

Mayor Mark S. Nexsen
Vice Mayor Cal Sheehy
Councilmember Jeni Coke
Councilmember Gordon Groat
Councilmember David Lane
Councilmember Michele Lin
Councilmember Donna McCoy



Lake Havasu City
Police Facility
2360 McCulloch Blvd North
Lake Havasu City, Arizona
86403
www.lhcaz.gov

City Council Regular Meeting Minutes - Final

Tuesday, September 11, 2018

6:00 PM

1. CALL TO ORDER

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

2. INVOCATION: Suzanne Waldron, Mount Olive Lutheran Church

Suzanne Waldron with Mount Olive Lutheran Church 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 Jeni Coke, Councilmember Gordon Groat, Councilmember David Lane, Councilmember Michele Lin, Councilmember Donna McCoy and Vice Mayor Cal Sheehy

5. CALL TO THE PUBLIC

There were no requests to address the Council.

6. CONSENT AGENDA

- 6.1 [ID 18-1750](#) Approve the August 14, 2018, City Council Regular Meeting Minutes (Kelly Williams)
- 6.2 [ID 18-1748](#) Adopt Resolution No. 18-3259 Ratifying the Police Chief's Execution of a Program-Funded State and Local Task Force Agreement with the Drug Enforcement Administration (DEA) for the DEA Phoenix Task Force (Daniel P. Doyle)
- 6.3 [ID 18-1765](#) Adopt Resolution No. 18-3261 Abandoning the Northwestern 10-Foot by 10-Foot Portion of the 10-Foot by 50-Foot Public Utility and Drainage Easement Along the Southwestern Property Line of Tract 2201, Block 16, Lot 2 (Stuart Schmeling)
- 6.4 [ID 18-1753](#) Ratify Amendment No. 2 to Professional Services Contract with Whitney

& Whitney PLLC for Public Defender Legal Services (Mitchell Kalauli)

- 6.5 [ID 18-1752](#) Call for Executive Session Pursuant to A.R.S. § 38-431.03(A) 5:00 p.m.
Tuesday, September 25, 2018 (Kelly Williams)

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

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

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

- 7.1 [ID 18-1739](#) Investment Report as of June 30, 2018 (Jill Olsen)

Mayor Nexsen noted that this item was for informational purposes only.

- 7.2 [ID 18-1746](#) Fiscal Year 2017-2018 4th Quarter Grant Agency and Contracted Service Agency Reports (Jill Olsen)

Mayor Nexsen noted that this item was for informational purposes only.

- 7.3 [ID 18-1751](#) Announce Vacancies on Lake Havasu City Boards, Committees, and Commissions (Kelly Williams)

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

- 7.4 [ID 18-1749](#) City Manager's Report (Jess Knudson)

City Manager Jess Knudson reported on the following:

- Thanked Greg Commeau, City employee, for serving at the Neighborhood Watch Meeting.
- Vice Mayor Sheehy presented a Proclamation to the Arizona Airborne Association for claiming August 16, 2018, as National Airborne Day in Lake Havasu City.
- Vice Mayor Sheehy, Councilmember Lane, and Mayor Nexsen celebrated the welcoming home of Navy Petty Officer 3rd Class, Adam Painton on September 1, 2018, at the American Legion.
- On August 28, 2018, the Havasu Youth Advisory Council (HYAC) joined Speak Out to talk about the youth program and get feedback from public on projects and ideas for the democracy competition. HYAC will be attending an upcoming council meeting to present their thoughts and gain insights from the City Council.
- On September 11, 2018, a 9/11 ceremony was held with guest speakers Mayor Nexsen and Judge Mitchell Kalauli.

- Upcoming Special Events:
 - o September 15, 2018 – Annual Suicide Awareness & Prevention Walk at 8:00 a.m. at Rotary Park
 - o September 17, 2018 – Shrine Circus at 6:30 p.m. at Havasu 95 Speedway
 - o September 22, 2018 – US Freestyle Jet Ski Championship Fall Round at 8:00 a.m. at Rotary Park/Thompson Bay

8. PUBLIC HEARINGS

- 8.1 [ID 18-1745](#) Series #07 Beer and Wine Bar Liquor License, Scotty's Broasted Chicken and Ribs, 410 El Camino Way/Brennan (Kelly Williams)

Ms. Williams advised that Darren Scott Brennan has applied for a Series #07, Beer and Wine Bar Liquor License for Scotty's Broasted Chicken and Ribs, located at 410 El Camino Way. Ms. Williams noted that all posting requirements have been met, all fees have been paid, and no objections were received. She said the location is properly zoned for a Series #07 liquor license.

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

Vice Mayor Sheehy moved to recommend that the Arizona Department of Liquor Licenses and Control approve a Series #07 beer and wine bar liquor license for Scotty's Broasted Chicken and Ribs, seconded by Councilmember McCoy, and carried by the following vote:

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

- 8.2 [ID 18-1741](#) Series #10 Beer and Wine Store Liquor License, NBD Store, 421 English Village/Finch (Kelly Williams)

Ms. Williams advised that Daniel Lamar Finch has applied for a Series #10 Beer and Wine Store Liquor License for NBD Store, located at 421 English Village. Ms. Williams noted that all posting requirement have been met, all fees have been paid, and no objections were received. She said the location is properly zoned for a Series #10 liquor license.

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

Councilmember McCoy moved to recommend that the Arizona Department of Liquor Licenses & Control approve a Series #10 beer and wine store liquor license for NBD Store, 421 English Village, seconded by Councilmember Coke, and carried by the following vote:

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

8.3 [ID 18-1757](#) Adopt Resolution No. 18-3260 Appointing Member(s) to the Lake Havasu City Airport Advisory Board (Kelly Williams)

Ms. Williams stated that the City received one application requesting consideration for an appointment as an alternate pilot member to the Airport Advisory Board. She said the appointment is necessary to fill the expired term of an alternate pilot member.

Mr. Edward Weber, applicant, addressed the Council and expressed his interest in this position. Mr. Weber stated that he has lived in Lake Havasu for over 23 years. He expressed his extensive experience in the aviation industry that encompasses over 60 years, and felt his experience would be a benefit to the Airport Advisory Board, aviation safety of the Airport, and to Lake Havasu City.

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

Councilmember Groat moved to adopt Resolution No. 18-3260 appointing Ed Weber as an alternate pilot member to the Airport Advisory Board with a term ending on June 30, 2021, seconded by Vice Mayor Sheehy, and carried by the following vote:

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

8.4 [ID 18-1766](#) Discussion and Possible Action, If Needed, to Comply with Arizona Open Meeting Law Following the Executive Session Regarding Water Quality Assurance Revolving Fund Update and Arizona Department of Environmental Quality Access to Wells

City Attorney Kelly Garry stated that this item was purely information for the Council's benefit, and no motion or direction was needed.

8.5 [ID 18-1733](#) Introduce Ordinance No. 18-1202 Amending Lake Havasu City Code Title 2, Administration and Personnel, Regarding Filling of Vacancies, Vice-Mayor, and Other Minor Revisions (Kelly Garry)

Ms. Garry advised that this item was brought to Council a couple of months ago to discuss the preferred term length for the Vice Mayor. She said based on the direction received at that meeting, it is necessary to make certain changes to the City Code. Ms. Garry added that staff took the opportunity to see if any other changes could be made at this time. She

reviewed the following recommended changes:

- 1) Revising § 2.04.040 to specifically include language for filling of vacancies for the Office of the Mayor. Currently, there is a separate section for the filling of a vacancy for the Office of the Mayor (§ 2.08.080). This section was not amended when Arizona Revised Statute § 9-235 was enacted. This statute specifies the term of appointment based on when the vacancy occurs. Staff recommends the proposed revisions to § 2.04.040 and the repeal of § 2.08.080 to bring the code in line with state law and to avoid future confusion.
- 2) Revising § 2.04.140 to correct the type of meetings that reporters may attend. Currently, the sections listed include executive sessions.
- 3) Revising § 2.04.210 to remove the statement that the Chairperson announces the result of a vote. Currently, the City Clerk announces the result of the vote after the system tabulates the result.
- 4) Revising § 2.12.030 to clarify that the references to a second election means general election and other minor revisions.
- 5) Revising § 2.24.050 to clarify that certain records are required to be published only when required by law.

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

Vice Mayor Sheehy stated that he was in favor of the City Attorney's recommendation for filling the Vice Mayor position. He said certain people may be able to serve in the role of Vice Mayor, but may not have the ability or time to serve in the role as Mayor. He added that the recommendation also gives the council the most flexibility.

Councilmember Lane agreed with Vice Mayor Sheehy.

Councilmember Lane moved to introduce Ordinance No. 18-1202 amending Lake Havasu City Code Section 2, Administration and Personnel, regarding filling of vacancies, Vice-Mayor, and other minor revisions, seconded by Councilmember McCoy, and carried by the following vote:

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

8.6 [ID 18-1762](#) Approve Professional Services Agreement with Whitney & Whitney PLLC for Public Defender Services (Mitchell Kalauli)

City Magistrate Mitchell Kalauli addressed the Council and said the item before Council is to approve a Professional Services Agreement to provide legal representation for indigent

defendants and Veteran's Treatment Court participants for up to five years commencing September 16, 2018. He explained that the City entered into a Professional Services Contract for public defender legal services with Whitney & Whitney PLLC on July 1, 2017. He explained that these services are considered a specialized service under the Exception Section of the Procurement Code and do not require competitive solicitation; however, staff solicited Letters of Interest and received six responses. Judge Kalauli stated that in determining what would be best for the Council to consider, staff looked at two things: 1) can they handle the case load that the Court currently has, and 2) is it within the parameters set by the budget. He said for the last year to date the caseload has increased 42 percent with 760 appointed cases last year and are expecting more this year. Judge Kalauli said they need to have a law firm that can handle that caseload, and in the last few months they have had to "split court" which means having at least two prosecutors and two public defenders. He said if they were doing payment by a case-by-case basis what ends up happening is that if you have a bump in numbers it probably will not fit in the parameters of the budget.

Judge Kalauli added that there is case law that says that any one attorney as a public defender can only handle about 300 active cases; therefore, if the Court anticipates having somewhere between 600 and 700 cases that are appointed during the year, we are looking at a firm with at least two attorneys to cover that caseload. He added that if you set a contract with an attorney at \$170,000 and then realize that the public defender is too busy, then you are still paying the \$170,000 and an additional amount for services through another attorney. He said the Court's recommendation to the City Council is that Whitney & Whitney fits those parameters and over the last five years they have been successful in doing what the Court has required of them. He said regardless of what the Council decides, at this time because of the grant that they operate the Veterans Court under, for the next two years they would have to have that same law firm represent veterans in Veterans Court.

Vice Mayor Sheehy said the conversation at the last meeting was more about the process and one of the suggestions was having a rotation basis and asked how staff can ensure this process in the future is more clear, to which Judge Kalauli said the issue with a rotation basis is that they have approximately 900 cases so someone has to assign out all of those cases. He said courts that do that have a separate department to handle that process and it is not the court that runs that process. He said it would take more time and he would ask the council for another clerk to assign the cases, and track the assignment and payment of those cases. He said if that is the direction, then he would suggest taking that into another department or make another department responsible for that so that the Court does not lose another clerk, as it would take a full time clerk to run that program. Judge Kalauli said there are other courts that have a public defender process; however, given the number of filings, it would take at least two attorneys and two additional support personnel. He added

that it is possible, and there are organizations that do that, but typically it is run through the city and not the court.

Councilmember McCoy said it was mentioned that the Court would need to keep the same law firm to keep the grant money for Veterans Court, to which Judge Kalauli replied that was correct. Councilmember McCoy asked how much money the Court would lose, to which Judge Kalauli said the grant is worth about \$1 million over the course of three years. He said this year the Court has spent a little under \$300,000, with a little over \$300,000 remaining each year for the next two years. Councilmember McCoy asked if the cost would come back on the veterans to pay if the grant money was lost, to which Judge Kalauli said that the Court would not be able to provide certain services for veterans unable to afford it, for example with the testing program the Court has been lucky that a number of organizations have been willing to support that; however, counseling and inpatient treatment would be one that the Court would struggle to provide those services.

Mayor Nexsen said one concern is regarding the overall process and being as transparent as possible, and asked if there has been any thought about creating a committee that would help process that selection, to which Judge Kalauli responded yes and added that in this scenario, had a committee reviewed the same information that they did, they would have likely had the same recommendation based on the number of cases and the budget constraint.

Mayor Nexsen asked what the law says regarding who is responsible to appoint the public defender, to which Ms. Garry stated that it is the Court's responsibility to appoint, but she is not aware of any laws on how the City acquires those services. Judge Kalauli said that it varies in each jurisdiction; however, the Court has to be the one that appoints and the contract goes to the governing body, in this case the City Council.

Mayor Nexsen clarified that he meant selection of the public defender and wanted to make sure that is not the prevue of the Courts but that the Council has the authority to do that, to which Ms. Garry said yes within some reason and added that she is not aware of any legal restrictions.

Vice Mayor Sheehy said he would like to see a selection committee moving forward.

Councilmember Lane said he would also like to see a selection committee and clarification regarding the qualifications. He said at the last meeting he questioned whether there should be a rotation of attorneys; however, the Judge explained that it would be more expensive paying case-by-case. Judge Kalauli said as the contract currently stands, it is regardless of the number of cases appointed, and there is also a renewable option every year in the contract that either side could terminate.

Councilmember Lane asked how many bids were lump sum contracts, to which Judge Kalauli replied there were two lump sum bids and some case-by case bids. He added that only one bid had multiple attorneys with a lump sum contract.

Councilmember Lane said for clarification the criteria used with Whitney & Whitney was that they had a lump sum under the budget amount with multiple attorneys, to which Judge Kalauli said that was correct.

Mayor Nexsen opened the public hearing.

Mr. Michael Frame, local attorney, addressed the Council and said he spoke at the last meeting regarding the process. He said Judge Kalauli spoke of the selection process as “we” which he is not certain who “we” is, and he also spoke of having various requirements, which were not published. He said his bid included a backup attorney that in the event of seasonal surges, extra work, or holidays, he could use to cover for him and probably use to handle the large number of cases. Mr. Frame said he was also shocked to hear that the caseload has increased by 42 percent, and explained that defendants are only entitled to a lawyer if they are going to be incarcerated or potentially incarcerated, so he is not sure what the 42 percent increase is but it is a large increase. He said he does not want the City spending any more money, but noted that his bid was \$100,000 under the bid of Whitney & Whitney, which the Judge apparently negotiated down with Whitney & Whitney. He said the Judge commented that he would have to hire more people to figure out the rotation, but said he has worked in jurisdictions where five or six attorneys are interested in the rotation and they are just assigned cases by last name. Mr. Frame said that the whole process of this selection is not above board and there is something else going on. He said if there are parameters you have to let the applicants or bidders know what those parameters are to keep things fair.

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

Vice Mayor Sheehy asked if the contract would start on October 1, to which Judge Kalauli responded that it would start on September 16, 2018, through June 30, 2019. Vice Mayor Sheehy asked if the Court would be able to put together a process by June 30, that is clear with a review committee, to which Judge Kalauli said yes.

Councilmember Lane said due to past contract extensions, he would like to see the contract come before the Council prior to June 30 so that the contract is in place without any extensions.

Councilmember McCoy moved to approve the Professional Services Agreement with Whitney & Whitney PLLC for Public Defender Services and authorize the City

Manager to execute the agreement on behalf of the City, seconded by Councilmember Coke, and carried by the following vote:

Aye: 6 - Mayor Nexsen, Councilmember Coke, Councilmember Groat, Councilmember Lin, Councilmember McCoy and Vice Mayor Sheehy

Nay: 1 - Councilmember Lane

- 8.7** [ID 18-1760](#) Ratify Emergency Purchase and Payment to Tri-Suns Engineering, Inc. for Emergency Work on Sweetwater Force Main Break at Mulberry Avenue and SR 95 and Approve Use of Contingency Funds (W. Mark Clark)

Operations Manager Mark Clark advised that the item before the Council is a ratification of an emergency purchase and payment to Tri-Suns Engineering, Inc., for emergency work on the Sweetwater Force Main break at Mulberry Avenue and SR 95. He added that this item also seeks approval of the use of contingency funds; however, the City Council can choose not to use contingency funds which would force the department to find funds in the operational budget.

Mayor Nexsen commended City staff and crews for their hard work, stating that crews worked around the clock to make sure that it did not get close to the lake. He questioned the invoice from Oxley Construction, stating that he has always equated them as a home builder, and noticed that their invoice was in the amount of \$25,000 for sewer fixes. Mr. Clark explained that Tri-Suns did most of the heavy pipe work and excavation; however, they had subcontractors, one being Oxley Construction, that did most of the trucking. Mayor Nexsen said their invoice listed an excavator and loader equipment charging by the hour and asked if that included labor, to which Mr. Clark replied yes. Mayor Nexsen asked what the additional 90 hours of labor was for, to which Mr. Clark explained that the City does review the invoices for comparable prices; however, the City is at the mercy of the contractor and their subcontractors, paying top dollar for the immediacy of the need and expertise.

Mayor Nexsen asked Mr. Clark to look into the Oxley Construction invoice and report to Council on what the additional 90 hours of labor charges at \$100 per hour were for.

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

Councilmember Lane moved to ratify the emergency purchase and payment to Tri-Suns Engineering, Inc., in the amount of \$99,393.60, for emergency work on the Sweetwater Force Main break and approve the use of contingency funds, seconded by Councilmember Groat, and carried by the following vote:

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

- 8.8** [ID 18-1723](#) Approve Cooperative Purchases for After-Market Automotive Parts and Service from DAB Auto, Inc., dba Jack's Auto Parts, from State Contracts (Kenneth Porosky)

Mr. Clark advised that the item before the Council is a standard annual renewal contract with Jack's Auto Parts, a local supplier.

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

Vice Mayor Sheehy moved to approve the multi-term cooperative purchase of after-market parts and service exceeding \$50,000 from DAB Auto, Inc., dba Jack's Auto Parts, utilizing Arizona State Procurement Office Contract ADSP016-129366, as amended, and approve annual renewal through March 31, 2021, seconded by Councilmember McCoy, and carried by the following vote:

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

9. CURRENT EVENTS

Ms. Garry noted that today was Ms. Maureen George's last appearance at the Mohave County Water Authority meeting. Ms. Garry said that Ms. George served as the Lake Havasu City Attorney and was instrumental in creating the Mohave County Water Authority.

10. FUTURE MEETINGS

Tuesday, September 25, 2018 @ 6:00 p.m. – Regular Meeting

Tuesday, October 9, 2018 @ 6:00 p.m. – Regular Meeting

Tuesday, October 23, 2018 @ 6:00 p.m. – Regular Meeting

11. FUTURE AGENDA ITEMS

There were no requests for future agenda items.

12. ADJOURN

Upon motion by Councilmember Coke and seconded, the meeting adjourned at 6:50 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 11th day of September, 2018. I further

certify that the meeting was duly called and posted, and that a quorum was present.

Kelly Williams, City Clerk/CMC