

PRESCOTT CITY COUNCIL
SPECIAL MEETING
TUESDAY, JUNE 21, 2011
PRESCOTT, ARIZONA

MINUTES OF PRESCOTT CITY COUNCIL SPECIAL MEETING held on June 21, 2011, in the CITY HALL COUNCIL CHAMBERS located at 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Pro Tem Lamerson called the Special Meeting to order at 3:02 p.m.

◆ **PLEDGE OF ALLEGIANCE**

Councilman Hanna led the Council and audience in the Pledge of Allegiance.

◆ **ROLL CALL:**

Present:

Mayor Kuykendall (arrived at 3:31 p.m.)
Councilman Blair
Councilman Hanna
Councilman Lamerson
Councilwoman Lopas
Councilwoman Suttles

Absent:

Councilwoman Linn

I. RECOGNITION

A. Recognition of the Yavapai College Women's Softball Team.

Joe Baynes invited the coaching staff and players in attendance forward and said that the Yavapai College Women's Softball Team won the 2011 Junior College National Championship for the second time in three years.

He noted that the coaching staff, for the second time in three years, won the National Coaching Staff of the Year Award. He said their record was 67 wins and 4 losses and 5 players were named All American.

II. ACTION ITEMS

A. Consideration of Senate Bill 1398 Implementation.

Acting City Manager McConnell said the Senate Bill added a \$13 surcharge in addition to other charges to fines, penalties and forfeitures

obtained in the City, and an example was parking tickets. He said they had brought back the implementation of the bill for action.

COUNCILMAN HANNA MOVED TO DIRECT THE CITY COURT MAGISTRATE AND CITY STAFF TO: 1) INCREASE ALL FINES, PENALTIES OR FORFEITURES SUBJECT TO THE SURCHARGE SPECIFIED BY SENATE BILL 1398 IN THE FULL AMOUNT OF \$13.00; 2) IDENTIFY SAID SURCHARGE ON PARKING CITATION FORMS AS BEING MANDATED BY THE STATE OF ARIZONA; AND 3) ACCOMPANY PARKING TICKETS WITH A FLYER OR PREPRINTED ENVELOPE NOTIFYING MOTORISTS THAT PARKING IS AVAILABLE IN THE CITY GARAGE ON GRANITE STREET; SECONDED BY COUNCIL WOMAN SUTTLES; PASSED UNANIMOUSLY.

- B. Adoption of Resolution No. 4087-1157 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Police Department to enter into a Memorandum of Understanding with the Arizona Department of Public Safety establishing permission and guidelines for use of state-licensed mutual aid radio channels and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Chief Kabbel said that it was a standard agreement and that the approval of the item would allow public safety officials within the City of Prescott to utilize the state-licensed mutual aid radio channels.

Councilwoman Suttles asked if there was any more to what a Memorandum of Understanding (MOU) was and what they could do with it. Chief Kabbel said that it was a form of an agreement.

Mr. Kidd said that it really was an Inter-Governmental Agreement. He noted that police agencies usually called it a MOU.

COUNCILWOMAN SUTTLES MOVED TO ADOPT RESOLUTION NO. 4087-1157; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- C. Adoption of Ordinance No. 4797-1148 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, ordering and calling a Special Election to be held on November 8, 2011, to fill a two-year (short) term on the Prescott City Council.

Councilwoman Suttles asked if it would be possible to get some of the Charter Amendments on the ballot of the Special Election.

Ms. Burke said that they could do that, but they had a limited time to get it done. She said that they would have to get the ballot wording approved and advertise for pro and con statements by July 11, 2011.

Councilman Hanna asked if there could be a write-in candidate on the November ballot. Ms. Burke said yes. She said that they would have to file the necessary paperwork at least 40 days before the General Election. She noted that their name would not be on the ballot.

Councilman Lamerson asked if there was anything that precluded an individual from applying to be appointed seeking the office, getting the necessary signatures, qualifying for the ballot and being a write-in at the same time.

Ms. Burke said that if they were going to run as a normal candidate for the two year term, there would be no reason to be a write-in candidate. Councilman Lamerson asked if there would be an issue if someone did both. Ms. Burke said that they could not be both because they could not serve both positions.

Councilman Lamerson said that he was talking about the two year position and asked Mr. Kidd if he had any comments. Mr. Kidd said that there would be a Special Election just for that position. He said that it was by Charter and was called a Short Term position. He said that there could be a situation when someone took out nominating packets and did not get enough signatures. He said that they could fill out the appropriate write-in candidate stuff and be a write-in.

Ms. Burke said that if someone took out a packet and circulated petitions but did not receive enough signatures; they could not be a write-in candidate.

Ms. Wayman-Trujillo, Yavapai County Recorder, quoted Arizona Revised Statutes 16-312, which confirmed what Ms. Burke said—that they could not be a write-in if they did not receive enough signatures.

Councilman Blair noted that there were a number of changes to the Charter Amendments. Councilman Hanna said that there were 24 changes. Ms. Burke said that they should subtract the eight that were on the last ballot. Councilman Blair said that it would seem to him that they should put eight more on the ballot to work towards getting through all of them. He said that he could not imagine putting all 16 on the ballot. He asked if there were eight house cleaning items that they could get on the ballot.

Ms. Burke said that they would have to pull together a Subcommittee meeting to review them. Councilman Lamerson said that they could go back and look. He said that they should look at them in the next few days. Councilman Blair said that they could do eight now and eight with the Presidential ballot next year.

Ms. Burke said that it would be better to do them now, rather than wait until next year's election. She said that trying to get ballot issues on a state-wide ballot could create problems. Ms. Wayman-Trujillo reminded them that the ballot could be very long. She said that there were 19 propositions from the state 4 years ago and 12 or so on the last one.

Mr. Kidd suggested that the committee could direct the City Clerk to post the meeting and then the staff would work with the committee to discuss the time frames and issues. He said if the committee was in favor of moving forward, they would put it on the next Council Agenda.

Councilman Blair said that Councilwoman Suttles made it clear that they needed to get through it.

Councilwoman Suttles asked if the cut off date for Councilwoman Linn's seat was July 1, 2011. Ms. Burke said yes. Councilwoman Suttles asked if the Mayor and Council would go into a workshop at that time. Ms. Burke said that copies of all of the applications would be distributed to the Mayor and Council; they would schedule a date for a Special or Regular Meeting for public interviews. She noted that they would make their appointment at that date or a future date.

Councilman Hanna asked if a person filed a packet to run in the upcoming election and did not get enough signatures, if they would be eligible to be a write-in candidate. Ms. Wayman-Trujillo said that he would not be eligible and it was called a Sore Loser Law, which was created a couple of years ago.

COUNCILMAN HANNA MOVED TO ADOPT ORDINANCE NO. 4797-1148; SECONDED BY COUNCILMAN BLAIR, PASSED UNANIMOUSLY.

- D. Consideration of Offer to settle the Lexington Insurance/Casa de Piños v. City of Prescott litigation.

Mr. Lloyd noted that they had some settlement discussions in the case. He said that the City's offer of judgment was \$77,500. He said that most recently Lexington had made an offer of \$90,000 to settle this, which he was required to communicate to the Council. He said that they saw three options for the Council to take: 1) reject the settlement offer; 2) accept the

offer; or 3) counteroffer in another amount – most likely between those two amounts.

Councilwoman Suttles said that she, Councilwoman Linn and Mr. Lloyd met with Lexington a few months ago in mediation. She said that she would like to go back to the table one more time. She noted that negotiating with insurance companies was hard and time consuming.

Councilman Hanna said that he was not going to comment on it but changed his mind. He asked if Lexington had other properties. Mr. Lloyd said that they had over 150 properties across the nation. Councilman Hanna asked if they should have known better than not to have a backwater valve. Mr. Lloyd said that he did not know because they had not received public records he had requested. He said that was where he was heading and he had a strong suspicion that the documents would show that.

Mayor Kuykendall arrived at 3:31 p.m.

Councilman Hanna said that he could not see paying for something that was not the City's fault. He said that the only way to get this to stop in general was to set precedence and not give in to every whim. He said that he thought that the offer they made was sufficient. He said to give them the same offer and if it was not acceptable, leave it up to a judge. Councilman Blair and Councilwoman Lopas agreed.

COUNCILMAN HANNA MOVED TO REJECT THE OFFER TO SETTLE THE LEXINGTON V. CITY OF PRESCOTT LITIGATION AND AUTHORIZE STAFF TO MAKE THE ORIGINAL \$77,500 OFFER BACK TO THEM; SECONDED BY COUNCILWOMAN LOPAS.

Councilman Lamerson noted that there was about a \$13,000 discrepancy between what they wanted and what the City wanted. He asked how much it cost to keep the case going.

Mr. Lloyd said that there were no direct costs but there were the salaries of those handling the matters. He noted that there were direct costs of at least two experts for the City and two for Lexington. Councilman Lamerson asked how much they would cost. Mr. Lloyd said that it could be as high as \$50,000 and as low as \$20,000.

MOTION FAILED 3-3 WITH MAYOR KUYKENDALL, COUNCILMAN LAMERSON AND COUNCILWOMAN SUTTLES VOTING NO.

Mr. Lloyd said that it did not prevent them from coming back at a later time. He also said that it did not prevent Lexington from making another offer.

- E. Recess into Executive Session.

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

The Prescott City Council recessed into Executive Session at 3:42 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, and discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to ARS 38-431.03(A)(3) and (4), respectively.
 - 1. The Crossings legal issues and claims.
- B. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, pursuant to ARS 38-431.03(A)(1).
 - 1. Annual evaluation of City Clerk.
 - 2. Annual evaluation of City Attorney.

IV. POST EXECUTIVE SESSION

The Prescott City Council reconvened into Open Session at 6:10 p.m.

- A. Possible action on Employment Agreement with City Clerk.

COUNCILMAN BLAIR MOVED TO EXTEND A ONE-YEAR CONTRACT FOR GARY KIDD, CITY ATTORNEY AND ELIZABETH BURKE, CITY CLERK; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- B. Possible action on Employment Agreement with City Attorney.

V. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Meeting of June 21, 2011, adjourned at 6:10 p.m.

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 Special Meeting of the City Council of the City of Prescott, Arizona held on the 21st day of June, 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