

MINUTES OF THE REGULAR MEETING OF THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, held in the Council Chambers, 88 E. Chicago Street, on Thursday, May 23, 2013 at 7:03 p.m.

THE MEETING WAS CALLED TO ORDER BY MAYOR JAY TIBSHRAENY.

The following members answered roll call:

Jay Tibshraeny	Mayor
Jack Sellers	Vice-Mayor
Trinity Donovan	Councilmember
Nora Ellen	Councilmember
Kevin Hartke	Councilmember
Rick Heumann	Councilmember
Jeff Weninger	Councilmember

Also in attendance:

Rich Dlugas	City Manager
Pat McDermott	Assistant City Manager
Marsha Reed	Assistant City Manager
Mary Wade	City Attorney
Marla Paddock	City Clerk

Mayor Tibshraeny asked for a moment of silence for the firefighter and police officer from the City of Phoenix who recently lost their lives in the line of duty.

INVOCATION: Pastor Victor Hardy – Congregational Church of the Valley

PLEDGE OF ALLEGIANCE: Boy Scout Joseph Malinski, Troop 923

MAYOR TIBSHRAENY SAID HE WOULD TAKE ITEMS OUT OF ORDER THAN AS LISTED ON THE PRINTED AGENDA. HE ASKED THAT THE CONSENT AGENDA BE CONSIDERED.

CONSENT:

MOVED BY COUNCILMEMBER HARTKE TO APPROVE THE CONSENT AGENDA. THE MOTION WAS SECONDED BY COUNCILMEMBER DONOVAN.

COUNCILMEMBER HEUMANN DECLARED HIS ABSTENTION ON ITEM 5 (Lease Agreement – Zoolikins) DUE TO A POTENTIAL CONFLICT OF INTEREST.

COUNCILMEMBER WENINGER STATED HIS NO VOTE ON ITEM 5. Councilmember Weninger said this building was purchased by the City and he voted no at that time as he believed the City should not take a tax generating business off line in order to create a walk way. He is voting no now as he is concerned when the City becomes a landlord and competes with the private sector.

MAYOR TIBSHRAENY said he too would have voted against the purchase of this building for a walkway had he been on the City Council at that time. He stated he supported Item 5 now as with the recovering real estate market the City has a better opportunity to recoup that investments in a couple of years. He said he believed he and Councilmember Weninger want the same outcome eventually and that is to get this property back to the private sector, but to minimize the cost to the taxpayer.

THE MOTION TO APPROVE THE CONSENT AGENDA CARRIED UNANIMOUSLY (7-0) WITH THE EXCEPTIONS NOTED.

1. MINUTES:

APPROVED the Minutes of the Chandler City Council Regular Meeting of May 9, 2013.

2. REZONING: Price Road Commerce Center Ord. #4392

ADOPTED Ordinance No. 4392, DVR12-0006, Price Road Commerce Center, rezoning from Agricultural (AG-1) to Planned Area Developemtn (PAD) for a business park on approximately 38 acres located south of the SWC of Germann and Price roads.

3. PROPERTY VACATION: Pecos Road Ord. #4453

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4453 authorizing the vacation of a portion of the north right-of-way of Pecos Road east of Alma School Road.

BACKGROUND/DISCUSSION

In 2003, Albertson's, Inc. dedicated right-of-way to the City of Chandler in anticipation of developing the northeast corner of Alma School and Pecos roads. Part of this dedication included two driveway access points totaling 1,093 square feet. The current property owner plans to develop an apartment project to be known as Aerie @ Alma School – East, on the property. These driveway access points do not match the proposed apartment development. The property owner has requested that the City vacate these areas to straighten out the north right-of-way line of Pecos Road. Staff approves of this request.

As part of the proposed development, the property owner will be dedicating additional right-of-way to the City to meet the requirements of the proposed project.

4. EASEMENT: SRP Ord. #4458

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4458 granting a no-cost power distribution easement to Salt River Project (SRP) to upgrade electrical service to the Dobson South water Production Booster Pump Facility.

BACKGROUND/DISCUSSION

As part of the improvements to the Dobson South water production facility booster pump, it is necessary to replace SRP's existing wiring and extend an existing 8-foot SRP easement approximately 100 feet to accommodate the upgraded power line. As a result, SRP has requested the City grant an extension of the existing power distribution easement at this location. The easement will be at no cost as it was required by a City project and benefits the public. Staff has reviewed and approved the legal descriptions for the requested easement.

5. LEASE AGREEMENT: Zoolikins LLC

Ord. #4460

Councilmember Heumann declared a potential conflict of interest on this item.
Councilmember Weninger voted nay on this item.

INTRODUCED AND TENTATIVELY APPROVED (5-0) Ordinance No. 4460 authorizing a lease agreement with Zoolikins LLC at 51 E. Boston Street for a term of 5 years.

BACKGROUND/DISCUSSION

In January 2013, Staff issued a Request for Information (RFI) to solicit a tenant for the City-owned space at 51 E. Boston Street, formerly the Blue Peacock gift shop. The RFI was closed on March 14, 2013, with two respondents. The selection committee reviewed the submitted proposals and selected Zoolikins LLC as the preferred tenant.

Zoolikins will open a retail store that focuses on natural baby products and their unique line of cloth diapers, bibs and accessories manufactured by their sister company, Bumpkins. Bumpkins holds one of the exclusive licenses to manufacturer Dr. Seuss children's clothing and has been in operation since 1989. This will be a second location for Zoolikins; the other in Downtown Scottsdale. They are an experienced retailer dedicated to bringing unique shopping experiences to downtown environments. They will bring an established customer base that represents a new non-seasonal demographic and help build the Downtown Chandler shopping experience.

6. REZONING/PRELIMINARY DEVELOPMENT PLAN: McQueen Commons Ord. #4461

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4461, DVR12-0044 McQueen Commons, rezoning from Planned Area Development (PAD) Mini-Storage to PAD Townhomes with Preliminary Development Plan (PDP) for a 20-unit townhouse development on approximately 1.5 acres located south of the SEC of Ray and McQueen roads. (Applicant: Sean Lake of Pew and Lake, PLC.)

BACKGROUND

The subject 1.5-acre site is located approximately ¼-mile south of the SEC of Ray and McQueen roads. The subject site is bordered to the east by the existing residential subdivision, Superstition Ranch. To the south is the Pima City Park and to the west is the recently constructed Nicholas Point residential subdivision. Directly north of the subject site are two existing rural residential properties fronting McQueen Road.

The subject infill site remains vacant despite two previous zoning approvals. The site was rezoned from Agricultural District (AG-1) to PAD for a 14,000 square-foot two-story office development in 2004. Construction never commenced. The site was again rezoned in 2007 for a 61,000 square-foot three-story (two up, one down) internalized self-storage facility. Again, construction never commenced. The site remains challenging from an infill standpoint for non-residential uses due to access challenges created by an inability to provide full movement access along McQueen Road. The existing raised median and nearby driveway locations dictate a right-in-right-out access only for the subject site.

The request is for rezoning from PAD Mini-Storage to PAD Townhomes with PDP approval for a 20-unit townhouse development. The request includes 5 buildings with 4 individually owned units in each building. The buildings are arranged around a horseshoe shaped one-way drive access off McQueen Road. Two buildings abut the northern adjacent rural residential property, two

buildings abut Pima Park to the south and one building abuts the existing home in Superstition Ranch to the east. The horseshoe shaped drive creates the internal open space area featuring guest parking as well as a shade ramada with benches, a table and barbeque. All buildings/units provide 20-foot driveways leading to 2-car garages, as well as individual private enclosed backyards. Additionally, a pedestrian access point with gate is provided centrally to Pima Park along the south.

From a landscaping perspective, care was taken to soften the hardscape edge along the internal horseshoe shaped drive through the use of landscaped planters located between the driveways and 2-car garages. Each planter will contain a 24-inch box Evergreen Elm tree with shrubs and groundcover. Along the drive's radius, where planters area not feasible, brick pavers were used to soften the appearance as well as provide visual guidance to the curvilinear driveway approaches. The McQueen Road frontage will include staggered height smooth-face and split-face concrete masonry unit (CMU) screen walls with integral low level landscape planters finished with cast concrete caps.

The buildings are all 2-stories in height, however, second story balconies are not provided to minimize the impact upon existing adjacent uses. The units range in size from 1,500 to 1,700 square feet in size and provide 3 bedrooms and 2.5 baths. Although the request includes only 5 buildings, two building types with several different floor plans are provided for diversity. Architecturally, building massing is broken up through the use of multiple plane changes, single-story elements, roof projections and color. Stacked stone accent treatments along the first floor provide a visual base to the building, as well as a quality textile feel at the pedestrian level. Finally, wrought iron ornamental details provide the finishing touch. It is important to note that although considered infill on a small site, all units provide a covered patio, as well as identified storage locations for the trash and recycle containers within the 2-car garage.

Staff supports the request finding the proposed townhouse development to represent a compatible and viable solution to a challenged infill site. The General Plan promotes this type of infill project that not only maximizes a property's viability, but maintains compatibility with the existing adjacent uses. The applicant has worked hard to maintain that compatibility through the proposal's overall design including the internalization of the open space. The neighborhood outreach has resulted in no opposition generated by the adjacent property owners who ultimately submitted letters of support.

PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed according to the provisions of the City of Chandler Zoning Code with a neighborhood meeting being held on April 8, 2013. Two neighbors were in attendance with general questions. No opposition was given at the meeting. Staff has received one phone call from a nearby property owner west of McQueen Road with concerns regarding traffic generation from the 20 townhouse units. Staff has received two letters of support and none in opposition.

PLANNING COMMISSION VOTE REPORT

The motion to approve passed unanimously 6-0 with Commissioner Wastchack absent.

RECOMMENDATIONS

Rezoning

Upon finding consistency with the General Plan, the Planning Commission and Planning Staff recommend approval subject to conditions listed in the ordinance.

Preliminary Development Plan

Upon finding consistency with the General Plan, the Planning Commission and Planning Staff recommend approval subject to the following conditions:

1. Development shall be in substantial conformance with the Development Booklet entitled "McQueen Commons" and kept on file in the City of Chandler Planning Division in File No. DVR12-0044, except as modified by condition herein.
 2. The landscaping shall be maintained at a level consistent with or better than at the time of planting.
 3. Sign packages, including free-standing signs as well as wall-mounted signs, shall be designed in coordination with landscape plans, planting materials, storm water retention requirements, and utility pedestals, so as not to create problems with sign visibility or prompt the removal of required landscape materials.
7. INTERGOVERNMENTAL AGREEMENT: Maricopa County Animal Care and Control Service Res. #4681

ADOPTED Resolution No. 4681 authorizing an Intergovernmental Agreement (IGA) with the Maricopa County Animal Care and Control Service for animal care and control services in an amount of \$184,000 00 expiring June 30, 2018.

8. PASS-THROUGH INDIAN GAMING GRANT APP: Chandler Education Foundation Res. #4687

ADOPTED Resolution No. 4687 authorizing the submittal of a \$40,500.00 Pass-Through Indian Gaming Grant application from the Chandler Education Foundation on behalf of the Chandler CARE Center to the Gila River Indian Community to provide financial assistance to uninsured Chandler youth for the purchase of eyeglasses, prescription medication and lab work.

9. INDIAN GAMING GRANT APP: City of Chandler Community Services Dept. Res. #4688

ADOPTED Resolution No. 4688 authorizing the submittal of a \$65,400.00 Indian Gaming Grant application for the City of Chandler Community Services Department to the Gila River Indian Community to provide critical accessible transportation for youth and adults with disabilities and for seniors who wish to attend recreation programs that include transportation.

10. PASS-THROUGH INDIAN GAMING GRANT: Dignity Health Foundation Res. #4689

ADOPTED Resolution No. 4689 authorizing the submittal of a \$1,200,120.00 Pass-Through Indian Gaming Grant application from the Dignity Health Foundation, East Valley, to the Gila River Indian Community to provide equipment needed to fund a Level 1 Trauma Center, a neurosurgical imaging system, trauma-specific training for hospital staff and a course to develop rural trauma teams at outlying facilities. It should be noted that the request asks that payments be disseminated over a three-year period which could tie up funding for other requesters in future years.

11. PASS-THROUGH INDIAN GAMING GRANT: About Care Res. #4690

ADOPTED Resolution No. 4690 authorizing the submittal of a \$40,000.00 Pass-Through Indian Gaming Grant application from About Care to the Gila River Indian Community to provide equipment needed to fund transportation services for homebound elderly and disabled residents of Chandler.

12. PASS-THROUGH INDIAN GAMING GRANT: The East Valley Jewish Com Center
Res. #4691

ADOPTED Resolution No. 4691 authorizing the submittal of a \$3,000,000.00 Pass-Through Indian Gaming Grant application from The East Valley Jewish Community Center to the Gila River Indian Community to help develop the Center for Holocaust Education and Human Dignity, a facility that will offer education and outreach programs on the Holocaust.

13. OFFSITE LUMP SUM AGREEMENT: Taylor Morrison/Arizona, Inc.

APPROVED an Offsite Lump Sum Agreement with Taylor Morrison/Arizona, Inc., deferring the construction of Vine Street as a condition of their development and accepting a lump sum payment of \$73,660.00.

This agreement is intended to cover the cost for the construction of Vine Street including but not limited to pavement, curb, gutter and sidewalk. A lump sum agreement was used to secure the developer's financial obligation to the City for the deferred work as well as release the developer from any future obligations. These improvements are being deferred for the acquisition of necessary roadway easements.

FINANCIAL IMPLICATIONS

Funds in the amount of \$73,660.00 have been received from the developer and are being held in an interest bearing account to use for the future construction of Vine Street.

14. OFFSITE LUMP SUM AGREEMENT: JEN Arizona 6, LLC

APPROVED an Offsite Lump Sum Agreement with JEN Arizona 6, LLC, deferring the construction of the median on Ocotillo Road as a condition of their development and accepting a lump sum payment of \$39,772.00.

This agreement is intended to cover the cost for the construction of a median on Ocotillo Road. A lump sum agreement was used to secure the developer's financial obligation to the City for the deferred work as well as release the developer from any future obligations. These improvements are being deferred for the future coordination and construction with the Town of Gilbert.

FINANCIAL IMPLICATIONS

Funds in the amount of \$39,772.00 have been received from the developer and are being held in an interest bearing account to use for the future construction of Ocotillo Road.

15. AGREEMENT AMENDMENT: Waste Management of Arizona

APPROVED Agreement No. SW9-910-2760, Amendment No. 3, with Waste Management of Arizona for City Facilities Refuse Collection in an amount not to exceed \$80,000.00. This is the third and final year of optional extensions.

Facilities serviced under this contract typically use two, three, four and six cubic-yard front load containers. To reduce costs, some facilities were able to take advantage of side-load 300-gallon container collection. While unit costs are the same, the total annual contract amount has been reduced from \$125,000.00 to \$80,000.00 per year as a result of the change in containers.

16. AGREEMENT: Heinfeld and Meech, LLC, P.C.

APPROVED Agreement No. AC3-946-3212 with Heinfeld and Meech, LLC, P.C. for professional auditing services for one year with the option to extend four (4) additional successive one-year terms in an amount not to exceed \$101,006.00.

The City is required by City Charter and State Statute to issue an annual audited financial report. In addition, federal law requires the City to undergo an annual single audit of federal financial assistance. The scope of services includes audit work for the City, the Chandler Health Care Benefit Trust, the Chandler Worker's Compensation and Employer Liability Trust and the Chandler Cultural Foundation.

17. AGREEMENT: Invoice Cloud, Inc.

APPROVED Agreement No. MS3-920-3131 with Invoice Cloud, Inc., (Vendor) and System Innovators (Proposer) for implementation and on-going maintenance of a Citywide electronic payment web portal for a one-time fee of \$80,000.00 and agreed upon ongoing transaction fees. This agreement has a seven (7) year term and transaction fees are fixed for the first three (3) years then the vendor may increase no more than 3% annually upon City approval.

BACKGROUND/DISCUSSION

The desire to accept credit cards Citywide by expanding electronic payment options has been discussed for quite some time. A Citywide Electronic Payment Processing Assessment was conducted in Fiscal Year 2011-12 that reviewed every department's collection and payment types, as well as a recommended Citywide solution. The results of the assessment and project were presented to the Information Technology Oversight Committee (ITOC) in April 2012 and it became their number one priority. The project plan for an Electronic Payment Processing Portal (EPPP) was then presented to the CAPA, IT and Management Services Subcommittee in June 2012. The project scope is to develop an on-line payment portal to centralize collection of payments across City departments, eliminate multiple existing payment processing systems and expand electronic payment options for citizens across all services. This solution will be user friendly, look and feel like the City of Chandler, drive efficiencies in payment collection, processing and reconciliation efforts, adhere to Payment Card Industry (PCI) and Data Security Standards (DSS) Compliance, simplify refund and dispute resolution, and integrate the EPPP to all current systems allowing future integration of COC enterprise technology systems. The Council subcommittee was again updated on the project and agreement highlights on May 8, 2013.

The vendor recommended by the evaluation committee provides a hosted cloud solution, is the leading national provider with over 235 clients in 31 states (Chandler will be their first municipality in Arizona) and municipalities and utilities make up 95% of their clients. This is the City's first hosted cloud solution. As a hosted solution, the City will not own the software. Invoice Cloud, Inc., will develop and implement the web portal and provide ongoing security and maintenance and take on all PCI compliance and risk. The implementation will roll forward using a phased approach and users will be trained at every phase.

FINANCIAL IMPLICATIONS

There is a one-time fee of \$80,000.00 to be paid from the ITOC EPPP budget for the implementation of the payment portal solution. There is no annual support fee associated with the portal; however, the on-going operation and maintenance of the portal will be funded by a portion of the transaction fees. The City has the flexibility to charge transaction fees under two

models: the City absorbs the fees model and a convenience fee (customer pays fee) model. The convenience fee model will charge 2.95% of the transaction total, \$1.00 minimum for credit card transactions where the City decides to give customers the choice to use a credit card for certain transaction types. Most services will be under the City absorbs the fee model. Based on current transaction counts, under the Invoice Cloud, Inc., transaction fee agreement, it would cost approximately \$129,600.00 more per year. In return, Chandler receives a state of the art, PCI compliant cloud solution which allows citizens to pay all City Services on line, 24 hours per day, through one central web portal.

18. AGREEMENT: Arnold Machinery Company

APPROVED Agreement No. ST3-755-3226 with Arnold Machinery Company for purchase of a LeeBoy 8500 asphalt paver in an amount of \$117,934.70.

19. CONSTRUCTION CONTRACT: JPCI Services

APPROVED Construction Contract No. WW1205-401 with JPCI Services for manhole rehabilitation in an amount not to exceed \$979,947.00.

20. AGREEMENT AMENDMENT: Traffic Signs

APPROVED Agreement No. TE0-801-2859, Amendment No. 3, with Safeway Sign Company, Zumar of Arizona and Zumar Industries, Inc., for the purchase of traffic signs and related items in a combined total amount not to exceed \$100,000.00. This is the third of four optional one-year renewals.

21. PURCHASE: Lucity, Inc.

APPROVED the purchase of annual maintenance for the Enterprise Asset Management (EAM) System from Lucity, Inc., sole source, in an amount not to exceed \$80,324.78.

Lucity's EAM application is the system that manages the City's service and work requests, coordinates preventative maintenance programs and tracks City asset maintenance throughout the asset's life cycle. This enterprise asset management application is vital to City operations. The City continues to expand the use of the application for other City work management functions. This system also handles citizen service requests and includes a web-based service request system. In the past year, the City integrated a mobile device application for citizen service requests into this system.

Lucity support provides access to technical assistance resources to resolve application issues as well as providing software fixes. The maintenance provides application upgrades necessary to operate keeping the systems current.

The annual maintenance renewal last year was \$79,466.00. This year's renewal represents a 1.1% increase. The effective term is July 1, 2013 through June 30, 2014.

22. PURCHASE: SHI International corporation

APPROVED the purchase of Lotus Notes annual support and maintenance from SHI International Corporation, utilizing the Western States Contracting Alliance (WSCA) Contract AZ #ADSP011-007500, in an amount not to exceed \$100,040.00.

The City uses IBM Lotus Notes software for Citywide email and calendaring as well as Domino document storage for PD. The Lotus Notes environment includes email and calendaring licenses supporting City full time and temporary staff including onsite contract staff. There are several City applications tightly integrated into Notes including Water Distribution, Water Lab, Water Quality, Water Web reporting and a number of other smaller applications. The annual maintenance includes Lotus Notes Domino servers (processor maintenance renewal), Lotus Notes client (license maintenance renewal & upgrades) and Lotus Enterprise Integrator.

Lotus Notes support provides access to technical assistance resources to resolve software application issues as well as providing software fixes. The maintenance provides application upgrades necessary to operate keeping the systems current.

The City performs an annual audit of licenses in use. This audit indicates that all licenses are in use and no reduction to the number of licenses can be made at this time.

The annual maintenance renewal last year was \$91,744.00. This year's renewal represents a 9% increase. The effective term is July 1, 2013 through June 30, 2014.

IBM Corporation is the actual provider of the support and maintenance support services and only allows a small group of resellers to sell these services on their behalf. A comparative price inquiry verified that the City will save 3% by purchasing support and maintenance through the WSCA volume discount contract vs. purchasing from IBM directly.

23. PURCHASE: SHI International Corporation

APPROVED the purchase of Oracle annual support and maintenance services from SHI International Corporation, utilizing the Western States Contracting Alliance (WSCA) Contract #ADSP011-007500, in an amount not to exceed \$262,972.00.

The City utilizes Oracle database products to store data for the following major systems: Financial, Payroll/HR, Sales Tax, Work Order Management, Permits and Inspections, Utility Billing, Geographic Information and numerous other departmental systems. The City utilizes Oracle Applications, which include Self Service Human Resources, Financial, Project Billing, iExpense, User Productivity Kit and iProcurement application modules.

Oracle support provides access to technical assistance resources to resolve system issues as well as providing software fixes. The maintenance provides system and application upgrades necessary to operate, keeping the systems current.

The City purchases maintenance and support based on the number of servers and processors on which the software is running on an annual basis. The City has audited the number of licenses being used and found that no licenses can be reduced at this time.

Oracle Corporation sets the cost of ongoing support and maintenance as a fixed percentage of the software license cost at the time of initial purchase. The maintenance costs are the same regardless of the reseller.

The annual maintenance renewal last year was \$254,083.00. The 3.5% increase in cost for this renewal period is based on an Adjustment Rate built into the original software license purchase contract. The effective term is August 1, 2013 through July 31, 2014.

24. USE PERMIT: Beef O'Brady's

APPROVED Use Permit, LUP123-0001, Beef O'Brady's, Series 12 Restaurant License, to sell liquor as permitted for on-premise consumption indoors within a restaurant and within an outdoor patio located at 6045 W. Chandler Boulevard, Suite 7, at the SWC of Chandler Boulevard and Kyrene Road. (Applicant: Amy Nations, Arizona Liquor Industry Consultants.)

BACKGROUND

The subject site is located at the southwest corner of Kyrene Road and Chandler Boulevard within the Kyrene Village Center. The subject business is located in Suite #7 at the eastern end of the inline shops. The shopping center is surrounded by commercial and industrial uses including the Paloma Kyrene Business Park to the south, Kyrene Crossing to the east and the Chandler Business Center to the north. The nearest residential neighborhood is the Sorrento Subdivision located southeast of the shopping center, east of Kyrene Road.

The request is for Use Permit approval to sell all types of alcohol for on-premise consumption indoors and within an outdoor patio area under a Series 12 Restaurant License.

The restaurant, Beef O'Brady's, will be a new tenant in the subject suite within the shopping center formerly occupied by the Regal Beagle. The subject restaurant, including a bar, is 3,980 square feet in area and the outdoor patio is 489 square feet in area. No expansions are proposed to the restaurant, bar or outdoor patio. There is no proposal for an interior stage, pool tables or video arcade games.

The restaurant will have 135 seats, 25 bar seats and 24 seats on the outdoor patio. The outdoor patio is enclosed with a 4 ½' high solid block wall. The restaurant will employ 40 full time employees and 20 part time employees. The regular business hours will be from 11 a.m. to 11 p.m. seven days a week.

The applicant indicates there will be 20 televisions located throughout the restaurant and two will be on the south wall of the outdoor patio. Small speakers, six by nine inches in size, are proposed throughout the restaurant. No speakers will be located in the outdoor patio area. The televisions located within the outdoor patio would broadcast sports and other satellite programs.

Live entertainment featuring classic rock bands or two to three person acoustical groups is planned to be scheduled up to six times a year. The live music is limited to indoors only. Two conditions addressing any potential noise concerns have been added as a condition of approval. Planning Staff recommends a one-year time limit to allow evaluation of neighborhood compatibility under the new ownership.

Planning Staff supports the request finding that a restaurant with indoor live entertainment and an outdoor patio is appropriate at this location if controlled so as to not unreasonably disturb the surrounding businesses and residents. There have been no complaints filed with the Police Department or opposition during the neighborhood meeting and public notification processes.

PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on April 2, 2013. There were two neighbors in attendance from the Sorrento subdivision with questions regarding live entertainment and ownership. The

Police Department has been informed of the application and has no issues or concerns. Planning Staff has not received any correspondence in opposition.

PLANNING COMMISSION VOTE REPORT

The motion to approve passed unanimously 6-0 with Commissioner Wastchak absent.

RECOMMENDED ACTION

Upon finding consistency with the General Plan and zoning, the Planning Commission and Planning Staff recommend approval subject to the following conditions:

1. The Use Permit is granted for a Series 12 license only and any change of license shall require reapplication and new Use Permit approval.
2. The Use Permit shall remain in effect for one (1) year from the date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to and approval by the City of Chandler.
3. Any changes in the floor plan related to but not limited to the addition of entertainment related uses such as a stage shall require re-application and approval of a Liquor Use Permit.
4. The Use Permit is non-transferable to any other location.
5. Expansion or modification beyond the approved exhibits (Site Plan, Floor Plan and Narrative) shall void the Use Permit and require a new Liquor Use Permit application and approval.
6. Music shall be controlled so as to not unreasonably disturb area residences and shall not exceed the ambient noise level as measured at the commercial property line.
7. No noise shall be emitted from the televisions located within the outdoor patio or from the televisions, speakers or live entertainment occurring indoors that exceeds the general level of noise emitted by uses outside the premises of the business and further will not disturb adjacent businesses and residential areas.
8. The patio shall be maintained in a clean and orderly manner.

25. LIQUOR LICENSE: Beef O'Brady's

APPROVED a Series 12 Restaurant Liquor License (Chandler #146381 L12) for Randy D. Nations, Agent, Andrew Yontz Enterprises, Inc., dba Beef O'Brady's, 6045 W. Chandler Boulevard, Suite 7. A recommendation for approval of State Liquor License #12079422 will be forwarded to the State Department of Liquor Licenses and Control. The Police Department reports no objections to the issuance of this license and no written protests have been received. All licenses, permits and fees have been paid and the applicant is in compliance with the City's Tax Code. This application was posted for hearing on April 11, 2013, at which time it was continued until May 23, 2013.

26. LIQUOR LICENSE: Pearl Sushi Lounge & Bomber Bar

APPROVED a Series 12 Restaurant Liquor License (Chandler #147172 L12) for Tammy Lynn Safriet-Carlin, Agent, Pearl Sushi Chandler LLC, dba Pearl Sushi Lounge & Bomber Bar, 2040 S. Alma School Road, Suite 3. A recommendation for approval of State Liquor License #12079461 will be forwarded to the State Department of Liquor Licenses and Control. This application reflects a change in ownership. Transportation and Development advises that a new Use Permit is not required since this will be a continuation of the location's previous use as Pearl Sushi Lounge & Bomber Bar. The Police Department reports no objections to the issuance of this

license and no written protests have been received. All licenses, permits and fees have been paid and the applicant is in compliance with the City's Tax Code.

27. FINAL PLAT: Almeria At Ocotillo

APPROVED Final Plat FPT12-0022 Almeria at Ocotillo, for a 25-acre multi-family residential development located NE of the intersection of Dobson and Price roads, adjacent to Market Place Loop. (Applicant/Owner: GP Chandler, LLC (Gilbane Properties).) The plat creates the lots and tracts, establishes the necessary easements and dedicates the required rights-of-way.

28. On Action

29. On Action

30. AGREEMENT: Subordination of Deed of Trust – Community Services of Arizona, Inc.

APPROVED the City to subordinate its Deed of Trust from Community Services of Arizona, Inc., regarding 298-392 N. McQueen Road in Chandler, Arizona to a deed of trust made by the new purchaser Quantum Realty Partners, LLC to its lender.

Community Services of Arizona, Inc., a local non-profit, has in the past received HOME funds for the acquisition and rehabilitation of multi-family properties in Chandler to provide affordable rental housing for low to moderate income persons. Currently, CSA owns 16 units in Chandler at 298 - 392 N. McQueen Road for which the City holds a Deed of Trust upon. This Deed of Trust secures a promissory note which requires CSA to maintain the subject housing units according to the rules and regulations of the HOME program including leasing the units as affordable and decent housing for a certified period of affordability. The face amount of the note is approximately \$500,000 but the amount is entirely forgiven if the property is maintained as affordable for twenty years.

The original note and deed of trust were executed by CSA to the City in 1998. In 2004, the City agreed to subordinate its Deed of Trust to a loan made by Arizona Bank & Trust in an approximate amount of \$513,000. Accordingly, the City's Deed of Trust is now in "second position." The current holder of the Bank & Trust loan has initiated foreclosure proceedings due to CSA's default on the loan. A Trustee's Sale is scheduled for June 5, 2013 which, if it occurs, will likely also foreclose the City's Deed of Trust. CSA has an agreement with a potential buyer that will satisfy the Bank & Trust loan and therefore place the property back in good standing. The new buyer, Quantum, is obtaining financing that will payoff the Bank & Trust loan. On Friday, May 17, the City learned that Quantum's financing source will require the City to subordinate its deed of trust in order to close the purchase by Quantum of CSA's interest.

CURRENT EVENTS:

The Mayor moved the Current Events item before the Action Item and asked if any member of the Council had announcements.

COUNCILMEMBER HEUMANN noted the upcoming graduations occurring and announced that over \$50,000,000 in scholarships being collected, in addition to 3 Flinn Scholars being from Chandler.

He stated at the ISEF (International Science and Engineering Fair) awarded two winners from Chandler.

COUNCILMEMBER WENINGER stated his condolences on the loss of the firefighter and police officer killed in Phoenix. He announced the safe return of his daughter and wife from Oklahoma and the graduation of his daughter this evening from Kindergarten.

Councilmember Weninger announced a fundraiser coordinated by his son benefitting Child Help. Child Help assists abused kids. Yo Love Yogurt will donate a portion of the proceeds of sales to Child Help.

Councilmember Donovan wished everyone a Happy Memorial Day in remembrance of those who served in the military and died during their service.

Councilmember Hartke echoed Councilmember Donovan's comments. Councilmember Hartke congratulated his son on his upcoming graduation from Chandler High School.

Councilmember Ellen gave her condolences for the Phoenix firefighter and police officer. She thanked those veterans that have served.

Mayor Tibshraeny stated there were quite a few speakers for Unscheduled Public Appearances regarding Salt River Project's line siting. He said because of the State's Open Meeting Law there could not be discussion. He noted the City had received a schedule of meetings that SRP will hold. The next one being on June 6th with the Ocotillo Community at Hamilton High School. There will be an open house on June 19th at Sun Lakes and in Tempe to share the route alternatives that have been removed based on siting criteria and construction feasibility and the balance of alternatives that are still undergoing evaluation. He added that there will be another open house on June 20th in Chandler to show additional route alternatives that have been removed. The Mayor stated the meeting the City has been requesting will occur the week of June 24th. It will be a presentation and a Q & A form.

He stated that while the process is solely the work of SRP, the City has been monitoring its progression. The public process will culminate with a hearing before the Arizona Power Plant and Transmission Line Siting Committee, an appointed body, which will forward recommendations to the Arizona Corporation Commission, an elected body, for the final decision.

The Mayor said a copy of the schedule would be available.

The Mayor said he has expressed concerns over the last 30 days continually to SRP. He has written the President of SRP, called and has met with him to express concerns with the public meeting formats and expressed the concern that the maps did nothing more than to create havoc in the community. He stated that they agreed to hold a Q & A type meeting and to share the eliminated routes in June and not wait to August.

UNSCHEDULED PUBLIC APPEARANCES:

The Mayor stated that members of the audience may address an item that is not on the agenda. State Statute prohibits the City Council from discussing an item not on the agenda, but will listen to concerns.

MR. WALLY DUMELLE, 975 E. Riggs Road, Chandler said there were 41 empty storefronts on Arizona Avenue. He is forming a group to help alleviate the impact to the business district. He said a common issue is that they need a sprinkler system. They will have the Fire Department, Metro Sprinkler, and banks involved. He asked the Council their consideration in appointing a member to the committee.

MR. TOM ABRAHAM, 9140 S. KYRENE, TEMPE representing Fulton Homes. Mr. Abraham stated his concerns over the SRP proposed expansion.

Mr. Abraham said Fulton Homes has several developments in Chandler. Like other developers, they go above and beyond to ensure they are upfront in their disclosures, public reports, and in communications with their Home Owners Associations. He asked the Council to consider how the proposed SRP lines could adversely affect the Fulton Ranch, The Reserve and Autumn Park projects.

MR. MIKE FROST, 570 W. Yellowstone Way, Chandler, said despite the fact that this project has been in the planning stage for the last 10-20 years, SRP concealed this project from the public until January 2013, when SRP filed their 10 year transmission project plan with the Arizona Corporation Commission. He stated the project will be an eyesore with steel poles up to 160' in height, a possible health risk, and the project will depress the value of properties along the line. He stated the Corporation will need to consider the total environment of the area as well as any ordinances, master plans or regulations in Chandler. He said the voters of Chandler will be watching to see what position the Council will take, if any, on this project.

MR. FRANK PERRI, 3460 S. Camelia Place, Chandler. He said if SRP has to cut through Ocotillo, the citizens should dictate how this is done. He asked the city to make this project eligible for capital funding or for SRP to take out a special revenue bond to bury the lines.

MR. GERARD KELLY, 1654 W. Yellowstone Way, Chandler said when they moved into the area, they were not aware of the high power voltage lines and it is a very serious concern for them.

MS. ARLENE MORRIS, 3431 S. Camelia Place, Chandler asked who on the Council or in city government is working with SRP to decide when future energy power needs for the Price Road Corridor.

MR. DOWNING deferred his request to speak.

MR. MARK WHILE, 1371 W. Honeysuckle Lane, Chandler, stated his concern with the health risk of overhead power cables and asked the consideration of burying them.

MS. LISA WILSON, 4053 S. Pleasant Place, Chandler, stated her concern with health reasons. She previously purchased a home behind power lines and she now has rheumatoid arthritis. She cited a California rule that does not allow power lines within 150' of schools. She stated that is something that Chandler needs to address. She also cited concerns with the lines being near the Airport. She stated the opinion that SRP has money to bury the lines.

MR. KEITH TAINSKY, 614 Kaibab Place, Chandler, asked that the city hire an expert in property values, and environmental impact and disease to address the group at the Town Hall.

MR. BERNARD HANSEN, 1260 W. Wisteria Court, Chandler, said that all public officials are subject to recall and called for everyone to work with the local officials, legislature and Governor to express their displeasure of the views put out by SRP.

MR. BARRETT HARTMAN, 645 W. Kaibab Place, Chandler, asked that the Council fight for the residents of the City and for the people who live and work here.

MR. BRUCE KELSEY, 624 W. Kaibab Place, said he is hoping the Ocotillo Route is off the list. He cited property values and that the homes were purchased before this was indicated, health and the wealth of local businesses, and the proximity to Hamilton High School.

MR. AL ANDERSON, 3470 S. Camelia Place, He said he is not opposed to the Price Corridor being the jewel of the southeast valley, but questioned the cost. He said the transparency with SRP has been an issue. He asked that SRP be forced to do a real town hall where the attendees can ask questions and all can hear the questions and the questions aren't filtered. He said the current companies, including Intel, do not need power. He said there are 7 substations between Kyrene and Schrader. He believes this power will be taken down to Pinal County. He stated his support for undergrounding.

MR. PHILIP ALEXANDER, 201 W. New Dawn Drive, said there is question on whether the substation is needed locally as that may not be true. He asked why the lines could not be buried as part of the recent Ocotillo Road Project. He cited bad planning on the part of SRP.

MS. TAMARA HOLDREN, 3830 S. Barberry Place cited concerns with property values and commented how this highly damages a unique community. She stated her disappointment with SRP, as she first heard of this in April. Outreach has failed at multiple levels.

MR. ADAM ARNDT, 4112 S. Pleasant Place, Chandler, said he was blindsided and unaware of this. He asked the Council for their help. He suggested the burial of the lines.

MR. RICHARD SZOKE, 186 W. Lynx Way, Chandler, commented that SRP could put it in a way that does not destroy values. He asked the Council's help.

MS. MARY ANN STONE, 2020 W. Harbour Drive, Chandler, stated she was not convinced all possible routes have been exhausted, and asked why more negotiation has not been done with Gila River Community. She stated she heard the word "urgency" used at a recent SRP meeting. SRP feels it will take too long to negotiate with GRIC, and there is an urgent need for the Price Road Corridor. She asked the City to verify if this was correct. Look at I-10 and 202 areas.

MS. HARITHA GADDE, 631 W. Tonto Drive, Chandler, said there should be some formality that the city needs to do in having the ability to issue SRP a permit. She asked the city to help them.

MR. DONALD MATTEO, 3465 S. Oleander, Chandler stated his concerns with high voltage tall transmission lines, health, and real estate values. SRP says it is technically impossible to bury these lines. He believes it is cost.

MAYOR TIBSHRAENY asked the City Manager to forward a video of the remarks tonight to SRP in preparation for the presentations. In addition he said the undergrounding issue needs to be addressed and to relay to SRP that Ocotillo Road is a nonstarter in the City.

RECESS: The Mayor called for a recess at 8:11 p.m. The Mayor reconvened the meeting at 8:25 p.m.

ACTION:

28. 2013-2014 TENTATIVE BUDGET

Res. #4685

BACKGROUND:

As required, the budget forms will be published in the Arizona Republic newspaper as will a notice that the City Council will meet on June 13, 2013, at 7:00 p.m. for the purpose of a public hearing and for final adoption of the 2013-14 Budget, and will further meet for the purpose of setting the tax levies at 7:00 p.m., June 27, 2013. Any budget amendments that are approved at the special meeting held on Monday, May 20th, will be incorporated into the Auditor General report prior to publication for the upcoming Budget hearings.

In summary, the 2013-14 recommended budget totals \$803,931,786 and includes funding for departmental operating budgets of \$318,960,824; funding for debit service of \$61,641,699; budget for equipment, technology and vehicle replacement purchases of \$8,677,845; and contingencies and reserves in the amount of \$81,579,747 in various funds. The capital budget includes \$77,837,246 in new appropriation, capital carry forward of \$252,994,425 and contingency and reserve funding of \$2,240,000.

Included in the projected operating revenues of \$499,322,003 is a property tax levy of \$27,077,298 based on a rate of \$1.2714 per \$100 assessed property value plus \$518,072 for SRP's payment to the City in lieu of property tax for a total of \$27,595,370.

The tentative budget resolution, with attached budget forms as required by Arizona Revised Statutes 42-17101 and 42-17102, will be available for public review and inspection May 28, 2013 on the City's official website www.chandleraz.gov and at the City of Chandler Libraries, City Clerk's office and the Management Services Administration office located in the Chandler City Hall.

DISCUSSION:

MR. GREG WESTRUM, Budget Manager, explained the tentative budget was being presented for adoption this evening. The final budget will be presented on June 13th. Mr. Westrum said the amendments to the budget that were approved on Monday night, are incorporated in the tentative budget. He noted that there is no property tax increase included in this budget. The budget total of \$8.3 million reflects a 3.8% decrease from the current year budget.

Mr. Westrum explained the posting and publishing requirements for the budget. He reminded the Council that only the first year of the Capital Improvement Program is actually incorporated into the budget.

COUNCILMEMBER WENINGER clarified that this budget includes the acceleration of Valencia Park – design and construction, to this next fiscal year. Citrus Vista Park was moved up for design in 2014-15 and construction in 2015-16. Mr. Westrum said that was correct. Councilmember Weninger thanked Mr. Westrum and the Budget Staff for their work.

COUNCILMEMBER HEUMANN commented that this remains a lean budget still coming out of the economic downturn, yet the City was able to accelerate parks and transit items. He reiterated there was no tax increase included in the City's portion.

MAYOR TIBSHRAENY asked what the property tax rate is. Mr. Westrum reported the rate for the primary property tax is .3292 per \$100 of assessed valuation. The secondary property tax rate is .9422 per \$100 for a combined rate of 1.2714. Mayor Tibshraeny asked about the levy. The Mayor commented that while the City is reducing its levy, there are many other entities that impact the tax bill.

COUNCILMEMBER HARTKE thanked the staff for their work on the budget and commented that Chandler remains as one of the enviable places to live. He thanked the staff for continuing to find efficiencies.

COUNCILMEMBER HEUMANN MOVED FOR THE ADOPTION OF RESOLUTION NO. 4685 ADOPTING THE 2013-14 TENTATIVE BUDGET, AND 2014-23 TENTATIVE CAPITAL IMPROVEMENT PROGRAM AND GIVING NOTICE OF THE DATES AND TIMES FOR HEARING TAX PAYERS, FOR THE FINAL ADOPTION OF THE BUDGET, AND FOR SETTING THE TAX LEVIES AND RATES. THE MOTION WAS SECONDED BY COUNCILMEMBER HARTKE.

THE MOTION CARRIED UNANIMOUSLY (7-0).

29. ZONING CODE AMENDMENT/CITY CODE AMENDMENT: Urban Chickens
Ord. #4449 & Ord. #4457

Mr. David De La Torre, Principal Planner, gave a summary of the background as provided to the Council in the memo. He added additional research has been completed to find out how other cities regulate chickens. He explained if Council approved the allowance, there are a few proactive steps the City could take to educate citizens on how to properly keep chickens. An informational brochure could be made available throughout City offices and on the City's website. He displayed a sample brochure from the City of San Diego. The City could partner with the Valley Permaculture Alliance to offer classes to residents in an effort to reduce any nuisances and complaints.

BACKGROUND

This initiative began last year when a group of residents spoke at a City Council meeting and requested that the City Code be amended to allow them to raise chickens in their backyards. Since that time, Staff has met with a Council Subcommittee, obtained input from residents and discussed the proposal with other departments including Police, Code Enforcement and the City Attorney's Office.

In addition, the draft amendment was posted on the Valley Permaculture Alliance's (VPA) website with a statement that encouraged Chandler residents to send comments directly to Planning Staff. The VPA is a local organization that promotes sustainable urban living in the desert southwest. Their website contains several forums dedicated to different sustainable living topics such as keeping backyard chickens. As a result, Staff received constructive feedback from residents who would like to have chickens as well as from experienced chicken owners.

Staff researched other municipalities in the Phoenix Metropolitan Area (PMA) and found that many allow chickens in single-family neighborhoods. Further research revealed that many cities across the country have amended their laws within recent years to allow chickens. Professional planning and zoning publications confirm that there is a nationwide trend to allow chickens in urban environments. The publications also report that the adopted ordinances regulating chickens are all quite different and no standard set of regulations has yet been established. Staff found this to be true with cities in the PMA. There are, however, common themes such as requiring droppings to be removed on a weekly basis, requiring coops to be setback from adjacent residences and declaring it to be unlawful for chickens to create a public nuisance.

EXISTING REGULATIONS

The four chapters of the City Code listed below address the primary issues of whether residents are permitted to keep chickens and the measures in place to protect neighbors from noise, odor and other nuisances that potentially could be created by chickens:

- Chapter 11 – Curfew, Graffiti, Smoking and Miscellaneous Offenses
 - Section 11-10 Disturbing the Peace Prohibited
- Chapter 14 – Animals, Article I – In General
 - Section 14-3 Consent required to keep animals within 200 feet of residences; exceptions as to household pets
 - Section 14-6 Cruelty to Animals
 - Section 14-7 Keeping Hogs, Donkeys, Roosters, etc.
 - Section 14-8 animals at Large
- Chapter 30 – Neighborhood Preservation
 - Section 30-5 Creating, Causing or Maintaining a Public Nuisance
- Chapter 35 – Land Use and Zoning
 - Section 35-401 Uses Permitted in AG-1 (Agricultural District)
 - Section 35-501 Use Permitted in SF-33 (Single Family District)

Other chapters in the City Code regulate different aspects of keeping chickens. For example, Chapter 44 – Garbage and Refuse, specifies that all refuse must be placed in leak-proof plastic bags that are tightly secured. Chapter 29 – Building Regulations, applies to any structure that exceeds 120 square feet or 7 feet in height. Section 35-200 of the Zoning Code identifies limitations to “home occupations” that prohibit residents from conducting a business from their home that involves customer traffic and selling commodities on the premises among other things.

Chapter 30, which is referenced in the proposed code, designates public nuisance as “anything which is injurious to health, safety, or is indecent or offensive to the senses...” More specifically, it designates the following as public nuisances:

- “Animal waste that is not securely protected from insects and the elements, or that is kept or handled in violation of this code or any other ordinance of the City or the county...”
- “Any putrid, unsound or unwholesome bones, meat, hides, skins or the whole or any part of any dead animal, butcher’s trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta, sewage or other offensive substances; provided, that nothing contained in this subsection shall prevent the temporary retention of waste in receptacles in the manner approved by the health officer of the county or this code or any other ordinance of the City...”
- “The erection, continuance or use of any building, room or other place in the City that, by noxious exhalations, including but not limited to smoke, soot, dust, fumes or other

gases, offensive odors or other annoyances, is discomforting or offensive or detrimental to the health of individuals or of the public.”

These public nuisances are currently enforceable by Code Enforcement and can continue to be applied as they relate to keeping chickens.

Chapter 35 (Zoning Code) currently allows chickens to be raised in AG-1 and SF-33 zoning districts. This translates generally to any single family property with a minimum lot size of 33,000 square feet. There is no limit to how many chickens may be kept on these larger properties. In SF-33 districts, the fence or corral containing the chickens must be setback at least 100 feet from the front property line and must not be closer to the street side property line than the principal building on corner lots. No setbacks are required for corrals on AG-1 properties. However, any structure that exceeds 120 square feet or 7 feet in height, must comply with building setbacks for accessory buildings on both AG-1 and SF-33.

PROPOSED CODE AMENDMENTS

The proposed amendment would expand the areas where chickens are permitted to all single family lots regardless of size. In effect this includes the following zoning districts where a single family dwelling is the primary use: SF-8.5, SF-10, SF-18, MF-1, MF-2, MF-3 and Planned Area Development (PAD). The multi-family districts (MF-1, MF-2 and MF-3) are included to cover the numerous single family dwellings near the downtown area that are zoned multi-family.

The proposed regulations would allow residents to keep up to five hens and establish requirements dealing with chicken coop setbacks and regular maintenance that are aimed at preventing the chickens from becoming a nuisance. Roosters remain prohibited anywhere in the City. The proposal also makes it unlawful to keep chickens in such a manner that disturbs the peace as designated in Chapter 11 or that constitutes a public nuisance as designated in Chapter 30 of the City Code.

Section 11-10 designates noises that are considered to be disturbing the peace. Among the list are vehicles with loud exhaust systems, loud music and barking dogs. Staff is proposing to add unreasonably loud chickens to the list so that Police officers may respond to chicken related noise complaints in the same manner as barking dogs. Per the City Attorney's office, the language for barking dogs is revised to match the language proposed for chickens.

Section 14-3, originally adopted in 1959, is proposed to be eliminated in its entirety. The section requires written consent from all residents within 200 feet in order to keep chickens among other animals. The law would be difficult to enforce and prove to be problematic for chicken and other animal owners when a new homeowner or resident in a rental property moves in next door.

Staff believes that keeping chickens in a backyard is a compatible use in single family residential neighborhoods when the number of chickens is limited, regulations are in place to require responsible maintenance, and provisions for the enforcement of violations are adopted. Many cities in the PMA allow chickens in most, if not all, of their single family neighborhoods. When contacted by staff, their code enforcement offices stated that chickens are not as much of a nuisance as some people might think. The following are Staff's findings for each potential issue:

Noise

Roosters are the main problem when it comes to noise. For this reason, roosters are currently prohibited citywide. Hens, by comparison, are very quiet and their cackling is not louder than a barking dog. Typically, hens will cackle only once a day for about 5 minutes either immediately

before or after laying an egg. Hens will typically remain quiet for the rest of the day. A healthy adult hen may lay one egg each day up to 300 eggs a year. The number of eggs laid depends on a variety of factors including the specific breed, the hen's egg cycle, number of hours of daylight, temperature and whether the hen is stressed. In the event that noise becomes an issue and the owner with chickens is unable to amicably resolve the issue, neighbors could call the Police Department who would have authority to issue a citation for disturbing the peace (Section 11-10) in the same manner as they would when responding to complaints regarding barking dogs.

Odor

Odor is an issue that can be addressed by removing or composting droppings. Chickens don't stink, but their droppings can produce offensive odors if they are left to accumulate over time. For this reason, the proposed amendment requires droppings to be composted or removed at least once per week or more frequently as necessary. As stated previously, Chapter 30 states that any place or use of any building that causes offensive odors that are considered to be discomforting, offensive, or detrimental to the health of individuals or of the public, is considered to be a public nuisance and is enforceable by the City's Code Enforcement Division.

Health

According to an article published by the American Planning Association titled "Urban Micro-Livestock Ordinances: Regulating Backyard Animal Husbandry", by Jaime Bouvier, public health scholars have concluded that backyard chickens present no greater threat to public health than other more common pets like dogs and cats. As with any animal, including dogs and cats, disease can be spread through droppings. According to the Center for Disease Control and Prevention (CDC), Salmonella is a bacterium that occurs naturally in poultry and is shed in their droppings. Salmonella can make people sick with diarrhea, vomiting, fever and/or abdominal cramps. Infants, elderly persons and those with weakened immune systems were more likely than others to develop severe illness. People may become infected with Salmonella after having direct contact with chickens, droppings or any surface in the area where the chickens are kept that may be contaminated and then transferring the bacteria into their mouth. In order to reduce the risk of infection, the CDC recommends regular cleaning and sanitation practices such as washing hands thoroughly with soap and water immediately after touching chickens or anything in the area where they live and roam. Neighbors are not at risk of infection unless they too have direct contact with the chickens or a contaminated surface.

Avian influenza (Bird-Flu) is a theoretical health risk potentially associated with urban chickens. It's considered theoretical because no cases have been reported in the U.S. or anywhere in the western hemisphere. Bird-Flu is a viral disease of birds that may be transmitted to people through direct contact with infected chickens. According to the World Health Organization, human to human transmission is extremely rare. Therefore, in the event that Bird-Flu was to spread to the U.S., neighbors would not likely be at risk of becoming infected unless they too have direct contact with an infected chicken or contaminated surface.

Other health risks associated with the breeding of flies or mosquitoes, attracting wild birds and pests can be prevented by composting or removing and properly disposing of droppings and keeping the food and water supplies contained, fresh and clean. For this reason, the proposed amendment requires water and feeder containers to be kept sanitary and droppings to be removed or composted at least once per week. Again, Chapter 30 currently designates "animal waste that is not securely protected from insects and the elements" as a public nuisance, further reinforcing the requirement to pick up droppings on a regular basis.

Building Safety

Building Safety concerns are addressed in the amendment by requiring any chicken coop that exceeds 120 square feet or 7 feet in height, or has any utility connections regardless of the coop's size, to obtain a permit. This is consistent with the City's current regulation that requires a building permit for any structure that exceeds 120 square feet or 7 feet in height.

Trespassing/Running at large

The proposed amendment requires hens to be contained within the rear or side yards and prohibits them from trespassing upon other properties or upon any street or public place. The method of containing the hens is up to each individual owner. The backyard property wall may serve for this purpose. However, some may choose to contain the hens within a smaller area such as a chicken run within the boundaries of their rear yard. In any case, a chicken coop is required to be provided and can be placed no closer than 10 feet to any property line shared by another residential lot.

Homeowner Associations (HOA)

If the proposed amendments were adopted, residents living within HOAs would still need to comply with their association's Codes, Covenants and Restrictions (CC&Rs). Many HOAs prohibit raising, breeding or keeping poultry and other animals that are not considered to be common household pets.

The City estimates that 82% of all single family lots in Chandler are located with HOAs; therefore, the code amendment may one affect 18% of the City's single family properties, most of which are located around the older parts of the City.

PUBLIC/NEIGHBORHOOD NOTIFICATION

As required by Arizona Revised Statutes, hearing dates for the Planning Commission and City Council, as well as the complete text of the draft code amendments have been published in an eighth-page newspaper ad at least fifteen days prior to the first required public hearing. Notices containing a website link to view the proposed amendments were sent electronically to over 30 Chandler residents who had contacted the City in regards to this effort. The text of the draft code amendments and public hearing dates were posted on the Valley Permaculture Alliance's online forum. A news release was issued to the press in an effort to notify all Chandler residents of the proposed amendment and to give all residents an equal opportunity to submit their comments and participate in the scheduled public hearings. As of May 7, 2013, Staff has received 31 responses (both email and telephone calls) from Chandler residents who are in favor of the proposed amendments. Some proponents requested that the limit be increased to more than 5 chickens and the coop setbacks be reduced. As of the same date, Staff has received 9 responses opposed to the amendment.

PLANNING COMMISSION VOTE REPORT

The motion to approve passed 4-2 with Commissioners Donaldson and Ryan dissenting and Commissioner Wastchack absent.

The Planning Commission made minor modifications to the proposed language and stated that they agreed with the intent of the proposal to allow chickens to be slaughtered at home for personal consumption. No modifications were needed to allow slaughtering. Commissioner Cunningham and Vice Chair Pridemore viewed the proposal as a trial amendment that could be revisited in the future to potentially allow residents to keep more chickens. Commissioner Donaldson stated that Chandler's laws should remain as they are, which allow chickens in AG-1 and SF-33 because they are not very different than what most cities in the PMA effectively allow.

Commissioner Ryan stated that chickens are not household pets but rather farm animals that belong on farms.

RECOMMENDATION

Upon finding the request to promote the General Plan's goals encouraging sustainable living practices and upon finding hens to be compatible with single family residential areas, the Planning Commission and Planning Staff Recommend approval.

DISCUSSION:

COUNCILMEMBER HARTKE clarified the noise of chickens during the day and night. Mr. De La Torre responded the chickens will go to bed when the sun starts to set, and to rise when the sun arises. During the evening, they are quiet.

Councilmember Hartke asked about the effects on any HOA rules. Mr. De La Torre explained any HOA would have to amend its CCR's if they desired to allow chickens. City Attorney Wade confirmed CCR's will trump this ordinance. If the residents wanted to have chickens in an HOA community, the action would have to be taken by its board.

Councilmember Hartke asked what the code enforcement process would be. MS. MORRISON, Neighborhood Resources Director, stated access to backyards is a compliance issue for them. Backyards have different rules and public expectation of what you can inspect. She asked Mr. Malcolm Hankins, Code Enforcement Manager to respond to questions.

Mr. Malcolm Hankins explained the process is to do back yard enforcement from a "plain view" site, which is to look at things from what you can see from the street or alley. When addressing issues within screened areas, effort is made to contact the alleged violator and access the violation. If access is not gained, then other efforts may include up to the unlikely extent of obtaining a warrant. Mr. Hankins added that compliance is typically gained voluntarily; although one recent case was through the court process. The code as present, does not allow chickens. They simply have to determine whether a chicken is present.

COUNCILMEMBER WENINGER asked for clarification. Mr. Hankins said it will be different to address a chicken issue if you have to determine number of chickens and other details. Currently, it's whether there is a chicken present or not. In response to a question from Councilmember Weninger, Mr. Hankins said there are 8 code inspectors.

COUNCILMEMBER HEUMANN asked if this would take away from the current duties of the inspectors. Mr. Hankins replied said it would be hard to guesstimate the option; however, it will always be additional effort.

Councilmember Heumann asked how this would be enforced. Mr. Hankins said the process would be consistent to current procedures. The inspector would first try consent to access. Councilmember Heumann questioned who determines what a public nuisance is and how a complaint about smell would be handled. Mr. Hankins said the ordinance defines nuisance it and lists a few examples. The concern about smell would be more challenging. If it was due to waste, you can see if the waste is being cleaned up, or identify other issues relating to the odor.

MAYOR TIBSHRAENY asked if SF-33 and AG-1 would remain as under the current code. Mr. De La Torre replied that was correct. The requirements of the maximum number and the coop requirements, would not apply to those two districts.

Mayor Tibshraeny asked about the repeal of Section 14.3 "Written Consent from Neighbors within 200' to keep animals" and if that was enforced currently. Mr. De La Torre cited an example. He added that Section 35 also regulates and those two sections can be in conflict. Section 14.3 is only applicable to SF-33 and AG-1 areas.

The Mayor read the names of those residents submitting a Comment Card indicating support or opposition to the item:

Opposed: Ingrid Donaldson, E. Lentz, Dennis Mittelstedt, Margaret Allen, David Wolff,
Support: Ann Beach, Charlie Northrup, Kiel Nahs, Andrew Lyman, Mark Van Horne, Sue Hoffman, Tom Kluse, Brittany Branch, Jared Branch

The Mayor called upon the following people to speak:

MS. MIA LOWRY, 2288 E. Palm Beach Drive, said she does not own chickens, but she believes that people should be allowed chickens and to be self-sufficient and self-reliant. She asked for the Council's support for this which upholds the Constitution and people's rights.

MR. LESLIE MINKUS, 3372 E. Gemini Court, said he also represents the Bela Flor HOA at least 29 of the 30 homes object to the proposal. He felt there has not been enough public notice for this. He asked the proposal be given more time to allow for public discussion. He questioned the effect of city ordinance on HOA CCR's, and asked to see the map referred to that shows the 82% coverage of HOA's in the City. He said while their HOA could restrict the chickens in their HOA, they could not if the surrounding areas were traditional neighborhoods. He asked if the cost of enforcement was included in the tentative budget that was approved tonight.

In response to the Mayor, City Attorney WADE told the Council that while she could not refer to specific case law, there was significant case law in Arizona. She added that the Legislature has also decided that the CCR's have tremendous authority.

The Mayor asked if there was any budgetary constraints or fiscal note. MS. DAWN LANG responded that there are no additional funds added in the budget. It would fall upon our existing code staff and police officers to address the calls.

MR. DAVID DE LA TORRE said they used GIS to come up with the estimate on HOA vs. Traditional neighborhoods. He added the bulk of the HOA's were located south of the 202 freeway and there were also a significant amount in west Chandler.

COUNCILMEMBER HARTKE questioned the 18% number. Mr. De La Torre said about 18-20% live in condo or apartments. The 18% is not inclusive of the entire housing product including multifamily.

MR. LEIGH RIVERS, 3737 W. Geronimo, said he is opposed to these code amendments. He referred to the Sacramento, California ordinance on chickens that allows up to 3 hens, and requires a license fee of \$10 per household and a permit fee of \$15 per chicken annually. He said that Sacramento's biggest concern was enforcement. He stated that Section 14-3 of the Code regarding written consent has been Chandler law since 1959. He questioned why this

would be difficult to enforce if it's been in the code this long. He suggested a written permit be looked at. He gave the opinion the right of 45,000 residents would be affected and lose their rights not to live next to chickens.

COUNCILMEMBER HEUMANN asked when the Sacramento law came effective. Mr. Rivers replied 2011.

MR. TRAVIS ALDRICH, 3207 N. Carriage Lane, stated his support for the chickens. He believed it was a right as an American and a freedom issue. He stated he does not live in an HOA and specifically chose that.

MS. LAURA RIVERS, 3737 W. Geronimo, said 18% live in Traditional neighborhoods. She said this is the same 18% that need help from the City Neighborhood Services for other issues such as weeds, noise, and blight. She stated the passing of the ordinances will result in lower property values for 18% of the residents in Chandler as there is a potential to have them. She said chickens are known to spread diseases, the most severe is histoplasmosis. She questioned how enforcement will occur. She asked Council to protect traditional neighborhoods.

MR. JOE POPAY, 732 N. Lisbon, said he originally addressed the Council almost a year ago on this issue. He voiced his support for the proposal and asked for Council's support.

MR. DANE CUTTING, 147 W. Ironwood, said he didn't see the advantage of allowing chickens. He spoke against the proposal and questioned why we would want to add another burden onto code enforcement and police.

MS. MARGIE ALDRICH, 3207 N. Carriage Lane, said she would like to raise a small flock and voiced her support of the proposal.

MR. JAMES BAGGET, JR. 165 W. Ironwood Drive, said he has had chickens as neighbors. He said they do smell and make noise. He gave the opinion that the Council should delay this as it hadn't been advertised much. He suggested a questionnaire be sent to people in the traditional neighborhoods.

COUNCILMEMBER HEUMANN asked about notification efforts. MS. NACHIE MARQUEZ, Communications & Public Affairs Director explained information was sent out on all communication channels – social media, website, listings for HOA, and Traditional Neighborhoods and Channel 11. She said in addition, there have been newspaper articles.

VICE MAYOR SELLERS asked if the information was just placed out this week. Ms. Marquez said they went more aggressive in the communications this week.

COUNCILMEMBER WENINGER commended the efforts and stated Chandler is becoming more and more transparent. He said he also reblasted the information on his media outlets when it came out from the City.

In response to a question from the Mayor, Ms. Marquez said the city did not survey the traditional areas. The Mayor asked what type of survey occurred when the issue of alley collection was addressed. Mr. Patrick McDermott said surveying has been done on moving from alley collection to front yard containers. It was done on more of a localized basis and not area wide.

MS. SARAH CUMMINGS, 1733 E. San Tan, stated her support for the proposal. She said chickens are useful for pest control and are no worse for carrying diseases than other animals. She noted that in any instance, there will be law breakers. She urged Council's support.

MR. DENNIS MITTELSTEDT, 4900 W. Boston Street, stated Chandler does not need another enforcement problem. He stated that chicken feed attracts pigeons. He said this request will open requests for other animals. He asked the Council to oppose it.

MS. RENU KAUR SIDHU, 1082 W. Orchid Lane, spoke in support of the proposal. She felt the arguments were fear based and not information based. She said this is a growing movement and she would like her city to be progressive.

MS. MARGARET ALLEN, 1571 W. Cindy Street, stated her opposition and cited concerns with property value, odor, and noise. She added her concern with the communication on this issue.

MS. DENISE PHILLIPS, 617 N. Tamarisk, said she has had chickens for 16 years. She stated the noise and smell is much less than her dogs and cat. She said she has them as she is an organic gardener.

In response to clarification by the Mayor, MR. DE LA TORRE explained the first ordinance, Ord. 4449, amends the Zoning Code. This amendment will allow hens on single family lots. The second ordinance amends two separate chapters of the City Code. Chapter 11 which deals with disturbing noises and adds unreasonably loud chickens to the list of disturbing noises. The Chapter amendment will repeal Section 14-3 which requires obtaining written consent from residences within 200 feet in order to allow animals that aren't household pets on your property in AG-1 and SF-33.

COUNCILMEMBER HEUMANN asked if the process of a use permit was explored. Mr. De La Torre said there are some cities in other states, such as Denver, had an administrative permit process with a fee. He noted their research was more focused on the cities in Arizona and their process. Planning Staff felt the use permit was an added step that didn't add much benefit to the process and would only determine how many residents are legally keeping chickens.

Councilmember Heumann asked if the two cities that have the permit found their enforcement was easier. Mr. De La Torre said that was not looked at.

COUNCILMEMBER HARTKE asked if this passed tonight, if there would be additional action needed by Council to request a report be given to Council on the issues or problems that have come up. Mr. De La Torre said the Council could direct the staff to report back on the process and enforcement.

COUNCILMEMBER HEUMANN asked if this ordinance passed what action could the Council take in the future. CITY ATTORNEY WADE said if this ordinance passed, it would be a land use right. The land use right could change, but those who had chickens would have a land use right that is vested.

COUNCILMEMBER SELLERS said he has struggled with this issue. He feels it is a favorable thing to allow people pursue a sustainable life style, but does not want to penalize the person next door. He felt the idea of the permit has some value, as there is an immediate remedy if issues arise.

COUNCILMEMBER DONOVAN said she has also inquired about a permit process. She asked if people could be denied the right based on the violations they had under the proposed ordinance. MR. HANKINS said based on the ordinance presented, there is no basis to do so.

MR. ZEDER said more research would be needed if it was Council's desire to pursue a permit process.

MR. HANKINS responded the violation would be a misdemeanor criminal offense. The violator would be issued notice and make attempt to gain access to see if compliance had been achieved. If not complied, and depending on the conditions violated, they would either submit a request to the prosecutor's office to file criminal charges, or if a nuisance violation, it would be a civil complaint and go through the civil court process.

COUNCILMEMBER HEUMANN asked what the time frame is when following a violation. Mr. Hankins said using an actual case, from reporting of the nuisance to the resolution it was about 10 months. That included several attempts to gain access to do inspections.

COUNCILMEMBER HEUMANN asked what the normal time frame for the Zoning Administrator's action if a violation is found on a use permit.

MR. KEVIN MAYO replied that if an administrative use permit was issued, there is still a fact finding process. Regardless if the use is allowed by permit or by right, when a nuisance is identified by a neighborhood, it still is code enforcement. In the event the nuisance is valid, the permit would be revoked. If the nuisance still persisted, it would still be pursued through the court process.

MOVED BY COUNCILMEMBER ELLEN TO INTRODUCE ORDINANCE NO. 4449, ZCA12-0004 URBAN CHICKENS, CITY INITIATIVE TO AMEND CHAPTER 35 OF THE CITY CODE TO PERMIT RESIDENTS TO RAISE CHICKENS ON SINGLE FAMILY LOTS. THE MOTION WAS SECONDED BY COUNCILMEMBER HARTKE.

VICE MAYOR SELLERS commented that while he would like to see this happen, he has not reached the level of comfort to be able to support this.

COUNCILMEMBER HEUMANN said he too has wrestled with this and did not feel he could support the motion. He is wrestling with property rights on both sides.

WHEN THE VOTE WAS CALLED, THE MOTION FAILED FOR LACK OF MAJORITY (3-4 with Mayor Tibshraeny, Vice Mayor Sellers and Councilmembers Heumann and Weninger voting nay).

COUNCILMEMBER HEUMANN asked if a motion for use permits could be offered tonight. MR. ZEDER said he believed if the Council wished to amend the ordinances as presented, they would need to come back.

CITY ATTORNEY WADE said as the motion has been denied, it is not on the table. She noted there would have to be action on the companion ordinance. The ordinance would have to be reconsidered and then amended. She said from what has been discussed, she believed the staff would need to come up with some ideas to offer some suggestions.

COUNCILMEMBER HEUMANN MADE A MOTION TO CONTINUE ORDINANCE 4457 TO THE JUNE 27, 2013 COUNCIL MEETING TO ALLOW TIME TO BRING FORTH OPTIONS ON USE PERMITS. THE MOTION WAS SECONDED BY VICE MAYOR SELLERS.

CITY ATTORNEY clarified that the motion would be in relation to the second ordinance.

MR. ZEDER commented that if Council desired use permits, it would need a zoning code amendment. He believed a new ordinance would be needed. City Attorney Wade agreed. Action would be needed on the second ordinance and then staff would be bringing back a new ordinance that addressed use permits.

In response to a question from COUNCILMEMBER DONOVAN, MS. Wade stated that while the first ordinance was denied, Council could direct staff to bring forth a new ordinance. The second ordinance also needs to be denied or continued. The second ordinance addresses the enforcement of the nuisance.

COUNCILMEMBER HEUMANN asked if the previous motion could be revoked. Ms. Wade said that the Council could reconsider the ordinance.

COUNCILMEMBER HARTKE asked if the revisions would need to go back to Planning & Zoning Commission. MS. WADE responded Ordinance 4457 does not have to as it's the enforcement ordinance.

COUNCILMEMBER DONOVAN asked if the ordinance for use permits would need to go back through Planning Commission. Mr. Kevin Mayo said Ordinance No. 4449 failed and if that were to be reintroduced at another hearing, he believed Statute would require another public hearing. Either Ordinance No. 4449 would need to be reconsidered and then continued to another meeting with the direction to staff to bring back another option, or it would be a new ordinance that requires the Planning process over.

Ms. Wade said the reconsideration must be done within 30 days.

MAYOR TIBSHRAENY asked Councilmember Heumann what he envisioned through the use permit process. Councilmember Heumann replied he was looking for an administrative process that didn't have to come back through the Council or Planning Commission.

COUNCILMEMBER ELLEN clarified if Councilmember Heumann was suggesting people have a permit to have chickens. Councilmember Heumann said through these discussions, there seems to be a need for checks and balances. The permit process seems to be a workable solution. He said in his opinion, the permit process could have more "teeth" in terms of revocations.

COUNCILMEMBER HEUMANN WITHDREW HIS MOTION, WITH THE CONSENT OF THE SECOND.

COUNCILMEMBER HEUMANN MOVED THAT ORDINANCE NO. 4449 BE RECONSIDERED. THE MOTION WAS SECONDED BY VICE MAYOR SELLERS. THE MOTION CARRIED BY MAJORITY (6-1 Councilmember Weninger voting nay).

COUNCILMEMBER HEUMANN MOVED TO CONTINUE ORDINANCE NO. 4449 AND ORDINANCE NO. 4457 TO THE JULY 11, 2013 COUNCIL MEETING TO ALLOW STAFF ADDITIONAL TIME. THE MOTION WAS SECONDED BY VICE MAYOR SELLERS.

COUNCILMEMBER HEUMANN said he would like staff and the City Attorney to research and work on an administrative process that would allow urban chickens.

COUNCILMEMBER DONOVAN asked if this would have to return to the Planning Commission. MR. ZEDER said that it would depend as staff would need to research options. A recommendation would come forward in July with options for approval, to request more time, or to refer back to Planning Commission.

COUNCILMEMBER WENINGER said whether he supports it or not, he would not want someone to have to pay money on the permit.

COUNCILMEMBER ELLEN said she agrees with Councilmember Weninger that she would not want the residents to go through the trouble to get a permit and to spend money as that is not the process with dogs or cats. The process should be simplified to allow residents to have chickens.

WHEN THE VOTE WAS TAKEN, THE MOTION TO CONTINUE THE ORDINANCES TO THE JULY 11, 2013 COUNCIL MEETING WAS APPROVED BY MAJORITY (4-3) Mayor Tibshraeny and Councilmembers Ellen and Weninger voted nay.

Adjournment: The meeting was adjourned at approximately 11:05 p.m.

ATTEST: _____
City Clerk

Mayor

Approved: June 13, 2013

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the City Council of Chandler, Arizona, held on the 23rd day of May 2013. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this _____ day of June, 2013.

City Clerk