

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, MAY 22, 2012
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on MAY 22, 2012, 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.

He reminded the audience that there would be another Budget Workshop at the library in two days.

◆ **INTRODUCTIONS**

◆ **INVOCATION** Pastor Dean Wilfong, Church on the Street

With Pastor Wilfong not present, Daniel Mattson gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Kuknyo

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

◆ **ROLL CALL:**

Present:

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow
Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

Absent:

None

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

City Manager McConnell noted that Budget Workshop 2 would be Thursday, May 24 at 1:00 p.m. in the Library. At that time they would be reviewing the capital programs of the City of Prescott in the various funds and there would also be the opportunity for public comment regarding any budget topic. Mayor Kuykendall asked if they would be able to ask questions from last week's Budget Workshop. Mr. McConnell said yes.

I. CONSENT AGENDA

CONSENT ITEMS I-A THROUGH I-D LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.

Councilman Kuknyo asked to pull Item D from the Consent Agenda to reword the minutes. He wanted his comment on page 18 to read that he disagreed “with” calling the people protesters, not “by” calling them protestors.

COUNCILMAN ARNOLD MOVED TO APPROVE CONSENT ITEMS A, B AND C; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

COUNCILMAN KUKNYO MOVED TO APPROVE ITEM D, APPROVAL OF THE MINUTES OF THE PRESCOTT CITY COUNCIL WORKSHOP, MAY 1, 2012, AND THE REGULAR VOTING MEETING OF MAY 8, 2012, AS AMENDED; SECONDED BY COUNCILMAN CARLOW; PASSED UNANIMOUSLY.

- A. Approval of agreement for legal services related to employee benefits with Boyle, Pecharich, Cline, Whittington and Stallings, PLLC, in the amount of \$15,000.00.
- B. Approval of agreement for legal services related to investigation of issues of employment law with Green and Baker Law Firm in the amount of \$13,000.00.
- C. Approval to purchase meter reading equipment from Mountain States Pipe & Supply in the amount of \$15,575.20.
- D. Approval of the minutes of the Prescott City Council Workshop of May 1, 2012, and the Regular Voting Meeting of May 8, 2012.

II. REGULAR AGENDA

- A. Public Hearing and consideration of liquor license application submitted by Benjamin Alvarez, applicant for Ben Monica Serafin Management, Inc., for a Series 12, *Restaurant*, license for The Dinner Bell located at 321 West Gurley Street.

Ms. Burke reviewed the application. Mr. Alvarez said the hours would be from 5:00 a.m. – 8:30 p.m. weekdays and open until 9:00 p.m. on Friday and Saturday.

COUNCILMAN LAMERSON MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

COUNCILMAN LAMERSON MOVED TO APPROVE A LIQUOR LICENSE APPLICATION FOR A SERIES 12, RESTAURANT, LICENSE FOR THE DINNER BELL LOCATED AT 321 WEST GURLEY STREET; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- B. Adoption of Resolution No. 4127-1237 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, repealing Resolution No. 3920-0926 relating to the formation and operation of an Enterprise Zone.

Mr. Guice said the City partnered with Yavapai County on the Enterprise Zone Program, which was designed to generate new capital business investment and job creation within local areas

He noted that with the creation of Arizona Commerce Authority and the new Quality Jobs Program, the Enterprise Program was discontinued. New companies can no longer apply and receive tax credits through that program. He noted that there had been no new companies entering the program, so staff thought it was best to close the program and discontinue the City's committee.

COUNCILMAN CARLOW MOVED TO ADOPT RESOLUTION NO. 4127-1237; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- C. Approval of Comprehensive Sign Plan for the "Willow Creek Shopping Center" located at 1048 Willow Creek Road (Owner: Willow Creek Plaza, LLC., Agent/Applicant: Morgan Sign Co., APNs:115-09-091C and 115-09-095B; File No. CC12-002).

Mr. Guice said the item was for monument signage only for the existing Willow Creek shopping center. He noted that there were two signs currently. A single sign, 72 square feet in size, was being proposed. He said it would be 13 feet high because it included the address at the top.

He noted that the second sign in the sign package was the signage on Iron Springs Road. He said it would also be 72 square feet with no address on the top. He said the two signs would exceed the allowable sign package by 16 square feet.

Councilman Carlow asked if it had gone through Planning and Zoning. Mr. Guice said yes and it passed unanimously, with a condition that the sign on Willow Creek Road would be set back 11 feet from the curb line.

Councilman Arnold asked how far back from current location the sign would be as it was difficult to see the traffic with the current signs. Mr. Guice showed a diagram with a sight distance triangle. He said it would be moved back another five to six feet. Councilman Arnold asked about the sign on Iron Springs Road. Mr. Guice said that they could see if there was room to move that back also.

Councilman Blair asked if they could move the sign up. Mr. Guice said it would be a question for the applicant. Councilman Blair said that if they were losing one parking spot anyway, he asked why they could not move the sign up for a better view point. He noted that the shopping center was pathetic about marking the drive lanes.

Stephan Marco, representing Morgan Signs, said the sight triangle was well behind where the proposed location of the sign was. He noted that the rendition they saw was a little misleading because it was too close to the curb. He said the 40' distance was ample for a driver to see oncoming traffic. Councilman Blair said that he was not sure he liked the word "adequate."

Councilman Blair said a person would have to pull their car past the sidewalk to be able to see up the road. Mr. Marco said the sign was about six feet back from where it showed on the diagram. Councilman Blair asked if the traffic engineer approved the plan. Mr. Guice said yes. Councilman Scamardo explained why the sign was where it was.

Councilman Kuknyo said that it was a good idea and would clean up a lot of clutter on that street.

COUNCILMAN ARNOLD MOVED TO APPROVE COMPREHENSIVE SIGN PLAN CC12-002 IN ACCORDANCE WITH EXHIBIT "A" DATED FEBRUARY 8, 2012, WITH THE WILLOW CREEK ROAD SIGN TO BE SET BACK A MINIMUM OF 11 FEET FROM THE WILLOW CREEK ROAD CURB; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

- D. Approval of Comprehensive Sign Plan for "The Shops at the Boulders" located at 1320 Willow Creek Road (Owner: Gisi Enterprises; Applicant/Agent: Morgan Sign Co., APNs: 115-05-166M, N & P, CC12-001).

Mr. Guice noted that this item was similar to the last. He said that it was for monument signage only for the new Shops at the Boulders, at

Willow Creek and Gail Gardner. The proposal was to have a primary identification monument sign at the intersection for a total of 65 square feet. He said the sign would be 12 feet high. He noted a second sign would come at another phase of the shopping center would be at the entrance of Gail Gardner Way for a total of 18 square feet. He noted that the package was 45 square feet less than what they could get permitted. He noted that the commission approved the package at their May 10th meeting with a unanimous vote and no conditions.

COUNCILMAN ARNOLD MOVED TO APPROVE COMPREHENSIVE SIGN PLAN CC12-001; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- E. Approval of an extension of City Contract No. 2011-422 with Roadsafe Traffic Systems, Inc., for City street pavement markings in the amount of \$77,515.24.

Mr. Nietupski said it was an annual pavement marking contract and staff's recommendation was for extension for the contract that was awarded last year at the same unit prices originally bid. He noted that there were a few issues with the equipment the past year. He noted that Roadsafe stepped up to the plate, came back and applied paint to address the issue, at no additional cost. He said the prices were at, or below prices that reviewed in the region. The work would be completed by June 30, 2012, so the downtown area would look good for the 4th of July.

Councilman Blair asked if there was a provision in the original contract to extend the contract for a year. Mr. Nietupski said yes, it was for two, one-year periods. He noted that they would rebid the contract the next time around. Councilman Scamardo asked if it was all unit pricing. Mr. Nietupski said yes.

Councilman Arnold noted that it would not include any of the streets in FY2013 reconstruction. He thought it was important for the public to know that the portion of Gurley Street, Cortez Street and Montezuma Street they would be discussing later would not be striped before the 4th of July. Mr. Nietupski said he was correct.

COUNCILMAN SCAMARDO MOVED TO AWARD AN EXTENSION OF CITY CONTRACT NO. 2011-422, WITH ROADS SAFE TRAFFIC SYSTEMS, INC., OF PHOENIX, ARIZONA, REQUIRING ALL WORK TO BE COMPLETED BY JUNE 30, 2012, IN THE TOTAL AMOUNT OF \$77,515.24; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

Councilman Arnold recused himself for a potential conflict of interest on Item F.

- F. Award of bid and contract to Fann Environmental, LLC, for the Sundog Wastewater Treatment Plant Nitrification/DeNitrification Upgrades Project in the amount of \$1,150,128.00.

Mr. Nietupski said the contract was to improve and control the wastewater treatment process so that the release of nitrogen was within the protection permit limits as specified by the Arizona Department of Environmental Quality. He noted that the project came about as part of the Wastewater Treatment Master Plan of 2009. He said there were issues with the treatment processes. He said the project was an element of the work that was identified in the airport wastewater and treatment project and engineering was done by Waterworks Engineering. He noted that the project could begin in June and be complete in November. He said the fund were from the Wastewater Fund.

Councilman Blair asked if the engineer's estimate was a City of Prescott engineer or a wastewater engineer. Mr. Nietupski said it would have been engineers from Waterworks.

COUNCILMAN BLAIR MOVED TO AWARD THE BID AND CONTRACT TO FANN ENVIRONMENTAL, LLC, FOR THE SUNDOG WASTEWATER TREATMENT PLANT NITRIFICATION/DENITRIFICATION UPGRADES PROJECT IN THE AMOUNT OF \$1,150,128.00; SECONDED BY COUNCILMAN CARLOW; MOTION PASSED 6-0 WITH COUNCILMAN ARNOLD ABSTAINING.

- G. Adoption of Resolution No. 4129-1239 – 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 the Yavapai County Flood Control District (District) and providing for the construction of sewer main relocation in conjunction with the Forbing Park Drainage Improvements Project to be constructed by the Flood Control District within County right-of-way.

Mr. Nietupski noted that the City operated the utilities within the County right of way. He said the Flood Control District designed the sewer realignments necessary for the installation of the new storm drain. Under the agreement, the City would pay the costs for the relocation. He said the anticipated cost would be around \$80,000.00, but the project had not been bid. The unit prices that were applicable would be used to make payments for the work completed. He noted that some water services may be disrupted. The project would begin in the summer of 2012 and would be funded from the Water and Wastewater Funds.

Mr. Nietupski noted that the project would be brought back to Council if it was in excess of \$10,000.00 beyond the \$80,000.00.

COUNCILMAN LAMERSON MOVED TO ADOPT RESOLUTION NO. 4129-1239; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- H. Award of bid and contract to Truesdell Corporation for the Concrete Dams Repair Project in the amount of \$945,945.00.

Mr. Nietupski said there were four dams in the City system: Upper and Lower Goldwater Lakes, Willow Creek Lake and Watson Lake. He said it was the first of two projects in FY13, the second project will replace three valves on the Granite Creek Dam and install apparatus for operations and worker safety.

He noted that in addition to the concrete repairs in the first project, they would also be installing security fencing to limit access to the top of the dam. He noted that Arizona Department of Water Resources (ADWR) did a yearly inspection of the dams and informed the City of the requirements as they related to the dams and maintenance. He said there were not structural issues. He said the project would address the concrete damage.

ADWR would participate in the inspection of the work as it proceeded. He noted that the project had a 75 day completion requirement. The work would be completed in August of 2012 and the project would be funded through the Water Fund.

Councilman Kuknyo asked if the repairs would be below the water line. Mr. Nietupski said they would all be above the water line. Councilman Kuknyo asked if the work would have any effect on the water quality of the lake. Mr. Nietupski said the work would be done with environmental sensitivity.

Councilman Scamardo asked if they were doing the work above the water line on the water side and cosmetics on the downstream portion. Mr. Nietupski said yes. Mayor Kuykendall asked if the bid included the fencing. Mr. Nietupski said yes.

COUNCILMAN ARNOLD MOVED TO AWARD THE BID AND CONTRACT TO TRUESDELL CORPORATION FOR THE CONCRETE DAMS REPAIR PROJECT IN THE AMOUNT OF \$945,945.00; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

- I. Approval to perform night work along portions of Gurley Street, Cortez Street, and Montezuma Street associated with the FY 2013 Pavement Rehabilitation Project.

Mr. Nietupski said they would be conducting the milling and hot mix overlay project in the downtown area, including Whiskey Row between Gurley and Goodwin and then on Cortez between Sheldon and Goodwin. He noted that Gurley Street would also be included from Marina to Rush. He said the work would begin in late July. He noted that the segments of Cortez and Montezuma would not receive the overlay application. He said it was a budgeted part of the annual rehabilitation program.

Councilman Arnold said it would be appropriate to look at some of the limitations on the contractor as to when they could do the work. He noted that it was the City's busy season. He thought it would be reasonable to work 7:00 p.m. to 6:00 a.m. Sunday through Wednesday. Mr. Nietupski said they could accommodate that.

Councilman Scamardo asked if it would be easier to work during Councilman Arnold's schedule to move the start date to later in the Fall. He asked what the total time of the project would be.

Mr. Nietupski said the mill and fill would be done in a block by block segment. When they began the Whiskey Row segment, they would mill it out and pave it before they moved to the next block segment. He said the project should not take more than 45 days. He said the ACFC product that would be used on Gurley Street was temperature sensitive and needed to occur during daylight hours.

Councilman Lamerson asked how much time they would save by doing the work at night. Mr. Nietupski said that it might take twice as long if they did not do the work at night. Councilman Lamerson said that he could not support delaying the maintenance program that was overdue.

Councilman Scamardo said that by allowing night work, the project would take 45 days and if they did not allow the night work, it would take 85 to 90 days. Mr. Nietupski said the segments of work along Cortez and Montezuma would take twice as long. Mayor Kuykendall noted that by doing the work at night, there would be parking during the day. Mr. Nietupski said there would be access and parking available. When the section is milled out, they will be parking on a milled surface. He said the parking would not be delineated at that time, but it would be available.

COUNCILMAN LAMERSON MOVED TO APPROVE THE PERFORMANCE OF NIGHT WORK ALONG PORTIONS OF GURLEY STREET, CORTEZ STREET, AND MONTEZUMA STREET FOR THE

FY2013 PAVEMENT REHABILITATION PROJECT; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- J. Adoption of Resolution No. 4128-1238 – 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 the State of Arizona, through its Department of Transportation (ADOT), and providing for the construction and maintenance of improvements to SR89/White Spar Road, Copper Basin Road to Peterson Lane, with State right-of-way and City jurisdiction.

Mr. Nietupski said the item specified the responsibilities of the City and the State as it related to the construction and maintenance of the proposed facilities and improvements to the highway within the State right-of-way and City jurisdiction. He noted that the City endorsed a grant application in 2010 that was submitted to ADOT for transportation enhancement funds between Copper Basin Road and Peterson Lane. He said the project involved roadway widening, new sidewalks with ramps, bicycle lanes and some drainage improvements. He said it would enhance safety for bicyclists and pedestrians. He said there would be sidewalks on both sides.

He said the State would design, administer and construct the roadway improvements. They would also maintain the roadway, drainage facility and bike lanes, as necessary. The City would maintain the structural integrity of the sidewalk. The routine surface maintenance for snow and ice and removal of debris would be the responsibility of the adjacent property owner, per the City Code, Section 8-1-2. The utility work would begin the Summer of 2012, with roadway improvements to be bid in the Fall of 2012.

Councilman Blair asked when Section 8-1-2 was put into code. He noted that the item would not go out to bid until Fall of 2012. He appreciated the fact that they would install sidewalks and bike lanes, but disagreed that the City would assume structural maintenance responsibility to the sidewalk, but they were going to pass along the snow removal, ice and debris removal to the fronting commercial property owners. He said he absolutely disagreed with that and he would not support it in that form.

Mr. Nietupski said the Code was a Council policy determination. He said the Code existed as it did for specific reasons. He said that he could understand the opinions on both sides of the fence, but, in that way, those pedestrian improvements could be accommodated. The improvements would provide more safety and access.

Councilman Blair noted that the City of Prescott got cinders on the sidewalk but they would require the property owner to remove them in a timely manner. He noted that if someone got hurt, they would sue the property owner. He asked if they were going to strip bike lanes. He asked if the City had a greater responsibility for debris removal because they were designated as bicycle lanes. Mr. Nietupski said the City had no involvement with the maintenance of the pavement, which included the bicycle lanes. Councilman Blair said that he did not understand why they would not maintain the sidewalks.

Councilman Lamerson noted that it was a State highway that ran through the City of Prescott. He said it was the State that wanted to put in the bike lanes and sidewalks. He asked if there had been situations that had the demand for sidewalks along a state highway on White Spar Road. Mr. Nietupski said that he could not speak to ADOT's accident data as it related to pedestrian conflicts.

Councilman Lamerson asked Chief Kabbel if he knew if people had been run over on that highway. Chief Kabbel said that there had been a lot of accidents with bicycles and near misses. He said there had been no pedestrian accidents.

Councilman Lamerson asked what would happen if they asked the State not to put in the sidewalks. He said if they wanted to put in bicycle lanes and maintain their highway and the bike lanes that would be fine. He said that he did not like having the State install sidewalks that were not needed and then having the City pass on the cleaning of the sidewalks to the residents.

Councilman Arnold said that he would be willing to support a workshop to discuss that code issue. As far as improvements to White Spar, he thought it was a great thing. He said that he was seeing that ADOT was not asking the City of Prescott to pay for any of the improvements. Mr. Woodfill said that was correct, other than the City's need to relocate and improve the water line contract.

Councilman Arnold said that one of the sister communities recently had some highway improvements done and came back and decided, after the fact that they wanted to put sidewalks in that was a difficult process. He said it would be a nice improvement into the City of Prescott, through White Spar. He noted that there were issues with the City Code.

Councilman Scamardo asked what was necessary for the American Disabilities Act (ADA) ramps constructed along White Spar. He asked why there would be one on sidewalks. Mr. Nietupski said that anywhere

the sidewalk intersected a street or intersection there had to be a provision to take the user down to the street grade.

Councilman Kuknyo said that he agreed with Councilman Arnold. He said it would be a nice improvement, and it was nice that ADOT was paying for the project. He said there was a fair amount of pedestrian traffic between the hotels and restaurants.

He noted that the City did not do snow removal on sidewalks and could not imagine what the cost to the City would be if they started to do that. He asked what the ten-year cost would be to maintain a mile of sidewalk. Mr. Nietupski said that he could not give him the specific amount. He noted that there were 111 miles of sidewalk in the City of Prescott.

Councilman Kuknyo said that he thought there would be increased number of pedestrians when the sidewalk was installed to Haisley.

Councilman Blair said he appreciated the fact that they were using taxpayer dollars with ADOT, but his problem was with maintenance on sidewalks. He said there were not many times that he had not seen the City of Prescott and contractors in developments that put in sidewalks that may abut a drainage area, hill slope, where he would see runoff on a sidewalk that created a liability issue. He they did need to have a workshop and talk about why the Code was put in place and what the ultimate cost to the City would be. He said he would hate for a property owner to be sued because he did not maintain a sidewalk. He noted that they were paying property taxes and taxes in the City.

Mr. Nietupski said they could schedule a workshop. He said that if the IGA was approved, it would not affect the Council's ability to change the policy in relation to the sidewalk maintenance issue.

Councilman Lamerson said that he appreciated ADOT bringing money into the City of Prescott and making improvements. He noted that they may be so concerned with the amount of money the City spent because they had stupid codes in the books. He noted that they spent a lot of money that was outside the role of the government and the money could have been better used providing public health and safety, which included sidewalks.

He said he was comfortable with improving the roads but did not like the maintenance to be the responsibility of the adjoining property owners.

Mayor Kuykendall invited the representative from ADOT to come up for questions. He asked if they could continue their work to Haisley instead of stopping at Haisley.

Mr. Mishler, ADOT Project Manager, noted that the project was a series of three grants. He said the original project came through one of the local citizens who worked with the Prescott district to get the project rolling. He said it was a great opportunity for the local community. He noted that they would not be able to go to Haisley with the project, but could look at in a future grant. He had been told that he needed to advertise the project by June 29, 2012. If the IGA did not go through, he would have to reapply and go through the process again. He said they had been working on it for over five years. He said that he hoped they could work on the Code challenges separately.

Mayor Kuykendall asked what the timeframe was. Mr. Mishler said he needed to advertise by June 29 and he needed to acquire several right-of-way parcels to be acquired. He said he was hoping to have completed by September and start construction in November

Mayor Kuykendall asked if the discussion of sidewalks was scheduled for future workshops. Mr. McConnell said yes and there were enormous financial implications of shifting the burden to the public agency. He said it was something that the Council would need to hear about, think about, and get some public input on.

COUNCILMAN ARNOLD MOVED TO ADOPT RESOLUTION NO. 4128-1238; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

- K. Award of individual contracts to three companies to provide analytical laboratory services: 1) XENCO Laboratories, Inc., in the amount \$24,200.00; 2) TestAmerica, Inc., in the amount of \$44,700.00; and 3) Bradshaw Mountain Essentials, LLC, in the amount of \$20,000.00.

Mr. Nietupski said the series of contracts was for compliance with regulatory requirements in water and wastewater permit sampling. He said the initial term of each contract was for two years, with an option to extend for two additional one-year terms, subject to a rate adjustment of no greater than three percent, based upon the previous year CPI. He noted that the sampling required 329 different analyses in the bid documents. He said that they expected multiple contracts. He noted that the results would be published for the public. He said the contract amounts were based on unit prices and the frequency of tests.

Mayor Kuykendall asked if they were currently testing. Mr. Nietupski said yes. He noted that it was done on an ongoing basis. Mayor Kuykendall asked who was currently doing the work. Mr. Nietupski said that he believed Test America was one of the labs they were using. He said that

they used Bradshaw as well. Mayor Kuykendall asked if the prices were a continuation of what the City was currently paying. Mr. Nietupski said that he could not give him an answer at that moment.

Councilman Carlow asked if there were any grant opportunities for that type of funding. Mr. McConnell said it was a cost of doing business, in order to comply.

COUNCILMAN SCAMARDO MOVED TO AWARD UNIT PRICE CONTRACTS FOR ANALYTICAL LABORATORY SERVICES TO: XENCO LABORATORIES, INC., IN THE AMOUNT OF \$24,000.00; TESTAMERICA, INC., IN THE AMOUNT OF \$44,700.00; AND BRADSHAW MOUNTAIN ESSENTIALS, LLC, IN THE AMOUNT OF \$20,000.00, ACCORDING TO THE UNIT PRICES IN THEIR RESPECTIVE BIDS; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- L. Adoption of Ordinance No. 4832-1232 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending the Prescott City Code by amending Sections 1-20-15, *Leave Policy*, and 1-20-21, *Present Benefits*, thereof; and adding Section 1-20-25, *Modifications*, thereto.

Mr. Kidd recused himself due to conflict of interest.

Ms. Zelms went through benefit changes to make sure Council and the audience was aware of what was being proposed. She showed a PowerPoint that covered the following:

- PROPOSED CHANGES TO EXISTING BENEFITS
- AS REVISED AT 4/24/12 CITY COUNCIL MEETING

She said that what was being presented was a modified retirement appreciation bonus. If an employee would be eligible to receive the retirement appreciation bonus if they left employment as of June 30, 2012, he would still be eligible with all of the same benefits when they decided to leave the City. She said he would receive his bonus, at his rate of pay, upon separation.

For employees who were with the City on June 30, 2012, but had not reached the years of service requirements, they could reach the bonus if they worked for the City for the required amount of time and reached the retirement requirements. However, they would receive that at their rate of pay as one June 30, 2012.

She noted that for any employee who was hired by the City after June 30, 2012, the bonus would not exist.

- **NEW PAID TIME OFF PROGRAM**

She noted that beginning June 24, 2012, the new paid time off (PTO) accrual would begin for all employees at the rates that were listed. She noted that a change from the current policy was that the caps of 200 and 240 for regular employees and 280 and 336 for fire shift employees would be strictly enforced.

She noted that part-time employees would accrue on a prorated basis, as they currently did. She noted that some people would have a vacation balance and a PTO balance when they left the City. The Code was written so that in no instance would an employee be paid out more than the maximum accrual. She said they would not receive both caps; they would receive the cap of 200 or 240, whether they had excess vacation or excess PTO.

She said the new PTO program resulted in a lower annual accrual because the amount of time that was accrued for vacation and sick time was higher than then number shown.

- **NEW CITY-FUNDED SHORT TERM DISABILITY PROGRAM**

She noted that staff proposed to create a City funded short term disability program, which would create a safety net for employees who did not have a lot of time on the books. The program would be supplemental coverage, paid by the City. There would be a 14-day waiting period and during that time, the employee would need to use their available PTO, vacation or sick balances to bridge the gap. She noted that they would be eligible for the short term disability which would pay 66 percent of their salary. She said it would be taxed at a different rate than the regular salary.

- **APPROVAL & IMPELMENTATION TIMELINE**

She noted that the Council was being presented with an ordinance that would codify the proposal into City Code. If it was approved, the effective dates within the document were June 23, when the sick and vacation bonuses would be frozen. She said that June 24 was when the new PTO would begin accruing and July 1 would be the date when new hires would not be eligible for the retirement appreciation bonus.

Councilman Scamardo thanked Ms. Zelms for the revisions that were brought to her by some of the Councilmen who thought they should look deeper into the short term disability program and the retirement bonus. He said that he was satisfied with the changes. Councilman Kuknyo agreed.

Clayton Heath, Kevin Heath, Dan Bates, City employees and Amy Drew, former employee. came forward to speak. Mr. Heath thanked the Council for looking at the proposed benefits package. He said it was difficult to balance the City's budget and maintain the excellent quality of City services provided to the citizens of Prescott.

He noted that Ms. Zelms presented a benefits package to the Council a couple of weeks prior. He noted that Ms. Zelms said the package was compared to 13 other cities of equal size of Prescott. Ms. Zelms stated that Prescott fell somewhere in the middle of the other cities in regards to benefits. He noted that employees of the City did their own research and found that Prescott fell well below, compared to the cities, and not somewhere in the middle. He said the document was given to the Council the day before his presentation.

Councilman Arnold and Councilman Blair said they had not seen the document. Mr. Heath handed the documents out to the Council and Mayor.

Mr. Heath said the City employees were concerned with the far-reaching impact that the proposed benefits package may have on the City's services. He noted that the impacts could be the ability to track and hire quality employees, retain quality employees with experience, create a stepping stone environment for employees.

Dan Bates, 12-year employee of the City, said that they appreciated the Council taking a look at the packet they provided. He has spoken with several of the Council members and he knows that a lot of their employees have spoken with the City Manager's Office and HR Department, regarding the proposals and what was trying to be accomplished. They can try to understand them trying to match a budget with a new world for today and in the future. He said that they don't take that lightly and they know the Council has not taken it lightly and they appreciate and recognize that some changes have already come forward.

Mr. Bates said that they still have some concerns. The decision does not have to be made today as it was going to affect employees for the long term as well as new employees coming to the City. If they do go forward today they would ask that they continue to keep the doors of communication open with the employees.

Kevin Keith, 12-year employee, said that when he was hired he was told by the chief and others at the City that he (as an employee) was the City's greatest asset. Today it seems they have now become a liability for the City. From that perspective it feels like they have become City numbers again. He would hope that they would take a second look and reach out and see whatever concessions could be made.

Amy Drew said that Clayton made a good point in that when they have employees, especially in the first-responder categories, if they have reached the maximum amount of leave time, she asked how the City was going to pay for the others covering the street. Also, she asked where the motivation was for first-responders to take a bullet, burn themselves, or risk their life. She did not see the appreciation. She said that she has been an office worker and a police officer and there is a huge difference in the way that leave affects the two, and they need to consider those differences.

James Baker, 14-year employee at the busiest fire station in the County, Station 72. He said that he goes on ten sick people in a day—the flu, hepatitis, etc. and he gets sick. He asked if he then has to burn his sick leave or vacation leave, or if it was considered industrial.

Mayor Kuykendall asked Ms. Zelms how that would work. Ms. Zelms said that she was not the Risk Management Department, but typically they have to qualify for workers compensation and she was not certain that one day of sick leave would qualify. She said they would have to have staff get back on that question.

Mr. Baker asked if they would use that or if they would have to use the short-term disability. Ms. Zelms said that the short-term disability provides coverage in excess of the first 14 days.

Councilman Kuknyo asked Mr. Baker how often that happened to him last year. Mr. Baker said that probably four to five days a year they get sick from their customers.

Mr. McConnell said that the fact is that the accrual rate and amounts indicated are a blend of vacation and sick time and it was true that the total number of hours was less than before. He said that the question was whether it was reasonable and sufficient and their conclusion was that it was reasonable. He said that currently the unused sick leave is being used as a retirement savings account. He said that if they were talking about services to the public and levels of services, over the long term they risk not being financially sustainable and changes have to be made. He said that in making those changes, the question is what is reasonable.

Mr. McConnell said that it all rolls up to difficult decisions. He said that they have gone through this and would dispute that they have not thoroughly aired it. They began with a series of workshops last year reviewing General Fund departments, including public safety, department by department and set forth a lot of information and it was clear that in the General Fund because of the way that municipalities are funded in the State of Arizona they were not looking at a sustainable future.

He said that at the outset they asked some questions, whether they were willing to cut level of service in public safety so that your child could have little league baseball, or eliminating some of the recreational amenities and quality of life issues. Or were they forced, by necessity, into rebalancing the priorities retaining some quality of life amenities, trying to maintain as best as we can their quality of services in public safety, and that was what they were dealing with.

He said that if they look at a new employee coming in the door on July 1, 2012, non-public safety, that employee will get 112.2 hours. That is a two-week vacation and 4 days of sick leave. That is not unreasonable. If they look at average sick leave use, they will find that most new employees do not use that sick leave. They will find for long-term employees is that they have 200+, 500+, 1500+ hours accumulated sick leave. They can use that sick leave. The fact is that from a financial standpoint, if they continue on into the future affording this benefit which can be cashed out as a “second retirement system account” they will not be able to afford it so the level of service is going to be reduced anyhow.

Daniel Mattson, said that he came before Council with concerns when this was first brought up in mid April. He said that it has improved from what was originally suggested, but with the next voting session being June 12, he recommended that they hold off and look at it further. He thought that the concerns voiced by the public safety employees were valid and need to be looked at. He asked if it would be possible to extend the secondary property tax for an additional seven years, to be used for a specific purpose.

Debbie Potts said that she was a resident of the City of Prescott and as a parent of a special needs child she wants to know that the Fire Department will be there giving the best care possible. She wants to know that police officers will be there giving their very best, knowing that they are getting their very best from their employer.

She asked if upper management was sacrificing any benefits because of the proposed package. Mayor Kuykendall said that it was one organization. The only ones not affected by the change were the Council

members. His check was \$602 a month and the rest of the Council's were less.

Laura Wilson said that she has worked for the Police Department in a civilian capacity for the last 12 years. In looking at the change in the leave policy it appears that they will lose 80 hours per year, plus the ability to accrue sick leave. Her concern is with the cap being at 240 hours. She said that she thinks about young families and the desire to attract them, she was concerned that these changes would impact their decision if they were about to have a baby.

She asked if they had explored the possibility of continuing with vacation or sick leave, allowing for accruals of sick leave, with no payout when the employee leaves. That seems to be where the big bulk of the money was.

Jeremy Brazzell, employee, said that he echoed what was pointed out by Laura. He did not think that the major concern of the majority was the fact that they were going to PTO, but rather the cap going from a vacation of 200/240 and unlimited sick time to 200/240 and elimination of the entire unlimited ability to earn sick days. The majority feel that the cap is entirely too low. Looking at the 13 other cities that were surveyed by the City prior to putting forth the proposal, they have a higher cap and a considerably higher cap of about 200 hours. He thought it might quell some of the concerns if they increased the cap. He said that he knows that Prescott Valley is on a PTO system. They can accrue an unlimited amount of PTO, but the payout is limited to 304 hours.

Sandra Smith, citizen, said that she had experience as a first responder who volunteered for five years in Brighton, Colorado. She said that they covered a 400 square mile area and worked with seven different fire districts in the area, as well as police, many of whom were also volunteers. She said that not one of them got paid, but they put up quality service and did the same job. She thinks that a lot of people in Prescott have forgotten what public service means. She said that what Mr. McConnell said made perfect sense to her. She lives on a fixed income budget and knows what it is to not have money to spend.

Mayor Kuykendall said that he has been in the City for a long time and has known many of those working for the City. He felt like they were sitting there with a bull's eye on their back because they were the target of trying to bring the community back into a financial condition that they can survive. Today they were informed again of how much extra money the community has to put in the budget to meet their requirements for pensions and benefits for the coming year. It is something over \$424,000 that they have to take from something.

He said that the Police Department has 71 employees. He asked if they wanted to do it with 69 and have 2 without a job. The Fire Department has 69; he asked if they wanted to pick out who they want to leave. He said that it was not fun and games and to have employees sit in the back and applaud when someone tries to make the Council look like they're villains is not right. His door has been open since the first day he got there and will continue to be open, but what they need to do is to come together, recognizing that they have a money problem. They depend on sales tax to pay the bills and business has not been good. When 68% of the General Fund is used just for public safety they have a problem. They were trying to find a way to make it work for everyone, and not take any money away from them.

Mayor Kuykendall asked that they do come together, recognizing that together they can fix the problem, and keep everybody working. If they can decide to do that he believed they could solve the problem. For some reason they were the messengers to tell them that the community cannot continue to sustain the obligations they have of over \$5.5 million.

Jim Lawrence, resident, said that about 35 years ago he was a member of a Reserve Police Department in California and they had a situation involving a contaminated area. He said that they ended up with two reserve police and two regular officers having an extended illness because of it. He said that he thought it was a legitimate question of whether they would be handled through workers compensation. He would hope that the question could be answered.

Councilman Arnold said that he agreed with the Mayor that the issues they were facing were not just dollars and cents today, but it was about the long-term viability of the City. As an example, they were making changes today that will insure that they will be able to provide jobs in areas that have been previously discussed for contracting out 15 to 20 years from now. He does not think there was a City employee that the Council did not care about.

He has heard the snickers, etc. but the Council does really care about the people that work for the City. They make the City happen. He has spent his time out with different departments learning about what they do and he thinks it is important and the work they do is important, but if they do not secure the financial viability of the City today there may not be a future for some of those areas.

Councilman Arnold said that the PTO system is not in place if they get injured on the job; that is what workers compensation is for. If an officer is shot in the line of duty, the City's workers compensation program provides them the benefits. If an employee is off work, at home, and trips and

breaks an ankle, that is where the PTO comes in, as well as the FMLA and short-term disability insurance.

This has been an elongated process and he was appreciative of the management as to how they have approached it. The one thing that he would recommend is that they review this in a year because things will come up when changes are made that may require tweaking. He said that he was appreciative of the work and effort that went into the report provided by employees. He said that some of the communities enjoy the benefits of a property tax which provides for a stable income. He said that he was not ready today to say they need to lay people off. He believed there was a better way to do it so they can meet their financial goals.

Councilman Arnold said that 88% of their General Fund is spent on salaries and benefits. The General Fund is a fund used specifically for providing services, but he asked what happened when it becomes 90%. Those were the questions they were being tasked with to understand as the policy makers of the City. He said that he realizes that not everyone will be happy, but he believed in his heart that this was the right direction in which to head.

Councilman Lamerson said that he heard a question today having to do with workers compensation issue. He appreciated the forthrightness in stating that they did not know the answer. He agreed with the fireman standing before them earlier regarding the potential to get sick from working with ill people, but he said that the same issue exists for the guy scraping the manure off the walls at the sewer plant and scraping up the garbage that no one else wants to scrape up. He does not know that answer, but it can be delivered to them regardless of what decision is made on the leave benefits. He said that if they do not have the right kind of insurance coverage to ensure that their employees were indemnified from serving the public properly it was not quite the same issue as this. He said that he, too, wants to know if workers compensation would cover those issues related to getting sick from the work they do for the City.

Councilman Scamardo said that he read the package from the employees that was dropped off yesterday and he understood the work they put into it. He said that he would like to think they were in front of the curve of other cities in facing the fact that sales tax revenues are not going to be sustainable in the future. He said that big box retailers were losing business to the internet and they were not being taxed.

He then read from a document Council had received today noting that fire employees required a \$20,900 contribution to retirement; police employees was \$23,197; City office workers was \$5,715. He said that he looked at the seven of them trying to be out in front of the curve and

prevent a disaster from happening. He said that he liked the idea of reviewing the issue again in a year to ensure that changes weren't needed.

Councilman Blair said that it was suggested that the problem with the PTO plan was with the sick leave and asked if that was correct. Ms. Zelms replied that vacation time is limited to the cap and sick time is limited to a formula based on whether they were retirement eligible or not so there was a reduced amount of sick time paid out.

Councilman Blair asked, if he was retirement eligible and has 1,000 sick hours today, how many he would get paid for. Ms. Zelms said that he would get half of those hours up to 700 if a regular employee, or up to 975 if a fire shift employee.

Councilman Blair said that in looking at the document they were given by employees there was not one community that has as high of a cap that we offer today. Ms. Zelms said that she thought the concern was that 1) a comfort level with the level of cap being provided (currently lower because it is capped at 200 and 240 for PTO) when in the past that was the cap for vacation and there was an unlimited accrual for sick time; and 2) the payout of the sick time at the time of separation.

Councilman Blair said that what was fresh in his mind was when he injured his leg he had AFLAC and although it had a 30-day wait period, once he was eligible he received \$10,000 to cover him being out of work. He would think that the plan of having the short-term disability with a 14-day wait period would be substantial.

Councilman Arnold asked if the City's liability would be increased for every hour above the current cap. Ms. Zelms said that it would not increase the payout, the liability, although it would be more time on the book and more of a management issue.

Councilman Kuknyo said that if they raised the cap with no payout perhaps that would take the place of the liability. He said that he liked where they had gotten. He believed that most of the holes had been filled and he liked the idea of a one-year review.

Councilman Carlow asked if he was correct that they were not taking away any sick time or vacation time that has been accumulated. Ms. Zelms said that was correct. If an employee had that time accumulated, then it could be banked for use.

Mr. Bates said that he wanted to reemphasize that they appreciate that the Council members and management had listened to their concerns. He said that there was a personal responsibility that each of them need to stop and think about. The City invests a lot of money in its employees, with police officers going through the academy and training within the Fire Department, as well as those within other departments.

There is also the situation when a family member has a catastrophic illness. They cannot plan for everything and their concern was with the sick leave going away there is no safety net in those types of situations. He said that they were wondering if there was a way to create that safety net without having a liability for the City. He said that the comments have not been meant as a personal attack, but rather this was the forum allotted for employees to express their concerns.

Councilman Blair said that they are trying to address some misguided percs given to employees of the City by past management without the Council knowing about it. He said that in the past the City of Prescott used to be the kingpin in sales tax, but now there is a lot of competition.

He said that the major crux is not necessarily about those in place now because whatever is on the books now is frozen; this policy affects mostly those hired after July 1.

Mr. Bates said that Councilman Blair brought up a great point of going this option versus laying people off. That was the reason they would encourage continue with dialogue.

Councilman Blair said that when they look at public safety retirement and the bill that Mayor Kuykendall talked about getting this week for over \$400,000, there is a 4:1 match for police; 3:1 match for fire and a 1:1 match for all other employees.

Mr. Bates asked if they knew what the match was being made by the City in the 1980's and 1990's. Mr. Bates said that during those times the match was 4:1 in the opposite direction; the employee was paying four times what the City was paying. He said that the public safety pension system is very cyclical and they were in a very tough time right now. Between 2000 and 2006 the system was hit hard through the stock markets, as well as a large number of individuals retiring at that time.

Councilman Blair said that he did not know why he or the taxpayers in general should have to make up for the ill investments made through a fire union that got lost in the stock market. Mr. Bates said that it was not just the fire union; it was the entire stock market. Councilman Blair said that

none of the other groups that lost money could look to others to make them whole.

Mr. Bates said that there is a commitment that the community at large has committed to, with regard to public safety, and the same with the military, that if they put in 20 years of service on the street, and are willing to put their life out there and put their family through some things, that is their reward.

Councilman Arnold thanked everyone for their comments. He said that he would reiterate his earlier proposal as it relates to next year's budget process. Mr. McConnell said that he did not know that they would need to start in October. Councilman Arnold said that it was their responsibility to review this again and hear feedback from management as it progresses. He would like to see a workshop come back on this issue.

Mr. McConnell said that certainly a commitment could be made to revisit the topic of the performance of this program in April of 2013, which would provide ample time for making adjustments.

Matt Dunbar, Assistant Finance Director, said that he was listening to the meeting and based on comments made by other employees he wanted to throw out an idea. If on July 1 or June 24 they start a new sick leave bank with zero payout that would eliminate future payout obligations. They could keep their same accrual of 12 days of vacation and sick leave, but the sick leave would not be paid out. That would allow employees to use their sick leave in times of need and keep those that are sick from coming into work and infecting others. He said that this would provide that safety net, and not create an additional liability for the City.

Councilman Scamardo asked if they were to look into that potential alternative, what he would do with the new short-term disability program that was being proposed. Mr. Dunbar said that he would not do that; it is a cost to the City.

Mr. McConnell said that the real question was how much paid time off was enough paid time off. Mr. Dunbar said that he thought that the question was finances. He said that this would not cost the City anything.

Mr. McConnell said that there was a component of this that was financial but there was a component which has to do with workers on the job performing their job, or not being on the job and being paid. He said that it was not only about long-term financial sustainability and savings; it was also a question of being in the world they live in and providing compensation to workers that are not on their job, it rolls up to significant questions about contracting out that work. If the service is what they are

trying to provide and the cost becomes uncompetitive because of the benefits, then they have an issue.

Mr. McConnell said that they looked at sick time usage and how many days were being used for sick time. The proposal before the Council reflects that actual information and staff's recommendation was to approve the plan because they thought it was reasonable.

Mr. Dunbar added that if it was not based on finances, then his idea would not matter, but from purely listening to the comments previously it sounded more about the financial aspect.

Mr. Dunbar said that there were some other options that could solve all the problems, and he does not know that this current option solves them, especially from the employees' perspective. It seems more damaging than good.

Councilman Arnold asked Ms. Zelms how many days the short-term disability provided for. Ms. Zelms replied that it provided 90 days. Councilman Arnold said that equated to 720 hours of paid time, at 66%, or 475 hours.

Councilman Scamardo said that the tax rate for withholding was tremendously lower on disability income in terms of FICA, etc.

Mr. Mattson said that it sounded like there were still a number of questions outstanding. He liked the idea of addressing it again in a year, but suggested that they hold it open for a decision on June 12 to give everyone a chance to go over it a little longer.

Mayor Kuykendall said that it was not like it was the first day they had been discussed. Mr. Mattson said that he knew that but a lot of points had been brought up and they should look them over for a new more weeks.

Councilman Arnold said that with the information provided and brief calculation for short-term disability, he was prepared to call for the question.

Councilman Kuknyo said that his door has been open and he has met with people from three to four different departments. He said that was why they saw changes that were addressed.

Councilman Lamerson said that it looked to him that the City reserved the right to change, add, modify, eliminate any benefit. If something comes up in the future where they see that there was something better that could be

done, that provision is accounted for. Mr. McConnell said that was correct. That was subject to a framework of law.

COUNCILMAN ARNOLD MOVED TO ADOPT ORDINANCE NO. 4832-1232; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- M.* Approval of Land Use Agreement No. AG-94TZ-P-12-50XX with the USDA Forest Service providing for the use of Upper Goldwater Lake as a source of water for suppression of the Gladiator Fire.**

Mr. Baynes said that Yavapai County Emergency Management contacted the City to request immediate authorization to use Goldwater Lake as a water dipping source for fighting the Gladiator Fire. He noted that the lake was not being stocked during this time.

Councilman Kuknyo asked where the money would go. Mr. Baynes said that it does not add up to much but Mr. Woodfill would need to tell them.

Councilman Carlow asked what other lakes they pulled from. Mr. Baynes said that they only pulled from Goldwater Lake. Mayor Kuykendall said that it was his understanding that the helicopters did not have to drop down at all at Goldwater.

Councilman Scamardo asked if it was a one-year agreement. Mr. Baynes replied that it was a per incident agreement.

COUNCILMAN ARNOLD MOVED TO APPROVE THE LAND USE AGREEMENT NO. AG-94-TZ-P-12-50XX WITH THE USDA FOREST SERVICE PROVIDING FOR THE USE OF UPPER GOLDWATER LAKE AS A SOURCE OF WATER FOR SUPPRESSION OF THE GLADIATOR FIRE; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

Mr. Kidd returned to the meeting at this time (5:35 p.m.)

III. ADJOURNMENT

There being no further business to be discussed the Regular Voting Meeting of May 22, 2012, of the Prescott City Council adjourned at 5:37 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 Regular Voting Meeting of the City Council of the City of Prescott, Arizona held on the 22nd day of May, 2012. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2012.

AFFIX
CITY SEAL

ELIZABETH A. BURKE, City Clerk