

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, FEBRUARY 22, 2011
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL
held on FEBRUARY 22, 2011 in the COUNCIL CHAMBERS located at CITY HALL, 201
SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Kuykendall called the meeting to order at 3:00 p.m.

◆ **INTRODUCTIONS**

◆ **INVOCATION:** Pastor H. Lee Wiggins, Heights Church

Pastor Wiggins gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilwoman Linn, introducing the Third Grade
Class of Trinity Christian School

The Third Grade Class of Trinity Christian School and Councilwoman Linn led the
Council and audience in the Pledge of Allegiance.

◆ **ROLL CALL:**

Present:

Mayor Kuykendall
Councilman Blair
Councilman Hanna
Councilman Lamerson
Councilwoman Linn
Councilwoman Lopas
Councilwoman Suttles

Absent:

None

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

Acting City Manager Hadley thanked the staff for their snow removal efforts the
previous weekend. She noted that the City had plow and man coverage and
everything went well. There was another storm coming through in Prescott
Wednesday thru Monday. She noted that there was potential for snow
accumulation.

I.* CONSENT AGENDA

CONSENT ITEMS A – CB LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.

A. Adoption of Ordinance No. 4776-1127 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, abandoning a portion of Clubhouse Drive and dedicating a revised Clubhouse Drive located to the south, dedicating a Wineglass Drive extension and authorizing the Mayor and City staff to take all necessary steps to effectuate such abandonment and dedication.

~~*B. Authorization to the Chief of Police to enter into a Memorandum of Understanding with towing companies for purposes of tow requests by members of the Prescott Police Department.~~

~~CB.*~~ Approval of the minutes of the Prescott City Council Workshop (Field Trip) of January 4, 2011, the Workshop of February 1, 2011, the Regular Meeting of February 8, 2011, and the Special Meeting (Executive Session) of February 8, 2011.

COUNCILMAN LAMERSON MOVED TO APPROVE CONSENT AGENDA ITEMS 1-A THROUGH 1-B; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

II. REGULAR AGENDA

A. Adoption of Ordinance No. 4781-1132 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the purchase of real properties, easements and improvements from A. Joanne Salley, and RNB Property Acquisitions LLC, for the reconstruction of the surface water recharge pipeline and authorizing the Mayor and City staff to take all necessary steps to effectuate said purchases.

Mr. Nietupski noted that the item dealt with a permanent right of entry for the City surface water recharge pipeline and a small easement for a segment of the project to the north.

Councilman Blair asked if the line would be totally reconstructed. Mr. Nietupski noted that there were some segments within the three mile stretch that had already been done. Councilman Blair asked if it made sense to bring back a purple line. Mr. Nietupski said that the water was surface water recharge from the lakes. He said that it was not about transporting effluent.

COUNCILMAN HANNA MOVED TO ADOPT ORDINANCE NO. 4781-1132; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

- B. Adoption of Resolution No. 4067-1137 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an Intergovernmental Agreement with Yavapai County for the extension of County occupancy of several buildings at the Rodeo Grounds and specific infrastructure improvements and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Acting City Manager Hadley noted that this item was for continued use of the Rodeo Grounds by the County in return for a payment of cash and other items.

Mr. Nietupski noted that the item related to the Mackin building, Barn A and Barn B. He said that the County would provide for improvements at the three locations. He said that they would participate in extension of the sanitary sewer main into Pioneer Park and provide sewer in lieu of the existing septic. He said that they would contribute \$32,500 toward that, and City would contribute the other \$32,500. The County would upgrade the sewer line in the vicinity of the new juvenile detention facility at a cost of \$48,000. He said that the County would also contribute up to \$40,000 for construction of the traffic signal which the Council authorized a couple of months ago. The total value was approximately \$120,500.00.

Councilwoman Suttles said that she was pleased to do some exchanges with the County. She asked when the County might be out of the Rodeo Grounds. Mr. Nietupski noted that it was a one year extension and their occupancy would expire at the end of June 2012.

Councilwoman Suttles said that she would like to see where they were with the projects in six months.

Councilwoman Linn asked if the County had insurance for the buildings they were leasing. She also asked if the City would have to approve any improvements. Mr. Nietupski deferred the question to the City Attorney or Mr. Fenech.

Councilman Hanna asked if they were historical buildings. Mr. Fenech said that those three buildings were not historical. He said the original documents that the County signed required them to carry insurance. The City also insured the buildings.

Councilwoman Linn asked if anyone leased any of the City properties, they would have to get approval from the City for improvements. Mr. Fenech said that they would let the City know if they wanted to make improvements. The County was responsible for any maintenance and repair above the ground. The City was responsible for anything below the ground.

COUNCILWOMAN SUTTLES MOVED TO ADOPT RESOLUTION NO. 4067-1137; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- C.*** Presentation, discussion and direction regarding the Prescott Police Department Towing Policy.

Acting City Manager Hadley noted that Item C was asking Council to approve a Memorandum of Understanding (MOU) between the City of Prescott Police Department and the towing companies the City uses in Prescott.

Lieutenant Andy Reinhardt gave a PowerPoint presentation on the Rotational Towing Service that covered:

◆ REQUIREMENTS AND AGREEMENT

He said that if a vehicle was abandoned it could be towed to an offsite location within the City limits.

◆ GOAL – PROVIDING QUALITY CUSTOMER SERVICE

Lieutenant Reinhardt noted that the police department realized that the towing companies were doing things that were not listed in the contract. The police department had complaints about the attitudes of the drivers and the City of Prescott did not have recourse against the companies. The companies were also charging different fees for the same services.

Councilman Hanna noted that years ago they were to ask the citizens if they had a tow company of choice and if not, the police department would call the next company in the rotation.

◆ FEE SCHEUDLE

Councilwoman Linn asked if the City of Prescott got any money from the towing companies. Lieutenant Reinhardt said that was correct.

- ◆ FEE SCHEDULES (Continued)
- ◆ RECOMMENDATIONS

Councilwoman Linn noted that the companies should be paid for the services they provided. Lieutenant Reinhardt said that other police departments listed the basic rates.

Councilman Blair asked if there were tow companies who were doing inappropriate things. He also said that three months ago he was in Los Angeles and the Los Angeles Police Department (LAPD) towed their own vehicles because the tow truck companies felt they were entitled. The City kept the impound fees and recouped their own costs.

He said that he was not going to support any MOU for a single provider in the tow truck business. He said that if they wanted to set prices for basic services to make public safety safe, then all of the towing companies needed to have the same MOU and be able to be part of the system. He did not see the City micromanaging the companies. He questioned the ability to have the storage yard within the City of Prescott. He said that there were service charges that needed to be listed and if the companies agreed, they could play.

Councilman Lamerson said that he did not think that it was the City's role to regulate cost of service in the community. He said that they could determine what the City wanted to do and put it out for a Request for Proposal (RFP). He said that he did not understand why it was coming forward all of a sudden.

Lieutenant Reinhardt said that they continued to receive complaints from vehicle owners about the service they received from the towing companies. He believed that it would cut down on those complaints. Councilman Lamerson said that the City was making an attempt to standardize towing services. He asked if the police department was asking if it was better to get an MOU or an RFP.

Lieutenant Reinhardt noted that awhile back the police department went out to tow companies to see if they had a resolution for some of the issues. When they responded, they sent back a price list of what they would be willing to charge. He noted that they were all across the board. He noted that the police department thought that they would be able to provide a better service to the motoring public if the charges were standardized when the police department was calling for a tow truck.

Councilman Lamerson asked if it was their intent to work with the tow companies to do the standardization and then move forward, or to tell the companies what the City was willing to do. Lieutenant Reinhardt said that they were looking for Council direction, although he recommended setting a price structure that was fair to the tow companies and the citizens.

Councilman Lamerson asked who would create the prices. Lieutenant Reinhardt said that the police department would, based on the current prices that were being charged. Councilman Lamerson asked if he would bring the prices forward. Lieutenant Reinhardt said that he could do that.

Councilman Hanna asked if he talked to the other tow companies and wanted to know what their answer to the problem was. Lieutenant Reinhardt said that they had some discussion during the RFP process. He said that their intent was that once they got permission to go forward, they would meet with all of those on rotation and explain the process. Councilman Hanna said that 20 years ago when they did this, they did not have that much of a problem. He said that if the City set the guidelines and if the tow companies accepted the guidelines, the City would work with them.

Chief Kabbel noted that years ago they opened it up on rotation, but the price structures were very similar. When they noticed the different pricing and gouging, they went out for an RFP and the City had one company as their provider. They conducted all of the services other than heavy duty. That worked well, but then the tow company got stuck with all of the abandoned vehicles in town for approximately 90 days. When it came time to renew the contract, they did not want it, so the City went back to a rotation policy. He said that the pricing structure changed so dramatically that people were getting charged up to \$40 to open a gate to get their belongings out of a car.

He said that when people are in accidents they are upset and not in the right mindset to pick a towing company from the phone book. He noted that was why the police provided a rotation policy. He said that people were asking why they were getting charged so much. He said that the police department was trying to come up with an MOU for all tow companies to follow with set prices that were industry standards, or an RFP to do a contract with one company to take care of all of the services, or something different; utilizing the current policy with tweaks. He said that they were asking Council where they would like the department to go.

Councilman Hanna agreed with Councilman Blair and said that it left a bad taste in his mouth to require a yard in Prescott. Chief Kabbel noted that they were also charging mileage. If the yard was in Paulden, the consumer would pay the mileage, which could be up to \$5.50 per mile. Councilman Hanna noted that they could have a flat rate back to their yard.

Councilman Blair said that if there was going to be an RFP, the City would spell everything out and send them to the towing companies. If they wanted to play in the rotation system, they could sign the MOU or not. He noted that he did not care if the yard was in Seligman.

Acting City Manager Hadley asked Councilman Blair if he thought it was okay to have the companies tow yard in Seligman. Councilman Blair said yes, if they were not charging mileage. He said that it was the property owner's business as a tow truck driver. He asked who cared where the property was if the driver would tow for a flat rate. Acting City Manager Hadley said that she thought the citizens would care because they may not have a way to get to Paulden to pick up the car. She said that she thought they should think that through. She noted that the police department was trying to stop inconveniencing the citizens. She noted that maybe they could say "the boundaries of Prescott" to include the unincorporated areas.

Councilman Blair said that they might say 'within 15 miles' of the City of Prescott. Acting City Manager said that a cap would be fine. Councilman Blair said that his point was to be able to say that they could give the citizens a tow if the companies agreed to certain parameters.

Chief Kabbel said that they liked to keep it within Prescott because it was sometimes just the first of several tows when there was an accident.

Councilman Lamerson noted that gas, tires and oil did not cost the same for each vehicle. He said that it was incumbent to work with the professionals to establish the guidelines and work in contingencies for increase in costs to the tow companies. He did not think that it was something that the City could do itself.

Councilwoman Suttles said that it reminded her of the False Alarm Ordinance. She said that there was a lot of discussion, but nothing happened. She said that if those eight companies agreed to come

to come to the table, then this would be over. She said that if they did not, the City would deal with fewer companies.

Daniel Mattson, Prescott, said that his commercial insurance only let him go 50 miles. He thought that a five mile radius seemed reasonable. He also mentioned ARS 28-4848 and said that he encountered a few instances where people were told they had to sign over their title to get their personal property. He said that one guy had his car towed due to driving under the influence (DUI). He noted that another guy did not want to have to deal with the police and signed over the title. He said that he was in favor of a reasonable price structure.

John Zambrano, Prescott, asked if the towing companies could submit their price and then the police department would select the lowest price available on a particular night. He said that it would encourage them to come in with a low bid.

Councilman Blair said that they may want to put a 10 percent variable on prices based on gas increases, etc.

Chief Kabbel said that as far as the direction went, they would come up with their research, get the stakeholders together and sit down with them and discuss the issues. They would come up with a fee schedule with variables in it and then come back to Council with an MOU to get all of the companies on the same page.

Mayor Kuykendall asked if he would bring the recommendation back to the Council and Chief Kabbel said yes.

Ron Williams, Prescott and owner of NASTOW Towing, said that they enjoyed a good relationship with the City of Prescott and valued that highly. He said that he felt like they were required to have the oil dry and did not find it unfair to charge for the service. He said that towing varied so much it would be difficult to make it a flat charge. He said it was not unreasonable to charge to crawl on his back and get under a semi and spend anywhere from 15 minutes to 2 hours to remove a drive shaft. He said that they would never charge a gate fee during working hours. However, if someone called at 2:00 a.m. and they had to get out of bed to let him in, he did not think it was unreasonable to charge for that service.

He said that they may have gone to pick up a car and it was not sitting on the side of a road, it was sitting on a pile of boulders 16 feet in the air, because they were going so fast. He said that they

would like to sit down with the officers to explain why some of these extra charges came up.

Councilman Hanna said that maybe one half of one percent of the companies was creating a problem by gouging. Mr. Williams said that he may also get complaints against his company, but he felt justified. Councilman Hanna said that he felt the best solution was for them all to get together. He said that people did not always understand that there were circumstances that would justify an extra charge. Mr. Williams said that all of the officers they had dealt with had been easy to work with.

Councilman Blair suggested that a Council member sit on that committee. He suggested Councilman Hanna, as he was a retired police officer.

Daniel Mattson said that he thought that it would be a good idea to have representation of potential customers. He said that he had a background in auto mechanics and would be willing to sit in on the meeting.

GD.* Recess into Executive Session.

COUNCILMAN HANNA MOVED TO RECESS INTO EXECUTIVE SESSION; SECONDED BY COUNCILWOMAN LINN; PASSED UNANIMOUSLY.

The Prescott City Council recessed into Executive Session at 3:56 p.m.

III. EXECUTIVE SESSION

- A. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body'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, pursuant to ARS 38-431.03(A)(4).
 - 1. Lexington Insurance/Casa de Pinos v. City of Prescott.
 - 2. McBurnie v. City of Prescott.
 - 3. City of Prescott v. CVID Investments LLC
 - 4. Potential legal claim re FLSA issues

- B. Discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to ARS 38-431.03(A)(3).
 - 1. Laws regarding executive sessions.

IV. ADJOURNMENT

The Prescott City Council reconvened into Open Session at 4:58 p.m., at which time the Regular Meeting of February 22, 2011, was adjourned.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

ELIZABETH A. BURKE, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Voting Meeting of the City Council of the City of Prescott, Arizona held on the 22nd day of February, 2011. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2011.

AFFIX
CITY SEAL

ELIZABETH A. BURKE, City Clerk