

DRAFT

**REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF EL MIRAGE
EL MIRAGE CITY COUNCIL CHAMBERS
10000 N. EL MIRAGE ROAD
6:00 PM -THURSDAY, FEBRUARY 18, 2021**

Minutes

1. ROLL CALL

Present: Mayor Alexis Hermosillo; Vice Mayor Roy Delgado; Councilmember Monica Dorcey; Councilmember Anita Norton; Councilmember Kallimayor Richards; Councilmember David Shapera; Councilmember Donna Winston (via phone)

2. CALL TO ORDER - The meeting was held online and publicly with limited access; called to order at 6:00 pm.

Pledge of Allegiance
Moment of Silence

3. PRESENTATION

1. Presentation by Christina Estes-Werther (Pierce Coleman, PLLC) to provide updates on Proposition 207, "Smart and Safe Arizona Act," for review and discussion. (City Attorney)

City Attorney Justin Pierce introduced Ms. Christina Estes-Werther who recently joined Pierce Coleman PLLC, after most recently working as Counsel for the Arizona League of Cities and Towns. Ms. Estes-Werther presented an overview of Proposition 207 (Smart and Safe Arizona Act) which passed in November, 2020. She provided a timeline of Marijuana activities/approvals in Arizona to include Proposition 203 (Medical Marijuana Act) that was passed in November, 2010, Arizona Department of Health Services (DHS) adopted rules on January 15, 2021, DHS license acceptance for marijuana establishments on January 19, 2021, DHS approval of approximately 70 applications by dispensaries to operate as marijuana establishments on January 22, 2021, deadline for DHS to accept marijuana establishment licensing applications is March 9, 2021, a marijuana establishment may submit an application to DHS to request a change to the retail, manufacturing, or cultivation site or add a manufacturing or cultivation site prior to April 1, 2021, and a date for DHS to promulgate rules and the open application period for social equity licenses has yet to be determined.

Ms. Estes-Werther explained the definitions between medical and recreational marijuana and the differences between dispensary types (non-profit medical marijuana, marijuana establishment, and a marijuana testing facility). She noted that marijuana remains a Schedule 1 drug of the Controlled Substance Act under Federal Government laws though relaxed enforcement standards are anticipated as more states approve marijuana use. She explained the licensing requirements of dispensaries and establishment/testing facilities by stating The American Medical Marijuana Association (AMMA) requires DHS to license marijuana dispensaries, and includes provisions for inventory control, laboratory testing, recordkeeping, security, etc. Dispensaries must also comply with cities' zoning restrictions and DHS may not issue more than one registration certificate for

every ten pharmacies She further explained Proposition 207 requires DHS to adopt rules to implement and enforce the Act and regulate marijuana activities including products, establishments and testing facilities pursuant to A.R.S. §36-2854(A).

Ms. Estes-Werther reviewed medical and recreational dispensary license allocation processes, explained DHS regulations for licensing establishments for new applicants and requirement exceptions for dual license applications, and discussed the zoning of Medical Dispensaries pursuant to A.R.S. §36-2804 which includes an AMMA requirement that dispensaries must not be within 500 feet of a public or private school existing before the date of the licensing application. She explained cities may enact reasonable zoning regulations that limit the use of land for establishments or testing facilities, or both, but a city may not enact any ordinance, regulation or rule that is more restrictive than a comparable ordinance, regulation or rule that applies to dispensaries.

Ms. Estes-Werther identified the City of El Mirage's medical marijuana permitted uses by zone and the conditional use by zone, and included reference to the City's Resolution R20-10-21 and Ordinance O20-10-08 adopted October 20, 2020 prior to the November General Election where recreational use of marijuana was a ballot item. The adopted City Resolution and Ordinance were intentionally prohibitive to allow for future exceptions or relaxation of prohibitions depending on the result of the ballot measure. With the passage of Prop 207, she explained five options the City has for marijuana establishments and testing facilities, 1) take no action which preserves current prohibitions on recreational marijuana establishments, (except for dual licensee) and preserves the ban on testing facilities, 2) gather more information and wait for additional rules from DHS on social equity licenses, 3) repeal the existing prohibition and allow all types of marijuana establishments authorized under State law, 4) repeal restriction on marijuana testing facilities, or 5) repeal the prohibition on both marijuana establishments and testing facilities. She closed the presentation by outlining the next steps should the City decide to allow all types of marijuana establishments to operate in the City.

Councilmember Shapera asked if hazardous chemicals involved in manufacturing were currently regulated by the State and County. Ms. Estes-Werther responded the Act itself is very general, it refers to abiding by safe and healthy requirements and the provision for Federal, State, and local municipalities allows cities to look at their own building codes pertaining to manufacturing.

Councilmember Shapera recommended option three from the five options provided (repeal the existing prohibition and allow all types of marijuana establishments authorized under State law) and felt a testing laboratory was not cause for concern. **Vice Mayor Dorcey** asked if a retail establishment and a medical dispensary can be on the same site and Ms. Estes-Werther confirmed yes stating it falls under a dual licensing. **Councilmember Norton** asked for an explanation regarding delivery law restrictions of marijuana. Ms. Estes-Werther responded the Act currently prohibits delivery, which is defined as delivering from the establishment to the consumer. By January, 2025 DHS is required to adopt rules to permit and regulate delivery by marijuana establishments. **Councilmember Hutchinson** clarified with Ms. Estes-Werther that delivery restrictions are under State law and if the City opted to repeal the marijuana delivery instructions from its code, State law overrides the City's code. **Councilmember Delgado** asked if there was a timeframe for purchasing the regulated recreational one ounce of marijuana. Ms. Estes-Werther stated, unlike the medical provision that required a fourteen-day period between purchases not to exceed 2.5 ounces, there is no timeframe for recreational use. **Councilmember Hutchinson** clarified with Ms. Estes-Werther recreational dispensaries are not responsible for tracking the number of times a consumer purchases their allowable one ounce and testing facilities follow State requirements before being allowed to sell to the consumer. **Councilmember Winston** agreed with Councilmember Hutchinson and stated the City should be proactive and not restrictive. **Vice Mayor Dorcey** recommended reviewing the current Ordinance for language revisions. **Mayor and Council** concluded that a work session was not necessary in light of the information Council has received and this very thorough presentation and asked Staff to draft an ordinance for review and action as a future Council meeting.

4. CALL TO THE PUBLIC

Citizens desiring to speak on any issue within the jurisdiction of the public body may do so at this time. Comments shall be limited to three minutes per person and shall be addressed to the City Council as a whole. At the conclusion of the Call to the Public, individual City Council Members may (1) respond to criticism made by those who have spoken, (2) direct staff to review or follow up on the matter, and/or (3) direct that the matter be put on a future agenda.

Resident Mr. Steve Gilliam expressed gratitude to Mayor, Council, and City staff for their efforts regarding the correct placement of trash containers on sidewalks. He further referred to a pending complaint he had filed with the Attorney General's office. He expressed his concerns regarding City residents not being held accountable for violating City Code (basketball goals placed on sidewalks, unauthorized vehicle parking).

5. CONSENT AGENDA

All items listed under the Consent Agenda will be voted on with one motion. If discussion is desired regarding any Consent Agenda Item, that item will be removed from the Consent Agenda and voted on separately.

1. Consideration and action to approve the minutes of the Council Work Session and the Regular Council meeting held Tuesday, February 2, 2021. (City Clerk)
2. Consideration and action to authorize the purchase of five refrigeration/freezer monitors/probes for use in the PD Property & Evidence from Sensoscientific at a one-time total cost of \$1,380 for the equipment and a not-to-exceed annual cost of \$250 for Support & Maintenance, including alert notifications, for a period of 5 years. (Police Department)
3. Consideration and action to authorize the City Manager to enter into a construction contract with AJP Electric, Inc. to install a new traffic signal at the intersection of Dysart Road and Acoma Drive in an amount of \$582,529 including a 10% contingency. (Community Development)
4. Consideration and action to approve The Legacy Final Plat submitted by SKG Enterprise, Inc. for a Single Family Use development located at 11201 North El Mirage Road, El Mirage, Arizona 85335. (Community Development)
5. Consideration and action to authorize the City Manager to enter into a Professional Services Contract with CivicLens to provide Geographical Information System (GIS) support in the amount not to exceed \$5,000 annually.(Community Development)
6. Consideration and action to request Arizona Lottery Funds (ALF) from Valley Metro in an estimated amount of \$92,467 for local and regional dial-a-ride services with Northwest Valley Connect, Valley Metro and/or another provider for FY2021 and authorize the Finance Director to transfer funds and make necessary changes. (Grants)

Vice Mayor Dorcey moved to approve items 1-6 on the Consent Agenda as presented; seconded by Councilmember Shapera.

Vote: 7 - 0 Passed - Unanimously

6. **REGULAR AGENDA**

1. Consideration and action to recommend a rate from the recent study for sanitation services, including or excluding recycling, to be posted along with other fee changes in compliance with Arizona Revised Statutes. (Public Works)

Public Works Director Nick Russo presented to Council an overview of the recent rate study for sanitation services, including or excluding recycling, as discussed at the February 2, 2021 Council Work Session. Mr. Russo identified two Council requests for additional information, 1) what is the average tonnage of items collected/recycled, and 2) do these items actually get recycled and what happens to the items once they go from Parks & Sons to the recycler. He explained data collection compiled with Parks & Sons on December 7, 2020, determined a monthly City average of 255 tons of items collected from the blue recycling containers. On December 10, 2021, Parks & Sons and Friedman Recycling confirmed that 42%-47% of items are actually recyclable after processing. This equates to 107-120 tons of items produced by El Mirage residents each month being diverted from the landfill. Mr. Russo explained the recycling vendor bales and sends out processed items directly to the appropriate mills; all the material is shipped out on a continuous basis. He refreshed Council on the three sanitation rate options provided at the February 2, 2021 Council Work Session: 1) discontinue recycling and keep the current rate of \$13.23 per month (fund goes negative in FY2025); 2) discontinue recycling and increase the rate to \$15.21 per month (fund goes negative in FY 2031); or 3) keep recycling and increase the rate to \$18.52 per month (fund goes negative in FY 2030). Mr. Russo concluded his presentation by stating that if Council agreed on a rate increase, a Notice of Fee Change would be presented to Council at the March 16, 2021 Council meeting, followed by a 60-day period for public input, and a proposed final adoption of a new fee would be presented to Council at the May 18, 2021 Council meeting. Any newly adopted fees would take effect on July 1, 2021.

Councilmember Shapera asked if vendors receive revenue for recycled items they send to the mills. Mr. Russo responded he had not addressed this question to the vendor and could only assume they received some revenue. Finance Director Robert Nilles explained the rates provided by Parks & Sons reflected fees for continuance of recycling and discontinuance of recycling, so any revenue would have been factored into the charges. **Councilmembers Hutchinson and Shapera** agreed rate option number two seemed to be the most cost effective approach moving forward.

Vice Mayor Dorcey, Mayor Hermosillo, and Councilmember Delgado believed the recycling program needed to remain in place with an emphasis on educating the Community to reduce the contamination rate through an education campaign. **Councilmember Norton** believed the volume of items currently being recycled was significant and efforts should be made to continue to educate the Community. **Councilmember Winston** believed recycling is important for both landfills and the environment for future generations and she stated that removal of the recycling program, and then possibly reinstating it later, could make the education piece difficult. **Councilmember Shapera** expressed his support for recycling but had concerns with the effectiveness of education.

Vice Mayor Dorcey moved to approve the recommended rate of \$18.25, (including recycling) to be posted along with other fee changes in compliance with Arizona Revised Statutes; seconded by Councilmember Norton.

AYES - Mayor Hermosillo, Vice Mayor Dorcey, Councilmembers Delgado, Norton, and Winston

NAYS - Councilmembers Hutchinson and Shapera

Vote: 5 - 2 Passed

7. **EXECUTIVE SESSION**

1. Consideration and action to adjourn into Executive Session pursuant to A.R.S. § 38-431.03.A.1. and A.3. for discussion and consultation for legal advice with the City Attorney on Council communications with other government agencies. (Mayor)

Vice Mayor Dorcey moved to adjourn into Executive Session pursuant to A.R.S. § 38-43.03.A.1 and A.3 for consultation and legal advice with the City Attorney on Council communication with other government agencies; seconded by Councilmember Shapera.

Vote: 7 - 0 Passed - Unanimously

8. **CITY MANAGER'S COMMENTS & SUMMARY OF CURRENT EVENTS**

The City Council may not act upon any matter in the City Manager's summary but may have general comment or questions. ***NOTE: This item was presented prior to the Execution Session adjournment.***

City Manager Dyches stated effective Monday, March 1, 2021 the City of El Mirage will be resuming in-person services.

9. **MAYOR'S COMMENTS and COUNCIL SUMMARY OF CURRENT EVENTS**

The Mayor and City Council may not discuss or act upon any matter in the summary unless the specific matter is properly noticed for legal action. ***NOTE: This item was presented prior to the Execution Session adjournment.***

Councilmember Delgado commented the City was not eligible to apply for CDBG funding for Fiscal Year 2021 because of the two-thirds funding rule. There was expected to be approximately \$2 million in awards this year and applications were submitted for scoring.

Councilmember Shapera expressed his pleasure at seeing the roads in his surrounding area being prepped for maintenance. He stated it reflects the City's concept to fix roads annually on a rotating system is working.

Councilmember Winston expressed her appreciation to Police Officers Patterson and Williams on behalf of her neighbors and herself for a job well done.

Mayor Hermosillo congratulated City Clerk Sharon Antes and Councilmember David Shapera on their recent birthdays.

10. **ADJOURNMENT - The meeting was adjourned at 8:11 pm.**

Alexis A. Hermosillo, Mayor

ATTEST:

Sharon Antes, City Clerk

I hereby certify the aforementioned minutes are a true and accurate record of the Regular El Mirage City Council Meeting held on Thursday, February 18, 2021 and a quorum was present.


Sharon Antes, City Clerk