

Minutes Formal City Council Meeting January 18, 2007

Minutes of the Formal Council Meeting of Thursday, January 18, 2007, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Municipal Building, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Hugh Hallman

Vice Mayor Hut Hutson

Councilmember P Ben Arredondo

Councilmember Barbara J. Carter

Councilmember Shana Ellis

Councilmember Mark W. Mitchell

Councilmember Onnie Shekerjian

Mayor Hallman called the meeting to order at 7:35 p.m.

1. Councilmember Arredondo gave the invocation.
2. Mayor Hallman led the audience in the **Pledge of Allegiance**.
3. **MINUTES**

A. Approval of Council Meeting Minutes

Motion by Vice Mayor Hutson to approve the following **COUNCIL MEETING MINUTES**.
Second by Councilmember Carter. Motion passed unanimously on a voice vote.

1. Council Executive Session – January 4, 2007
2. Council's Formal Meeting – January 4, 2007 [20070118clrkck01.pdf](#)
3. Council's Finance, Economy & Veterans Affairs Committee –
December 19, 2006 [20070118feva01.pdf](#)

B. Acceptance of Board & Commission Meeting Minutes

Motion by Vice Mayor Hutson to accept the following **COMMITTEE & BOARD MEETING MINUTES**. Second by Councilmember Shekerjian. Motion passed unanimously on a voice vote.

4. Aviation Commission – December 14, 2006 [20070118tavco01.pdf](#)
5. Development Review Commission – November 14 & 28, and December 12, 2006 [20070118drc01.pdf](#) [20070118drc02.pdf](#) [20070118drc03.pdf](#)
6. Enhanced Services Commission – December 13, 2006 [20070118esc01.pdf](#)
7. Historical Museum Advisory Board – October 5 & November 2, 2006

[20070118hmab01.pdf](#) [20070118hmab02.pdf](#)

8. Human Relations Commission – November 14, 2006 [20070118hrc01.pdf](#)
9. Mayor's Youth Advisory Commission – December 5, 2006 [20070118myac01.pdf](#)
10. Neighborhood Advisory Commission – November 8, 2006 [20070118nac01.pdf](#)
11. Tempe Police Public Safety Personnel Retirement Board – December 7, 2006
12. Tempe Police Public Safety Personnel Retirement Board – Executive Session – December 11, 2006

4. REPORTS AND ANNOUNCEMENTS

A. Mayor's Announcements

- Mayor Hallman announced that Tempe's Sister City relationship with **Lower Hutt, New Zealand**, just celebrated its twenty-fifth year, with to date, more than 80 successful teacher exchanges. He introduced three teachers from New Zealand, along with their Tempe host teachers: Corona del Sol High School teacher, **Jan O'Malley**, and New Zealand teacher, **Kathryn Boyd**; McClintock High School teacher **Kriket Tomasi**, and New Zealand teacher **Greg Pestell**; Scales Professional School teacher **Lynn Shepherd**, and New Zealand teacher **Minoo Kanwal**.
- Mayor Hallman read a proclamation designating the week of January 15-19, 2007, as **Homes for Arizonans Week** in Tempe, Arizona.
- Mayor Hallman announced that the **Neighborhood Traffic Management Program** has been revised to provide solutions to traffic issues and promote safer conditions for motorists, bicyclists, pedestrians and residents. Citizen input would be helpful, and the draft plan is available on line at www.tempe.gov/traffic. An open house will also be held from 6-8:00 p.m., on Tuesday, February 6, at the Tempe Public Library.

B. Manager's Announcements – None.

5. AGENDA

All items in these minutes identified with an asterisk (*) are **public hearing items**. All items listed on the agenda are approved with one council action. Items scheduled for Introduction/First Public Hearing will be heard but not adopted at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon at this meeting.

Mayor Hallman announced consideration of the **AGENDA**.

Motion by Vice Mayor Hutson to approve the Agenda as amended (Items #22, #32 and #33 were removed for separate consideration). Second by Councilmember Mitchell. Motion passed on a roll call vote 7-0.

A. Miscellaneous Items

13. Approved the Report of Claims Paid to be filed for audit for the weeks of July 23, & 30, August 6, 13 & 20, 2006.

COMMENTS: A copy of the detailed claims report may be obtained by contacting the City Clerk's Office.

14. Approved the dissolution of Residential Permit Parking Area 5 at 107 E 7th Street.
DOCUMENT NAME: [20070118pwss01.pdf](#) **RESIDENTIAL PERMIT PARKING (0503-19)**

15. Approved **Contract #2007-11**, a management agreement between the City of Tempe and the Tempe Historical Society for the management of the Tempe Historical Museum gift shop.
DOCUMENT NAME: [20070118csju01.pdf](#) **TEMPE HISTORICAL SOCIETY (0109-12)**

16. Approved **with conditions** an amendment to an existing Condominium Plat by UNIT 13 OF MOUNTAIN VIEW BUSINESS PARK OFFICE CONDOMINIUMS at 2727 West Baseline Road.

COMMENTS: (Ken Matheson, Southern Gardens Acquisitions, L.L.C., owner) (PL060677) located at 2727 West Baseline Road in the GID, General Industrial Zoning District, including the following request:

SBD06027 – Replat of the Mountain View Business Park Condominium Plat for Unit 13.
The following conditions were approved:

1. The Condominium Plat for Unit 13 of Mountain View Business Park Office Condominiums shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department **on or before January 18, 2008**. Failure to record the plan within one year of Council approval shall make the plan null and void.
2. The owner(s) shall review the continuing care Condition, Covenant and Restriction (CC&R) as required to incorporate the reduction in size of Unit 13 and the addition of Unit 16. The CC&R's shall be reviewed by and placed in a form satisfactory to the Development Services Manager and City Attorney and recorded with the Maricopa County Recorder's Office **on or before January 18, 2008**. The Recordation of the CC&R's shall be made prior to final inspection of tenant improvements for Unit 16.

DOCUMENT NAME: [20070118dskko01.pdf](#) **PLANNED DEVELOPMENT (0406)**

17. Approved **with conditions** a Subdivision and Condominium Plat for RAIN TREE VILLAS at 1424 South Jentilly Lane.

COMMENTS: (Elizabeth Ross/Jentilly 24 LLC, applicant/property owner) (PL060605) located at 1424 South Jentilly Lane, in the R-4 Zoning District, including the following:

SBD06022 – Subdivision and Condominium Plat for 24 units on 1 lot.

The following conditions were approved:

1. The owner(s) shall provide a continuing care condition, covenant and restriction for all of the project's landscaping, required by Ordinance or located in any common area on site. The CC&R's shall be reviewed and in a form satisfactory to the Development Services Manager and City Attorney prior to

recording of Condominium Plat.

2. The Condominium Plat shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department **on or before January 18, 2008**. Failure to record the plan within one year of Council approval shall make the plan null and void.
3. The applicant shall complete a full "reserve study" for the site, identifying all common elements life expectancy and future replacement cost, which shall be disclosed to future buyers of the units. Acknowledgement of the reserve study shall be included in the CC&Rs. This study shall be provided to staff for verification prior to recording of Condominium Plat.
4. Provide a cross-access agreement with adjacent property to the west. Agreement shall be processed through the Public Works Engineering Division and recorded with the Maricopa County Recorder's Office prior to recording of Condominium Plat.
5. The site shall upgrade all lighting levels to comply with the Zoning and Development Code, Part 4, Chapter 8, Lighting, including exterior building entrance lighting from dusk to dawn, parking areas, and mailbox. All non-compliant light fixtures shall be removed. A photometric plan with cut sheets shall be submitted to Building Safety for review. This condition shall be completed prior to recording of plat.
6. Modify existing wall on the south property line and existing chain link fence to the north and provide each with an eight (8) foot masonry wall prior to recording of Condominium Plat. Staff recommends replacing all perimeter walls to match new wall heights. Submit plans to Development Services, Building Safety Division, for review.
7. Replace all dead and missing landscape on site. Place a Planning inspection call to Rob Peterson (480) 350-8396, for compliance with this condition. This condition shall be completed prior to recording of plat.
8. Reduce height of existing screen wall to a maximum height of three (3) feet, located near eastern entrance adjacent to parking spaces to the north. This condition shall be completed prior to recording of Condominium Plat.
9. Provide ADA compliant access from parking area to first floor entrances of western building. Minimize grade changes for accessibility with a wheel chair. This condition shall be completed prior to recording of Condominium Plat.
10. Any exterior modifications of buildings, including paint colors, will require submittal of a Development Plan Review, as a separate application.

DOCUMENT NAME: [20070118dsrl02.pdf](#) **PLANNED DEVELOPMENT**
(0406)

- *18. Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for Rui Shing, Inc., dba Tang Yuan Restaurant, 6438 S. McClintock Drive.

COMMENTS: Zhi Jun Liu, Agent.

DOCUMENT NAME: [20070118LIQ1.pdf](#) **LIQ LIC (0210-02)**

- *19. Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for KJSR, Inc., dba Pasand Indian Cuisine, 1801 E. Baseline Road.

COMMENTS: Karuna Boggula, Agent

DOCUMENT NAME: [20070118LIQ2.pdf](#) **LIQ LIC (0210-02)**

- *20. Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for Café Wasabi, Inc., dba Café Wasabi, 3223 S. McClintock Drive.

COMMENTS: Hee Won Lee, Agent
DOCUMENT NAME: [20070118LIQ3.pdf](#) LIQ LIC (0210-02)

- *21. Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for Sunset Diner, LLC, dba Sunset Diner, 414 S. Mill Avenue, #115.

COMMENTS: John Kolintzas, Agent
DOCUMENT NAME: [20070118LIQ4.pdf](#) LIQ LIC (0210-02)

- *22. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION**
Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for Tempe Life Care Village, Inc., dba Friendship Village of Tempe, 2645 E. Southern Avenue.

APPLICANTS PRESENTATION

Darrell Jensen, Executive Director, Tempe Friendship Village, summarized the history of Friendship Village. Within the last five years, a major renovation and expansion project has occurred. Prior to beginning that project, focus groups were held to discuss the types of services desired, and one of the services requested was the ability to have a cocktail or wine before dinner. Feedback was sought and there has been overwhelming support.

PUBLIC HEARING

Charles Blumm, Tempe, resident of Friendship Village, distributed a written statement to Council. In addition, in the 30 years Friendship Village has existed, there has been no liquor bar. He has spoken to 30 or 40 residents who don't want it. The notice was posted, but not posted visibly, nor was it in the weekly newsletter. Residents should drink only what they themselves provide. He would suggest a locked storage area at the bar. There is a concern with an open bar since it would be open to the public and security would become a problem.

Mayor Hallman responded that liquor law would likely preclude a locked storage area, because it would be a dispensary, but he understood the point.

Herb Osman, Tempe, resident of Friendship Village, Chair of the Resident Council, and he spoke on behalf of the Resident Council. This has not come up with objections at the Resident Council, nor at the ad hoc expansion group. Most people are comfortable with the concept.

Councilmember Shekerjian asked if residents are allowed to buy liquor and bring it in.

Mr. Osman responded that they are, especially at special events, they serve beer and wine, generally at no cost to the participants, except maybe a voluntary donation.

Councilmember Shekerjian clarified that with the liquor license, the only change would be that they could now purchase it at the Village.

Councilmember Mitchell asked for clarification of the security issue.

Mr. Osman responded that the State requires that if there is a liquor license, the public must be allowed entry. In talking to residents, most people understand that would include guests or family members. We think it would be rare when the general public would come.

Councilmember Carter asked how the expansion committee communication the plans to add a liquor license.

Mr. Osman responded that it was discussed in the focus groups and it has been mentioned numerous times in Village meetings. We did not take an assessment of the approval at a Resident Council meeting, but it did not arise in the time when we had public comments, nor did it come up in one of the fourteen standing committees.

Councilmember Ellis asked how it would be purchased. If the general public comes in, would they be issued a card or pay cash?

Mr. Osman responded that it would be cash or credit card.

Councilmember Ellis asked the City Attorney if the notice needed to be posted in the place where alcohol will be served or can it be posted in a central location?

Andrew Ching responded it needed to be posted on the premises in a conspicuous place.

Kay Savard, Specialty License Coordinator, responded that it was posted at the front door of the dining hall, just above the hostess kiosk desk on the wall in plain view.

Councilmember Shekerjian asked if there was a requirement to advertise that they had a liquor license.

Mr. Osman responded that his understanding was that it was not required.

Mr. Ching responded that there is no condition in liquor law that would require any advertising once the license is in place.

Marie Cahill, Tempe, resident of Friendship Village, had a complaint about where the notice was posted. It should have been in the area of the bar. It was posted high on the wall, so it was difficult to read. Only about 80% of the residents go to that dining room to eat. They would have no way of seeing that notice if it were not posted by the bulletin board, the door to come in, or by the mail room. She felt the liquor license was for the bar, not the dining room.

Councilmember Ellis asked that if it had been posted in a better location, would that have made a difference in her support.

Mayor Hallman clarified that if everyone had seen the notice and read it, would she be in favor of it?

Ms. Cahill responded that a poll should have been taken by the residents and the majority vote would have prevailed. The residents did not have a say in this.

Mayor Hallman asked whether or not she would abide by the current representative form of government of the Village.

Ms. Cahill responded that she could not recall that form of government being used in any other situation in the Village.

Frank White, Tempe, resident of Friendship Village. He felt everyone knew what was being obtained. The license was not being obtained for use by the bar. That is a very small area. The license is to allow alcohol at dinner or for a private party. Most people do want the license.

APPLICANT RESPONSE

Darrell Jensen stated that there is no more to address.

Mayor Hallman asked if, once a Series 12 liquor license is issued, they must allow anyone who presents himself at the guard's gate entry for that purpose?

Mr. Jensen responded that part of the licensing law is that licenses of that type are "public" licenses, so we would have to make provision for that. We do have security, and we would provide a special pass which would allow access to the dining areas. Once the dining room closes at 8 p.m., we would no longer be able to sell alcoholic beverages, and the person would have to leave the property.

Mayor Hallman asked if they would be escorted off the property.

Mr. Jensen responded that they would make sure that someone who was there only for that purpose would be escorted off the property. From a practical standpoint, that would likely not be a problem.

Mayor Hallman asked how this license application was posted to the community, other than the posting by the entrance to the dining hall.

Mr. Jensen responded that was the location of the posting. We have a monthly general resident meeting at which he speaks, and on two occasions he stated that the liquor application was scheduled for public hearing with the Tempe City Council on January 18th. In addition, we also publish a recap of that meeting that is distributed to all residents.

Motion by Councilmember Arredondo to approve Item #22. Second by Councilmember Shekerjian. Motion passed on a roll call vote, 7-0.

COMMENTS: Darrell Jensen, Agent
DOCUMENT NAME: [20070118LIQ5.pdf](#) LIQ LIC (0210-02)

- *23. Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for Dos Gringos Priest, Inc., dba Dos Gringos Grille, 8000 South Priest Drive.
COMMENTS: Brian Roehrich, Agent
DOCUMENT NAME: [20070118LIQ6.pdf](#) LIQ LIC (0210-02)

B. Award of Bids/Contracts

24. Awarded **Contract #2007-12**, a one-year, sole source contract to Bentley System, Inc., for annual software system support.
COMMENTS: Total cost for this contract shall not exceed \$32,000 during the contract period.
DOCUMENT NAME: [20070118fst07.pdf](#) **PURCHASES (1004-01)** (Sole Source #07-123)
25. Awarded **Contract #2007-13**, a one-year contract with two (2) one-year renewal options to Empire Machinery for wheel loaders to be used by the Public Works Department.
COMMENTS: Total cost for this contract shall not exceed \$291,870 during the initial contract period.
DOCUMENT NAME: [20070118fst02.pdf](#) **PURCHASES (1004-01)** (RFP #07-106)
26. Approved a one-year contract renewal with Contractors West for street light maintenance.
COMMENTS: Total amount not to exceed \$487,000.
DOCUMENT NAME: [20070118fst01.pdf](#) **PURCHASES (1004-01)** (T03-042RB-01)
27. Approved a one-year contract renewal with Qwest Communications Corporation for telecommunications carrier services.
COMMENTS: Total amount not to exceed \$486,000.
DOCUMENT NAME: [20070118fst04.pdf](#) **PURCHASES (1004-01)** (EPS060014-A6)
28. Approved a ten-month contract renewal with Portable Computer Systems, Inc., for Panasonic laptop computer equipment.
COMMENTS: Total amount not to exceed \$200,000.
DOCUMENT NAME: [20070118fst06.pdf](#) **PURCHASES (1004-01)** (05PB050)
29. Approved a one-year contract renewal with Total Office Interiors for remanufactured Haworth and Herman Miller systems furniture, freestanding furniture and related support services.
COMMENTS: Total amount not to exceed \$140,000.

DOCUMENT NAME: [20070118fsts08.pdf](#) PURCHASES (1004-01) (T05-090-01)

30. Approved a twenty-three month contract renewal with Philip Transportation and Remediation, Inc., for the transportation and disposal of hazardous waste.

COMMENTS: Total amount shall not exceed \$210,000.

DOCUMENT NAME: [20070118fsts03.pdf](#) PURCHASES (1004-01) (03025)

31. Approved the utilization of a ten-month State of Arizona contract with Environmental Systems Research Institute, Inc., for ESRI software and support.

COMMENTS: Total amount not to exceed \$250,000.

DOCUMENT NAME: [20070118fsts05.pdf](#) PURCHASES (1004-01)
(AD040025-001-A4)

- 31a. Approved the utilization of a one-year State of Arizona contract with Glotel, Inc., for Information Technology consultant services.

COMMENTS: Total cost of this contract shall not exceed \$55,000 pending approval of an Information Technology Consultant Agreement.

DOCUMENT NAME: [20070118fsts09.pdf](#) PURCHASES (1004-01)
(Contract # AD000197-013)

- C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action.

- *32. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.**

Introduced and held the **first public hearing** for Code text amendments for ADULT ORIENTED BUSINESS REGULATIONS. The **second public hearing** is set for February 1, 2007.

COMMENTS: (City of Tempe, applicant) (PL060481) for code text amendments within the Zoning and Development Code, including prohibiting "sexual encounter centers"; incorporating State Law as it pertains to adult oriented business separation requirements; and clarify definition related to determining area devoted to adult oriented material, including the following:

ZOA06003 – (Ordinance No. 2007.01) Code Text Amendments within the Zoning and Development Code for Sections 3-403 and 7-102.

Mayor Hallman asked City Attorney Andrew Ching if it would be acceptable to combine Item #32 and Item #33 into one public hearing.

Mr. Ching responded that it would be acceptable.

PUBLIC HEARING

Jim Lemmon, Tempe, stated that these two ordinances are a vast improvement. The distance of separation is

good. He further commended staff for their hard work.

Richard Shoemaker, Tempe, stated his concern with the pornography shop on Broadway and children's exposure. He doesn't feel such businesses belong in residential areas. He supports the ordinance.

Darlene Justus, Tempe, commended Council. She is concerned with the children. Parents have some control over what happens in the home, but in the community, children are exposed. Citizens have the right to uphold community standards necessary for the protection of children. This shouldn't be inflicted on others.

Councilmember Carter added that with rights come responsibility. Staff has worked hard to firm up this ordinance so that these businesses become more responsible.

Councilmember Shekerjian agreed. She commended citizens for their support.

Mayor Hallman summarized that the United States Supreme Court has interpreted the Constitution to require communities to allow adult-oriented businesses. That's something we cannot preclude. We must in some ways guess the confines that the Supreme Court has imposed on communities. They have made it clear that we must allow these businesses to operate, also made it clear that before we can regulate an adult-oriented business, it has to purvey a certain amount of material before we can even regulate it. Currently, our Code imposes a requirement that 33% of the material sold be adult-oriented. That comes from Supreme Court case law. While it appears the Supreme Court has allowed some tighter regulation of that kind of activity, we are still working to determine exactly what can be safely imposed to achieve the greatest protection for our community, while making sure we are upholding our obligation to abide by the Constitution of the United States. The risk is if one goes too far in regulating the businesses with ordinances that are ultimately being done unconstitutionally, they could be struck down by a court and that would leave the community completely at risk for the location of adult-oriented businesses anywhere. This is a very difficult issue and must be addressed carefully. He commended Council and staff for working diligently to make sure we can provide the greatest protection for our community's standards, while making sure we uphold the Constitution.

DOCUMENT NAME: [20070118dsrl01.pdf](#) PLANNED DEVELOPMENT
(0406)

*33. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.**

Introduced and held the first public hearing to amend Chapter 16A, Article VI of the Tempe City Code, relating to Adult-Oriented Businesses and adding new Section 22-17 relating to Sexual Encounter Centers. **The second public hearing is set for February 1, 2007.**

Public hearing for Item #33 was combined with the public hearing for Item #32.

DOCUMENT NAME: [20070118cacc01.pdf](#) TCC CH16 – LICENSES,
TAXATION & MISC BUS REGS, ETC. CITY CODE (0503-16) ORDINANCE NO.
2007.07

D. Ordinances and Items for Second Hearing/Final Adoption – None.

E. Resolutions – None.

6. **PUBLIC APPEARANCES** – None.

7. **CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS**

- Councilmember Ellis congratulated Councilmember Carter on the “Inclusive Communities” sign posted in downtown Tempe. We signed on to the Inclusive Communities last spring, and it is finally posted.
- Councilmember Shekerjian congratulated Mayor Hallman and his wife for completing the half marathon last weekend, as well as other staff who participated. She also commended the over 2400 children who participated in the children’s marathon.
- Mayor Hallman reminded residents of the Town Hall Meeting set for Saturday, January 20th, from 9:30 a.m. to 12:30 p.m. at the Tempe Library. The meeting will be a discussion and visioning session for the land west of the Tempe Center for the Arts and the property on the west side of Priest, north of Rio Salado Drive. He further thanked staff for their efforts in the P.F. Chang Rock ‘n Roll Marathon. The marathon benefits charities with \$5.9M.

Meeting adjourned at 8:45 p.m.

I, Connie Krosschell, the duly-appointed Acting City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be the minutes of the Formal City Council meeting of January 18, 2007, by the Tempe City Council, Tempe, Arizona.

Hugh Hallman, Mayor

ATTEST:

Connie Krosschell, Acting City Clerk

Dated this _____ day of _____, 2007 .