

Minutes of the Special Meeting of the Mayor and Council of the City of South Tucson, Arizona, held Wednesday, October 30, 2013, at 6:00 p.m. at the City of South Tucson Council Chambers, 1601 South 6th Avenue, South Tucson, Arizona.

Council Present: Paul Diaz
Miguel Rojas
Mary Soltero
Ildfonso Green
Vanessa Mendoza
Oscar Patino
Anita Romero

Staff Present: Luis Gonzales, City Manager
Veronica Moreno, City Clerk
Joel Gastelum, Planner
William Lackey, Police Chief
Dennis Rankin, Police Dept.
Marilyn Chico, Housing Director
Capt. Luna, Fire Dept.
Andrea de Castillo, City Attorney

Mayor Diaz called the meeting to order and led the Pledge of Allegiance.

ITEM #03 – INVOCATION – Councilman Patino led the Invocation.

ITEM #04 – ROLL CALL – All members of the Council were present.

ITEM #05 - APPROVAL OF MINUTES: SPECIAL MEETING, OCTOBER 9, 2013

- Motion by Councilman Rojas to approve the minutes of the Special Meeting of October 9, 2013. Seconded by Councilman Green. Motion passed unanimously.

ITEM #06 – ORDINANCE NO. 13-05 RELATING TO ZONING; AMENDING THE CITY OF SOUTH TUCSON ZONING CODE CHAPTER 24, 24-528 OF THE SOUTH TUCSON CITY CODE, AMENDING THE LARGE RETAIL ESTABLISHMENT DESIGN CRITERIA BY REMOVING REQUIREMENT “M” AND DECLARING AN EMERGENCY TO EXIST – Mr. Gonzales stated the recommendation is to delete the section dealing with the large retail establishment design criteria. He referenced the Council agenda packet, Section M (Big Box Ordinance), page 8. Mr. Gonzales stated a public hearing has been held regarding this item. Motion by Councilman Rojas to pass ordinance No. 13-

05 relating to zoning; amending the City of South Tucson Zoning Code Chapter 24, 24-528 of the South Tucson City code, amending the large retail establishment design criteria by removing requirement "M" and declaring an emergency to exist. Seconded by Councilwoman Soltero. Motion passed unanimously.

ITEM #07 – RESOLUTION NO. 13-39 OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, DECLARING AS PUBLIC RECORDS THOSE CERTAIN DOCUMENTS FILED WITH THE CITY CLERK'S OFFICE AND ENTITLED "CHAPTER 24, ZONING ORDINANCE AMENDMENT ADOPTED PURSUANT TO ORDINANCE NO. 13-05 - Mr. Gonzales explained this resolution ensures a public document exists that relates to the motion passed in Item 06. Motion by Councilman Rojas to pass Resolution No. 13-39. Seconded by Councilman Green. Mayor Diaz asked for clarification on the order of the ordinance and resolution. Motion passed unanimously.

ITEM #08 – ORDINANCE NO. 13-06 OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, APPROVING AND ADOPTING REVISIONS TO THE SOUTH TUCSON CITY CODE ON ENFORCEMENT AT ARTICLE 1, CHAPTER 3-1: ANIMALS AND FOWL, AND AUTHORIZING THE MAYOR TO EXECUTE THIS ORDINANCE FOR THE PURPOSE OF EMPOWERING PIMA COUNTY ANIMAL CONTROL PURSUANT TO THE NOW EXISTING INTERGOVERNMENTAL AGREEMENT - Mr. Gonzales handed out information not available in the Council agenda packet, and explained this item pertains to the animal cruelty section of the City Code, relating to anabolic steroids. Staff has researched the enforceability of that section of the law. The following is the transcript of Ms. De Castillo address to the Council:

Ms. De Castillo: My attempt to give you a concise analysis of what preemption law and, with regard to the enforceability of the ordinance that was passed by the majority of the citizens of South Tucson is written for you at the last two pages of your packet. So what we're looking at is only a very small portion of the animal cruelty ordinance under 08-06. Specifically is the sentence that is written at the bottom of page 1, which is no person shall give or administer anabolic steroids as defined in the United States Code. And it goes on with regard to the enhancement of performance of these dogs. My legal research was very conclusive that the Title 19 of the Arizona Administrative Code with the latest version of June 30th of 2012. At Title 19, Chapter 2, Article 3 provides the power and authority the State over greyhound racing. Specifically it declares all powers of the department and commission not specifically defined in these rules are reserved to the department and commission under the law. To go even a step further, the Arizona Administrative Code speaks specifically to administration of

medications to the greyhound dogs. I've itemized the definitions for you that's in this so that you'd know if you desire to go back. Talks about treatments, specifically, when such administration may occur, specific paragraph in that Title, and defining what a foreign substance is. And while there was public discussion at our last meeting with regard to the anabolic steroids that was the understanding that was of concern. The Arizona Administrative Code specifically provides that there is a treatment level of a foreign substance that is permitted and it's specified by quantity and by name. The relevant portion which is the one sentence from our City ordinance is in direct conflict. So the doctrine based on preemption essentially tells the City of South Tucson that we may not enforce this law. What I suggested was that we only amend the portion with regard to enforcement. It would exclude the specific enforcement of the injection of the dogs for a foreign substance that has been specified in the title under Arizona law as we simply do not have the power to enforce it. So based upon my research of the law, preemption and the unequivocal conflict existing between the supreme State law over municipal law, the State regulations on the injections of greyhounds preempts our ordinance. So my suggestion would be to amend solely the enforcement provision as it applies to the intergovernmental agreement that we have with Pima County Animal Control. Any questions?

Mayor Diaz: In the ...

Councilwoman Mendoza: And the amendment, sorry, and that amendment is the Article 1 in general? The Section 301 enforcement? That is what is recommended that we (inaudible)?

Ms. De Castillo: It's just the portion that says excluding Section 3-3 paragraph 3, is the only portion that would be excluded. The remaining portion of the law would remain in full force and effect would be my suggestion.

Councilman Green: So you're saying that the State Revised Statute 19-2-301 covers the hormonal injection and that's it.

Ms. De Castillo: It does absolutely.

Councilman Green: The administration and therefore we can't enforce it.

Ms. De Castillo: That's correct. It specifies it as to the type, the quantity, who is to administer it. It's very specific ...

Councilman Green: And that's ...

Ms. De Castillo: ... (inaudible).

Councilman Green: ... Arizona Department of Racing?

Ms. De Castillo: Yes, which is the State law.

Motion by Councilwoman Mendoza to approve and adopt Ordinance No. 13-06 of the Mayor and Council of the City of South Tucson, Arizona, approving and adopting revisions to the South Tucson City Code on enforcement at Article 1 Chapter 3-1 Animals and Fowl, and authorizing the Mayor to execute this ordinance for the purpose of empowering Pima County Animal Control pursuant to the now existing intergovernmental agreement. Seconded by Councilwoman Soltero. Motion passed unanimously.

ITEM #09 – RESOLUTION NO. 13-40 OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, DECLARING AS PUBLIC RECORDS THOSE CERTAIN DOCUMENTS FILED WITH THE CITY CLERK'S OFFICE AND ENTITLED ENFORCEMENT AT ARTICLE 1, CHAPTER 3-1: ANIMALS AND FOWL AMENDMENT ADOPTED PURSUANT TO ORDINANCE NO. 13-06
– Motion by Councilman Rojas to accept Resolution No. 13-40. Seconded by Councilwoman Mendoza. Motion passed unanimously.

ITEM #10 – RESOLUTION NO. 13-41 OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, APPROVING, AND ADOPTING THE CONTRACT BETWEEN THE CITY OF SOUTH TUCSON, ACTING ON BEHALF OF THE SOUTH TUCSON HOUSING AUTHORITY AND BCK COATINGS FOR THE PAINTING CONTRACT FOR THE PROPERTIES MAINTAINED BY THE SOUTH TUCSON HOUSING AUTHORITY, AUTHORIZING THE MAYOR, THE CITY MANAGER AND/OR THE SOUTH TUCSON HOUSING DIRECTOR TO EXECUTE THE AGREEMENT – Mr. Gonzales informed the Council this resolution authorizes awarding a painting contract by the Department of Housing to BCK Coatings. Background information was provided to the Council in the agenda packet along with the following bid information regarding the top three bidders: BCK Coatings, \$98,300; Desert View Painting, Inc., \$126,400; and Wild West Painting, Inc., \$145,000. Ms. Chico answered questions from the Council regarding the specs, paint quality, and whether the South Tucson Building Inspector would be inspecting the job. Ms. Chico stated the Housing Inspector will be looking at the work, and the City Inspector is invited to inspect the work. Councilman Green voiced concerns over whether the OSHA requirements will be followed. Ms. Chico stated once the award has been made, all the specifics will be discussed and covered. Mayor Diaz asked Mr. Gonzales if the City has a “Best for Value” system when awarding contracts. Mr. Gonzales stated that to the best of his knowledge there is no program in the City which gives preference to minority contractors, but he believes HUD does have a policy in place,

although he does not know what it is. Ms. Chico informed the Council that in the bid packet, each bidder was to mark if they were a minority or a woman-owned company. She explained that even if they are not, if they must hire somebody, through Section 3 HUD reporting, they are supposed to see the Housing Authority Director to see if there are residents, especially in Public Housing, who could paint, and that must be documented. Motion by Councilman Rojas. Seconded by Councilman Green. Motion passed unanimously.

ITEM #11 – RESOLUTION NO. 13-42 OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, RATIFYING, APPROVING AND ADOPTING THE FY 2012-2013 JOHN A. VALENZUELA YOUTH CENTER RECREATION FUNDING AGREEMENT BETWEEN THE CITY OF SOUTH TUCSON, ARIZONA, AND THE PIO DECIMO CENTER, A NON-PROFIT CORPORATION AND AUTHORIZING EXECUTION OF THIS RESOLUTION FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND/OR THE CITY MANAGER OF THE CITY OF SOUTH TUCSON TO EXECUTE SAID AGREEMENT AND DECLARING AN EMERGENCY TO EXIST – Mr. Gonzales explained the FY in Resolution No. 13-42 expired in September. Some contracts, while awarded, never came before the Council for ratification. This contract is for recreational activities in the amount of \$100,000, at the John Valenzuela Youth Center. The funding source is the Department of Labor and the Department of Economic Security. Mayor Diaz asked whether there will be reporting provided to the City regarding expenditures of these monies. Mr. Gonzales stated the contract calls for end of year report, which is due in December. Motion by Councilman Rojas to approve Resolution No. 13-42. Seconded by Councilman Green. Motion passed unanimously.

ITEM #12 – RESOLUTION NO. 13-43 OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, RATIFYING, APPROVING AND ADOPTING THE FY 2013-2014 JOHN A. VALENZUELA YOUTH CENTER RECREATION FUNDING AGREEMENT BETWEEN THE CITY OF SOUTH TUCSON, ARIZONA, AND THE PIO DECIMO CENTER, A NON-PROFIT CORPORATION AND AUTHORIZING EXECUTION OF THIS RESOLUTION FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND/OR THE CITY MANAGER OF THE CITY OF SOUTH TUCSON TO EXECUTE SAID AGREEMENT AND DECLARING AN EMERGENCY TO EXIST – Mr. Gonzales stated this is the contract for the John Valenzuela Youth Center for FY 2013-14, in the amount of \$100,000. Councilman Green stated he was under the impression the amount was for more than \$100,000. Mr. Gonzales stated the actual amount of money under the grant is \$115,000, which \$15,000 is administrative cost that stays in the City to pay for utilities, etc. Councilman Rojas asked if the Youth Center prepares a budget for review by the City

Manager. Mr. Gonzales stated there is a budget which reflects staffing patterns, etc. Councilman Rojas asked the City Manager if he will be seeing a budget since at this time there is no Finance Director. Mr. Gonzales responded he will see a budget. Motion by Councilwoman Mendoza to approve and adopt Resolution No. 13-43 of the Mayor and Council. Seconded by Councilwoman Romero. Motion passed unanimously.

ITEM #13 - RESOLUTION NO. 13-44 OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, RATIFYING, APPROVING AND ADOPTING THE FY 2012-2013 SERVICES AGREEMENT FOR RECREATION PROGRAMING, FACILITY AND FUNDING SERVICE BETWEEN THE CITY OF SOUTH TUCSON, ARIZONA, AS THE COMMUNITY DEVELOPMENT BLOCK GRANT RECIPIENT AND PIO DECIMO CENTER, A NON-PROFIT CORPORATION AND AUTHORIZING EXECUTION OF THIS RESOLUTION, FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND/OR THE CITY MANAGER OF THE CITY OF SOUTH TUCSON TO EXECUTE SAID AGREEMENT AND DECLARING AN EMERGENCY TO EXIST – Mr. Gonzales stated the source of funding for this resolution is CDBG funds. He stated the resolution expires in December of this year. The total amount of the contract is \$124,044.14. Mr. Gonzales stated the action is ratification of an existing contract which had not been ratified prior. Staff amended the original contract, as it had not yet been awarded, to extend to December. Motion by Councilman Rojas to approve Resolution No. 13-44. Seconded by Councilman Green. Motion passed unanimously.

ITEM #14 – RESOLUTION NO. 13-45 OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, RATIFYING, APPROVING AND ADOPTING THE FY 2013-2014 SERVICES AGREEMENT FOR RECREATION PROGRAMING, FACILITY AND FUNDING SERVICE BETWEEN THE CITY OF SOUTH TUCSON, ARIZONA, AS THE COMMUNITY DEVELOPMENT BLOCK GRANT RECIPIENT AND PIO DECIMO CENTER, A NON-PROFIT CORPORATION AND AUTHORIZING EXECUTION OF THIS RESOLUTION, FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND/OR THE CITY MANAGER OF THE CITY OF SOUTH TUCSON TO EXECUTE SAID AGREEMENT AND DECLARING AN EMERGENCY TO EXIST – Mr. Gonzales stated this resolution is for the contract beginning October 2013. The funding source is CDBG grants in the amount of \$127,000. Mayor Diaz asked if there is a way to determine what the intent is for the funds or what types of programs will be provided for this particular year. Mr. Gonzales stated there is a reporting procedure which will require the Youth Center to submit a report every quarter, informing the City every program they have in place. Mr. Gonzales informed the Council that \$7,000 has been earmarked for science, math and technology

seminars for youth. Mayor Diaz asked if Council can make recommendations, through the City Manager, for programs at the Youth Center to which Mr. Gonzales stated they can. Motion by Councilman Rojas to pass Resolution No. 13-45. Seconded by Councilwoman Soltero. Motion passed unanimously.

ITEM #15 – DISCUSSION AND DIRECTION FOR THE EXTENSION OR A NEW ONE OR TWO YEAR CONTRACT FOR THE POSITION OF CITY MANAGER –

Mayor Diaz stated some of the issues being researched and worked on now will continue through next year. He stated December 10 is quickly approaching and the Council needs to take the opportunity to discuss an extension or a new contract for the City Manager. Councilman Green asked if the City Manager's current contract is for one year or six months, with month-to-month after that. Mr. Gonzales stated the contract is specific to six months and expires December 10. Councilman Green requested this item be tabled and set for Executive Session. Motion by Councilman Rojas that Mayor Diaz and the City Manager meet and discuss the possibility for an extension of the contract and bring a report back for discussion or final action at the next meeting. Seconded by Councilwoman Soltero. Councilwoman Mendoza asked if Councilman Roja's motion is stating that none of the Council will be involved in the decision and it would be a discussion alone between the Mayor and the City Manager. Councilman Rojas stated it can be a discussion by the Mayor and the City Manager and any other council member that wants to be invited. Councilwoman Mendoza stated it is her opinion the Council not discuss personnel issues in public. Mr. Gonzales stated the person involved in the personnel issue has the right to state whether the issue be discussed in private (Executive Session) or in public. He stated as this case pertains to him, he does not have a preference whether it is discussed in Executive Session or publicly. Motion passed unanimously.

ITEM #16 – REPORTS

Mr. Gonzales stated the fire truck has been sold, picked up, and the City has been paid \$290,000, minus 5% or \$14,500 that went to the broker. Mr. Gonzales thanked Police Chief Lackey for his work on the process of selling the fire truck.

Mayor Diaz announced there will be a Dia de los Muertos procession on Sunday, November 3, beginning at 6th and 31st Street.

Mr. Gonzales stated the Cyclovia event will be held on April 6. Staff has been meeting with organizers of the event. Mr. Gonzales has recommended to Cyclovia organizers that there be a joint effort to bring a music festival on South 4th Avenue at the time of the event.

Mayor Diaz asked if a date has been set for a west side cleanup. Ms. Moreno stated the clean-up is set for November 22.

ITEM #17 – CALL TO THE AUDIENCE – No response from the audience.

ITEM #18 – ADJOURNMENT - Motion by Councilman Rojas to adjourn the Special Meeting. Seconded by Councilwoman Mendoza. Motion passed unanimously. The meeting adjourned at 6:58 p.m.

Paul Diaz, Mayor

ATTEST:

Veronica Moreno, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Meeting of the City Council of South Tucson, Arizona, held on the 30th day of October, 2013. I further certify the meeting was duly called and a quorum was present.

Dated this _____ day of _____, 2013.

Veronica Moreno, City Clerk