



City of Apache Junction, Arizona

Meeting Minutes City Council Meeting

Meeting location:

City Council Chambers
at City Hall
300 E Superstition Blvd
Apache Junction, AZ
85119

www.ajcity.net
Ph: (480) 982-8002

Tuesday, November 15, 2016

7:00 PM

City Council Chambers

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The regular meeting of the City Council of the City of Apache Junction, Arizona, was held on November 15, 2016, at the Apache Junction City Council Chambers pursuant to the notice required by law.

Mayor Insalaco called the meeting to order at 7:00 p.m.

A. CALL TO ORDER

B. INVOCATION AND PLEDGE OF ALLEGIANCE

Councilmember Wilson gave the Invocation.

Councilmember Waldron led the Pledge of Allegiance.

C. ROLL CALL

Present: 7 - Mayor Insalaco
Vice Mayor Barker
Councilmember Evans
Councilmember Rizzi
Councilmember Serdy
Councilmember Waldron
Councilmember Wilson

Staff Present: City Manager Bryant Powell
Assistant City Manager Matt Busby
City Clerk Kathleen Connelly
City Attorney Joel Stern
Public Safety Director Tom Kelly
Library Director Spencer Paden
Development Services Director Janine Solley

Others Present: Senior Planner Rudy Esquivias
Public Information Officer Al Bravo

D. CONSENT AGENDA

Yes: 7 - Mayor Insalaco, Vice Mayor Barker, Councilmember Evans, Councilmember Rizzi, Councilmember Serdy, Councilmember Waldron and Councilmember Wilson

No: 0

Vice Mayor Barker MOVED THAT THE CONSENT AGENDA BE ACCEPTED AS PRESENTED; AND

THAT APPROVAL BE GIVEN FOR PROFESSIONAL SERVICES AGREEMENTS FOR FISCAL YEAR 2016-2017 BETWEEN THE CITY OF APACHE JUNCTION AND THE APACHE JUNCTION REACH OUT FOOD BANK IN THE AMOUNT OF \$32,000; THE BOYS AND GIRLS CLUB OF THE EAST VALLEY - SUPERSTITION MOUNTAIN BRANCH IN THE AMOUNT OF \$20,000 AND COMMUNITY ALLIANCE AGAINST FAMILY ABUSE IN THE AMOUNT OF \$20,000 FOR A TOTAL AMOUNT OF \$72,000; AND THAT AUTHORIZATION BE GIVEN FOR THE MAYOR TO SIGN THE AGREEMENTS; AND

THAT APPROVAL BE GIVEN FOR THE LEGAL ADVERTISING AGREEMENT BETWEEN THE CITY OF APACHE JUNCTION AND THE ARIZONA REPUBLIC FOR THE ONE YEAR PERIOD COMMENCING JANUARY 1, 2017 THROUGH DECEMBER 31, 2017, FOR THE RATES OF 40 CENTS PER LINE PER DAY IN THE MESA REPUBLIC, 25 CENTS PER LINE PER DAY IN THE ARIZONA BUSINESS GAZETTE AND 85 CENTS PER LINE PER DAY FOR THE ARIZONA REPUBLIC; AND THAT AUTHORIZATION BE GIVEN FOR THE MAYOR TO SIGN THE AGREEMENT.

Councilmember Evans SECONDED THE MOTION.

VOTE: Unanimous.

The motion carried.

1. [16-529](#) Consideration of acceptance of agenda.
2. [16-530](#) Consideration of approval for minutes of regular meeting of November 1, 2016.
3. [16-531](#) Consideration of FY 2016-2017 human services funding contracts between the City of Apache Junction and Apache Junction Food Bank in the amount of \$32,000.00, the Boys and Girls Club of the East Valley (Apache Junction Branch) in the amount of \$20,000.00 and Community Alliance Against Family Abuse in the amount of \$20,000.00. Council directed staff at the regular meeting of November 1 to bring the contracts back for approval on the consent agenda.
4. [16-533](#) Consideration of approval of legal advertising agreement between the City of Apache Junction and the Arizona Republic for calendar year 2017.

This item was discussed at the work session of November 14 and gives the council the opportunity to approve the agreement.

E. AWARDS, PRESENTATIONS AND PROCLAMATIONS

5. [16-479](#) Presentation of 30-year Service Award to Spencer Paden of the Library.

City Manager Bryant Powell presented Library Director Spencer Paden with his 30-year service award which consisted of some vacation time, a little money, a certificate for his service and a sandstone plaque award.

6. [16-521](#) Presentation of proclamation designating November 2016 as National American Indian Heritage Month.

Mayor Insalaco read a proclamation designating November 2016 as National American Indian Heritage Month and presented it to Audra of Apache Trail Chapter of the National Society Daughters of the American Revolution.

F. ANNOUNCEMENT OF CURRENT EVENTS

Councilmember Wilson thanked the Chamber of Commerce and the parks and recreation department for the Festival of the Superstitions and the parade this past weekend. It was well-organized and it was wonderful to see the kids' smiles while they rode his pony.

Vice Mayor Barker congratulated everyone who worked so hard on the Veterans Day Parade. Councilmember Waldron was in the thick of things and will probably talk about the walking marine.

Vice Mayor Barker announced she went to the senior center on Monday to see their opening lunch and it went through with nary a hitch. Parks and recreation is doing a wonderful job and she met the Pinal Gila folks. It is looking good and people were enjoying their lunch.

Councilmember Waldron thanked everyone as the parade this year was the largest Veterans Day Parade they have ever had. They had 56 entries and when you consider that Phoenix had 90 entries per capita they did very good. He appreciated everyone coming out and the community did a lot of hard work.

Councilmember Waldron commented they had a couple of folks show up at the veterans' center yesterday and one was a marine who walked from Camp Lejeune, North Carolina to Camp Pendleton, California as part of his personal transition back into the world. He is now visiting various places and veterans' centers.

Councilmember Serdy commented he wanted to give kudos to Councilmember Waldron and the parade, also. After the parade there is a ceremony honoring the veterans. A lot of people do not go to it. He encouraged those who go to the parade to go over behind the chamber for the ceremony.

Councilmember Serdy announced there is something going on with Wounded Warriors on Friday morning in the area but he does not have the details. The police department is helping out with that.

City Manager Bryant Powell stated they will get the details from the police department and find out the Wounded Warrior event.

G. CITY MANAGER'S REPORT

7. [16-534](#) City manager's report.

City Manager Bryant Powell commented on restarting the bike unit at the police department, an officer assisting a resident with the euthanasia of a dog, and read a note commenting on Officer Rivera's professional compassion.

8. [16-438](#) Presentation and discussion with Kenneth Hall, Central Arizona Government's (CAG) Executive Director, on a brief overview of CAG as an agency.

Mr. Ken Hall, Central Arizona Governments Executive Director, gave a brief overview of the agency.

Councilmember Waldron commented Central Arizona Governments undertook a project in Superior where they had to inventory every building in Superior. It created quite a plan with every building in Superior and the condition of each, the address, GIS and all that information. It was an extensive survey.

Mr. Ken Hall stated it was a housing assessment.

Councilmember Waldron commented it was a very good document. A lot of the services that Central Arizona Governments has the city also has in house, but we have identified some services where we will ask for some assistance from Central Arizona Governments. They offer a lot of services to Apache Junction and all the smaller communities that they can do for less money than competitive bids.

Mr. Ken Hall stated they are a 501C(3)(e). They are there to provide services and not make a profit.

H. PUBLIC HEARINGS

9. [16-537](#) Presentation, discussion, public hearing and action on proposed Ordinance No. 1439, case PZ-10-16, a planned development major amendment request by the James P. Schmidt Revocable Trust, represented by Lance Baker, Architect with Synectic Design Inc., to change the plan of development for a B-2/PD (Old West Commercial by Planned Development) zoned parcel in the Ironwood Crossings Shopping Center at 1477 W. Apache Trail, on the east side of the former Food City Grocery Store building, from a pad for future commercial or retail shops to a pad with a permanent, improved, outdoor storage and sales yard for the new Shopper's Supply business.

Yes: 7 - Mayor Insalaco, Vice Mayor Barker, Councilmember Evans, Councilmember Rizzi, Councilmember Serdy, Councilmember Waldron and Councilmember Wilson

No: 0

Senior Planner Rudy Esquivias briefed the council on the item.

Councilmember Rizzi asked if the block wall is required and what was the developer's initial reaction to the block wall.

Senior Planner Rudy Esquivias stated staff asked for a block wall. The new ordinance typically calls for outdoor storage uses to be screened, particularly in commercial zones with 8' screen walls. It is also a security issue. They did not object to the wall.

Vice Mayor Barker commented she wanted to thank planning and zoning for putting a time limit on this. It is time we started putting time limits on developments so that people who come in with proposals actually go through with those proposals.

Councilmember Wilson commented he talked to the people at Shopper's Supply and they are not very happy on the idea of the masonry wall. The stuff being stored back there is bulky such as water tanks, feeders, hay, fencing, panels et cetera. A lot of it could be seen as a potential buyer drives up and looks through the fence and can actually see it. They cannot have a sign on it saying this is what they have there. With a block wall it is totally blocked. A block wall, even though it is 8' tall, becomes very sturdy so someone could actually climb over it. We have an ordinance against using razor wire so they cannot do that. It becomes an issue of security as well. When he talked to them he suggested the idea of a wrought iron fence. It leaves it open so it can be seen through and it looks good. In their original proposal they had

a chain link fence. He was talking to them about giving a date certain of a year or two and replace the chain link fence with wrought iron. If they look at Walmart, they do not have a block wall around it. If they go to other stores in other parts of the valley that have garden shops outside that do not have block walls around them. It is part of their ability to capture the eye of someone as they are coming in. They see roses and go look at the roses and other things. It is part of their sight advertising they try to expand. He would like to see if they can work something out on this block wall and make it something more conducive to what they would like.

Senior Planner Rudy Esquivias stated if they would like to change the wording in that condition to instead of an 8' decorative masonry wall to an 8' wrought iron, and he does not know if he wants screening in it or not, they can. They have been dealing with the architect. The actual Shopper's Supply people have not communicated with him at all. In his discussions with the architect he was not advised that was a concern for the store people.

Mayor Insalaco asked if there was anything wrong with half and half.

Senior Planner Rudy Esquivias stated that could bleed with Dr. Kumar's new development. The north from as far as the street view may be blocked a bit because of the auto parts store between Apache Trail and what is going to be the north side of the yard. He showed them on the overhead where everything is.

Councilmember Rizzi commented it makes things look like a prison somehow. After a while we have all these 8' block walls.

Vice Mayor Barker agreed. Commercial folks like Walmart and other have roofs over their open nursery. It is a normal roof so it is more of a permanent structure than a storage wall.

Councilmember Wilson commented they will have part of this covered already because the hay has to be protected from rain. They want to make sure it does not get wet because they do not want mold and the crates wet.

Senior Planner Rudy Esquivias showed them the shade canopy. The rest of it will be open yard.

Councilmember Evans asked if the people in development services have talked to the people selling the product.

Senior Planner Rudy Esquivias stated they did not.

Councilmember Evans commented she is confused. She asked if they called Councilmember Wilson to complain about this and are these the local people and not the higher ups.

Councilmember Wilson commented it was the owner of the facility. He did not realize they would be putting in a block wall and discovered it that day. He had stopped over to discover how things were going and talked to him.

Councilmember Evans commented so the owner did not mention it to development services.

Senior Planner Rudy Esquivias stated he did not. They did send him copies of the planning and zoning staff report and the city council staff report. He has not heard from the owners himself.

Councilmember Wilson commented the owner is present.

Councilmember Serdy commented the owners are local. He concurred with Councilmember Wilson. We are going to have a long term partnership and we are grateful they are filling this building. They do not want to put them behind the 8 ball. Tractors Supply is just down the road so we want our stores to thrive more than them. Anything we can do to help them to be successful he thinks they should do.

Councilmember Evans commented she is just wondering why there is a communication problem.

Councilmember Waldron commented his other concern is this is a proposed storage area, not a retail area as Walmart has.

Senior Planner Rudy Esquivias stated his understanding is it is storage and retail.

Councilmember Waldron commented it said storage area.

Vice Mayor Barker commented it said storage and sales area.

Councilmember Waldron commented he was looking at the site plan.

Vice Mayor Barker suggested a compromise. She would prefer the block in the back where there is really no need

for the wrought iron. They could have the wrought iron in the front. That way they would be able to see it but they will have that buffer in the back from the alley behind the old Food City. That alley is huge and traveled. Having the block wall there might be a good precaution.

Senior Planner Rudy Esquivias stated there is a property perimeter block wall.

Councilmember Wilson asked if it were possible to talk to the owner and if he could address this issue.

City Attorney Joel Stern stated this is a public hearing and after they are done with Rudy he should be brought up.

Mayor Insalaco requested the owner address the council.

Mr. Tyler Schmidt, one of the owners for Shopper's Supply, 1477 W. Apache Trail, addressed the council. He stated basically he talked to Councilmember Wilson earlier and addressed the concerns. The reason it was not brought up earlier is that the last time they were looking at a chain link fence. He did not know that the block wall was an issue until today when he talked to Councilmember Wilson and he voiced his concerns. They treat it as a sales area. The customers drive by in the parking lot and if they do not see they carry fencing they will drive to Tractor Supply and see they do carry fencing. It puts them behind the 8 ball. They really like people to see what they carry. Somebody might not walk all the way through the store to our side yard to see what we have outside. They might find it prudent to drive around and check things out that way. He would really like to not have a block wall. They are putting a lot of money into the building and they want to make it as nice as possible for the community. They are not necessarily married to chain link. They will compromise on anything. They just want to do business. Another concern of the block wall as Councilmember Wilson said was razor wire. They have had a temporary fence the last week and they have had security guards out all week. They have called the police three nights in a row now. People are trying to get over the walls, they are trying to get over the temporary fence, so they do need razor wire or wrought iron. Wrought iron works because it bends.

Vice Mayor Barker commented she thinks wrought iron would be very attractive there, too. There are people who use the area behind there as a shortcut. There it is a street, it is a through street and is traveled and she thinks wrought iron would look pretty nice out there. It would still show his

supplies.

Mr. Tyler Schmidt stated that would be great. They would be more than happy to put wrought iron up, actually as soon as possible.

Mayor Insalaco commented it would also be decorative with the little short pony wall. With the wrought iron on top it would give them a little bit of protection on the bottom and they could still see through that.

Mr. Tyler Schmidt stated as long as they can see through it, whatever they approve will be great. Whatever they approve, if they could approve quickly they would start tomorrow if possible.

Councilmember Rizzi commented as long as it is secure as he is obviously looking for security. Her question was going to be what his alternative plan for security would be without the block wall.

Mr. Tyler Schmidt stated the wrought iron that bends. One stays straight up and one bends over. That helps keep everybody out. They do not want to have a security guard every night. The faster they can put the fence up the happier they are. They appreciate them doing this.

Mayor Insalaco commented they appreciate them coming into town.

Mr. Tyler Schmidt thanked them and stated he hoped they would be open soon.

Mayor Insalaco opened the public hearing on the item. There being no one wishing to speak, he closed the public hearing and reopened the item to council discussion. There being no further discussion, he called for a motion.

Councilmember Waldron MOVED THAT ORDINANCE NO. 1439 BE READ BY TITLE ONLY AND THE READING OF THE ENTIRE ORDINANCE BE WAIVED.

Councilmember Rizzi SECONDED THE MOTION.

VOTE: Unanimous.

The motion carried.

City Clerk Kathleen Connelly read the ordinance by title only.

Councilmember Waldron MOVED THAT ORDINANCE NO.

1439, AS READ BY THE CITY CLERK, BE APPROVED AND ADOPTED WITH THE FOLLOWING AMENDMENT: THAT UNDER CONDITION NUMBER 1, THAT THE CHANGE BE MADE FROM AN 8' MASONRY WALL TO AN 8' WROUGHT IRON FENCE.

Councilmember Rizzi SECONDED THE MOTION.

VOTE: Unanimous.

The motion carried.

I. OLD BUSINESS

None.

J. NEW BUSINESS

10. [16-528](#) Presentation and discussion with city staff and Merrill & Marla Orr on the donation of the art to be placed near the focal point median.

City Manager Bryant Powell stated they are super excited to see Shopper's Supply occupying Food City. As that one empties, they have another one coming which will be Pet Club. He briefed the council on the public art in the downtown area for the last three years.

Mr. Merrill Orr gave a brief presentation on his work.

Vice Mayor Barker asked what he had in mind.

Mr. Merrill Orr stated the first thing he would like to do is a contemporary southwest piece, about a 15' contemporary Kachina. It represents the southwest and also represents his line of work which is very contemporary. The Kachina would have very large feathers on it and would have a very southwest look. A lot of his pieces are very, very contemporary. He studied realism abroad when he was very young. He enjoys contemporary so it will have a contemporary flair. But it is an opportunity for the city to get something started without any city funds being used. He showed them pieces of his artwork in China.

Vice Mayor Barker commented he had more on his website that were more southwestern. He had a couple of them there.

Mr. Merrill Orr stated he would definitely keep it on the southwest trend because this is a very southwest area. He loves southwest as well. He used to do stone sculpting and

it was all primarily southwest. He dealt with some of the biggest dealers in Arizona, the Ortegas. He would like to do a southwest piece that has a contemporary flair and donate it to the city and get it started. The city can sell it, make some money on it and put it towards other pieces of art.

City Manager Bryant Powell asked how long it would take him to do it once he is given the green light to go and how long the temporary part would be before the city could auction it.

Mr. Merrill Orr stated he does a lot of shows during the major season which is now. It would be about a month out on production time. It would be a one-day installation.

City Manager Bryant Powell asked about the auction part, if it would be six months for it to stay there and they would start the auction at four months.

Mr. Merrill Orr stated that is entirely up to the city. Whatever the city would like to do. If they would like to have the piece for one year in that place then that is what you would do. If you want to sell it off and auction it off in one month, it is your choice. It has been given to the city so whatever you choose to do with it is entirely up to you.

Councilmember Evans commented she loved the concept. She asked if he would typically have a couple of drawings or ideas for them to see or is this something he would want to do on his own. She has a concern about if someone steals it as it has been donated to the city.

City Attorney Joel Stern stated it is city property so whether it gets insured for a certain value he does not know. That is something they have not talked about. As it is city property there would be no liability for us.

Councilmember Evans asked if he could come to them with some ideas.

Mr. Merrill Orr stated he could present them a few renderings of ideas. To be blunt and honest with them, when it comes to large pieces that he does, he does it, they receive it and they say thank you. He is not being arrogant about it.

Councilmember Evans commented she appreciated that but she does not know what he anticipated his process to be.

Mr. Merrill Orr stated to make the city happy he would bring out a few renderings for them, something they can

actually get a visual on. It will not be identical to the rendering because he does change. When he is working on a piece he might see something a little bit different that is going to be more attractive. He guarantees they will be happy and not every city has large pieces of work like this. He has donated other pieces to other cities in the past because the cities have been very kind to himself and to his family. It is his way of saying thank you. He is fortunate that he can actually do something like this as not a lot of artists can. By being able to do this he gets a lot out of life. He is treated very well. If he can pass it on, why not pass it on.

Vice Mayor Barker commented she has a problem, and here is her problem. Here we have this wonderful sculpture and there it is right across from the focal point. Then we auction it off and we have an empty pedestal. Now that bothers her.

Mr. Merrill Orr stated here is what he will do. He will replace it. Here is how he sees this. He does not see just one spot. We have a road that goes completely through town and you see tire shops, automotive shops and businesses that are not attractive, quite honestly. We do not see anything out in the median that is beautiful. That is what we are missing. We are missing some art.

Vice Mayor Barker agreed.

Mr. Merrill Orr stated if there is a way that he can actually help get it started and kick it off, so be it. He is here for them. All he has to have is let us make it happen.

Vice Mayor Barker commented they have his number.

Councilmember Serdy commented he has had the pleasure to spend some time with Merrill and he does not think this thing is going to be stolen because it is going to be about 20' tall. They would be more likely to steal the javelin than this. It is not going to be stolen. If they are going to cut it up they will have nothing. The art is going to be there when it sells. Merrill is also being very modest. He was on Channel 3 last week and we have a recording. He thinks that will be available in the future with some shows that he has done. He can see this leading to, with the vice mayor's question, other local artists coming out of the woodwork to want to do this as well. It may be a one upsmanship.

Mr. Merrill Orr stated they have to. It is not they should, they have to.

Councilmember Serdy commented he does not live in Gold Canyon. He lives by the Mining Camp. The city has a public relations man and we can get television stations out here. We can get Matt to take some photos as it is being built and installed. It will make a pretty cool slide show. He could see this leading to a lot of great public relations. Nobody in the valley is doing this. Not Paradise Valley and not Scottsdale. We will be the leading edge. We have always wanted to be an artists' community. This is our chance to really kick it off. They can go over the auction process later. We will have to come up with that. He will require a slab to hold this up and he thinks several of them on the council could probably get some cement donations for that. It would take something to fill it up. He also talked about getting youth involved as he has done this in other places.

Mr. Merrill Orr stated our youth actually need a little help. Bringing youth into the arts is a great way to start it out. If there is a way to bring them in, they do not get paid. They have to volunteer for it, get them out there and get their hands working. Get them excited about something. The reason why he does not pay is that a lot of times people will do jobs just to get paid just to make something happen. He does not like paying kids. If they are going to take young people and teach them something, they will volunteer for it. He does not care what type of personality a young person has. It could be a nasty personality, it could be a great personality. To be able to take young people and help mold them like a piece of clay, you can do that in any industry but with the arts it is a little bit easier because they actually have fun with it. Something he would like to do in the future is to bring in a youth program for the arts in our town.

Councilmember Rizzi commented she also had the opportunity to sit and talk with Merrill and it is obvious that he has such an extensive background in doing this. He is very modest about it. He has so much experience and knowledge of our community and the heritage we have here in our community. She has absolutely no doubt anything he would create would just flow with this community. She is so excited at the opportunity for us. It is just incredible. It is an amazing opportunity.

Mr. Merrill Orr stated it is for him, too. He said not to kid themselves. It is always fun to drive down the road and say look at that and it is his piece up there.

Councilmember Rizzi commented absolutely and then like he said to bring the kids in. There are kids that are high risk and you bring them into something like this it gives them a sense of ownership in shaping their community. He just

hit the nail on the head. Amazing things happen when you bring the kids in.

Mr. Merrill Orr stated he actually had a young man that worked for him that was 6'6" and weighed 250-260 pounds. The police department in our town warned him about him. They told him not to let him work for him. He had previously had a tremendous amount of problems with the police department. He brought him on and gave him a chance. He acted up with him once and he put him in his place. He never had a problem with him after that. He was happy to come to work every day of the week. The police department came by and asked what he had done. He took a person who was literally in a gang and gave him something to look forward to. He taught him how to weld and work in stone. It broadened his mind and that is what they need to do, broaden their minds.

Mayor Insalaco asked if they can get this started with voice approval.

City Manager Bryant Powell stated since this is presentation and discussion tonight they would talk about a few renderings tonight. When they get a few of those they will package them for the December 6 direction to staff. That is how he thought it would go. Once they have the direction to staff that is the will of the council.

City Attorney Joel Stern stated traditionally there would probably be a simple, and he means simple, donation form. It would be a short donation form. That is all they really need since it is donated. There is no real expenditure of city monies except for the installation.

Mr. Merrill Orr stated he thinks they could get a lot of that done by people donating their time to help out. Basically, once he is turned loose on it, if he needs to make the right contacts to have the help to get it installed he will do so without having any cost to the city.

Councilmember Serdy commented they talked at the last meeting about someone donating who has cement or a boom truck. They can send them a letter of thanks and they will be glad. They can also say their boom truck put that up.

City Manager Bryant Powell stated they have had three years of working with direction to staff. They have the current one. He needs a new direction to staff that they will bring back on December 6. He asked if he could help him with a few styles if he has any.

Mr. Merrill Orr stated absolutely. He would

like to work with the city in the future and help bring in new artists and new talent.

City Manager Bryant Powell stated that is another thing. They can get with Anna McCray and get them on the volunteer list. They are working on that as well.

Councilmember Serdy commented Merrill and his wife know the whole circuit and the whole southwest. They go to Southern California. That will introduce all those people to our town and area. With everybody that moves here, they always visit us first. The possibilities are endless.

Councilmember Wilson commented he is excited as well and is looking forward to making the motion in December.

City Manager Bryant Powell stated the other interesting thought is they are working with Arizona Department of Transportation on the roundabout. That is another opportunity for some art. They were initially thinking about the west pedestal. The javelina will be on the east pedestal and they will work together on the roundabout. He has learned that in other cities the roundabout came from a third party. Either the developer or the city had to pay for it. It would be an opportunity to look at that as well.

11. [16-539](#) Consideration of approval for Resolution No. 16-33, a resolution of the mayor and city council of the City of Apache Junction, Pinal and Maricopa Counties, Arizona, declaring and adopting the results of the general election held on November 8, 2016. State law requires that the city council canvass the votes and adopt election results no later than 20 days following an election. Staff is requesting adoption of the resolution or selection of a meeting date no later than November 28, 2016.

Yes: 7 - Mayor Insalaco, Vice Mayor Barker, Councilmember Evans, Councilmember Rizzi, Councilmember Serdy, Councilmember Waldron and Councilmember Wilson

No: 0

City Clerk Kathleen Connelly briefed the council on the item.

Mayor Insalaco called for a motion.

Vice Mayor Barker MOVED THAT THIS ITEM BE CONTINUED TO MONDAY, NOVEMBER 28, AT 6:00 P.M.

Councilmember Wilson SECONDED THE MOTION.

VOTE: Unanimous.

The motion carried.

12. [16-515](#) Discussion on use of oleander plants for landscaping and screening.

Councilmember Wilson briefed the council on the item.

Vice Mayor Barker commented it seemed to her in the large lot areas that we could come up with some kind of regulation that we can enforce. As they read through the material they found most cities were having problems with enforcement of those ordinances. She supposes it would be by complaint like Darryl did but it is kind of after the fact. Plus there is the fact that after you cut the oleanders down the leaves still blow. They do not pay any attention to fences or walls. They will still blow around.

Councilmember Waldron commented he would like to see more detail on what is being proposed. He has oleanders but he does not live next to horse property. There are people who have oleanders now that live next door to horse property. They would have a problem telling them they need to pull them all out. He would like to see more detail on exactly where this is proposed, how it would be worded and the enforcement part of it. It was pretty common in the stuff they read here where the enforcement is an issue. He would like his thoughts on where and how.

Mayor Insalaco asked what the legal process is on this and what problems can be caused on this. He asked if they could force someone to get rid of them.

City Attorney Joel Stern stated they should not tie this to zoning as they could get into some Proposition 207 issues. If they require someone to pull them out it could be a Fifth Amendment violation for taking. He would probably envision an ordinance that is put under property maintenance rather than zoning. He would not set aside just a certain area where they would be prohibited, maintained or controlled. He believes it would have to be city wide.

Councilmember Serdy asked him to outline Proposition 207 in a few sentences.

City Attorney Joel Stern stated it was an anti-city statute that basically said if you pass any law relating to a land use, any land use, and it diminishes the value of a person's property, a lawsuit could be filed by the alleged injured person.

Councilmember Evans commented she is a former

horse owner who formerly lived in Gilbert on an irrigated horse acreage that was surrounded by oleanders. Her horses never even went near an oleander. Even when ground feeding they picked around the smallest little thing to not eat if they want to. Her problem with this is if they are going to create a list of everything that an animal cannot eat. She asked how they could create this for oleanders and then they would have to create something else for another plant that is pretty dangerous to other animals or dangerous to horses, too. She asked where his research goes. She feels bad that someone lost their horse or if their horse had an illness due to feeding one of these. She is not sure how they could even prove that eating a leaf of an oleander caused it because horses can have sick stomach issues for many reasons. Apparently these neighbors have had a conflict. Darryl said the neighbor went out and planted oleanders. She has never seen an oleander that has just been planted that is that tall. It takes them a couple years to get that tall to go over an 8' fence. She has a problem trying to create an ordinance or anything on one particular plant or one particular item.

Vice Mayor Barker commented it appears that under the maintenance ordinances that any bush that pops over the fences or walls should be trimmed. That is maybe what they should be talking about. This is a maintenance issue.

Councilmember Evans stated it is a maintenance issue with a singular plant.

Vice Mayor Barker commented her neighbors have oleanders that are 15' high. They could probably create a problem for somebody. If it was overall just anything, that would be something where that if a neighbor complained it could be enforced because it is a bush, whatever bush it happens to be, and it needs to be trimmed.

Mayor Insalaco asked if it is an illegal plant. They outlawed mulberry trees in Arizona. This is not in that category.

City Attorney Joel Stern stated it is not. He also believes the code under 9-1-1 already says you cannot have overhanging trees. He asked development services staff if that is correct.

Vice Mayor Barker commented then under that particular ordinance someone could go out and check a property that was a complaint and say that has to be cut.

City Attorney Joel Stern stated he believes that is how it is done.

Vice Mayor Barker commented it is already taken care of in reality.

City Attorney Joel Stern stated that is correct as it applied to any plant.

Councilmember Evans commented it is not if it is over the fence.

Councilmember Wilson commented it is not.

Councilmember Evans commented because these oleanders basically grow up. It is on the owner's property and it is growing straight up over an 8' wall.

City Attorney Joel Stern stated then it is not illegal.

Councilmember Serdy commented he thinks Councilmember Wilson is only intending for this to be in the areas zoned for horses. He has oleanders in his yard. The home run fence in the baseball field is total oleanders. In his area the yards are relatively small and people share trees. He enjoys the shade he gets from his neighbor that hangs in his and his other neighbor enjoys his. He thinks that would be opening it up for anybody that has a fight. If they cut the tree down they will be butchering trees. The mayor was correct about mulberries but he thinks it was only Maricopa County and that is now off. A castor bean is illegal; it is what they make ricin out of. There is precedent to just name a plant by name. Maybe they could do an ordinance just on that plant in certain areas. He knows that is really pinpointing it to protect animals that would eat this. He does not think dogs do. They can make it only equine/bovine.

Councilmember Rizzi commented she is going along with what the vice mayor said about any overhang. Councilmember Serdy had said that he enjoys his neighbor's overhang but for neighbors that do not, she thinks they should provide an avenue. It sounds like we have that avenue. It is the complaint avenue. If one enjoys the neighbor's tree than obviously they are not going to complain. She does not think it would require cutting a tree down. She does not think it is unreasonable to expect somebody to maintain it if it is bothering her. Keep it on your side of the fence. It does not mean you have to cut your tree down. What concerns her is this could go two different ways. They could have somebody move on to a horse property and complain about smells and flies. It happens all the time. They plant oleanders to possibly intentionally annoy. But they could also have someone who

already as the oleanders and a neighbor moves in with horses and expects them to tear or pull their oleanders down. She does not think that is reasonable. It sounds to her like they already have something in place for people that are being annoyed by the plants or whatnot. She would hate to ban anything. She has horse property and her neighbor has horses and she has burros. She has oleanders and it has never been an issue. She hates to ban things.

Councilmember Serdy asked if the original request was for the oleanders to be set back. He asked if they could do a setback on a certain plant.

Councilmember Wilson commented and the top of the plant must be kept below the fence line.

Councilmember Rizzi commented she thinks that is a reasonable request.

Vice Mayor Barker commented she thinks that is already in place. She thinks they already have that.

Councilmember Waldron commented they do not have anything about below the fencing. They do overhanging.

City Manager Bryant Powell commented he would like to have Larry or Rudy come up and talk about how that all works.

Vice Mayor Barker commented they do not want to ban oleander plants. She counted 40 different oleander plants between Silver and San Marcos on the north side of Broadway when she was walking the other night. They were not in any private yard. They were all in open space.

Development Services Director Larry Kirch stated he knows the property maintenance code deals with such things as palm fronds hanging down and weeds but he was not familiar with anything that overhangs a fence. They have never written a violation for a neighbor complaining about something growing over the fence in the past two years that he has been here. For weeds it has to be over 10 inches tall so they do not write anything up that is not over 10 inches. The outside storage deals with debris, garbage and litter. There are inoperable vehicles.

Vice Mayor Barker commented they do not need to get into that or they will be here all night.

Development Services Director Larry Kirch and Assistant City Manager Matt Busby were unable to find it in the

property maintenance standards.

Development Services Director Larry Kirch stated they deal with the dried palm fronds and they have written those up a few times. He is not aware of anything that was growing over a fence line. Usually anything that grows over a fence line is now in your sphere of your side of the fence. People cut it down. It does not top it off because they would have to go over to the other side of the fence to lop it off at the height of the fence.

Mayor Insalaco commented he thinks now they are getting into property rights.

Development Services Director Larry Kirch stated this might be the section they deal with. They would need to add it to subparagraph 5 and word it in such a way as they want. He has not read all the stuff that they have on enforcement and how difficult it is to enforce. They would have to write it in such a way to make it enforceable. Otherwise, why have it if you cannot enforce it.

Councilmember Serdy commented he sees mulberry trees are still in the code.

Development Services Director Larry Kirch stated they will be talking about the code in January. It was last done in 2006 so it is 10 years old. Most of this has not been looked at in 10 years. If mulberries are now okay, then we would go back and amend it.

Councilmember Serdy commented they are selling them at Lowe's.

City Manager Bryant Powell stated that is not in the city limits.

Councilmember Serdy commented it is called the Apache Junction Lowe's.

City Manager Bryant Powell stated it is, he knows it is, but it is on Crismon Road.

Development Services Director Larry Kirch stated subparagraph 5 or a new 6 is where there is some consideration of where it might go.

Vice Mayor Barker commented they are going to look at the code in January.

Development Services Director Larry Kirch

stated he was going to look at what he has talked about with the city manager. There are a number of codes that need to be updated. The sign code because of the U.S. Supreme Court case. There are new state laws in group homes. They will be looking at the zoning code and Chapter 9. There are some things he does not want to go into tonight as they are probably not germane but there are certain things we can enforce from different angles that they may want to look at. They have gotten a lot of feedback on Chapter 9 in the two years he has been here. Chapter 2, the subdivision code, should be updated. Those are all things they are going to present and get direction to staff in January. They are looking for something specific here as it is on the agenda for direction to staff on the oleanders. It may get referred to Chapter 9 or be a separate ordinance or however they feel. There are a number of items they will bring back in January to get direction from the council.

Mayor Insalaco closed the discussion and moved on to the next item.

K. COUNCIL DIRECTION TO STAFF

13. [16-516](#) Council direction to staff on use of oleanders plants for landscaping and screening.

Yes: 5 - Vice Mayor Barker, Councilmember Rizzi, Councilmember Serdy, Councilmember Waldron and Councilmember Wilson

No: 2 - Mayor Insalaco and Councilmember Evans

Mayor Insalaco called for a motion.

Councilmember Wilson asked if they could be working on some language between now and then. It will be asking them to go through and present some ideas.

Vice Mayor Barker commented they would be presenting ideas and research. She asked if that was his motion.

Councilmember Wilson MOVED TO RESEARCH AND COME BACK.

Vice Mayor Barker SECONDED THE MOTION.

City Manager Bryant Powell stated he wanted to clarify one thing. He asked if they want to have it as part of the comprehensive work that we do so we have it set. We have one more meeting in December. There is no second meeting in December. The first meeting in January will be the swearing in. The second meeting in January is where we will start influencing

some of those retreat items.

City Clerk Kathleen Connelly stated they will not have the second work session in January because that is a legal holiday.

City Manager Bryant Powell stated they may be looking at the first meeting in February. It would be the first work session. By then they would have plenty of time to do a lot of research on this. It will be a part of the Chapter 9 changes.

Vice Mayor Barker commented that works.

Mayor Insalaco asked if they wanted to put that in the motion.

Councilmember Wilson asked how they could word the ordinance that would address the problem.

Vice Mayor Barker commented and be enforceable.

Mayor Insalaco asked if it would be an ordinance.

City Attorney Joel Stern stated if it changes the city code section it would be an ordinance. Basically they are to research all issues regarding what was discussed tonight. He asked if that would work.

Vice Mayor Barker stated it would. He has a full time job.

City Attorney Joel Stern stated they are talking about bringing it back in February.

City Clerk Kathleen Connelly stated the first work session in February.

Mayor Insalaco called for the vote.

VOTE: 5-2 (Councilmember Evans and Mayor Insalaco voted in opposition. During the vote Councilmember Evans commented she voted no because she does not see one way they can enforce this on whose yard the leaves blew from, and you can buy these all over the state. She does not want to do anything that is not enforceable. We are spending staff time on something we really cannot enforce.)

The motion carried.

L. SELECTION OF MEETING DATES, TIMES, LOCATIONS, AND PURPOSES

Vice Mayor Barker MOVED THAT AN EXECUTIVE SESSION AT 5:45 P.M. AND A WORK SESSION AT 7:00 P.M. BE HELD ON MONDAY, DECEMBER 5, 2016, IN THE CITY COUNCIL CONFERENCE ROOM AND CITY COUNCIL CHAMBERS RESPECTIVELY;

AND THAT AN EXECUTIVE SESSION AT 5:45 P.M. BE HELD ON TUESDAY, DECEMBER 6, 2016, IN THE CITY COUNCIL CONFERENCE ROOM.

Councilmember Rizzi SECONDED THE MOTION.

VOTE: Unanimous.

The motion carried.

This was approved

- 14. [16-535](#) Executive Session at 5:45 P.M. and Work Session at 7:00 P.M. for Monday, December 5, 2016.
- 15. [16-536](#) Executive Session at 5:45 P.M for Tuesday, December 6, 2016. Other meetings if necessary.

M. CALL TO PUBLIC

Ms. Judy Lutes, 4381 N. Ironwood, Apache Junction, invited everyone to the Welcome Back Bash for the winter visitors.

Mr. Jim Duncan, 2745 E. Smoketree, Apache Junction, addressed the council regarding the regulation of city events and requested neighborhood review provision in the approval process.

Mr. Reggie Kollinger, 820 W. 10th Avenue, Apache Junction, addressed the council regarding the developer of the Superstition Commons Townhouse development building the grade up approximately 4' on the south wall from the original grade and is building the basement 1.5' above that. He requested someone contact the developer and take all of it out.

Mr. Bob Lewis, 896 W. 10th Avenue, Apache Junction, addressed the council regarding the Superstition Commons Townhouse development. He showed pictures of the original grade and what it is now. The floor will now be the height of his 6' fence.

Councilmember Evans directed Sam or other staff to check and see what the original grade was to what the platted grade for the subdivision is supposed to be and the grade that it currently is, understanding this is not finished grade as that cannot be done until construction is finished.

City Manager Bryant Powell stated Sam Jarjice, the development engineer, will check it out.

Councilmember Serdy commented going back to Current Events and Announcements, he received word on the Wounded Warrior Ride. It is a motorcycle ride at Prospector Park at 8 a.m. this Friday.

Councilmember Waldron directed the city attorney to look into what Mr. Duncan brought up and see if there is something not in the ordinance that should be.

City Attorney Joel Stern stated they can do that and he has already had discussions on it.

Councilmember Wilson commented he is also concerned about the grade for the townhouses as well as the ordinance.

Vice Mayor Barker agreed.

Mayor Insalaco commented he thinks the developer is thumbing his nose up at the city and the residents. He has a dirt pile and he is supposed to get rid of it and he piled it there where the buildings will go. He went out and looked at it and you can see where the original wall is on the corner at San Marcos. The dirt is 3' high. The buildings are not there yet.

City Attorney Joel Stern stated he is sorry to interrupt but this is the time to direct staff.

Mayor Insalaco commented he is trying to get to something. He directed staff to go out and do something or stop them from doing any more until that dirt is removed. This developer is thumbing his nose up at us because he is mad because we are making him do something and it is not right for the residents along that whole street.

N. ADJOURNMENT

Mayor Insalaco adjourned the meeting at 8:55 p.m.