

**WORK SESSION OF THE COMMON COUNCIL
OF THE CITY OF EL MIRAGE
EL MIRAGE CITY COUNCIL CHAMBERS
10000 N. EL MIRAGE ROAD
5:00 PM – TUESDAY, OCTOBER 17, 2017**

Minutes

I. ROLL CALL

Present: Mayor Lana Mook, Councilmember Bob Jones, Councilmember Roy Delgado, Councilmember Lynn Selby, Councilmember Jack Palladino, Councilmember David Shapera

II. CALL TO ORDER

The meeting was called to order at 5:01 pm.
Pledge of Allegiance
Moment of Silence

P1. Presentation by City Prosecutors Mike and Tom Parascandola with an update on City prosecution responsibilities and accomplishments (Administration)

Michael and Thomas Parascandola are a family of lawyers born and raised in the Northwest Valley and have been the City Prosecutors for the City of El Mirage for 12 years. Together they have 47 years of municipal prosecution experience and gave a PowerPoint presentation on their functions at the El Mirage Court and recent accomplishments.

The Prosecutor's Office evaluates, manages and prosecutes misdemeanor criminal cases with the goal of administering justice in an equitable, efficient, and expeditious manner while advocating for victim rights. Prosecutor functions include promoting justice, representing society, ensuring victim rights are followed, advocating for victim safety, restitution and perpetrator accountability. They also file criminal charges, review cases for legal and factual sufficiency, administer plea negotiations, provide legal motions and appeals, litigate jury and bench trials, review legislation/case law, and advise the Police Department.

Law enforcement agencies they work with are Police Departments, Code Enforcement, Animal Control, Sheriff's Office, Registrar of Contractors, Department of Public Safety, the County Attorney's Office and Victim's Assistance. They also work with the El Mirage City Court, Maricopa Superior Court, Arizona Court of Appeals and the Arizona Supreme Court. Cases they prosecute include misdemeanors that occur in the city limits. They do not prosecute felonies. Cases prosecuted include domestic violence, disorderly conduct, shoplifting/theft, drug and alcohol offenses, assault and threat, criminal damage, contracting, code and zoning, traffic and DUI.

They have streamlined the criminal justice process by providing improved victim safety, increased case resolutions, efficient use of city court resources, greater victim and witness participation and defense satisfaction. They have accomplished implementing Diversion Guilty Plea Agreements for nonviolent first-time offenders, rehabilitation programs (education/counseling) preventing devastating convictions and protecting victims, and case resolution/conviction if unsuccessful with agreement terms. Under DUI, they provide evidence (blood/breath), search warrants – refusals, jail and alcohol/drug counseling while cooperating with DPS. They are compliant with state reporting.

They have provided a Body Worn Camera Policy, identified cases for home detention, made improvements in the use of technology in the court system, done continuous monitoring of warrant cases, and provided Police training. They identify and refer mental health cases and provide case disposition (Evidence Management and Transparency). Case volume has increased from approximately 1,300 in FY 11/10 to approximately 1,700 in FY 17/18.

Mayor Mook asked if these cases involved repeat offenders or first-time offenders and Mike Parascandola answered there were various situations. Some have been here a while and have been through the system. Domestic violence is insidious and many are repeat offenders growing more violent each time. Shoplifters are another common offender.

Mayor Mook thanked Mike and Tom Parascandola for updating the Council with this presentation and on their role as prosecutors for the City.

17. Presentation not for action regarding implications, legal and otherwise, for two recent Request for Council Agenda Submittal forms received by the City Attorney from Councilors Shapera and Selby. (City Attorney)

Councilor Shapera made a motion to remove section P-2 from the amended agenda; seconded by Councilor Selby. Mayor Mook asked why and Councilor Shapera responded it was not necessary. When Attorney Hall asked for clarification Councilor Shapera responded he made a motion to remove it because it is a Council agenda item. Attorney Hall stated it is not an action item because this is a Work Session with no action to be taken.

Attorney Hall reported that for one of Councilor Shapera's requested agenda items he obtained the services of the Southwest Risk Pool. The information to be provided would be informational and Attorney Hall suggested the item be explained and the Risk Pool Attorney be given the opportunity to make his presentation. The request in question was quoted as follows: "Council consideration and action to change City Code § 31.20 City Manager under Section 2, to delete Fire Chief and Police Chief from the section." Under the heading Brief history/description of the matter for consideration, the request was quoted as follows: "Insert new § 31.20 Section 2a as 'The Police Chief and the Fire Chief will be appointed, removed, suspended and demoted subject to all applicable personnel ordinances, rules, ordinances and regulations by a majority vote of the City Council'." A line at the bottom of the request is provided for City Attorney approval as to form and Mr. Hall explained that one of the reasons it was not yet signed was because the request required more research. Councilor Shapera recommended the item be pulled

and go on a future agenda and he asked if the City Attorney was saying he does not have the right, as a Councilperson, to remove this section from this portion of the agenda. Attorney Hall responded he did not know if he does not have the right but the information to be provided by the Risk Pool is excellent and relevant information and it will be the same information if put on a future agenda; since the Risk Pool attorney is here he recommended hearing it now. Mayor Mook stated the information is critical for residents, citizens and employees to hear and she is very concerned that Council would not like to obtain valuable information on personal liability issues from the company the City pays to represent them on these kinds of services. She stated she could see no reason why Council should not listen to the Risk Pool attorney's opinion concerning an item that may or may not come up in the future and for citizens and employees who are here to receive that information. Councilor Shapera disagreed. Mayor Mook stated Mr. Arnson from the Risk Pool will move forward with his presentation at this time.

Mr. Aaron Arnson stated he works for the firm of Pierce Coleman Law and is a Southwest Risk Pool attorney who represents municipalities. When a City is sued for employment discrimination or there is an employment issue, their firm is assigned by the Risk Pool to represent them. Mr. Arnson stated he is not here in the role of an advocate but to address the purview and supervision of the Fire and Police Chiefs. Councilor Shapera addressed Mr. Arnson and stated there was nothing said in the request about the Fire and Police Department supervision, only the hiring and firing of the Fire and Police Chiefs. Supervision and operations of the departments would stay with the City Manager as in the current code; he was only referencing a change for the Council to hire/fire either of the Chiefs.

Mr. Arnson responded that some issues are legal, some issues are practical and some issues are procedural. He explained the first issue is legal and there is increased risk of liability should oversight, including hiring and firing authority, be retained by the Council instead of the City Manager. If the City Council directly supervises the Police Chief and/or Fire Chief, any Council actions, and in some cases their inaction, could put them at great risk for drawing personal liability due to the nature of their work.

Importantly, for each Councilmember is the issue of personal legal liability. City Councilmembers are absolutely immune from damages for their legislative acts. Absolute immunity means not being liable for damages in a lawsuit. Legislators, however, are not immune when their decisions are administrative rather than legislative. He stated, for example, a legislative act would be passing an ordinance; an administrative act is the everyday running of business. When oversight of hiring and firing of Police and Fire Chiefs goes to the City Council, the interpretation could be made that it is an administrative action rather than a legislative policy action, if not outright, at least implicitly, thus subjecting individual Council members to personal liability.

With respect to personal liability, different sorts of liability attach to Section 1983 lawsuits for individual lawmakers that don't attach to municipalities. Municipalities can be liable for compensatory damages and there are no punitive damages that attach to 1983 lawsuits. However, individual lawmakers that are found personally liable for Section 1983 violations for punitive damages are something to be concerned about.

Mayor Mook asked for explanations of those types of damages. Mr. Arnson reported there are numerous types of damages in court for emotional distress or damage to reputation or health; a municipality can be liable as well as lawmakers and there are caps. Damages vary and can be opposed by a judge or jury. Punitive damages, however, are applied simply when a judge or jury believes someone needs to pay for their actions and is a form of punishment for what a judge or jury perceives to be a wrongful act taken by an official policymaker. Punitive damages depend on circumstances, facts and what the payment capacity is of the individuals who have been charged with the punitive damages award and they can be very high - in the thousands, hundreds of thousands or millions of dollars. Mr. Arnson stated he could not speak to the exact provisions of the City's coverage but suggested contacting the Risk Pool to determine whether there would be individual Councilor coverage if the Council decided to move forward with this action.

Mr. Arnson continued by stating there is also a practical, managerial perspective to making such a decision. He spoke to the potential confusion of the Police and Fire Chief reporting to six or seven rotating Council members disrupting continuity and there being uncertainty over policy and/or political ramifications. Given that personal and municipal liability could be on the line, he cautioned Councilors to clearly distinguish between policy making and administrative actions. In addition, he mentioned the legal implications of violating the City Manager's contract relative to certain duties enumerated in the contract as well as in the City Code regarding the City Manager's responsibilities which could possibly be a breach of contract.

Councilor Shapera thanked Mr. Arnson for his presentation, but stated there was nothing stated about managing the Police and Fire Departments. Mr. Arnson pointed out that the primary issues are not management issues, they are legal issues related to the fact when a Council oversees the hiring and firing of the Police and Fire Chiefs, there is the possibility of that legal ramification and final decision making authority that could lead to municipal and personal liability under Section 1983.

Considerable discussion followed between Councilors Shapera, Delgado and Jones, Dr. Isom and Mr. Hall involving timing of requests for Council Agenda submittals, postings, responses or lack of responses, accusations of collusion and stalling, outside influences and pressures, pending potential open meeting law violations, and the time required to properly vet and research requests with respect to providing Council with accurate legal advice for making sound policy decisions. Mr. Hall stated Mr. Arnson was brought in from the Risk Pool to provide Council with expert advice on an item that two Council members brought forward for action which he believed could pose serious liability concerns for individual Council members.

Mr. Hall then reported on the second request for Council action item submitted by Councilors Shapera and Selby which he did not approve for this agenda. The second request in question was quoted as follows: Consideration and action for "The immediate termination of employment of Attorney Robert Hall and appoint attorney Calvin N. Brice as temporary city attorney as provided by El Mirage City Code § 31.24 Section D." Under the heading Brief history/description of the matter for consideration, the request was quoted as follows: "City Code § 31.24 Section A allows the City Council to appoint

a city attorney. Section D allows for the removal of a city attorney.” Mr. Hall then read Sections A and D of Section §31.24 City Attorney in the City Code:

“Section A. Appointment. The City Attorney shall be appointed by the City Council and shall report directly to the City Council. The Mayor shall act as the direct supervisor of the City Attorney for purposes of day-to-day supervision.

Section D. Removal procedure. The City Attorney may be removed, with or without cause in accordance with the contract terms, upon a majority vote of the full City Council.”

Mr. Hall stated his contract with the City was a simple Letter of Agreement that has been in effect since January, 2011 which he read for the record: “Dr. Isom, I appreciate the opportunity to work with the Mayor and Council, you and the staff of El Mirage. This is to confirm my understanding of our discussion relative to an interim appointment as the City Attorney to be at the pleasure of the Mayor and Council on a month to month basis. I will attend the regularly scheduled council meetings on the second and fourth Thursdays of each month (*the meetings were subsequently changed to the first and third Tuesday of each month*). The minimum bill for those weeks is \$3,500 each week. Telephonic consultations will be held with the Mayor, Council Members, you, and other staff members on an as-needed basis, usually scheduled at mutually convenient times. The City will pay me at the rate of \$160 per hour based on one-tenth increments, along with reasonable out of pocket costs, to be billed and paid monthly. The City will reasonably insure me with liability and legal malpractice insurance policies for work and activities related to this interim period. If these terms are acceptable, please acknowledge my appointment as the City’s interim City Attorney by affixing the appropriate signatures below.”

He then discussed the cost comparisons for other cities showing a range from \$154/hour to \$210/hour and stated his charge of \$160/hour was for that of an associate attorney who generally are attorneys just beginning their careers right out of law school. He presented cost savings to the City for FY 2010/11 through FY 2013/14 that totaled \$216,528. Mayor Mook stated the City previously had a full-time attorney getting a full-time salary and the City has had a part-time attorney for the past seven years getting a part-time salary. She added that Mr. Hall has always been available and worked more than part-time when the need arose and he has shown real savings to this City has since 2011. He has done a fine job and saved the City huge amounts of money in legal actions which is also part of the packet Council received.

Mr. Hall discussed some of the more prominent cases he has worked on over the years pointing out the original claims versus the ultimate settlements and savings to the City. Some involved no assistance or coverage from the Risk Pool while others were long negotiations. There was some disagreement between Council Delgado and Mr. Hall over terms of his 2010 claim and ultimate settlement but documents produced from the Councilor’s attorney supported Mr. Hall’s statement that the original claim was for \$500K although Councilor Delgado pointed out he was offered \$50k but settled for \$45K which reflected his true expenses in the case. Mr. Hall enumerated other cases; 1) Jenner Industries claim of \$180,000 was settled out of court for \$5,750; 2) a \$10,500 deferred

comp claim settled for \$0, 3) “Maggie’s Mountain” had not received proper environmental review and the State was ultimately required to install monitoring stations and provide test results; 3) Thompson Ranch claim of \$7M was settled after 1 ½ years of negotiations out of court for \$0; 4) Happy Valley Vista claim for \$2M was settled out of court for \$0, 4) a \$2.5M mesothelioma case was a case not covered by the Risk Pool but the City’s shared cost with an attorney representing several small cities was \$60K that was successfully defended with an early dismissal. He went on to discuss his assistance in resolving a very challenging City court/judge transition, the eminent domain cases associated with the \$55M El Mirage Road and Thunderbird Road projects, the major contracts reviewed for the YMCA, fire station, police station, and City Hall construction, land donation contracts worth millions of dollars from the JF Long Foundation, and the major water credit negotiations that provide long term water credits and property value increases. He stated he has had amazing experiences with this Council and the City has been moving forward thanks to Council’s vision.

Mr. Hall concluded by pointing out that he could not approve the second item as presented because according to the City Code, a full Council is required to dismiss the City Attorney. The Code generally states “a vote of the majority of those present, or a vote of the majority” but in this case the Code specifically states “in accordance with the contract terms, upon a majority vote of the full City Council.” Mr. Hall’s interpretation is that a full Council does not exist at this point in time because of the decision not to fill the vacant seat until the next election. If this item goes any further, the City Council should consider independent counsel to make sure all items are properly reviewed and not conflicted.

More discussion followed between Councilors Shapera, Delgado, Jones, and Selby, Mr. Hall and Dr. Isom over the definition of a full Council, length of time to come to this conclusion, potential open meeting law violations, lack of communication, and whether independent counsel should be sought to make a determination on a full Council.

Councilor Shapera concluded that he read the code about “full” Council and stated he would like to follow the direction of Mr. Hall and seek independent counsel on the definition of “full” Council.

III. **ADJOURNMENT** - The Work Session was adjourned at 6:53 PM.

**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 – TUESDAY, OCTOBER 17, 2017**

Minutes

I. ROLL CALL

Present: Mayor Lana Mook, Councilmember Bob Jones, Councilmember Roy Delgado, Councilmember Lynn Selby, Councilmember Jack Palladino, Councilmember David Shapera

II. CALL TO ORDER

The meeting was called to order at 7:05 pm.
Pledge of Allegiance
Moment of Silence

III. PROCLAMATIONS

P1. Proclamation for the City of El Mirage to become a Purple Heart City (Administration)

Intergovernmental and Public Relations Manager Amber Wakeman presented by stating that the people of El Mirage have a great admiration and the upmost gratitude for the men and women who selflessly served their country in the Armed Forces. Veterans have paid the high price of freedom by not only leaving their homes and families, but by selflessly choosing to place themselves in harm's way for the good of our Nation and communities.

She further stated that many citizens of our community were wounded during combat and earned the Purple Heart Medal recognition of their meritorious acts of bravery and service to our communities and Nation. The City of El Mirage was approached by the Military Order of the Purple Heart, Department of Arizona, to join the State of Arizona, all fifteen counties and other cities from around the State to become a Purple Heart City to recognize these brave men and women.

She introduced three representatives present from the Military Order of the Purple Heart to receive the proclamation; Mr. Sal Salinas Senior Vice Commander, Mr. Ron Capek, Chapter and Department Finance Officer, and Mr. Larry Leighton, Adjutant, Department of Arizona, Military Order of the Purple Heart.

Mayor Mook stated, NOW, THEREFORE, the City of El Mirage proclaims to be a Purple Heart City to recognize and honor the service and sacrifice of our Nation's men and women, who were wounded or killed while serving to protect the freedoms enjoyed by our communities and Nation.

IV. 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 Regular Council meeting held Tuesday, October 3, 2017. (City Clerk)

2. Consideration and action to approve the destruction of municipal records in the Fire, Building & Life Safety Department that have reached the end of their retention period as authorized under ARS §41-151.19. (Fire & Building Safety)

Councilor Jones moved to approve Consent Agenda Items 1 thru 3 as presented; seconded by Councilor Palladino. Motion carried unanimously (6/0).

V. REGULAR AGENDA

- A. Public hearing, closure of public hearing, followed by consideration and action to approve a conditional use permit for a medical marijuana cultivation use at the northwest corner of Alice Avenue and El Mirage Road. (Community Development)

Mayor Mook opened the Public Hearing.

GIS/Development Services Coordinator Jose Macias reported the site is the northeast corner of Alice Avenue and El Mirage Road. It is a 10-acre lot with no building and is currently zoned EI (Employment/Industry) and a Land Use of Agriculture. The General Plan addresses this project under Commerce/Industry Park. This site is bordered on the north with Agriculture, on the east with Industrial, on the south with Industrial and on the west with Agriculture. No public comments were received.

This will be a three-phase project with Phase 1 covering 4 acres, Phase 2 covering 3 acres and Phase 3 covering 3 acres. There has been a site plan approval and amendment. The Technical Advisory Committee (TAC) review provided no objections and no stipulations. Major TAC comments discussed were that Fire Building Life Safety stated carbon air scrubbers will be required to mitigate the odors emitted by the operation, and the applicant responded that HVAC and Architectural plans will include carbon air scrubbers. The Planning and Zoning Commission recommended approval at the October 10, 2017 Public Hearing with a 4-0 vote. Staff is seeking a final action for the Conditional Use Permit request.

Representative land owners Mr. Jim Miller and Mr. Jake Long and investors Mr. Mark Hale and Mr. Jim Hennessey were present to answer any questions.

Mr. Miller stated that Jake Long, Mark Hale and Jim Hennessey are the principals of Spicoli Farms and they are available to answer any questions. Mr. Miller pointed out that security is a concern but medical marijuana operations are heavily regulated by the State of Arizona. They will be selling wholesale to dispensaries so there will be no direct retail sales from the operation. To prevent anyone from taking "free samples" of the product, there will be a wall and a 34,000 sq. ft. building. The area will be heavily monitored and the wall/building will not reveal the operation; product will be taken directly to dispensaries.

Councilor Shapera stated this Council has a long history of support of medical marijuana and he is glad they are coming to El Mirage noting there has never been a problem with anything they have done in this community and he is in favor.

Councilor Delgado asked if they would be using agricultural water or purchasing water from the City and Mr. Miller responded that they have not checked with ADWR to see if grandfather rights would apply. It is a farming operation that could be done outside but for security reasons growing will be necessary inside a building. Councilor Delgado stated he hopes the operation is successful.

Councilor Jones thanked them for coming. He stated he wants to make sure there are adequate scrubbers because the operation is being done in phases and asked if there will be additional scrubbers with each phase. Mr. Miller stated yes, unequivocally. Councilor Jones stated the only complaint he has ever had is the odor coming from the facilities and he, too, looks forward to seeing them do business in the City.

Councilor Palladino thanked them for coming and welcomed them to the City.

Resident Steve Gilliam asked if there would have armed security 24/7 or do they expect PD to take care of security. Mr. Hale answered they are not allowed to have weapons onsite but they will have security cameras throughout the entire site both inside and outside. Mr. Gilliam then asked how many employees will be hired and Mr. Hale answered initially there will be 40-45 employees but at build out they expect to have approximately 80 employees. Mr. Gilliam also asked what the timetable is for the project and Mr. Hale responded as soon as possible depending on regulations; one more public hearing is required after which they hope to begin early 2018 and be operational by summer of 2018.

Mayor Mook closed the public hearing.

Councilor Jones moved to approve a conditional use permit for a medical marijuana cultivation use at the northwest corner of Alice Avenue and El Mirage Road; seconded by Councilor Palladino. Motion carried unanimously (6/0).

Councilor Shapera at this time moved to adjourn into an Executive Session to receive legal advice and Mr. Hall stated the Council has the right to make that motion. Dr. Isom asserted he does not agree with an Executive Session on this motion because it deals with his employment contract and he was not provided the required 24-hour notice. Mayor Mook asked if it was for any other reason than Dr. Isom's employment contract and Councilor Shapera stated that it was. Mr. Hall stated, however, that because the item is a personnel issue, Dr. Isom has the right to have the discussion held in the public meeting.

Councilor Shapera moved to convene into Executive Session to discuss personnel and obtain legal advice; seconded by Councilor Selby. Councilor Shapera then rescinded his motion but requested an Executive Session later in the meeting.

B. The Mayor seeks to avoid any further disparagement of City Manager Isom by offering Council an opportunity to terminate the employment of the City Manager without cause and pursuant to all terms and conditions of his employment contract and all amendments thereto; and authorizing the City to make all necessary budget transfers and arrangements to accommodate this action.

Mayor Mook asked if Dr. Isom would like to make an opening statement and stated he would prefer to defer to Council's comments first

Councilor Shapera deferred at this time.

Councilor Delgado stated he wanted a review of Dr. Isom's contract because he does not agree with paying out \$225,000 to terminate his contract.

Councilor Jones withheld comments until later.

Dr. Isom stated it has been a pleasure for him to serve this community and things have been done the right way. The City has gone through many transitions over the years and the last seven years have been a time of prosperity. He noted this City Hall is indicative of the progress that has been made along with other improvements around the community and he is proud of the work he has done. He said the City seems to now be moving into a different season and perhaps that is the natural order of things. He expressed concern with Councilor Delgado's comment since the contract has been reviewed by all members of Council and several members of Council approved it originally. Several members of this Council also approved severance to a former City Manager far in excess of what has been negotiated with Dr. Isom. The City was in a different set of circumstances at that time. Councilors Shapera, Delgado and Selby all voted in favor of that contract.

Mayor Mook stated she never expected to make these statements. She wanted to avoid any further disparagement of City Manager Isom by offering four members of this community an opportunity to terminate his employment without cause and pursuant to all terms and conditions of his employment contract and authorizing the City to make all necessary budget transfers to accommodate this action. Disparagement means the publication or speaking about someone in a negative or belittling way or the act of making unflattering false statements that are derogatory. Mayor Mook read the following statement into the record: "Dr. Isom has transformed the City of El Mirage since accepting the City Manager position in December of 2010. He does not deserve to have his works overshadowed by a movement on the part of the City's Public Safety Associations to disparage his name in an effort to advance their interests; especially since public safety (police and fire) have been inarguably the most significant benefactors of his efforts. Dr. Isom helped this Council overcome a reported \$4.7 million budget deficit through sound fiscal management. Council should recall that before even taking the Manager's position, Dr. Isom worked with this Council while he was a private citizen, to conduct the City's first formal Goal Setting Session. That goal setting session and subsequent goal setting sessions are what put this community on a road to recovery and a newfound stability. I'm very disheartened our Public Safety Employee Associations would continue efforts to disparage Dr. Isom after the things he has accomplished for this community. And I can't understand why any member of this Council would stand by and let it happen. So, I'm bringing this item forward for Council's consideration with an eye on the City and out of concern for Dr. Isom. Council, if the majority of you sincerely want Dr. Isom gone, then this is your chance as he is not going to let anyone pressure him to resign."

Mayor Mook stated that before she made a motion, she wanted to list a few of the many accomplishments and contributions achieved under Dr. Isom's leadership and read the following list into the record:

- Played a critical role in El Mirage establishing a relationship with Luke Airbase in support of the F35 mission.
- Established important and lasting relations between El Mirage and its neighboring West Valley cities
- Built new fire station and rehired firefighters whose positions were eliminated by the previous Council
- Constructed eight wash culvert barriers, making drainage safer for the residents
- Completed Gentry Park renovations and improvements in the Downtown
- Managed the Redflex program in a manner to ensure the safety of traveling motorists, while at the same time using technology to ease the demands on public safety personnel and resources
- Solely responsible for the idea for asking the voters to support the construction of a New Police Station which led to the professionalism of the Police Department including an upgraded work environment and station capacity for service
- Pursued solution to City's historic water problems while keeping his promise to residents for not raising utility rates for a five-year period. The purchase of extinguishment credits offset the ever-increasing cost of groundwater securing a stable water supply for at least 40 years.
- Responsible for funding the majority of YMCA facility and pool, as the City was able to pay cash for all but a portion of the facility; the construction of the Y met a 2008 request by residents for such a facility in the community
- Oversaw the automation and replacement of water meters
- Coordinated the partnership with County Flood Control which led to the construction of Basin Park
- Responsible for the Development of the City's first and very successful street maintenance program
- Facilitated the installation of solar panels for City facilities
- Negotiated the terms and conditions of the IGA with County for the construction of El Mirage Road project which is inarguably the project that improves and forever changes the face of this community
- Implemented the bulk trash program
- Re-established the Police Explorers program
- Created the City's first comprehensive budget
- Created the City's first comprehensive 5-year capital improvement plan
- Established the City's first-ever bond rating, currently rated at "AA-" for S&P 500 and A1 for Moody's
- Improved overall financial position of the City, guiding the City out of a \$4.7M structural deficit to its present stability
- Implemented police vehicle replacement program
- Accelerated funding for many capital expenses, including new fire apparatus and vehicles
- Created an atmosphere that promotes new business development in El Mirage, (i.e., Dakoka Fabricating, Epcor Water, Valero, Family Dollar, and many many

- others)... In fact, John F. Long Properties reports that because of Dr. Isom's leadership in El Mirage, they have been able to bring their 1400+ acres in El Mirage to market perhaps 10-15 years earlier than had been anticipated
- Improved drainage ways throughout the City, thereby resolving historic flooding issues
 - Improved solar light and security at all City parks and in other common areas
 - Implemented many improvements to the City pocket parks
 - Established a successful Special Events program
 - Helped to re-organize and remodel City Court operations so that the Court would come into compliance with AOCPS standards
 - Helped to recruit the City's Judge
 - Streamlined overall staffing in all City departments
 - Improved security at Public Works facilities
 - Improved security at Library and Court facilities
 - Served as Chair for the Arizona Metropolitan Trust which provides health insurance for City employees and their families as well as insurance for the employees and families of six other cities, Pinal County, and two regional Fire Districts
 - Facilitated the design of the new City Website with a theme of "Transparency"
 - Developed the funding processes and constructed this New City Hall which contributes to the perceived professionalism of the City government and Council
 - Facilitated the design and installation of pedestrian and student traffic safety lights (HAWK Lights)
 - Added bike lanes on arterials and collector streets to enhance pedestrian and bicycle safety
 - Purchased new police vehicles, radios, body cameras, side arms, and computers
 - Upgraded basketball courts in City parks
 - Established a successful citywide Litter Campaign
 - Recommended hiring of Street Beautification Specialist
 - Increased funding for Police Department by 19%, outpacing growth of other departments by a total of 8%
 - Coordinated partnership with YMCA and Arizona Coyotes for installation of a DEK Hockey rink
 - Added additional Public Works personnel
 - Constructed new water lines with laterals on El Mirage Road north of Thunderbird Road
 - Constructed new roadway including sidewalks, lighting and turn outs on El Mirage Road
 - Installed new lights at Basin Park
 - Replaced unsafe equipment at pocket parks
 - Balanced all budgets

Mayor Mook stated the accomplishments just listed come primarily from the Council's lists of accomplishments in past Goal-Setting Reports. Dr. Isom also played a critical role in resolving many legal matters, law suits, and other issues of concern saving the City many millions of dollars; issues include but are not limited to the following:

July , 2010 – Notice of Claim	Claim filed against the City by sitting Council member for civil rights violations, harassment charges, and false light invasion of privacy, severe emotional stress	Claim \$500,000
February, 2011 – Settlement Agreement		Paid \$45,000
August 2011, Settlement Agreement	Jenner Industries LLC – owner Blair Jenner filed suit against the City of El Mirage As part of the settlement agreement, pending lawsuit was dismissed with prejudice	Claim \$180,000 Paid \$5,750 Settled out of Court
July, 2011 – Notice of Claim	Helped resolve claim by ex-wife of former City Manager that City denied her court ordered Decree of Dissolution settlement of husband’s deferred comp administered by Nationwide Finance	Claim \$10,500
August, 2011 – no claim against City		Paid \$-0- (City was not the plan administrator)
	Maggie’s Mountain – State had received funds from previous owner’s to perform monitoring tests at the base of the City’s landfill adjacent to the Agua Fria river but had not constructed monitoring stations nor performed testing	City prevailed in requiring State to account for funds, install stations, and conduct monitoring - ongoing
December 2013 – Notice of Claim	Thompson Ranch/Dreisseszen – claim filed against City claiming illegal re-zoning and diminution of property value as a result	Claim \$6,778,700
May, 2015 – Settlement Agreement	As part of the settlement agreement, pending lawsuit was dismissed with prejudice	Paid \$-0- Settled out of Court
December, 2014 – Notice of Claim	Happy Valley Vista – claim filed against City for improper notice and adoption of 2010 voter approved General Plan zoning codes.	Claim \$2,500,000
October 2016 – Settlement Agreement	As part of the settlement agreement, pending lawsuit was dismissed with prejudice	Paid -0- Settled out of Court
July, 2014 – Notice of Claim	Claim by construction company laborer that diagnosis of mesothelioma was caused by exposure to asbestos pipe during installation of City water system – multi-city claim on-going for two large cities. City of El Mirage was dismissed pursuant to motion for summary judgment from multi-city case by Court after employee depositions – case was not covered by Risk Pool – independent attorney hired who represented five smaller municipalities to share costs and attorney’s fees because of extremely specialized subject matter	Claim \$2,250,000 El Mirage portion Paid – El Mirage portion approx.. \$60K for attorney fees
January, 2016 – Court Dismissal		
November 2015	Long-standing pending lawsuit against City for administration of floodplain – original claim in early 2000 was delayed by way of four separate tolling agreements in the attempt to settle – creation of Basin Park reduced the initial claim to \$3,500,000	Original Claim - \$10M Claim \$3,500,000 ON-GOING
December 2016 – Notice of	Wrongful death claim	Claim \$5M

Claim

ON-GOING

Mayor Mook stated she believed it is important that the City of El Mirage celebrate Dr. Spencer Isom's many accomplishments as the Council considers this change. He has improved the quality of life for El Mirage's 35,000 residents. El Mirage is a much better place to live and to work as a very direct result of Dr. Isom's leadership. She stated "If this Council approves this item tonight, then I for one wish Dr. Isom all the best." Mayor Mook reported the fiscal impact to the City is approximately \$223,000 from various accounts.

Jim Miller of John F. Long Properties, reported the Mayor's statements were very accurate. They met with Dr. Isom when he first came to El Mirage and they were asked what was keeping them from developing their properties. In 2000, their property was rezoned from Residential to Industrial to protect Luke. He pointed out that decisions being made should not be taken lightly. They are on the verge of great economic development and they have 2,400 acres zoned Industrial to develop. Two years ago they determined they needed utilities and infrastructure and El Mirage rose to the occasion. The City needs to be professional, have integrity, confidence, dedication, stability and leadership. When developers come in they want to meet with the City and the City needs to have a good staff displaying stability. They are looking forward to working with the City in the future.

Laurie Carnal stated her belief that Councilor Shapera has a personal vendetta against Dr. Isom; most of the current Council voted to approve Dr. Isom's contract and she wondered what "back room" deals were made to agree with Councilor Shapera. She stated that over the seven years Dr. Isom has been City Manager he has introduced many innovative programs, trimmed the waste in the City government and helped get this City on sound financial ground. The appearance of this community is much improved since she moved here in 2006 and is continuing to improve. He has been instrumental in restoring working relations with other West Valley cities. This Council has unfailingly voted in favor of these projects. The fact that the first action of this new council majority will put the City \$800,000 in debt concerns her deeply. She does not understand the rationale behind their actions. She thanked Dr. Isom for all his hard work and dedication over the years. All his dealings with here have been honest, open and responsive to either suggestions or questions. She applauded putting this item on the agenda knowing it will be a great loss if Dr. Isom is terminated. She stated there is no reason why this man's reputation should be sullied at the hands of four Council members. Dr. Isom will be leaving a strong, positive legacy for this City.

Steve Gilliam spoke on behalf of himself, his wife and the spirit of past Vice Mayor Joe Ramirez. He worked with Joe Ramirez on three projects and spoke with him on many occasions as a contractor and as a friend and said Joe would be sad to be sitting here with Dr. Isom being disparaged. When Dr. Isom came on as City Manager, they lived in the same HOA and they often discussed HOA and City matters. Dr. Isom was always acceptable and open to the public. The City has become a whole lot better because of people like Dr. Isom and his leadership and his sincere help.

Mayor Mook asked Dr. Isom for his comments and he responded with the following. Dr. Isom stated he wants only what is best for this community. Even though there is a season of change, he is still a resident of the community and he still wants what is right. If he were to find himself on the other side of the podium, he would still demand there be transparency in everything the City does. He will sleep well if the decision is to move him on because he is very proud of the community that was built as a team effort. The City is different when he walks around; it is cleaner than it was and people are friendlier than before. But there are still issues to deal with. One of the important things as a leader that he has learned that it is not what you know, rather, it is knowing what you don't know. He thinks as City Manager he has had an excellent staff who provided expertise in the areas he doesn't know. He thinks this Council as a body was a partnership, focusing on policy and letting management focus on implementing that policy. Somewhere something went wrong and he believes it has to do with the City's financial position and how the Associations expect to be paid. As long as he is here, all boats will rise and fall together. He commented there is very little talk about the people who are out on the street after a wind storm that clean up the damage, the people who sit at the front desk, or the HR people. He made it clear he is not saying that public safety is not important saying he would put the City's public safety up against anybody in the county. But he believes the Associations are different. He commented he has heard first hand they don't care about the rest of this City. He stated he wants his legacy to be that he expects this community will recognize all employees equitably and not serve one at the expense of the other. The City has been able to come up with a way and emerge as a leader in the West Valley and in this county by treating all employees as if there are of value.

No comments from Council.

Mayor Mook moved to terminate the employment of the City Manager without cause pursuant to all terms and conditions of his employment contract and amendments thereto; and authorizing the City to make all necessary budget transfers and arrangements to accommodate this action; seconded by Councilor Palladino. Roll Call Vote:

COUNCILMEMBER	YEA	NAY
Mayor Mook		X
Councilmember Jack Palladino		X
Councilmember David Shapera	X	
Councilmember Roy Delgado	X	
Councilmember Lynn Selby	X	
Councilmember Bob Jones	X	

Motion carried (4/2). Nay votes cast by Mayor Mook and Councilor Palladino.

Dr. Isom shook the hands of Mayor Mook and all Councilmembers, left the dais and took a seat in the audience as an El Mirage resident.

- C. Consideration and possible adoption of Resolution R17-10-17 authorizing all matters necessary to sell and issue General Obligation Refunding Bonds of the City and declaring an emergency. (Finance)

Deputy City Manager/Finance Director Robert Nilles reported that Mr. Greg Schwartz from Piper Jaffray gave a presentation at the September 7, 2017 Council meeting on this matter and the resolution being considered with an emergency clause is to move forward under a timeline to proceed with selling and issuing general obligation refunding bonds and presented.

There were no questions from Council.

Councilor Jones moved to adopt Resolution R17-10-17 authorizing all matters necessary to sell and issue general obligation refunding bonds of the City and declaring an emergency; seconded by Councilor Delgado. Motion carried unanimously (6/0).

D. Consideration and action to approve Resolution R17-10-16 to temporarily suspend City Code §130.01 to allow alcoholic beverages to be served and consumed at specific City of El Mirage Special Events for the FY 2017/2018 event season. (Administration)

Intergovernmental and Public Relations Manager Amber Wakeman stated this is a request for a waiver of City Code alcohol restrictions for the FY 2017/2018 Special Events season as has been past practice.

Councilor Jones moved to approve Resolution R17-10-16 to temporarily suspend City Code §130.01 to allow alcoholic beverages to be served and consumed at specific City of El Mirage Special Events for the FY 2017/2018 event season; seconded by Councilor Delgado. Motion carried unanimously (6/0).

VI. CALL TO THE PUBLIC

Citizens desiring to speak on a matter that IS NOT on this agenda may do so at this time. Comments shall be limited to three (3) 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 respond to the matter, and/or (3) direct that the matter be put on a future agenda.

C1. Council and Staff responses to comments made at the October 3, 2017 Council meeting.

Councilor Shapera stated he had no response at this time.

Councilor Selby stated he had no response.

Councilor Delgado stated he had no response at this time.

Councilor Jones stepped down from the dais, picked up a hand mic and addressed the audience from the floor. He spoke at length addressing numerous topics and expressed his beliefs on what was causing the current issues. He stated Dr. Isom had done an excellent job and done many great things for the City and respected Dr. Isom for two and half years. He stated he believed a change came, not with the passing of the Vice Mayor, but when five months ago the Police Department presented a survey and invited every Councilmember to ask questions. He stated he met with the Association President and Vice President as well as the Police Association Executive to hear their position; he stated Attorney Hall was present at one of those meetings. He believed there were issues that needed to be addressed and called a meeting with Dr. Isom. He elaborated on the issues faced every day by Police Officers and that he believed there were training deficiencies as presented by the Association. He concluded after holding frequent meetings with the police representatives that there was no communication whatsoever between the Police Association, the Chief or the City Manager and they wanted to express their belief that there is not enough manpower in the police department. He discussed growth and associated crime in the City and his belief that his duty as a Councilor is to be fiscally responsible while also working together to find answers to protect citizens.

He continued by discussing his conversations with the Fire Association representative and stated that although Dr. Isom had told him the fire department was running very smoothly, he was told by the Association representative that they were down to a one engine fire department and they wanted two employees brought back that were removed when the fire department was reorganized. He stated Dr. Isom terminated those positions with the re-org and the changes did not work as anticipated. He relayed a recent incident involving a fire at a storage unit on El Mirage Road where he stored his RV stating the response time was unacceptable and he wanted an investigation. He stated there were accusations of falsifying response times and claimed there were problems with the new dispatch. He talked about the strains faced by fire fighters and medics and the need to be sure they are sufficiently staffed to protect the citizens of El Mirage. He stated he never supported a second fire station which this City cannot afford; all he requested was for the two firefighters to be replaced.

He reiterated numerous times and in different ways his belief that lack of communication was the cause of all the issues. He stated that while he supports the hard work of all employees in the City, a very high priority with him is to support the first responders who deserve better from this City.

He concluded by commenting on the City Manager's dismissal stating he did not know about the severance in his contract as he was not on Council when the contract was approved. He stated he respects Dr. Isom and his accomplishments and is sorry it has come down to this but he realized to protect this community changes needed to be made. He noted his belief that there is not a person on the Council that wants to put this City into bankruptcy but their job is to make sure there is adequate protection and that citizens are protected in public safety.

C2. New Call to Public requests

Michelle Palladino, (wife of Councilor Palladino) addressed Councilor Shapera and clarified she does not speak on behalf of her husband, as was implied on a social media site, rather she speaks for herself. She then addressed Councilor Delgado and stated her husband became involved in politics because of him and reminded him of how he had been assisted and supported during the issues he had with the previous administration of which Councilor Shapera was a part; they defended him in his charge against the City and he ultimately prevailed. She questioned what had changed since then for him to now side with one of the people who had charged him. She further stated her belief that their actions could now jeopardize the City's bond ratings and she questioned why they did not wait to first pursue the SAFER grant opportunity which she stated Councilor Jones knew was being investigated. She further referenced an email from Councilor Delgado that made the case against Councilor Jones' plan to place Police and Fire under the direction of the City Council. She questioned what was behind the perceived changes in his current decisions.

Steve Gilliam discussed the cost ramifications of hiring two firefighters and the impact on the CIP budget and long term effects which at this time, with no proposed plan for funding, will produce an \$816K deficit in the five year plan. He expressed concern over the impact such a move could have on the City's credit ratings after listening to the presentations made by the City's bond manager Piper Jaffray. He stated he believes the Council needs to make sound fiduciary decisions for the entire City and not just campaign donors. He also asked citizens how much property tax increases they would be willing to pay.

Laurie Carnal addressed pending investigation cases before the Attorney General's office relative to a possible Open Meeting Law (OML) violation by not providing sufficient information for public comment on an agenda item brought forward at the September 19, 2017 Council meeting to "augment the El Mirage Fire Department" as required by Arizona Revised Statutes. She noted that when the item came before Council there was no discussion, rather a motion was made with an immediate second, with four members voting in favor; it was her belief that this move was pre-arranged by the four voting members. She stated her research of OML violations stated the most egregious violation is to willfully withhold information from the public which is an offense that could result in fines and/or removal from office. She then referenced an email sent in August from Councilor Delgado to Councilors Shapera and Selby (and others) that discussed Councilor Jones' plan to move the Police and Fire Department under the direction of the City Council rather than under the City Manager. She stated that email was then forwarded to Councilor Jones by resident Beth Simek thus potentially creating another OML violation with four members clearly involved in email communications. She referenced other more recent requests for council agenda submittals involving four councilors that she believes points to possible collusion. She asked if any of the four councilmembers could offer information on these matters that have occurred and seemingly continue to occur.

Frank Carnal commented on a reported criminal investigation of Dr. Isom by an unnamed outside law enforcement agency that was recently circulated in an El Mirage Police Employees Association update. He went on to say and wondered why Police Association President Doug Jones and Vice President Norm Brice gave the reported uncovered information to the least senior Council member Bob Jones and Police Chief McDonald rather than to the Mayor and/or City Attorney as would be the normal procedure. He also referenced the pending Attorney General case relating to lack of information presented in the September 19, 2017 Council Agenda submittal by Councilors Shapera and Selby and quoted A.R.S. § §38-431.09 regarding public meetings and providing sufficient information to the public. Mr. Carnal further clarified that the Association's downplay of the consequences of an OML violation is inaccurate because in addition to voiding the action taken, councilmembers found to be in violation could be fined \$500 per occurrence and/or removed from office. He stated his belief that the four councilors who voted in favor of the immediate hiring of two fire fighters were influenced by campaign money received from various fire departments and went on to speculate whether police campaign support was influencing their desire to hire Attorney Calvin Brice, father of Police Association Vice President Norm Brice. He concluded by expressing his dismay with the recent actions of four Council members that he believes are repulsive.

Michele Kern stated she would like to know how Council could make such a mistake in this community allowing their judgment to be clouded by their ego and public safety influence. She stated Council needed to know their role is for the good of the entire community and that public safety will always ask for more and more; it is up to the City Manager and the council to balance everything in this community. She pointedly asked Council "What has happened to you?" She appealed to their integrity, stating she knows what is going on with the employees' associations and they should never be involved in the political influence which is entirely self-serving. She commented if you have a manager who is willing to stand up and do what is needed, i.e., represent and do everything for ALL employees and citizens, that is marvelous. She told Councilors that they are the ones under political pressure; the City Manager did not bow to that and she knows why certain Council members voted the way they voted.

Amy Husted stated she was not planning to speak but wanted the four Councilors to know they speak for a lot of constituents in the City and that social media is important to get the information to the citizens. She informed that she would be willing to pay for two extra firefighters and related how the quick response of firefighters in 2011 saved the life of her husband who had a collapsed lung. She stated she is not going to pay with her husband's or children's lives and would be willing to pay more for her family's safety.

Dr. Isom addressed Council and members of the public as a private citizen now. He stated Councilor Jones made negative comments about him during his comments that could create liability for the City now that he is a private citizen. Dr. Isom commented on and clarified numerous statements made by Councilor Jones. He stated there was a timing issue with regards training; Chief McDonald publicly stated Dr. Isom was unaware of any training issues and the Chief took responsibility for missing that issue which has since been resolved. He stated Councilor Jones blamed him for eliminating the two fire fighter positions but what he did not say was that he knew it was the fire department who presented the plan to implement a Battalion Chief model that thus

eliminated two fire fighter positions – and they were on board with the promotions and new model until Councilor Jones asked Fire Captain Tirpak if there was anything they wanted. He also mentioned the transition from Surprise to Tolleson dispatch and noted Councilor Jones was informed of the reasons for the move but instead focused on issues of response time and problems knowing that the Chief was working through transition issues. Dr. Isom advised that he believed Councilor Jones caved to pressures he received from phone calls, the Police and Fire Associations involvement and pressures from neighbors. He concluded by stating he is no longer an employee, but as a resident Councilor Jones is his elected official and he will hold him accountable.

VII. CITY MANAGER 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.

1. Halloween Harvest Festival – Friday, October 20, 2017
2. El Mirage Salute to Veterans – Saturday, November 4, 2017.

Special Events Coordinator Jeffrey Anderson gave a report on both events. He stated the temperature is getting cold but our events are heating up. Friday October 20th there will be a Halloween Harvest Festival at Gentry Park at 5:00 pm. They are expecting 3,500-4,000 at this event. There are 46 vendors who have paid for spaces at the event. Wal-Mart donated 700 pumpkins and Coco’s Towing donated bottled water. This should be a great time and he hopes to see everyone at the event.

The next event will be the Second Annual Salute to Veterans. Mayor Mook wanted to recognize our veterans and active military and last year this event was a great success with the Viet Nam War Traveling Wall and displays. This year’s event will take place Saturday, November 4th at Gateway Park. The day begins at 7:30 AM with a 5K run and Firefighters’ Charity Pancake Breakfast to follow the run and the main event will run from 2:00 to 9:00 PM featuring a car show, military displays, Arizona Military Vehicle Club, food trucks, and a Bob Hope impersonator. There were 18 sponsors who donated to be a part of this event and he looks forward to seeing everyone there.

Mayor Mook commended Mr. Anderson for a job well done. The public is really enjoying the events.

VIII. 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.

No Council comments were received.

**Councilor Shapera moved to adjourn into Executive Session;
seconded by Councilor Selby. Motion carried unanimously (6/0).**

A break was called at 9:13 PM to clear the room for the E-Session.

**Councilor Shapera moved to reconvene into Regular Session;
seconded by Councilor Jones. Motion carried unanimously (6/0).**

No action resulted from the Executive Session discussion.

IX. ADJOURNMENT

The meeting was adjourned at 9:34 pm.



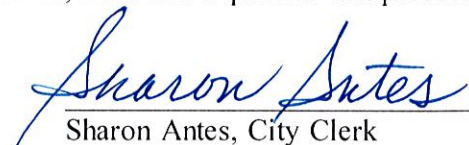
Lana Mook, Mayor

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 October 17, 2017 and a quorum was present.



Sharon Antes, City Clerk