

MINUTES
REGULAR CITY COUNCIL WORKSESSION
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA
CITY COUNCIL CHAMBERS - YUMA CITY HALL
ONE CITY PLAZA, YUMA, ARIZONA
October 15, 2019
6:00 p.m.

CALL TO ORDER

Mayor Nicholls called the Regular City Council Worksession to order at 6:05 p.m.

Councilmembers Present: Shelton, Watts, Thomas, Knight, and Mayor Nicholls
Councilmembers Absent: McClendon and Miller
Staffmembers Present: Interim City Administrator, John D. Simonton
Assistant City Prosecutor/Police Legal Advisor, Emily Hart
Director of Engineering, Jeff Kramer
Various department heads or their representatives
City Attorney, Richard W. Files
City Clerk, Lynda Bushong

I. CABALLEROS DE YUMA ANNUAL REPORT & DONATION PRESENTATION

Jeff Ruby, El Presidente of the Caballeros de Yuma (Caballeros), presented the Caballeros annual update as follows:

- Fourth of July Flag Raising Ceremony at the Yuma Armed Forces Park in Downtown Yuma
 - A way for the Caballeros and the community to recognize local heroes and honor Yuma's men and women in uniform
- Colorado River Crossing Balloon Festival at Kiwanis Park, West Wetlands Park, and Desert Sun Stadium
 - This three-day event brings more than 30 hot air balloons and their crews to Yuma
 - Last year's contributions resulted in a donation of canned and dried food items to the Salvation Army and a cash donation of over \$2,000 to various local youth volunteers
- Ken and Betty Borland Tower Lighting and Holiday Pageant at Desert Sun Stadium
 - Admittance to event is by canned food donation, which is collected by the Yuma Community Food Bank
 - Last year 2,400 pounds of food was collected, and hot chocolate sales proceeds were also donated to the food bank
- Yuma Territorial Marathon and Half Marathon
 - Involves close to 500 runners from as far away as Canada and Mexico
 - The full marathon is a Boston Marathon qualifier, and the half marathon is enjoyed by people of all ages
 - Last year the Caballeros were able to donate a total of \$3,900 to the volunteer nonprofit support groups for this event
 - A 10K race will be added to the 2020 event
- Bull of the Desert Strongman Competition at Desert Sun Stadium
 - The Caballeros have been contacted by national strongman certifying entities to have the event at a pro division

- This would allow the event to become nationally sanctioned, adding it to the national competition schedule as a qualifying event
- Midnight at the Oasis at Desert Sun Stadium
 - This classic car show for cars from 1972 and older and two nights of concerts is fun for the entire family
 - The event started in 1993 with only 36 entrants, and in 2019 over 970 classic car owners gathered in Yuma to show off their prized possessions to more than 50,000 spectators
 - On the Thursday prior to the event a rally is held on Main Street with over 300 classic cars and more than 5,000 attendees
 - Approximately 80% of the classic car entrants and spectators come from outside of Yuma
 - Last year the Caballeros awarded over \$75,000 to more than 25 local nonprofit service organizations and school clubs
- Scholarships
 - Last year, \$39,000 in college scholarships were awarded; \$45,000 in scholarships are planned for next year
 - Two \$5,000 Presidential Memorial Scholarships and seven \$2,000 Memorial Scholarships are awarded to high school seniors graduating from high schools throughout Yuma County
 - One \$2,000 Military/Law Enforcement Appreciation Scholarship is awarded to a high school senior who has a parent that is an active duty or retired U.S. Military member or a sworn Public Safety Officer/Firefighter within Yuma County
 - Two \$5,000 Presidential Continuing Education Scholarships and three \$2,000 Continuing Education Scholarships are awarded to students enrolled in bachelor degree programs at Arizona State University, University of Arizona, and Northern Arizona University
 - Two \$1,000 Continuing Education Scholarships are awarded to students enrolled in associate degree programs at Arizona Western College
- Overall Donated Funds
 - During the 2018-2019 Fiscal Year, the Caballeros donated a total of \$147,869 back into the Yuma community
 - Since 1962, the Caballeros have donated approximately \$3.6 million back to the Yuma community
 - Of that, approximately \$600,000 has been returned directly to the City and improvements to City facilities
- Event Security
 - The Caballeros have continued to upgrade their security operations to meet national security protocols for all events
 - It is the Caballeros security mission to professionally and effectively create and maintain a secure environment for all attendees, vendors, volunteer community service groups, and performers
 - Security plans and procedures are coordinated with local law enforcement, emergency medical agencies and assisting City of Yuma and Yuma County departments as necessary
- City Partnership
 - The Caballeros are excited to partner with the City of Yuma for the upcoming Tunes and Tacos festival on April 10-11, 2020

In closing, **Ruby** presented ten active shooter vests to the Yuma Police Department. These are secondary vests that are worn in active shooter situations and are able to stop rifle rounds.

Discussion

- The vests include both front and back trauma plates that cover the entire upper portion of the body (**Thomas/Ruby**)
- Each high school is awarded at least one scholarship, charter high school students can apply for the Caballeros scholarships under their own category (**Thomas/Ruby**)
- The Caballeros scholarships can be used for trade school as long as it is in the accredited post-secondary charter listing (**Thomas/Ruby**)

II. DOG BARKING ISSUES

Hart presented the following overview of the legal and ethical obligations of prosecutors and police officers when enforcing ordinances, with specific discussion related to the enforcement of the City's barking dog ordinance:

- How is a Misdemeanor Charged?
 - By an Arizona Traffic Ticket and Complaint (ATTC) Form
 - Issued by a police officer only if there is probable cause
 - Reviewed by a judge for probable cause at the first court appearance
 - May be reviewed by a prosecutor, who determines whether to proceed with the prosecution
 - By a Complaint
 - Issued by a prosecutor based on a review of evidence gathered during a law enforcement investigation
 - Only issued if there is probable cause and reasonable likelihood of conviction beyond a reasonable doubt
 - Some crimes must be charged through a prosecutor's Complaint
 - Police officers have some discretion on whether or not to issue a citation, and interdepartmental policies are also taken into consideration
- What is Probable Cause?
 - Sufficient evidence for a reasonable person to believe the individual to be prosecuted committed the crime for which they are to be charged
 - Objective "reasonable person" standard
 - Probable cause must exist before a person can be charged with a crime
 - Victim and/or witness statements alone are insufficient to support probable cause
 - It has been well established through many court decisions that there must be sufficient corroboration through an objective fact
 - Corroboration requirement acts as a 'check' or protection against false reporting of crimes
- What is a Prosecutor's Duty?
 - A prosecutor must find probable cause just as police officers do, and has an additional ethical obligation created by their licensing agency
 - Prosecutors have the specific obligation to see that the defendant is accorded procedural justice, that guilt is decided on the basis of sufficient evidence, and that precautions are taken to prevent the conviction of innocent people
 - The requirement for reasonable likelihood of conviction beyond a reasonable doubt may result in internal policies requiring prosecutor review before charging

- Barking Dog Ordinance §130-005
 - ‘It shall be unlawful for any person to keep or harbor within the City any animal which excessively barks, howls, or makes other noises by day or night and disturbs the peace and quiet of any person or family’
 - Only ‘excessive’ barking is prohibited
 - Probable cause requires more than some barking every now and again, and also requires more than just a complaint from a witness
 - Violation of the ordinance is a Class 2 Misdemeanor
 - Fine of up to \$750, up to five days in jail, or both
- When Will a Person Be Charged For a Barking Dog?
 - Take the requirements of probable cause and combine them with the language of the ordinance
 - Is there sufficient evidence for a reasonable person to find the suspect kept or harbored an animal within the City?
 - Is there sufficient evidence from which a reasonable person would find a suspect’s dog excessively barked, howled, or made other noise?
 - Is there sufficient evidence to support a reasonable person finding that the barking disturbed the peace and quiet of a reasonable person or family?
 - ‘Sufficient evidence’ requires more than a witness statement
 - If all three questions are answered ‘yes’, there is probable cause to issue an ATTC or Complaint; however, the prosecutor’s ethical obligations still exist
- Interdepartmental Policy
 - The City Prosecutor’s Office requests that barking dog cases be submitted to the City Prosecutor for review and charging
 - The ordinance is enforced, but not through the issuance of a citation
 - A prosecutor’s complaint has the same power as an ATTC
 - This request was made so the prosecutor could assess whether there is a ‘substantial likelihood of conviction beyond a reasonable doubt’
 - Avoids having a citation issued that is later dismissed by the prosecutor for lack of likelihood of conviction
 - Allows the prosecutor to determine if the evidence is sufficient to prove ‘excessiveness’ and ‘reasonableness’
 - Enforcement of the ordinance is nuanced and is best reviewed by the prosecutor
- What Do Other Jurisdictions Do?
 - Ordinances throughout the Phoenix and Tucson areas have similar language and/or requirements, though some may differ in whether they are criminal or civil
 - All recommend mediation and an attempt to resolve the issue without City involvement
 - Phoenix requires:
 - Submission of a written petition signed by at least three separate persons
 - Petition must include either audio proof, video proof, or a written log containing a physical description of the dog and the dates and times when the barking occurs that shows a pattern of habitual barking
 - The complainant(s) must appear before a judge to provide facts before a prosecutor will sign a Complaint
 - Complainant(s) must agree to appear and testify at any trial

- Chandler requires:
 - Consistent barking for five or more minutes at a time for multiple days
 - A 16-day incident log
 - Evidence via audio and/or video recording
 - A call to the non-emergency number to provide the log to the responding officer (will not respond to anonymous calls)
 - Appear and testify in court
- Pima County requires:
 - A telephonic complaint
 - A letter is sent to all parties involved suggesting resolution amongst themselves
 - If the issue is not resolved in 10 days, the matter is referred to a Noise Complaint Specialist for mediation
 - If mediation is declined or unsuccessful the complainant is provided with a noise log that must be returned before the matter will be reviewed for charging
- Mesa requires:
 - Three complaints, with 10 days between the first and second as well as the second and third complaints
 - Anonymous complaints are not accepted
 - An officer will only respond after the third complaint
 - The complainant must be willing to testify
 - A suggested weeks' worth of logs showing specific dates, times, and durations of disturbances
 - If a period of 30 days occurs between any of the complaints, the process starts over

Discussion

- The City's ordinance does not require more than one complainant, and generally speaking an audio or video recording or a log would be considered by the prosecutor (**Knight/Hart**)
- The City's Animal Control Officers attempt to mediate between the neighbors to attempt to resolve the situation before it is referred to the City Prosecutor's Office (**Shelton/Hart**)
- Yuma's ordinance does not define excessive with regards to the amount and duration of barking, so it comes down to whether a reasonable person would find it to be excessive (**Thomas/Hart**)
- It is not uncommon for barking dog violations to result in criminal citations; this is the case for many other cities throughout Arizona (**Thomas/Hart**)
- A civil matter requires only a preponderance of the evidence versus evidence beyond a reasonable doubt for criminal matters, making it a more difficult standard to meet (**Mayor Nicholls/Hart**)
- Because a violation would result in a criminal charge and a conviction may involve jail time, it could significantly affect some peoples' lives and put their jobs in jeopardy (**Mayor Nicholls/Hart**)
- If excessive was defined in the ordinance, it would provide parameters going forward so all involved would know the standard for the evidence that would be required (**Knight/Hart**)
- If a barking dog citation went to trial, it would be up to the judge to decide the credibility of the witnesses and how much weight to give their statements (**Thomas/Hart**)
- Misdemeanor trials are decided by a judge; very few misdemeanors qualify for a jury trial, which are limited to charges for driving under the influence and some types of theft (**Thomas/Hart**)

III. STORMWATER PROGRAM UPDATE

Kramer provided an update on the City's Stormwater Program as follows:

- Regulatory Overview
 - Stormwater programs are established based on the Clean Water Act of 1972, the Water Quality Act of 1987, and the Clean Water Rule of 2015
 - Federal oversight is provided by the Environmental Protection Agency (EPA) through the National Pollutant Discharge Elimination System (NPDES)
 - State oversight is provided by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge Elimination System (AZPDES)
 - Regulations apply to surface waters only; groundwater is not include
 - The City has been regulated as a 'small municipality' since March 2003, and operates under an AZPDES Municipal Separate Storm Sewer System (MS4) permit
 - The designation as small municipality is based on Yuma's population in 2003, and the City will retain this designation regardless of population growth
 - The City's current five-year permit was effective as of September 29, 2016
 - The ultimate goal of the permit is to protect the Waters of the U.S. from polluted stormwater runoff
 - Waters of the U.S. are any surface waters – lakes, rivers, streams, canals, oceans, etc. – which have any connection to interstate or foreign commerce
- City Stormwater Regulations
 - Ordinance O2005-15
 - Regulates illicit discharges and illegal dumping into the drainage system
 - Ordinance O2006-38
 - Regulates stormwater runoff from construction sites one or more acres in size
 - Regulates City water and sewer line construction projects that disturb ½ acre or more
 - Ordinance O2007-78
 - Regulates post-construction stormwater runoff for sites with connection to the Colorado River
- Compliance by the City
 - The City has developed and implemented a Stormwater Management Program (SWMP) which includes six Minimum Control Measures (MCMs) specified by the ADEQ:
 - Public Education and Outreach
 - Public Involvement and Participation
 - Illicit Discharge Detection and Elimination
 - Construction Site Runoff Control
 - Post-Construction Site Runoff Control
 - Good Housekeeping for Municipal Operations/Facilities
 - The MS4 Permit requires annual reporting to the ADEQ
- Colorado River through Yuma
 - The ADEQ listed the Colorado River (River) as impaired from the Yuma Main Canal crossing to the Mexico border in 2016
 - The impairment is due to high selenium and low dissolved oxygen
 - The dissolved oxygen impairment was removed in 2018
 - Impact on the City's MS4 Permit
 - Requires implementation of measures to prevent exceedance of listed pollutants

- One Additional Control Measure (ACM) was added to the City's permit and the SWMP was revised accordingly
- Additional Control Measures
 - The City's ACM incorporated five best practices:
 - Delineate drainage area and inventory system elements with discharge potential to the River
 - Reduce/prevent discharge of pollutants from construction sites into the River
 - Reduce/prevent discharge of pollutants from post-construction sites into the River
 - Education about reducing discharges
 - Introduction of a surface water monitoring program
 - Steps taken to meet the ACM
 - Delineated the priority area (potential discharge into the River)
 - Incorporated plan review, site inspection, and education for activities within the priority area
 - Initiated visual monitoring and testing of stormwater and runoff outfalls to the impaired surface water segment in both wet and dry weather
- Priority Area
 - The City's priority area goes from the Third Street/Giss Parkway alignment to the River and extends from 22nd Avenue to Gila Street
 - This area includes four discharge points: 19th Avenue, 17th Avenue, 9th Avenue, and Madison Avenue
 - Annual cleaning takes place by the Utilities Department within the priority area, with the entire system being completed every three years
 - Inspections by the Public Works Department take place twice annually
- Analytical Monitoring Program (AMP)
 - Developed after a two to three year discussion with ADEQ, who approved the City's AMP on June 29, 2016
 - Yuma is the first small municipality in Arizona to perform stormwater testing
 - The goals of the testing are to prevent the exceedance of selenium levels and protect surface water quality standards
 - Impacts of the AMP
 - Testing of Yuma's four monitored outfalls began in January 2017
 - The testing cost for 2018 was \$1,500
 - The testing cost for 2019 to date is \$1,950
 - Since testing began, the City has measured seven exceedances of the regulatory limit for selenium
 - Four at Madison Avenue, one each at 9th Avenue, 17th Avenue, and 19th Avenue
 - In the future, the City will likely have to begin upstream testing to try to determine the source of the pollutant
- Impact on Projects and Operations
 - City Directed Operations
 - Capital Improvement Program projects
 - Operations within streets and rights-of-way
 - City facilities
 - City Controlled Operations
 - Runoff from private development
 - Discharges from development sites that may drain into the River

- Construction Runoff
 - The City requires the owner of any construction sites of one acre or more to implement Stormwater Pollution Prevention Procedures (SWPPP)
 - Develop plans preventing stormwater pollution from leaving the site
 - File for a permit with ADEQ
 - Implement stormwater pollution prevention measures onsite
 - Perform and document inspections and enforcement, which the City began enforcing more strictly in July 2018
- Annual Reporting Results
 - The City's annual MS4 Permit Report was submitted to ADEQ on September 24, 2019, and ADEQ has notified the City that the annual report has been approved
 - The Annual Discharge Monitoring Report was also submitted to ADEQ on September 24, 2019
 - ADEQ has notified the City that the report has deficiencies due to the four selenium exceedances in 2019
- Ongoing Efforts
 - Stormwater documents and ordinances are reviewed annually and revised as needed
 - Annual training for City staff and industry partners has been completed
 - The Engineering Department webpage will be updated to provide a detailed stormwater page
 - Anyone can report violations or concerns in two ways:
 - By calling (928) 373-4520
 - By emailing storm@yumaaz.gov

Discussion

- It is unknown if anything can be done to reduce selenium once it has been introduced into the River, therefore it is the City's goal to eliminate its introduction so that it will eventually dilute itself and drop below the impairment level (**Watts/Kramer**)
- The ADEQ has never conveyed to the City whether selenium has any effect on local farming due to the water being used to irrigate crops (**Watts/Kramer**)
- While selenium is a popular supplement, the difference between that and what is in the River is likely the concentration (**Shelton/Kramer**)
- There are ongoing discussions regarding repealing significant parts of the 2015 Clean Water Rule, one of them being what bodies of water qualify as Waters of the U.S. (**Shelton/Kramer**)
- It would be impossible to design a stormwater evacuation system to prevent it from being overwhelmed by record rainfall due to the required size and cost (**Shelton/Kramer**)
- The City is aware of shortages of stormwater infrastructure and is taking steps as funding becomes available to remedy that deficiency (**Shelton/Kramer**)
- The standard capacity of a stormwater system is 1.2 or 2.25 inches per hour, depending on whether it is private or public development, and some of the older storm drain systems are not up to that standard (**Shelton/Mayor Nicholls/Kramer**)
- The City is responsible for water that exits the storm drain system at Madison Avenue, so unless testing can positively identify where the selenium is coming from there is no way to allocate that responsibility to anyone else (**Thomas/Kramer**)
- The ADEQ has certain requirements for construction sites of more than one acre; additionally, in the City's priority area any construction activity within 50 feet of a storm drain, regardless of size, is required to protect against stormwater runoff (**Thomas/Kramer**)

IV. REGULAR CITY COUNCIL MEETING AGENDA OF OCTOBER 16, 2019

Motion Consent Agenda Item B.6 – Cooperative Purchase Agreement: Medium and Heavy Trucks and Truck Bodies (Aerial Lift Truck) (purchase of one 2020 Altec Aerial Lift Truck for an estimated expenditure of \$169,019.00) (Parks & Recreation)

Discussion

- Simonton will provide information on why a dedicated truck is needed for Parks & Recreation, what specifically the truck will be used for, and the anticipated frequency of its use at tomorrow night's City Council Meeting (**Knight/Thomas/Mayor Nicholls/Simonton**)

Motion Consent Agenda Item B.13 – Job Order Authorization: Avenue 3E Paving Rehabilitation 32nd Street to 40th Street (authorize a job order with Sunland Asphalt and Construction, Inc., in an amount not to exceed \$816,707.00) (Engineering)

Discussion

- Sunland Asphalt and Construction, Inc., is the only contractor in Arizona that has the specialized equipment needed for the type of asphalt that will be used on this project (**Knight/Kramer**)
- Ultra-Thin Bonded Wearing Course is being used because it takes less time to complete the paving process and is less expensive than conventional asphalt, which is estimated at \$2.5-\$3 million for this project (**Knight/Kramer**)
- While the Ultra-Thin Bonded Wearing Course is anticipated to last for only 10-12 years versus the 30-35 years that is typical for conventional asphalt, it is ideal for this project due to the changes that will be taking place at Marine Corps Air Station (MCAS) -Yuma that will require the road to be redesigned several years down the road (**Knight/Kramer**)
- The City will work with MCAS-Yuma to determine the changes that need to be made to Avenue 3E, what improvements are necessary, and who will be contributing what portion to the funding of the project (**Thomas/Kramer**)

Motion Consent Agenda Item B.15 – Job Order Authorization: 16th Street Paving Avenue B to Avenue C (execute a job order with CEMEX Construction Materials South LLC in an amount not to exceed \$1,599,023.89) (Engineering)

Mayor Nicholls declared a conflict of interest on Motion Consent Agenda Item B.15 as his firm completed the design for that project.

Resolution Consent Agenda R2019-043 – Development Fee Deferral: Driftwood Ranch Unit 1 Subdivision (defer development fees and water and sewer capacity charges for three years from the date of execution) (Engineering)

Discussion

- A Certificate of Occupancy would need to be issued before the model homes could be occupied for sales purposes (**Knight/Simonton**)

V. EXECUTIVE SESSION

Motion (Thomas/Shelton): To adjourn the meeting to Executive Session. Voice vote: **adopted** 5-0. The meeting adjourned at 7:29 p.m.

Lynda L. Bushong, City Clerk

APPROVED:

Douglas J. Nicholls, Mayor

DRAFT