



City Council Regular Meeting Minutes - Final

Tuesday, March 28, 2017

6:00 PM

1. CALL TO ORDER

Mayor Nexsen called the meeting to order at 6:00 p.m

2. INVOCATION: Pastor Kay Scott, Lake Havasu Church of the Nazarene

Pastor Kay Scott with Lake Havasu Church of the Nazarene gave the invocation.

3. PLEDGE OF ALLEGIANCE

The Mayor led in the Pledge of Allegiance.

4. ROLL CALL

Present: 7 - Mayor Mark S. Nexsen, Councilmember Donna McCoy, Vice Mayor Jeni Coke, Councilmember Cal Sheehy, Councilmember Michele Lin, Councilmember David Lane and Councilmember Gordon Groat

5. CALL TO THE PUBLIC

Mr. Jeysin Yenglin addressed the Council and requested that the following be changed: 1) rename Cherokee Lane to Aniyunwiya in respect for the heritage language, 2) remove any Native American names from city parks, 3) remove the British flag and rename the London Bridge, 4) make medical marijuana and medical marijuana patient prescriptions and licensing free for qualified disabled residents, 5) ban alcohol from Lake Havasu City, and 6) create better community cleanup programs.

Mr. Chuck Vaughn addressed the Council and said he was in favor of Option 2, the automated trash system, which was discussed in the earlier work session.

6. CONSENT AGENDA

6.1 [ID 17-1132](#) Approve the March 14, 2017, City Council Work Session and Regular Meeting Minutes

6.2 [ID 17-1113](#) Adopt Resolution No. 17-3139 Authorizing the Submission of an Application for a FY 2017 Grant with the Bureau of Justice Statistics for

the National Criminal History Improvement Program to Improve the Nation's Safety and Security, and Authorizing Execution of Necessary Documents and Implementation of the Activities Funded by the Grant

- 6.3 [ID 17-1117](#) Adopt Resolution No. 17-3140 Abandoning the Entire 20-foot Public Utility and Drainage Easement Along the Common Property Line of Tract 2167, Block 23, Lots 6 and 7
- 6.4 [ID 17-1128](#) Adopt Resolution No. 17-3143 Approving an Intergovernmental Agreement with the Mohave County Flood Control District for Flood Control Funding
- 6.5 [ID 17-1125](#) Approve Production Agreement with DataProse LLC for Utility Billing Services
- 6.6 [ID 17-1127](#) Ratify the City Manager's Execution of the Test Center Agreement with National Testing Network for Administration of Employment Testing
- 6.7 [ID 17-1133](#) Call for Executive Session Pursuant to A.R.S. § 38-431.03(A) 5:00 p.m. Tuesday, April 11, 2017

Vice Mayor Coke moved to approve the Consent Agenda as presented, seconded by Councilmember Groat, and carried by the following vote:

Aye: 7 - Mayor Nexsen, Councilmember McCoy, Vice Mayor Coke, Councilmember Sheehy, Councilmember Lin, Councilmember Lane and Councilmember Groat

7. CORRESPONDENCE, COMMUNICATIONS, PETITIONS, ANNOUNCEMENTS, CITY MANAGER REPORT

- 7.1 [ID 17-1131](#) Announce Vacancies on Lake Havasu City Boards, Committees, and Commissions

City Clerk Kelly Williams announced the current vacancies on various Lake Havasu City Boards, Committees, and Commissions.

- 7.2 [ID 17-1130](#) City Manager's Report

City Manager Charlie Cassens reported on the following:

- Code Enforcement Updates. There are currently 51 open cases.
- Building Permit Updates.
- Vietnam Veteran Breakfast will be held March 29, 2017, from 6:30 a.m. to 9:00 a.m. Lake Havasu City and various veteran organizations will host a free traditional pancake breakfast at the Aquatic/Community Center in honor of our Vietnam Veterans. Ceremony begins promptly at 6:45 a.m. with a

presentation of “Colors” from the Marine Corps League.

- Coffee with the Mayor and City Manager is scheduled for Friday, April 7, 2017, from 7:30 a.m. to 9:00 a.m., at Jersey’s Grill located at 2049 McCulloch Boulevard North.
- Special Events:
 - The Jet Jam Racing Event - Saturday & Sunday, April 1 & 2, 2017, at Rotary Community Park and Thompson Bay, from 8:00 a.m. to 5:00 p.m..
 - The Lake Havasu Yacht Club Opening Day Boat Parade - Saturday, April 8, 2017, in the Bridgewater Channel from 10:00 a.m. to 1:00 p.m.
 - The Havasu Boat Show Block Party - Saturday, April 8, 2017, on Scott Dr. from 5:00 p.m. to 10:00 p.m.
 - 10th Annual Baseball By The Bridge (Little League Minors) - Saturday & Sunday, April 8 & 9, 2017, at Rotary Community Park, SARA Park, and ASU from 8:00 a.m. to 10:00 p.m.

8. PUBLIC HEARINGS

8.1 [ID 17-1116](#) Introduce Ordinance No. 17-1173 Repealing City Code Section 11.06.080, Trails Advisory Committee

City Attorney Kelly Garry advised that the Trails Advisory Committee (TAC) was created in 2015 as a formal subcommittee of the Parks and Recreation Advisory Board (PRAB). She said as a formal subcommittee, TAC was required to comply with Arizona Open Meeting Law, public record law, and other rules and regulations that all public bodies are required to follow. Ms. Garry said this became complicated and problematic; therefore, based on concerns that were arising about potential violations of Open Meeting Law, staff piloted having them be an informal subcommittee of PRAB. She said this has been occurring for approximately five months and is going well; therefore, now is an appropriate time to repeal the code section that created the formal TAC subcommittee. She said this was brought before the informal subcommittee and although they are in favor of it, they are not quite ready to let it go. Ms. Garry explained this is the introduction of the ordinance and will be brought back next month for final adoption, which then requires 30-days before it goes into effect; therefore, there is still approximately two more months until it is finalized.

Mayor Nexsen opened the public hearing.

Ms. Mary VanRoy addressed the Council and said she served on TAC and agrees with the City Attorney’s comments because it was difficult for them to follow the rules and this will offer them more flexibility. She said their meetings will be held the second Wednesday of the month at 4:00 p.m. at the Aquatic Center and will be open to the

public. She added that the subcommittee will continue to work with Arizona State Parks on the “100 Premier Trails”, and said they are also finalizing the grant they received from Arizona State Parks to expand the trails in the community.

There being no further comments, Mayor Nexsen closed the public hearing.

Councilmember Lin noted that Mr. Mark Zieff, Parks and Recreation Advisory Board Member, has stepped up to be the liaison between PRAB and TAC.

Councilmember McCoy moved to introduce Ordinance No. 17-1173 repealing City Code Section 11.06.080, Trails Advisory Committee, seconded by Councilmember Lane, and carried by the following vote:

Aye: 7 - Mayor Nexsen, Councilmember McCoy, Vice Mayor Coke, Councilmember Sheehy, Councilmember Lin, Councilmember Lane and Councilmember Groat

8.2 [ID 17-1124](#) Adopt Resolution No. 17-3142 Revising Resolution No. 10-2484 To Amend Wastewater Fees for Reuse of Treated Effluent to Reduce Commercial Effluent Rates Effective July 1, 2017

Customer Service Supervisor Kevin Morin advised that this item is proposing to amend wastewater fees for reuse and treated effluent to reduce commercial effluent rates effective July 1, 2017. Mr. Morin explained that staff was tasked with conducting a statewide rate review to determine if the current rate charged by the City was comparable to rates charged in other similar communities. He said what they found was that rates varied significantly from city to city and did not provide a solid conclusion, or even comparable rate. Mr. Morin explained that staff then reviewed the cost to produce effluent water to determine if the City’s rates were in line with actual production costs. He said the current charge to a commercial customer is \$329.31 per acre foot, and the proposed commercial effluent rate is \$228 per acre foot which is in line with the City’s current production costs. He added that the rate reduction encourages the ongoing use of effluent water instead of potable water for recreational areas located within the city, while consuming a byproduct of our treatment process at a breakeven cost compared to the alternative. Mr. Morin said the alternative to selling effluent to the public is to inject the treated water into wells which results in a substantial cost increase to the City and does not encourage organizations to use treated water as an alternative to potable water.

Mr. Morin listed several current commercial effluent customers who will benefit from this rate reduction, including:

- Island Golf Club at The Nautical
- Nautical Estates
- Havasu Marina

- Islander RV Resort
- Evergreen Alliance Golf Club
- City Center Executive Plaza

He added that the effluent revenue is estimated at \$740,000 for fiscal year 2016-17, and the rate reduction is estimated to reduce revenue in fiscal year 2017-18 by \$245,000 to \$495,000; however, he said this is partially offset by the increase of water users connected to the system and the addition of sewer maintenance fees to be collected beginning April 2017 for part-time residents.

Mayor Nexsen asked if the City saw less usage during the years that the rate increased, to which Mr. Morin said yes. He added that with the additional City parks, which will be brought online with effluent, there will be enough effluent to support a reduced rate which may increase consumption. Mayor Nexsen said from a market standpoint you need to lower the rate when the rate is too high as it is not maximizing revenue. He said the City increased the rate years ago to reflect what was happening in the other communities but it did not work; therefore, a price adjustment is appropriate.

Mr. Cassens said at the time the City set the rate at the market price it unfortunately resulted in customers turning off what was formerly irrigated property, which is not esthetically pleasing. He said reducing the rate is the right thing to do, it is prudent, we can justify the number (which is an average of cost of recovery), and it helps us recognize the end users that are helping us dispose of the effluent in a much more cost effective and pleasant way for the community.

Councilmember Sheehy asked how the proposed rate compares to other communities, to which Mr. Morin said the rate is right in the middle with costs ranging from \$60 to \$1,100 per acre foot. He added that some communities are giving it away while others are not distributing it at all.

Councilmember Groat said if the city has to draw from its allocation on the Colorado River to mix potable water with effluent to meet the demand in the summer then it must mean that the drop-off during the non-peak months must be exceptionally large, to which Mr. Morin said it was his understanding that they have not had to mix potable with effluent water for a number of years. Mr. Cassens said the City has a comingling pond at the Mulberry Treatment Plant which can supplement the effluent that is generated with raw lake water pulled from the South Intake, which is non-potable water. Mr. Groat asked if that water is coming from the city's Colorado River water allocation, to which Mr. Cassens replied yes, and said it happens periodically and the city does have to account for that. Mr. Groat asked Mr. Morin if his analysis shows how steep the drop-off was during the non-peak months, to which Mr. Morin said in reviewing a five year study what they

saw was that all the users use more water when it is hot and cut back dramatically when there is a lot of rain, and noted that other than the weather they were unable to identify other reasons for the drop in use at certain times.

Councilmember Groat asked if Mr. Morin knew how much land had been taken off irrigation due to the increase in rates, to which Mr. Morin, Mayor Nexsen, and Mr. Cassens responded that they were aware of three golf courses that reduced their effluent use.

Councilmember Groat said the idea is to take it away from an attempt to what the market would bare to a case of cost recovery at a non-profit level, and asked if the City added in a small percentage of that variance that they cannot account for, to which Mr. Morin replied no. Mr. Cassens said it is a number that is designed to generate cost recovery, but at the same time give some deference that we do not have to pay the difference of putting the water in the ground and bringing it back up.

Mayor Nexsen opened the public hearing.

Mr. Vaughn addressed the Council and said he thought the rates should include a portion of the ongoing maintenance costs and future costs for new effluent lines.

There being no further comments, Mayor Nexsen closed the public hearing.

Councilmember Sheehy said he fully supports a rate that is based on cost recovery and added that while some may see this as a drastic decrease it is important to note that the customers have been paying the increased rate for five years

Councilmember Sheehy moved to adopt Resolution No. 17-3142 revising Resolution No. 17-3142 amending wastewater fees for reuse of treated effluent to reduce Commercial Effluent Rates effective July 1, 2017, seconded by Councilmember Lane, and carried by the following vote:

Aye: 7 - Mayor Nexsen, Councilmember McCoy, Vice Mayor Coke, Councilmember Sheehy, Councilmember Lin, Councilmember Lane and Councilmember Groat

- 8.3** [ID 17-1119](#) Approve a Five (5) Year Master Services and Purchasing Agreement with Taser International, Inc. for Digital Evidence Management/Storage and Flex 2 Camera Equipment

Police Chief Dan Doyle said five years ago when the City moved to full implementation of body cameras they entered into an agreement with TASER International to combine the City's Conducted Energy Weapons (CEW), body cameras, and cloud-based digital

evidence into one five year contract that would allow the City to budget appropriately and avoid replacing broken equipment, and at the same time, after the five year term ended, the City would receive all new Tasers and body camera equipment before signing a new contract. He said this year as the contract came to an end, the City realized that the body cameras need to be replaced earlier than every five years due to advances in camera technology; therefore, the contract was split into two separate contracts: 1) body cameras and cloud-based evidence storage, and 2) CEWs. Chief Doyle said in doing this, the City will receive new cameras twice; at 2 ½ years and 5 years. Chief Doyle said the total cost of the contract is \$402,015.84, and explained that the bulk of the cost is the City's digital evidence storage, which is not only for camera footage but all digital evidence.

Mayor Nexsen opened the public hearing. There being no comments, he closed the public hearing.

Vice Mayor Coke moved to approve a five (5) year Master Services and Purchasing Agreement with Taser International, Inc. for digital evidence management/storage and Flex 2 camera equipment, seconded by Councilmember Groat, and carried by the following vote:

Aye: 7 - Mayor Nexsen, Councilmember McCoy, Vice Mayor Coke, Councilmember Sheehy, Councilmember Lin, Councilmember Lane and Councilmember Groat

8.4 [ID 17-1120](#) Approve the Purchase of Ten (10) Conducted Energy Weapons (CEW) and a Five (5) Year Taser Assurance Plan with Taser International, Inc.

Chief Doyle said this is the second part of the contract which will provide new Tasers to each officer as well as the Animal Control Officers and jailers. He said the total cost of the contract is \$125,190.76, and includes a refresh for new equipment at the end of the five years.

Councilmember Groat asked how many additional Tasers are being purchased, to which Chief Doyle said it would include 10 additional Tasers. Councilmember Lane asked how many Tasers the Police Department currently has, to which Chief Doyle responded approximately 92. Councilmember Lane asked if this also covers Tasers for new officers, to which Chief Doyle responded yes.

Mayor Nexsen opened the public hearing. There being no comments, he closed the public hearing.

Councilmember Lane moved to approve the purchase of ten (10) Conducted Energy Weapons and a five (5) year Taser Assurance Plan with Taser International, Inc., seconded by Councilmember McCoy, and carried by the following vote:

Aye: 7 - Mayor Nexsen, Councilmember McCoy, Vice Mayor Coke, Councilmember Sheehy, Councilmember Lin, Councilmember Lane and Councilmember Groat

8.5 [ID 17-1114](#) Ratify City Manager's Execution of Change Order No.1 for the FY 2016-17 Crack Seal Program with Cholla Pavement Maintenance, Inc.

Maintenance Services Division Manager Mark Clark said this item is requesting ratification of extra work that was performed by Cholla Pavement Maintenance, Inc. Mr. Clark explained that the initial contract is an estimated quantity of the poundage needed to perform the work; however, this project had 5.25 miles of additional lane mileage plus additional heavier cracks than originally anticipated. He noted that anytime they can perform maintenance work early it will keep the road in better condition.

Mayor Nexsen opened the public hearing. There being no comments, he closed the public hearing.

Vice Mayor Coke moved to ratify the City Manager's execution of Change Order No. 1 to the FY 2016-17 Crack Seal Program Contract with Cholla Pavement Maintenance, Inc., seconded by Councilmember McCoy, and carried by the following vote:

Aye: 7 - Mayor Nexsen, Councilmember McCoy, Vice Mayor Coke, Councilmember Sheehy, Councilmember Lin, Councilmember Lane and Councilmember Groat

8.6 [ID 17-1087](#) Discussion and Direction on Creation of Smoke-Free Areas within Rotary Community Park

Recreation Services Manager Mike Keane advised that the item before the Council is discussion and direction on creation of smoke-free areas within Rotary Park. Mr. Keane explained that the topic of smoke-free parks or portions of parks has been an increasingly hot topic in the Parks & Recreation field over the last decade. He said the Students Working Against Tobacco (SWAT) for Lake Havasu City has brought attention to this topic for the parks in the community, and said their mission is to strive to improve the health of Lake Havasu City students, families, and communities. Mr. Keane said SWAT has made multiple presentations to the Park & Recreation Advisory Board (Board), and has asked the Board to consider adopting a smoke-free park policy with the belief that a smoke free park policy would reduce the cigarette butt litter at the parks, change social norms around smoking, and reduce second-hand smoke exposure. He said additionally through these presentations and discussions, Rotary Park was identified as a target location as the city's first smoke-free park, and the south side of Rotary Park was further targeted to include the skate park, softball fields, and a number of playgrounds. Mr. Keane said on February 6, 2017, the Board recommended that the City Council adopt a

new city ordinance creating a smoke-free zone in Rotary Park to include all playgrounds, Ramada 13, Ramada B, Ramada C, the skate park and bleachers for the softball fields.

Mr. Keane stated that through additional conversations amongst City staff, concerns have arisen over the adoption of such an ordinance due to questions of enforceability and other unintended implications. He said while many cities across the nation have elected to establish ordinances to create smoke-free parks, these ordinances mainly rely on self-enforcement as the main deterrent for not smoking in the parks, and many other cities have found themselves grappling with the same questions staff has expressed and have elected to create a program discouraging smoking in city parks, including education, social media, and advertising campaigns as well as signage in parks. Mr. Keane said while staff recognizes the danger of second-hand smoke, especially to children and no way advocates for such behaviors and understands the student's desire for a smoke-free park policy, the enforcement of a smoke-free policy creates many concerns. Mr. Keane said it is staff's recommendation that SWAT work with the City to create a program discouraging smoking in our city parks where children may be present versus creating a city ordinance to establish smoke free areas within the parks.

In response to Councilmember Groat's question, Mr. Keane said one major concern from staff is the enforcement and the implications it will have. Mayor Nexsen said he could also see a potential issue regarding the exact coordinates of the smoking and non-smoking areas in the park.

Mayor Nexsen asked if an ordinance would impose fines, to which Ms. Garry said that would have to be a part of the spectrum to examine. She added that from a legal perspective if you are going to enforce it then it has to be enforced from a legal realm either civilly or criminally and you have to have the evidence in order to present that, so unless an officer or code enforcement officer witnesses the smoking, there must be evidence, and added that creating certain areas makes it much more difficult to prove whether or not they were within the boundaries. Ms. Garry said another concern is that you are making an action that may be legal now illegal for certain people, so there may be adults who are legally allowed to smoke who are in the park and are going to be subject to fines. Ms. Garry said she is not certain that is the issue that the city is trying to address, but more so trying to discourage smoking around the play areas where there are young children.

Councilmember Groat asked if there are any unique concerns that the Council has not heard from a thousand cities across the United States already that have in fact adopted ordinances for not smoking. He said many cities have created non-smoking bans for the entirety of the park and in this case SWAT has chosen a logical solution that smoking would be mainly near the eastside parking lot. He said with the prevailing winds in Lake

Havasu City coming from the west, northwest, or southwest, and generally not the east, it would be an enormous anomaly as to not inconvenience anyone. Councilmember Groat said he does not believe an ordinance will create an unenforceability question, but as a remarkable sort of compromise that allows people to be able to enjoy the park and gives kids a right to clean air. He added that it is a matter of public safety and the community does not expect the Police Department to arrest people because they have inadvertently walked through the park with a dog, yet that is an ordinance. Councilmember Groat said he believes an ordinance sends a message and is also another tool that the Police Department has to work with in the event that they need it because they cannot create an ordinance on the spot. He said the Council is responsible for allowing these organizations and the Police Department to have these tools available to them without causing any undue harm or stress to the public.

Ms. Garry said staff researched to see if there were other communities that actually adopted ordinances with strong enforcement measures and were not able to find any at least in the state of Arizona. She said many of them have policies like what staff is suggesting because of the enforceability issues.

Councilmember Groat asked if staff researched Mesa, to which Ms. Garry said yes, as well as Phoenix and Gilbert. As requested by Councilmember Groat, Ms. Garry explained that they all have policies that encourage no smoking in the parks which is very similar to what we are trying to create. Councilmember Groat asked if there was a unique difference between Mesa, who created an ordinance, and Phoenix, who created a policy, and whether there was anything that derived from the ordinance out of Mesa that would discourage the City from pursuing an ordinance, to which Ms. Garry said there were no ordinances, only policies that were set by cities in their parks that created no smoking.

Councilmember Lin asked if Parker had adopted an ordinance, to which Ms. Garry replied that at the time staff was researching Parker had not adopted an ordinance. Ms. Garry said staff is seeking the Council's input today on whether to create an ordinance or a policy by resolution. She said the vehicle on how we get there is arguable but it is just whether you are going to put behind it the enforceability of having a citation and violations that go along with an ordinance, or if you are going to have a policy that has more of an educational approach to discourage smoking in the park, particularly around the areas where small children are playing.

Councilmember Lin said she started a relationship with the kids from SWAT about two years ago and is now the chair for the Young Adult Development Association (YADA) of Havasu. She said SWAT came to speak with YADA about their concerns of smoking in the park and they went through the process and to the Board and the Tinnell Memorial Sports Park Committee and it was recommended unanimously by the Board to create an

ordinance. She said she believes there is a bigger problem than just tobacco use, as there is a drug problem in Lake Havasu City with the youth. She said starting an ordinance like this will not combat the drug problem but at least put a little start to it. Councilmember Lin said she has five children who use the parks and Ramadas for birthdays and they have witnessed the drug use. She said she could have hit the button or called the Police Department but those same underage kids using drugs know that she has a child in high school and she did not want it to come back on her child. She said SWAT has worked really hard and an ordinance really needs to be the first step.

Mayor Nexsen said underage smoking and smoking marijuana in the park is already illegal yet that does not stop people from doing it and wondered how an ordinance is going to stop people from smoking in the parks.

Ms. Garry interjected and said Mesa does have an ordinance for smoke free but it does not specifically address parks. Councilmember Groat said Councilmember Lin made some very good observations about the things that happen at the park and while he does not have children, he is a teacher and cares very deeply about each and every one of them. He said the students have expressed to him that they do not feel comfortable going down to the skate park because of the crowd. He said the City does not have an effective tool or a mechanism to say that the park needs to be available to all children, as everyone deserves the right to be down there to play in the park. Councilmember Groat stated that many children have asthma, and second-hand smoke or primary smoke, can be a huge trigger for asthma attacks. He said the city may not have any instances of that happening but the simple fact is that you do not want to be the first. Councilmember Groat stated that the city respects the rights of the children and to ask for and receive a place where they play in a safe and beautiful park, not just for our community members but for everyone, and added that people who have previously served on this council have all invested time and effort in creating these beautiful parks.

Councilmember Lin added that an ordinance if anything will be a preventative measure as nicotine is a gateway to other drugs.

Mayor Nexsen stated that the city already has ordinances that are incredibly hard to enforce and by making this an ordinance it will be a “feel good” ordinance which means it is not enforced and the problem will not go away. Mayor Nexsen said he believes education is the key. He said with an ordinance there will be fines attached; however, with education the city can have signs informing people that there are young lungs at work. Councilmember Lin asked what the fine is for having dogs in the park, to which Ms. Garry replied that she did not know offhand but would follow up.

Chief Doyle said he met with the SWAT group and commends all of the individuals

because it is really nice to see young people involved and passionate about an issue. Chief Doyle said his biggest concern is having specific areas on the map that would be smoking and non-smoking areas because from a law enforcement perspective that becomes extremely difficult to enforce. He said if the city was going to enact an ordinance, he would prefer to eliminate smoking in the entire park because realistically the Police Department's philosophy is to try and gain compliance first and if they are unsuccessful then a citation is issued. Chief Doyle said it would be extremely difficult to go to court with a map unless the areas were clearly delineated.

Mayor Nexsen said he agreed and thought there was some discussion about designating the far south and north parking lots as smoking areas. He added that if the city does ban the entire park he would hate to see a mother with children fined because she was smoking in the park and did not know.

Councilmember Groat said he agreed that designating certain areas in the park as smoking and non-smoking will be very difficult to enforce. He suggested the parking lot on the east side of the ball field be designated as a smoking area, as the winds will carry the smoke away from the park to the highway.

Ms. Garry stated that the fine for dogs in the park is punishable by sanction that is fixed by the court but not more than \$1,000.

Councilmember Lin said she did not believe it is SWAT or the Council's intention to fine people for smoking in the park but really more as a way to discourage the youth from smoking or doing drugs.

Councilmember Lin asked how many citations the Police Department has issued for underage smoking in the parks or anywhere in Lake Havasu City, to which Chief Doyle said the Police Department has conducted over 1,100 extra patrols in the parks and the problem is that most kids will not smoke, just like they will not bully others or cause problems, in front of a police officer so it makes it very difficult to catch them in the act. He added that an ordinance can be very difficult because you can see at the state and federal level what the intention of an ordinance is, and you cannot create an ordinance with the intention to not really cite anyone or to only target a specific group because in law enforcement you must enforce it impartially to everyone at any time. He said if it is the Council's desire to create an ordinance, he asked that they create one that is enforceable.

Councilmember Groat asked Chief Doyle in his professional experience how it would work if the decision was made to create a policy and not an ordinance, to which Chief Doyle said he did not have experience with a policy of this nature.

Mayor Nexsen said an ordinance that does not have a consequence is a policy and what he heard from Councilmember Lin is that she did not want to have a consequence or fine, to which Councilmember Lin said it did not necessarily have to be a fine but could be community service hours or a different type of consequence. Ms. Garry said if that was written in the ordinance then that would be the consequence; however, she cautioned that there are other court fees and attorney's fees that are also associated and a variety of costs that may go along with it. She said a policy is expressing the community's desire and asking that the community support it so that community members in the public and in the parks will help enforce the policy if they too feel that it is something important to them. Ms. Garry stated that whether it is a policy or an ordinance, it is the community that needs to stand behind it to help enforce and stop that activity or behavior.

Mayor Nexsen opened the public hearing.

The following individuals spoke in favor of creating a smoke-free area within Rotary Community Park:

Erica Fisher, Students Working Against Tobacco (SWAT)

Simon Suminski, SWAT

Chase Noble, SWAT

Austin Martin, SWAT

Evelyn Hunter, Patrick Tinnell Skate Park Committee

Chuck Vaughn, resident

Debra Levi, SWAT

Leo Biaisucci, resident

Matthew Martin, resident

There being no further comments, Mayor Nexsen closed the public hearing.

Mayor Nexsen said he appreciates all the work that SWAT has done on this project, but does not believe an ordinance will solve the problem.

Ms. Garry noted that Parker did adopt an ordinance banning smoking in all parks except in designated smoking areas which carry a \$50 fine or the magistrate may order five hours of community work service performed in the town. She noted that it does not state who handles the enforcement. Mayor Nexsen asked if violators would go to court, to which Ms. Garry said yes whether it is civil or criminal and there would most likely be court fees associated with it.

Councilmember Groat said he is in favor of banning smoking in the park and would like

to see Rotary Park be the first no smoking park in Lake Havasu City. He shared that he used to be a respiratory care practitioner and said there are few ways that you can die that is more horrible than the slow suffocation caused by chronic obstructive pulmonary disease. Councilmember Groat said it would be his recommendation to direct staff to look into the best practices of an ordinance that would include no tobacco, including plant materials or vape, in the entire park which is much more enforceable.

Councilmember Lin agreed with Councilmember Groat's recommendation.

Mayor Nexsen said he did not believe creating an ordinance would solve the drug problem, to which Councilmember Lin said she did not think it would either but it would be a catalyst and would get kids to stop smoking if there is an ordinance and they could be fined.

Mayor Nexsen said he does not disagree but asked if what the Council is trying to do is really solving the problem because what he has heard is that it is not a smoking issue but a drug issue, and there is already a law against drug use.

Councilmember Lane said SWAT has done a wonderful job. He said from a law enforcement point of view, creating non-smoking areas will never work so it needs to be the whole park. He said the Council cannot regulate someone else's health, but we can suggest an ordinance or a policy on the books. He said with an ordinance, if someone calls the Police Department the officer will need probable cause to make contact. Ms. Garry said it happens all the time with cases, the officers write the citation and it is sent in for screening and the prosecutor looks at the evidence and determines whether or not they think they have enough to be able to take it forth so it is going to depend on the cases. She said there are all types of factors that can come into play and make it very difficult so it is always best if an officer can witness it and get it on Axon; unfortunately in most circumstances, if someone else is calling to report that a person is smoking, we are going to have issues. Councilmember Lane said an ordinance will only add another law on the books that cannot be enforced and if we are giving it to law enforcement as a tool but do not want them to enforce it, than that becomes another legal issue because you cannot pass a law with a purpose or an ulterior motive so you can develop probable contact.

Chief Doyle said the Police Department over the last 12 months has been called nine times on drugs; unfortunately out those nine times there were only two arrests because by the time the officer arrived on scene they were either gone or not smoking anymore. He said if the police are called and the people quit smoking when the officers get there, they in one respect, probably accomplished what you wanted to accomplish; however it is very difficult with six police officers on the street at any one time throughout the entire city and because it is a priority three call it may be 15 to 20 minutes before an officer arrives.

Councilmember Lane said if we put up “No smoking” signs because it is the City’s policy then it is not enforceable, but if we make it a law it will not be enforceable either.

Councilmember Sheehy noted that the Town of Miami ordinance that was referenced has to do with their Parks & Recreation and states that you cannot smoke in non-designated areas, but it is not a smoking ordinance. He agreed that the city should not have smoking in the park for all the same reasons, but said there seems to be three different intentions being heard: 1) combat underage smoking which is already against the law and they do it anyway, 2) address the drug use which is against the law as well, and 3) make something that is legal for people 18 years and older now illegal to do in the parks. Councilmember Sheehy said we cannot do one without the other, so the Council really needs to think through this process. He said he agrees with Chief Doyle’s statement that you cannot create non-smoking sections, and recommended designating everything south from Smoketree a non-smoking policy standpoint and everything north of Smoketree would be a designated smoking area. He said he could support starting with a policy to see how that works.

Councilmember McCoy agreed with Councilmember Sheehy and added that the SWAT group has done an amazing job. She said it is equally important to remember that the Council represents the entire city and there are always compromises that have to be made. Councilmember McCoy recommended starting with a few areas in the park first. She said with that said; the Council is also concerned about using police resources wisely, and added that unfortunately, there will still be litter and butts in the park because people do not always pick up after themselves.

Vice Mayor Coke said it is always nice to see young kids take a stand for what they believe in, and added that the decisions that the Council has to make are not always easy and do not make everyone happy. She said regardless of whether it is an ordinance or a policy, it is a step in the right direction and asked that no one get discouraged.

Mayor Nexsen said he could live with a policy or an ordinance because the end result will still be the same. He added that the SWAT group did a wonderful job and he respects what they are trying to do and the fact that they would like to see healthier lifestyles.

Mr. Cassens said the difference between an ordinance and a policy will come from the people that are responsible smokers in the community. He said you will be sending them a message that they are not welcome at Rotary Park and that the city does not advocate smoking. He said the park is for the children but it was built by everyone and is there for everyone, and said he would caution the Council in excluding a section of our community for a simple morale issue because there is a segment of our community that are

responsible who will honor an ordinance, where those who do not care about an ordinance will not care and will not change their habits.

Mayor Nexsen said he agreed with Councilmember Sheehy that the smoke free area be designated from the south gate to the north gate.

Councilmember Sheehy reiterated that he believes the city should start with a policy and if it is successful then the city can look at a more long term solution with ordinances and more parks.

Ms. Garry stated that once the Council has determined whether they want to proceed with a policy or an ordinance, then staff will bring it back to dial in the parameters of the area.

Councilmember Sheehy was in favor of creating a policy.

Councilmember McCoy was in favor of creating a policy.

Vice Mayor Coke was in favor of creating a policy.

Councilmember Lin was in favor of creating an ordinance.

Councilmember Lane was in favor of creating a policy and added that it should be expanded to every park in the city.

Councilmember Groat was in favor of creating an ordinance.

Mayor Nexsen said the end result would be the same either way, and was in favor of creating an ordinance.

Mayor Nexsen stated that the majority of councilmembers were in favor of creating a policy.

Councilmember Sheehy said he has heard it mentioned that this will be another tool for the Police Department, and said in his experience the Police Department has been very good coming to the Council when they need something so he did not believe this is being led for them.

Mayor Nexsen reiterated that he thought it needed to be from exit to exit with no designated smoking areas in-between.

Councilmember Sheehy noted that there will be several more public hearings and the

Council would appreciate the public's feedback through this process.

Mayor Nexsen said staff will come back with a policy and signage encouraging people not to smoke, and added that if, after a certain period of time, it is not getting the desired impact then the Council can discuss other options.

The Council thanked the SWAT group for all their hard work.

9. CURRENT EVENTS

There were no council committee reports.

10. FUTURE MEETINGS

Tuesday, April 11, 2017 @ 6:00 p.m. – Regular Meeting

Tuesday, April 25, 2017 @ 6:00 p.m. – Regular Meeting

11. FUTURE AGENDA ITEMS

There were no requests for future agenda items.

12. ADJOURN

Upon motion by Councilmember Lane and seconded, the meeting adjourned at 8:15 p.m.

CERTIFICATION

I hereby certify that the foregoing is a full and true copy of the Regular Meeting Minutes of the Lake Havasu City Council held on the 28th day of March, 2017. I further certify that the meeting was duly called and posted, and that a quorum was present.

Kelly Williams, City Clerk/CMC