Notice of Public Meeting
Town of Superior
Regular Council Meeting
Thursday, October 6, 2011-7:00 P.M.
Superior Senior Center
360 Main Street, Superior, AZ 85173
MINUTES

A. CALL TO ORDER

Mayor Hing called the meeting to order at 7:10 p.m.

B. SALUTE TO THE FLAG

Mayor Hing led the salute to the flag.

C. OPENING PRAYER

Mayor Hing led the opening prayer.

D. ROLL CALL

Present: Council Members Hank Gutierrez, Chris Tomerlin, John Tameron, Soyla "Kiki" Peralta, Mayor Michael Hing, Vice Mayor Olga Lopez; **Absent:** Council Member Gilbert Aguilar

E. CONSENT AGENDA

1. Approval of Minutes for Regular Meeting September 15, 2011
2. Approval of Minutes for Special Meeting September 28, 2011

Mayor Hing said that in the September 15 minutes, the word "dollar" had been left out on page 6, paragraph 1, line 3. Vice Mayor Lopez asked for details to be added of the attorney's comments on the September 28 minutes in the 4th paragraph.

MOTION: Council Member Tomerlin moved to approve the minutes for the regular meeting of September 15 with correction and table the minutes for the special meeting of September 28 to add in some details. Vice Mayor Lopez seconded. **VOTE:** The motion carried unanimously.

F. COMMUNICATION

1. Manager's report—Deputy Town Manager Lou Digirolamo

   a) Employee recognition from Public Works Department—Jed Lant

   Mr. Lant presented a plaque and check to Ed Johnson of the public works department in recognition of his service .Deputy Town Manager Digirolamo recognized Mr. Lant for his completion of Level 1 of the Road Scholar Arizona Local Technical Assistance Program of the Federal Highway Administration.

   b) Presentation on changing street name from Cherrywood Place to Helen Snyder Drive or Place—Jed Lant

   The item was withdrawn and will be brought back as a business item.

c) Discuss survey from Superior Substance Abuse Coalition

Mayor Hing said Elizabeth Magallanez of the Superior Substance Abuse Coalition was with them regarding a survey taken in the school and drug use. He said that Council Member Tomerlin also served with the coalition. Mayor Hing said he felt it important they look at it as a serious issue because some of the numbers were spoken in a public meeting by Ms. Magallanez and maybe she could bring some clarification .Ms. Magallanez discussed the Superior High School Youth Focus Group Outcome and Needs Assessment Report .She said a lot of people had misunderstood what it was about and that only 12 students were selected because a focus group is a very small group out of a large group. So when the report talks about the percentages, it is percentages of the 12 who participated, not the whole student body. Further comments were made.

d) Home Rule next election cycle, lease excise tax and buildings rented by the Town

Deputy Town Manager Digirolamo said the next Home Rule election will be in 2013. Also, there is a lease excise tax from town buildings that they rent to organizations but they do not rent to any organization that is not a nonprofit at this time so they are not collecting any lease excise tax. Vice Mayor Lopez said the senior center paid $300 and animal shelter paid rent. Deputy Town Manager Digirolamo said they are all nonprofits. Vice Mayor Lopez said the senior center is not. Deputy Town Manager Digirolamo said he would have to check. More comments were made.

e) Property taxes on Schedule B of the Town of Superior budget 2011-2012 and rental tax for same budget year

Deputy Town Manager Digirolamo asked that this be tabled. Mayor Hing said he wanted to refer these items to a work session for more detail. He directed the deputy town manager to set up a work session on the same night as the next council and just meet earlier.

f) Lost Trail work day 10/8/2011, Dia de Colores 10/15/2011, town cleanup and free dump day 11/12/2011

Mila Lira and Sue Anderson reported on these upcoming events.

g) Letter reference Pinal County Excise Tax

Town Attorney Chris Wencker said in June the Auditor General had given a report of findings that the town may have loaned some county excise tax funds to the general fund. He said he had met with the town's auditors. The mayor was there, the finance director, the finance clerk. He has written a letter to the Auditor General asking for an extension of six months on their response deadline, which currently is December. They need to finish up their audits for fiscal year 2009, 2010 and 2011 in order to have the information to respond. He hasn't heard back from the Auditor General yet. The mayor and vice mayor asked if this could be put in the workshop. The mayor said budgets are approved by the town council and work off the revenues they get from HURF and Pinal County Transportation Excise Tax. The money has been used as part of their working budget. They are not the only community under fire.

h) Letter from AZ Department of Revenue reference Town's sales tax

Deputy Town Manager Digirolamo said he had received a letter from the Department of Revenue about some TPT taxes that at first were given to Superior and then taken back, reissued to the town, and then the state Department of Revenue said they re-audited the audit and now the town had to pay back a certain amount of money. He said the final findings were that the town is to pay back $156,487.02. This had already been given to them and they had put it into the

general fund. When the Department of Revenue first contacted them they said they wanted all the funds paid back to the state either within one year or two years. He had talked to their legal advisor and asked him to negotiate. The attorney had asked for a five year period to lessen the burden on their regular budget. They came back and settled on three years and they are going to owe $4,100 monthly and some odd cents. It wasn't a discretionary option. Mayor Hing asked the attorney if what the state had done was legal. Attorney Wencker said, "Yes." He said the only fine line was when the actions by the state were taken and he has asked the Department of Revenue to supply him with all of the documents leading up to that, going back to 2007, so he can put those together and see if there was ever a time when the state missed one of those deadlines. He hasn't received that information yet. Mayor Hing asked that this item also be brought to the work session.

i) Letter BHP reference study area

Deputy Town Manager Digirolamo reported on a letter regarding the BHP study area.

j) Notice of Claim against the town reference the rest stop area on Highway 60

Deputy Town Manager Digirolamo reported that they did receive from a processor server a notice of claim against the town. They were served regarding a claim that an elderly lady had stopped to use the facilities at U.S. 60. The claim had said it was raining and there was some water in one of the restrooms. She slipped and fell, required some medical attention, not from EMS or the police but her private doctor. They made a claim to the town for $150,000. This was sent to Southwest Risk and a claims adjuster had come out.

k) Update on the air conditioning for the Magma Club

Deputy Town Manager Digirolamo said he had met the lone bidder on the a/c project. He was asked by council to see if the price could be negotiated to a lower price or done in different phases. They came up with a dual phase project. He expects this to start within the next few weeks.

l) Update on code enforcement and new procedures—Lieutenant Mike Campbell

Lieutenant Campbell said police will now be driving by and photographing trash illegally dumped. Public works will pick up the trash immediately.

G. BUSINESS, POSSIBLE DISCUSSION AND/OR ACTION ON THE FOLLOWING:

1. Discuss/Approve/Reject proposed redistricting of Legislative District No. 5 and drafting a support letter

Jesse Bryant of the Globe area presented a *Proposed Eastern Rural Congressional District*. He requested a support letter for the proposal.

Roy Chavez and Mila Lira from the audience made a number of comments regarding redistricting .There were further comment sand discussion from the council and Mr. Bryant.

MOTION: Vice Mayor Lopez moved to approve the proposed redistricting of Legislative District No. 5 and draft a support letter. Council Member Tameron seconded .***VOTE:*** The motion carried unanimously.

2. Discuss/Approve/Reject Draft Contract with Resolution Copper Mining and the Town of Superior reference the sewer tap on Magma Avenue

Deputy Town Manager Digirolamo said staff and the mayor met with Resolution Copper. He called their attention to a letter in their packet from Resolution dated September 8. The proposed agreement would expire December 31, 2012 unless extended by the council so it is not a long agreement. Resolution has agreed to pay Superior additional construction and modular on whatever sewer and wastewater issues that they have into the tap on Magma Avenue for $750 a month. The way this was formulated was that an average person uses 50 gallons per day based on a 30-day month. They estimated there would be 100 people up there. Council Member Peralta asked what they paid for the initial tap. Deputy Town Manager Digirolamo said $500. That is the normal fee for both commercial and residential taps.

Mayor Hing asked Attorney Wencker if he saw anything questionable in the agreement. Attorney Wencker said there were some terms that should be added to the contract related to conflict of interest. They are all really standard terms that he can't see Resolution objecting to. The one that they'd have to explain to them relates to termination (2nd page, paragraph 6). The conflict of interest statute requires that the town be allowed to terminate the contract in the next three years if someday with a conflict of interest worked on the contract. Conflict of interest is if somebody who works for the town negotiated this contract and then goes to work for Resolution.

He drew their attention also to paragraph 12 on that page that includes a waiver of the right to trial by jury. Responding to questions, Attorney Wencker said if they took out that waiver then if there were a trial it would be an open question. Attorney Wencker also advised them about a paragraph that requires that any lawsuit filed would be in Maricopa County.

Vice Mayor Lopez asked Attorney Wencker to re-address conflict of interest. He again explained that if anybody with a conflict of interest works on the contract and then goes to work for Resolution, the town can cancel the contract.

Council Member Tameron told Attorney Wencker that he had a contract [with Resolution] and also sits on council. He will recuse himself on the vote. But where is he with this termination? Attorney Wencker said that could conceivably be considered a conflict of interest. There are different conflicts of interest for terminating contracts and voting on the business before the council. So if he identifies this conflict of interest and recuses himself from voting, that doesn't necessarily have to do with termination of the contract.

Vice Mayor Lopez asked what if you have relatives that work for Resolution? How does that affect the council? Attorney Wencker said if you currently have a relative, close relative, husband, child, parent, even grandparent, that works for Resolution that could be a conflict of interest. But if the town approves this contract and one of those people works for Resolution Copper, that could also be considered a conflict of interest for purposes of terminating the contract.

Council Member Peralta asked if when they had first discussed this they had decided to ask for a higher fee. Deputy Town Manager Digirolamo referred to legal counsel saying that they could not ask for a higher fee than other businesses assessed. Attorney Wencker said he would be in agreement that in those sewer connections everybody has to pay roughly the same amount. There were further comments with members of the audience Roy Chavez and Manuel Ortega also participating.

Council Member Gutierrez noted his contract with Resolution. He also said that perhaps that was why the Mutual Benefit Agreement is in place, to address some of these inequities of Resolution being outside the town. But he said he is going to recuse himself.

Mayor Hing explained segments of the letter from Mr. Cherry of Resolution. He said it was up to the council whether they allowed an entity that is outside the town limits. They could talk about the past until they beat it to heck but they have a present issue before them. Mr. Chavez indicated a desire to

speak. Mayor Hing said he had given Mr. Chavez the time. The deal was they had a company that is working with the community. They made an offer to hook up into the system. He referred to the letter discussing their operations and he said their operations could include a possible option for expansion of a water treatment plant. Mr. Chavez indicated a desire to speak a number of times. Mayor Hing banged his gavel and called for a recess. Following the recess he continued to comment on items in the letter, including Resolution's options for water and sewer treatment facilities and interest in purchasing effluent from the town.

Attorney Wencker read from the statute on conflict of interest and advised council that what it meant was that those who know they have a conflict of interest can vote on it notwithstanding that conflict. Because if all three of them who felt they had a conflict were to recuse themselves on this vote, the council couldn't act. So if each of them declared what their interest is, they could still vote.

Mayor Hing clarified with the attorney about whether they could charge more than a $500 tapping fee. Attorney Wencker said to a certain extent but if they had already charged $500 they couldn't go back and say they wanted more than that, but in the future certainly they could have a higher rate for those who are outside the town, provided it costs them more to provide that service. There were further comments.

Mayor Hing asked if there were any other questions. Attorney Wencker said those who feel they have a conflict of interest must declare the nature of that in order to vote. Mr. Gutierrez, Mr. Tomerlin and Ms. Lopez would have to declare what their interest is in Resolution. Vice Mayor Lopez said she did have a conflict of interest because she has children who work for Resolution. Council Member Tomerlin said he had a conflict because he had a janitorial contract with Resolution Copper. Council Member Gutierrez said he has a conflict because he contracts to Resolution.

MOTION: Council Member Peralta moved to approve the agreement with the changes of the monthly fee being $1100, leave the connection fee the same at $13.78, add in the termination for conflict of interest and liability for Resolution if they cause any damage to the system and change in jury trial provision. Council Member Tomerlin seconded. ***VOTE:*** The motion carried 5-1 with Council Member Gutierrez abstaining.

3. Discuss/Approve/Reject the 12 members on the Economic Development Committee as listed on the Composition form dated 9/1/2011 and update the articles of incorporation by the Economic Development Committee

   Deputy Town Manager Digirolamo read the 12 members of the EDC into the record for council to approve: Pam Rabago, Sue Anderson, Sonnie Samson, Michael Carnes, Pete Guzman, Pete Casillas, Lou Digirolamo, Dennis Van Gorp, Rita Wentzel, Melissa Rabago, Michael Hing and Curt Williams.

   MOTION: Council Member Tameron moved to approve the 12 members of the Economic Development Committee. Council Member Tameron seconded. ***VOTE:*** The motion carried unanimously.

   Mila Lira updated the council on the EDC. Council Member Tameron said he had attended the recent EDC work session. An explanation had been given as to why a town council member was not on the board. He asked if Ms. Lira could explain. Ms. Lira referred him to Ms. Wentzel for a detailed explanation but in a quick nutshell when they had attended a conference on public funding, it had been recommended that nonprofit boards try to avoid having elected officials, who stay more in an advisory capacity. This protects elected official from conflicts of interest.

4. Discuss/Approve/Reject to allow town staff to enter into negotiations with Orion Recycling LLC to renew the Town of Superior Recycle Collection Center contract.

Deputy Town Manager Digirolamo explained that the Orion contract had expired in July. He was looking for renegotiation power from the town.

MOTION: Council Member Peralta moved to allow the Chief (Deputy Town Manager Digirolamo) to enter into those negotiations with Orion Recycling. Vice Mayor Lopez seconded. ***VOTE:*** The motion carried unanimously.

5. Discuss/Approve/Reject letter requesting signage from Orion Recycling and payment

   Larry Jochai of Orion Recycling said he had asked about the opportunity to put a sign under the airport sign for a $500 monthly payment. It is his understanding that it is owned by the town. There were further comments and discussion.

   MOTION: Council Member Peralta moved to accept the proposal placed before them as long as it followed the town signage code and all regulations. Vice Mayor Lopez seconded. ***VOTE:*** The motion carried unanimously.

6. Discuss/Approve/Request from applicant Tina Rose to abandon Town property known as the Gibbs Street alignment

   Property owner Tina Rose discussed that a survey had found the alignment had never been abandoned. Within five years the road would be widened to five lanes and end up taking that piece. Their property is within that abandonment piece so that creates a problem for them regarding a pending sale. What they would like to do is acquire that abandonment piece from the town. Mayor Hing asked Deputy Town Manager Digirolamo if everything was in order to do this. The answer was in the affirmative. There were further comments and a detailed discussion in the room.

   MOTION: Council Member Gutierrez moved to accept the request from the applicant for the abandonment of town property known as the Gibbs Street alignment following the proper code. Council Member Peralta seconded.

   Council Member Tameron asked about a property that had set precedence and whether it was residential or commercial. Deputy Town Manager Digirolamo said he would not say it set precedence. It was on Stone Avenue and residential.

   VOTE: The motion carried unanimously.

7. Discuss/Approve/Reject Resolution 531 as mentioned in business item #6

   Deputy Town Manager Digirolamo read Resolution 531 and the mayor said he accepted the reading.

   MOTION: Council Member Tomerlin moved to approve Resolution 531. Vice Mayor Lopez seconded. ***VOTE:*** The motion carried unanimously.

8. Discuss/Approve/Reject bid received for 679 Main Street

   Mayor Hing recused himself from this item. Vice Mayor Lopez said it was in regard to bid approval for 679 Main Street and they had bidder Betty Gallegos there and she asked Ms. Gallegos to step up to the podium. Ms. Gallegos said she planned on expanding the existing general store that she had and remodeling. Deputy Town Manager said this did go out for bid. Council had set a bid of $10,000. This was the only bid received. The prospective bidder is offering $8,000: $500 earnest money with $7,500

to be paid cash at the close of escrow. It was underbid by $2,000 and the council can still accept that. Ms. Gallegos asked for the town to clean the interior.

MOTION: Council Member Peralta moved to accept the offer of $8,000 and the city will do cleanup. She requested 3-5 years to remodel but here it says three years so it would be three years. Council Member Tameron seconded. ***VOTE:*** The motion carried unanimously.

9. Discuss/Approve/Reject a plan for canceled fireworks from 4th of July production

There was a discussion of where to move the fireworks with the statewide centennial celebration on February 14 being a suggestion. Mila Lira from the audience requested they not do it that weekend. Vice Mayor Lopez suggested saving it for the next 4th of July and maybe making it a bigger celebration. Deputy Town Manager Digirolamo said they could enhance their 2012 fireworks.

MOTION: Vice Mayor Lopez moved to take the 4th of July fireworks of 2011 and move them to the 4th of July 2012. Council Member Tameron seconded. ***VOTE:*** The motion carried unanimously.

H. CALL TO THE PUBLIC

Roy Chavez said it would be nice to get a clear definition of what communications are because it took an hour and a half to get through them and some should be discussion/action items. He said he thinks some of the community may have wanted to make comments or add to the discussion but they were not allowed. Regarding substance abuse he discussed days when there were 18 bars in town and you need to look at their culture and that they are a mining community and they work hard and play hard. He is also going to investigate whether the town is being impacted by the excise tax issue. He made other comments on sales tax and air conditioning.

Sonnie Samson asked about the transfer station. He understood that a transfer station was to transfer, you get it out of there. They have trash piled up and they want more space.

Sue Anderson said Globe-Miami had a chapter of the Modern Woodmen of America. She discussed their good neighbor grant and donations to the Chamber and town.

Manuel Ortega said regarding the drug issue, the school is doing their job. Everyone wants to pass the buck. He can see one problem here at council. In that special council meeting of September 28, that was most insulting. He criticized the actions of two members of council to the town manager. He made further comments.

I. EXECUTIVE SESSION:

The Town Council may or may not vote to go into Executive Session pursuant to ARS38-431.03 (A-1) (A-3) & (A-7)

A-1 –PERSONNEL: A-3 LEGAL ADVICE WITH ATTORNEY; A-7 – LEGAL ADVICE ON SALE, LEASE OR PURCHASE OF REAL PROPERTY

There was no executive session.

J. COUNCIL COMMENTS

Council Member Peralta: N/A

Council Member Gutierrez: The town is short staffed and the staff does fall short sometimes, but they are working right to the bone. Some things fall through the cracks but it is not just public works that needs to be recognized. Their staff works very hard and actually it is a tribute to the current town manager that they have everything in place that they can continue to operate the community with their town manager being on medical leave. He agreed with Mr. Ortega. He was embarrassed in their previous special session. His thought was that they were going to meet just with the town manager and she opened it up to the public just for the fact that she was requesting additional time. As far as the substance abuse issue, he thinks about the "what ifs." He was raised in this community. There was less to do then. He mentioned high school football or baseball games now where people are parked by the side of the road pouring alcohol. Is that an example they wish to have? Maybe the school should be a little tougher on that. He made further comments.

Council Member Tomerlin: N/A

Council Member Tameron: N/A

Vice Mayor Lopez: She would like an update on the Cobre Valley Medical Center, and then another update on the water line for the Little League. The Hearts and Minds surveys are starting and she hopes when people are contacted they will answer their questions.

Mayor Hing: The clinic is moving along. They are working with Arizona Water Company to address some water issues. The effluent line to the Little League Park is moving ahead. Arizona Water Company has offered their assistance in helping engineer the line. He wanted also to address an issue that people take things and distort the whole heck out of them. There is a rumor out there about Ms. Tahan who was used with their real estate issues because that was her expertise. It happened that he had a personal real estate issue and he asked her to help him defend himself against this lawsuit that was placed against him and his wife. The rumor was that the town was paying her bills, which is absolutely untrue, but of course there were individuals that were out there pushing the fact that the mayor is using the town attorney for his benefit and that is absolutely not true. It just happened he did lose the case. He made further comments.

K. ADJOURNMENT

MOTION: Council Member Tomerlin moved to adjourn. Vice Mayor Lopez seconded. ***VOTE:*** The vote to adjourn was unanimous. Mayor Hing adjourned the meeting at 11:12 p.m.

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I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the Town Council of the Town of Superior held on the 6th day of October 2011. I further certify that the meeting was duly called and held and that a quorum was present.

/s/

Lou Digirolamo _____

Deputy Town Clerk/Police Chief

These Minutes were compiled and transcribed by
Cindy Tracy
An Independent Contractor.
(Final editing of these minutes and their content is completed and verified by staff members of the Town of Superior.)