislative counsel and the rules committee both reviewed the bill for constitutionality and conflict issues.

No name given, citizen, said he did not want outside investors buying up housing stock to use as rentals.

Mr. Paladini said the ordinance required a local contact person be available 24/7.

Councilwoman Orr said CC&R's could prohibit the rental of units less than 29 days. She asked if a neighborhood (with no CC&R's) could establish rules that no vacation rentals would be allowed in the neighborhood. Mr. Paladini said yes, CC&R's could prohibit vacation rentals and be developed after the fact. He said all properties

interested had to voluntarily agree to the terms of the CC&R's. He said usually CC&R's were adopted by the original subdivision developer and imposed on the property.

Mayor Pro Tem Lamerson said he recalled the status of CC&R's legality had been discussed by the State legislative. Mr. Paladini said he was not familiar with the concept. Mayor Pro Tem Lamerson said he was informing him there may be a movement to diminish the effect of CC&R's by the State. Mr. Paladini said he knew of a movement to reduce the ability of a homeowner to place liens or fines on a property regarding certain things. He said overall, CC&R's were accepted as enforceable in the State.

Councilman Sischka felt the ordinance would reduce the number of vacation rentals, because people would not want to get certified, be available 24/7, and abide by all the rules.

Mayor Oberg said starting in January 2017, properties would have to register with the State regarding TPT and Bed Tax.

Mark Woodfill, Finance Director, said yes. He said the State allowed the rental companies (AirBnB) to report a lump sum to the cities. He said the report would not list individual rentals, which might make enforcement more complex.

Councilwoman Orr asked if the City was going to follow up with the known vacation rentals. Mr. Woodfill said the City would provide education materials and outreach publicity pieces. He said ultimately it was the business owner's responsibility to comply with the law.

Councilman Sischka thought people were not going to want to comply with the law, which would limit the number of vacation rentals.

Mr. Lamar said to be proactive a mailing to all known vacation rentals would be beneficial.

Mayor Oberg asked if the ordinance should be reviewed in one year.

Mr. Paladini did not believe the ordinance needed to be reviewed in one year. He said adjustments could be made as needed.

- C. Requests for information re the October 11, 2016, Voting Meeting agenda items

There were no comments/requests.

4. ADJOURNMENT

There being no further business to be discussed, the Study Session Meeting of October 11, 2016, adjourned at 2:45 p.m.

HARRY B. OBERG, Mayor

ATTEST:

DANA R. DeLONG