

MINUTES OF THE WORK SESSION OF THE TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, HELD OCTOBER 7, 2010 AT 6:00 P.M. IN THE TOWN COUNCIL CHAMBERS.

Mayor Smith called the Work Session to order at 6:00 p.m. Roll call was taken as follows:

<u>ROLL CALL:</u>	<u>Present</u>	<u>Absent</u>		<u>Present</u>	<u>Absent</u>
Mayor Luke Smith	<u>X</u>	<u>    </u>	Stephanie Irwin	<u>X</u>	<u>    </u>
Vice Mayor Rich Crockett	<u>X</u>	<u>    </u>	Kim Webb	<u>X</u>	<u>    </u>
Woody Biscoe	<u>    </u>	<u>X</u>	Leslee Wessel	<u>X</u>	<u>    </u>
Norris Dodd	<u>X</u>	<u>    </u>			

STAFF PRESENT:

Kelly Udall, Town Manager; Rosemary Rosales, Town Attorney; Lu Anne Frost, Town Clerk; and Woody Eldredge, Chief of Police.

AN ORDINANCE ADOPTING TOWN CODE CHAPTER 8.16, "FIREWORKS" BY ADDING REGULATIONS FOR THE USE OF FIREWORKS:

Chief Eldredge stated this Ordinance is in response to the State Law, effective in December, which would allow for the sale and use of certain types of fireworks in the Town of Pinetop-Lakeside. He said it is staff's request that the use of fireworks be prohibited in the Town. He said, unfortunately, they could not prohibit the sale of fireworks. He said there is a section of the law on permissible consumer fireworks, which excludes anything that goes in the air or explodes. He went over the permissible fireworks per the state law. He stated they have had several meetings with the Fire Marshalls of the Pinetop and Lakeside Fire Districts, and said they have come to an agreement as to their concerns. He said they wanted the Police Department to co-sign any permits, so they know the Town is not opposed to the permit. He stated both the Police Chief and Fire Marshall would approve permits. He said they were also concerned with the enforcement aspect. He said they do not want to go into someone's back yard to issue a citation for the use of fireworks. He said it was never the intention of the Ordinance to have the Fire Marshalls or Fire Departments issue citations, but said the state law allows them, along with the Town Attorney, to issue civil citations. He said only the Police Department and Town Attorney could issue criminal sanctions under the law. He said the Ordinance sets penalties for violations for the use of fireworks. He said anyone over the age of 16 could buy them. He said the State Fire Marshall would design the signage for sellers. He stated it also gives the Town the ability to charge up to \$250,000 for a single incident if a fire starts from the illegal use of fireworks. He stated the Council could change that amount. He stated the counties could not restrict the use of fireworks in unincorporated areas of the counties, except during times of extreme fire danger. He said the law allows permits for commercial firework displays, under Fire Department supervision.

Councilmember Wessel stated a concern about taking the fireworks into the forest. Rosemary Rosales stated fireworks probably are not allowed on federal land. Kelly Udall stated Ms.

Rosales and Chief Eldredge worked closely with the City of Show Low so the Ordinances would be similar. He stated the definitions are the same, the liability is the same; and the salient points are the same. He stated Show Low has passed their Ordinance.

Mr. Udall stated staff is looking for any changes from the Council, so when it comes back for adoption it is ready. Mayor Smith asked if the \$250,000 fine would hold up in court. Ms. Rosales stated it is part of the statute, and said it gives the public notice that if they violate the law they could be liable up to \$250,000. Mayor Smith asked how they would assess it. Ms. Rosales stated there would be a restitution hearing to establish the assessment. Mr. Udall stated it is just for expenses to respond to the emergency, not for personal property. Ms. Rosales stated it is similar to the “stupid motorist law,” which has held up. Vice Mayor Crockett clarified the permits would be issued by both the Police Department and Fire Departments. He asked if they would be separate permits. Chief Eldredge stated both entities would sign the same permit. Ms. Rosales stated they want to be sure the Town is informed of any permits issued. Chief Eldredge said the Fire Districts' concern was issuing a permit without the Town's consent. Vice Mayor Crockett asked if they should define the Fire Marshall as the District Fire Marshall, and indicate which District. Ms. Rosales stated she would look into that.

ORDINANCE NO. 10-343 AMENDING TOWN CODE CHAPTER 6.04 ANIMAL CONTROL, TO INCLUDE SECTION 6.04.290 WILD ANIMALS:

Mayor Smith stated they discussed this Ordinance at the last meeting, and said they provided direction to staff. He asked if there were any additional comments. Ms. Rosales suggested they delete paragraph 1 and begin with paragraph 2. She stated her concern about paragraph 1 is that it makes it a strict liability where they could cite anyone for leaving garbage out. She stated if a person does not know about the wildlife situation and puts trash out, they could be cited immediately. She said she does not know if the Council wants to be so extreme. Mayor Smith stated they want to send the message of what should be done. Ms. Rosales stated this Ordinance began at the County level, and said it was built on by Show Low and then by Pinetop-Lakeside. She said it refers to a property owner and excludes renters or guests in someone's home. She stated they might want to change the language to an “individual who fails to” rather than property owner. Councilmember Wessel stated the Game & Fish people wanted to have something to go by to take care of the ones they warned. She stated they have all learned by experience. Chief Eldredge stated the enforcement aspect was the last resort, and said the intent was for this to be an education process. He said he could not think of an incident where they would immediately cite someone, unless they absolutely refused to abide by the law. Vice Mayor Crockett stated Maricopa and Pima Counties have only enforced their similar ordinances twice. He said he is concerned about putting an Ordinance on the books they would not use. Chief Eldredge stated he wondered how many times they have actually spoken to people about the Ordinance without issuing a citation. Councilmember Wessel asked if they could make changes and still adopt the Ordinance tonight. Mr. Udall stated they could remove it from the consent agenda, make changes, and still adopt it. Ms. Rosales explained paragraph 2 allows the Town to put a person on notice and then cite them for anything they are doing to attract animals. Mayor Smith stated it is important to have both paragraphs, as paragraph 1 specifies the things they know would attract animals. He stated it affords an opportunity for remedial action and education. Vice Mayor Crockett stated paragraph 1 indicated they would be guilty of a civil

violation. Mayor Smith stated enforcement is always an issue, but said this Ordinance should reflect what they are trying to achieve. Mr. Udall stated the Police Officers have a level of interpretation based on circumstances, and said he thinks they make good judgment calls. He said when they do issue citations, they have a good reason for the citation. Ms. Rosales stated it was brought to her attention that they must publish a notice of hearing on this Ordinance, as it is a change to the Town Code. She stated they would bring it back to the Council the first meeting in November, along with the changes the Council recommended.

ITEM NO. 6, COUNCIL DECISION REQUEST TO CALL THE 2011 TOWN PRIMARY AND GENERAL ELECTIONS, TO BE HELD ON MARCH 8 AND MAY 17, 2011 RESPECTIVELY:

Lu Anne Frost stated there are two upcoming elections in the spring of 2011. She stated there are three incumbents eligible to run, Vice Mayor Crockett, Councilmember Dodd, and Councilmember Wessel. She stated Referendum 09-016 was filed on the Stone Bridge project, and said they anticipate receiving Initiative 10-018 for the acquisition of Woodland Lake Park, which must be filed by November 8. She stated Home Rule and the General Plan update would also be on the ballot. She stated it is the Council's decision how these items are placed on the ballots. She stated they could decide to put the referendum and initiative on the primary ballot, and said they could put Home Rule and the General Plan update on the General ballot; or said they could put them all on the Primary ballot. She stated the Council Candidate Packets would be available November 8, and said they are due back by December 8. Councilwoman Wessel stated if they put everything on the Primary ballot, there might not be a need for the General Election, which would save the Town money. Ms. Frost reminded the Council that Navajo County would conduct the elections using the mail ballot process. Mayor Smith stated he felt that due to the importance of Home Rule and the General Plan update, they should be on a separate ballot from the Council election. Councilmember Dodd asked the ballpark cost of an election. Ms. Frost stated approximately \$5,000 to \$7,000. She stated a publicity pamphlet is required anytime there is an issue, other than a Council election, on the ballot. She stated a publicity pamphlet costs approximately \$3,000. She stated there is a \$200 fee for any arguments submitted in the publicity pamphlet.

Paul Esparza stated if they were to put the General Plan update on the General Election ballot it would allow the citizens additional time to study and provide input on the update, and said it would allow staff additional time for the educational process. Mr. Udall stated it is his recommendation to place Home Rule and the General Plan update on the General Election ballot.

The Work Session adjourned at 6:56 p.m.

Dated this 14th day of October 2010.

PINETOP-LAKESIDE TOWN COUNCIL

/s/ Lu Anne Frost, Town Clerk