



CITY OF SURPRISE
Special City Council Meeting Agenda
16000 N. Civic Center Plaza
Surprise, AZ 85374

Tuesday, May 22, 2018 @ 4:30 PM
COMMUNITY ROOM

Back Print

- A. Call To Order
- B. Roll Call
- C. Pledge of Allegiance
- D. PROCLAMATION AND COMMUNITY ACKNOWLEDGEMENTS
- E. City Manager Report:
- F. City Attorney Report:
- G. City Clerk Report:
- H. Call To The Public:

INSTRUCTIONS: In order to address the City Council, you will need to fill out a Call to the Public Form available at the front counter, and then turn it in to the City Clerk before the meeting begins.

[Download the Call to the Public form](#) (PDF download requires [Adobe Acrobat Reader](#))

[Fill out the Call to the Public form online](#) If submitting form electronically, please submit to City Clerk at least one hour before the meeting start time.

The Call to the Public form is also available at the front counter.

Note: A.R.S. 38-431.01(H)- During this time members of the public may address City Council only on issues within the jurisdiction of the City Council which are not an item on the agenda. At the conclusion of the open call, City Council may respond to criticism, may ask staff to review the matter or may ask that the matter be put on a future agenda. No discussion or action shall take place on any item raised.

Approval of items on the Consent Agenda – all items with an asterisk (*) are considered to be routine matters and will be enacted by one motion and one roll call vote to the City Council. There will be no separate discussion on these items unless a Councilmember requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.

I. Special City Council Meeting Agenda:

Consent Agenda:

Regular Agenda Item - Non-Public Hearing:

1. District Citywide [Consideration and action pertaining to canvassing election results for the Circle City Water Company utilities acquisition ballot issue; Resolution # 2018-77.](#)

None
Sherry Ann
Aguilar,
City Clerk

2.	District 1	<u>Consideration and action pertaining to authorizing the acquisition, through the exercise of the power of eminent domain, of the water utility systems and tangible and intangible utility assets located within and without the boundaries of the City of Surprise of Circle City Water Company, L.L.C.; authorizing all necessary acts to accomplish said acquisition, including but not limited to initiating litigation; and declaring an emergency; Resolution # 2018-83.</u>	None Robert Wingo, City Attorney
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J. Other Business and Future Agenda Items:

K. Mayor/Council Reports:

L. Executive Session:

For information Purposes; Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, but for only the following purposes:

- discussion or consideration of personnel matters (A.R.S. §38-431.03 (A)(1));
- discussion or consideration of records exempt by law from public inspection (A.R.S. §38-401.03 (A)(2));
- discussion or consultation for legal advice with the city’s attorneys (A.R.S. §38-431.03 (A)(3));
- discussion or consultation with the city’s attorneys regarding the city’s position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. §38-431.03 (a)(4));
- discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03 (A)(5)); or
- discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town. A.R.S. §38-401.03 (A)(6).
- discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03 (A)(7)).

Confidentiality Requirements Pursuant to A.R.S. §38-431.03(C)(D): Any person receiving executive session information pursuant to A.R.S. §38-431.02 shall not disclose that information except to the Attorney General or County Attorney by agreement of the City Council, or as otherwise ordered by a court of competent jurisdiction.

The council may vote to hold an executive session for the purpose of obtaining legal advice from the Board’s attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

M. Adjournment:

SHERRY ANN AGUILAR, CITY CLERK, MMC

POSTED:

SPECIAL NOTE: PERSONS WITH SPECIAL ACCESSIBILITY NEEDS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETER, SHOULD CONTACT THE CITY CLERK'S OFFICE @ 623.222.1200 OR TTY 623.222.1002, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.



CITY OF SURPRISE
Special City Council Meeting

May 22, 2018 @ 4:30:00 PM

[Back](#) [Print](#)

Council Meeting Date: May 22, 2018
Submitting Department: City Clerk
Staff Recommendations: None

Contact Person: Sherry Ann Aguilar, City Clerk
District: Citywide

Consent	Regular	Public Hearing	Report/Discussion
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Agenda Wording:

Consideration and action pertaining to canvassing election results for the Circle City Water Company utilities acquisition ballot issue; Resolution # 2018-77.

Motion:

I move to approve Resolution # 2018-77, a resolution canvassing election results for the Circle City Water Acquisition ballot issue.

Background:

This request is of a routine nature and follows State Statutes for canvassing election results.

Objective Analysis:

Pursuant to Arizona State Statute, the vote must be canvassed by the governing body between 6 and 20 days of an election. This item will therefore comply with state law.

Policy Compliant:

Pursuant to Arizona State Statute, the vote must be canvassed by the governing body between 6 and 20 days of an election. This item will therefore comply with state law.

Financial Impact:

N/A

Budget Impact:

N/A

FTE Impact:

N/A

ATTACHMENTS:

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- ☐ [Resolution No. 2018-77 Canvass election results](#)
 - ☐ [Final Summary Report - Exhibit "A"](#)
 - ☐ [Final Precinct Report Exhibit "B"](#)
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RESOLUTION NO. 2018-77

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, MARICOPA COUNTY, ARIZONA DECLARING AND ADOPTING THE RESULTS OF THE SPECIAL ELECTION HELD ON MAY 15, 2018 AND ORDERING THE RECORDING OF SUCH RESOLUTION

WHEREAS, the City of Surprise did cause the following matter to be submitted to the qualified electors of the City at a Special Election held in and for the City of Surprise on the 15th day of May, 2018; one (1) question; and

WHEREAS, the election returns have been presented to and have been canvassed by the Mayor and City Council.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Surprise, Arizona, that:

SECTION 1: The total number of ballots cast at said Special Election were **18,754** and distributed as follows included in Exhibits "A" (Summary Report) & "B" (Precinct Canvass):

Citywide all Districts Combined:

Question 1: QUESTION OF PURCHASING AND ACQUIRING ANY AND ALL OF THE PLANT OR PROPERTY OF CIRCLE CITY WATER COMPANY.

Ballots for:	15,045	Percentage: 80.22%
Ballots Against:	3,709	Percentage: 19.78%

SECTION 2: It is hereby found, determined and declared of record, that more than one-half of the ballots cast on the question of Purchasing and Acquiring any and all of the plant or property of Circle City Water Company at said election voted "**YES**", therefore the following measure was **APPROVED** by the voters.

SECTION 3: It is ordered that, directly following the adoption of this Resolution, the City Clerk shall record this Resolution with the Maricopa County Recorder's Office.

PASSED AND ADOPTED by the Mayor and City Council of the City of Surprise, Arizona, this **22nd day of May, 2018.**

Mayor

ATTEST:

APPROVED TO FORM:

Sherry Ann Aguilar, City Clerk

Robert Wingo, City Attorney

AYES: _____

NAYS: _____

MRC_20180515_E
May 15, 2018
Summary Report
MARICOPA COUNTY
FINAL RESULTS

Registration & Turnout	111,131	Voters
Ballot By Mail Turnout	33,508	30.15%
Total ...	33,508	30.15%

TOWN OF FOUNTAIN HILLS QUESTION (0)

Under Votes: 10

Over Votes: 2

- PRIMARY LEVY, YES	3,459	34.03%
- PRIMARY LEVY, NO	6,705	65.97%
Total ...	10,164	100.00%

TOWN OF QUEEN CREEK PROP 405 (0)

Under Votes: 8

Over Votes: 0

- YES	3,828	84.35%
- NO	710	15.65%
Total ...	4,538	100.00%

CITY OF SURPRISE QUESTION (0)

Under Votes: 32

Over Votes: 0

- YES	15,045	80.22%
- NO	3,709	19.78%
Total ...	18,754	100.00%

MRC_20180515_E
5/15/2018
Precinct Canvass
MARICOPA COUNTY

1 CITY OF SURPRISE QUESTION

				1	1	1	1								
	Registered	Ballots Cast	Turnout (%)	YES	NO	Over Votes	Under Votes								
6531 1 - MAY 2018	11940	2625	21.98	2114	508		3								
6532 2 - MAY 2018	15034	8010	53.28	6388	1608		14								
6533 3 - MAY 2018	11981	2192	18.30	1782	407		3								
6534 4 - MAY 2018	9350	1746	18.67	1349	394		3								
6535 5 - MAY 2018	10285	2204	21.43	1781	417		6								
6536 6 - MAY 2018	11673	2009	17.21	1631	375		3								
	70263	18786	26.74	15045	3709	0	32								



CITY OF SURPRISE
Special City Council Meeting

May 22, 2018 @ 4:30:00 PM

[Back](#) [Print](#)

Council Meeting Date:	May 22, 2018	Contact Person:	Robert Wingo, City Attorney
Submitting Department:	Attorney's Office	District:	1
Staff Recommendations:	None		

Consent	Regular	Public Hearing	Report/Discussion
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Agenda Wording:

Consideration and action pertaining to authorizing the acquisition, through the exercise of the power of eminent domain, of the water utility systems and tangible and intangible utility assets located within and without the boundaries of the City of Surprise of Circle City Water Company, L.L.C.; authorizing all necessary acts to accomplish said acquisition, including but not limited to initiating litigation; and declaring an emergency; Resolution # 2018-83.

Motion:

I move to approve Resolution #2018-83. [This is an emergency measure and will require 3/4 approval to become effective immediately].

Background:

In 2008, the City Adopted the Integrated Water Mater Plan which identified Circle City Water (CCWC) as a possible source to grow its water portfolio. CCWC is a small water system in the northern part of Surprise's planning area that possess a Central Arizona Project (CAP) Municipal and Industrial (M&I) subcontract. In 2015, the owners of CCWC approached the City with the interest of selling CCWC to the City. The CAP allocation would increase the City's annual rights to Colorado River water from 10,249 acre-feet to 14,153 acre-feet. This increase in CAP water right will help towards the City meeting future water needs. On November 7, 2017, Council approved a resolution to seek voter approval to acquire CCWC. A Citywide vote was held on May 15, 2018, in which 80% of Surprise eligible voters authorized the City to purchase CCWC. The City shall utilize its powers of eminent domain to acquire 100% of CCWC's assets.

Objective Analysis:

Pro: Presently, CAP water is the only surface water supply available Surprise. The ability to grow this supply provides Surprise the ability to meet demands of a growing community. Increasing our supplies today reduces the costs of having to purchase water when needed in the future. Con: Without growing its rights to water, the City will be unable to meet its future demands or it will be forced to purchase future water rights at future water prices.

Policy Compliant:

The acquisition is consistent with the City's adopted Water Management Policies regarding expansion and acquisition of CAP allocations.

Financial Impact:

The one-time costs associated with eminent domain are approximately \$500,000 and will be funded from the proceeds of the sale of long term storage credits. Costs associated with the actual purchase of CCWC and the ongoing maintenance will be discussed at a later date.

Budget Impact:

No budget impact is anticipated as part of this action. The Circle City Water Acquisition Project #71260 within the Water Utility Capital Fund shall pay the associated costs, including legal and court fees, of the condemnation action.

FTE Impact:

N/A.

ATTACHMENTS:

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☐ [Resolution #2018-83 Authorizing Acquisition](#)

RESOLUTION # 2018-83

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AUTHORIZING THE CITY MANAGER, CITY ATTORNEY AND THE WATER RESOURCE MANAGEMENT DEPARTMENT DIRECTOR, OR THEIR DESIGNEES, TO ACQUIRE THOROUGH THE EXERCISE OF THE POWER OF EMINENT DOMAIN THE WATER UTILITY SYSTEMS AND TANGIBLE AND INTANGIBLE UTILITY ASSETS LOCATED WITHIN AND WITHOUT THE BOUNDARIES OF THE CITY OF SURPRISE OF CIRCLE CITY WATER CO., L.L.C. AND AUTHORIZING ALL NECESSARY ACTS TO ACCOMPLISH SAID ACQUISITION, INCLUDING PURSUING LITIGATION AGAINST THE ARIZONA CORPORATION COMMISSION AND MEMBERS THEREOF IN THEIR OFFICIAL CAPACITIES, LAKE PLEASANT 5000, L.L.C., HARVARD INVESTMENTS, INC. AND ANY OTHER NECESSARY PARTIES; AND FURTHER AUTHORIZING THE CITY MANAGER AND THE CITY'S FINANCIAL OFFICERS TO DISBURSE THE NECESSARY FUNDS FOR THE JUST COMPENSATION, IF DETERMINED IN THE MANNER PROVIDED BY LAW OR AGREED UPON, PLUS USUAL AND CUSTOMARY CLOSING COSTS, AND ANY NECESSARY ATTORNEY'S FEES, LEGAL EXPENSES AND COSTS, INCURRED BY THE CITY, AND TO THE CIRCLE CITY WATER CO., L.L.C., AND OTHERS WHO MAY BE DETERMINED TO HAVE A COMPENSABLE INTEREST, AND INTEREST AS MAY BE REQUIRED OR PROVIDED BY LAW; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Surprise has the authority pursuant Arizona Revised Statutes §§12-1111, et seq., 9-511 et. seq., and/or 9-522(A)(l) to acquire utility property through the power of eminent domain;

WHEREAS, Circle City Water Co., L.L.C. provides water utility services in the vicinity of the City and possesses certain water rights including rights under that certain Central Arizona Project Municipal and Industrial Subcontract, Contract No. 07-XX-302-W043 (hereinafter, the "CAP Contract");

WHEREAS, the Director of the Surprise Water Resource Management Department, has recommended the acquisition by eminent domain of the entire water utility assets and all tangible and intangible utility property of Circle City Water Co., L.L.C., including without limitation all franchises, certificates of convenience and necessity, service area rights, water rights, and the rights under the CAP Contract (hereinafter, the "Circle City Condemnation");

WHEREAS, the electors of the City of Surprise have authorized the Circle City Condemnation by election on May 15, 2018;

WHEREAS, Harvard Investments, Inc. and Lake Pleasant 5000, L.L.C. have asserted certain rights to the water covered by the CAP Contract, and have asked the Arizona Corporation Commission to block the Circle City Condemnation; and

WHEREAS, the Arizona Corporation Commission has institute proceedings purporting to block the Circle City Condemnation, purporting to award Harvard Investments, Inc. and Lake Pleasant 5000, L.L.C. rights to the water covered by the CAP Contract, or purporting to prevent the City from acquiring all of the franchises, certificates of convenience and necessity, service area rights of Circle City Water Co., L.L.C., or purporting otherwise to interfere with the Circle City Condemnation.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Surprise, Arizona, as follows:

Section 1. It is deemed essential as a matter of public use and necessity that the entire water system and tangible and intangible utility assets, including without limitation all franchises, certificates of convenience and necessity, service area rights, water rights, and the rights under the CAP Contract, located within and without the boundaries of the City of Surprise, of Circle City Water Co., L.L.C., be acquired by the City of Surprise for the purpose of being incorporated into the City's water service and delivery system, future water resources and water service planning and development of the City and its water system, and in order to provide current and future residents and businesses of the City and others in the vicinity with water service by the City through its municipal water system.

Section 2. The City Manager, the City Attorney, the Water Resource Management Department Director, and their designees, and the City's Financial Officers are authorized and directed to acquire full title and ownership by eminent domain of the entire water utility assets and all tangible and intangible utility property of Circle City Water Co., L.L.C., including without limitation all franchises, certificates of convenience and necessity, service area rights, water rights, and the rights under the CAP Contract, and the City Manager and the City's Financial Officers are further authorized and directed to disburse the necessary funds for the just compensation, if determined as provided by law or if agreed upon, plus usual and customary closing costs, and any necessary attorney's fees, legal expenses and costs, incurred by the City, and to Circle City Water Co., L.L.C. and others who may be determined to have a compensable interest, and interest as may be required or provided by law; and to do any and all other things necessary or appropriate toward achieving these purposes.

Section 3. The City Manager, the City Attorney, the Water Resources Management Department Director, and their designees are authorized to file and pursue litigation, including eminent domain claims, declaratory judgment claims, special action claims and claims for injunctive relief, in the Superior Court, the Arizona Supreme

Court, or other appropriate courts, against Harvard Investments, Inc., Lake Pleasant 5000, L.L.C., the Arizona Corporation Commission, the members of the Arizona Corporation Commission in their official capacities, and other necessary or appropriate parties, to prevent the Circle City Condemnation from being blocked directly or indirectly, to ensure that the City of Surprise is able to acquire full title and ownership by eminent domain of the entire water utility assets and all tangible and intangible utility property of Circle City Water Co., L.L.C., including without limitation all franchises, certificates of convenience and necessity, service area rights, water rights, and the rights under the CAP Contract, and to protect the legal rights of the City.

Section 4. The Mayor and City Council of the City of Surprise determines and declares that, it is necessary that this Resolution go into immediate effect, to preserve the public peace, health, safety and welfare of the citizens of the City and that further delay may irreparably jeopardize this objective, and therefore, declares that this Resolution, if passed by the requisite number of votes of the City Council, shall be immediately effective as an emergency measure, pursuant to the provisions of A.R.S. § 19-142(B).

APPROVED AND ADOPTED this ____ day of _____, 2018.

Sharon R. Wolcott, Mayor

Attest:

Approved as to form:

Sherry Aguilar, City Clerk

Robert Wingo, City Attorney