

# MINUTES

## LEAGUE OF ARIZONA CITIES AND TOWNS

### EXECUTIVE COMMITTEE MEETING

Friday, November 3, 2017 at 10:00 a.m.  
League of Arizona Cities and Towns  
1820 W. Washington St.  
Phoenix, Arizona

#### MEMBERS

##### President

Jay Tibshraeny, Mayor, Chandler

Thomas L. Schoaf, Mayor, Litchfield Park  
Ed Honea, Mayor, Marana

##### Vice President

Mark Nexsen, Mayor, Lake Havasu City

John Giles, Mayor, Mesa  
Satish Hiremath, Mayor, Oro Valley  
Cathy Carlat, Mayor, Peoria

##### Treasurer

Christian Price, Mayor, Maricopa \*

Daniel Valenzuela, Councilmember, Phoenix\*  
Gail Barney, Mayor, Queen Creek  
W.J. "Jim" Lane, Mayor, Scottsdale

Doug Von Gausig, Mayor, Clarkdale  
Lana Mook, Mayor, El Mirage  
Coral Evans, Mayor, Flagstaff  
Linda Kavanagh, Mayor, Fountain Hills  
Jenn Daniels, Mayor, Gilbert  
Jerry Weiers, Mayor, Glendale  
Georgia Lord, Mayor, Goodyear

Daryl Seymore, Mayor, Show Low  
Rick Mueller, Mayor, Sierra Vista  
Sharon Wolcott, Mayor, Surprise\*  
Mark Mitchell, Mayor, Tempe  
Bob Rivera, Mayor, Thatcher  
Jonathan Rothschild, Mayor, Tucson\*  
Douglas Nicholls, Mayor, Yuma+

\*Not in Attendance  
+ Attended via phone

President Jay Tibshraeny called the meeting to order at 10:04 a.m. He invited the Executive Committee to join him in the Pledge of Allegiance. President Tibshraeny proceeded to welcome new Executive Committee members; Mayor Coral Evans of Flagstaff, Mayor Satish Hiremath of Oro Valley and Mayor Gail Barney of Queen Creek.

#### 1. REVIEW AND ADOPTION OF MINUTES

Mayor Mark Nexsen moved to approve the minutes of the August 23, 2017 Executive Committee Meeting; Mayor Bob Rivera seconded the motion and it carried unanimously.

## **2. LEGISLATIVE POLICY DISCUSSION**

President Tibshraeny asks Executive Director, Ken Strobeck, to introduce the Legislative Policy Discussion. Mr. Strobeck invited League Pension Policy Analyst, Nick Ponder, to provide a PSPRS update.

Mr. Ponder discussed the legislative pension ad-hoc committee that went to Globe, Yuma, Flagstaff, Bisbee and Phoenix. He educated the committee on the history of the PSPRS system, how it got to where it is today, and what the prospects are moving forward. The ad-hoc committee made three relatively benign recommendations. The first recommendation was a new audit of PSPRS, there was one audit done by the Auditor General in 2015, but this was done before Tier 3 was implemented. The second item was additional reporting for the actuarial report. He found that the information the legislator was requesting is already in the actuarial report. If there is additional information that needs to be identified in that report, a mandate can be created through legislation or simply ask PSPRS for the information. The third legislative item was a request to re-form the ad-hoc committee in the 54th legislative session, which would begin in 2019.

In addition, Mr. Ponder has been traveling around the state talking to councils including Globe, Casa Grande and Yuma. He has also spoken to the Apache/Navajo mayors as well as Greater Arizona Mayor's Association (GAMA) and presented to GFOAz. Mr. Ponder is educating people from a League perspective as an independent perspective as to how PSPRS got to where it is today and what to do moving forward. The most common questions at council meetings are; when are contribution rates going down? Do you think that Tier 3 is a fix? The state helped create this problem, when are they going to give us money to help fix it, or stop taking the money that should be put towards it? In regard to contribution rates, PSPRS backloads cost when completing their valuations because salary growth is expected over time. The contribution rates will increase before they go down in about 4-5 years. Cities and towns can request a change in the way the actuary calculates annual contribution amounts, but this would mean you would start paying more money now to put more money in the system to pay down the balance. Mr. Ponder mentioned the Center for Retirement Research out of Boston College and their tool for calculating payment and interest rates to allow individual cities and towns the ability to look ahead and better budget moving forward.

In terms of Tier 3 being a fix, Mr. Ponder explained the way pensions work is that unfunded liability is everything that has been created for people who exist now and existed before now. In that regard, Tier 3 is certainly a fix in respect to cost prospectively, but the debt created for those who are retired and those who are currently active needs to be paid down. He said Tier 3 is more cost effective for cities and towns moving forward.

Mr. Ponder answered clarifying questions regarding contribution rates. From 2003 the assumed rate of return went from 9% to 7.4%, which is the current rate, and each time the assumed rate decreases contribution rates increase for the employer. In addition to that, when the 2011 legislation was passed for pension reform, PBI savings were built in the in the actuarial valuations. When the lawsuits overturned much of SB1609 rates had to increase again because cities and towns essentially had not been paying adequate contributions for four years. In the

2016 changes from a PBI to a COLA resulted in a contribution rate increase to account for anticipated future increases to PBI. He noted, the increase in contribution rates due to the COLA were a one-time adjustment and should not happen again moving forward. There will be one more increase in contribution rates next year since they have to account for people living longer. After that is done, cities and towns should hopefully see a leveling out of contribution rates.

In response to a question from Mayor Mueller regarding the powers of the PSPRS board, Mr. Ponder discussed how a provision clarifying the PSPRS board powers and abilities in regard to adding benefits. Mr. Strobeck mentioned the 50/50 cost split and how this could also mediate some of these issues since the cost is shared evenly.

Mr. Ponder discussed the issue of the Advisory Committee. He has been tasked with looking into the local board consolidation, the final outstanding item from SB1428 in 2016. The Cortex study proposed decreasing the amount of board from 233 to 45. The 45 was split up along county lines as well as allowing the 17 independent lands to keep their local boards. Mr. Ponder benchmarked plans across the country, separated plans between agent-multiple-employer plans and cost-sharing plans, you can think of non risk-pool versus risk-pool. He found that in terms of risk-pool plans, local boards were never in charge of making decisions that would affect the pool. The main point was to not have local boards making decisions that affect the pool, and then have other local boards questioning those decisions. The recommendation would be to have one medical board to assess any disability cases. That proposal was approved in the September meeting. There was to be a meeting in October to discuss whether or not PSPRS could handle all administrative work or could local boards handle some of it, what could the employer handle on their own, etc. At the October meeting, Police and Fire presented their own information which led the committee to rescind their approval of the medical board and have now created a working group to move forward.

Executive Director Ken Strobeck introduced John Kross, Town Manager, Queen Creek, to present on the Construction Sales Tax Task Force update.

Mr. Kross began to discuss an overview of the important policy considerations and the research the group did. A diverse group came together to represent the whole state of Arizona coupled with a technical, advisory group in order to present a unified and comprehensive report. The direction was to assemble a task force and analyze the implications of the various proposals that have been made over the past few years that would impose tax only on materials, and to calculate the implications of that. One of the first things done by the task force was to understand the various issues and concerns of the stakeholders and participants in this transaction. These concerns served as the foundation for the report: determining the tax liability and the requirements on these construction projects based on which jobs fall under maintenance, repair, replacement or alteration (MRRA), as a part of the 2013 legislation. For prime contractors, the liability for tax is 65% on the gross proceeds and the standard deduction today is 35% for labor based on the gross income of the construction project after all other deductions are taken. With the MRRA jobs, those are taxed on the purchase price of materials only paid through the vendor, or by the contractor based on the job site as chosen by the contractor. Critics often say that Arizona's tax system on construction is overly complex. In terms of tax compliance and complexity, we feel we were able to debunk those criticisms based on our research of nine other

states. One of the states that was researched, Utah, does have a tax on materials, but once researched further, it was noted there are other taxes imposed in Utah that make up for this difference. One of the issues the task force dealt with was responding to the 1999 Arthur Andersen study which essentially says more compliance would make up for any revenue gaps. This claim was debunked and data can be found in Appendix 12.

There are three proposals made by the task force for possible legislation if there should be interest moving forward. Each proposal has been held to the standard of six core principles established by the task force: ensure that tax revenues are remitted to the jurisdiction in which the construction activity occurs; any proposal does not amount in a significant reduction in the revenues for the state or local governments; maintains the integrity of other tax systems and policies; provides fairness for all similarly situated taxpayers; is easy to determine tax obligation and to comply with remittance; and prevents tax avoidance by relocating or restructuring businesses.

The task force began their proposal analysis with the most recent legislator proposals presented by Representative Cobb and by Senator Lesko. The analysis showed they did not come close to meeting the principles previously stated.

With each task force proposal, we are recommending that the state shared revenue pool be expanded to include Use Tax. It is classified the same as Retail and should be included in the state shared revenue pool. Each proposal essentially eliminates the MRRA category with the intent to try and simplify the system for the contractor and for compliance and remittance. It also allows the handyman class to pay tax on the purchase price of materials to the retail vendor. As for heavy highway construction, the task force decided to keep that as a completely separate category and keep that taxed using the prime contracting method.

Mr. Kross reviewed the three task force proposals as listed in the final report; the dollar limited approach, the percentage limited approach and the Arizona Contractor's Excise Tax (ACET).

Mayor Mitchell asks if the task force has talked with contractors. President Tibshraeny asks Legislative Director, Patrice Kraus, to answer the question. Ms. Kraus says that the task force has worked with contractors throughout their research and believes they have come to the realization that a materials only tax is not an option as the state cannot afford to lose a large amount of money. The task force is currently working with contractors in the industry to figure out a path forward.

Mayor Nexsen asked if the task force has shared their report with Representative Cobb. Ms. Kraus said no, that the task force wanted to share the final report with the Executive Committee before releasing it. She mentioned that they had provided Rep. Cobb with much of the research data and also information she has requested relating to her desire for the state to move to a materials-only tax. The task force had also shared their methodology with JLBC.

Ms. Kraus briefly touched on other legislative items that will likely be dealt with during the next legislative session. First, the legislative department has worked on ecoATM which was defeated last session. Legislative Associate Tom Savage has been leading a model ordinance process to

prepare for the upcoming legislative session. Second, the legislative department is working on a fleet management issue driven by Representative Weninger. Last session, he looked at the state vehicle fleet and had a bill that required them to decrease their numbers by 20% over two years. He is now questioning city fleet numbers. We are working to collect the information he has requested regarding these numbers. The League assumes cities have decreased their fleets to appropriate levels after the great recession, but will continue to work on this issue. Another potential issue facing the legislative department is in regard to short-term rentals. This bill has passed and is now in effect, but may require some changes. The city of Sedona has asked if all platforms can be required to remit taxes for the people using their platform. Ms. Kraus informed the committee that Air BnB remits taxes on behalf of their hosts, while other platforms like Home Away and VRBO do not. The League will be discussion standardizing this process to have all platforms stand in the place of the taxpayer and pay these taxes on their behalf.

In closing, Ms. Kraus thanks the mayors and their cities for responding to numerous information requests.

Mr. Strobeck calls everyone's attention to the Municipal Policy Statement which summarizes the League Resolutions and is used as a tool to get into various legislators' offices to talk about legislative issues.

Mayor Kavanagh briefly discussed some additional bills that will be coming up this legislative session. There will be a bill in the works about sober living homes and having them register so cities and towns are aware of them. She mentioned a bill in regard to the rental tax issue working with the hotel and lodging association to get Air BnB and others on board. Mayor Kavanagh also said there would be a bill that would include marijuana in the Smoke-Free Arizona legislation. She also brought up the issue of the legitimacy of the process for service animals. The final issue was in regard to sex offenders and their ability to move within a certain distance of their victims.

### **3. SB1487 DEVELOPMENTS**

President Tibshraeny introduced League General Counsel Christina Estes-Werther to report on the developments regarding SB1487.

Ms. Estes-Werther informed the committee of the complaints that have been filed since the last meeting in August. The first, was mid-September by Senator Kavanagh who filed a complaint alleging the Phoenix police operations order relating to immigration enforcement had violated state law. He had seven specific allegations, though the Attorney General focused on two of the issues; concerns regarding placement of the language Phoenix uses and concerns regarding routine procedural matters when implementing immigration law. Essentially, the Attorney General tracked the operations order with state law and felt there was no conflict. This is the first no-violation that any city has received. Ms. Estes-Werther noted an issue with this particular complaint; she said the operations order was not directly approved by the Phoenix city council. There was a subcommittee that made a recommendation to the council that the operations order had to be updated to reflect recent court decisions, so they were updating to simply comply with law and that is what the council had approved. The language itself had never been approved by

the council. SB1487 says violations have to be an official action by the governing body to prompt an investigation. This shows that the Attorney General is taking a broad view of these claims, which is concerning.

Ms. Estes-Werther continued to discuss the second complaint, filed against the City of Bisbee by Senator Warren Petersen. This complaint alleged that Bisbee's plastic bag ban is in violation of state law. Ms. Estes-Werther said they had received the investigative report from the Attorney General stating that Bisbee's plastic bag ban does violate state law. This is the first "does violate" ruling as compared to "may violate." The City of Bisbee was given 30 days to comply to resolve the complaint or lose their state shared revenue, and they have about two weeks left at this point. Essentially, the Attorney General found that there is a conflict between the ordinance and state law and he does not recognize their charter authority in this case. The concern here is that the Attorney General's report refers to the Tucson case, is only recognizing charter authority in terms of local elections or real property. Since this issue did not fit into those two categories, the Attorney General found that Bisbee did violate state law. Bisbee held a special council meeting to go over the details of the report. We understand they are planning to re-write the ordinance so that the plastic bag ban is voluntary. Ms. Estes-Werther mentioned Bisbee may choose to conditionally repeal the law so that in the future, if it is found that this ruling violated their charter authority, they would be able to put the ordinance back into place. It is also possible they will file a challenge in the future after resolving this issue.

There were several clarifying questions regarding the issue of charter authority.

Ms. Estes-Werther noted that Bisbee tried to argue the plastic bag ban is a local issue because it is in regard to littering and trash in their community but the Attorney General disregarded their argument stating it was not in regard to elections or real property, therefore it was of state interest.

Mayor Von Gausig asked if there was any recourse or challenge that could be made by Bisbee. Ms. Estes-Werther said since they received a "does violate" there really is no recourse in the SB1487 legislation. When there is a "may violate" the city or town has an opportunity to respond if the Attorney General files the special action in the Supreme Court. In the "does violate" provision, it is silent and says the Attorney General makes a decision and unless resolved in 30 days the state treasurer will be notified to withhold state shared revenue. Though we do have regular court rules and proceedings, meaning Bisbee could file a declaratory action, they would have to start in the Superior Court because there is no direct route to the Supreme Court like there is in a "may violate" finding.

A question is asked about SB 1152 from the 2017 legislative session regarding consolidated elections and how that is not contradictory to the Attorney General's ruling. There were also questions about the process of changing the legislation in upcoming sessions.

Mr. Strobeck mentioned the voluntary assessment sample statement provided in the materials relating to the first SB 1487 litigation involving Tucson. The League retained outside counsel and filed arguments in the case. The Executive Committee had authorized half of the cost to be

paid for from League reserves and the other half will be billed on a per capita basis to all 91 cities and towns.

#### **4. RECAP OF 2017 ANNUAL CONFERENCE**

President Tibshraeny welcomed League Communication and Education Director Matt Lore to report on the 2017 Annual Conference held in Oro Valley.

Mr. Lore thanked Mayor Hiremath of Oro Valley for hosting the Annual Conference. Mr. Lore referenced the financial report and noted the net revenue of the 2017 conference was \$212,768. The conference attendees totaled 1,131 and represented 82 out of the 91 cities and towns.

Mr. Lore pointed out the survey results provided in the committee materials and noted next year's conference will be held in Phoenix at the Phoenician Resort August 24-28. In 2019, the conference will be in Tucson at the Star Pass resort August 20-24.

The planning meeting for the 2018 conference will be held in March. He said anyone who is interested will be welcome to participate.

There were several comments and questions regarding the capacity of the hotels and if they can accommodate all our registered delegates.

#### **5. LEAGUE ANNUAL SURVEY RESULTS**

President Tibshraeny again welcomed League Communication and Education Director Matt Lore to discuss the League annual survey results.

Mr. Lore discussed the annual survey and informed the committee that the survey is sent to all mayors, council members, managers, clerks, attorneys and other staff including intergovs and public information officers. In addition, the survey is also sent to city and town members of league affiliate groups including the Arizona City/County Manger Association (ACMA), the city attorneys association (ACAA), the municipal clerks association (AMCA) and the Government Finance Officers Association of Arizona (GFOAz).

Mr. Lore explained that the survey is rather short and is divided into three parts. The League looks at the demographics of respondents and what services members find the most valuable from the League and how we can improve our services to cities and towns.

#### **6. 2016-2017 AUDIT REPORT**

President Jay Tibshraeny invited League Executive Director Ken Strobeck to present the 2016-2017 audit report.

Mr. Strobeck referenced the completed audit of the League as well as the Property Corporation provided in the committee materials. He noted this was completed by Clifton Larson Allen. There were no findings or recommended changes. Financial statement disclosures were found to be neutral, consistent and clear. The auditors did not encounter difficulties with management or completing the audit. Mr. Strobeck also noted that general fund revenue exceeded budgeted amounts and expenditures were under budget for the fiscal year.

Mayor Mark Nexsen moved to approve the 2016-2017 audit report; Mayor Mark Mitchell seconded the motion and it carried unanimously.

## **7. CITIES AND TOWNS WEEK 2017**

President Tibshraeny invited League Communication and Education Director Matt Lore to present on the 2017 Cities and Towns Week.

Mr. Lore began by applauding the efforts of League Communication and Education Associate Samantha Womer on the social media accounts led by the League which includes the League website, monthly newsletters, AZ Cities @ Work, the League magazine and social media accounts (Twitter, Instagram, and Facebook). He reminded the committee why the AZ Cities @ Work campaign began, as an effort to show citizens what cities and towns do. This is updated through the AZ Cities @ Work website, blog and social media accounts. Mr. Lore proceeded to present on the variety of platforms the League uses to communicate with citizens. He also encouraged the committee to utilize these tools and tag the League in posts.

Mr. Lore presented information about the 2017 Cities and Towns Week which took place October 15-21. Committee materials included numerous examples of how cities and towns got involved through social media, proclamations, press releases, etc. To increase participation in Cities and Towns Week, the League provides a toolkit containing several tools including sample press releases, hashtags and images to promote. He noted that Gilbert and El Mirage used new platforms like the NextDoor App and Snapchat/Instagram stories. He also informed the committee that the 2018 Cities and Towns Week will take place October 21-27, 2018.

## **8. LEAGUE DIRECTOR'S REPORT**

President Tibshraeny asked League Executive Director Ken Strobeck to present the League Director's Report.

Mr. Strobeck informed the committee the League had hosted the Western League Directors, which included seven municipal league directors from the western states, in Phoenix for a day and a half long workshop. He also noted a 3-day conference in Scottsdale for the National League of Cities Risk Insurance Program. Mr. Strobeck also mentioned the Arizona reception at the NLC conference in Charlotte, NC, November 15-18, that will be held on Friday night.

Lastly, Mr. Strobeck mentioned the League had filed an amicus brief which concerned the City of Mesa and the State of Arizona in regard to liability issues during emergency situations.

Mayor Rivera inquired about the renovation of the League building. Mr. Strobeck responded that the committee had decided a total renovation was too costly, but they may make system upgrades for the HVAC and electrical systems. Mayor Rivera also inquired about setting aside money and creating a reserve. Mr. Strobeck said this could be discussed during the upcoming budget meetings.

Seeing no further business, President Tibshraeny adjourned the meeting at 11:58 a.m.

  
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EXECUTIVE DIRECTOR

  
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PRESIDENT