

## MINUTES

### LEAGUE OF ARIZONA CITIES AND TOWNS

#### EXECUTIVE COMMITTEE MEETING

Friday, February 8, 2019 at 10:00 a.m.  
League of Arizona Cities and Towns  
1820 W. Washington St.  
Phoenix, Arizona

#### MEMBERS

##### President

Christian Price, Mayor, Maricopa

##### Vice President

Cathy Carlat, Mayor, Peoria

##### Treasurer

Douglas Nicholls, Mayor, Yuma

Tom Brady, Mayor, Bullhead City  
Craig McFarland, Mayor, Casa Grande  
Kevin Hartke, Mayor, Chandler  
Doug Von Gausig, Mayor, Clarkdale  
Robert Urbine, Mayor, Douglas  
Coral Evans, Mayor, Flagstaff\*  
Jenn Daniels, Mayor, Gilbert  
Jerry Weiers, Mayor, Glendale  
Georgia Lord, Mayor, Goodyear  
Thomas L. Schoaf, Mayor, Litchfield Park  
Ed Honea, Mayor, Marana

John Giles, Mayor, Mesa  
Greg Mengarelli, Mayor, Prescott  
Gail Barney, Mayor, Queen Creek  
W.J. "Jim" Lane, Mayor, Scottsdale+  
Sandy Moriarty, Mayor, Sedona  
Daryl Seymore, Mayor, Show Low  
Rick Mueller, Mayor, Sierra Vista+  
Mark Mitchell, Mayor, Tempe\*  
Bob Rivera, Mayor, Thatcher  
Anna Tovar, Mayor, Tolleson  
Jonathan Rothschild, Mayor, Tucson

\*not in attendance

+ attended via phone

President Christian Price called the meeting to order at 10:01 a.m. He then led the Executive Committee in the Pledge of Allegiance.

#### 1. REVIEW AND ADOPTION OF MINUTES

President Christian Price requested a motion on the adoption of the minutes. It was indicated that there needed to be a correction made; the Treasurer should be listed as Mayor Douglas Nicholls of Yuma. Mayor Jenn Daniels moved to approve the amended minutes of the November 2, 2018 Executive Committee Meeting; Mayor Douglas Nicholls seconded the motion and it carried unanimously.

## **2. NOMINATING COMMITTEE RECOMMENDATIONS FOR NEW EXECUTIVE COMMITTEE MEMBERS**

President Price invited Mayor Ed Honea, Nominating Committee Chair, to present on the Nominating Committee recommendations for new Executive Committee members. Mayor Honea let everyone know that there was a large number of applicants, making the decision difficult. The Committee selected five people to recommend to serve on the Executive Committee. Mayor Honea introduced the five recommended candidates for the Executive Committee: Mayor Craig McFarland of Casa Grande and Mayor Kevin Hartke of Chandler, who will both serve two-year terms; and Mayor Robert Uribe of Douglas, Mayor Greg Mengarelli of Prescott, and Mayor Sandy Moriarty of Sedona, who will serve one-year terms.

Mayor Ed Honea moved to approve the new members for the Executive Committee; Mayor Douglas Nicholls seconded the motion and it carried unanimously.

President Price welcomed the new members.

## **3. LEGISLATIVE POLICY OVERVIEW AND SESSION UPDATE**

President Christian Price welcomed League Executive Director Ken Strobeck to introduce League Legislative Director Nick Ponder to present on the Legislative Policy Overview and Session Update. Executive Director Strobeck also informed the Committee that the deadline for house bills to be introduced will be Monday, February 11.

### **Wayfair**

Legislative Director Ponder informed the Committee that Wayfair does not have a bill number yet; Representative Ben Toma, sponsor of the pending bill, is expected to drop the bill today. Mr. Ponder reminded the Committee that this bill comes out of the Supreme Court case, South Dakota v. Wayfair. Prior to June of 2018 you could not tax sales of remote sellers coming into the state. If the company did not have a physical presence in Arizona, their products could not be taxed. The League has been working as a coalition with the Arizona Retailers Association, International Coalition of Shopping Centers and the counties, trying to bring the equity into Arizona. Mr. Ponder noted that there will be additional revenue for the cities but likely not as substantial as others have been saying. Others have quoted an increase of 293 million dollars, whereas the League has a calculation of approximately 85 million dollars.

### **Digital goods**

Mr. Ponder discussed the topic of digital goods. Senator Michele Ugenti-Rita is the sponsor for this bill which was introduced a few days ago. Last year's bill had eight new exemptions. Mr. Ponder noted they are unsure what the revenue impact will be but that the current legislation will software as a service. Software is currently considered taxable by the Department of Revenue. Although League staff does not know the exact impact, it is believed that the number will grow substantially. The League is going to oppose this piece of legislation.

## **Texting/Cell phone ban while driving**

Next, Mr. Ponder informed the board of a proposed bill to ban texting while driving. Mr. Ponder noted this is an important issue especially with the recent passing of a Salt River Police Officer. Mr. Ponder introduced Tom Savage, League Legislative Associate, to provide an update.

Legislative Associate Savage explained that there had been five proposed measures introduced at the Legislature to establish a state-wide ban for texting while driving or hands-free law. Some cities currently have an active ordinance prohibiting the use of cell phones or general hands-free. SB1165 is a new measure sponsored by Senator Brophy McGee. Of all the proposed bills, this bill is most agreeable to cities and towns. Mr. Savage went over the salient points of the legislation and noted that if passed, SB1165 would preempt any city/town ordinances in effect at the time. As this legislation moves forward League staff will keep our members up to date on its evolution.

Answering questions from Committee Members, Mr. Savage clarified that, as the legislation is currently written, a citation cannot be used against a person's insurance or have points counted against their license and that there are provisions to prevent law enforcement from taking possession of cell phones. He also clarified that this would be a primary offense.

President Price asked for a motion to support the texting/cell phone ban while driving Mayor Bob Rivera moved to approve; Mayor Kevin Hartke seconded the motion and it carried unanimously.

## **Tax Exemptions**

Mr. Ponder then presented on city tax codes. Representative Shawna Bolick introduced a ban on food for home consumption tax. After calculations, that would be a \$115.8 million impact to the state. Some rural communities do not have a property tax, so a food tax is a substantial part of their budget. The League did an analysis of each member city to determine how much, if any, of their budget is comprised from food tax.

Mr. Ponder discussed another tax exemption of feminine hygiene products and formula, sponsored by Representative T.J. Shope. Mr. Ponder reminded the Committee that as exemptions are added to the retail base within the model state tax code, it would be required to conform anything that is a tax exemption in retail at the state level.

## **Highway Safety**

Mr. Ponder provided information about highway safety bills to the Executive Committee. There are several bills that either attempt to repeal the highway safety fee that was passed last year or bring it down to a number that was lower. These include SB1001, sponsored by Senator Michelle Ugenti-Rita and HB 2536 sponsored by Representative Noel Campbell. Both of these pieces of legislation are at the beginning stages of the process and the League will closely monitor them as they move through committees.

## **League Resolutions**

Mr. Ponder introduced Legislative Associate Alex Vidal to speak about the League Resolutions. Legislative Associate Vidal discussed the short-term rental resolution and legislation. The current legislation opposed allowing cities and towns to do any type of regulation for short-term rentals. The League has been working with Representative John Kavanagh on a bill and at this time

Representative Kavanaugh is still in the process of getting signatures for this bill. The League will continue to work on this bill as the process moves forward.

The next item Mr. Vidal informed the Committee about was the resolution for protection against sexual orientation and gender identity. There is still some disagreement on what to include in this bill from lawmakers and at the time of this meeting it does not appear that the bill will be moving forward this year.

Mr. Vidal also discussed the State Liquor Board. Many jurisdictions have had complaints regarding concerns that the liquor board is not making decisions with thoughts about their impact on public safety. The City of Glendale has been working with the League on HB 2743, sponsored by Representative Anthony Kern, which will change the State Liquor Board, preserving a seat for the city and town elected officials or someone from the League to represent the cities and towns. This will be heard in Committee next week.

Mr. Vidal also discussed the affordable housing resolution. The idea is to establish a state tax credit. Right now, there is a federal low-income housing tax credit. What the proposed program will do is match what is being given at the federal level to help boost affordable housing. There are a lot of benefits for cities and towns with this bill and the League will be in support of this bill.

### **Other Activities**

Legislative Director Ponder finished up by, discussing Florence's pension transfer. In smaller cities that have part-time firefighter accounts, there is money left over from employees who do not vest so they will be able to take the leftover money and transfer it to PSPRS to help paydown unfunded liabilities. This was passed through Committee last week.

### **Governor's Office**

President Price introduced Daniel Scarpinato, Governor's Chief of Staff, and Ben Blink, Policy Advisor, to talk about the Governor's priorities and answer any questions. Mr. Scarpinato discussed the positive increase in the budget, with a million-dollar surplus. There is an opportunity to make key investments which will have positive impacts on communities and position the state for any downturns. They want to continue collaborative work with the League and cities and towns. The Governor's proposal is to put a billion dollars in a rainy-day fund. This will help for the next downturn. Furthermore, this will allow for investments in K-12, protecting roads, and local communities. Mr. Scarpinato introduced Ben Blink as a resource for everyone regarding the budget.

Executive Committee members then asked Mr. Scarpinato questions regarding vacancies on important commissions and questions about the Drought Contingency Plan. Mr. Scarpinato answered questions and ended by stating that the Governor will be wanting to meet with local officials to discuss these issues further.

## **4. SOCIAL MEDIA PROGRAM OVERVIEW**

President Price welcomed Legislative Director Nick Ponder to provide an overview of the social media program. Mr. Ponder informed the Executive Committee that the League has established a social media program to educate legislators on important city and town issues as well as to recognize the impactful things cities and towns are doing to make Arizona a great place to work and live. This program will include fun, short and informative videos as well as posts to Facebook and Twitter. The

social media program has been a great success and the League has seen a large increase in engagement since October when the program commenced.

Executive Director Ken Strobeck added that it is important for everyone to follow the League on Twitter to get the information out to your cities and towns.

## **5. LEGAL UPDATE**

President Price invited League General Counsel Christina Estes-Werther to provide a legal update. General Counsel Estes-Werther informed the Committee that an amicus brief was filed for the City of Peoria where The Goldwater Institute has sued the city for alleged misuse of statutory authorization relating to economic development, which they claim was violating the gift clause. The League objects to this argument. Mrs. Estes-Werther indicated that the decision will be forthcoming since the brief was filed December 21<sup>st</sup>.

Peoria Mayor Cathy Carlat noted this case involves Huntington University and giving them benefits when they moved into the city for consideration for jobs, paid from general fund money. The case is in the Court of Appeals because the city won in lower court.

Mrs. Estes-Werther brought up another amicus filed which touches on every public entity and was written on behalf of the state. This was arising out of the crash that happened on the I-10 ten years ago. The court waived the statute of limitations in this case, so the plaintiffs were allowed to file more than a year after the deadline. Since this impacts all cities and towns, the League wants to make sure the plaintiffs are following all the proper deadlines and giving proper notice of litigation. The second issue involves absolute immunity. As policy makers you get absolute immunity when making decisions, exercising discretion and contributing funds for a policy decision. The court decided the state did not have absolute immunity because they didn't specifically say there shouldn't have been a barrier at that median. The League is opposing this decision, saying that is not how cities and towns govern.

Mrs. Estes-Werther updated the Committee on Prop 126. This was on the state-wide ballot in November and prohibits new state and local taxes on services but there is no definition of service. Mesa, Scottsdale, Tempe, Flagstaff, Prescott and Sedona have contracted with a law firm to review that matter and how it might affect them personally since they have increased their taxes this past year. There is authorization to litigate but they are still examining what course of action they might want to take.

## **6. REPORT FROM BUDGET SUBCOMMITTEE**

President Price welcomed Budget Subcommittee Chair and Litchfield Park Mayor Thomas Schoaf, to speak. Mayor Schoaf noted the Subcommittee was formed to see what the budget will look like before establishing dues. The Subcommittee met and went through the preliminary budget prepared by staff. There are no significant changes from last year. Because the City of Phoenix is no longer a member of the League, there needed to be a decision on how to cover the shortfall of their dues payment. The Subcommittee thought the most responsible way to cover it would be to split it across all cities and towns in a fair manner. The proposal will be a dues increase somewhere between 4-6%.

The Board questioned if Phoenix comes back, how it will affect this increase.

Mayor Schoaf answered that the dues will be adjusted again, by lowering, if Phoenix comes back.

Mayor Thomas Schoaf moved to approve the dues as presented in the packet, Mayor Ed Honea seconded the motion and it carried unanimously.

## **7. PROPOSED AUDIT FIRM CONTRACT**

President Price again asked Litchfield Park Mayor Thomas Schoaf to speak about this contract. Mayor Schoaf indicated that the Subcommittee looked at the audit costs to see if it would make sense to get a different auditor. They received proposals from seven different groups. CliftonLarsenAllen was significantly cheaper and committed to cycling through auditors so they wouldn't be the same every time. With this, the Subcommittee proposed using CliftonLarsenAllen for the auditors for the next contract cycle, which is three years.

Mayor Thomas Schoaf moved to approve the CliftonLarsenAllen as the auditors for the next three years, Mayor Jerry Weirs seconded the motion and it carried unanimously.

## **8. PROPOSED LEAGUE BYLAWS**

President Price invited Executive Director Ken Strobeck to speak on the proposed League bylaws, which have been drafted. He indicated they needed to be reviewed and some language may need to be cleaned up. He reminded the Committee that the bylaws differ from the charter in that they can be changed from time to time by the Executive Committee whereas the charter can only be changed in a vote by the full membership at the Annual Conference.

The Committee decided to table the proposed bylaws to the next meeting, so they could examine the draft and submit any proposed changes in writing. Mayor McFarland motioned to table the bylaws for discussion at the next League Executive Committee Meeting, Mayor Schoaf seconded the motion and it carried unanimously.

## **9. PSPRS NOMINEES / RESOLUTIONS OF APPRECIATION**

President Price welcomed Executive Director Ken Strobeck to speak. Executive Director Strobeck mentioned there were openings on the PSPRS Board. Members are nominated by the League and one of the appointments has been made. There have also been three other names sent to the Speaker of the House for consideration of appointment. Speaker Bowers has not made an appointment yet; it is still pending.

Mayor Bob Rivera made a motion to approve resolutions of appreciation for individuals who served on the Board of Trustees of the Public Safety Personnel Retirement System, Mayor Thomas Schoaf seconded, and it carried unanimously.

## **10. IGA-DOR UPDATE**

President Price invited Tax Policy Analyst Lee Grafstrom to speak. Mr. Grafstrom discussed working on the TPT Administration IGA with the Department of Revenue (DOR). The IGA is a uniform agreement between the DOR and each individual city and town that covers all aspects of sales tax administration, licensing, audit and collection by the DOR on behalf of the cities and towns. Mr. Grafstrom indicated the renegotiation of this IGA started more than a year ago and the revised version will help the cities and the DOR to implement much improved tax practices. This negotiation is almost done; there are only a few corrections that still need to be made. One issue that has been

addressed deals with audit authority for those cities and towns that do not have staff or contract tax auditors. DOR and the cities will create a method for cities and towns without auditors to formally request DOR or another city perform an audit of a specific taxpayer in their jurisdiction. Another significant issue relates to interpretations of the model city tax code. The new IGA adds language that says, when the state statute and the model city tax code are the same, cities must follow written guidance and interpretations provided by the DOR. However, when the state statute and model code are not the same, the Municipal Tax Code Commission (MTCC) or its designee is the final arbiter and interpreter of the model city tax code. Mr. Grafstrom said they expect to have the completed IGA ready to send to councils in the next few weeks. that needs to be separately approved by each council. The agreement would be carried through each city that uses the model city tax code, including Phoenix.

Mr. Grafstrom informed the board about the next MTCC meeting on February 22nd. There are two amendments for the MTCC to approve. The first responds directly to some legislative bills by making several clarifications and corrections to the Spec Builder section effective on April 1st, including the clarification of which projects qualify for the tax, expanding the allowance for exempt sales between developers, and adding an exemption for in-place leases at the time of the sale. The other amendment is related to the U.S. Supreme Court decision in South Dakota v. Wayfair, conforming the model code's Retail section to the state's version of Retail from the perspective of a remote seller. The Retail amendment requires the adoption of several exemptions the state has that cities currently do not, including the tax on feed, seed and fertilizer sold at a feed store that 65 cities and towns currently have in place. The amendment to Retail is necessary to keep the model code from being an impediment to the state applying the new nexus rules under Wayfair. Wayfair overturned the old "physical presence nexus" requirement and recognizes an "economic nexus" standard that will allow the imposition of state and local taxes on remote sellers outside Arizona who meet certain minimum sales thresholds. The Retail amendment has a delayed effective date, stipulating it does not go into effect until the date the state begins to enforce the new economic nexus rules pursuant to the Wayfair decision. Both amendments are expected to be approved.

Mr. Grafstrom also spoke about a resolution for the MTCC to designate the City Tax Administrators Council (CTAC) as their designee for interpretations of the model code. By naming CTAC as its designee, the MTCC will be able to respond quickly to taxpayer requests for rulings, thereby maintaining its authority over how the model code is interpreted and applied, rather than ceding that authority to the DOR.


## **11. EXECUTIVE SESSION TO DISCUSS EMPLOYMENT CONTRACT**

Mayor John Giles motioned to move into Executive Session; Mayor Jenn Daniels seconded, and it carried unanimously.

The Executive Committee moved into Executive Session at 11:57 a.m.

The Executive Committee adjourned Executive Session at 12:25pm.

  
\_\_\_\_\_  
EXECUTIVE DIRECTOR

  
\_\_\_\_\_  
PRESIDENT