

**MINUTES**  
**REGULAR WORKSESSION**  
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA  
CITY COUNCIL CHAMBERS - YUMA CITY HALL  
ONE CITY PLAZA, YUMA, ARIZONA  
**February 4, 2020**  
**6:00 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the Regular City Council Worksession to order at 6:00 p.m.

Councilmembers Present: Shelton, Morris, Watts, Knight, McClendon, Shoop, and Mayor Nicholls  
Councilmembers Absent: None  
Staffmembers Present: City Administrator, Philip A. Rodriguez  
Fire Chief, Steve Irr  
Fire Marshal, Kayla Franklin  
Asst. City Prosecutor/Police Legal Advisor, Emily Hart  
Chief Information Officer, Kathleen Fernandez  
Chief of Police, Susan Smith  
Asst. Dir. of DCD/Zoning Admin., Alyssa Linville  
Various department heads or their representatives  
City Attorney, Richard W. Files  
City Clerk, Lynda Bushong

**I. FIREWORKS UPDATE**

**Irr** introduced **Franklin**, who presented proposed updates to the City's current fireworks ordinance as follows:

- Current Ordinance
  - In April 2014 the Arizona legislature made changes to the state statute regarding the use and sale of fireworks
    - Allowed for the sale of permissible consumer fireworks, not including aerial fireworks
    - These changes were incorporated into the City Code via Ordinance O2018-015
  - In May 2019 the Arizona legislature made additional changes to the state statute, further governing the use and sale of fireworks, requiring an update to the City Code
- Purpose of Proposed Changes
  - Bring the City into conformance with state statutes
  - Provide consistency across jurisdictions, resulting in less confusion for distributors and sellers of permissible fireworks
- Updates to the State Statutes
  - Allows the restriction of the use of fireworks in or around areas surrounding a municipal or county preserve, desert park, regional park, designated conservation area, national forest, or wilderness area
  - Allows the seizure of illegal fireworks from sellers

- Proposed Changes to the City Code
  - Prohibit the use, discharge or ignition of permissible consumer fireworks on any property within a one-quarter-mile radius of the following City parks:
    - Riverfront Regional Park
    - West Wetlands
    - Gateway Park
    - Riverside Park
    - East Wetlands
    - James P. Deyo Regional Park
      - Any fireworks that leave the ground or explode remain illegal
      - Fireworks displays with a permit will still be allowed in these areas
  - Permit the Fire Marshal to seize, remove or cause to be removed all fireworks for sale in violation of the ordinance

### Discussion

- While the state allows up to a one-mile radius, a one-quarter-mile radius will be easier to enforce because it is a smaller area on which law enforcement needs to concentrate (**Knight/Franklin**)
- The proposed ordinance will encompass all permissible fireworks, including handheld sparklers (**Morris/Franklin**)
- While any fireworks can be a fire hazard, aerial fireworks are more dangerous because they can cover more area (**Morris/Franklin**)
- Public outreach efforts will be included in the implementation of the ordinance to ensure that citizens are clear on which fireworks are legal and where they can be used (**Morris/Irr**)
- Neighborhood parks are not included in the state statute, only municipal or county preserves, desert parks, regional parks, designated conservation areas, national forests, and wilderness areas (**McClendon/Franklin**)
- While a one-mile radius may be more difficult to enforce, it may help to alleviate noise complaints regarding fireworks in those areas (**Knight**)
- The term ‘permissible fireworks’ is defined in the existing fireworks ordinance (**Mayor Nicholls/Franklin**)
- It may be helpful to implement an education campaign prior to proposing the new ordinance to help citizens understand the current laws and get an idea of what their concerns may be (**Mayor Nicholls**)
- A person violating this ordinance would be guilty of a misdemeanor and subject to a fine of up to \$500, imprisonment for not more than one day, or both a fine and imprisonment (**Shoop/Franklin**)

## **II. DOG BARKING ORDINANCE UPDATE**

**Hart** presented the following overview of the City’s current ordinance regarding animals disturbing the peace and proposed changes to the ordinance:

- Current Ordinance
  - It shall be unlawful for any person to keep or harbor, within the City, any animal which excessively barks, howls, or makes other noise by day or night and disturbs the peace and quiet of any person or family.
  - Penalty – Class 2 Misdemeanor Conviction
    - Zero to five days in jail; or
    - \$0 to \$750 fine; or

- Combination of fine and jail
- Considerations
  - Direction from City Council
    - Define 'excessively'
    - Draft the statute as a civil offense
  - Request from Animal Control
    - Add a definition of 'animal' that includes birds
  - Other issues to address
    - Include a graduating penalty for repeat offenders
    - Address ownership issues caused by the 'keep or harbor' language
    - Address animals maintained by a legal entity (ex. guard dogs)
- Proposed Modified Ordinance
  - It shall be unlawful for any person or legal entity to permit any animal within the person's or legal entity's care, custody or control to excessively bark, howl, or make other noises by day or night that disturbs the peace and quiet of any person or family.
  - For the purposes of this section only, "animal" is defined as any mammal, bird, or fowl.
  - For the purposes of this section only, "excessively" is defined as persistent barking, howling, or other noise for 30 minutes or more at any one time.
- Proposed Penalty Options
  - Civil
    - Civil Offense
    - First offense - \$50 fine
    - Second offense within 12 months - \$100 fine
    - Third offense and thereafter within 12 months - \$200 fine
  - Criminal
    - Class 2 Misdemeanor
    - First offense - \$50 fine
    - Second offense within 12 months - \$100 fine
    - Third offense and thereafter within 12 months - \$200 fine and up to five days in jail
  - Hybrid
    - First offense – civil offense, \$50 fine
    - Second offense within 12 months – civil offense, \$100 fine
    - Third offense and thereafter within 12 months – Class 2 Misdemeanor, \$200 fine, up to five days in jail

### Discussion

- If a person successfully defends themselves against a civil defense, they could potentially make the City pay their attorney's fees (**Knight/Hart**)
- If the proposed ordinance was modified to replace the 30-minute requirement with at least two complaints, it would build corroborating evidence (**Knight/Hart**)
- The requirements of the ordinance are the same regardless of the time of day (**Morris/Hart**)
- 'Persistent' was used instead of specifying 'continuous' or 'intermittent' to allow for some stopping and starting of noise (**Morris/Hart**)
- A warning provision can be added to the proposed ordinance; however, Animal Control already works considerably with the public to resolve issues prior to filing a complaint (**Morris/Hart**)
- The 30-minute requirement allows time for those responsible for an animal to investigate whether there is a legitimate reason for their noise, such as an intruder (**Shoop/Hart**)

- Animal owners can present information regarding extenuating circumstances to Animal Control, the City Prosecutor's Office, or the Municipal Court (**Shelton/Hart**)
- A specified number of warnings could be allowed before a fine is assessed, such as with the City's false alarm program (**McClendon**)
- A citizen cannot be charged for a barking dog unless there is corroboration; some cities and towns such as Surprise include that legal obligation directly in their ordinance (**McClendon/Hart**)
- A criminal penalty for a barking dog may be a bit severe and could cause issues with some citizens whose employment require a clean criminal record (**Mayor Nicholls**)
- A provision could be included in the ordinance to cover incidences where dogs are provoked to bark, for example by another animal or a person (**Mayor Nicholls/Hart**)
- It is difficult to land on perfect language that covers all possible situations; however, Animal Control officers do have some discretion in enforcing the ordinance (**Mayor Nicholls/Hart**)

### **III. REGULAR CITY COUNCIL MEETING AGENDA OF FEBRUARY 5, 2020**

Motion Consent Agenda Item B.9 – Cooperative Purchase Agreement: Advanced Technology Solutions Aggregator (authorize the purchase of security video cameras and subscription services through the National Cooperative Purchasing Alliance for a total cost of \$221,678.69) (ITS)

#### Discussion

- This purchase is intended to replace existing cameras at City facilities, with the exception of the purchase of cameras for the new Fleet Services Maintenance Shop, and are designed to secure City assets (**Knight/Fernandez**)
- Adding cameras to the parking lots serving Main Street would be complicated because it would venture into issues of ownership and who is responsible for that property (**Knight/Fernandez**)

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Motion Consent Agenda Item B.10 – Request for Proposal: Professional Real Estate Services (execute a one-year contract with a renewal option of four additional one-year periods, as needed, with SVN Velocity Commercial Real Estate and Velocity Real Estate & Management) (FIN)

#### Discussion

- The 5% charged on a lease is typically on the whole value of the lease, and it could be required to be paid in advance or yearly (**Knight/Mayor Nicholls**)
- It may be preferable to pay the 5% yearly, because if it is paid in advance and the lease is broken and a new lease is put into place, the City could end up paying twice (**Knight/Mayor Nicholls**)

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Motion Consent Agenda Item B.11 – Grant Award: Arizona Companion Animal Spay and Neuter Committee (execute the required documents with the Arizona Companion Animal Spay and Neuter (ACASNC) Committee to disburse awarded grant funds to support community spay and neuter surgeries) (YPD)

#### Discussion

- The grant funds typically last the entire six months; sometimes outreach efforts are especially successful and the funds are used up prior to the end of the six-month period (**Knight/Smith**)

- The ACASNC is a statewide commission; Annette Lagunas, Director of the Yuma Humane Society, serves on the committee representing Yuma (**Shelton/Mayor Nicholls**)

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Adoption of Ordinance O2020-002 – Rezoning of Property: Southeast corner of Avenue 7 ½ E and 44<sup>th</sup> Street (rezone approximately 19.3 acres from the Agriculture District to the Medium Density Residential and Medium Density Single-Family Residential Districts) (DCD)

Discussion

- There was an error on the Planning and Zoning Staff Report which shows the General Plan designation as Low Density Residential; the correct designation is Mixed Use (**Knight/Linville**)

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**Shoop** asked a procedural question regarding the process by which items that go through the Planning and Zoning Commission are finalized. **Files** clarified that City Council makes the final decision on all ordinances, resolutions, and motions.

**IV. ADJOURNMENT/EXECUTIVE SESSION**

**Motion** (Knight/Watts): To adjourn the meeting to Executive Session. Voice vote: **adopted** 7-0. The meeting adjourned at 7:01 p.m.

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Lynda L. Bushong, City Clerk

APPROVED:

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Douglas J. Nicholls, Mayor