

**MINUTES**  
**REGULAR WORKSESSION**  
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA  
YUMA CITY HALL  
ONE CITY PLAZA, YUMA, ARIZONA  
**August 18, 2009**  
**5:00 p.m.**

**CALL TO ORDER**

**Mayor Nelson** called the City Council meeting to order.

Councilmembers Present: Shoop, Mendoza, Beeson, McClendon, Nicholls, Johnson and Mayor Nelson  
Councilmembers Absent: none  
Staffmembers Present: City Administrator, Mark Watson  
Deputy City Administrator, Bob Stull  
Director of Community Development, Laurie Lineberry  
City Attorney, Steven W. Moore  
Executive Director Yuma Crossing National Heritage Area Corporation, Charles Flynn  
Finance Director, Pat Wicks  
Various department heads or their representatives  
City Clerk, Brigitta M. Kuiper

**I. SUMMARY OF CURRENT EVENTS - NONE**

**II. REGULAR CITY COUNCIL MEETING AGENDA OF AUGUST 19, 2009**

**Resolution R2009-67: Development Agreement – Chretin’s LLC and Lanai Village Ventures, LLC**

**Lineberry:** The Capital Improvement Plan (CIP) Project Manager, Jay Simonton, met with Jim Waits, the owner of Chretin’s, to identify possible sign placement during 16<sup>th</sup> Street construction activity. The development agreement allows the owner the leniency of not applying for banner permits and allows for signage changes. **Nicholls:** The resolution does not address sign sizes or location as it relates to public safety. Should this language be included since this document will set a precedence? **Lineberry:** The CIP Project Manager will coordinate with Arizona Public Safety, the gas companies, Arizona Department of Transportation and anyone within the right-of-way. Staff has also been advised to speak with me when 16<sup>th</sup> Street area business’s contact the City. **Mendoza:** Is the signage directional or advertising only? **Lineberry:** Staff has chosen not to limit the businesses. Such arrangements will be allowed only when an agreement is in place. When construction has been completed, the code will apply. **Johnson:** If size limits aren’t set, they could get out of control. **Lineberry:** Staff will bring suggestions forward tomorrow at the Regular Council Meeting for City Council’s consideration. **Mayor Nelson:** Due to the economic impacts of the affected businesses an emergency clause needs to be included.

**Resolution R2009-65: Development Fee Deferral: Kammann Properties, Inc., and Arizona Corporation**

**Nicholls:** If the subdivision is sold to a different developer, does that trigger the payment of development fees? **Moore:** The agreement is binding on successors and interest, but there is no mention of assigning the fees to another party. The intent is if Developer A has an agreement with the City and the property is acquired by Developer B; Developer B is then responsible to initiate a new Development Fee Deferral Agreement with the City. The deferral is not transferable. **Nicholls:** If a house is under construction at the time of the sale, would the fees then need to be paid? **Moore:** No, under the agreement it will come due when the building department finalizes the house; at the time the title is being transferred. Currently, the City has entered into approximately 8-10 Development Fee Deferral Agreements.

**Ordinance O2009-52: Main Street Canopies**

**Flynn:** Main Street canopies lie within the City right-of-way. Businesses are finding it difficult to make use of the space for improvements to the property. Staff has been working with downtown property owners for a year and a half in the area between 1<sup>st</sup> Street and Giss Parkway. The consensus of staff and the property owners is to develop a lease that would give the property owner some certainty of use. The lease will:

- Hold the property owner responsible for maintenance and insurance for the specified canopy and sidewalk area.
- Have a five-year term.
- Insure a five-foot pedestrian clearance, as close to the street as possible.
- Not change the current building use.

**Flynn:** Staff has talked about encouraging active street life and use of the area; this will allow each business a unique presence. Other communities offer outside dining. This may be a possibility with an agreement in place. The Parks & Recreation Department is responsible for the canopies in the Mall District; although, it's not their highest maintenance priority. Staff wants to repair or replace those that need it before transferring maintenance to the property owner. There is a tangential operation; the Heritage Area was a recipient of a Community Development Block Grant. Funding can be used for the canopy restoration. The lease will be offered to two different groups: those who are ready to engage in the lease and those whose canopies need maintenance prior to entering into a lease. **McClendon:** Will all of Main Street be included in the lease program and will there be an automatic billing cycle?

**Flynn:** These are individual leases and not mandatory. Any improvements will go through the Historic District Commission review process. **McClendon:** Was the cost discussed with the retailers?

**Flynn:** The City won't be leasing the canopies for a fixed fee; it will basically be the cost of insurance and maintenance. The agreement is in place to create a long-term benefit to all parties. **Beeson:** Could alcohol be available in this outside area? **Flynn:** Individual businesses will need to contact Arizona Department of Liquor Licenses and Control and file the appropriate paperwork for an extension of their license. **Nicholls:** Fire suppression systems would have to be extended into the canopied area; would that be funded by CDBG? **Flynn:** That is a possibility.

## **Yuma Riverfront Development**

**Watson** informed City Council of the following information received in a letter from Mr. Craig Clark:

- Payment Application #19 was funded by the construction lender on August 6<sup>th</sup>. Checks were sent overnight to Summit Builders. Summit confirmed their receipt on August 7<sup>th</sup>; checks were disbursed to Yuma subcontractors beginning August 11<sup>th</sup>. As of last night, Summit confirmed all checks have been released to Yuma Subcontractors.
- Payment Application #20, which included payments to 11 Yuma subcontractors totalling \$303,045.00, was received /approved/submitted to the bank on August 13<sup>th</sup>. The lender is working to insure payments are funded by the month's end.
- The last Payment Application of approximately \$100,000, involving three Yuma subcontractors, will be paid in September and will close out the project.

**Watson** clarified that the payment bond, referred to in previous discussions, is part of the City's overall agreement with Clark. In the agreement, Clark stated he would build a hotel and conference center. As part of the agreement, a bond would be taken out for the whole contract. If Clark had gone bankrupt, the bond would provide for the projects' completion - not necessarily for payment of the contractors. It was financial recourse for the City to use if the project wasn't completed by Clark. The bond was not taken out; however, Clark has come through with construction of the project.

**Johnson** encouraged any local subcontractors that have not received payment to come forward at the Regular Council Meeting tomorrow.

### **III. LONG-TERM MAINTENANCE OF THE YUMA EAST WETLANDS**

**Flynn** briefed the City Council on the Multi-Species Conservation Program (MSCP), as follows:

- 50-year program funded by the US Bureau of Reclamation (USBOR) in California, Arizona and Nevada
- Intent is to protect the lower Colorado environment by restoring 8,100 acres while ensuring the continuance of river water and power generation
- Agreement is to address and meet the needs of Endangered Species Act
- Represents 56 participating entities, including indian tribes and water districts
- Funded jointly by the three states involved and USBOR
- Total restored area is now 350 acres on City and Quechan Tribal land

**Flynn** stated the City needs to be in a position to restore and maintain the Wetlands, especially considering current budget difficulties. It would not be wise to let the Wetlands go back to its former state. Furthermore, he has been negotiating an agreement on behalf of the Heritage Area through MSCP:

- MSCP will provide 70% of maintenance costs; \$250,000 / first year and \$350,000 thereafter.
- Quechan Tribe, City of Yuma and Heritage Area will each contribute 10%; committing \$33,333/first year and \$50,000 thereafter
- City of Yuma and Quechan Tribe will provide water for their own lands
- City of Yuma and Quechan Tribe will review and approve annual budgets
- USBOR will be ready to start this project October 1, 2009.

- Project is eligible for 2% Hospitality Tax funding.
- The estimated water needed is projected at: City – 1,000 acres/feet per year, Quechan – 1,500 acres/feet per year.
- Heritage Area would provide maintenance on behalf of all partners

**Johnson** pointed out that the City of Yuma has a consumptive contract for water with the Quechan Indian Tribe. **Flynn**: Correct: that is why the Quechan's financial participation is greater.

#### IV. EXPENDITURE LIMITATION REPORTS

**Wicks** updated the City Council on his correspondence with the Arizona Auditor General, who reports to the State Joint Legislative Audit Committee. The Auditor General has direct responsibility for all state agencies, counties, universities, school districts and Expenditure Limitation Reports for cities.

- The Expenditure Limitation process was created in 1980, approved by Arizona voters and became Article 9, Sections 20 and 21 of the Constitution.
- Intended to limit expenditures of local revenues after 1980 with future adjustments each year for increases in population and inflation.
- Base limit is actual expenditures from fiscal year (FY) 1979-1980, adjusted for excludable revenues
- Limit different for every city based on expenditures from one fiscal year to the next.
- Economics Estimates Commission (part of the Arizona Department of Revenue) determines new limits annually. The Commission determines the adjustments through the Arizona Department of Economic Security (ADES) using their cost of living increase statistics.
- Local revenues exclude:
  - Investment income: amounts received as trustee or custodian; Federal, State and/or private grants or gifts; amounts received from another agency, department, or authority of same political subdivision; contracts with other political subdivisions, school districts, community colleges or the State; Highway User Revenue Funds (gas tax) in excess of the amount received in FY 79-80.
  - Any amounts or property received from the issuance or incurrence of bonds, or other lawful long-term obligations issued or incurred for a specific purpose or any amounts or property collected or segregated to make payments or deposits required by a contract concerning such bonds or obligations.
  - Any amounts or property accumulated for the purpose of purchasing land, buildings or improvements or constructing buildings or improvements, if such accumulation and purpose have been approved by the voters of the political subdivision.
- 2007 draft Expenditure Limitation Report (under consideration)
  - Audited expenditures less exclusions cannot exceed expenditure limitation
    - City of Yuma's 2007 report is within the limit: \$710,143.
  - Exclusion for bond proceeds included amounts to be reimbursed from bond sales that did not occur until November 2007 (FY 2008)
  - Projects excluded were outlined in City Council reimbursement resolutions in 2005 and 2006
    - Reimbursements were to be made from bond proceeds after bond sale

- City contends:
  - Nature of expenditures determines how they are to be used in the report. These have been approved by the City Council as bond projects.
    - Timing of bond sale is immaterial
    - Based on the nature of the long-term obligation being established by the bonds and the nature of the projects themselves they are excludable.
  - Water and Sewer projects related to the bonds carried voter approval with initial funding from a State agency
    - Voters approved projects allowing for exclusion of related costs
  - City required long-term financing to complete the projects
    - Bonds were sold to complete the projects
    - Reimbursements were made immediately after the bond sale
- Auditor General contends:
  - Bond sale must occur before any exclusions are allowed
    - Irrespective of the bond resolutions approved by City Council
    - Irrespective of nature of the expenditure
  - Therefore, the expenditures are not excludable
  - Disallowing these exclusions would cause the City's expenditures to exceed the limit.

**Wicks** informed the City Council that discussions are on-going with the Auditor General. The 2007 Expenditure Limitation Report is still in draft status; the 2008 and 2009 reports are on hold until a final determination is made on the 2007 report. Exclusions on the 2007 report that are denied may be carried over to the 2008 report. The City has submitted a request to the Auditor General and is waiting for this response. It's premature to assume that anything is final. If expenditures exceed the limit by more than 10%, the City can lose 1/3 of its state-shared income taxes for the year after the hearing with the Auditor General is held; an amount estimated at \$2.8 million. There may be a formal hearing in the future. If the outcome is negative for the City, there are other courses of action available.

**Johnson:** Does this apply to all local government entities that are municipal corporations? **Wicks:** This applies to the state, counties, community college districts and cities/towns specifically. It does not apply to school districts; or municipal corporations such as irrigation districts. **Johnson:** What would have happened to the projects that were already under construction, if the City didn't expend that money? **Wicks:** A number of concerns could have arisen, such as contractual issues, loss of service, and failure to expand when statutorily required to do so. The City continued the projects because of the responsibility it has to citizens.

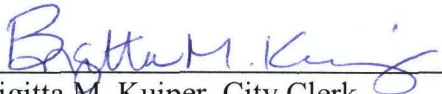
## V. CITY OF YUMA BOARDS, COMMISSIONS AND COMMITTEES

**Mayor Nelson** encouraged Councilmembers to continue to get the word out regarding the board/commission vacancies. **Shoop:** Is there any criteria for the Census Counts Committee? **Watson:** Staff will put together some talking points. The primary duty is to be community leaders and encourage the public to be counted. Appointments need to be made by the 1<sup>st</sup> of September.

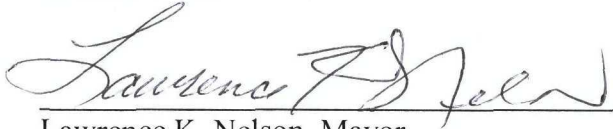
VI. ADDITIONAL ITEMS FOR POSSIBLE DISCUSSION - NONE

VII. ADJOURNMENT/EXECUTIVE SESSION

**Motion** (Johnson/Beeson): To adjourn the meeting to Executive Session. Voice vote: **adopted** 7-0.  
The meeting adjourned at 6:01 p.m.

  
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Brigitta M. Kuiper, City Clerk

APPROVED:

  
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Lawrence K. Nelson, Mayor

Approved at the City Council Meeting of:  
SEPTEMBER 16 - 2009.  
DEPUTY  
City Clerk: L. Bushong