



CITY OF SURPRISE
City Council Meeting Minutes
100 North Civic Center Plaza
Surprise, AZ 85374

Tuesday, August 16, 2016 @ 06:05 PM

Call to Order

Roll Call

Mayor Wolcott called the **Regular City Council Meeting** to order at 06:05 p.m. Surprise City Hall Council Chamber 16000 North Civic Center Plaza Surprise, Arizona 85374 , on **Tuesday, August 16, 2016**. Also in attendance with Mayor Wolcott were Vice Mayor Biundo, Council Member Winters, Council Member Williams, Council Member Villanueva, Council Member Hall, and Council Member Tande.

Staff Present: City Manager, Bob Wingenroth, City Attorney, Robert Wingo, and City Clerk, Sherry Ann Aguilar.

Pledge of Allegiance

Proclamation and Community Acknowledgements

City Manager Report

City Attorney Report

City Clerk Report

City Clerk Aguilar reported on: Aug. 19 - Independent voters need to request a ballot, or vote at city hall by Aug. 26, or go to polls on Aug. 30.

Call to the Public

Mayor Wolcott read the rules for addressing City Council.

Bill Cherilla - 15 year resident in Surprise. Thanked Mr. Biundo, Winters & Hall for voting against the tax increase.

Letter read by City Clerk Aguilar on behalf of JoAnna Mankiewicz regarding Southwest Gas rate increase.

Consent Agenda

1 - Consideration and action pertaining to approval of the final plat entitled "A Final Plat of the Spa 1 Water Reclamation Facility" ,a property generally located at the southeast corner of Cactus Road and Litchfield Road - APPROVED

2 - Consideration and action pertaining to acceptance of maintenance of the streets and public utility improvements at Desert Oasis Parcel 14C, generally located northeast of 175th Avenue and Maya Way; Resolution # 2016-104 - APPROVED

3 - Consideration and action pertaining to acceptance of maintenance of the streets and public utility improvements at Desert Oasis Parcel 11, generally located west of 171st Avenue and Hedgehog Place; Resolution # 2016-103 - APPROVED

Council Member Winters made the motion to approve Resolution 2016-103 with the corrected exhibit to the resolution. Council Member Tande seconded the motion. Seven yes votes. Motion carried.

4 - Consideration and action on the meeting minutes of August 5, 2016 Regular City Council Meeting - APPROVED

5 - Consideration and action on a request by Amy Phillips for a series #12 License (1207A710) for Babbo's Italian Eatery located at 16433 W. Bell Road, Surprise, AZ 85374 - APPROVED

Council Member Williams made the motion to approve the consent agenda, excluding item #3. Council Member Tande seconded the motion. Seven yes votes. Motion carried.

Regular Agenda Item - Public Hearing

6 - Consideration and action pertaining to rezoning approximately 176 acres of City owned property located at the southeast corner of Litchfield Road and Cactus Road from Residential Ranch (RR) to Public Facility (PF); Ordinance # 2016-23 - APPROVED

City Planner, Sergio Angulo gave a presentation on this item.

Council Member Hall made the motion to approve Ordinance 2016-13. Council Member Williams seconded the motion. Seven yes votes. Motion carried.

7 - Consideration and action pertaining to approval of a Major Amendment to the Sierra Verde PAD, by modifying development standards and permitting attached and detached rental housing units on Parcel 8, an approximately 14.83 acre property located generally on the Southwest corner of Greenway and Litchfield Roads; Ordinance # 2016-22 - APPROVED

City Planner, Hobart Wingard gave a powerpoint presentation regarding this item.

Council Member Hall - what is allowable number of units?

Mr. Wingard - currently 234

Council Member Hall - finished PAD height?

Mr. Wingard - there is an opportunity to put another block on their wall.

Council Member Hall - Gas, is it in units or just swimming pool?

The applicant - Paul Gilbert did not have the answer to the question but will get back to City Council.

Council Member Hall - small back yard maintained by whom?

Mr. Wingard - maintained by the management company.

Council Member Hall - how many fire accesses?

Mr. Wingard - four accesses.

Public comments:

Letter read by City Clerk Aguilar on behalf of Leo and JoAnna Mankiewicz regarding item #7.

Regular Agenda Item - Non-Public Hearing

8 - Consideration and action pertaining to a fiscal year 2017 budget amendment reallocating appropriations from various funds for the fiscal year 2017 budget and adjusting budget authority; Resolution # 2016-102 - APPROVED

Finance Director, Lindsey Duncan gave a presentation regarding this item.

Council Member Williams made the motion to approve Resolution 2016-102. Council Member Winters seconded the motion. Seven yes votes. Motion carried.

9 - Consideration and action pertaining to support of the League of Arizona Cities and Towns 2017 Legislative Resolutions - APPROVED

DCM, Nicole Lance gave a presentation for this item.

Council Member Williams - It's nice to see Surprise taking the leadership role and strongly supported. What is the current temperature of EDRA? What other cities are behind us in this effort?

Council Member Hall - Excited about the EDRA, I concur with Council Member Tande.

Council Member Williams made the motion to support the 2017 League Resolutions consistent with the attached summary chart. Council Member Winters seconded the motion. Seven yes votes. Motion carried.

10 - Consideration and action pertaining to the August 8, 2016 ethics complaint filed by Vice-Mayor, Jim Biundo against Mayor, Sharon Wolcott based on her campaigning and fundraising for candidates for Surprise City Council under the auspices of the official title of "Mayor" - REPRIMANDED MAYOR WOLCOTT BASED ON RULE 8 ADVOCACY

Mayor Wolcott commented on changes to the seating arrangements. She passed the gavel over to Council Member Tande and City Attorney Wingo stepped down from this item due to conflict of

interest and asked outside legal counsel, Attorney Verburg took over for this item.

Mayor Wolcott referred to the Council Policies, Rules and Procedures Handbook.

Attorney Verburg explained the proceedings.

Council Member Tande asked City Clerk Aguilar to read item 10.

10 - Consideration and action pertaining to the August 8, 2016 ethics complaint filed by Vice-Mayor, Jim Biundo against Mayor, Sharon Wolcott based on her campaigning and fundraising for candidates for Surprise City Council under the auspices of the official title of "Mayor".

Mayor Wolcott - I move to dismiss this item, which I believe is improperly before us. The complaint refers to a violation of ethics; there is no ethics policy in the City Council/Surprise City Code. Any action or discussion of this item has the effect of abridging my constitutional rights to freedom of speech. Therefore, I move to dismiss. Council Member Tande seconded the motion.

Mayor Wolcott - first, I would like to thank the citizens of Surprise for the outpouring of support that I have been receiving over the last few days. It truly is an honor and a privilege to serve the people as Mayor and I am excited about all the great things that are going on in our community. From the upcoming WESTMEC Campus to the IRIS USA opening. Surprise is full of great news and our vision is finally coming together. People across the valley and around the country are finally beginning to see what we have known for some time. Surprise is a wonderful community and a great place to live and do business. That is why it is so disappointing to be up here watching in disbelief as some of my colleagues on this City Council try to stop this momentum. I am disheartened by their efforts to create headlines and confusions rather than govern responsibly. I truly believe that as elected officials it is not only our role but our responsibility to embody the best for our city not the worst. Surprise is my home and I love living here and I'm deeply saddened to see the city displayed in such a negative and hateful way. With people corrupting their offices and wasting taxpayer funds to conduct what basically comes down to a political kangaroo court masquerading as legitimate Council business. They are creating confusion and controversy rather than focusing their efforts to gain consensus and cooperation on issues that actually matter. This item shouldn't even be on the agenda, it is wrong and I apologize to the citizens of Surprise for this misuse of city resources. However, since we are talking about the Policies and Procedures Manual I think a little bit of context might be helpful.

Over 2000 years ago the citizens of Athens Greece recited the Athenian Oath, I believe that the oath is a timeless reminder of our civic responsibility and I quote: "We will never bring disgrace on this our City by an act of dishonesty or cowardice. We will fight for the ideals and Sacred Things of the City both alone and with many. We will revere and obey the City's laws, and will do our best to incite a like reverence and respect in those above us who are prone to annul them or set them at naught. We will strive unceasingly to quicken the public's sense of civic duty. Thus, in all these ways, we will transmit this city not only, not less, but greater and more beautiful than it was transmitted to us."

Recognizing Council Member Biundo's skill with words, I called upon him to lead an effort to clean up our city code which had become littered with 74 pages of gotcha politics and replaced them with simple, transparent guidelines to remind us of our duty to each other as well as the citizens we serve and the entity of the city itself. I wanted it to reflect the values of embraced by this City Council. My contribution to this handbook was to place the Athenian Oath at the beginning of our Policies and Procedures Manual as a reminder of our civic duty and the historical context in which we should

conduct our offices. Perhaps some of my colleagues missed it while they were furiously turning through the pages looking for charges to level at me. I strive every day to leave this city a better and more beautiful community this is why I work so hard to focus on issues that are important to our residents and business community. I ran for office to make a difference I have been engaged in countless efforts to improve our community and have always openly shared my opinions on the future of Surprise. Not only is it my First Amendment right but it is my duty, educating voters on issues, elections and candidates who will impact the future of this community is something that I'm going to continue to do not just because it's within my right to do it but because it is the right thing to do. Elected leaders across this valley, across the state and across the country do the same thing every day and our founding fathers would expect nothing less of us. There are times when my colleagues may not like what I have to say or may not agree with my position that is their prerogative that's what makes this democracy great. People coming together to discuss issues, find solutions and protect the American way of life. However, they do not have the right to misuse taxpayer dollars and to abuse their office to haul me before the public simply because they don't like what I have to say. It is wrong and it is hurtful to this city. Surprise is no longer a small town it is big complex city with important issues as one of the fastest growing cities in the country the eyes of the public are on us and we must act in a manner that makes our residents proud to call Surprise home. We should be telling the great story of our city, the story we all know. It is of our city's deserved status bright star with an impressive resolve to grow and prosper in spite of economic challenges and divisive politics. But instead we are stuck with this, this will be why Surprise is in the news again, news fed by a constant stream of whisper campaigns and dissension in the body politic. It is wrong and sad it is unfortunate how much staff, manpower and city resources were wasted in this witch hunt. It is a fiscally irresponsible use of tax payer dollars and likely violates state laws regarding public dollars. It speaks to the very reason why I have chosen not to support some of these people for their re-election. They are calling my ethics into question to mask their own ethical and legal violations they are abusing City Hall to play politics and make personal attacks from the dais to score political points. One of my favorite quotes is from Barry Goldwater and I quote "to disagree one doesn't have to be disagreeable" These actions are more than disagreeable they are reprehensible. I will not stand idly by while my opponents try to challenge my fundamental First Amendment right with a trumped up allegation that really alleges no real wrong doing. This is the type of behavior that people are fed up with and so many people are turned off politics. The people of Surprise have shown me overwhelming support and acknowledgement for my leadership and accomplishments these past five years but clearly my opponents are on this dais as demonstrated by the most unfortunate spectacle. They use the council chamber to blacken the eye of our City they claim to cherish for political gain. Our citizens deserve a council that can get along and find ways to address issues that our impacting our community through consensus and compromise. Our citizens deserve a council that values team work and strives to work together even when they are on opposing opinion. Healthy debate is hallmark of a strong democracy and this display is not healthy for our city. It is harmful and if left to fester it will consume us. This is why I am choosing to speak up and why I chose not to stay quiet as I have this past 26 months. While my opponents endeavor to undermine me both personally and the office of Mayor in ways which themselves insult the spirit of the council policies and procedures manual. My accuser hopes the event will affirm the integrity of the city's ethics policy which does not exist. I believe this spectacle only proves that the policy invokes needs work. Mr. Biundo fails to understand that our Constitution's First Amendment guarantees that no law and certainly no handbook shall be made to abridge the freedom of speech. Lest anyone be confused I will gladly lend you my copy for your further examination. I am proud of whom I have chosen to endorse but I will leave my explanation of why to a more appropriate forum. I respect that other people have different opinions on these elections and there is a time and a place for those to be expressed now is not the time and this is not the place. Politics is what happens during campaigns out in the public, governing is what happens within these walls. We need to set aside these issue and get back to the real task at hand, governing.

Mayor Wolcott asked her legal counsel to step forward on her behalf.

Mary O'Grady, Attorney representing Mayor Wolcott read aloud a letter by Mrs. O'Grady that was sent to the entire City Council. She asked that the complaint simply be withdrawn.

Letter submitted to City Clerk Aguilar for the record by Attorney Mary R. O'Grady

Vice Mayor Biundo called for the question.

City Clerk Aguilar conducted a roll call vote. Council Member Tande - yes; Council Member Hall - no; Council Member Villanueva - no; Council Member Biundo - no; Council Member Williams - yes; Council Member Winters - no and Mayor Wolcott - yes. 3 yes votes and 4 no votes to dismiss the item. Motion failed.

Vice Mayor Biundo thanked those who have encouraged me to bring this forward. If the Mayor had indicated that she was conducting all the campaigning activities as a private citizen and not under the hospices of the official title of the Office of Mayor (Rule 8), we wouldn't be here. If the City of Surprise had no official policies governing conduct of its officials, the ethical and professional conduct of its officials, we wouldn't be here. The Mayor did not make that distinction and the city does have very exact policies governing ethical and professional conduct. The core of my complaint is that campaigning under the hospices of the official title of Mayor, Mayor Wolcott breached the rules of conduct as delineated in the Council approved City of Surprise Policies and Procedures Manual as adopted in September 2014. Which again, serves as Council guide for ethical and professional behavior. When we all took our Oaths of Office we took a solemn oath "to abide by all official ordinances, policies and procedures of the City of the Surprise." It does not say not as we think they should be or could be or must be but as they are. On page 16 of the manual it states "Members have a duty to report if another member if another member has violated law or policy." I submit that Mayor did violate policy in campaigning under the hospices of Mayor. If I did not bring it forward, I would be in violation of the very policies to which I am making reference. Let me be clear at the outset there is absolutely no question of the Mayor's legal right to do so. It's in doing so that she breached official policies to which she took an Oath of Office as we all did. Let me be a little more specific, Rule of Conduct 3 - "the professional conduct must be void of even the appearance of impropriety," which an interesting irony. One can't make a phone call from the office phone or use a sheet of city letterhead but it is deemed legal to use the title that represents that entire office. The legality notwithstanding it is reasonable to assume that one would be expected to conclude beforehand that hosting fundraisers for whomever issuing robocalls and mailing promotional flyers in the official capacity of Mayor rather than as a private citizen would give a clear appearance of impropriety and it did, by the numerous phone calls, emails and comments I and others received.

Here is a small sampling of some of those. I am an old Mayor from Huntington Beach California and I am shocked that Mayor Wolcott is endorsing a campaign, I am outraged. Is what she's doing ethical? Why would anyone do this? I've never seen anything like this in a local election, someone has to stop this. There were more.

Rule of conduct 1 - "Members will work for the common good of the city of Surprise and not for any private or personal interest."

In a July 27th article in the Arizona Republic, Mayor Wolcott gave her personal opinion "new blood on the Council is a good thing." Fact, one of those for whom she's campaigned aggressively has declared publically support for at least two major positions which she advocated recently but she did not prevail. Fact, the two incumbents which she seeks to replace with "new blood", have challenged

some of her major positions. I submit that those reveal that she is acting in her self-declared personal interest and not necessarily in the best interest of the city.

Rule of Conduct 8 - perhaps the most important of these. "Any statements or written correspondence should reflect clearly that the position taken is that of the individual in his/her personal capacity." In order to make that clear distinction we as public office often will feel the need to preface by saying "I am speaking to you, or writing to you as a private citizen" not in the capacity of x or y or z. That practice is not evident here, in fact there was a designed deliberate effort to use the official title of Mayor. In a standalone context it's legal to campaign to use the title of Mayor but as public officials we don't operate in standalone context we have policies, we have procedures, we swear oaths. Throughout campaigning the Mayor clearly in my judgment has not met the requisite requirement of Rule 8 regarding advocacy.

Lastly, in the Policies and Procedures Manual there is a statement commitment which we all signed when it was adopted. It reads in part that members "will avoid and discourage conduct that is divisive or harmful to the best interest of the city." Aggressive campaigning under the hospices of the title Mayor to remove two incumbents from a council over which she is the presiding officer is by definition divisive. I believe there is a sufficient basis to conclude that Mayor Wolcott has breached aspects of Rules of Conduct of the City of Surprise as delineated in the City of Surprise Policies and Procedures Manual as adopted by Council in September 2014.

To summarize, taking our Oath of Office, we all swore to God that we would uphold the policies and procedures of the City of Surprise including those that are contained in the manual. We don't have the option to unilaterally decide to which ones we want to adhere and which ones we want to ignore because we don't agree with them or because we think they are faulty or because we think they are limiting our free speech or for any other reason. Unless we want to usher in a period of civic disobedience in local governance. Should the Policies and Procedure Manual be reviewed? Of course. Should some policy changes be made? Perhaps. We have as a Council the collective authority to do that. We have already heard and perhaps will continue to hear declarations in constitutionality and freedom of speech, those are very precious indeed. If those who are declaring that the policies abrogate those rights then it's incumbent upon them to follow due process to get them changed. Until such time as they may be changed, I and others on Council swore to uphold those policies as part of our solemn Oath of Office, that Oath of Office ought to mean something. Did Mayor Wolcott's campaigning under the hospices of the title of Mayor breach one or more aspects of the existing rules of conduct as contained in the manual? I believe there is clear reason to conclude that she did.

Mayor Wolcott to all that I previously addressed and to all of my colleagues, I recall standing and taking the Oath of Office, it begins with the highest authority. Which is the Constitution of the United States, to think that the First Amendment is not the highest authority over a Council policy and procedure of Surprise Arizona is on its face absurd. It's obviously the majority of this Council's interpretation of the Council Policy and Procedures that it does have a higher authority than the Constitution. It's clearly their need to view that as the highest authority giving them the reason to bring these trumped up charges. I believe enough evidence has been already supplied to dismiss this outright. Clearly this is not going to happen and so we are in the territory and suspect that we are going to be here for a while.

Council Member Winters - This is indeed a very sad day for the City, I'm saddened for the city, the residents, staff and Council. This is a very simple issue it's not about the First Amendment or US Government. I'm just a Council Member for a small city in Arizona but I take my Oath of Office very seriously. We were all issued this book on Policies and Procedures and it's very evident that if a

public official is going to campaign for anybody that person has that right, as long as they do it as a private citizen not if somebody on the City Council who because of two members doesn't get along with that person he/she wants to get rid of them. I don't always agree with Vice Mayor Biundo or Council Member Villanueva but that's okay. I'm not going to go out there and get them tossed off of Council because we don't agree, that's the democratic process that's why there is seven of us up here. We all come from different backgrounds, different educational backgrounds and different values. I'm sorry it has come to this state on the whole Mayor Wolcott has been a very good leader and a very good Mayor. I think she made a mistake in robocalling people in the city saying that as the Mayor of Surprise she wanted you to vote for this person or that person or send out flyers in two different districts with her pictures on it saying as Mayor vote for this person or that person. I don't think it's right or fair, it's not illegal but it's unethical and it's not a very good day for all of us including me. It's a sad state of affairs when you have severed disagreements with our colleagues, but I have to stand up for what is right.

Council Member Winters made the motion that the City Council sanctions Mayor Wolcott on an ethics violation as per the City of Surprise Policies and Procedures, Rule 8.

Attorney Verburg asked which sanction Council Member Winters would prefer.

Council Member Winters stated "reprimand."

Council Member Winters - let me read what I feel is the most pertinent passage in this manual. Rule 8, Members must represent the official policies or positions of the city council to the best of their ability when designating as those delegates for the purpose. When representing their individual opinions and positions, members must explicitly state that the member does not represent the City of Surprise or its Council, and will not allow the inference of such representation to exist. Until and unless the Mayor and Council take an official position on an issue as a collective public body in a public meeting, any statement of written correspondence should reflect clearly that the position taken is that of the individual in his/her personal capacity. I put myself in the position of those in District 2 and District 3 who received this information I would think wow the Mayor called me and asked me to vote for this person for City Council.

Council Member Tande - because of the nature of the motion, I think it would be appropriate that the Council consider whether or not they would want to recess for legal advice first.

Attorney Verburg stated that he did not hear a second. Council Member Biundo seconded the motion.

Council Member Williams - I appreciate the value of each individual up here and it's evident that Vice Mayor Biundo has put a lot into this. I've looked at Rule 8 and what the question really came down to is you need to be dispassionate about it and it's hard to do that in this political realm because our relationships are so intimate. In looking at this as dispassionately as possible and looking at Rule 8 which I focused on. The spirit of Rule 8 came about because we wanted to ensure that no one can endorse a policy as a representing the body the city the municipality this is the core of rule 8. I think the title carries with us and that's why I voted to dismiss this. I'm not saying that I agree or disagree with the endorsements or the actions of the campaign, I'm simply looking at the issue passionately and objectively saying that the inference that the entire city endorses a specific candidate because of a title used to me is not reflective of rule 8.

Council Member Villanueva - I would like to express my feelings about this, I am one of those that Mayor Wolcott would like to see office of this Board. I am going to talk to you about how hard since I

have been on this Council, I have worked so hard with my district and with the city. The Mayor has never asked me or ever known what I have done and I have actually done some work that has made her look good. She has never asked me or spoken to me all I know is that she wants me off of this board and has no idea what type of work I have done for this city. She did mention earlier that our city is in very good shape, of course it is because she and the Council work together. Just because we make a motion that she doesn't like. Let's face it, this city is in better shape today than it was a year ago and the reason is because some of the decisions that we have made. We haven't made them because we are against her we made them for the betterment of the city. It has worked out we are in better shape today than a year ago and we all know that.

There is an article in the paper that says that you were quoted in the AZ Republic stating that "having new blood on this Council every once in a while is a good thing, it's a good fresh set of eyes and it takes a look at the future of the city and I think that it's a positive thing." Maybe that's what she thinks, you obviously think that you are exempt from this statement and I guess you feel that your own statement doesn't apply to you but it does. I don't feel that she has a right to tell us that she doesn't want us on this Council. I think she should have stayed out of the election if we won we won if we didn't then that's okay. But for her to say that she doesn't want us on this Council for whatever reason and I don't think she can tell us why. I have done a lot of work and I can say that I don't sit around I'm not a loud speaker but I'm a worker. I think we have a good Council, we have made good decisions, we have good staff and the city is going in the right direction. What she means by having "good eye" on the Council when we are doing a good job, I don't know. I'm very disturbed Mayor that you would not acknowledge my work since I've been here and I'm very disturbed that you didn't even acknowledge or tell me that you didn't want me on this Council, I'm very sad. I am stating my disappointment and stating my disappointment with the shame that we have put the city in, I've had comments from all over the state. Shame on all of us and shame on what has been happening. We do need to discuss it we need to let the audience and residents know. That's all I have to say is that I'm very disturbed about all of this.

Council Member Tande - I would like to reemphasis that we have legal counsel available tonight.

Council Member Tande is there a second to recess to executive session? Mayor Wolcott seconded the motion.

Vice Mayor Biundo called for a roll call vote on whether to go into executive session or not. Council Member Tande seconded the motion. Council Member Winters - no; Council Member Williams - no; Vice Mayor Biundo - no; Council Member Tande - yes; Council Member Hall - no; Council Member Villanueva - no and Mayor Wolcott - yes. Five no votes and two yes votes (Wolcott and Tande). Motion failed to recess to executive session.

Council Member Tande asked Mayor Wolcott's legal counsel to approach.

Attorney O'Grady - candidly I'm glad on not your Lawyers, I'm glad I'm the Mayor's Lawyer. This is the worst case I've ever seen of content based restrictions on the First Amendment. Absolutely the worst record I've ever seen a public body make restricting someone's First Amendment and saying you think you're required to do so based on city policy and then refusing to get legal advice about what in the world you're doing. A member of the Council gives you a path toward a Constitutional interpretation of the rule that you're talking about, which is this isn't about campaigns this is about policy issues. This is not an action required by your policies if you believe otherwise and you don't give legal advice. Frankly, it is reckless and a callous disregard of the First Amendment. This body cannot take that sort of action. I'm sure you've had lectures in the past regarding 1983 responsibilities and that sort of thing and that's up to your Council. This is an example on content

based discrimination. Here is what is out there in term of endorsements: Representative Rivero from Council Member Winters; Peoria Mayor so and so endorsing an incumbent. This Council cannot sanction the Mayor for her campaign speech or for quotes in the newspaper, that's the kind of speech that the First Amendment protects and I ask you not to take this action. Thank you.

Council Member Tande - I would like to have the opportunity of legal advice. This is the oath of office I took. In Civics 101 you learn about the Constitution and that is what carries the weight. And anything in conflict below that is illegal and not considered. So in my opinion our policy doesn't read into it, what is being claimed here. Even if it did it would be severed by the Constitution of the US. It's unfortunate but this does create a slippery slope, we hear about it in the public that's how open meeting laws work. I've been doing a lot of research, we do have the benefit of legal advice and if we heeded the legal advice this would be dismissed. In my research there are legal opinions from Attorney General's Goddard and Brnovich both saying this is okay and it's actually a good thing that people use their title in this type of free speech. Vice Mayor Biundo and I both wrote ballot statements for the override. He chose not to sign his name and I chose to sign my name at that time former Attorney General Goddard saying it was okay for us to do this. I heard the Council has been endorsing, there was a letter in the newspaper where Council Member Winters used his title and it's perfectly okay. This gets discussed through small town America and all over. Unfortunately, it goes through lots of expenses some have risen to the US Supreme Court. The US Supreme Court says this is okay. We are potentially opening the door to future lawsuits from anybody in this area and is a serious mistake by the Council. I really think we should go into and have the benefit of our Counsels advice on how all this plays out now that he's had the opportunity to hear us each speak on policy.

Mayor Wolcott - It doesn't appear that the Council wishes to accept legal advice and we are attempting to create that path to expose the risk of the action being proposed. I must say that I find it very ironic because as you said Council Member Winters was in the paper last week criticizing one of the candidates and used his title. So my colleague making the motion is actually accusing me of the identical thing that he did. Council Member Tande is the Campaign Manager for one of my opponents for Mayor we have become friends. We put our weapons away and try to work together. My opponent and I have become friends as well. Council Member Tande, I believe you were endorsed by me when you ran for City Council. You may have received endorsements from others. I didn't see any admonition from Council that I shouldn't have done that. You may all recall that Council Member Biundo was appointed to fill my seat when I stepped down to run for Mayor and shortly after when we changed the district lines against both me and Council Member Biundo's objection because we did not like the composition of the new districts because we felt it was creating more problems than it was solving. Council Member Biundo sought to be seated as new appointment in the new district and he had my support and didn't hear of any sanction from City Council. But I heard from the public that they didn't like the fact that I had supported Council Member Biundo. We lost a dear friend and public servant and it was I that called Council Member Villanueva knowing that districts had changed much to our objection. We knew that the district would change and limit the ability of the people living in the OTS from having an open voice. I picked up the phone and called Council Member Villanueva. I didn't hear any objection from Council when I called and asked Council Member Villanueva to serve in her husband's place. The districts have changed the city has changed and there isn't one of us who hasn't done good things for this city. But because things change sometimes it requires a fresh look. I was never asked for the endorsement for any member that sits here although I was asked by Council Member Winters. When he was running he and his opposition both people who had worked equally hard on their campaign. And I asked, do you really want me to do this, is it really that important to choose between two friends? They both said yes so I opted to endorsed the other candidate. It has been painful but it was at the request of these two friends that I picked and I did. I think it's clear that the Constitution, rulings of the Supreme Court and ruling of

Attorney General have made it very clear that it's important for public officials to help educate you on what is best for the future of this city. I don't condemn the work of anybody of this council but I look forward to always working as a team and trying to make the betterment of the community. Like I said earlier to deliver the city greater than it was delivered to us. Mr. Chair I think the public is restless and they would like to be heard.

Public Comments:

Doc Sullivan - There is no violation she is exercising her right to free speech. Both Biundo and Villanueva used this meeting format to campaign.

Johnny Melton - Supports Mayor being able to practice free speech. This behavior has no place in this Council.

Ed Hanzel - It's a shame that the Council has not grown up with the city. Involved in bickering and small town politics than in solving real problems that we face.

Pam Hilinski - Sharon Wolcott is the Mayor and entitled to her First Amendment rights, she's entitled to voice an advocate her opinion. I suggest you all do the same before Surprise takes a step backwards.

Ken Wright - I've been a part of these type of sessions. If a violation has occurred has it occurred before? The answer is yes, it has occurred. Where were the people when they had an opportunity to run for Mayor?

Esther Lumm - I saw the article in the paper and heard it on NPR. I'm not here because I think the Mayor committed something illegal. I am old fashioned in thinking that our elected officials should follow a particular behavior to represent our residents. The Mayor's actions were unprofessional and inappropriate.

Charles Croghan - I'm very disappointed, this is not the way that government should be ran in this country. Airing dirty laundry in public, handle it within your own offices if you would had the courage to do that.

Richard Strnad - Born and raised in Arizona, saw Surprise when it was a gas station only. If you look at how people vote a lot of times they just throw them all out and this is what you're going to do. I'm here to support the Mayor.

Tom Jackson - have been here since 1964. This is ridiculous talk to four people, Rachel, Skip, Roland and Jim. This is not a reality show, although very entertaining but not funny, get back to work.

Larry Templeton - I'm troubled by this situation, each person was elected and each should represent your constituents. This has been misconstrued and not a Constitutional violation. Mayor getting aggravated with Council the way they voted, she held a fund-raiser. This is an ethical violation, let's get passed it.

Chet Chetkauskus - We don't need a lawyer to tell us about the Constitution or First Amendment. This is an ethics question, were talking about morals you don't stack the deck. He spoke of fundraisers and campaigning.

City Clerk Aguilar read the following statement on behalf of Leo Mankiewicz

City Clerk Aguilar read the following statement on behalf of Margie and William Murr

City Clerk Aguilar asked for clarification on the motion made earlier. Councilmember Winters made the motion to reprimand Mayor Wolcott for Rule Number 8 of the Council Policies and Procedures Handbook. Seconded by Vice-Mayor Biundo. Roll call vote Vice-Mayor Biundo (Yes) Councilmember Winters (Yes), Councilmember Williams (No), Councilmember Tande (No), Councilmember Hall (Yes), Councilmember Villanueva (Yes) and Mayor Wolcott (No). City Clerk Aguilar confirmed it was a 4 yes vote, 3 no vote. Motion carried.

Other Business

Council Member Tande - add to a future work session a study on the topic of traffic at school sites throughout the city. Seconded by Council Member Winters.

Council Member Tande - revisit the Policies and Procedures Handbook. Seconded by Vice Mayor Biundo.

Mayor and Council Reports - None

City Attorney Wingo announced that the Counsel is not here at this time and suggested that the executive session matter be tabled to the next meeting.

Council Member Williams made the motion to table the executive session to the next Council Meeting. Council Member Tande seconded the motion. Seven yes votes. Motion carried.

Executive Session

- 11. Consideration and action to recess into executive session for discussion and consultation for legal advice with the City Attorney pertaining to litigation in Haga v. City of Surprise pursuant to A.R.S. 38-431.03 (A)(3).**

Adjournment

Council Member Williams made the motion to adjourn the Regular City Council Meeting of August 16, 2016 at 8:57 PM. Council Member Hall seconded the motion. Seven yes votes. Motion carried.

Sharon R. Wolcott, Mayor

ATTEST:

Sherry Ann Aguilar, City Clerk,

CERTIFICATION:

I, Sherry Ann Aguilar, City Clerk for the City of Surprise, Maricopa County, Arizona, do hereby verify that these are the true and correct minutes of the Regular City Council Meeting of **Tuesday, August 16, 2016.**

Sherry Ann Aguilar, City Clerk,