PRESCOTT CITY COUNCIL
SPECIAL STUDY SESSION MEETING
TUESDAY, JANUARY 30, 2017
PRESCOTT, ARIZONA

MINUTES OF THE SPECIAL STUDY SESSION MEETING OF THE PRESCOTT CITY COUNCIL HELD ON JANUARY 30, 2017, in the COUNCIL CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

1. CALL TO ORDER

Mayor Oberg called the meeting to order at 9:04 a.m.

2. ROLL CALL:

Present:	Absent:
Mayor Oberg Mayor Pro Tem Lamerson Councilman Blair Councilman Lazzell Councilwoman Orr Councilman Sischka Councilwoman Wilcox	

3. DISCUSSION ITEMS

A. Discussion and presentation regarding Public Safety Personnel Retirement System (PSPRS) reform, the State Legislature, update on legislative issues, and information regarding municipal bankruptcy

Mayor Oberg said at the last Council meeting they had agreed to get input from the Legislators regarding the PSPRS issues.

Representative Noel Campbell addressed the Council. He talked about the pension that happened last year. He was concerned that the Council and the City Manager elected to hire eleven officers that would be placed into the old pension system just a few weeks before the new Tier 3 went into effect. He listed the differences between the old pension system and the Tier 3 system. He said if the Council had waited a few more weeks it would have been a 50/50 cost share. He said the job offers came well after the voters and the state had approved the cost savings of Proposition 124.

Representative Campbell said he had spoken to Senator Lesco and House Speaker Mesnard regarding Prescott's liability, they knew the concerns of the community. His goal was to have the speaker appointed an ad hoc committee to address reform around the state. He thought it would be accomplished with a lot of experts. They needed to educate the public, legislatures, and PSPRS members. He wanted to address and hopefully solve this problem which was equitable for all involved. He said the Council had made his job and the legislature's job more difficult to address Prescott's liability.

Representative David Stringer addressed the Council. He endorsed the remarks of Representative Campbell. He hoped that the Council would reconsider the hiring of the police officers, and offer the newly hired officers some type of temporary positions so they would not be enrolled in PSPRS before July 1st. He thought if the firefighters had not started yet, it could be postponed until July 1st.

Representative Stringer said public safety was number one, but Prescott was not a high crime city. He said it was a relatively short amount of time before the new pension system started. His concern was that bringing people on early, and incurring the substantial liabilities, that they would undermine the public confidence in the Council's judgment and commitment to limiting resources wisely.

Representative Stringer was also concerned that by passing a .75% sales tax increase the Council thought they were solving the pension issue, but that could not be further from the truth. He looked at the past decades of returns for PSPRS and thought it was impossible to pay off the debt with a .75% increase. He said from 2005 to 2014 the average investment return was 5.575%. The Reason Foundation had stated that the PSPRS fund had less than a 45% chance of assuming a 7.5% assumed rate of return over the next three decades. This was a problem not only in Prescott and he hated to see the public be sold a false narrative of that .75% increase would solve the PSPRS issue.

Representative Stringer said he would work with Representative Campbell on the effort to get an ad hoc committee to explore the pension liability issues. They needed to get all the stakeholders to recognize the financial perils. He reminded Council of the recent history of tax initiatives that were defeated. He said the one lesson that they should have learned was that it was much easier to get a measure defeated than it was to get one passed, especially when politicians and prominent members of the community were less than candid with the voters.

Councilwoman Wilcox appreciated the representatives coming and speaking with the Council, but she did not think it went over well when they came to scold them and tell them what they did was wrong. She said the Council had reasons for approving the positions and as Representative Stringer said, public safety was number one. She said there were specific cycles in which police officers could be hired; there were only two academies each year. If they did not hire those officers at that time they would have had to wait another year. She said if you stretch public safety too thin they cannot do the job they are asked to do. The Council felt they needed to fill the unfilled vacancies, which were not new positions. With respect to Fire they were fortunate to get a federal grant. They could now stop browning out fire stations and keep the response time at five minutes or less. She said they have one of the best, most efficient EMT fire response teams and they wanted to keep that quality and standard. There was a cost to adding them before the new system came into effect, but they were willing to absorb it.

Representative Campbell said it was not his intent to scold the Council. Their purpose for coming before Council was to formalize the debt obligation of the City and many other Cities by poor performance of the fund itself. He said when they acerbate that by hiring before July 1, 2017, they were adding millions of dollars to the pension fund liability. He said they were the Council's allies and he supported law enforcement. He respects their call on hiring before July 1st, but his intention was to try and help the City by not adding more debt to the PSPRS.

Representative Stringer said his purpose was to simply promote a frank discussion and to share the views in a frank way, not to scold anyone. He said with respect to the police officers, they were only talking about a five week period of time. He did not see how a five week delay would make a difference, or how it was a significant compromise.

Councilwoman Wilcox said it was a serious compromise of creditability, when the City already extended them offer letters, which included their enrolment in the current PSPRS system.

Representative Stringer was not suggesting that they cheat or take advantage of them.

Councilman Sischka asked about the .75% and how they had said it was not going to pay the debt. He had listened to former Councilmember Mary Ann Shuttles who said after 2006 they had seen this coming. She said that everyone back then was saying that the state would solve this problem. The state tried to solve a problem, but according to her part of the reason we were in the current situation was because we saw what was going on and were hoping that the state would come in and take care of it and they did not. Councilman Sischka asked if their suggestion was that they do nothing.

Representative Stringer said right now he was suggesting that they defer a tax increase until the legislature had further opportunity to look at this. He said Prescott as he understood it was not insolvent and they could put this off for another year or two. He thought it was a huge mistake and disservice to the voters.

Councilman Sischka said if the state did get something going then there would be no reason to continue with the .75% sales tax. That was always an option. He said he would hate to see them sitting around doing nothing again, and waiting for the legislature to hopefully come in as a knight in shining armor and save us. He thought they had to get something done, and then allow the legislature to fix the ultimate problem, if in fact that could happen.

Representative Campbell said Proposition 124 was a one – two year work in process. He knew the City needed to pay its debt. He said the way the legislature thinks was that if the City is paying their debt then there was no problem. He said it would take the cities suffering and to come in unison down to the legislature before they would revisit this again.

Councilwoman Orr said they were asked to hold off on a decision of putting an initiative on the ballot so they could see what was being done at the legislature. Her concern was that there was really nothing on the state's books that would pay off the debt. She said it was reported that Representative Campbell suggested that five or six cities come together to file bankruptcy. Representative Orr asked if they both suggested that the only way to get something done at the state was if five or six cities filed bankruptcy.

Representative Campbell said, yes, the action that it would take to move the legislature in a positive direction was when the cities reached critical mass. He said the only way they were going to get any action was if five, six, or seven cities would file for bankruptcy. He said he was not recommending that, but that would send off alarm bells at the state. Unless something drastically occurs at the city and municipality level, the legislature has washed their hands of this.

Councilwoman Orr said that the were a very solvent city. She did think that she was elected to put Prescott as one of the five or six cities to declare bankruptcy to make the legislature move.

Representative Stringer did not think that was what they were saying. The point of talking about bankruptcy was that it gave them leverage, and if they could not find another solution maybe that was something that needed to be on the table. He said there was strength in numbers. In respect to what the legislature was willing to do, he thought if they put the appropriate amount of pressure on the legislature they would act again. He said by raising taxes, by hiring people, and not taking advantage of the tools they gave us it would send the wrong message to the legislature.

Councilman Blair disagreed. He said the bottom line was that the City had a debt that they had to pay. He said with that debt in seven years from today they would not have a library or parks and recreation operations. If that was what they were advocating for them to do, for the quality of life in the community, it was not something he could stand behind. The only way the City could pay the debt off was to raise a tax. He thought it would soften the blow. We do have a public safety issue in the community and the state will not allow the local community to solve their own problems.

Representative Campbell agreed with Councilman Blair. That was something the City would have to deal with.

Councilman Blair said they appreciated Proposition 124, but it did not relieve the City of the liability. He asked if they were suggesting that If the City addressed the issue, then the legislature would not listen.

Representative Campbell said the legislature at the present time had no desire to revisit the issue.

Mayor Pro Tem Lamerson appreciated Proposition 124. He had lodged concerns over premature hiring, but he had concerns of not following through on the hiring process. He did not support going to the voters for .75%. He thought they had the opportunity to go to the reserves and pay down some of the encumbered expenses. They could reasonably pay down some of the debt, then they could go to the voters and say they had decreased the PSPRS liability.

Mayor Oberg thanked them for coming and talking with them. The Council would take into consideration everything they had to say.

Mayor Oberg introduced Barry Aarons, contract lobbyist for the City.

Mr. Aarons thanked Representatives Campbell and Stringer, and Senator Karen Fann. He said they were good and available representation.

Mr. Aarons said that when they were doing the strategic plan, two of the major things the Council said they wanted to deal with was the PSPRS issue, and a communication plan.

Mr. Aarons said the PSPRS issue could not be just a one prong approach. He suggested a three prong approach. He talked about other cities and agreed that until the other cities stepped up the pressure on the legislature was not as much as it could be. He said the critical mass levels were different and keeping up the level of pressure with other cities was critical.

Mr. Aarons said the statewide unfunded level was $8.2 billion. He thought for the state to step up when they have issues such as education, ACCESS, and corrections and ask them to divert or create money for pension issue was a tough ask. Even if the argument was made that the legislature was the one that put this into play, they would say that there were other factors. The legislature did have a variety of things and venues to continue to affect this. He said when you talk about the issue, you get publicity. The ad hoc committee idea could be taken lightly, but the speaker was not allowing the creation of study committees this year, so for him to have interest and to consider an ad hoc committee was something at a higher level. He said there were a lot of things at the legislature that drove interest.

Mr. Aarons talked about the development and implementation of a communications plan. He said if there was going to be a resolution there would need to be a combination of things. He thought it needed to be engaged very quickly. He said if there was any thought of taking an issue to the ballot within twelve or eighteen months they needed to get buy-in.

He reviewed the three prong attacked that included to work with other cities, keep pressure on the legislature, and to seriously engage the communications plan. He thought they should go to the public and ask them how they wanted to resolve the problem and what they were willing to do.

Councilwoman Orr commented that the Strategic Plan Committee had come to the same conclusion, that they needed several avenues.

Councilman Sischka said this perspective could have been given in 2006, but now they were in 2017 hearing it again. For all those years the City paid what they were expected to pay. They saw the problem coming, but they expected someone else to fix it for us. While the intent was to make sure that they did not do anything before they needed to, they had been not doing something for a long time. At some point they needed to stop kicking the can and do something about it. He would hate to have this same issue five years from now. He was having a hard time with waiting to solve the issue.

Mr. Aarons said the strategy that they were on was the best thing they could do to get long range planning.

Councilwoman Wilcox said if they take something to the voters, it had to be something that they would approve. She asked Mr. Aarons what he thought would be the most effective way to find out what the voters would be willing to approve.

Mr. Aarons thought it would be a combination plan; survey research, polling, and there were organizations that conducted research that the City might be able to piggyback on. He thought they should advocate an aggressive speaker's bureau. He said they needed to do a lot of different things to get out there to the public and paint some options to see what their response would be and what they would be willing to do.

Mayor Pro Tem Lamerson said one of the things they had done was to reorganize some of the hiring practices and the classification standards for new hires. He said that would have a direct impact on the general fund and then on PSPRS. He thought they needed to demonstrate their sincerity to the voters, and they do have reserves. What they had not done was discuss what portion of those reserves they would use to pay down PSPRS. They did not want to eliminate the quality of life by destroying what the general fund paid for. They also wanted to look at the reserves and bring it down to a manageable level. He thought it was premature to go to the voters unless all the options were vetted.

Councilman Blair talked about the debt. His question was how at the state level was a Charter City able to control their own destiny, like having a fee on the water bill to help pay for public safety. He thought the state needed to give them back the opportunity to have an impact fee. The state had taken both of those opportunities away from them. He said as he looked at the future he saw them having the same battle every year in the general fund. When they start talking about combining Fire with Yavapai County, they would not touch us until they paid off the PSPRS debt. The City had two problems, paying off the debt and having an avenue to take care of our public safety and our community.

Mayor Oberg knew that after 2006 there were some things done by the state legislature, and reforms were passed, which were disputed by the Court. He said they had to be very clear when they went to the public that they were using the correct data. Right now they knew they were at $78.4 million in debt and they needed to use the correct number. He said this was not a debt, but this was a liability. He thought they needed to all speak from the same sheet of music. If there were conflicting messages it would confuse the public.

Mr. Aarons said everyone needed to be providing the same information and the same data. He said they should have message development, message delivery, and message consistency when they were developing a speaker's bureau. He said the data had to be consistently applied.

Mr. Aarons continued his presentation reviewing current legislative bills.

HB2011 limited the amount of cash you could keep to pay off bonds. Mr. Aarons said this would be damaging, and said it may not pass.

HB2086 and SB1021 limited cities on the production of identification cards. Mr. Aarons said it was aimed at Phoenix because of the social services card they use.

HB2179 would require that all Intergovernmental agreements be reviewed ever eight years. Mr. Aarons said It would have severe consequences.

HB2213 was a government property excise tax and was used in bigger cities for vertical development.

HCR2011 would put on the ballot an increase in the motor vehicle fuel tax. Mr. Aarons said HURF had been diverted, and this would be idea of a statewide ballot to consider an increase in a gas tax.

SB1165 related to exempt wells. It would require getting three estimates on an execmpt well, instead of just one estimate. The estimate would then be an average of those three. It would provide more assuredness that the estimates were what they were looking for.

CM Sischka asked for clarification on the exempt well situation and what the estimates would do. Mr. Aarons responded that there was a concern that having only one estimate would allow for a low-ball estimate, which would allow for more exempt wells to be permitted.

Mr. Aarons said those were the big bills currently proposed. He said he had not seen a residential bill yet. He talked about the authority of cities to control their own revenue. He thought that was another one of those issues that would take a pooling of cities.

Councilwoman Wilcox asked about HCR2011 she found it an interesting parallel to what the Strategic Plan Committee was recommending on the City ballot. She asked if the gas tax was proposed because they were trying to pay down the unfunded liability for DPS.

Mr. Aarons said no, it was a budget technique that they used to free up more revenue for other things, so that certain education programs could be funded.

Councilman Blair asked if instead of going for three estimates for drilling wells. He would like to see that language changed to the dry well water off the roofs for recharge. Mr. Aarons said he would look at that.

Councilwoman Orr asked about the point of sale bill number. Mr. Aarons said that bill had not been introduced yet.

Councilwoman Orr asked if the only thing that had been introduced for PSPRS was clean up language for Proposition 124. Mr. Aarons thought SB1115 codified the new definition of normal retirement from 2012-2017.

CW Orr asked if anything had been introduced that would tackle the PSPRS debt. Mr. Aarons said that would become a budget issue.

Councilman Sischka drew a parallel with what Representative Campbell was trying to do with the gas tax and what they were trying to do by freeing up the General Fund.

Mr. Aarons said that one of the things that Representative Campbell’s bill stated was that money that was put into HURF could not be raided for any purpose.

Councilman Sischka said that was exactly what they were trying to do here. They were trying to raise money to pay off an unfunded liability, and that would all be used to help free up money in the General Fund in order to pay for the things that it was intended to pay for.

Mr. Aarons said it was kind of the situation, but inverted.

Councilman Sischka wondered if Representative Campbell had to go before the public to find out what they would be willing to pay for.

Mayor Pro Tem Lamerson said the assessment was on $78 million. He thought they needed to look at all the options. He said it had become apparent to deliver the police and fire model of today that cost the community millions. If we paid down some of what we owed we could demonstrate the sincerity on eliminating the future liability. He aside if there were other things the Council could do before they do a sales tax increase.

Councilman Sischka asked it is premature to set a date.

Mayor Pro Tem Lamerson said yes, because they did not know all the options.

Councilwoman Wilcox asked what the Governor's plan was for paying down the DPS unfunded liability. Mr. Aarons said he did not have that answer.

Councilwoman Wilcox asked if the state could afford their annual liability. Mr. Aarons said there was money in the budget to pay that off.

Councilwoman Wilcox said she heard that money was being taken from the Department of Transportation to put into DPS to possibly pay for their unfunded liability.

Mr. Aarons said the way it appeared from his look at the budget the HURF was being freed up to put monies in the General Fund to pay for education.

Councilwoman Wilcox thought it sounded like three or four nutshells, and a question as to where the money was going.

Councilwoman Lazzell said he had heard the same rumors, and asked Mr. Aarons if he would take a look at that.

Mayor Oberg asked about the new PSPRS board and if they had actually been seated and elected. Mr. Aarons said he would find out.

Mayor Oberg talked about a pooled Tier 3 and asked Mr. Aarons for information he might have.

Mr. Aarons thought when they talked about Proposition 124 last year the consensus was to have just one pool.

Mayor Oberg said he had talked to the League of Cities and Towns and they indicated they would move forward in looking at pooling. Mr. Aarons said as far as he knew they had not yet made that decision.

Jon Paladini, asked about HB 2178 it was the election contract bill that was referred to house government.

Mr. Aarons said this went back to the when Ms. Ugeniti was the chair of the election committee. The bill was on the list, but because it did not have any action he did not go over it. He said he would keep an eye on it.

Mr. Paladini thought this was the bill that would move all cities to even-numbered election years. He said we were a Charter City and held our elections in the odd-numbered years. The bill was saying that we would not be able to contract with the county to run our elections. He hoped the League of Cities and Towns would fight this as it put pressure for towns to finance their own election.

Michael Lamar, City Manager, asked if it was Mr. Aarons opinion that the legislature would penalize a community for trying to fix their issue.

Mr. Aarons thought that was why an ad hoc committee was so important, as it could offer something in the way of a matching fund opportunity. He said the possibility of potential rewards could be on the table, and an ad hoc committee could say they needed to help the cities. One of the other ideas that needed to be discussed was to look at migration to more defined contribution participation.

Mayor Oberg appreciated Mr. Aarons presenting and updating the Council.

Councilman Lazzell asked if he was just kept the Council apprised of the bills, and who approve those items.

Mr. Aarons said some of the positions were established in the Council's Strategic Plan. He said some issues they talk to staff to find out what the implications are, and used the Council's established legislative program that was adopted in order to guide him. For other items with a more technical aspect he would speak with the City Manager and the City Attorney.

Mr. Aarons departed.

Mr. Paladini presented a PowerPoint presentation on Municipal Bankruptcy in Arizona.

Mr. Paladini said it was important to discuss the bankruptcy issue as it had come up in past meetings. He said bankruptcy was a two pronged decisions; a legal decision and a political decision. He said Arizona was one of twelve states that allowed for municipal bankruptcy. He said the City was not insolvent, and had a lot of assets to pay the debt. The City has a plan to pay off debt, but it did affect other areas because they would have to cut spending on programs did not mean that they were insolvent.

Mr. Paladini talked about requirements of bankruptcy. One requirement was to negotiate in good faith with the creditors. The issue with that was that they would have to negotiate with each PSPRS retiree and the existing employees. He said If they were not insolvent the bankruptcy court would through it out. He said the State could challenge municipality bankruptcy.

Mr. Paladini said the big question that was still in litigation had to do with vested rights. The Arizona Constitution says one is vested at the time of employment. He talked about the substantial legal costs associated with municipal bankruptcy. He said in his opinion the facts did not warrant a bankruptcy for this City.

Mr. Paladini's presentation included the following information:

- Bankruptcy Law
- Does Arizona Authorize Municipalities
- The Prerequisites of a Municipal Bankruptcy Filing
- Insolvency Requirement
- The Prerequisites of a Municipal Bankruptcy Filing
- The Role of the Debtor (Municipality)
- Receivership
- The Role of the State
- Positive Impacts of Municipal Bankruptcy
- Negative Impacts of Municipal Bankruptcy
- The Interplay of Constitutional Protections for Public Pension Benefits
- The Detroit Case
- Vested Rights vs. Executor Contracts
- Costs of Bankruptcy
- Does Bankruptcy Work

Mr. Paladini said in his opinion the facts did not warrant a bankruptcy for this City. The City was far from an insolvency issue.

Mr. Lamar talked about the outcomes of a bankruptcy, and posed the following questions:

- Do we retain our existing businesses?
- Do we remain a viable tourism destination?
- Do we remain attractive to new businesses?
- Do middle, upper middle and/or high income retirees continue to relocate here?
- What does downtown look like in terms of retail, special events, new commercial and residential development, etc?
- If the impact is deemed to be negative, are we willing to serve as the sacrificial lamb for the statewide public safety pension reform?

Councilwoman Orr said the biggest cost of doing bankruptcy would be the public relations. It would affect tourism, our economy, and our goals of economic development. It would set the City many years. She was concerned with the message that the talk of bankruptcy talk was sending. She hoped that they could assure the citizens who had invested their lives and homes in this community.

Councilman Blair thought they should move past the bankruptcy idea because of what it would do to the quality of their lives. He did not think they could recover from that.

Mayor Pro Tem Lamerson said that Prescott was not bankrupt. They had an issue of a liability, and the ability to come up with a solution to address the liability. The only question was how and when.

Councilman Sischka asked if what the Council was asking was for the Committee to go back and look at alternatives with reserve funds.

Mayor Pro Tem Lamerson and under new management there had been changes, which allowed for some of the reduction of expenditures to go to paying the liability.

Councilman Sischka said he would like to see what they could do with the money that was freed in the General Fund. He thought if they answered those questions he would feel more comfortable moving forward.

Mayor Pro Tem Lamerson thought it was premature to set an election date on what they would ask because of the complexity of what they are going to ask for. He wondered what would happen if they paid down the liability.

Councilwoman Wilcox said the Council had decided to meet once a week as a full Council to continue to discuss the issue. The Strategic Plan Committee felt they had vetted it thoroughly, and their last presentation to the Council gave options. They were asking the Council to consider one of the three most palatable options.

Mayor Pro Tem Lamerson thought they should go to management to see what they could do with the reserves in order to reduce the PSPRS liability.

Councilman Blair thought if it was worded the proper way; it said .75% until it was paid off. He did not like sitting there and listening to the Representatives say that the debt was never going to be paid off. There was an obligation to the community to let them know they had looked at everything they could.

Mayor Pro Tem Lamerson did not disagree that they should go to the voters. The part he was uncomfortable with was that they had not looked at everything. One of the options that was not looked at yet was the reserves. He said he would be more supportive of .75% if it was dedicated to police and fire.

Councilman Blair thought it was immaterial because they would be setting it at 10 years or sooner, even they used $10 million of the reserves.

Mayor Pro Tem Lamerson said his suggestion was not to put a 10 year limit on it. He said just because they paid down the PSPRS debt police and fire services did not go away. The City did not have a source of revenue for the services.

Councilwoman Orr said they had talked to citizens, and there were a group of citizens that came forward last year. She said they kept hearing that any amount that is raised should go to the debt.

Councilwoman Orr said they needed to keep it simple and designate the tax for a specific purpose. It needed to sunset when the debt was paid off, or in 10 years. She understood they were not there yet, and thought they did need to look at the reserves as a possible option.

Mayor Pro Tem Lamerson said he would like to see that as an option.

Councilwoman Orr said the property tax was one that she would take off the table, and she was glad that they were at the point that they took bankruptcy off the table.

Councilman Sischka thought that just because they would designate a sales tax as a source of revenue did not mean that it would pay it off.

Mayor Oberg appreciated the Representatives Campbell and Stringer, and Mr. Aarons for coming in. He said it was a complex subject and thought they had to be cognizant of the burden that they were asking the taxpayers to take. He agreed with a dedicated funding source for police and fire. He understood that they needed to move forward and pay the liability they have, and they needed a dedicated funding source.

Mayor Oberg thought as far as putting something on the ballot in the future, if they came to a decision they could put something on the special election that was already going to be held in August.

4. ADJOURNMENT

There being no further business to be discussed, the Study Session Meeting of January 30, 2017, adjourned at 11:41 a.m.

HARRY B. OBERG, Mayor

ATTEST:

DANA R. DeLONG