

MINUTES

LEAGUE OF ARIZONA CITIES AND TOWNS

EXECUTIVE COMMITTEE MEETING

Friday, February 9, 2018 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

Daryl Seymore, Mayor, Show Low

Lana Mook, Mayor, El Mirage

Rick Mueller, Mayor, Sierra Vista

Coral Evans, Mayor, Flagstaff

Sharon Wolcott, Mayor, Surprise+

Linda Kavanagh, Mayor, Fountain Hills

Mark Mitchell, Mayor, Tempe*

Jenn Daniels, Mayor, Gilbert

Bob Rivera, Mayor, Thatcher

Jerry Weiers, Mayor, Glendale

Jonathan Rothschild, Mayor, Tucson

Georgia Lord, Mayor, Goodyear

Douglas Nicholls, Mayor, Yuma+

*Not in Attendance

+ Attended via phone

President Jay Tibshraeny called the meeting to order at 10:03 a.m. He invited Mayor Weiers to lead the Executive Committee in the Pledge of Allegiance.

1. REVIEW AND ADOPTION OF MINUTES

Mayor Jonathan Rothschild moved to approve the minutes of the November 3, 2017 Executive Committee Meeting; Mayor Bob Rivera seconded the motion and it carried unanimously.

President Jay Tibshraeny then asked to move to Item # 5 – Presentation by Gilbert Davidson, Chief of Operations, and Governor's Office.

5. PRESENTATION BY GILBERT DAVIDSON, CHIEF OF OPERATIONS, GOVERNOR'S OFFICE

President Jay Tibshraeny welcomed League Executive Director Ken Strobeck to introduce Mr. Gilbert Davidson.

Executive Director Strobeck informed the Executive Committee that late last year, Gilbert Davidson, former town manager for the Town of Marana, was appointed to the position of Chief Operating Officer for the Executive Branch for the State of Arizona by Governor Doug Ducey. Executive Director Strobeck welcomed Mr. Davidson to provide a brief update.

Mr. Davidson introduced himself to the Executive Committee, explaining that his position was created to oversee the state agencies, ensuring that they are operating efficiently and effectively to best serve the citizens and support other elements of government. In addition to overseeing the state agencies, Mr. Davidson informed the Committee that he recently took over the duties as interim director of the Department of Administration.

In his new role as Chief Operating Officer, Mr. Davidson's first priority is the rollout of the Arizona Management System. This is a program endorsed by Governor Ducey where the main goal is to create a culture within state government that drives efficiency, eliminating unnecessary policies and procedures.

Mr. Davidson informed the Committee that he had recently provided a presentation about this new system to the Arizona City/County Management Association at their Annual Winter Conference the week prior. He also referenced a partnership launched with the state universities and other entities to begin a concerted effort to train and develop all levels of state employees and indicated it could be a program where local government could potentially share.

Mr. Davidson also told the Committee that he would love to engage with cities and towns in strengthening the state and to contact him if there were areas effecting local government where he could potentially be of service.

2. LEGISLATIVE POLICY DISCUSSION AND UPDATE 28:45

President Jay Tibshraeny welcomed League Executive Director Ken Strobeck to provide the Executive Committee Legislative Update.

League Executive Director Strobeck informed the Executive Committee that the Legislature had been in session for just over a month and has been historic with the expulsion of Rep. Don Shooter. Rep. Shooter was expelled by a vote of 56-3 and is only the fourth representative to be expelled from the legislature. Mr. Strobeck also notified the board of upcoming deadlines at the Legislature.

Executive Director Strobeck then welcomed League Legislative Director Patrice Kraus to provide updates on additional bills.

Home-based businesses/Occupational licenses

Legislative Director Kraus began by informing the Committee of three bills that were introduced in regard to home-based business regulations; SB 1002, SB 1175 and HB 2333. Sen. Farnsworth who is sponsoring SB 1002 has contacted the League prior to the start of the session and had worked collaboratively with the counties on the bill language. Sen. Farnsworth wants to create a statutory framework for home-based businesses. Ms. Kraus noted that the League does not believe home-based businesses are negatively affecting our communities. The League has been working cooperatively with Sen. Farnsworth and he has included some of the suggested language, but the League will have to continue to oppose this bill.

The Goldwater Institute, the Free Enterprise Club and Institute for Justice approached Rep. Weninger to run a bill regulating home-based businesses which is HB 2333. Ms. Kraus noted that HB 2333 as a mirror bill in the Senate, SB 1175. The language in HB 2333 and SB 1175 contains restrictive provisions and mandates that home-based businesses can locate “by right,” which would give businesses equal footing with residents. If it is what they call a “no impact” home-based business it is limited to the owner of the house, immediate family members and up to three employees at one time, but cannot increase traffic. Ms. Kraus informed the board of the three provisions that make it difficult for cities and towns to regulate. Firstly, locating by right meaning the business does not have to inform the city/town they are opening a business, which in turn means they do not require a permit or any kind of license at the local level if they are considered a “no impact” home-based business. Secondly, any regulations in regard to home-based businesses have to be “narrowly tailored” in that they specifically address home-based businesses. Thirdly, any question of whether or not the regulation is narrowly tailored is to be decided by the courts and the burden of proof is clear and convincing evidence which is the same standard of proof as removing a child from their home.

Ms. Kraus said that the League is not opposed to having some type of statutory framework for things home-based businesses can and cannot do, but have not been approached to negotiate on these bills so the League will continue to oppose them.

Mayor Nexsen questioned the impact to the neighborhood. Ms. Kraus noted that the same organizations that brought forward the Air BnB bill from two sessions ago are behind HB 2333 and SB 1175.

Mayor Daniels asked about the probability of killing one, if not all, of the home-based business bills. Ms. Kraus suggested working on the issue before trying to kill the bill in hopes of putting the issue to rest. President Tibshraeny asked about regulating home-based businesses for safety reasons where Ms. Kraus mentioned there are provisions in the bill for public health and safety. If you could demonstrate that the business was putting others at risk the city/town would be able to regulate the business, the question is if the municipality does not know the business is there, how can you determine if what they are doing is endangering the public?

Ms. Kraus explained to the board that if the League does not have the ability to negotiate or the bill is killed, the issue may return the following session with more restrictive provisions. Mayor Hiremath asked for examples of issues that were defeated and came back the following session

in a more restrictive form. Ms. Kraus gave examples of issues such as consolidated election dates and segued into the occupational licensing bill that was killed last session and remains a current issue.

After additional discussion, President Tibshraeny calls for a decision for direction on whether or not League staff should have the flexibility to negotiate and if not, then to kill the bill, or to work to defeat the bill without negotiating. The board votes to allow the legislative team flexibility in their strategy.

Construction Sales Tax /Spec Builder, Digital Goods

President Tibshraeny invited League Tax Policy Analyst Lee Grafstrom to discuss legislation in regard to Construction Sales Tax/Spec Builder.

Mr. Grafstrom first discussed a bill related to the speculative builder. HB2387 is a bill that will essentially pre-empt city's speculative builder classification and creates an exemption for in-place leases. He explained that when people build a new commercial property typically they are sold as soon as they get about 80% leased; leases tend to run 5-10 years. This value of renting out the building is included in the value of the purchase price. Mr. Grafstrom noted this has been a recurring issue for at least a decade and at the city level various cities have dealt with this issue by providing exemptions or relief in this area with varying methods. He informed the board that the League is in the process of putting the in-place lease exemption into the Model City Tax Code and providing a uniform methodology so taxpayers and jurisdictions know exactly how to deal with it. Mr. Grafstrom explained the bill says that cities must allow for a deduction for the value of in-place leases, other intangibles and personal property but it does not provide a method to value those in-place leases, which is one of the main concerns; the larger concern is the term "other intangibles." Over the years the term "other intangibles" has been used by the development industry to mean anything from profit, overhead, or whatever they decide to include as the difference between cost of construction and selling price for the new construction. Mr. Grafstrom noted cities tax the selling price and the state taxes the cost of construction price. This bill has a floor on it saying that there can be a deduction for whatever amount for leases, other intangibles and personal property, as long as you do not go below that floor of basis that you used at the state level. Since there are no definitions or methodologies, there is simply a door that is open with a potential bottom line of paying it like the state. The League sees this as a complete elimination of speculative builder which would cost cities and towns a large sum of money; the League is attempting to pull numbers to estimate what the loss may be as a total. This is an exemption cities and towns already use and we are working to add this exemption in the Model City Tax Code and are more than willing to sit down with stakeholders to get to a solution that is fair across the board.

Mr. Grafstrom then discusses two bills that emerged from the ad-hoc committee that looked at taxation of digital goods, SB1392 sponsored by Sen. Farnsworth and its companion bill HB2479 sponsored by Rep. Ugenti-Rita. Mr. Grafstrom informed the board that the bill was written by the Arizona Tax Research Association (ATRA) to assist the ad-hoc committee. ATRA has added definitions to the bill that match what already exists in the Model City Tax Code but that did not exist in the state tax code. An issue is that a line is being drawn about what will be taxable and what will not be taxable based on whether or not the purchaser can save, download and hold

onto, a complete copy of whatever that good may be like a movie, song or version of TurboTax. Mr. Grafstrom informs the board that digital goods that are partially downloaded or are not downloaded and remain in the cloud/internet would be exempt. The language of this bill separates prewritten software and digital goods which it calls taxable provided they are transferred electronically and you got a full copy. This bill also exempts anything considered to be specified digital services which would be those same programs or goods, provided you did not download the entire copy. Mr. Grafstrom noted that the bill also talks about software as a service formerly known as software as a subscription, and offered this example – I am putting my programs on your server with your operating system and I am operating there which is currently taxed under TPP (Tangible Personal Property) because I am renting space on your server. Infrastructure as a service is – I am putting my own operating system and programs on your server, but my system is running everything, which is also currently taxable through TPP. He noted there are eight new exemptions in this bill and this will have a high dollar cost for the state, counties and cities/towns because it changes the nature of certain transactions. It makes things that are currently considered taxable under retail or rental under TPP and turns them into Use Tax, which a lot of cities do not have and is not shared at the state level. Mr. Grafstrom informs the board that there is a significant revenue impact that will come from this, the problem is that no one is reporting their information in the way the bill describes which is making it difficult to find an accurate number, but the impact is predicted to be large. The biggest concern is that the large number is only going increase as technology advances, especially once it becomes known how the process works without being taxed. A question was asked of who gets the tax, which Mr. Grafstrom answered that currently, if it is a digital good, the tax goes to the billing address of the customer.

Legislative Director Patrice Kraus brings one additional bill to the attention of the Committee, Cable Licensing. Ms. Kraus invited Legislative Associate Tom Savage to discuss this issue.

Cable Licensing

League Legislative Associate Tom Savage communicated to the Committee that the League had been contacted by Cox the second week of session regarding their proposal to shift the licensing authority of cable operators from local municipality to the Secretary of State. This bill, HB2579 is sponsored by Rep. Jill Norgaard. Cox explained the bill as only transferring the ministerial authority of licensing cable operators but that the local regulations regarding right of way management would otherwise remain the same. Mr. Savage informed the Board that with the League's review of the bill it seems the provisions of the bill do not match up with that story.

There are some troubling provisions in this bill regarding cost shifts to municipalities for street cut restoration and undergrounding requirements. Essentially, though the language is vague, the cable operator is required to pay the "reasonable costs" for repairing street cuts. Anything above what the cable operator deems to be reasonable is to be paid by the municipality. The municipality would receive an invoice from the cable operator and the city/town would have 60 days to pay the additional cost and if they do not, it will come out of their license fees. Mr. Savage said that in addition, the undergrounding requirements in most cases will be covered by the municipality. Mr. Savage reminded the Board of some cities that have had issues with this company regarding bundling discounts, the issue was that they were applying discounts for a bundle of 3 packages, telephone, internet and cable; they were applying their discounts from

their telephone and internet to the cable so therefore it would lower the revenues that are subject to the up to 5% license fees. He also noted that the bill would change the definition of gross revenue in this bill. Essentially, if they are receiving any revenue for leasing of their infrastructure in the right of way, it is not included in their gross revenue, or those revenues would not be subject to the license fees. Mr. Savage told the board that the biggest issue is that this has not gone through a thorough stakeholder process as they came to us after the session began with a 20 page draft of what the cable operator was trying to accomplish. The League was not included in the process and was only made aware of the bill after the session began. This bill is scheduled for House Commerce next week. Mr. Savage informed the board that the League requested the bill be held and to work on the issue over the interim, but it seems as though the cable operator is adamant on pushing this bill through this session. Mayor Daniels suggested discussing the nuances of the bill with Rep. Norgaard. League Executive Director Ken Strobeck noted that the contents of this bill are very intentional and it takes away any leverage cities and towns have to work with cable operators Mayor Giles, Mayor Daniels and President Tibshraeny ask League staff to set up a meeting with Rep. Norgaard. Mayor Nicholls of Yuma reiterated that having a franchise agreement is a community's only leverage. League Legislative Director Patrice Kraus noted that other cable companies like Comcast and CenturyLink have not been involved and will most likely not engage at this point.

3. SB1487 DEVELOPMENTS

President Jay Tibshraeny recognized League Executive Director Ken Strobeck, who welcomed League General Counsel Christina Estes-Werther to provide an update on developments of Senate Bill 1487.

General Counsel Estes-Werther informed the Committee that there had been three 1487 claims recently. She referenced a claim made by Representative Jay Lawrence against the City of Phoenix and their transparency protocol. The Attorney General found that this did not violate SB1487. Another claim was made by Representative Vince Leach against the Town of Patagonia in reference to their regulation of heavy trucks. The Attorney General also found that this did not violate SB1487.

A third claim, also made by Representative Vince Leach, came in a complaint against Government Property Least Excise Tax (GPLET) as utilized by the City of Tempe. The Attorney General released an opinion, indicating that one of the ordinances, in reference to the Graduate Hotel in Tempe, was not in violation. The second complaint about GPLET use for Bank of the West in Tempe was found by the Attorney General as an item that may violate SB1487. The Attorney General acknowledged that there is ambiguity in the statute regarding a grandfathering date about a particular rate.

Ms. Estes-Werther told the Committee that the Attorney General typically gives a city a few weeks to brief the council, find out their intended direction and then they are required to file special action, likely within the next couple weeks. The League is willing to file an amicus brief in support of the City of Tempe should they move forward.

Ms. Estes-Werther also informed the Committee about proposed legislation in relation to SB1487. She noted that SB 1347 included a few developing provisions. The first would preclude a complaint from being made by a legislator who did not represent the city or town where the complaint was being filed. In all but one circumstance thus far, all the complaints have been made by legislators who do not represent municipalities where they filed the complaint. Another provision would expand the time frame. Currently there are only 30 days from when the legislator files a complaint for the Attorney General to make a determination, which puts a lot of burden on the municipality, who is typically only given approximately 10 days to respond. The bill now asks for 60 days, which doubles the time frame, however, Ms. Estes-Werther indicated that they would be amenable of any type of time increase. In addition, she noted that new legislation would like to codify some of the general processes, as there is not currently anything that indicates cities or towns need to be notified once they're under investigation. Ms. Estes-Werther then welcomed Attorney Paul Eckstein from the law firm of Perkins Coie, who represented the League before the Arizona Supreme Court in January 2017 in the Tucson firearms case.

Mr. Eckstein gave a brief overview of the particular case, reminding the Executive Committee that the Attorney General had found the City of Tucson in violation of SB1487 after a complaint was filed in 2016. The City of Tucson involved state laws that preempted cities from legislating by ordinance in any other way with respect to weapons, in particular, requiring the government to sell back weapons to dealers within the marketplace. The City of Tucson had ordinances providing that the City of Tucson would destroy weapons and not put them back into the marketplace. After a legislator filed an objection, the Attorney General indicated it "may violate" state law.

The Supreme Court issued a decision in August 2017. Their findings were that requiring the Attorney General to investigate and take further action of an ordinance violation complaint does not violate Arizona's Separation of Powers provision in the Constitution. Additionally, requiring the Supreme Court to accept jurisdiction also does not violate Arizona's Separation of Powers provision in the Constitution. Most importantly, the Supreme Court's decision indicated that the City of Tucson's ordinance was in violation of the legislative preemption having to do with gun regulation. The court ruled that the registration and regulation of firearms is part of the police power and the state has the right to act where there is an important police power of protection. Secondly, in order for a city to prevail, the Supreme Court said that the matter must be of a purely local matter and indicated matters that were purely local interest to date were elections and disposal of city real estate.

Mr. Eckstein told the Committee that with respect to the particular issues that the Supreme Court ruled upon, the most harm was conducted on the matter of local interest. Where there had been some wiggle room prior to this decision on which matters were of local interest, the law is now clear that it must be a matter of purely local interest.

Mr. Eckstein also said that there are still some unclear items that the Supreme Court chose not to decide. The Court did not decide if it was constitutional for the Attorney General to instruct the State Treasurer to withhold State Shared Revenue funding. The court said in a footnote they did not have to decide this issue as it had not been filed as a B1 violation.

4. PSPRS UPDATE

President Tibshraeny welcomed League Pension Policy Analyst, Nick Ponder to discuss PSPRS Updates.

Mr. Ponder references a presentation provided in the Executive Committee Meeting binder. Mr. Ponder notes that the most common question he receives is “PSPRS made 12% last year, why did my contribution rates go up?” Mr. Ponder referenced his presentation to explain the 2017 Actuarial Valuation, which was also presented at the Arizona City/County Management Association Winter Conference at the beginning of the month. He informed the committee that some of this was due to the Hall case where the contribution rate for Tier 1 was reduced from 11.65% to 7.65%, and how much longer people are living, which in turn increases contribution rates. Since remaining cases have been settled, this should be the last increase we see to our contribution rates before they eventually will come down. There is one particular bill in the legislature that would increase contribution rates by 27% per employer which is also mentioned in the presentation provided.

Mr. Ponder explained that in the general, it is best to account for people living longer and salary increases now rather than later when you are accumulating interest. Lastly, Mr. Ponder notes the League’s recommendation in regard to local boards which was to allow the 17 larger employers to keep their local board structure and establish one board consisting of medical professionals for employers in the risk pool. Across the nation, the process is generally to have all pooled boards but by having pre-established local boards, the conclusion was to leave the local boards in place and create one additional medical board to represent the remaining pooled communities. This recommendation was based on analysis of the original Cortex recommendation of consolidating to 45 local boards and concerns presented at the ad-hoc committee meetings. This does not seem to be high priority this legislative session.

In response to a question, Executive Director Ken Strobeck notes that the number 17 comes from the agreed upon number of 250 active employees in a city’s police or fire department. The goal of having a board of medical professionals making these decisions for the pool is to maintain objectivity.

6. UPDATE ON LEAGUE POLICY COMMITTEES

President Tibshraeny invites Legislative Associate Tom Savage to provide an update on Policy Committees.

Mr. Savage informed the committee the legislative staff wants to make changes to the way the policy committee process works that will make the process more efficient. He notes that the biggest change is to consolidate the meetings dates during the three months after the conclusion of the Legislative session. Mr. Savage reminded the committee that previous years included a meeting during the legislative session which led to confusion as to whether the policy issues on

the agenda, does that mean that legislative staff are going over to the capitol to try and fix the issue notwithstanding the process that the resolutions are vetted through.

In addition, because the legislature is in session, we are focused on what is happening at the capitol, advocating for issues that have been adopted during the previous year's annual conference that was included in our legislative agenda and also working through the numerous bad bills that we have provided to you. Legislative staff hopes by consolidating these meetings to the months between May and July up until the resolutions committee will allow for ease of the process and these issues will be fresh in everyone's minds as the committees head into the resolutions process which will allow for more robust discussion of the issues.

Also, legislative staff will be conducting an open enrollment process by submitting an annual survey to elected officials and their staff to identify which policy committees are available and to invite city officials to participate, especially those who have knowledge on specific subject matter.

7. REPORT FROM BUDGET SUBCOMMITTEE

President Tibshraeny invited Mayor Schoaf, Budget Subcommittee Chairman to discuss the report from the Budget Subcommittee which includes the proposed preliminary FY 2018-19 League and Property Corporation budgets which was created to put context to the recommended FY 2018-19 League Dues.

Mayor Schoaf reviewed the budget documents provided and explained that the budget is relatively the same, except that this year the League is budgeting for a positive revenues over expenditures compared to last year where the subcommittee budgeted for a shortfall. He explained that based on this preliminary budget there does not need to be any change to the Dues formula so the subcommittee put together a dues list which provided context for the changes in dues based on the 2016 census numbers.

Without any questions, Mayor Thomas Schoaf moved to approve the Proposed FY 18-19 Dues; Mayor Jenn Daniels seconded the motion and it carried unanimously.

Seeing no further business, President Tibshraeny adjourned the meeting at 12:09 p.m.


EXECUTIVE DIRECTOR


PRESIDENT